

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT  
OF TENNESSEE AT JACKSON

JOHN FRANKS and wife, BRENDA  
FRANKS,  
Wife  
Plaintiff,

V.

DOCKET NO.:  
**JURY DEMANDED**

LAVATEC, INC, and  
ABC COMPANY  
Defendants.

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COMPLAINT FOR DAMAGES

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Now into court through undersigned counsel comes Plaintiffs, John Franks and wife,  
Brenda Franks, who aver as follows:

**JURISDICTION AND VENUE**

1. Jurisdiction in this matter is based upon 28 U.S.C. 1332, and the amount in controversy herein exceeds the sum of \$75,000.00.
2. Venue in this matter is proper with this court as the incident at issue in this litigation occurred in Madison County, Tennessee, which is within jurisdictional boundaries of this court.

**PARTIES**

3. At all times pertinent hereto, Plaintiffs, John Franks and Brenda Franks, (hereinafter referred to as "Plaintiff") are competent adult resident citizens of Medina, Gibson County, Tennessee; at the time of the incident to at issue herein John Franks and Brenda Franks were lawfully married and have been continuously lawfully married from that time up until the present.

4. At all time pertinent hereto, Defendant, Lavatec, Inc. (hereinafter referred to as “Lavatec”) is a Connecticut Corporation with its principal place of business in Connecticut, and is authorized to do, licensed to do and/or doing business within the state of Tennessee.
5. ABC Company (hereinafter referred to as “ABC”) is a company whose identity, residency and citizenship is unknown, but upon information and belief is a foreign company with its principal place of business outside the State of Tennessee and is authorized to do, licensed to do and/or doing business within the State of Tennessee. ABC is believed to be the predecessor in interest to Balfour Beatty Construction, Inc. or LLC.
6. At all pertinent times hereto, Plaintiff, John Franks was an employee of Jackson-Madison County General Hospital (hereinafter “the Hospital”).
7. Part of John Franks’ duties and responsibilities as an employee for the Hospital involved working with and using certain electronic laundering machinery (hereinafter “the machinery”), which machinery was part of the laundering facility of the Hospital.
8. Defendant, Lavatec was a manufacturer and/or commercial supplier and/or retailer and/or assembler and/or wholesaler of a product, said product being the machinery, and sold the machinery to the Hospital.
9. Defendant, Lavatec and/or its agents, representatives and/or contractors participated in the installation or assembly of the machinery at the Hospital and also provided the guidance to the Hospital and its employees with respect to the installation, use, and operation of the machinery.

10. Defendant, Lavatec and/or its agents, representatives and/or contractors participated in the installation or assembly of, instruction in and the use of, and/or oversight of the usage of the machinery.
11. Defendant, ABC was a manufacturer and/or commercial supplier and/or retailer and/or assembler and/or wholesaler of the machinery.
12. Defendant, ABC also participated in the installation of, instruction in the use of, and/or oversight of the usage of the machinery.
13. On January 13, 2007, Plaintiff was operating the laundry system when parts of the equipment, including certain steel hooks, hit him in the head, face and body and actually, directly and proximately caused serious mental, physical and emotional damages to plaintiff for which he received treatment and worker's compensation benefits from his employer, the Hospital.

**ALLEGATIONS AGAINST DEFENDANTS**

**COUNT I: STRICT LIABILITY FOR PRODUCTS LIABILITY AGAINST  
LAVATEC and/or ABC**

14. Lavatec and/or ABC breached a duty imposed upon them to provide a safe product, in that the machinery and/or one or more of its component parts was so defective as to be unreasonably dangerous, said defects being manufacturing defects and/or design defects in the machinery and/or its component parts.  
Plaintiff was a foreseeable user of the machinery.
15. The aforementioned defective condition of the machinery and/or component parts rendered them unreasonably dangerous to users, in that the machinery or its component parts were either dangerous beyond the expectation of the ordinary

consumer of such products, or a less dangerous alternative or modification was economically feasible for the machinery or component parts .

16. Lavatec and/or ABC and/or their agents, employees or contractors assembled the machinery at the Hospital.
17. Lavatec and/or ABC, and/or their agents, employees, or contractors (for whom Lavatec and/or ABC are vicariously liable) failed to properly assemble the laundry system allowing certain safety features, below described, to remain unassembled on the machinery, which features were necessary to the safe and proper operation of the machinery, including but not limited to an uninstalled steel safety cage (“safety cage”).
18. The aforementioned steel safety cage was not installed at the time of Plaintiff’s injury but was in fact sitting on the soiled linen dock of the Hospital for approximately four months prior to the incident at issue in this cause.
19. The machinery had been placed into use without the safety cage and was being regularly used prior to and up until the time of plaintiff’s injury.
20. Lavatec and/or ABC breached a strict duty in the assembly of the machinery because the assembly was so defective as to be unreasonably dangerous and such defective condition was either dangerous beyond the expectation of the ordinary consumer or a less dangerous alternative or modification was economically feasible.
21. While denying that Plaintiff “misused” the machinery in any manner, to the extent the Plaintiff may have misused the machinery, any such misuse was a reasonably

foreseeable use or misuse of the machinery which Lavatec and/or ABC should have anticipated.

22. One or more of the defects aforementioned existed when the machinery left Lavatec and/or ABC's control.
23. In the alternative, Lavatec and/or ABC failed to provide adequate warning of the condition of the machinery and/or dangers of the machinery, and such absence of adequate warning constitutes a defective condition in and of itself and an adequate warning would have prevented the injury that occurred.
24. One or more of the defective conditions set forth above were the actual, direct and proximate cause of the damages to Plaintiffs, such damages being set forth in paragraph 42 (Causation & Damages) below and incorporated within this Count I as if set forth herein *in extensio*.

**COUNT II: NEGLIGENT PRODUCTS LIABILITY AGAINST**

**LAVATEC AND/OR ABC**

25. Plaintiffs hereby re-allege and re-aver each and every allegation set forth in paragraphs 1 through 22 above.
26. Lavatec and ABC owed Plaintiff a duty of reasonable care as Plaintiff was a foreseeable user of the machinery and/or the machinery or installation of the machinery and was so unreasonably dangerous as to be defective in one or more of the following respects:
  - a. The steel hook mechanisms were unreasonably dangerous;
  - b. The absence of the steel safety cage was an unreasonably dangerous defect;
  - c. Proper warnings about the dangers of the machinery were inadequate;

- d. The design of the machinery was unreasonably dangerous and Lavatec and/or ABC, or one or more agents, employees or contractors of Lavatec and/or ABC who those designed the machinery knew or should have known of enough facts to put a reasonable manufacturer, installer, retailer, assembler, or wholesaler on notice about the dangers of marketing the machinery as designed;
- e. The aforementioned acts of negligence and defective conditions were the actual, direct, and proximate cause of the damages to Plaintiffs set forth in paragraph 42 (Causation and Damages) below, and incorporated into this Count III as if set forth herein *in extensio*.

**COUNT III: NEGLIGENCE OF DEFENDANTS**

- 27. Plaintiffs hereby re-aver and re-allege each and every allegation set forth in paragraphs 1 through 24 above as if set forth herein *in extensio*.
- 28. The defendant(s), Lavatec, and/or ABC were negligent in one or more of the following particulars:
  - a. Failing to properly install the laundry system.
  - b. Failing to properly instruct the proper employees of the Hospital about the operation and/or defects and/or hazards of operation of the system.
  - c. Failing to install portions of the machinery which were necessary to its safe operation.
  - d. Failing to warn Plaintiff and/or appropriate representatives of the Hospital of the dangers of operating the machinery without its complete installation.
  - e. Other acts of negligence which may be proven at the trial of this matter.

- f. One or more of the aforementioned acts or omissions of the defendants constituted recklessness and such complete disregard for the safety of Plaintiff, and/or gross negligence, such as to entitling Plaintiff to an award of punitive, treble damages, attorney's fees, court costs and/or costs of litigation.
29. One or more of the defective conditions set forth above were the actual, direct and proximate cause of the damages to Plaintiffs, such damages being set forth in paragraph 42 (Causation and Damages) below and incorporated within this Count IV as if set forth herein *in extensio*.

**COUNT IV: BREACH OF THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE UNDER T.C.A. 47-2-314 AND/OR T.C.A. 47-2-315 BY LAVATEC AND/OR ABC**

30. Plaintiff hereby re-avers and re-alleges each and every allegation set forth in paragraphs 1 through 26 above.
31. Lavatec and/or ABC sold the machinery to the Hospital and pursuant to the contract(s) of sale the implied warranties of merchantability and usage of trade pursuant to T.C.A. 47-2-314 was in effect, and Plaintiffs were third party beneficiaries of such warranties.
32. Lavatec and/or ABC placed the machinery into the stream of commerce when such machinery was not reasonably safe for its intended use and/or its intended environment.
33. In the alternative, the machinery was, as it left the possession and control of Lavatec and/or ABC in such a condition not contemplated by the Hospital or Plaintiff as to be unreasonably dangerous to either or both.

34. Lavatec and/or ABC were a supplier of the machinery within the context of the laws of the State of Tennessee and the machinery supplied by Lavatec and/or ABC was not fit for its intended purpose and/or not fit for its particular purpose and/or not fit for a purpose which was foreseeable by the Defendant(s) in the use of the machinery.
35. Lavatec and/or ABC were in breach of the implied warranty of merchantability and fitness for a particular purpose.
36. One or more of the defective conditions set forth above were the actual, direct and proximate cause of the damages to Plaintiffs, such damages being set forth in paragraph 42 (Causation and Damages) below and incorporated within this Count V as if set forth herein *in extensio*.

**COUNT V: BREACH OF EXPRESS WARRANTY AND MISREPRESENTATION**

**BY LAVATEC and/or ABC**

37. Plaintiff hereby re-avers and re-alleges each and every allegation set forth in paragraphs 1 through 32 above.
38. Lavatec and/or ABC were in breach of the express warranty of fitness for the purposes intended and/or for the foreseeable use of the machinery and/or misrepresented the ability of the machinery to safely perform the functions for which it was designed.
39. Lavatec and/or ABC were the actual manufacturers and/or suppliers and/or in the chain of distribution of the machinery rendering them liable for damages caused by the defects in the design and/or installation and/or malfunction of the machinery.



40. Plaintiff, John Franks was a foreseeable victim of the aforementioned defect(s).
41. One or more of the defective conditions set forth above were the actual, direct and proximate cause of the damages to Plaintiffs, such damages being set forth in paragraph 42 (Causation and Damages) below and incorporated within this Count VI as if set forth herein *in extensio*.

**COUNT VI: CAUSATION AND DAMAGES**

42. One or more of the above Count I-V, and the installation and product defects and breaches of warranty and misrepresentation, and acts or omissions of negligence, recklessness or gross negligence were the actual, direct and proximate cause of the following damages to Plaintiff, John Franks.
  - a. General damages for mental, physical and emotional pain and suffering, past, present and future.
  - b. Special damages, including loss of wages, loss of wage earning capacity, and loss of benefits due from his employer.
  - c. Special damages in the amount of the out-of-pocket medical expenses incurred by Plaintiff, past, present and future.
  - d. Treble damages, punitive damages, attorney's fees, court costs, and/or costs of litigation, as a result of the reckless, willful and/or grossly negligent conduct of defendants aforescribed.
  - e. Such other damages as may be shown at the trial of this matter.

**COUNT VII: LOSS OF CONSORTIUM AND LOSS OF SERVICES OF  
BRENDA FRANKS AGAINST LAVATEC AND/OR ABC**

43. As a result of the aforementioned accident and injuries sustained by John Franks, his wife, Brenda Franks, has suffered a loss of services, such loss of services being of such a character to entitle her to recover the value of such services.
44. As a direct and proximate result of the aforementioned accident and injuries sustained by her husband, Plaintiff Brenda Franks has suffered a loss of consortium including but not limited to deprivation of her husband's love, affection, comfort and conjugal relations, society, companionship, cooperation and solace relations, due to a material change in his personality, attitudes and capabilities, as well as deterioration in the happiness of the marriage subsequent to the injury, and a deterioration of the marital relationship following the injuries.
45. As a direct and proximate result of the wanton or reckless disregard for the safety of Plaintiff, Plaintiff, Brenda Franks is entitled to an award of punitive damages or treble damages, court costs, costs of litigation, and/or attorney's fees.
46. As a direct and proximate result of the allegations set forth in Counts I – VII above, Brenda Franks has suffered severe mental and emotional distress.
- 47. Plaintiffs' request trial by jury on all issues set forth herein.**

Wherefore, after due proceedings are had, Plaintiffs pray that:

1. Proper process be served upon the defendants requiring them to file an answer and otherwise appear and defend against this Complaint.
2. That the Plaintiff, John Franks be awarded general damages of \$1,500,000.00 for physical, mental and emotional pain and suffering and mental anguish, past, present and future and other such general damages as may be proven at the trial of this matter.

3. That the Plaintiff, Brenda Franks be awarded \$500,000.00 for loss of consortium, services, society and similar such damages.
4. That the Plaintiffs be awarded their special damages in an amount to be determined by the trier of fact.
5. That the Plaintiff, John Franks be awarded punitive and/or treble damages in the amount of \$3,500,000.00 or such other amount as the jury may determine to be necessary to punish the Defendants and deter future misconduct such as set forth herein.
6. That the Plaintiffs be awarded their attorney's fees and costs of this action.
7. That the Court declare the rights and obligations of the parties under the facts aforementioned.
8. That the Plaintiffs be awarded such other further in general relief to which they may be entitled pursuant to law or equity.
9. That the Plaintiff(s) be allowed **trial by jury** on all issues set forth herein.

/S/ Gregory W. Minton, BPR# 015584  
Attorney for Plaintiffs  
P.O. Box 359  
Medina, TN 38355  
731-783-1999

COST BOND

I acknowledge myself surety for the costs of the above cause.

THE AGEE LAW FIRM

/S/ Gregory W. Minton, Attorney

