

CAUSE NO. _____

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|-----------------------------|---|--------------------------|
| ROBERT BOSCH, LLC | § | IN THE DISTRICT COURT OF |
| | § | |
| v. | § | HARRIS COUNTY, TEXAS |
| | § | |
| CNH INDUSTRIAL AMERICA, LLC | § | _____ JUDICIAL DISTRICT |

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE COURT:

COMES NOW, Plaintiff, ROBERT BOSCH, LLC (hereafter "Bosch"), as Plaintiff, and files this Original Petition complaining of Defendant CNH INDUSTRIAL AMERICA, LLC (hereafter "CNH"), and in support of its claim, would respectfully show the court the following:

I.
Introduction

1. This is a lawsuit to recover amounts that CNH owes to Bosch pursuant to the statutory indemnification provisions of TEX. CIV. PRAC. & REM. CODE § 82.002. Bosch is an innocent seller of a component part of a product designed and manufactured by CNH. Bosch was forced to incur costs, expenses, fees, and other damages in a separate products-liability lawsuit based on injuries caused by CNH's product. Bosch is entitled to complete indemnification by CNH for these losses.

II.
Discovery Control Plan

2. Bosch intends to conduct discovery under Level 3 of TEX. R. CIV. P. 190.3(a)(1).

III.
Jurisdictional Statement

3. Pursuant to TEX. R. CIV. P. 47, Bosch seeks actual damages of over \$250,000.00 but not more than \$1,000,000.00.

IV. **Parties**

4. Plaintiff Robert Bosch, LLC, is a limited liability company organized and existing under the laws of Delaware, with its principal place of business in Michigan.

5. Defendant CNH Industrial America, LLC, is a corporation organized and existing under the laws of Delaware, with its principal place of business in Wisconsin. Defendant may be served with process by serving its registered agent of service, CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

V. **Venue**

6. Venue is proper in this Harris County because a substantial part of the events or omissions giving rise to the claim occurred in Harris County, Texas. All of the lawyers in the underlying matter were located in Harris County and the defense costs incurred by Plaintiff to defend the underlying case were paid to a law firm located in Harris County. The settlement of the underlying case was consummated in Harris County.

VI. **Facts**

7. On November 4, 2016, Juan Santiago and Maria Santiago initiated a products-liability lawsuit (the “Lawsuit”) against Bosch and CNH to recover damages sustained in an accident that took place on or about May 5, 2016 in Concho County, Texas.¹ In their Lawsuit, Mr. and Mrs. Santiago claimed that Mr. Santiago was injured when a cover to a sealed battery box on a Model 8230 agricultural combine blew off, hitting him in the head and face. They

¹ Mr. and Mrs. Santiago initially filed their lawsuit action in the United States District Court for the Southern District of Texas, Corpus Christi Division as Civil Action No. 2:16-cv-00473. That Court granted Case’s motion to transfer venue to the Northern District of Texas, San Angelo Division on February 3, 2017.

alleged that the battery box exploded when hydrogen gas inside the sealed box ignited when Mr. Santiago activated a battery disconnect switch that operated the batteries.

8. Mr. and Mrs. Santiago sued CNH as the designer and manufacturer of the Model 8230 combine, claiming that the enclosed battery box for the combine was unreasonably dangerous and defectively designed in that it failed to allow for the proper ventilation of explosive gases emitted from the batteries during charging. Mr. and Mrs. Santiago further claimed that the type of battery and battery disconnect switch chosen for the Model 8230 combine were improper for the battery box and created an unreasonable risk of explosion. Mr. and Mrs. Santiago also sued Bosch as the distributor of the disconnect switch, claiming that the disconnect switch was improper for use in the battery enclosure of the Model 8230 combine.

9. Both Bosch and CNH appeared and answered the Lawsuit. The case proceeded with pre-trial activities, during which Bosch incurred considerable expenses, including court costs and attorneys' fees. Eventually, Mr. and Mrs. Santiago settled their claims against all defendants. As to Bosch, Mr. and Mrs. Santiago agreed to release their claims in exchange for payment from Bosch in the total amount of \$325,000.00. The Settlement Agreement and Release between Mr. and Mrs. Santiago and Bosch was executed on October 22, 2018, and the settlement check issued on October 29, 2018. An Agreed Final Judgment and Stipulation of Dismissal was entered in the Lawsuit on February 15, 2019.

10. CNH designed and manufactured the Model 8230 agricultural combine involved in the accident, including the enclosed battery box. Bosch was not involved in the design or manufacture of the combine and/or its battery box. Rather, Bosch merely sold to CNH a component part of the Model 8230 combine—namely, the disconnect switch which CNH chose to use inside the battery box. This sale was conducted via an electronic data transaction in which

CNH requested (via a computer) that a certain number of switches be delivered to a certain plant. Bosch played no role in the selection or installation of the switch in the battery box for the Model 8230 combine and did not know that CNH would use the switch inside an enclosed and sealed battery box. Indeed, Bosch did not know how CNH would use the switch at all.

11. The disconnect switch was not negligently or defectively marketed, designed or manufactured, and it functioned properly at the time of the accident. Bosch did not negligently modify or alter the disconnect switch before selling or distributing it to CNH. Further, Bosch did not otherwise engage in any negligent or intentional misconduct or other act or omission for which it may be held independently liable that caused or contributed to the accident involving the Model 8230 combine or the associated injuries to Mr. and Mrs. Santiago.

VII.

Statutory Indemnification

12. Bosch incorporates by reference the facts set forth in paragraphs 1-11 above.

13. Chapter 82 of the Texas Civil Practices & Remedies Code states in relevant part:

A manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller's negligence, intentional misconduct, or any other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable.

TEX. CIV. PRAC. & REM. CODE § 82.002(a). Bosch is a "Seller" as that term is defined by § 82.001 of the Texas Civil Practice & Remedies Code. CNH is a "Manufacturer" as that term is defined by § 82.001 of the Texas Civil Practice & Remedies Code. The claims and causes of action asserted against Bosch in the Lawsuit are a "product liability action" as that term is defined by § 82.001 of the Texas Civil Practice & Remedies Code. CNH was served as party to the Lawsuit and, thus, had reasonable and/or actual notice of the Lawsuit.

14. Bosch claims the protections of TEX. CIV. PRAC. & REM. CODE § 82.002 and seeks to recover from CNH all amounts owed under this provision. Pursuant to § 82.002, CNH is statutorily required to indemnify and hold harmless Bosch for all losses caused by the Model 8230 agricultural combine and the enclosed battery box at issue. These losses include, but are not limited to, any settlement amounts paid by Bosch, court costs, reasonable expenses, reasonable attorney fees, and any other damages incurred in defending the claims that Mr. and Mrs. Santiago asserted against Bosch in the Lawsuit, without regard to the manner in which the Lawsuit concluded. The losses also include the costs, reasonable expenses, reasonable attorney fees, and any other damages that Bosch incurred or will incur in asserting its right to indemnity from CNH.

VIII.
Attorneys' Fees

15. Bosch incorporates by reference the facts set forth in paragraphs 1-14 above.

16. Because of the actions of CNH, Bosch has been required to retain the services of legal counsel to protect its interests and pursue indemnification pursuant to § 82.001 of the Texas Civil Practice & Remedies Code. Accordingly, Bosch is entitled to recover its reasonable attorneys' fees from CHN under TEX. CIV. PRAC. & REM. CODE §§ 38.001 and 82.002.

IX.
Request for Disclosure

17. Bosch tenders this request for disclosure asking CNH to disclose all information listed under Rule 194.2 of the Texas Rules of Civil Procedure within the time prescribed.

X.
Jury Demand

18. Bosch requests a trial by jury in this case pursuant to Rule 216, Texas Rules of Civil Procedure.



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