

2.2. Defendant, CHRISTUS SPOHN Health System Corporation (“Defendant” or “CHRISTUS SPOHN”) is a corporation, whose principal place of business is at 600 Elizabeth Street, Corpus Christi, Texas 78404-2235. CHRISTUS SPOHN may be served with process through its Registered Agent: Corporation Service Company, d/b/a CSC, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

III. JURISDICTION AND VENUE

3.1 Subject matter jurisdiction of this cause rests with this Honorable Court as the amount in controversy exceeds its minimum jurisdictional requirements. *In personam* jurisdiction is satisfied as Defendant’s principal place of business is in Texas and the event(s) that forms the basis of Plaintiffs’ claims occurred in the State of Texas. The Court’s exercise of personal jurisdiction over Defendant is consistent with all applicable statutory requirements and constitutional guarantees.

3.2 In accordance with §15.002(a)(3) of the Texas Civil Practice and Remedies Code, venue is proper for this action in Nueces County, Texas because it is the county of Defendant’s principal office in this state.

3.3 The amount in controversy in this action exceeds the jurisdictional limits of this Court.

IV. FACTS

4.1 On April 30, 1969, two baby girls were born at the Kleberg County Hospital: one named Mary Ann and the other Cynthia. Upon information and belief, they were the only two girls born at the hospital on that date.

4.2 Mary Ann was the offspring of Charles Wayne Rector and Linda Belle Walpole.

4.3 Cynthia was the offspring of Fidel Barrera Saenz and Benilde Soliz.

4.4 Tragically, according to the birth certificate, Mary Ann was identified as being born to Fidel Barrera Saenz and Benilde Soliz, and Cynthia was identified as being born to Charles

Wayne Rector and Linda Belle Walpole in Kleberg County Hospital.

4.5 Both Mary Ann and Cynthia were sent home with and raised by the families that they were discharged to when they left the Kleberg County Hospital. However, they were not with their biological families. The instrumentation used to identify the two babies was mislabeled and apparently failed. Mary Ann and Cynthia were switched at birth and sent home with the wrong families.

4.6 Both Mary Ann and Cynthia grew up in very different circumstances, both economically and culturally. Both Plaintiffs' set of biological parents passed before any of the parties discovered that Mary Ann and Cynthia were switched at birth.

4.7 Almost 50 years later, Mary Ann and her husband both submitted DNA samples to Ancestry.com, curious of where their ancestors were from. After several months, Mary Ann received her results from Ancestry.com and was surprised to see that her lineage was based mostly in Europe. Mary Ann thought that her results were a mistake and most likely her sample was switched with someone else.

4.8 Rather than resubmit her DNA to Ancestry.com again, Mary Ann submitted another DNA sample to 23andme.com on or about March 7, 2018. Again, Mary Ann waited at least 2 months until she received her results from 23andme. The results were similar to the Ancestry.com results in that they indicated that Mary Ann had mostly European DNA.

4.9 It did not occur to Mary Ann at that time that she was, in fact, switched at birth and that was the reason for her European heritage. However, it did motivate her to find out more about the circumstances around her birth.

4.10 On October 23, 2018, Mary Ann researched on-line the birth records of the Kleberg County Hospital. On the day of her birth, she noticed that another Hispanic female baby was born

around the same time. Mary Ann saw Cynthia Ann Rector's name and noticed that the name "Rector" showed up on her Ancestry and 23andme results.

4.11 On or about May 15, 2019, Mary Ann sent an email to the television show, "Long Lost Family," asking about whether they would pursue genetic testing to confirm if she was switched at birth. Cynthia declined to participate in the testing, but Cynthia's sister Karen Rector (Mary Ann's biological sister) agreed to submit a DNA sample to the producers.

4.12 On or about June 10, 2019, Cynthia began to suspect that her family was not her biological family when her sister Karen agreed to submit Karen's DNA to "Long Lost Family."

4.13 In August of 2019, Mary Ann's worst fears were confirmed when the producer from "Long Lost Family" informed Mary Ann that she and Karen were biological sisters according to the genetic findings. This was the first time that Mary Ann was confronted with the scientific reality that she was not raised by her biological mother and/or father.

4.14 Cynthia confirmed for herself her genetic origin and that she was switched at birth with Mary Ann after the "Long Lost Family" genetic results were revealed. She was devastated.

V.

CAUSES OF ACTION

Negligence

5.1 Plaintiffs hereby incorporate Paragraphs 2.1 through 4.14 as if fully set forth herein.

5.2 At the time and place in question, Defendant had a duty to correctly and securely identify each infant in the hospital and to ensure that discharge of each infant be with his or her parent or family.

5.3 Defendant was guilty of the following separate acts of negligence, each of which, singularly or in combination, were a proximate cause of the injuries and damages alleged herein.

- a) Failing to have reasonable processes and procedures in place to properly identify each infant, or failing to follow same;
- b) Failing to have reasonable processes and procedures in place to properly identify the parent for each infant, or failing to follow same;
- c) Failing to have reasonable processes and procedures in place to maintain the identity of each infant while in the hospital, or failing to follow same;
- d) Failing to have reasonable processes and procedures in place to minimize or eliminate the risk that an infant would be misidentified, or failing to follow same;
- e) Failing to have reasonable processes and security procedures in place to minimize or eliminate the risk that an infant may be discharged from the hospital with the wrong parent or family, or failing to follow same.

5.4 Plaintiffs would show that each of the foregoing acts and/or omissions constituted negligence and that one, more than one, or all of such acts and/or omissions and various combinations thereof were a proximate cause of the damages, harms and losses sustained by Plaintiffs.

5.5 Alternatively, Plaintiffs plead that the doctrine of res ipsa loquitur applies in this case because (1) the character of the incident (switching and misidentifying babies after birth) is such that it would not ordinarily occur in the absence of negligence; and (2) the instrumentality causing the injury is shown to have been under the management and control of Defendant. There is no other plausible explanation for this occurrence other than Defendant's negligence.

Medical Malpractice
(Alternatively)

5.6 Although Plaintiffs contend that their cause of action falls outside the scope of the Texas Medical Liability Act, Plaintiffs have complied with the requirements of the Texas Medical Liability Act, Section 74.051(a) of the Texas Civil Practice and Remedies Code, in giving Defendant written notice of the claim on which this suit is based, and in attaching to the notice a proper authorization form for release of protected health information as required by Section 74.052

of the Texas Civil Practice and Remedies Code. Copies of the notices and authorization forms are attached as Exhibit “A” and Exhibit “B.”

5.7 On or about April 30, 1969, Plaintiffs’ mothers were admitted to Kleberg County Hospital to give birth.

5.8 Mary Ann was born to Fidel Barrera Saenz and Benilde Soliz in Kleberg County Hospital on April 30, 1969. Cynthia was born to Charles Wayne Rector and Linda Belle Walpole in Kleberg County Hospital on April 30, 1969.

5.9 During the stay at the hospital and unbeknownst to the two families, the babies were switched and discharged with the other’s parents. Both Mary Ann and Cynthia were raised by the families that they were discharged to when they left the Kleberg County Hospital.

5.10 At all times relevant, Defendant hospital owed Plaintiffs a duty to act as an ordinarily prudent hospital would do under the same or similar circumstances.

5.11 Defendant knew, or should in the exercise of reasonable care have known, that it needed to have certain security measures in place to avoid at least this type of situation where babies were unable to be identified and placed and ultimately discharged with families other than their own.

5.12 As a direct and proximate result of Defendant's negligence, Plaintiffs suffered mental anguish and damages.

5.13 Plaintiffs plead that the doctrine of *res ipsa loquitur* applies in this case because (1) the character of the incident (switching and misidentifying babies after birth) is such that it would not ordinarily occur in the absence of negligence; and (2) the instrumentality causing the injury is shown to have been under the management and control of Defendant. There is no other plausible explanation for this occurrence other than Defendant’s negligence.

VI. DAMAGES

6.1 Plaintiffs hereby incorporate Paragraphs 2.1 through 5.13 as if fully set forth herein.

6.2 Plaintiffs would show that at the time and on the occasion in question, each received personal injuries, including injuries emotionally and mentally. Plaintiffs assert that each Plaintiff will likely be required to undergo intensive, life-long therapy, as well as counseling to assist them in dealing with the symptoms each Plaintiff is experiencing relating to conditions similar of PTSD.

6.3 Plaintiffs should be fairly and reasonably compensated for their injuries considering the following elements of damage:

- (a) Mental anguish suffered in the past;
- (b) Mental anguish which, in reasonable probability, they will suffer in the future;
- (c) The reasonable expenses for necessary medical care which they have received for counseling and therapy services;
- (d) The reasonable expenses for necessary medical care which they will, in reasonable probability, require for the future treatment of their injuries;
- (e) Economic loss in the past and future, including loss of opportunity (Plaintiff High only);

6.4 All of Plaintiffs' injuries, harms and losses as set forth herein above were proximately caused by the negligence of Defendant. Accordingly, Plaintiffs are bringing this suit for just, reasonable, and adequate compensation against Defendant. Additionally, Plaintiffs seek all other elements or damages not specifically identified herein to which Plaintiffs are entitled to under Texas law, including pre-judgment interest, post-judgment interest, all costs of Court and any and all other legal and equitable relief to which they are justly entitled.

6.5 Pursuant to Rule 47 of the Texas Rules of Civil Procedure, Plaintiffs state that they are seeking monetary relief of over \$1,000,000.

VII.
RULE 193.7 NOTICE

7.1 Pursuant to TEX. R. CIV. P. 193.7, Plaintiffs hereby give actual notice to Defendant that any and all documents produced may be used against the Defendant producing the document at any pre-trial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

VIII.
WRITTEN DISCOVERY

8.1 Attached hereto as Exhibit "C" is Plaintiffs' Request for Disclosure to Defendant. Pursuant to 194.3(a) of the Texas Rules of Civil Procedure, you are required to answer the attached Request for Disclosure within fifty (50) days after service of the Request.

IX.
JURY TRIAL

9.1 Pursuant to the Texas Rules of Civil Procedure, Plaintiffs respectfully request a trial by jury in this cause and tenders the jury fee with the Original Petition.

X.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Mary Ann High and Cynthia Rector, pray that the Defendant, CHRISTUS SPOHN Health System Corporation, be duly cited to appear and answer herein; and that upon final trial of this cause, Plaintiffs recover:

1. Judgment against Defendant for Plaintiffs' damages as set forth above, in an amount in excess of the minimum jurisdictional limits of this Court;
2. Interest on said judgment at the maximum legal rate allowed by law from the date of such judgment;
3. Prejudgment and post judgment interest at the maximum rate allowed by law;
4. Costs of court; and

5. Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

By: /s/ Eric H. Findlay

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