

III.

In Plaintiff's Third Amended Original Petition filed against Third Party Plaintiff and other Defendants many claims were asserted against Third Party Plaintiff, including manufacturing defect and design defect claims arising out of the use by another Defendant of a product called H3O.

IV.

Third Party Defendant is liable to Third Party Plaintiff for indemnity and for any and all sums it may be compelled to pay to Plaintiff, including attorney's fees and court costs, as a result of the occurrence made the basis of Plaintiff's suit. In this connection, Third Party Plaintiff will show that at all times material it has owned and operated a retail sales business for H3O. The H3O was designed and manufactured by Third Party Defendant. Plaintiff, in her latest petition, alleges the existence of certain defects in the design and manufacture of the H3O sold by the Third Party Defendant to Third Party Plaintiff. Third Party Plaintiff will show that it had no knowledge of the existence of any such defect, if any, at the time of the sale and that the Third Party Plaintiff innocently resold the H3O to the Defendant, Dr. Smith, in the ordinary course of its retail business without knowledge or the means of acquiring knowledge of any product defects, if any.

Further, Third Party Plaintiff denies that it was guilty of any negligence contributing to or independently causing the harm, if any, complained of by the Plaintiff. Consequently, Third Party Plaintiff is entitled to judgment over and against Third Party Defendant for indemnity for any and all sums which it may be adjudged liable to Plaintiff, including but not limited to indemnity under Chapter 82 of the Texas Civil Practice & Remedies Code.

V.

Alternatively, Third Party Plaintiff is entitled to contribution from Third Party Defendant toward any liability that may be found to exist from Third Party Plaintiff to Plaintiff as a result of the incidents made the basis of the Plaintiff's suit. In this connection, Third Party Plaintiff will show that the Third Party Defendant designed, manufactured, and sold the H3O that is claimed to be defective to the Third Party Plaintiff, and the Third Party Plaintiff innocently resold the H3O to Dr. Smith in the ordinary course of its retail business without knowledge or the means of acquiring knowledge of any product defects. Third Party Defendant's design and manufacture of the H3O, alone or in combination, are the direct cause of the Plaintiff's damages, if any. Accordingly, pursuant to Chapter 33 of the Texas Civil Practice & Remedies Code, Third Party Plaintiff is entitled to contribution for the percentage of responsibility assigned to the Third Party Defendant by the trier of fact.

WHEREFORE, PREMISES CONSIDERED, Third Party Plaintiff, Lumen Food Corp., requests that Hydro Products and Technologies, Inc. a/k/a HPT, Third Party Defendant, be cited to appear and answer herein, and that on final trial hereof, Third Party Plaintiff have the following:

1. In the unlikely event that Third Party Plaintiff be required to pay damages to Plaintiff, that it have judgment over and against Third Party Defendant Hydro Products and Technologies, Inc. a/k/a HPT for indemnity and/or contribution as provided by law;
2. Prejudgment interest as provided by law;
3. Attorney's fees;
4. Postjudgment interest as provided by law;
5. Costs of suit; and
6. Such other and further relief to which Third Party Plaintiff may show itself justly entitled.

Respectfully submitted,
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ATTORNEYS FOR THIRD PARTY PLAINTIFF
AND DEFENDANT
LUMEN FOOD CORP.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument as this day forwarded in accordance with the Texas Rules of Civil Procedure to all counsel of record, on this the ____ day of January, 2004.

GERALD L. BOLFING