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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

C-1-94-133

GREGORY SHUFF,
EXECUTOR OF THE ESTATE OF
IRENE SHUFF, DECEASED,
ON BEHALF OF HIMSELF AND ALL
OTHERS SIMILARLY SITUATED
9121 Depalma Drive
Cincinnati, Ohio 43251,

::
CASE NO. _____
::
(Judge BAKER, J.)
::

Plaintiffs :: COMPLAINT AND JURY DEMAND

vs. :: CLASS ACTION

EUGENE L. SAENGER, M.D.
9150 Given Road
Cincinnati, Ohio 45243,
::

and ::

JOHN DOES ONE THROUGH ELEVEN
WHOSE NAMES ARE NOT PRESENTLY
KNOWN,
::

Defendants ::
: : : : : : :

On behalf of themselves and the class alleged herein,
Plaintiffs state the following for their complaint against
Defendants:

I. PRELIMINARY STATEMENT

1. This is a class action brought by Plaintiff on behalf
of all patients of the human radiation project carried out by
Dr. Eugene Saenger and his associates at the University of
Cincinnati's Medical Center during the years 1960 to 1971.

2. Plaintiffs seek damages for deprivations under color of
state law of the rights, privileges and immunities secured by the

Constitution of the United States, and, in particular, those rights secured by the Fourteenth Amendment.

3. Specifically, Plaintiffs allege that the class members were the unwitting subjects of a study conducted to determine the effects of radiation on soldiers, that the class members were exposed to doses of radiation at levels expected on a nuclear battlefield, that the class members had inoperable cancer and were told that they were receiving experimental treatment for their cancer, and that the class members were neither told that they were part of a medical experiment nor that they were receiving radiation in doses anywhere from 25 to 300 rads.

II. JURISDICTION

4. This action is filed under 42 U.S.C. § 1983 to redress injuries suffered by Plaintiff for deprivation under color of state law of rights secured by the Fourteenth Amendment to the United States Constitution, as well as § 2125.01 et seq. of the Ohio Revised Code and Ohio common law. This court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

5. Venue in the United States District Court, Southern District of Ohio, Western Division, is proper pursuant to 28 U.S.C. § 1391.

III. PARTIES

6. Plaintiff Gregory Shuff was appointed administrator of the Estate of Irene Shuff, deceased, by the Hamilton County Probate Court on February 17, 1994, in Case No. 940740. He brings the below actions on behalf of the Estate of the decedent, and also as the personal representative of the next of kin of the decedent. A copy of the Letter of Authority is attached as Exhibit A.

7. Decedent Irene Shuff was first admitted to Cincinnati General Hospital on September 15, 1967, and diagnosed with lung cancer. Decedent was last admitted on January 2, 1968. On January 16, 1968, as part of Defendant's human radiation experiment, Decedent was treated with 100 rads of total body irradiation. On February 9, 1968, twenty-four days after the radiation experiment, Decedent died.

8. Defendant Dr. Eugene Saenger was at all times relevant to this action a member of the College of Medicine at the University of Cincinnati and the lead researcher and project director conducting the human radiation experiments at Cincinnati General Hospital and funded, in part, by the Department of Defense. As such, Defendant had ultimate responsibility for selecting the patients who would be subjected to the human radiation experiments, for the formulation and implementation of the experiments that were ultimately conducted, and for the decision to not seek or acquire informed consent from the

patients before the experiments were performed. Defendant is sued in both his individual and official capacities.

9. Defendant Saenger was assisted by John Does one through eleven. The names of those associates are not known at the present time. They will be identified as Plaintiffs are able to discover their names.

IV. CLASS ACTION ALLEGATIONS

10. This is a class action under Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure.

11. Plaintiffs are representative parties of a class of all patients of the human radiation project carried out by Dr. Eugene Saenger and his associates at the University of Cincinnati's Medical Center during the years 1960 to 1971. Plaintiff Shuff brings this action on behalf of himself and on behalf of a class of similarly situated individuals.

12. Plaintiffs are members of the class and their claims are typical of all class members. Plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

13. The class is so numerous that joinder of the numbers is impracticable. On information and believe, current members of the class number approximately eighty-seven patients.

14. The lawsuit challenges the nature and scope of radiation experiments conducted on patients by Dr. Eugene Saenger and the existence or non-existence of informed consent by the

patients to the experiments. Questions of law and fact are common to the class.

V. FACTUAL ALLEGATIONS

15. From 1960 to 1971, radiation experiments were conducted at the University of Cincinnati's Medical Center on approximately eighty-seven patients in order to test the effects of radiation on humans.

16. The patients were selected for the experiment because they suffered from cancer although the patients were not in the final stages of their disease, nor were they close to death.

17. The later trend of the experiments in 1969 to 1970 was to recruit patients who were in better physical condition than those recruited in the earlier stages of the experiments.

18. Additionally, the patients were selected for the experiment because they had either low I.Q.'s or little education.

19. The patients were told that they were receiving whole body radiation treatment for their cancer and were exposed to radiation levels from 25 to 300 rads with at least thirty-six of the patients receiving radiation doses as high as 200 rads.

20. The radiation treatment was not designed to benefit the patients, but instead to benefit the human radiation experiment.

21. No consent forms were used for the first five years of the experiments and patients and their families were told only that the radiation was part of their cancer treatment.

22. In 1965, written consent forms were first used yet these written forms failed to state the real risk to the patients of death within forty days of the radiation exposure.

23. The existence of the human radiation experiments were kept from the patients and their families who only became aware of the experiments after a February, 1994, newspaper article in the Cincinnati Enquirer reported the patients had been part of an experiment.

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24. Of the eighty-seven patients who were irradiated, twenty-one patients died within thirty-eight days of the radiation, four died within ten days, and seven within twenty days.

25. Radiation injury from the radiation experiments resulted in bone marrow failure and other complications that either lead to the patients' demise or seriously shortened their life expectancies.

26. Because of Defendants' expertise and training, Defendants knew or should have appreciated the magnitude of the risk to which they exposed Plaintiffs.

27. In wanton disregard of the high probability of harm, Defendants continued to expose Plaintiffs to unsafe levels of radiation without their informed consent.

28. The actions and inactions of Defendants are the direct and proximate cause of harm suffered by Plaintiffs.

29. The actions and inactions of Defendants and their reckless indifference to the risk posed by their actions and

inactions deprived Plaintiffs of a right secured by the Fourteenth Amendment to maintain one's bodily integrity and to preserve one's life.

30. The actions and inactions of Defendants were performed as employees of the University of Cincinnati and under color of state law.

VI. FIRST CLAIM FOR RELIEF - 42 U.S.C. § 1983

31. Defendants, acting under color of state law, arbitrarily abused their government power by intentionally or with disregard to a known risk exposing Plaintiffs to unsafe levels of radiation without Plaintiffs' informed consent to the procedure in violation of Plaintiffs' Fourteenth Amendment right to maintain bodily integrity and to preserve life.

VII. SECOND CLAIM FOR RELIEF - ASSAULT AND BATTERY

32. Plaintiffs herein allege paragraphs 1 through 31 above as though fully rewritten herein.

33. Defendants failed to inform Plaintiffs' decedents of the true nature and hazards of the full-body radiation procedure, including the risk to the decedents of death within forty days of the radiation exposure, which they had the duty to do.

34. Without Plaintiffs' decedents' informed consent and aware of the risk involved, Defendants proceeded to direct the administration of 100 rads of radiation to decedents, which resulted in Decedent Shuff's death, and the deaths of others.

VIII. THIRD CLAIM FOR RELIEF - WRONGFUL DEATH

35. Plaintiffs herein reallege paragraphs 1 through 34 above as though fully rewritten herein.

36. These claims are brought under Ohio Revised Code §2125.01, et seq. for the benefit of the next of kin of decedents.

37. Decedent Irene Shuff died on February 9, 1968, as a direct and proximate result of the Defendants' above acts and omissions. Other members of the class had their fathers and mothers die as a direct and proximate result of Defendants' acts and omissions.

38. As a result of Defendants' conduct, Plaintiffs' decedents' next of kin have suffered damages by reason of the death of their relatives, including loss of support from the reasonably expected earning capacity of the decedents, as well as loss of decedents' services, society, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training and education. Decedents' next of kin have also suffered from loss of prospective inheritance and from mental anguish.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class they represent pray this court:

- (a) determine by order pursuant to Rule 23, Federal Rules of Civil Procedure, that this action may be maintained as a class action;

- (b) award Plaintiffs compensatory damages in the amount of \$125,000,000.00;
- (c) award Plaintiffs punitive damages in the amount of \$125,000,000.00;
- (d) award Plaintiffs their reasonable costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and
- (e) grant such other relief as may be just and equitable.

Robert E. Newman

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JURY DEMAND

Plaintiffs demand a trial by jury on all issues.



ROBERT E. NEWMAN (0023484)

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF IRVINE SWIFF DECEASED

CASE No. 930740 Docket: _____ Page _____

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY

[For Executors and all Administrators]

Name and Title of Fiduciary GREGORY SWIFF, ADMINISTRATOR

On hearing in open court the application of the above fiduciary for authority to adminis... decedent's estate, the Court finds that

Decedent died [check one of the following] - testate - intestate - on FEBRUARY 9, 1968 domiciled in _____

[Check one of the following] - Bond is dispensed with by the Will - Bond is dispensed with by law - Applicant has executed and filed an appropriate bond, which is approved by the Court; and

Applicant is a suitable and competent person to execute the trust.

The Court therefore appoints applicant as such fiduciary, with the power conferred by law to fully administer decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

2-17-94
Date

Wayne F. Wells
Probate Judge

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

Deed

Bruce A. Ryan

2-17-94
Date