

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

JOHN DOE and JANE DOE; JOSEPH DOE;
and JAMES AND JANET DOE,

Petitioners,

v.

NORTHWESTERN MEMORIAL HOSPITAL
and NORTHWESTERN MEDICAL
FACULTY FOUNDATION,

Respondents.

No.

2012CH26738
CALENDAR/ROOM 12
TIME 00:00
General Chancery

FILED LAW DIVISION
2012 JUL 16 AM 10:06
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL

PETITIONERS' EMERGENCY BILL OF DISCOVERY

Petitioners, JOHN DOE and JANE DOE; JOSEPH DOE; and JAMES AND JANET
DOE, by and through their attorneys, CORBOY & DEMETRIO, P.C., petition this Court for an
Emergency Bill of Discovery and in support thereof, state:

1. In April, May, and June of 2012, Northwestern Medical Faculty Foundation and
Northwestern Memorial Hospital owned, operated, managed, and controlled an operation for
cryopreservation and storage of semen/testicular tissue.

2. At said time and place, Petitioners had semen/testicular tissue stored with
Northwestern Medical Faculty Foundation with the plan of becoming parents in the future
through assisted reproductive techniques.

3. At said time and place, the cryopreservation and storage procedure failed, causing
the loss of and/or damage to semen/testicular tissue specimens stored with Northwestern Medical
Faculty Foundation (Exhibit A).

4. While Respondents have admitted the failure of their cryopreservation equipment and the resulting damage to Petitioners' specimens, which Respondents contractually agreed to preserve for fees, the specifics of the failure and what entities were involved in those failures is not currently known.

5. In order to preserve, protect, and investigate all aspects of any and all potential causes of action arising from the damage to and/or loss of the specimens which Petitioners stored with Northwestern Medical Faculty Foundation and/or Northwestern Memorial Hospital, it is necessary that Petitioners have access to all information regarding the operation and maintenance of the cryopreservation and storage system, including all information regarding the failures that led to the damage to and/or loss of Petitioners' stored specimens, as well as an inspection of the equipment in question.

6. Based on the foregoing, Petitioners pray for the entry of an Order requiring the immediate preservation and subsequent production of the following by the Respondents, within twenty-one days :

- a) Any and all records pertaining to the maintenance of the cryopreservation and storage system, including any protocol, log records, and/or inspection records;
- b) Any and all records pertaining to any and all inspections and work conducted on the cryopreservation and storage system in the year prior to the failure that led to the damage to and/or loss of specimens;
- c) Any and all records and read-outs from the cryopreservation and storage system in the month prior to and month after the failure that led to the damage to and/or loss of specimens;
- d) Any and all communications, whether written, email, or any other form, pertaining to any and all maintenance work done on the cryopreservation and storage system for one month prior and up to the time of the occurrence;

- e) A list of the names and addresses of all individuals who conducted any maintenance and inspection of the cryopreservation and storage system in the year prior to the failure that led to the damage to and/or loss of specimens;
- f) All data downloads of the cryopreservation and storage system;
- g) All e-mails to and from Respondent to Petitioners;
- h) All records of testing done on the affected specimens of Petitioners;
- i) All medical records of Petitioners;
- j) All inspection records of the cryopreservation and storage system;
- k) A list of entities that manufactured the cryopreservation and storage system and any of its component parts;
- l) A list of entities that performed maintenance on any part of the cryopreservation and storage system; and
- m) Further, Petitioners pray for an opportunity to inspect the cryopreservation storage system and devices that failed.

7. Petitioners additionally pray for leave to issue subpoenas to investigatory agencies and other third parties with knowledge for the reports, statements, photographs and videos relating to the failure of the cryopreservation and storage system.

WHEREFORE, Petitioners pray for the entry of an Order granting the aforesaid relief.


Matthew T. Jenkins

Michael K. Demetrio
Matthew T. Jenkins
Corboy & Demetrio, P.C.
Attorneys for Petitioners
33 North Dearborn Street, 21st Floor
Chicago, Illinois 60602
(312) 346-3191
Firm I.D. No. 02329



Northwestern Medical Faculty Foundation

Phillip E. Roemer, MD
Chief Medical Officer

Executive Adminis
650 North Lake St
Suite 1118
Chicago, Illinois 6
Tel (312) 695-2270

June 3, 2012

Dear

This is a follow-up to the call you received from our Northwestern Medical Faculty Foundation (NMFF) physicians regarding the failure of our cryogenic storage tank that stored your sperm samples at our outpatient urology facility. We deeply regret this incident and its potential impact. As our physician indicated during your conversation, we are dedicated to doing everything we can to assist you in exploring the clinical next steps regarding your fertility and assisted reproduction options.

While we cannot know with certainty, our testing indicates that it is likely that all samples in the tank that failed were affected. We tested nearly 100 samples from inactive patients who had consented to discard them. When samples are analyzed before freezing and after thawing, the technicians measure the percentage of sperm seen moving, which is called "motility." Testing of the samples from the tank that failed showed significantly less sperm motility than we would expect when a sample had simply been frozen once and thawed for use.

FURTHER EVALUATION OF MALE FERTILITY

Given this unfortunate situation, we would like you to consider the clinical next steps to minimize the impact on your fertility. First, you should consider further evaluation of your fertility. Depending on your clinical situation, we would like to offer you another semen analysis. If further semen analysis is impossible because of other medical conditions, then we would like a NMFF urologist to see you to explore other fertility options. In either case, we would like you to call us 312-695-2270 to arrange for semen analysis or an office visit at no cost to you, if you have not already made such arrangements.

USE OF AFFECTED SAMPLES FOR ASSISTED REPRODUCTION

We would note, however, that in the patients who had only very limited number of motile sperm before freezing, the chance to have a successful IVF is much reduced. Although



this likely would have been true regardless of this incident. we acknowledge that the incident likely has adversely affected these samples.

If you would like to try to obtain further information about the impact of this event on your samples, it may be possible that we could, with your permission, test part of your sample to see whether it was affected. To do this, however, you must have a sufficient number of vials to test. Please note that we cannot test a vial without thawing it. Refreezing the sample would further reduce the motility and possibly render it useless. After testing the sample, it would either have to be used immediately or discarded. Accordingly, we would urge patients with only a few vials of sample or with a low number of motile sperm to begin with to discuss testing options with their IVF specialist (reproductive endocrinologist). Again, if you have not already made these arrangements and would like to know more about the possible impact of this event on your sample or whether to test your sample, please call 312-695-2270, and we will arrange for an appointment or telephone consultation with an IVF specialist at no cost to you.

NMFF is dedicated to minimizing the impact of this unfortunate event. And as you can see, the clinical next steps are very complex. Please understand that you have a unique clinical situation that may not be fully known at this time, and so it is difficult to make broad statements regarding future treatment. Nonetheless, the Foundation wants you to know that it is committed to providing you and all of the affected patients fair and reasonable responses to this unfortunate occurrence.

Again, we sincerely apologize for this incident and will remain available to discuss further your individual clinical situation.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip F. Roemer M.D.", with a stylized flourish at the end.

Philip F. Roemer, M.D.
Chief Medical Officer

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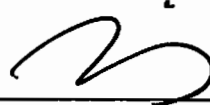
Respondents.

No.

AFFIDAVIT

I, Matthew T. Jenkins, of Corboy & Demetrio, P.C., attorney for Petitioners, JOHN DOE and JANE DOE; JOSEPH DOE; and JAMES AND JANET DOE, am familiar with the facts as set forth in the Emergency Bill of Discovery.

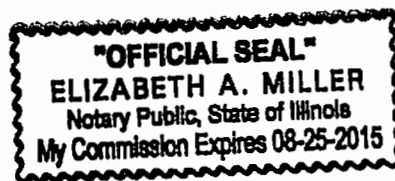
Based upon my limited investigation to date, I state, under oath, that all of the allegations contained in Petitioners' Emergency Bill of Discovery are true and correct to the best of my knowledge.



Matthew T. Jenkins

SUBSCRIBED and SWORN to before me
this 16th day of July, 2012.

Elizabeth A. Miller
NOTARY PUBLIC



Michael K. Demetrio
Matthew T. Jenkins
Corboy & Demetrio, P.C.
Attorneys for Petitioners
33 North Dearborn Street, 21st Floor
Chicago, Illinois 60602
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