

STATE OF INDIANA) IN THE MARION _____ COURT
) SS:
 COUNTY OF MARION) CAUSE NO. _____

JACOBA BALLARD and DEBORAH PIERCE,)
 individually and on behalf of a class of all persons)
 similarly situated)
)
 Plaintiffs,)
)
 v.)
)
 ANONYMOUS HEALTH CARE PROVIDER)
 d/b/a ANONYMOUS and JOHN DOE, M.D.,)
)
 Defendants.)

49014 16 10 CT 03 54 85

FILED
 (103) SEP 21 2016
Myla A. Eldridge
 CLERK OF THE MARION COUNTY COURT

**PLAINTIFFS', JACOBA BALLARD AND DEBORAH PIERCE,
CLASS ACTION COMPLAINT**

Plaintiffs, Jacoba Ballard and Deborah Pierce, by counsel, in support of their Class Action Complaint against Anonymous Healthcare Provider d/b/a Anonymous and John Doe, M.D., allege and state as follows:

INTRODUCTION

1. Plaintiffs bring this Class Action Complaint individually and on behalf of the Class defined herein against Anonymous Healthcare Provider, d/b/a Anonymous, and John Doe, M.D., seeking an award of damages.
2. Plaintiff Jacoba Ballard is a resident of Reelsville, Putnam County, Indiana.
3. Plaintiff Deborah Pierce is a resident of Brazil, Clay County, Indiana.
4. Defendant, Anonymous Healthcare Provider, d/b/a Anonymous ("Anonymous"), is and was at all times relevant hereto a health care provider licensed to practice medicine in the

State of Indiana with its principal offices, as defined by the IND. MEDICAL MALPRACTICE ACT, IND. CODE § 34-18-2-14, located in Indianapolis, Marion County, Indiana.

5. Defendant, John Doe, M.D., is and was at all times relevant hereto a health care provider licensed to practice medicine in the State of Indiana with his principal offices, as defined by the IND. MEDICAL MALPRACTICE ACT, IND. CODE § 34-18-2-14, located in Indianapolis, Marion County, Indiana.

6. At all times relevant hereto, Defendant, John Doe, M.D., was acting as an agent, and/or employee, of Defendant, Anonymous, and was acting within the course and scope of that agency and/or employment.

7. Between at least 1979 and for many years thereafter, the Defendants failed to use the ordinary skill, care and diligence in their care and treatment of their patients.

8. Specifically, at all times relevant hereto, Defendants negligently, artificially inseminated Defendants' patients with Defendant, John Doe, M.D.'s, own sperm.

9. This Court should award Plaintiffs and the Class, inclusive of the subclasses they represent, damages compensating them for the losses, as described herein, attributable to Defendants' unauthorized insemination of patients with John Doe, M.D.'s, own sperm.

THE PARTIES

I. Jacoba Ballard

10. In 1979, Deborah Pierce, Jacoba Ballard's mother, presented to the Defendants for artificial insemination.

11. As a result of the artificial insemination procedure performed by the Defendants, Deborah Pierce became pregnant with Jacoba Ballard who was born on August 26, 1980.

12. Jacoba Ballard, at all times relevant hereto, was a patient and received treatment from the Defendants.

13. During that time, the Defendants had a duty to provide reasonable and appropriate medical care to Jacoba Ballard.

14. In March, 2016, John Doe, M.D., finally admitted for the first time that he is Jacoba Ballard's biological father.

15. John Doe, M.D., used his own sperm to artificially inseminate Deborah Pierce.

II. Deborah Pierce

16. In 1979, Deborah Pierce presented to the Defendants for artificial insemination.

17. As a result of the artificial insemination procedure performed by the Defendants, Deborah Pierce became pregnant with her daughter, Jacoba Ballard, who was born on August 26, 1980.

18. Deborah Pierce, at all times relevant hereto, was a patient and received treatment from the Defendants.

19. During that time, the Defendants had a duty to provide reasonable and appropriate medical care to Deborah Pierce.

20. In March 2016, Defendant, John Doe, M.D., finally admitted for the first time that Deborah Pierce's daughter, Jacoba Ballard is his biological daughter.

21. John Doe, M.D., used his own sperm to artificially inseminate Plaintiff Deborah Pierce.

22. Deborah Pierce was unaware that John Doe, M.D., used his own sperm to inseminate her until March, 2016.

III. Defendant John Doe, M.D.

23. Defendant, John Doe, M.D., was at all times relevant hereto a health care provider licensed to practice medicine in the State of Indiana with his principal office, as defined by the IND. MEDICAL MALPRACTICE ACT, IND. CODE § 34-18-2-14, located in Indianapolis, Marion County, Indiana.

24. At all times relevant hereto, Defendant, John Doe, M.D., was acting as an agent, and/or employee, of Defendant, Anonymous, and was acting within the course and scope of that agency and/or employment.

IV. Defendant Anonymous Healthcare Provider, d/b/a Anonymous

25. Defendant, Anonymous, is and was at all times relevant hereto a health care provider licensed to practice medicine in the State of Indiana with its principal offices, as defined by the IND. MEDICAL MALPRACTICE ACT, IND. CODE § 34-18-2-14, located in Indianapolis, Marion County, Indiana.

26. At all relevant times herein, Anonymous employed Defendant, John Doe, M.D., as a physician performing artificial insemination procedures.

JURISDICTION AND VENUE

27. Venue is appropriate in Marion County, Indiana, because Anonymous' principal offices are located in Marion County, Indiana.

28. Jurisdiction is appropriate in Indiana because all defendants are located in Indiana.

FACTUAL BACKGROUND

29. For much of his medical career and during all times relevant hereto, Defendant, John Doe, M.D., practiced fertility medicine at Anonymous.

30. During this time, Defendant, John Doe, M.D., offered to perform, among other services, artificial insemination procedures for his patients.

31. According to Defendants' policies and representations communicated to its patients, including Plaintiff Deborah Pierce and the "Mothers" subclass, donor sperm for such procedures was to be sourced from anonymous medical school residents.

32. At no time did John Doe, M.D. ever disclose to any patient that he would use his own sperm to inseminate them.

33. According to Defendants' policies and representations communicated to its patients, including Plaintiff Deborah Pierce and the "Mothers" subclass, specimens from a single donor were to be used in no more than three successful artificial insemination procedures in a well-defined geographic area. Therefore, specimens from a single donor were not to be used in more than three successful artificial insemination procedures at Anonymous.

34. The policy described in paragraph 33 was important to limit the risk of accidental incest resulting from many closely biologically related individuals living near each other and unaware of their biological relationships.

35. At no time did John Doe, M.D. ever disclose to any patient that he would use his own sperm to inseminate them.

36. Plaintiffs and Class Members, at all times relevant hereto, were patients of and received treatment from the Defendants.

37. At all times relevant hereto, Anonymous owed Plaintiffs and Class Members a duty to provide reasonable and appropriate medical care.

38. Plaintiff Deborah Pierce and other members of the "Mothers" sub-Class were negligently artificially inseminated with Defendant, John Doe, M.D.'s, sperm.

39. The Defendants failed to use the ordinary skill, care and diligence in their care and treatment of Plaintiffs and Class Members.

40. The Defendants deviated from the standard of care regarding fertility practices through acts and omissions including, but not limited to, negligently artificially inseminating the “Mothers” with Defendant, John Doe, M.D.’s, sperm, failing to disclose to the “Mothers” that he would be using his own sperm in the artificial insemination procedures, and in exceeding the scope of the “Mothers” consent for their respective artificial insemination procedures in intentionally withholding information regarding the origin of the sperm used for artificial insemination purposes.

41. As a direct and proximate result of Defendants’ deviation from the appropriate standard of care, Plaintiffs and Class Members sustained personal injuries.

42. On or around December 10, 2014, Plaintiff Jacoba Ballard received genetic testing results from the testing service “23andme.”

43. Those results identified seven individuals as Plaintiff Jacoba Ballard’s half-siblings.

44. In March, 2016, Defendant, John Doe, M.D., finally admitted for the first time that he is the biological father of Plaintiff Jacoba Ballard.

45. In March, 2016, Defendant, John Doe, M.D., finally admitted for the first time that he is the biological father of the members of the “Children” subclass, which may number in excess of 50 individuals.

CLASS ALLEGATIONS

46. Pursuant to Indiana Trial Rule 23, Plaintiffs Jacoba Ballard and Deborah Pierce, bring this action on behalf of themselves and all other persons similarly situated. Plaintiffs seek to represent the Class Members as two subclasses.

47. The subclass of "Children" Plaintiff Jacoba Ballard seeks to represent is defined as:

Any resident of Indiana conceived via an artificial insemination procedure using the sperm of Defendant John Doe, M.D., performed by or on behalf of any Defendant or performed at the offices of Anonymous.

48. The subclass of "Mothers" Plaintiff Deborah Pierce seeks to represent is defined as:

Any resident of Indiana successfully impregnated via an artificial insemination procedure using the sperm of Defendant John Doe, M.D., performed by or on behalf of any Defendant or performed at the offices of Anonymous.

49. Excluded from the Class are:

- (a) Defendants and any of their subsidiaries, affiliates, predecessors, and entities with which it may have merged;
- (b) all persons who make a timely election to be excluded from the Class;
- (c) governmental entities;
- (d) the judge assigned to this case and his or her immediate family;
- (e) any consulting or testifying expert retained by either party to this litigation and his or her immediate family; and
- (f) any claims of death occasioned by Defendants negligent acts or omissions.

50. Upon information and belief, the proposed Class includes over 100 individuals, and, thus, is so numerous that joinder of all members would be impracticable. The size of the

Class, and members' identities, are ascertainable from Defendants' testimony and business records.

51. Questions of law and fact common to the Plaintiff Class predominate over questions affecting only individual members. The common questions of law and fact include, but are not limited to, the following:

- (a) whether Defendants had a duty to provide reasonable and appropriate medical care to subclass "Mothers";
- (b) whether Defendants had a duty to provide reasonable and appropriate medical care to subclass "Children";
- (c) whether Defendants breached their duty owed to the "Mothers" subclass by failing to disclose to their patients that John Doe, M.D., was using his own sperm for artificial insemination purposes;
- (d) whether the Defendants deviated from the standard of care regarding fertility practices;
- (e) whether the Defendants failed to use the ordinary skill, care and diligence in their care and treatment of Plaintiff Class Members;
- (f) whether this failure included, but was not limited to, Defendants' negligent artificial insemination of subclass "Mothers" with Defendant, John Doe, M.D.'s, sperm;
- (g) whether, as a direct and proximate result of Defendants' deviation from the appropriate standard of care, Plaintiff Class Members sustained injuries;

- (h) whether, by reason of Defendants' negligence, Plaintiff Class Members suffered damages, including but not limited to, mental and emotional suffering and loss of enjoyment of life; and
- (i) whether Defendants should be compelled to disclose to all Plaintiff Class Members the patients to whom Defendant John Doe, M.D.'s, sperm was administered in the performance of an artificial insemination procedure.

52. The claims asserted by Plaintiffs Jacoba Ballard and Deborah Pierce are typical of claims of the respective subclasses of Class Members that they seek to represent, as described above. Further, all claims arise from the same course of conduct by Defendants and the nature of the relief sought is common to the class.

53. Plaintiffs Jacoba Ballard and Deborah Pierce will fairly and adequately represent and protect the interest of the Class Members. Plaintiffs Jacoba Ballard and Deborah Pierce have retained counsel competent and experienced in both medical malpractice and class action litigation.

54. No other litigation concerning this controversy has been by or against members of the Class.

55. It is desirable to concentrate this litigation in Indiana, because the allegations common to all parties occurred in Indiana, Defendants are located in Indiana, Plaintiffs are located in Indiana, and many Class members are located in Indiana.

56. A class action is superior to other methods for the fair and efficient adjudication of this controversy, as joinder of all members is impracticable. Furthermore, it would be a monumental waste of time and resources to require individual cases when all claims arise from Defendant's identical misconduct.

57. There will be no undue difficulty in the management of this litigation as a class action.

COUNT I: MEDICAL MALPRACTICE

58. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

59. The Defendants had a duty to provide reasonable and appropriate medical care to Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members.

60. The Defendants deviated from the standard of care regarding fertility practices.

61. The Defendants failed to use the ordinary skill, care and diligence in their care and treatment of Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members.

62. This failure included, but was not limited to, Defendants' negligent artificial insemination of Plaintiff Deborah Pierce and the "Mothers" subclass with Defendant, John Doe, M.D.'s, sperm, and failure to disclose to Plaintiffs that he used his own sperm to inseminate the Mothers subclass.

63. As a direct and proximate result of Defendants' deviation from the appropriate standard of care, Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members sustained injuries.

64. By reason of Defendants' negligence, Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members suffered damages, including but not limited to, mental and emotional suffering and loss of enjoyment of life.

65. As a result of the Defendants' negligence, Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members incurred medical expenses and suffered mental and emotional damages.

66. Defendants are liable to Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members for all damages they sustained as a result of the Defendants' deviation from the standard of care in the performance of the fertility procedure.

COUNT II: NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

67. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

68. Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members sustained direct physical impact as a result of Defendants' medical malpractice described in Count I and throughout this Complaint.

69. As a direct and proximate result of this impact, Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members sustained injuries.

70. Defendants are liable to Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members for all damages they sustained as a result of the Defendants' deviation from the standard of care in the performance of the fertility procedure including negligent infliction of emotional distress resulting from the Defendants' negligence.

COUNT III: CONSTRUCTIVE FRAUD

71. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

72. Defendants, as Plaintiffs' and Class Members' health care providers, held a position of trust and confidence with Plaintiff Deborah Pierce and members of the "Mothers" subclass sufficient to form a fiduciary relationship with Defendants as the dominant parties.

73. Defendants, as Plaintiffs' and Class Members' health care providers, had a duty to provide reasonable and appropriate medical care to Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members.

74. Defendants, as Plaintiffs' and Class Members' health care providers, had a duty to make sure that all material facts were fully disclosed to Plaintiff Deborah Pierce and members of the "Mothers" subclass, and that they would refrain from making misrepresentations to Plaintiff Deborah Pierce and members of the "Mothers" subclass.

75. Defendants violated their fiduciary duties by misrepresenting and omitting facts as referenced above.

76. Plaintiff Deborah Pierce and members of the "Mothers" subclass relied on Defendants' expertise as their health care provider when they agreed to the artificial insemination procedure described herein.

77. As a direct and proximate result of Defendants' conduct, Plaintiff Deborah Pierce and members of the "Mothers" subclass consented to the artificial insemination procedure performed by or on behalf of Defendants or at the facilities of Anonymous and were damaged.

COUNT IV: BATTERY BY DEFENDANT, JOHN DOE, M.D. (MOTHERS)

78. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

79. Defendant, John Doe, M.D., intentionally used his own sperm to artificially inseminate the members of the "Mothers" subclass, including Deborah Pierce.

80. Defendant, John Doe, M.D.'s, informed consent procedure fell far short of that mandated by the relevant standard of care in intentionally withholding from the members of the "Mothers" subclass the origin of the sperm used for the artificial insemination procedures.

81. The use of Defendant, John Doe, M.D.'s, sperm was outside the scope of permissive contact with the members of the "Mothers" subclass.

82. The use of Defendant, John Doe, M.D.'s, sperm was intentional offensive contact with the members of the "Mothers" subclass.

83. As a direct and proximate cause of Defendant, John Doe M.D.'s, willful conduct, members of the "Mothers" subclass were injured.

COUNT V: BREACH OF CONTRACT (MOTHERS)

84. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

85. Defendants offered to provide an artificial insemination procedures pursuant, in part, to the representations described in paragraphs 31 and 33.

86. Members of the "Mothers" subclass, including Deborah Pierce, accepted Defendants' offer of an artificial insemination procedure pursuant, in part, to the representations described in paragraphs 31 and 33.

87. Defendants and members of the "Mothers" subclass, including Deborah Pierce, entered into contracts for an artificial insemination procedure.

88. Defendants breached those contracts by using John Doe, M.D.'s, own sperm in the artificial insemination procedure.

89. As a direct and proximate cause of Defendants' breaches, members of the "Mothers" subclass were injured.

COUNT VI: BREACH OF CONTRACT (CHILDREN)

90. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

91. The contracts between members of the “Mothers” subclass, including Deborah Pierce, were intended to benefit Jacoba Ballard and members of the “Children” subclass.

92. Defendants owed a duty of performance on the contracts to Jacoba Ballard and members of the “Children” subclass.

93. As a direct and proximate cause of Defendants’ breach of the contracts, Jacoba Ballard and members of the “Children” subclass were injured.

COUNT VII: BREACH OF EXPRESS WARRANTY (I.C. § 26-1-2-313)

94. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

95. The sperm used in the artificial insemination procedure was movable at the time of identification in Plaintiff Deborah Pierce and members of the subclass “Mothers” agreements with Defendants to participate in the artificial insemination procedure.

96. Defendants sold sperm in conjunction with the artificial insemination procedures that they provided.

97. Plaintiff Deborah Pierce and members of the “Mothers” subclass purchased sperm in conjunction with the artificial insemination procedures they underwent.

98. Defendants’ affirmed as fact to their patients, including Plaintiff Deborah Pierce and the “Mothers” subclass, that donated sperm for such procedures was to be sourced from anonymous medical school residents.

99. Defendants’ affirmed as fact to their patients, including Plaintiff Deborah Pierce and the “Mothers” subclass, that specimens from a single donor were to be used in no more than three successful artificial insemination procedures in a well-defined geographic area. Therefore,

specimens from a single donor were not to be used in more than three successful artificial insemination procedures at Anonymous.

100. The affirmation of paragraph 99 explicitly extends to future performance of the sperm, insofar as it warrants minimized risk of accidental incest.

101. Defendants' affirmations of fact in paragraphs 98 and 99 were false.

102. Defendants' breached their express warranties to including Plaintiff Deborah Pierce and the "Mothers" subclass.

103. As a direct and proximate result of this unfitness, Plaintiffs and Class Members were injured.

COUNT VIII: NEGLIGENT HIRING OR RETENTION (ANONYMOUS)

104. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

105. As John Doe, M.D.'s, employer, Anonymous, owed a duty of reasonable care in the hiring or retention of John Doe, M.D., to Plaintiffs and the Class Members.

106. Anonymous breached its duties to Plaintiffs and Class Members when it hired or retained John Doe, M.D., in its employment, despite his repeated breaches of the medical standard of care.

107. Plaintiffs and Class Members were injured as a natural and probable consequence of Anonymous' hiring or retention of John Doe, M.D.

108. The injuries sustained by Plaintiffs and Class Members were foreseeable to Anonymous on account of John Doe, M.D.'s, pattern of conduct injurious to his patients.

COUNT IX: MANDATORY INJUNCTION

109. Plaintiffs hereby incorporate by reference all previous rhetorical paragraphs in this Complaint.

110. Plaintiffs Jacoba Ballard and Deborah Pierce and the Class Members and the public health, in general, face certain and irreparable harm from the inadvertent intermarrying of closely biologically related individuals.

111. Due to the nature of the information that Defendants failed to disclose, members of the “Children” subclass, as well as their children, face a heightened risk of meeting and, possibly procreating with, a half-sibling, aunt, uncle, or cousin unaware of the relationship between them.

112. The children of closely biologically related individuals often have significant health and development problems.

113. Disclosure of the identities of each and every child of Defendant, John Doe, M.D., conceived via artificial insemination to all other children of Defendant, John Doe, M.D., is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public.

114. Pursuant to Indiana Trial Rule 65, Defendants should be enjoined to disclose the identities of each and every child of Defendant, John Doe, M.D., conceived via artificial insemination to all other children of Defendant, John Doe, M.D.

WHEREFORE, Plaintiffs Jacoba Ballard and Deborah Pierce, individually and on behalf of the above-defined subclasses, by and through counsel, pray the Court grant the following relief:

- A. An order certifying the subclasses defined herein pursuant to Ind. T.R. 23;

B. An order designating Plaintiffs Jacoba Ballard and Deborah Pierce as representatives for the subclasses certified pursuant to Ind. T.R. 23 and designating their counsel as lead counsel for the class;

C. An order awarding Plaintiffs Jacoba Ballard and Deborah Pierce and all other Class Members damages an amount to be determined at trial sufficient to compensate them for all damages arising out of the injuries to Plaintiffs Jacoba Ballard and Deborah Pierce and all other Class Members; the negligent infliction of emotional distress of Plaintiffs Jacoba Ballard and Deborah Pierce and all other Class Members; the constructive fraud committed against Plaintiff Deborah Pierce and the “Mothers” subclass; the breach of express warranty committed against Plaintiff Deborah Pierce and the “Mothers” subclass; the breach of contract committed against Plaintiff Deborah Pierce and the “Mothers” subclass; the breach of contract committed against Plaintiff Jacoba Ballard and the “Children” subclass as third-party beneficiaries to a contract; and the negligent hiring and retention of John Doe, M.D.

D. An order requiring Defendants, their agents, successors, employees, and other representatives to disclose the identities of each and every child of Defendant, John Doe, M.D., conceived via artificial insemination to all other children of Defendant, John Doe, M.D.;

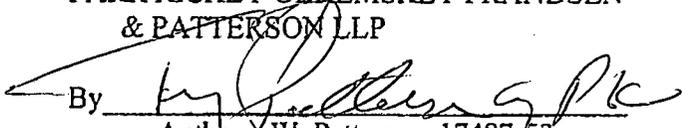
E. An order awarding attorney’s fees pursuant to applicable State law; and,

F. Any and all other appropriate relief in the premises.

Respectfully submitted,

PARR RICHEY OBREMSKEY FRANDBSEN
& PATTERSON LLP

By


Anthony W. Patterson, 17497-53
225 West Main Street
Post Office Box 668
Lebanon, IN 46052

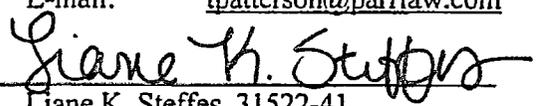
Telephone: (765) 482-0110

(317) 269-2509

Facsimile: (765) 483-3444

E-mail: tpatterson@parrlaw.com

By


Liane K. Steffes, 31522-41
251 N. Illinois Street, Suite 1800
Indianapolis, IN 46024

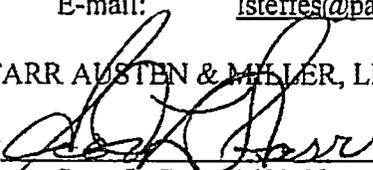
Telephone: (317) 269-2500

Facsimile: (317) 269-2505

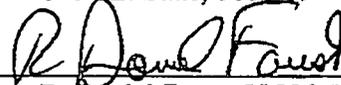
E-mail: lsteffes@parrlaw.com

STARR AUSTEN & MILLER, LLP

By


Scott L. Starr, 1601-09

By


R. Daniel Faust, 28556-53
201 South Third Street
Logansport, IN 46947

Telephone: (574) 722-6676

Facsimile: (574) 753-3299

E-mail: starr@starrausten.com

faust@starrausten.com