

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**DEBORAH M. MOONEYHAN AND
MICHAEL MOONEYHAN**

PLAINTIFFS

V.

CIVIL ACTION NO. 4:15-CV-181-DMB-DAS

**WAL-MART STORES, INC. AND
WAL-MART STORES EAST, LP**

DEFENDANTS/THIRD-PARTY PLAINTIFFS

V.

**JONES STEPHENS CORPORATION,
HI-TEC LABORATORIES, INC.,
THE ROOTO CORPORATION, AND
JOHN DOES A, B AND C**

THIRD-PARTY DEFENDANTS

THIRD-PARTY COMPLAINT

NOW COMES Defendants Third-Party Plaintiffs Wal-Mart Stores, Inc., and Wal-Mart Stores East, LP (hereinafter “Wal-Mart”), and files its Third-Party Complaint against the Third-Party Defendants Jones Stephens Corporation, Hi-Tec Laboratories, Inc., The Roto Corporation, and John Does A, B, and C (hereinafter “Third-Party Defendants”).

PARTIES

1.

Plaintiffs Deborah M. Mooneyhan and Michael Mooneyhan are adult resident citizens of Bolivar County, Mississippi.

2.

Defendants/Third-Party Plaintiffs Wal-Mart Stores East, LP is a limited partnership organized and existing under the laws of the State of Delaware, with its principle place of business located in Bentonville, Arkansas. Defendants/Third-Party Plaintiffs Wal-Mart Stores, Inc. is a corporation organized and existing

under the laws of the State of Delaware, with its principle place of business located in Bentonville, Arkansas.

3.

Third-Party Defendant Jones Stephens Corporation is a corporation organized in the state of Alabama with its principle place of business in Moody, Alabama, where it may be served with process and this Third-Party Complaint through its President and Registered Agent, Dennis Allen, at the company's headquarters located at 3249 Moody Parkway, Moody, AL 35004. John Stephens Corporation is the distributor of the subject product which allegedly caused Plaintiffs' damages as set forth in their Complaint.

4.

Third-Party Defendant Hi-Tec Laboratories, Inc. is a corporation organized in the state of Florida with its principle place of business in Freeport, Florida, where it may be served with process and this Third-Party Complaint through its President and Registered Agent, John J. Magee, at the company's headquarters located at 9646 Hwy. 20 West, Freeport, FL 32439. On information and belief, Hi-Tec Laboratories was the manufacturer of the original product which allegedly caused Plaintiffs' damages as set forth in their Complaint.

5.

Third-Party Defendant The Rooto Corporation is a corporation organized in the state of Michigan with its principle place of business in Howell, Michigan, where it may be served with process and this Third-Party Complaint through its Registered Agent, Glenn R. Matecun, at 915 N. Michigan Avenue, Suite 6, Howell, MI 48843. On information and belief, The Rooto Corporation was reported to be the manufacturer of the subject product which allegedly caused Plaintiffs' damages as set forth in their Complaint.

6.

Third-Party Defendants John Does A, B, and C are individuals, corporations, partnerships or other associations whose identity is currently unknown but otherwise are responsible for the installation, maintenance, repair and upkeep of the subject pay phone at issue in this action. All such unknown parties are believed to be domiciled outside of the state of Mississippi and also have their principal place of business outside of the state of Mississippi. Upon identification of the identity of such unknown parties, Defendant/Third-Party Plaintiff Wal-Mart will move to amend its Third-Party Complaint with the identity of any unknown parties.

JURISDICTION

7.

This Court has personal and subject matter jurisdiction under the provisions of Title 28, U.S.C. § 1332 and related statutes. Plaintiffs are adult resident citizens of Bolivar County, Mississippi. Defendant/Third-Party Plaintiff Wal-Mart Stores, Inc. is a corporation organized under the laws of the State of Delaware, with its principle place of business in the State of Arkansas, and Defendant/Third-Party Plaintiff Wal-Mart Stores East, LP is a limited partnership organized and existing under the laws of the State of Delaware, with its principle place of business located in the State of Arkansas. Third-Party Defendant Jones Stephens Corporation is a corporation organized under the laws of the State of Alabama with its principle place of business in the State of Alabama. Third-Party Defendant Hi-Tec Laboratories, Inc. is a corporation organized under the laws of the State of Florida with its principle place of business in the State of Florida. Third-Party Defendant The Rooto Corporation is a corporation organized under the laws of the State of Michigan with its principle place of business in the State of Michigan. On information and belief, John Does A, B, and C are individuals, corporations, partnerships or other associations whose identity is currently unknown but who are organized outside the State of Mississippi

and also have their principle place of business outside the state of Mississippi. Thus, complete diversity of citizenship exists and venue is proper herein.

FACTS

8.

On or about June 16, 2014, Plaintiff Deborah Mooneyhan was in the Wal-Mart Store located in Cleveland, Mississippi. Plaintiff Deborah Mooneyhan reported to Wal-Mart employees that she picked up a bottle of Liquid Lightning Drain Cleaner while shopping and got some of the drainer cleaner on her hand.

9.

On August 2, 2015, Plaintiffs filed their lawsuit suit against Wal-Mart in the Circuit Court of Bolivar County, Mississippi. Plaintiffs' Complaint sought to recover her alleged damages from Wal-Mart as a result of the claimed injury she sustained when the Liquid Lightning Drain Cleaner came in contact with her hand. On December 11, 2015, Wal-Mart removed this cause from the Circuit Court of Bolivar County, Mississippi.

10.

At all times relevant herein, Third-Party Defendants owed Wal-Mart a duty to design, manufacture, produce, market, sell, label, and deliver the subject product in a reasonably prudent and safe manner so that it could be utilized and sold for the purpose for which it was intended without unreasonable risk of danger. Third-Party Defendants breached their duties to manufacture, produce, market, sell, label, and deliver the subject product and as a direct proximate result, Plaintiffs were allegedly injured and, in turn, Wal-Mart has suffered damages and losses for which Wal-Mart is entitled to reasonable compensation and/or reimbursement as shown below.

11.

Plaintiffs alleged injuries and damages were caused by defective design, manufacture, production or delivery of the subject product, and in turn, Wal-Mart has suffered damages because of Third-Party Defendants' negligence and breach.

12.

Defendants/Third-Party Plaintiffs Wal-Mart do not own, operate, maintain or control the design, manufacture or delivery of the subject product or the facility where it was manufactured. Moreover, Defendants/Third-Party Plaintiffs Wal-Mart did not manufacturer, produce, design, test, label or deliver the subject product which allegedly injured Plaintiffs. Wal-Mart justifiably relied on Third-Party Defendants to properly manufacture, design, test, label and deliver the subject product for sale to Wal-Mart customers.

13.

Third-Party Defendant Jones Stephens entered into a contractual relationship with Defendants/Third-Party Plaintiffs Wal-Mart as a distributor and/or supplier of the subject product and a copy of the Supplier Agreement with Jones Stephens is attached hereto as Exhibit "1" and incorporated herein by reference. Such Supplier Agreement imposes binding responsibilities and obligations upon Jones Stephens Corporation, including duties to defend and indemnify Wal-Mart for Plaintiffs' claims asserted herein.

14.

On December 1, 2015, Wal-Mart tendered the defense and potential indemnity of this claim to Third-Party Defendants Jones Stephens Corporation and Hi-Tec Laboratories calling on such Third-Party Defendants to defend and indemnify Wal-Mart for all allegations, claims and demands of Plaintiffs in this action. These Third-Party Defendants have denied the request and otherwise refused to defend or

indemnify Wal-Mart. Copies of the December 1, 2015 correspondence are attached hereto as Exhibit “2” and incorporated herein by reference.

15.

On March 8, 2015, Wal-Mart also tendered the defense and potential indemnity of this claim to Third-Party Defendant calling on this Third-Party Defendant to defend and indemnify Wal-Mart for all allegations, claims and demands of Plaintiffs. This demand was made based on the allegations from Hi-Tec Laboratories that it did not manufacture the subject product, and that The Roto Corporation was improperly manufacturing the subject product and attempting to sell the product under the Supplier Agreement with Jones Stephens Corporation. Despite the good faith notice and demand sent to The Roto Corporation, this Third-Party Defendant has completely failed to respond to the notice/demand and otherwise refused to defend or indemnify Wal-Mart. Copies of the March 8, 2015 correspondence is attached hereto as Exhibit “3” and incorporated herein by reference.

BREACH OF CONTRACT

16.

Pursuant to the Supplier Agreement entered into between Wal-Mart and Third-Party Defendant Jones Stephens Corporation and related written documents, such Third-Party Defendant is contractually obligated to defend, indemnify, and hold harmless Wal-Mart against the claims and action brought by the Plaintiffs in this case.

17.

Jones Stephens Corporation breached its contract with Wal-Mart and have refused to comply with the terms and conditions therein. Specifically, Jones Stephens breached their legal obligation to defend and indemnify Wal-Mart from the claims alleged by Plaintiffs herein.

18.

As a direct and proximate result of the breach of contract from Third-Party Defendant Jones Stephens, Defendants/Third-Party Plaintiffs Wal-Mart have suffered damages and will suffer damages in the future as shown below.

COMMON LAW INDEMNITY AND DEFENSE

19.

Third-Party Defendants Jones Stephens, Hi-Tec Laboratories and Roto Corporation had a duty to properly manufacture, design, produce, test, label and deliver the subject product. Moreover, Third-Party Defendants had a duty to inspect or prevent any unreasonably dangerous product, or properly warn Wal-Mart and members of the public of any unreasonable dangers posed by the subject product.

20.

Wal-Mart is entitled to a legal defense and indemnification from Third-Party Defendants as to all claims asserted by Plaintiffs as Third-Party Defendants were actively negligent in manufacturing, designing, producing, testing, labeling and delivering the subject product, which is the sole responsibility and legal duty of Third-Party Defendants.

21.

Third-Party Defendants have breached their duty owed to Defendants/Third-Party Plaintiffs Wal-Mart for common law indemnity based on the active negligence of Third-Party Defendants. As direct and proximate cause of Third-Party Defendants' breach of their duties, Defendants/Third-Party Plaintiffs Wal-Mart have suffered damages and will continue to suffer damages in the future as shown below.

22.

Based on the foregoing, and other facts that may be discovered in the prosecution of this cause, and in defense of the instant suit filed by Plaintiffs, Wal-Mart is entitled to the following relief and damages from Third-Party Defendants, jointly and severally:

- a. Complete indemnification as to all claims asserted by, and/or any recovery obtained in favor of the Plaintiffs herein;
- b. All attorneys fees, costs and expenses incurred in the defense of the claims asserted against Wal-Mart in this cause;
- c. All expert witness fees incurred in the defense of the claims asserted against Wal-Mart in this cause;
- d. All discovery costs and expenses incurred in the defense of the claims asserted against Wal-Mart in this cause;
- e. All costs of Court incurred in the defense of the claims asserted against Wal-Mart in this cause;
- f. All attorneys fees, costs and expenses incurred in the prosecution of this Third-Party Complaint;
- g. All other fees and costs of litigation associated with the defense of the claims asserted against Wal-Mart, and incurred in the prosecution of this third-party lawsuit filed by Wal-Mart and other items recoverable under the subject Supplier Agreement.

WHEREFORE, PREMISES CONSIDERED, Defendants/Third-Party Plaintiffs Wal-Mart Stores, Inc. and Wal-Mart Stores East, LP demand judgment of and from Third-Party Defendants Jones Stephens Corporation, Hi-Tec Laboratories, Inc., The Rooto Corporation, and John Does A, B, and C, jointly and severally, for their breach of contract and breach of duty for a defense and common law indemnity to Wal-Mart for the allegations and claimed damages of Plaintiffs in the underlying Complaint; and Defendants/Third-Party Plaintiffs Wal-Mart Stores, Inc. and Wal-Mart Stores East, LP demand a full defense and indemnity from Third-Party Defendants in the event Plaintiffs are successful in their claims against Wal-Mart. Defendants/Third-Party Plaintiffs Wal-Mart Stores, Inc. and Wal-Mart Stores East, LP further request such additional legal and equitable relief to which it may be entitled as shown above.

RESPECTFULLY SUBMITTED, this, the 5th day of May, 2016.

WAL-MART STORES EAST, LP

By: /s/R. Brittain Virden
R. BRITTAIN VIRDEN, MBN 10022
Attorney for Defendants/Third-Party Plaintiffs
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CERTIFICATE OF SERVICE

I, R. Brittain Virden, attorney for Defendants/Third-Party Plaintiffs Wal-Mart Stores, Inc. and Wal-Mart Stores East, LP, hereby certify that on May 5, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

VIA E-MAIL: jonfairbanklaw@gmail.com

Jonathan B. Fairbank, Esq.

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Christopher P. Williams, Esq.

/s/R. Brittain Virden

R. BRITTAIN VIRDEN