

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BARBARA HALUSKA and LINDA KISZIE,
on behalf of themselves and all other similarly
situated individuals,

Plaintiffs,

vs.

FORBES REGIONAL HOSPITAL and
WEST PENN ALLEGHENY HEALTH
SYSTEM,

Defendants

CIVIL DIVISION

No.: GDS-9134

Issue No.:

Code: 011

CLASS ACTION COMPLAINT

Filed on behalf of: PLAINTIFFS

Counsel of Record for Plaintiffs:

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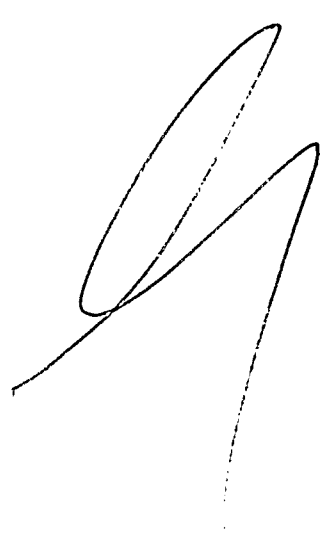
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4-14-2025 09:15:15

JURY TRIAL DEMANDED

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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint and for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER OR CANNOT AFFORD ONE, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Lawyer Referral Service
Allegheny County Bar Association
920 City-County Building
414 Grant Street
Pittsburgh, PA 15219
412-261-5555

CLASS ACTION COMPLAINT

AND NOW come the Representative Plaintiffs, individually and on behalf of all other similarly situated colonoscopy patients, by and through their counsel, Berger & Lagnese, LLC, and allege and state the following in support of their claims against Defendants Forbes Regional Hospital and West Penn Allegheny Health System:

PRELIMINARY STATEMENT

1. This is a class action brought by the Representative Plaintiffs, and other similarly situated colonoscopy patients against Defendants Forbes Regional Hospital and West Penn Allegheny Health System as a result of the failure of Defendants to properly clean, sterilize and disinfect a colonoscope or colonoscopes that was/were used on the Representative Plaintiffs as well as all the of the other members of the class.

2. Representative Plaintiff Barbara Haluska is a resident of West Mifflin, Allegheny County, Pennsylvania.

3. Representative Plaintiff, Linda Kiszie is a resident of Pittsburgh, Allegheny County, Pennsylvania.

4. Defendant, Forbes Regional Hospital, (hereinafter “Forbes”) is a located in Monroeville, Allegheny County, Pennsylvania.

5. Defendant, West Penn Allegheny Health System (hereinafter “West Penn”) is a non profit corporation located in Pittsburgh, Allegheny County Pennsylvania.

ALLEGATIONS OF FACT

6. In 2002 several patients at Allegheny General Hospital, part of Defendant West Penn, developed serious infections as a result of improperly cleaned, sanitized, and disinfected bronchoscopes.

7. In 2003 a problem was discovered in New York and California regarding the failure of hospitals to properly clean, sanitize, and disinfect certain colonoscopies manufactured by Olympus America Inc (hereinafter "Olympus"). As a result of improper cleaning and disinfecting of the colonoscopes, a number of individuals contracted hepatitis C. The cleaning problem involved the failure of the hospitals to properly disinfect auxiliary channels in the involved colonoscopes.

8. As a result of the failure of these hospitals to properly disinfect auxiliary channels of the involved colonoscopes, Olympus sent safety notices to over 2300 of its customers, including many hospitals, warning of the need to properly clean and disinfect the auxiliary channels. On information and belief, Representative Plaintiffs believe that Defendants Forbes and West Penn received the safety notices from Olympus informing them of the need to properly clean and disinfect all the auxiliary chambers of their Olympus colonoscopes.

9. Sometime prior to October 28, 2004, Defendants purchased two new colonoscopes from Olympus. The new colonoscopes were model number CF-Q160AL. These colonoscopes contained a special auxiliary chamber that permitted water to be pumped through it. On information and belief, before October 2004, Defendants had not owned any Olympus CF-Q160AL colonoscopes.

10. On information and belief, Representative Plaintiffs assert that these new Olympus colonoscopes were accompanied by instruction and user manuals that contained specific instructions telling Defendants how to properly clean and disinfect the Olympus CF-Q160AL colonoscope.

11. Despite their knowledge that the failure to clean and disinfect instruments such as a colonoscope could have grave consequences for their patients, and despite their knowledge that Olympus colonoscopes had auxiliary chambers that needed to be properly disinfected to avoid serious and/or fatal injuries to their patients, Defendants failed to read the information provided by Olympus on the proper cleaning and disinfecting of the Olympus CF-Q160AL colonoscope. Not only did they fail to read the information from Olympus on the proper cleaning and disinfecting of the Olympus CF-Q160AL colonoscope, Defendants did not even realize that this model was different from the colonoscopes previously purchased from Olympus.

12. Because of the failure of Defendants to realize that their new Olympus CF-Q160AL colonoscopes were different from those scopes previously purchased from Olympus (in that the new scopes contained an additional auxiliary chamber), and because of their failure to read the instructions provided by Olympus on how to properly clean and disinfect such scopes, all persons who had a colonoscopy at Forbes between October 28 2004 and February 26 2005, including Representative Plaintiffs who underwent a colonoscopy with the Olympus CF-Q160AL colonoscope underwent colonoscopy with an improperly cleaned and disinfected colonoscope.

13. The careless and reckless conduct of Defendants as described above, subjected each of these individuals, including Representative Plaintiffs, to a significantly increased risk of

contracting viral and/or bacterial infections and/or illnesses including but not limited to hepatitis B, hepatitis C and HIV.

14. On information and belief, Defendants discovered on February 27, 2005, or shortly thereafter, that all persons who had a colonoscopy at Forbes using the Olympus CF-Q160AL between the dates of October 28 2004 and February 26 2005 were subjected to a colonoscopy with an improperly cleaned and disinfected colonoscope, and were thus at risk of contracting infection and/or illness. Defendants knew that if any such patient engaged in unprotected sexual relations or otherwise transferred blood, or certain other body fluids, additional persons would be at risk of contracting viral and/or bacterial infections and/or illnesses.

15. Despite this knowledge Defendants waited over a month, or until late March 2005, to inform Defendants of the potential risks. In late March 2005, Defendants sent certified letters to about 200 patients, including Representative Plaintiffs, advising them that they were at risk of infection and/or illness as a result of having undergone colonoscopy with an improperly cleaned and disinfected colonoscope. The patients, including Representative Plaintiffs, were advised to submit to two blood tests, one immediately and one in six months, to determine if they had contracted any illnesses as a result of having undergoing a colonoscopy with an improperly cleaned and disinfected colonoscope.

CLASS ACTION ALLEGATIONS

16. This action is brought as a class action pursuant to Pennsylvania Rule of Civil Procedure 1702 on behalf of all patients of Defendants Forbes and West Penn who underwent colonoscopy with an improperly cleaned and disinfected colonoscope.

17. The class of plaintiff is so numerous as to make it impracticable to join all members of the class. The exact number of class members is unknown to Representative Plaintiffs, however, media reports have estimated the number of class members at about 200. Moreover, the damages suffered by any one class member may not justify the expense and effort of a separate legal action, but as a class those damages do economically justify legal action.

18. Common questions of law and fact affect the rights of each member of the class and all members of the class are seeking common relief by way of damages.

19. Among the multiple common questions of fact and law are:

- a. Whether Defendants were negligent in failing to inform themselves of the proper cleaning and disinfecting method for the Olympus CF-Q160AL colonoscopes?
- b. Whether Defendants were negligent in failing to properly clean and disinfect the Olympus CF-Q160AL colonoscope before it was used on each member of the class?
- c. Whether Defendants acted in reckless indifference to the rights and safety of the class members when they failed to inform themselves of the proper cleaning and disinfecting method for the Olympus CF-Q160AL colonoscopes?
- d. Whether Defendants acted in reckless indifference to the rights and safety of the class members when they failed to properly clean and disinfect the Olympus CF-Q160AL colonoscope before it was used on each member of the class?

- e. Whether Defendants acted in reckless indifference to the rights and safety of the class members when they failed to inform the class members of the risk of infection for over one month?
- f. Whether providing testing of the class members now and at six months is adequate to ensure that none of the class members contracted any infections and/or illnesses as a result of being subjected to colonoscopy with an improperly cleaned and disinfected colonoscope? and
- g. Whether the blood tests of the class members adequately tests for all diseases the class members may have contracted as a result of being subjected to colonoscopy with an improperly cleaned and disinfected colonoscope?

20. The claims made by the Representative Plaintiffs are typical of the claims that will made by other members of the class in that the Representative Plaintiffs and the other class members all underwent colonoscopy at Defendant Forbes with improperly cleaned and disinfected colonoscopes and the Representative Plaintiffs and the other class members all seek the same kind of relief.

21. Moreover, the Representative Plaintiffs will fairly and adequately represent all members of the class, and have no conflict with class members in the maintenance of this action. Representative Plaintiffs have retained competent counsel that is experienced in complex class actions to represent them and other members of the proposed class. The interests of the Representative Plaintiffs and the other class members they seek to represent are aligned because they too underwent colonoscopy with an improperly cleaned and disinfected colonoscope.

22. The common questions of law and fact enumerated above predominate over any question only affecting an individual class member.

23. If each class member had to pursue an individual claim there exists the risk of inconsistent adjudications with respect to individual class members.

24. This forum is the appropriate to litigate the claims of the entire class as the majority of the class members are likely to be Allegheny County residents and Defendants are both located in Allegheny County.

25. Representative Plaintiffs on behalf themselves and the Class, seek equitable relief in the form of a court ordered and supervised medical monitoring program funded by Defendants to ensure prompt diagnosis of any viral and/or bacterial infection and/or illness that any class member may have contracted as a result of the careless and reckless conduct of Defendants. Such a program would include blood testing in six month intervals for a minimum of two years. Such a program would include testing for all viral and/or bacterial infections that any class member could have contracted due to Defendants' recklessness and negligence.

26. Maintenance of this action as a class action for the proposed class is a fair and efficient method for adjudication of this controversy. It would be impracticable and undesirable for each member of the Class to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

27. Representative Plaintiffs know of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action certified for the described class.

COUNT ONE

NEGLIGENCE

28. The averments of Paragraphs 1-27 are incorporated herein.

29. Each class member, including Representative Plaintiffs, underwent a colonoscopy with an Olympus CF-Q160AL colonoscope that was improperly cleaned and disinfected.

30. In subjecting each class member to colonoscopy with an improperly cleaned and disinfected colonoscope, Defendants through their employees, agents, and servants were negligent and acted with reckless indifference to the safety of their patients in the following particulars:

- a. In failing to inform themselves, their employees, agents, and servants of the proper method of cleaning and disinfecting the Olympus CF-Q160AL colonoscope;
- b. In failing to have in effect rules, regulations and protocols requiring their employees, agents, and servants to read and follow cleaning, disinfecting and other instructions provided by the manufacturers of medical instruments such as the Olympus CF-Q160AL colonoscope used in their hospital;
- c. In failing to enforce rules, regulations and protocols requiring their employees, agents, and servants to read and follow cleaning, disinfecting and other instructions provided by the manufacturers of medical instruments such as the Olympus CF-Q160AL colonoscope used in their hospital;
- d. In permitting an improperly cleaned and disinfected colonoscope to be used on each class member;

- e. In failing to properly clean and disinfect the colonoscopes before they were used on each class member;
- f. In failing to recognize at any time before February 26, 2005 that they were subjecting their patients to colonoscopies with improperly cleaned and disinfected colonoscopes; and
- g. In failing to promptly and in a timely manner notify each class member that they had been subjected to colonoscopy with an improperly cleaned and disinfected colonoscope and were therefore at risk of contracting and/or spreading viral and/or bacterial infections and/or illnesses.

31. As a direct and proximate result of the Defendants' negligence and reckless indifference to the safety of their patients as set forth above, the class members, including the Representative Plaintiffs, have suffered injury including but not limited to:

- a. Pain and suffering;
- b. Mental anguish;
- c. Embarrassment and humiliation; and
- d. Inconvenience.

WHEREFORE, Representative Plaintiffs, on behalf of themselves and all others similarly situated respectfully request compensatory and punitive damages in an amount excess of \$25,000, plus any and all other relief this Court deems appropriate.

COUNT TWO

MEDICAL MONITORING

32. The averments of Paragraphs 1-31 are incorporated herein.

33. As a result of the actions of Defendants, Representative Plaintiffs and all other class members are at risk for contracting both viral and/or bacterial infections.

34. To date, Defendants have offered two blood tests, one immediately and one in six months, and are testing only for hepatitis B, hepatitis C, and HIV.

35. Representative Plaintiffs believe that such testing is inadequate to ensure diagnosis of all of the viral and/or bacterial infections and/or illnesses the class members may have contracted as a result of the careless and reckless conduct of Defendants.

36. Representative Plaintiffs believe adequate testing requires, at a minimum, testing every six months for a two year period to ensure that none of the class members have contracted any viral and/or bacterial infections and/or illnesses as a result of having been subjected to colonoscopy with an improperly cleaned and disinfected colonoscope.

37. Further, Representative Plaintiffs believe that adequate testing requires that tests be done for all possible viral and/or bacterial infections that they and the other class members could have contracted as a result of having been subjected to colonoscopy with an improperly cleaned and disinfected colonoscope. On information and belief, the testing being offered by Defendants is only for hepatitis B, hepatitis C and HIV.

WHEREFORE, Representative Plaintiffs, on behalf of themselves and all others similarly situated request that Defendants be required to provide appropriate medical monitoring, at the expense of Defendants, together with any and all additional relief the Court deems appropriate.

PRAYER FOR RELIEF

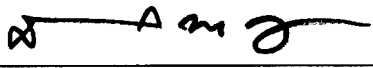
WHEREFORE, Representative Plaintiffs, on behalf of themselves and all others similarly situated, request that this Court enter judgment against Defendants and in favor of Representative Plaintiffs on their own behalf and on behalf of the Class, and further request that the Court award the following relief:

- a. Certifying this action as a class action pursuant to Pa.R.Civ.P. 1701, et seq.;
- b. Awarding Representative Plaintiffs and the Class compensatory and punitive damages in excess of \$25,000 for the acts complained of herein;
- c. Ordering Defendants to provide additional testing, at Defendants' expense to ensure timely diagnosis of any and all persons who were infected as a result of the careless and reckless conduct of Defendants;
- d. Entering an appropriate award of attorneys' fees, expenses, costs of suit, pursuant to the rules governing class actions and other applicable laws of the Commonwealth of Pennsylvania; and
- e. Ordering such additional and further relief as this Court deems just and appropriate.

JURY TRIAL DEMAND

Representative Plaintiffs demand on behalf of themselves and all others similarly situated
a trial by jury on all issues so triable.

BERGER & LAGNESE, LLC

By: 

Daniel M. Berger
Pa. I.D. No. 09982
Paul A. Lagnese
Pa. I.D. No. 51281
David M. Paul
Pa. I.D. No. 70552

Counsel for Plaintiffs

VERIFICATION

I, David M. Paul, have read the foregoing Class Action Complaint and hereby aver that the statements contained therein are true and correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.



David M. Paul

DATED: April 14, 2005