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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DISTRICT

C-1-94-149

DONNA WHITE CHRISTY; and LOTTIE
WALLACE, as Next of Kin of ROSA
HAYES, on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

UNIVERSITY OF CINCINNATI; UNIVERSITY
OF CINCINNATI COLLEGE OF MEDICINE;
UNIVERSITY OF CINCINNATI MEDICAL
CENTER; UNIVERSITY HOSPITAL (formerly
General Hospital); CHILDREN'S
HOSPITAL; EUGENE L. SAENGER, M.D.;
and JAMES G. KERIAKES, Ph.D.,

Defendants.

)
)
)
) **M.J. SHERMAN**
) **WBBB, J.**
) **CLASS ACTION COMPLAINT**
) **FOR VIOLATION OF CIVIL**
) **RIGHTS (42 U.S.C.**
) **§§ 1983, 1985);**
) **WRONGFUL DEATH; FRAUD;**
) **MEDICAL MALPRACTICE;**
) **NEGLIGENCE; BATTERY;**
) **NEGLIGENT INFLECTION OF**
) **EMOTIONAL DISTRESS;**
) **INTENTIONAL INFLECTION**
) **OF EMOTIONAL DISTRESS;**
) **ULTRA HAZARDOUS**
) **ACTIVITY; AND MEDICAL**
) **MONITORING/INJUNCTIVE**
) **RELIEF**

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This is a class action complaint filed by Donna
3 White Christy and Lottie Wallace on behalf of themselves and on
4 behalf of all others similarly situated, for violation of civil
5 rights, wrongful death, medical malpractice and other claims for
6 civil damages and for equitable injunctive relief, including
7 medical monitoring as a result of total and partial body
8 irradiation experimentation upon plaintiffs Donna White Christy,
9 Rosa Hayes, and, according to recent press reports,
10 approximately 100 other patients at Cincinnati's General
11 Hospital between the years 1960 and 1972.

12 2. The experiments were conducted by defendant
13 Eugene L. Saenger, M.D., and assisted by, among others, James G.
14 Kereiakes, Ph.D., both professors at the University of
15 Cincinnati College of Medicine, with the authorization,
16 cooperation, funding, encouragement and ratification of the
17 University of Cincinnati, General Hospital, Children's Hospital,
18 the City of Cincinnati, as well as the United States government.
19 According to press accounts, the United States Department of
20 Defense provided Dr. Saenger and the University of Cincinnati
21 College of Medicine between \$651,000 to \$850,000 to help fund
22 the total and partial body irradiation experiments upon human
23 subjects conducted by Dr. Saenger.

24 3. Extraordinarily large doses of whole body
25 irradiation -- comparable to those that might be encountered by
26 soldiers exposed to atomic bomb blasts -- were administered to
27 plaintiffs and all class members, the majority of whom were
28 poor, poorly educated, unintelligent according to standardized

1 tests, stricken with cancer, and African-American. A primary
2 purpose of the experiments was to gauge the psychological and
3 physical effects such radiation would have upon soldiers on an
4 atomic battlefield. Joseph G. Hamilton, M.D., a leading medical
5 researcher at the University of California and proponent of many
6 forms of human radiation experimentation, wrote to the Atomic
7 Energy Commission in 1950 that total body irradiation on humans
8 would have "a little of the Buchenwald touch." He recommended
9 that total body irradiation experimentation be performed only on
10 chimpanzees.

11 4. The Secretary of the United States Department of
12 Energy, Hazel O'Leary, has acknowledged that the United States
13 Government's program of radiation experiments upon human
14 subjects, conducted from the 1940's through the 1970's in
15 cooperation with both public and private universities and
16 hospitals, was an "appalling" episode in American history, and
17 that the unwitting victims of such experiments deserve
18 compensation. This lawsuit is filed to obtain such compensation
19 for the human subjects of total and partial body irradiation
20 experimentation under the guise of therapeutic treatment, and
21 for the families of those subjects who have since died.

22 5. As a result of the whole body irradiation
23 experimentation described in this Complaint, plaintiffs and the
24 class, many of whom were suffering from some form of cancer at
25 the time of the experimentation, suffered severe and permanent
26 injuries, including bone marrow suppression and infection, acute
27 radiation sickness, immune system suppression, nausea, vomiting,
28 possible genetic damage and premature deaths. On the basis of

1 such injuries, plaintiffs and the class are entitled to
2 compensatory and punitive damages. Plaintiff Donna White
3 Christy and any other survivors of the experimentation are
4 further entitled to injunctive relief in the form of medical
5 monitoring for radiation injuries.

6 JURISDICTION AND VENUE

7 6. Jurisdiction in this matter is based upon
8 28 U.S.C. § 1331, on the basis of federal questions as to
9 violations of the rights of plaintiff and the class under the
10 United States Constitution and 42 U.S.C. §§ 1983 and 1985; and
11 28 U.S.C. § 1367, which provides for supplemental and pendent
12 jurisdiction of related state claims.

13 7. Venue is proper in this district pursuant to
14 28 U.S.C. § 1391(b) on the grounds that the events giving rise
15 to the claims, or a substantial portion thereof, occurred in
16 this district.

17 PARTIES

18 8. Plaintiff Donna White Christy is a resident of
19 Erlanger, Kentucky, who was subjected to whole body irradiation
20 experimentation on February 27, 1969 while a patient at
21 Children's Hospital. She was ten years old at the time and
22 suffered from a tumor in her right femur, or thigh bone.
23 According to the medical record summary maintained by those
24 conducting the experiment, plaintiff was intentionally exposed
25 to 200 rads of total body irradiation, after which she
26 experienced nausea and vomiting that lasted ten hours. Total
27 body irradiation of the kind that was administered -- in one
28 large dose so as to simulate an atomic bomb blast -- was not

1 then, and never has been, an accepted treatment for solid
2 tumors.' To give a sense of the magnitude of such a radiological
3 exposure, Dr. Saenger and his colleagues in a 1972 published
4 study in Therapeutic Radiology referred to a chart detailing
5 radiation dose effects that concluded that approximately 15% of
6 healthy persons subjected to 200 rads would die as a direct
7 result of the acute effects of the exposure. Additionally,
8 according to the chart, less than 20% of stem cells in the bone
9 marrow -- i.e., the parent cells for all the body's blood
10 cells -- would survive such a radiation dose. Whole body
11 irradiation of persons in a weakened condition -- such as those
12 like Donna White Christy and all class members suffering from
13 cancer -- has an even greater crippling effect. Despite such
14 odds, and in large part because she received a bone marrow
15 transplant from her identical twin sister, Donna White Christy
16 was able to survive. She is one of only a handful of all
17 subjects of the experiments who survives today.

18 9. Rosa Hayes did not survive. Rosa Hayes was
19 admitted to Cincinnati General Hospital in December, 1965, with
20 symptoms later diagnosed as related to colon cancer. On
21 April 2, 1966, she was given a single dose of 300 rads of
22 partial body radiation, although such irradiation was not
23 medically indicated. Immediately following the experiment, she
24 was nauseated and vomited. Rosa Hayes died on October 7, 1966,
25 approximately six months after the massive dose of radiation she
26 received. Her surviving daughter, Lottie Wallace, brings this
27 action as the next of kin of Rosa Hayes.

1 10. Defendant University of Cincinnati is a public
2 academic institution located in Cincinnati, Ohio, and funded by
3 the State of Ohio. During the period of the experimentation
4 from 1960 to 1972, however, the University of Cincinnati was
5 funded by the City of Cincinnati. The University of Cincinnati
6 provided authorization, cooperation, funding, encouragement and
7 ratification of the total and partial body irradiation
8 experimentation conducted by Dr. Eugene Saenger and Dr. James
9 Kereiakes. Dr. Saenger and Dr. Kereiakes were and still are
10 professors at the University of Cincinnati College of Medicine.

11 11. Defendant University of Cincinnati College of
12 Medicine is a public academic institution located in Cincinnati,
13 Ohio, and funded by the State of Ohio. During the period of the
14 experimentation from 1960 to 1972, however, the University of
15 Cincinnati College of Medicine was funded by the City of
16 Cincinnati. Dr. Saenger is a professor of radiology at the
17 University of Cincinnati College of Medicine. Dr. Kereiakes is
18 a professor emeritus at the same institution. At times
19 pertinent to this Complaint, both were professors at the
20 University of Cincinnati. Defendant University of Cincinnati
21 College of Medicine provided authorization, cooperation,
22 funding, encouragement and ratification of the total and partial
23 body irradiation experimentation conducted by Dr. Saenger.

24 12. Defendant University Hospital (formerly General
25 Hospital) is located in Cincinnati, Ohio, and is funded by the
26 State of Ohio. During the entire 12 year period of total and
27 partial body irradiation experimentation that is the subject of
28 this Complaint, General Hospital was funded by the City of

1 Cincinnati. The Eugene L. Saenger Radioisotope Laboratory was
2 located in the basement of University Hospital. Additionally,
3 the Cobalt 60 teletherapy unit that provided the radiation doses
4 was located in the basement of University Hospital. Defendant
5 University Hospital provided many of the subjects utilized in
6 the experiments, as well as authorization, cooperation,
7 encouragement, ratification and funding of the total and partial
8 body irradiation experiments conducted by Dr. Saenger.

9 13. Defendant Children's Hospital is a private
10 pediatric teaching hospital affiliated with the University of
11 Cincinnati and is located in Cincinnati, Ohio. Plaintiff Donna
12 White Christy was a patient at Children's Hospital in 1969.
13 Children's Hospital provided patients like Ms. Christy and other
14 class members to General Hospital so that such persons could
15 become subjects of total and partial body irradiation
16 experimentation.

17 14. Defendant University of Cincinnati Medical Center
18 is a non-profit corporation located in Cincinnati, Ohio.
19 Defendant University of Cincinnati Medical Center consists of
20 several hospitals, including University Hospital (formerly
21 General Hospital) and Children's Hospital. The total and
22 partial body irradiation experimentation took place at General
23 Hospital.

24 15. Defendant Eugene L. Saenger, M.D., is a Professor
25 Emeritus of Radiology at the University of Cincinnati College of
26 Medicine. He has been a professor at the University of
27 Cincinnati since 1962. He is also the Director of the Eugene L.
28 Saenger Radioisotope Laboratory at the University of Cincinnati

1 College of Medicine. Dr. Saenger is described as the "father"
2 of nuclear medicine and radiation experimentation at the
3 University of Cincinnati. He directed the total and partial
4 body irradiation experimentation at General Hospital that forms
5 the gravamen of this Complaint. Defendant Saenger had ultimate
6 responsibility for selecting the patients who became subjects of
7 the total and partial body irradiation experimentation.
8 Dr. Saenger is sued in his individual and official capacities.

9 16. Defendant James G. Kereiakes, Ph.D., is a
10 Professor Emeritus of Clinical Radiology at the University of
11 Cincinnati College of Medicine, Department of Radiology --
12 Physics. Dr. Kereiakes is and was at times pertinent to this
13 Complaint affiliated with the Eugene L. Saenger Radioisotope
14 Laboratory, and he worked closely with Dr. Saenger on the whole
15 and partial body irradiation experimentation on human subjects.
16 Dr. Kereiakes is sued in his individual and official capacities.

17 **FACTUAL ALLEGATIONS**

18 17. Over the course of a dozen years, and ending in
19 1972, Dr. Eugene L. Saenger and his colleagues exposed
20 approximately 102 people to full and partial body irradiation.
21 A primary purpose of the experiments was to measure both the
22 psychological and physical effects of radiation that soldiers on
23 an atomic battlefield would encounter. Researchers also were
24 interested in evaluating civilian defense strategies in the
25 event of a nuclear war.

26 18. Plaintiff Donna White Christy was among those
27 patients who became the subject of total body irradiation
28 experimentation funded in part by the Department of Defense. In

1 1969, when she was ten years old and suffering from Ewing's
2 Sarcoma of the right distal femur, she attended Children's
3 Hospital. Apart from getting purely therapeutic treatment for
4 her localized cancer, she was given 200 rads of total body
5 irradiation. In 1965, prior to experimenting upon Donna White
6 Christy, Dr. Saenger and Dr. Kareiakes, along with others,
7 concluded in a study published in Health Physics that "[i]nfants
8 and children are more susceptible than adults to the deleterious
9 late effects of ionizing radiation." Nevertheless, defendants
10 saw fit to inflict total body irradiation upon plaintiff Donna
11 White Christy.

12 19. Plaintiff Rosa Hayes suffered from colon cancer
13 when she became a patient at General Hospital in 1965. In
14 April, 1966, she was exposed to 300 rads of partial body
15 irradiation to the lower body. The defendant researchers knew
16 that there was no therapeutic justification for the massive dose
17 of radiation administered to her. Rosa Hayes died six months
18 after being the victim of partial body irradiation
19 experimentation.

20 20. Donna White Christy was never told the real
21 purposes of the research, nor did she give her consent to be
22 part of an experiment involving total body irradiation at levels
23 approximating nuclear battlefield conditions. Ms. Christy's
24 parents do not remember if they signed a consent form. However,
25 they were never advised that their daughter would be subjected
26 to total body irradiation at extraordinarily high levels and
27 that the experiment was funded by the Department of Defense.
28 According to a 1972 review of the experiments by the American

1 College of Radiology, subjects of the experiments were not asked
2 to sign consent forms until 1965 -- fully five years after the
3 experiments began and after approximately 48 class members had
4 already received total body irradiation exposure. According to
5 the same study, only during the "last few years" were the
6 subjects told that the information might have military as well
7 as clinical significance. No person was advised that the total
8 and partial body irradiation experimentation was funded in part
9 by the Department of Defense.

10 21. Even those class members who signed documents
11 stating that they consented to the radiation experiment never
12 provided informed consent. According to press accounts,
13 subjects were asked to sign "consent" forms that stated they
14 were participating in a "scientific investigation" that would
15 advance medicine and mankind. According to the University of
16 Cincinnati's Junior Faculty Association, which prepared a report
17 critical of the experimentation, "[n]one of the consent forms
18 properly states the real risk to the patients -- that is, the
19 risk of death from bone marrow infection within 40 days." The
20 true nature and purposes of the radiation experiments were
21 concealed from the subjects, and voluntary or informed consent
22 was thereby made impossible.

23 22. All risks and hazards of the experimentation were
24 not made known to and were intentionally concealed from
25 plaintiffs and the class. For example, according to the report
26 by the American College of Radiology, while Dr. Saenger and the
27 researchers knew that nausea and vomiting would likely be
28 experienced by the subjects following full or partial body

1 irradiation, such information was specifically withheld because
2 researchers believed that disclosure would bias their findings
3 regarding the "subjective reactions the patients might have to
4 the radiation." Long-term carcinogenic and genetic hazards
5 associated with massive doses of total and partial body
6 irradiation were also concealed.

7 23. Informed consent was lacking also because the
8 subjects were poorly educated and deemed unintelligent according
9 to standardized tests. According to a 1969 study published in
10 the Archives of General Psychiatry, co-authored by Eugene L.
11 Saenger, M.D., the relevant intellectual characteristics of the
12 16 human subjects in the experiment included: 1) a mean of 4.2
13 years of education; 2) a mean score of 84.5 on the Wechsler-
14 Bellevue test; and 3) "a strong evidence of cerebral organic
15 deficit. . . ." According to press accounts, the median IQ of
16 all subjects was 87. An IQ of 100 is considered average.
17 Dr. Saenger intentionally selected subjects who were
18 "debilitated patients of low-educational level" to participate
19 in the experiments he conducted.

20 24. The 1969 study was entitled, "Total and Half Body
21 Irradiation: Effect on Cognitive and Emotional Processes." One
22 of the primary aims of the total and partial body irradiation
23 experiments was to document the effects of such irradiation
24 exposure on the subjects' psychological processes and
25 psychosomatic reactions. Cancer therapy was not the purpose of
26 the research. Dr. Saenger and his colleagues found evidence
27 that impairment of intellectual function appeared immediately
28 after actual irradiation and persisted one day. Total body

1 irradiation of these individuals ranged from 50 to 300 rads.
2 According to the chart that Dr. Saenger and Dr. Kareiakas
3 referred to in the 1972 study in Therapeutic Radiation, more
4 than 50 percent of healthy persons exposed to 300 rads of total
5 body irradiation will die as a direct result of such exposure.

6 25. If plaintiffs and class members had been properly
7 informed of the dangers, risks and purposes of the radiation
8 experiments, they would not have consented to such
9 experimentation. Any consent they may have given to undergo
10 such experimentation is invalidated by defendants' failure to
11 provide the basis for informed consent.

12 26. Not only were the class members predominantly
13 unintelligent according to standardized tests or somehow
14 mentally impaired, they were also predominantly African-
15 American. For example, of the 16 subjects documented in the
16 1969 psychological experiment, 13 were African-American or
17 "Negro." Three were white. According to press reports, at
18 least 61 of the approximately 102 subjects of the total and
19 partial irradiation experiments were African-American.

20 27. Defendants' failure to inform plaintiffs and the
21 class of the true nature and dangers of the whole and partial
22 body irradiation experiments has tolled any and all applicable
23 statutes of limitation, due to the inability of plaintiffs and
24 class members to discover their claims for relief against
25 defendants.

26 28. Plaintiffs and the class members did not know or
27 have reason to know the true nature and dangers of the total and
28 partial body irradiation experimentation to which they were

1 subjected, and neither plaintiffs nor the class knew or had
2 reason to know of their possible claims for relief until
3 approximately January, 1994, when press reports for the first
4 time identified a few subjects in the experiments. On
5 February 25, 1994, the Cincinnati Enquirer published identifying
6 information -- i.e., initials and birth dates -- of all subjects
7 about whom it had knowledge.

8 29. Plaintiffs and the class members are entitled to
9 compensatory and punitive damages as a result of the injuries
10 and deaths caused by defendants' negligent, reckless and
11 intentional misconduct. Plaintiff Christy and surviving class
12 members are also entitled to injunctive relief in the form of
13 medical monitoring for radiation injuries.

14 CLASS ACTION ALLEGATIONS

15 30. Individual and Representative Plaintiffs Donna
16 White Christy and Lottie Wallace, as Next of Kin of Rosa Hayes,
17 bring this action pursuant to Rules 23(a), 23(b)(1), 23(b)(2)
18 and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf
19 of themselves and all persons similarly situated who have been
20 damaged by the defendants' conduct in subjecting plaintiffs and
21 the class members to radiological experimentation without their
22 knowledge or consent. Plaintiffs also bring this action on
23 behalf of the legal representatives or next of kin of those
24 persons, like Rosa Hayes, who were subjects of the total and
25 partial body irradiation experimentation but who have
26 subsequently died. Plaintiffs bring this action on behalf of
27 two proposed classes, initially defined as follows:
28

1 (a) The Class of Persons Who Were Victims Of
2 Total Or Partial Body Irradiation Experimentation And Their
3 Legal Representatives or Next of Kin: This class consists of
4 all persons who were subjects of total or partial body
5 irradiation experimentation at General Hospital during the years
6 1960 to 1972, as well as the executors, legatees,
7 administrators, beneficiaries, and next of kin of deceased
8 subjects of the experimentation. This class also includes those
9 persons other than the actual subjects of the experimentation
10 who suffered damages as a result of the experimentation.

11 (b) The Medical Monitoring Class: This class
12 consists of all persons entitled to injunctive relief and/or
13 damages in the form of medical monitoring as a result of the
14 increased risk of illness, injury or death caused by the total
15 or partial body irradiation experimentation to which they or a
16 parent were subjected. It is not now known how many class
17 members fall into this class, as the University of Cincinnati
18 and University Hospital has to date not made its records
19 available to the public. The descendants born subsequent to a
20 parent's having been the victim of irradiation experimentation
21 would be included in this class because of the high risk of
22 genetic damage that the victim of the total or partial body
23 irradiation may have suffered. Such genetic damage creates a
24 high risk of harm to the descendants of the experimented-upon
25 victim, requiring medical monitoring.

1 31. The proposed classes are so numerous that
2 individual joinder of all their members in a single action is
3 impracticable.

4 32. There are numerous common questions of law and
5 fact that predominate over any questions affecting only
6 individual members of the proposed classes. Among these
7 questions of law and fact common to the classes are:

8 (a) whether defendants committed the violations
9 of law alleged herein;

10 (b) whether defendants participated in and
11 pursued the acts complained of;

12 (c) whether the defendants' acts and omissions,
13 under color of state law and/or federal law, deprived plaintiffs
14 and the class, or caused them to be deprived, of their rights
15 under federal law including, but not limited to, the rights of
16 life and liberty; the right to due process; the right of equal
17 protection; property rights to pursue claims for relief which
18 were concealed by defendants; and the rights of privacy and
19 bodily security; as guaranteed by the United States Constitution
20 and 42 U.S.C. §§ 1983 and 1985, and the Ohio Constitution;

21 (d) whether the non-governmental defendants
22 acted under color of state law, either alone or in concert with
23 the governmental defendants, to deprive plaintiffs and the class
24 members of their rights under federal law as set forth in the
25 preceding paragraph;

26 (e) whether the defendants willfully, recklessly
27 or negligently caused damages to plaintiffs and the class
28 members by subjecting them to total or partial body irradiation

1 experimentation having no justifiable therapeutic value, and
2 without the informed consent of plaintiffs and the class
3 members;

4 (f) whether defendants acted willfully,
5 recklessly, with gross negligence, or negligently in each and
6 every particular aspect of the planning, supervision, conduct,
7 follow-up, and concealment of information about the experiments
8 to which plaintiffs and the class were subjected;

9 (g) whether the defendants by virtue of their
10 ownership, management, and control of an ultrahazardous
11 experimentation program are absolutely liable, regardless of
12 fault, for damages, injuries, and losses resulting from the
13 total and partial body irradiation experimentation to which
14 plaintiffs and class members were subjected;

15 (h) whether defendants breached duties of care
16 owed to the plaintiffs and the class members and so are liable
17 for medical malpractice;

18 (i) whether defendants' conduct constitutes a
19 battery;

20 (j) whether plaintiffs and the class members are
21 entitled to damages for bodily and psychological injury,
22 wrongful death, and severe emotional distress, and, if so, what
23 are the appropriate means of calculating such monetary damages;

24 (k) whether plaintiffs and the class members
25 were subjected to levels of radiation sufficient to cause
26 injury;

27

28

1 (1) whether the types of injuries suffered were
2 probably caused by exposure of plaintiffs and the class members
3 to total or partial body irradiation experimentation; and

4 (m) whether injunctive relief should be awarded,
5 including an order directing defendants to establish one or more
6 funds for defraying the expense of future medical monitoring and
7 medical care for plaintiffs and surviving class members,
8 including children conceived or born subsequently to the
9 irradiation experimentation performed on their parents.

10 33. The claims of plaintiffs are typical of the
11 claims of all other class members they seek to represent, and
12 plaintiffs have the same interest as the other class members.
13 Accordingly, plaintiffs are adequate representatives of the
14 class they seek to represent and will fairly and adequately
15 protect the interest of the other class members. Plaintiffs are
16 committed to the vigorous prosecution of this action and has
17 retained counsel experienced in litigation of this nature to
18 represent them. Plaintiffs anticipate no difficulty in the
19 management of this litigation as a class action.

20 34. A class action is the only method for the fair
21 and efficient adjudication of this controversy. The members of
22 the plaintiff classes are so numerous that joinder of all
23 members is impracticable, if not impossible. Should separate
24 actions be brought or be required to be brought by each
25 individual member of the classes, the resulting multiplicity of
26 lawsuits will cause undue hardship and expense for the court and
27 the litigants. The prosecution of separate actions will also
28 create a risk of inconsistent rulings which might be dispositive

1 of the interest of the other class members who are not parties
2 to the adjudications and/or may substantially impede their
3 ability to protect their interests.

4 FIRST CLAIM FOR RELIEF

5 (Violation of Civil Rights:

6 United States Constitution; 42 U.S.C. § 1983)

7 Defendants: All

8 35. Plaintiffs incorporate by reference paragraphs 1
9 through 34 of this Complaint into the First Claim for Relief.

10 36. During the 12-year period of total and partial
11 body irradiation experimentation upon human subjects at General
12 Hospital and Children's Hospital from 1960 to 1972, the City of
13 Cincinnati owned General Hospital and funded the University of
14 Cincinnati, including the University of Cincinnati College of
15 Medicine and Children's Hospital. It was the custom and policy
16 of these municipally owned or municipally funded entities to
17 encourage, ratify, authorize and fund the total and partial body
18 irradiation experimentation conducted by Dr. Saenger, in
19 violation of the civil rights of plaintiffs and the classes.

20 37. Dr. Eugene Saenger conducted the experimentation
21 while a professor at the University of Cincinnati College of
22 Medicine. The City of Cincinnati funded the College of
23 Medicine, and owned General Hospital, a hospital at which the
24 total and body irradiation experimentation was performed. The
25 conduct of Dr. Saenger constitutes "state action," because of
26 his employment by these public institutions and the funding that
27 these institutions provided to carry out the human irradiation
28 experimentation alleged herein.

1 38. All defendants, under color of state law,
2 deprived plaintiffs and the class, or caused them to be deprived
3 of their rights pursuant to the United States Constitution and
4 42 U.S.C. § 1983, in some or all of the following ways:

5 (a) By designing, encouraging, ratifying,
6 and executing an experimentation program
7 that exposed victims to total or partial
8 body irradiation at levels approximating
9 those that soldiers might encounter on an
10 atomic battlefield without their informed
11 consent, defendants deprived the decedents
12 of the right to life, without due process.

13
14 (b) By designing, encouraging, funding,
15 authorizing, ratifying, and executing a
16 program of radioactive experimentation
17 directed predominantly at African-Americans,
18 defendants deprived the class of their right
19 to equal protection under law.

20
21 (c) By designing, encouraging, funding,
22 authorizing, ratifying, and executing a
23 program of radioactive experimentation that
24 caused victims to be exposed to total or
25 partial body irradiation without informed
26 consent, defendants violated the rights of
27 plaintiffs and the class to the privacy of
28

1 their own bodies, and the right to bodily
2 security.

3
4 (d) By conducting the program of
5 experimentation without informing plaintiffs
6 and the class of its dangers and risks, and
7 by continuing to conceal information
8 required by plaintiffs and the class to
9 determine the nature of their claims for
10 relief, defendants deprived plaintiffs and
11 the class of their property rights to such
12 claims, without due process.

13
14 39. As a direct and proximate result of defendants'
15 conduct, plaintiffs and the class suffered severe injuries,
16 including bone marrow suppression; nausea; vomiting; premature
17 deaths; severe and permanent pain, suffering and emotional
18 distress; other physical and emotional injuries not yet
19 determined, including possibly genetic damage; reasonable costs
20 for professional medical treatment; loss of wages and earning
21 capacities; and costs of medical monitoring.

22 40. As a direct and proximate result of defendants'
23 conduct, plaintiffs and the class are entitled to the damages
24 and injunctive/medical monitoring relief as set forth in this
25 Complaint.

26 **SECOND CLAIM FOR RELIEF**
27 **(Conspiracy to Violate Civil Rights;**
United States Constitution; 42 U.S.C. § 1985)
28 **Defendants: All**

1 41. Plaintiffs and the class incorporate by reference
2 paragraphs 1 through 40 of this Complaint into the Second Claim
3 for Relief.

4 42. All defendants conspired to violate the rights of
5 plaintiffs and the class to due process, equal protection,
6 bodily security, privacy, and property, by acting in concert to
7 authorize, encourage, design, fund, execute and ratify a program
8 of total and partial body irradiation experimentation upon a
9 class composed predominately of African-Americans, and by
10 failing to inform plaintiffs of the risks, hazards, and true
11 purpose of the experimentation, all in violation of 42 U.S.C.
12 § 1985 and the United States Constitution, as set forth in
13 paragraphs 1 through 40, of this Complaint.

14 43. As a result of defendants' conduct, plaintiffs
15 and the class have suffered the injuries and losses set forth in
16 this Complaint, and are entitled to damages and
17 injunctive/medical monitoring relief as set forth herein.

18 **THIRD CLAIM FOR RELIEF**
19 **(Medical Malpractice)**

20 [Defendants: University of Cincinnati Medical Center;
21 University of Cincinnati College of Medicine; University
22 Hospital; Children's Hospital; Eugene L. Saenger, M.D.]

23 44. Plaintiffs incorporate by reference paragraphs 1
24 through 43 into the Third Claim for Relief.

25 45. Defendants University of Cincinnati Medical
26 Center, University Hospital, and Children's Hospital are
27 licensed medical facilities that owed a duty to plaintiffs and
28 the class to provide professional medical services that met the
standard of care applicable to professional physicians and

1 medical facilities in the community at the time and place of the
2 events alleged in this Complaint.

3 46. University Hospital and Children's Hospital are
4 liable for the wrongful acts and omissions of their officers,
5 agents, and employees.

6 47. Defendant Eugene L. Saenger, M.D., is a physician
7 licensed to practice medicine in the State of Ohio. As such, he
8 owed a duty to plaintiffs and the class to provide professional
9 medical services that met the standard of care applicable to
10 professional physicians in the community at the time and place
11 of the events alleged in this Complaint.

12 48. Defendants University of Cincinnati College of
13 Medicine, University of Cincinnati Medical Center, University
14 Hospital, Children's Hospital, and their agents and employees,
15 including Dr. Eugene Saenger, violated their duties to
16 plaintiffs and the class by providing services that failed to
17 meet the applicable standards of care, in some or all of the
18 following ways:

19 (a) By exposing plaintiffs and other class
20 members to extraordinarily high doses of total or partial body
21 radiation known to be harmful and potentially fatal to humans;

22 (b) By exposing plaintiffs and the class to
23 potentially fatal and harmful doses of radiation when such
24 radiation had little or no justifiable therapeutic purpose;

25 (c) By intentional concealment of the risks,
26 dangers and purposes of the total or partial body irradiation
27 experimentation to plaintiffs and the class; and

28

1 (d) By failure to obtain the informed consent of
2 plaintiffs and the class members for their participation in an
3 experiment funded by the Department of Defense and designed to
4 expose subjects to radiation levels approximating those
5 encountered by soldiers on an atomic battlefield.

6 49. As a direct and proximate result of defendants'
7 wrongful acts and omissions, plaintiffs and the class members
8 suffered the damages set forth in this Complaint.

9 FOURTH CLAIM FOR RELIEF

10 (Negligence)

11 Defendants: All

12 50. Plaintiffs incorporate by reference paragraphs 1
13 through 49 into the Fourth Claim for Relief.

14 51. Defendants owed a duty of ordinary care to
15 plaintiffs and the class members with respect to the events
16 alleged in this Complaint. To the extent that the Court may
17 determine that the conduct of defendants does not constitute
18 medical malpractice on the grounds that total and partial body
19 irradiation served no medical or therapeutic purpose, but was
20 instead an experiment outside the scope of the claim for medical
21 malpractice, then all defendants must be held accountable
22 pursuant to an ordinary negligence standard.

23 52. Defendants breached their duty of care to
24 plaintiffs and the class, in some or all of the following ways:

25 (a) Defendants University of Cincinnati Medical
26 Center, University of Cincinnati College of Medicine, University
27 Hospital, and Children's Hospital negligently authorized,
28 encouraged, ratified, funded and/or supervised their officers,
agents, and employees in the total and partial body irradiation

1 experimentation conducted by Dr. Saenger and others acting under
2 Dr. Saenger's direction.

3 (b) Defendants Dr. Saenger and Dr. Kereiakes
4 negligently planned, authorized, encouraged, supervised and
5 carried out a program of extremely dangerous total and partial
6 body irradiation experimentation on low income, poorly educated,
7 predominantly African-American persons, and intentionally
8 concealed from them the risks, hazards, and true purposes of the
9 experimentation.

10 53. As a direct and proximate result of defendants'
11 conduct, plaintiffs and the classes suffered the damages alleged
12 in this Complaint.

13 FIFTH CLAIM FOR RELIEF
14 (Wrongful Death)
15 Defendants: All

16 54. Plaintiffs incorporate by reference paragraphs 1
17 through 53 into the Fifth Claim for Relief.

18 55. Plaintiff Lottie Wallace is the next of kin of
19 decedent Rosa Hayes, and is entitled to pursue a claim for the
20 wrongful death of Rosa Hayes.

21 56. As a result of defendants' negligence, reckless
22 and intentional misconduct as alleged herein, decedent Rosa
23 Hayes was the subject of partial body irradiation at a dose of
24 300 rads. Rosa Hayes died on October 7, 1966, approximately six
25 months after she received this dose of partial body radiation.
26 Although Ms. Hayes suffered from colon cancer, the
27 extraordinarily high dose of partial body irradiation she
28 received shortened her life. Partial body radiation was not a
justifiable therapeutic treatment for colon cancer.

1 57. Plaintiff and next of kin Lottie Wallace did not
2 know or have reason to know of her claim for relief on the basis
3 of the death of her mother because of defendants' fraudulent
4 concealment of the facts supporting her claim for relief.
5 Ms. Wallace only learned that her mother was a subject in the
6 experiments when Ms. Wallace saw her mother's initials and birth
7 date published in the Cincinnati Enquirer on February 25, 1994.
8 The Enquirer had published such information regarding all
9 subjects of the experiment about which it had knowledge.

10 58. As a result of the wrongful death of Rosa Hayes,
11 plaintiff Lottie Wallace is entitled to the compensatory and
12 punitive damages permitted by the law of the State of Ohio for
13 wrongful death.

14 59. Plaintiff Lottie Wallace brings this claim for
15 wrongful death on behalf of herself and on behalf of the next of
16 kin of all other class members whose deaths were proximately
17 caused by the total and partial body irradiation
18 experimentation, and who are therefore entitled to pursue claims
19 for wrongful death.

20 SIXTH CLAIM FOR RELIEF
21 (Fraud)

22 Defendants: All

23 60. Plaintiffs incorporate by reference Paragraphs 1
24 through 59 into this Sixth Claim for Relief.

25 61. By intentionally concealing from plaintiffs the
26 full risks and true purposes of the total and partial body
27 irradiation experimentation, defendants perpetrated a fraud upon
28 plaintiffs and the classes.

1 62. Defendants promised to provide therapeutic
2 medical care, and plaintiffs and the classes relied upon
3 defendants' promises by agreeing to submit to defendants' care.

4 63. Defendants had a duty to disclose such material
5 information, and their failure to disclose the true hazards and
6 purposes of the experiments misled plaintiffs to undergo
7 unwittingly total and partial body irradiation experimentation.
8 Defendants intended to mislead plaintiffs by withholding such
9 material information because defendants feared that plaintiffs
10 would not provide their consent in the event plaintiffs had all
11 material information about which defendants were aware.

12 64. If defendants had disclosed the true nature,
13 purposes and risks of the total and partial body irradiation
14 experiments, plaintiffs and the classes would not have agreed to
15 submit to such experiments.

16 65. As a direct and proximate result of the fraud,
17 plaintiffs have suffered premature deaths, acute radiation
18 sickness, bone marrow suppression and infection, nausea,
19 vomiting, and other physical and emotional injuries, as set
20 forth in this Complaint.

21 SEVENTH CLAIM FOR RELIEF
22 (Negligent Infliction of Emotional Distress)
 Defendants: All

23 66. Plaintiffs incorporate by reference paragraphs 1
24 through 65 into the Seventh Claim for Relief.

25 67. As a result of defendants' negligence described
26 above, plaintiffs and the class members were subjected to levels
27 of total and partial body irradiation approximating those that
28 would be encountered by soldiers on an atomic battlefield.

1 68. As a direct and proximate result of defendants'
2 negligent conduct, plaintiffs and the class members have
3 suffered mental anguish and severe emotional distress and worry
4 over the actual injuries and deaths that have been suffered, as
5 well as the fear and risk of further injuries and illnesses.

6 69. Plaintiffs and the class members are entitled to
7 compensatory damages for the mental anguish, severe emotional
8 distress, anxiety, worry and fear caused by defendants'
9 negligent conduct.

10 EIGHTH CLAIM FOR RELIEF
11 (Intentional or Reckless Infliction of Emotional Distress)
 Defendants: All

12 70. Plaintiffs incorporate by reference paragraphs 1
13 through 69 into the Eighth Claim for Relief.

14 71. Defendants recklessly or intentionally inflicted
15 severe emotional distress by extreme and outrageous conduct
16 involving an immoral program of intentional radiological
17 experimentation upon human subjects; the failure to disclose
18 fully the purposes and dangers inherent in such experiments; the
19 failure to obtain informed consent of the victims; the
20 intentional concealment of the claims for relief to which
21 plaintiffs and the class members are entitled; and the
22 intentional failure to advise plaintiffs and the class of the
23 need for medical surveillance and monitoring for radiation
24 injuries.

25 72. As a direct and proximate result of defendants'
26 intentional or reckless conduct, plaintiffs and the class
27 members have suffered serious mental and emotional injuries,
28 including but not limited to mental anguish over the injuries to

1 themselves and the deaths of those they love; severe emotional
2 distress associated with physical injuries suffered by
3 plaintiffs and the class members; severe mental anguish, fear
4 and worry over the risks of future illness to themselves and
5 their descendants; and severe mental anguish and anger on the
6 basis of knowledge that they or their loved one were used as
7 human guinea pigs without their informed consent.

8 73. As a direct and proximate result of defendants'
9 intentional or reckless misconduct, plaintiffs and the class
10 members are entitled to compensatory and punitive damages for
11 the mental and emotional injuries set forth above.

12 NINTH CLAIM FOR RELIEF
13 (Ultrahazardous Activity)
14 Defendants: All

15 74. Plaintiffs incorporate by reference Paragraphs 1
16 through 73 into this Ninth Claim for Relief.

17 75. Defendants' program of unconsented full and
18 partial body irradiation experimentation constituted an
19 ultrahazardous activity in that:

20 (a) the unconsented radiological experiments
21 created a high degree of risk of serious harm or accelerated
22 death to plaintiffs and the class members, which could not be
23 eliminated by the exercise of reasonable care;

24 (b) there was a strong likelihood that the harm
25 resulting from unconsented radiation experiments would be great;

26 (c) total or partial body irradiation at doses
27 approximating those that soldiers would encounter in a nuclear
28 war was not a matter of common usage such as would be carried on
by the great mass of mankind or many people in the community;

1 (d) the radiological experiments were
2 inappropriate, particularly with respect to the fact that the
3 victims were predominantly poor, poorly educated, and African-
4 American, and because the irradiation had little, if any,
5 therapeutic value; and

6 (e) any value of the unconsented radiation
7 experiments to the community of which plaintiffs and the classes
8 were members, was outweighed by the dangers and risks to the
9 victims associated with the total and partial body radiation
10 experiments.

11 76. As a direct and proximate result of defendants'
12 conduct, plaintiffs and the class were injured and suffered
13 damages more fully described in Paragraph 82 of this Complaint.

14 TENTH CLAIM FOR RELIEF
(Battery).

15 Defendants: University of Cincinnati College of Medicine;
16 University Hospital; Children's Hospital;
Eugene L. Saenger, M.D.; James G. Kereiakes, Ph.D.

17 77. Plaintiffs incorporate by reference Paragraphs 1
18 through 76 into this Tenth Claim for Relief.

19 78. By administering harmful or even lethal levels of
20 total and partial body irradiation upon unwitting victims,
21 defendants and their officers, agents and employees committed a
22 battery upon the persons of the plaintiffs and the class
23 members.

24 79. As a direct and proximate result of defendants'
25 conduct, plaintiffs and the class members suffered premature
26 deaths, acute radiation sickness, bone marrow infection and
27 suppression, nausea, vomiting, other physical injuries, and
28 emotional distress, as set forth in this Complaint.

1 **ELEVENTH CLAIM FOR RELIEF**
2 **(Medical Monitoring; Injunctive and Equitable Relief)**
3 **Defendants: All**

4 80. Plaintiffs incorporate by reference Paragraphs 1
5 through 79 into the Eleventh Claim for Relief.

6 81. As a proximate result of the above-described
7 conduct by defendants and the unconsented radiation experiments,
8 plaintiffs, on behalf of themselves and all others similarly
9 situated, are entitled to the following equitable relief:

10 (a) that defendants be required to issue a
11 formal and public apology to plaintiffs and the class members
12 for defendants' outrageous conduct and the injuries and
13 premature deaths that resulted;

14 (b) that defendants be ordered to search for and
15 disclose, as soon as reasonably practicable and in any case no
16 later than 60 days, all records pertaining to every aspect of
17 the events alleged in this Complaint, including but not limited
18 to (1) the identity of all victims of the radiological
19 experiments; and (2) all medical records of the victims of the
20 total and partial body irradiation experimentation;

21 (c) that a judicial determination and
22 declaration be made of the rights of plaintiffs and the class
23 and the defendants with respect to the damages and injuries
24 caused by the unconsented radiological experiments;

25 (d) that defendants be required to establish a
26 fund, in an amount to be determined by the Court, for the
27 purpose of establishing and maintaining a testing and treatment
28 program whereby surviving victims will receive on-going medical

1 testing and monitoring, and, if necessary, psychological
2 counseling and medical treatment for radiological injuries; and
3 (e) that defendants establish a fund to pay the
4 costs of locating and informing all members of the class and
5 providing all information about their claims.

6 **DAMAGES**

7 82. As a direct and proximate result of defendants'
8 acts and omissions, plaintiffs and the class members have
9 suffered and continue to suffer the following damages:

10 (a) deprivation of life and liberty;

11 (b) loss of equal protection and privileges and
12 immunities under the law;

13 (c) taking of their property rights without due
14 process;

15 (d) invasion of their privacy rights to their
16 own bodies and their confidential medical information;

17 (e) severe illnesses and injuries, including
18 bone marrow suppression, premature deaths, and possible genetic
19 damage;

20 (f) past and future medical expenses, and costs
21 of future medical monitoring;

22 (g) severe pain, suffering, emotional distress
23 and anxiety;

24 (h) loss of wages and earning capacity; and

25 (i) damages for wrongful death.
26
27
28

1 PRAYER FOR RELIEF

2 WHEREFORE, individual and representative plaintiffs,
3 on behalf of themselves and all other class members, pray for
4 judgment against the defendants jointly and severally as
5 follows:

6 (1) an order requiring defendants to identify
7 all members of the classes, certifying the classes alleged in
8 this Complaint and providing for appropriate notice to all class
9 members of the pendency of this action and appointing plaintiffs
10 and their counsel to represent the classes;

11 (2) compensatory damages in amounts to be proven
12 at trial or other expedited alternative procedures adopted by
13 the Court;

14 (3) punitive and exemplary damages according to
15 proof in an amount sufficient to punish the defendants and to
16 deter them and others from engaging in similar wrongdoing;

17 (4) an order requiring defendants to issue a
18 formal and public apology;

19 (5) an order requiring defendants to establish a
20 fund for testing and providing medical treatment to plaintiffs
21 and the classes for radiation injuries and the risk of further
22 injuries;

23 (6) an order requiring defendants to search for
24 and disclose all documents described in the claim for injunctive
25 relief set forth in this Complaint;

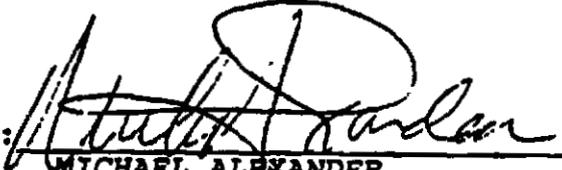
26 (7) an order requiring defendants to establish a
27 fund to pay costs of locating and informing class members of all
28 information about their claims;

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(8) an award to the classes of their costs,
interest, and attorneys' fees;
(9) the equitable and injunctive relief
specified herein;
(10) interest at the legal rate; and
(11) any and all other further relief as this
Court deems just and proper.

DATED: MARCH 1, 1994

THE ALEXANDER LAW FIRM
LIEFF, CABRASER & HEIMANN
LAW OFFICES OF MELVIN M. BELLI

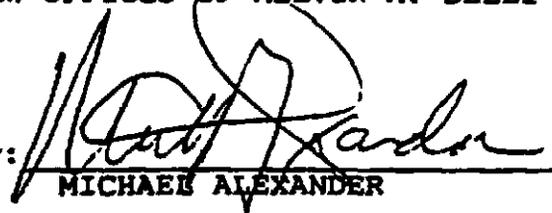
By: 
MICHAEL ALEXANDER

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DEMAND FOR TRIAL BY JURY

Individual and Representatives Plaintiffs hereby
demand trial by jury on all claims so triable.

DATED: MARCH 1, 1994 THE ALEXANDER LAW FIRM
LIEFF, CABRASER & HEIMANN
LAW OFFICES OF MELVIN M. BELLI

BY: 
MICHAEL ALEXANDER