

Cause No. 2011 70457

JOE PRESSIL

IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

ADVANCED FERTILITY CTR-TEXAS and  
OMNI-MED LABORATORIES, L.L.C.

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157<sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff JOE PRESSIL brings this lawsuit complaining of ADVANCED FERTILITY CTR-TEXAS ("Advanced Fertility") and OMNI-MED LABORATORIES, L.L.C. ("Omni-Med"), and would respectfully show the following:

**I.  
DISCOVERY LEVEL**

1. Plaintiff requests discovery be conducted under Level 3 in accordance with Rule 190.4 of the Texas Rules of Civil Procedure.

**II.  
REQUEST FOR DISCLOSURE**

2. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff requests Defendants to disclose, within fifty (50) days of service of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure. Plaintiff specifically requests the responding parties to produce responsive documents at the undersigned law office within fifty (50) days of service of this request.

**FILED**

Chris Daniel  
District Clerk

NOV 21 2011

Time: 1:20 p.m.  
Harris County Clerk  
By: [Signature]  
Deputy

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**III.  
PARTIES**

3. Plaintiff, JOE PRESSIL, is a resident of Allegany County, New York.

4. Defendant, ADVANCED FERTILITY CTR-TEXAS is a company organized and existing under the laws of Texas and with its principal office in Houston, Harris County, Texas. This Defendant may be served by serving an officer or manager employed at Defendant's principal place of business: 18400 Katy Freeway, Houston, Texas 77094-1286.

5. Defendant, OMNI-MED LABORATORIES, L.L.C. is a limited liability company organized and existing under the laws of Texas and with its principal office in Houston, Harris County, Texas. This Defendant may be served via its registered agent for service of process, Lisa Benjamani, 10901 Katy Freeway, Houston, Texas 77079-2203.

**IV.  
JURISDICTION**

6. The court has jurisdiction over Defendants because they have either done business in Texas, committed a tort in Texas, and/or have had continuous contacts with Texas. In addition, the damages for which Plaintiff brings suit exceeds the minimal jurisdictional limits of the Court.

**V.  
VENUE**

7. Venue is proper in Harris County, Texas because Harris County is where all or a substantial part of the events giving rise to the Plaintiff's claims occurred.<sup>1</sup> Additionally, both Defendants maintain their principal office in Harris County, Texas.<sup>2</sup>

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<sup>1</sup>TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(A)(1).

<sup>2</sup> TEX. CIV. PRAC. & REM. CODE ANN. § 15.002(A)(3).

**VI.  
FACTS**

8. Plaintiff, Joe Pressil ("Pressil"), suffered mental and economic injuries when Defendants obtained his sperm without his consent or knowledge and in vitro fertilized a woman purporting to be his wife when she, in fact, was not.

9. In February of 2011 Pressil found a receipt from Omni-Med for cryopreservation of a sperm sample. Pressil was listed as the "patient" on the receipt even though he had never been to Omni-Med nor ever sought treatment for male infertility. Pressil immediately called Omni-Med and was referred to Advanced Fertility, the clinic who ordered the cryopreservation. Likewise, Pressil have never been a patient at Advanced Fertility.

10. Pressil then immediately contacted Advanced Fertility who told him they could not discuss the details over the phone. Confused and still without any answers or explanations, Pressil went to Advanced Fertility, in person.

11. Advanced Fertility told Pressil they obtained his sperm sample from a woman purporting to be his wife, even though Pressil was not married, and in 2007 performed in vitro fertilization which resulted in the birth of twins. Advanced Fertility impregnated the woman with Pressil's sperm without his knowledge, much less his consent. Advanced Fertility's website "strongly encourages" both partners to take part in an initial consultation, though Pressil was never consulted. Pressil first discovered his children were born through in vitro fertilization in February of 2011.

12. To date, Omni-Med continues to keep Pressil's cryopreserved sperm sample without his consent. Due to the unexpected birth of his children caused by Defendants, Pressil suffered severe mental anguish and incurred economic harm due to substantial child support payments.

**VII.  
NEGLIGENCE**

13. Defendants owed certain duties to Joe Pressil. Defendants breached its duties and was negligent in one or more of the following ways:

- a. Failing to obtain consent from Pressil before using his sample;
- b. Failing to notify Pressil his sample was obtained, preserved, stored and used for in vitro fertilization;
- c. Failing to design, implement or enforce policies and procedures to ensure donors have knowledge of their samples being obtained, preserved, stored and/or used for in vitro fertilization;
- d. Failing to ensure in vitro patients purporting to be the spouse of a donor is, in fact, the spouse of the donor;
- e. Failing to ensure in vitro patients have legal possession of a donor's sample; and
- f. Failing to properly and timely alert donors their sample was obtained, preserved, stored and/or stored by Defendants.

14. Defendants' acts and omissions were a proximate cause of Plaintiff's injuries.

**VIII.  
CONVERSION**

15. Plaintiff owned, possessed and had the right to immediate possession of personal property which Defendants exercised dominion or control over. Specifically, Defendants obtained, cryopreserved, stored and used Plaintiff's sperm sample and in vitro fertilized a woman without Plaintiff's knowledge or consent. As a direct result, Plaintiff suffered damages.

**IX.  
TEXAS THEFT LIABILITY ACT**

16. Plaintiff had a possessory right to property which Defendants unlawfully appropriated, as defined in Texas Penal Code §31.03. Specifically, Defendants obtained,

cryopreserved, stored and used Plaintiff's sperm sample without Plaintiff's consent and/or knew the sperm sample was obtained by another without Plaintiff's consent. Defendants appropriated the property with the intent to deprive Plaintiff of the property and Plaintiff suffered damages as a result.

**X.  
CONSPIRACY**

17. Defendants conspired to accomplish an unlawful purpose or a lawful purpose by an unlawful means. Defendants had a meeting of the minds on their course of action and one or all committed an unlawful, overt act to further the object or their course of action. As a result, Plaintiff suffered damages.

**XI.  
RESPONDEAT SUPERIOR**

18. Defendants are liable for the torts committed by its employees during the course and scope of their employment. Specifically, Defendants' employees, acting within the course and scope of their employment (and in furtherance of Defendants' business), had a general duty to exercise reasonable care in performing their work. Such employees, however, failed to exercise the requisite standard of care under the circumstances. As a result, Defendants are liable for the injuries suffered by Plaintiff.

**XII.  
DAMAGES**

19. Plaintiff respectfully requests the following damages to be considered separately and individually for the purpose of determining the sum of money that will fairly and reasonably compensate him:

- a. The mental anguish Plaintiff has suffered in the past and will continue to suffer in the future;
- b. The loss of opportunity Plaintiff has suffered in the past and will continue to suffer in the future;
- c. The loss of enjoyment of life Plaintiff has suffered in the past and will continue to suffer in the future;
- d. The amount of child support Plaintiff has paid in the past and will continue to pay in the future;
- e. The expenses necessarily incurred in the past of raising two children, and those that will be reasonably incurred in the future; and
- f. The loss of any earnings sustained by Plaintiff in the past, and the loss or reduction of Plaintiff's earning capacity in the future.

**XIII.  
EXEMPLARY DAMAGES**

20. Defendants conduct, when viewed from the standpoint of the actors at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Furthermore, Defendants' conduct illustrates not only an attitude of conscious indifference for the rights, safety and welfare of others, but also shows Defendants' actual and subjective awareness of the dangers of such conduct.

21. Nevertheless, Defendants proceeded with a conscious indifference to the rights, safety or welfare of others, including Joe Pressil. Therefore, Defendants are liable for exemplary/punitive damages.

**XIV.  
CONDITIONS PRECEDENT**

22. All conditions precedent have been performed or have occurred as required by Texas Rule of Civil Procedure 54.

**XV.  
DISCOVERY RULE**

23. Plaintiff was not aware of the acts and omissions committed by . Consequently, the discovery rule applies to this case and the statute of limitations has been tolled until the day Plaintiff knew, or in using reasonable diligence, should have known the wrongly filled prescription was the cause of his mental distress and other injuries.

**XVI.  
JURY DEMAND**

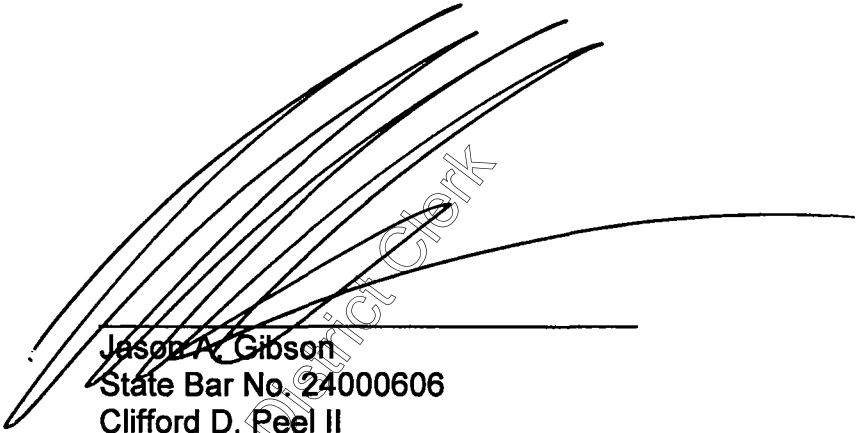
24. Plaintiff DEMANDS A TRIAL BY JURY and tender the appropriate fee.

**XVII.  
PRAYER**

25. For the above reasons, Plaintiff prays he has judgment against Defendants, jointly and severally, together with interest on the judgment at the legal rate, pre-judgment interest, costs of court and for such other further relief, both in law and equity, to which the Plaintiff may show himself justly entitled.

Respectfully Submitted,

**THE GIBSON LAW FIRM**



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Unofficial Copy Office of Christy D. Peck, Clerk