



NAILAH K. BYRD
CUYAHOGA COUNTY CLERK OF COURTS
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Cleveland, Ohio 44113

Court of Common Pleas

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By: MEGAN J. FRANTZ OLDHAM 0079378

Confirmation Nbr. 1325710

JESSICA CRISSMAN, ET AL.

CV 18 894473

vs.

Judge: STEVEN E. GALL

UNIVERSITY HOSPITALS HEALTH SYSTEM, INC.,
ET AL

Pages Filed: 16

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

**JESSICA CRISSMAN ON BEHALF OF
HERSELF AND ALL OTHERS
SIMILARLY SITUATED**
C/O TZANGAS PLAKAS MANOS LTD.
220 MARKET AVE. S., 8TH FLOOR
CANTON, OHIO 44702

CASE NO:

JUDGE:

CLASS ACTION COMPLAINT

-and-

**WILLIAM CRISSMAN ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED**
C/O TZANGAS PLAKAS MANOS LTD.
220 MARKET AVE. S., 8TH FLOOR
CANTON, OHIO 44702

**JURY DEMAND
ENDORSED HEREON**

Plaintiffs,

-vs.-

**UNIVERSITY HOSPITALS HEALTH
SYSTEM, INC.**
C/O JANET MILLER, STATUTORY AGENT
3605 WARRENSVILLE CENTER ROAD
MSC 9110
SHAKER HEIGHTS, OHIO 44122

-and-

**UNIVERSITY HOSPITALS AHUJA
MEDICAL CENTER, INC.**
C/O JANET MILLER, STATUTORY AGENT
3605 WARRENSVILLE CENTER ROAD
SUITE 2135
SHAKER HEIGHTS, OHIO 44122

-and-

**UNIVERSITY HOSPITALS MEDICAL
GROUP, INC.**

C/O JANET MILLER, STATUTORY AGENT
3605 WARRENSVILLE CENTER ROAD
MSC 9110
SHAKER HEIGHTS, OHIO 44122

-and-

**UNIVERSITY HOSPITALS CLEVELAND
MEDICAL CENTER d/b/a, *inter alia*,
UNIVERSITY HOSPITALS RAINBOW
BABIES & CHILDREN'S HOSPITAL AND
UNIVERSITY HOSPITALS MACDONALD
WOMEN'S HOSPITAL**

C/O JANET MILLER, STATUTORY AGENT
3605 WARRENSVILLE CENTER ROAD
MSC 9110
SHAKER HEIGHTS, OHIO 44122

Defendants.

Now come Plaintiffs, Jessica Crissman and William Crissman, individually and on behalf of the other members of the below-defined class (the "Class") and for their Class Action Complaint against Defendants University Hospitals Health System, Inc., University Hospitals Ahuja Medical Center, Inc., University Hospitals Medical Group, Inc., and University Hospitals Cleveland Medical Center d/b/a, *inter alia*, University Hospitals Rainbow Babies and Children's Hospital and University Hospitals MacDonald Women's Hospital (collectively "UH" or "Defendants"), hereby state as follows:

INTRODUCTION

1. Plaintiffs are among the hundreds of patients and clients of UH who contracted with UH and entrusted UH to safeguard some of their most precious and irreplaceable property- their frozen embryos and/or eggs.

2. On or around March 3-4 of 2018, approximately 2,000 eggs and embryos stored in a large liquid nitrogen storage tank at UH's Ahuja Medical Center Fertility Center in Beachwood –

including eleven (11) embryos belonging to named Plaintiffs – were subject to fluctuating temperatures and were compromised, damaged, and/or their viability was destroyed.

3. It has been reported that UH's storage tank had off-site monitoring and an audible alarm that would alert staff to such a temperature change.

4. It has also been reported that the alarm was sounding on the morning of March 4, 2018 when staff arrived but there was no one in the facility overnight on March 3, 2018.

5. Plaintiffs were devastated when they learned that their eggs and/or embryos were compromised and/or their viability was destroyed due to UH's misconduct.

6. UH has advised that the only way to ascertain the extent of the damage / destruction is to thaw the eggs / embryos and examine them. However, once thawed, the eggs / embryos cannot be re-frozen, and even if they remain viable, they may have been affected at the cellular level.

7. UH's misconduct has significantly impacted Plaintiffs' plan of expanding their family and dashed their hopes that their embryos being stored at UH would become their future children.

8. As a result of UH's misconduct, Plaintiffs, individually and on behalf of the other Class members, hereby assert claims for breach of contract, negligence, conversion, and bailment against UH.

THE PARTIES

9. At all times relevant herein, Plaintiffs Jessica Crissman and William Crissman were citizens of the State of Ohio. Their specific address will be provided to the Court under seal.

10. At all times relevant herein, Defendants University Hospitals Health System, Inc., University Hospitals Ahuja Medical Center, Inc., University Hospitals Medical Group, Inc., and University Hospitals Cleveland Medical Center d/b/a/, *inter alia*, University Hospitals Rainbow Babies and Children's Hospital and University Hospitals MacDonald Women's Hospital were corporations and/or business entities duly organized and existing under the laws of the State of Ohio. Defendants held themselves

out to the public as providers of medical and fertility services, including the storage of eggs, embryos, and sperm.

JURISDICTION AND VENUE

11. This Court has general jurisdiction over this case because the amount in controversy exceeds \$25,000 and Defendants are residents of and do business in the State of Ohio.

12. Venue is proper in the Cuyahoga County Court of Common Pleas because Defendants are residents of and operate their principal places of business in Cuyahoga County and all or part of the claims for relief arose in Cuyahoga County, Ohio.

13. The Class Action Fairness Act should not apply to this matter because, upon information and belief, two thirds or more of the members of the proposed Class and all of the Defendants are citizens of the State of Ohio.

FACTUAL BACKGROUND

14. UH contracted with Plaintiffs for the procurement, development, fertilization, freezing, and/or storage of embryos and eggs. Eggs and/or embryos are frozen via cryopreservation, which involves preserving eggs and/or embryos at sub-zero temperatures. Plaintiffs' embryos and eggs were to be stored by UH in liquid nitrogen storage tanks at these sub-zero temperatures to ensure their continued viability until Plaintiffs desired to utilize them for in-vitro fertilization ("IVF") or implantation.

15. By freezing eggs and embryos, couples are able to preserve their fertility if they choose not to, or are unable to, start a family at a certain period of time. For instance, some couples choose to freeze their eggs, sperm, or embryos before commencing treatment for cancer or other diseases and/or choose to have embryos implanted after such treatment.

16. The road to IVF is a long, arduous process that is rife with emotion and expense, subjecting prospective parents, including Plaintiffs, to a significant amount of physical, emotional, and financial strain and stress.

17. In order to retrieve eggs for cryopreservation, a patient must undergo a hormone-injection process such as for IVF for several days in order to stimulate the ovaries and ripen the eggs. Once the eggs have adequately matured, they are removed through a medical procedure that often requires sedation and ultrasound guidance. Following egg retrieval, the eggs are immediately frozen and remain frozen until they are ready to be used.

18. The costs of egg / embryo freezing and fertilization can easily approximate as much as \$15,000.

19. UH knew that Plaintiffs were relying on UH's skill in developing, freezing, and safely storing viable eggs and/or embryos and to deliver those eggs and/or embryos to Plaintiffs for future fertilization and/or implantation.

20. UH also knew that these eggs and/or embryos were of great value to Plaintiffs and, in many cases, were utterly irreplaceable.

21. In recent days, Defendants have reached out to Plaintiffs to advise them of Defendants' misconduct and that, as a consequence of Defendants' misconduct, Plaintiffs and other Class members' frozen eggs and embryos that had been entrusted to UH may have been destroyed or irretrievably damaged.

22. In a March 8, 2018 statement, UH admitted the temperature fluctuation in its tissue storage bank in Beachwood. *See*, <http://news.uhhospitals.org/news-releases/university-hospitals-statement-concerning-fertility-clinic.htm>.

23. A UH executive has been quoted by NBC News as reportedly admitting “the temperature that was measured at a portion of the tank was higher than our acceptable limits”. *See*, <https://www.nbcnews.com/health/womens-health/malfunction-egg-freezing-facility-affects-hundreds-patients-n855016>.

24. A UH executive has been quoted by WKYC News as reportedly stating “It's devastating, it's absolutely devastating”. *See* <http://www.wkyc.com/article/news/health/disaster-at-university-hospitals-fertility-clinic-may-have-damaged-more-than-2000-embryos-and-eggs/95-526950050>.

25. UH admits it does not know the viability of Plaintiffs’ and the other Class members’ eggs and embryos.

26. UH has indicated it would need to thaw the eggs and embryos to determine whether they remain viable. However, once the eggs and embryos are thawed, they cannot be re-frozen and, even if they remain viable, they may have been otherwise compromised or altered by the temperature fluctuation.

27. On or about March 7, 2018, UH sent letters to all affected patients, including named Plaintiffs and the other Class members, apologizing, disclosing the temperature fluctuation in the storage tank, and stating in pertinent part: “Over the weekend, an unexpected temperature fluctuation occurred at our tissue storage bank, where frozen eggs and embryos are stored.”

28. Plaintiffs, on their own behalf and on behalf of all potential members of the Class, bring this action to seek redress against UH.

NAMED PLAINTIFF FACTUAL ALLEGATIONS

29. Plaintiff Jessica Crissman experienced fertility-threatening health issues when she was 28-years old.

30. Because Plaintiffs had always dreamed of starting a family and having children, they reached out to UH's fertility clinic in 2015.

31. In 2016, with the help of UH, Plaintiffs created twelve (12) embryos.

32. In 2016 Plaintiffs utilized one of their twelve (12) embryos for in-vitro fertilization, and thereafter gave birth to their son in 2017.

33. Plaintiffs contracted with UH and trusted UH to freeze and preserve their remaining eleven (11) embryos – which were full siblings to their son – and to store them for future use to expand their family over the course of time.

34. The freezing of these eleven (11) embryos that UH developed/fertilized would have allowed Plaintiffs to have multiple opportunities for implantation / IVF and the best possible chance for future pregnancies.

35. Plaintiffs viewed their embryos as their future children and their son's future siblings.

36. Plaintiffs have suffered extreme emotional distress and grief regarding the loss of their embryos and the fact that they may now not be able to have as many children as they had hoped and planned, and may be unable to give their son full siblings as they had planned.

37. Furthermore, Plaintiffs invested in excess of \$25,000 in the egg / embryo retrieval, fertilization, IVF, and freezing process. A significant portion of this expense was incurred to create the eleven (11) embryos that Plaintiff had entrusted to UH's care. That expense – as well as the physical and emotional strain and stress that went into creating the eleven (11) remaining embryos – was all for naught.

38. Plaintiffs are now older than they were when they began the IVF / embryo freezing process. Medical literature suggests that Plaintiffs' chances for conception of a healthy child may have decreased as they have aged. That, coupled with the financial emotional, and physical costs of going

through this process again – where there is no guarantee that Plaintiffs will be able to create any additional viable embryos for IVF or implantation – is deeply concerning to Plaintiffs.

CLASS ALLEGATIONS

39. This action is brought by Plaintiffs on their own behalf and on behalf of all other similarly situated persons, as a class action pursuant to Rule 23 of the *Ohio Rules of Civil Procedure*.

Class Definition

40. Plaintiffs seek certification of the proposed Class defined as:

All UH patients and clients who had their eggs and/or embryos stored in the storage tank at UH's Ahuja Medical Center Fertility Center in Beachwood that was subjected to a rise in temperature on or about March 3-4, 2018.

41. Subject to additional information obtained through further investigation and discovery, the foregoing Class may be expanded or narrowed by amendment or the filing of an amended complaint.

42. Excluded from the Class are: (1) Defendants, their affiliates and subsidiaries, their officers, directors, partners, employees, and agents; (2) Class counsel; employees of Class counsel's firm and Class counsel's immediate family members; (3) defense counsel, their employees, and their immediate family members; and (4) any judicial officer who hears, considers, or renders a decision or ruling in this case, their staff, and their immediate family members.

Numerosity

43. The members of the Class are so numerous and geographically dispersed that joinder of all members is impracticable. While the exact number of Class members is unknown at this time, it is estimated that the Class includes approximately 700 individuals, based upon UH's statements to the press. The exact number of the Class members is within the knowledge of Defendants.

Commonality and Predominance

44. There are questions of law and fact common to all members of the Class that relate to and affect the rights of each member of the Class. These common questions predominate over questions that may affect only individual Class members because UH has acted on grounds generally applicable to the Class. Such common questions include but are not limited to:

- A. Whether UH breached its contract for safe storage and cryopreservation of eggs and embryos with Plaintiffs;
- B. Whether UH breached its standard of care in storing Plaintiffs' eggs and/or embryos;
- C. Whether UH failed to use reasonable care to monitor the temperature of its storage tank that contained Plaintiffs' frozen eggs and/or embryos;
- D. Whether UH converted Plaintiffs' eggs and/or embryos by failing to return the eggs and/or embryos to Plaintiffs undamaged and in a usable/viable state;
- E. Whether UH breached its bailment contract for safe storage and cryopreservation of eggs and embryos with Plaintiffs by failing to return the eggs and/or embryos to Plaintiffs undamaged and in a usable/viable state; and
- F. What remedies are appropriate compensation for the damages caused to Plaintiffs Jessica Crissman and William Crissman and each member of the Class.

Typicality

45. The claims of Plaintiffs Jessica Crissman and William Crissman are typical of all Class members. The claims of the Crissmans are based on the same fundamental factual allegations and legal theories as the claims of all other members of the Class. The Crissmans are situated identically to all members of the Class with respect to issues presented in this case, as Plaintiffs and all members of the Class were patients / clients of UH; contracted with UH to develop, freeze, and store Plaintiffs' frozen

embryos and/or eggs; UH had a duty to Plaintiffs to ensure the embryos and eggs were not harmed while in the custody and possession of UH; and Plaintiffs' eggs and/or embryos were all stored in the storage tank that incurred the temperature fluctuation on March 3-4, 2018 at the UH facility in Beachwood.

46. All Class members have been adversely affected by the wrongdoing of UH described herein and UH's defenses to Plaintiffs Jessica Crissman and William Crissman's claims are typical of its defenses to claims of the members of the Class.

Adequacy of Representation

47. Plaintiffs Jessica Crissman and William Crissman will fairly and adequately protect the interests of the Class because Plaintiffs have no interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs Jessica Crissman and William Crissman have retained attorneys who are experienced and competent in the prosecution of a complex class action such as this case. The attorneys for Plaintiffs will actively conduct and be responsible for the prosecution of this litigation and the expenses thereof. Plaintiffs' attorneys have adequate resources, experience, and commitment to litigate this matter.

Predominance and Superiority

48. Class action treatment of this case is superior to any other method available for the fair and efficient adjudication of this controversy because it would be impractical, inefficient, and undesirable for each of the individual Class members who have suffered damages as a result of UH's conduct to bring separate actions. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication or the possibility of inconsistent or contradictory judgments. Moreover, the common issues identified hereinabove predominate over individual issues, if any, particular to each Class member. The prosecution of separate actions by individual Class members, if such is even possible, would create a

risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendants.

49. Plaintiffs know of no difficulty to be encountered in the maintenance of this action that would preclude its maintenance as a class action.

50. This forum is the most appropriate forum for litigation of the Class members' claims.

**COUNT I
BREACH OF CONTRACT**

51. Plaintiffs restate each preceding paragraph as if fully rewritten herein.

52. Plaintiffs formed a valid, binding oral and/or written contract with UH, duly supported by consideration, whereby Defendants agreed to store and safeguard Plaintiffs' frozen eggs and/or embryos via cryopreservation for future implantation and/or IVF.

53. There was a meeting of the minds between Plaintiffs and UH that UH would use its best efforts to carefully store and safeguard Plaintiffs' eggs and/or embryos and would only release the eggs and/or embryos in the manner and at the time directed by Plaintiffs.

54. Plaintiffs provided UH with consideration for these services and Plaintiffs upheld their end of the bargain.

55. Defendants breached the parties' agreement by negligently, recklessly, and/or knowingly damaging the eggs and/or embryos that Plaintiffs had entrusted to Defendants' care, by failing to maintain the required temperature in the storage tank where the eggs and/or embryos were stored, and by failing to have procedural safeguards in place or failing to adequately follow procedures that would prevent temperature fluctuations from destroying or damaging Plaintiffs' eggs and/or embryos.

56. As a direct and proximate result of Defendants' breach of contract, Plaintiffs have suffered and will continue to suffer, substantial damages and irreparable harm for which no remedy exists.

Plaintiffs have suffered severe emotional, physical, property, and economic damages in an amount to be proven at trial.

**COUNT II
NEGLIGENCE**

57. Plaintiffs restate each preceding paragraph as if fully rewritten herein.

58. UH had a duty to use reasonable care in the storage and maintenance of Plaintiffs' frozen eggs and/or embryos to ensure that the eggs and/or embryos remained properly frozen, maintained, and viable for future procedures, including taking reasonable precautions to protect against fluctuating temperatures in the UH storage tank.

59. UH also had a duty to implement and enforce reasonable policies and procedures to ensure that their patients' and clients' directives and wishes were followed.

60. UH knew or should have known that failure to exercise reasonable care increased the risk of harm to Plaintiffs' eggs and embryos and to Plaintiffs.

61. UH breached its duties by failing to exercise reasonable care in the freezing, storage, and maintenance of Plaintiffs' embryos and/or eggs by failing to exercise reasonable care in ensuring that Plaintiffs' eggs and/or embryos remained properly frozen, maintained, and viable for future procedures.

62. UH also breached its duties by failing to implement and enforce reasonable policies and procedures, including appropriate back-up equipment, constant monitoring, and necessary alarms and communication methods regarding the temperatures inside its storage tank(s) in the event of a fluctuation in temperature in its storage tank(s).

63. As a direct and proximate result of UH's failure to exercise ordinary care, Plaintiffs suffered severe emotional, physical, property, and economic damages in an amount to be proven at trial.

COUNT III CONVERSION

64. Plaintiffs restate each preceding paragraph as if fully rewritten herein.

65. Plaintiffs owned their eggs and/or embryos which were placed in UH's care for the express purpose of safekeeping and storage until such a time as Plaintiffs directed otherwise.

66. As explained hereinabove, UH converted Plaintiffs' eggs and/or embryos by assuming control over them and harming the embryos and/or eggs by subjecting them to temperature fluctuations that damaged and destroyed their viability, thereby depriving Plaintiffs of their ownership rights over their property

67. As a direct and proximate result of UH's misconduct, Plaintiffs suffered severe emotional, physical, property, and economic damages in an amount to be proven at trial.

COUNT IV BAILMENT

68. Plaintiffs restate each preceding paragraph as if fully rewritten herein.

69. Plaintiffs formed an oral and/or written contract with UH, whereby Defendants agreed to store and safeguard Plaintiffs' frozen eggs and/or embryos for the purpose of freezing them for Plaintiffs' future use.

70. There was a meeting of the minds between Plaintiffs and UH that UH would use its best efforts to carefully store and safeguard the eggs and/or embryos and would only release the eggs and/or embryos in the manner and at the time directed by Plaintiffs.

71. Plaintiffs froze their eggs and/or embryos with UH to store them for future use and to preserve their dreams of expanding their family.

72. Plaintiffs delivered their eggs and/or embryos to UH and entrusted UH with storing their eggs and/or embryos for the purpose of freezing them for Plaintiffs' future use.

73. Due to UH's misconduct explained hereinabove, Plaintiffs' eggs and/or embryos were damaged and/or their viability was destroyed. As such, UH will not be able to redeliver Plaintiffs' frozen eggs and/or embryos undamaged to Plaintiffs.

74. As a direct and proximate result of UH's misconduct, Plaintiffs suffered severe emotional, physical, property, and economic damages in an amount to be proven at trial.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- A. An order certifying this action as a class under Rule 23 of the *Ohio Rules of Civil Procedure*;
- B. An order appointing Plaintiffs as the class representatives;
- C. An order appointing the undersigned as class counsel;
- D. Compensatory, property, and emotional damages in excess of \$25,000.00;
- E. Punitive damages in an amount to be determined at trial;
- F. Attorneys' fees in an amount to be determined by the Court;
- G. Prejudgment and post judgment interest in accordance with the statutory rate;
- H. Costs of the within action; and
- I. Any further relief that this Court deems just and equitable.

DATED: March 13, 2018

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD

/s/Megan J. Frantz Oldham

Megan J. Frantz Oldham (0079378)

106 S Main Street #2500

Akron, Ohio 44308

Telephone: (330) 455-6112

Facsimile: (330) 455-2108

Email: mfrantzoldham@lawlion.com

Lee E. Plakas (0008628)

Edmond J. Mack (0082906)

Maria C. Klutinoty Edwards (0086401)

220 Market Avenue South

Eighth Floor

Canton, Ohio 44702

Telephone: (330) 455-6112

Facsimile: (330) 455-2108

Email: lplakas@lawlion.com

emack@lawlion.com

mklutinotyedwards@lawlion.com

-and-

Christopher L. Parker (0055912)

Roderick, Linton, Belfance, LLP

50 South Main Street

10th Floor

Akron, Ohio 44308

Telephone: (234) 281-4949

Facsimile: (330) 434-9220

Attorneys for Plaintiffs

INSTRUCTIONS FOR SERVICE

To the Clerk:

Please issue summons and a copy of the Complaint upon the Defendants at the address contained in the caption of this Complaint by Certified Mail, Return Receipt Requested.

/s/Megan J. Frantz Oldham
Attorney for Plaintiffs

JURY DEMAND

Plaintiff respectfully demands a trial by jury as to all within matters.

/s/Megan J. Frantz Oldham
Attorney for Plaintiffs