

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ULSTER

KATHRYN LUMBARD,

Plaintiffs,
- against -

**VERIFIED
COMPLAINT**

PLANNED PARENTHOOD OF THE MID-HUDSON
VALLEY, INC., PLANNED PARENTHOOD
FEDERATION OF AMERICA, INC, EILEEN
MELTZER, NP, JOHN DOE, MD and JANE DOE, MD.

Defendants.

INDEX NO.: 12- 440S

FILED
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DEC 28 2012

**NINA POSTUPACK
ULSTER COUNTY CLERK**

Plaintiff, Kathryn Lumbard, by and through her attorneys, Melley Platania, PLLC, as and for her

Verified Complaint alleges:

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

1. At all times herein relevant, plaintiff was and is a resident of Dutchess County, New York.
2. Upon information and belief, defendants, Planned Parenthood of the Mid-Hudson Valley, Inc., Planned Parenthood Federation of America, Inc. herein collectively referred to as "Planned Parenthood" were at all relevant times herein, a duly organized and existing entity with a principle place of business at No.169 Washington Avenue, Kingston, Ulster County, New York.
3. Upon information and belief, at all relevant times here, defendant Eileen Meltzer was a resident of the State of New York, residing in the County of Ulster or elsewhere within the State of New York and she continues to be a resident of the State of New York.

4. Upon information and belief, defendants, John Doe, M.D. and Jane Doe, M.D., both names being fictitious, were and are both residents of the County of Ulster, New York or elsewhere within the State.
5. Upon information and belief defendants offered medical care, treatment, advice and services to the public and to plaintiff here.
6. Defendants represented to the public that they were competent to advise women regarding their reproductive system and organs, including birth control advice and devices including an I.U.D. which was inserted into her body, into her uterus on June 29, 2010.
7. Plaintiff relied upon the representations of defendants as to their competency and knowledge and deferred to them with regard to the efficacy and safety of the birth control methods, means and devices.
8. Defendant furnished an I.U.D. (Intrauterine Device) to plaintiff representing that it was safe and effective and would not injure or otherwise harm plaintiff.
9. Upon information and belief, before, on and following June 29, 2010, defendant, Eileen Meltzer, then Nurse Practitioner, was, at all times in the employ of defendant, Planned Parenthood, acting within the course and scope of her said employment and/or agency relationship with said co-defendant.
10. On June 29, 2010, plaintiff presented to the aforesaid Planned Parenthood office(s) where a medical procedure, an I.U.D. was inserted by defendant, Eileen Meltzer, into plaintiff's uterus as a means of birth control.

11. Following the aforementioned medical procedure on June 29, 2010 plaintiff suffered from numerous symptoms of pain and cramping, irregular menses, anemia and other symptomology caused by and/or related to the aforesaid I.U.D.
12. The aforementioned I.U.D. was a "Mirena" brand device.
13. Before, on and following June 29, 2012 by defendant Eileen Meltzer at Planned Parenthood offices in Kingston, New York, the said I.U. D. was unsafe, defective and otherwise unreasonable dangerous to the health and safety of plaintiff herein.
14. At the time of said procedure on June 29, 2010, plaintiff had no knowledge or belief that that said Mirena I.U.D. was unsafe, defective and otherwise dangerous to her body, her health, her safety.
15. On or about August 17, 2011, while hospitalized in the Commonwealth of Pennsylvania while traveling, the said I.U.D. was found to have penetrated the wall of plaintiff's uterus and had otherwise caused severe pain and additional symptoms related to the insertion and migration of the said I.U.D.
16. Upon information and belief, defendants, their officers, agents, servants and employees, and/or independent contractors under their control, had actual knowledge and actual notice that said I.U.D. was unsafe, dangerous and defective; and constructive notice and knowledge that the said I.U.D. was unsafe, dangerous and defective for a period of time prior to June 29, 2010.
17. As a consequence of the procedure, insertion of the I.U.D. as alleged herein above, plaintiff suffered serious and painful bodily injuries, probable infertility, anemia, excessive and severe cramping, permanent and irreversible injury and damage to her uterus and other parts of her body; past and future medical expenses, past and future

economic loss and mental anguish, loss of enjoyment of the life; and has suffered as heretofore undetermined bodily injuries, and damages; and has suffered and incurred additional damages for which defendants, and each of them individual and jointly are liable.

18. Defendants by their acts and omissions, negligently and carelessly:

- a. Failed to adhere to good and accepted standards of medical practice with respect to plaintiff's care and treatment;
- b. Committed acts and omissions of medical malpractice with respect to the care of plaintiff as herein alleged;
- c. Inserted a device, an I.U.D. as alleged herein; which I.U.D. was known by them to be recalled by the manufacturer, was dangerous, was defective and was otherwise unsafe for insertion into plaintiff's body;
- d. Failed to adhere to and follow accepted standards of medicine with respect to plaintiff's care and treatment after June 29, 2010 by failing to remove the said I.U.D. in a timely and safe manner;
- e. Failed and neglected to perform appropriate diagnostic testing of plaintiff's body following the insertion of the said I.U.D. to determine its location and position with plaintiff's body;
- f. Failed to abide or follow all applicable federal, state and local rules, laws, regulations or standards imposed upon or theretofore followed by defendants;
- g. Failed to disclose to plaintiff the risks of migration, uterine penetration and other symptomology prior to the insertion of said I.U.D.;
- h. Were otherwise careless, negligent and/or reckless.

19. All of the foregoing are believed to be permanent in nature. All have and will require the use of pain and other medications; all of the foregoing requiring possible future surgery; all of the foregoing with possible arthritis and inflammation of the areas injured; all of the foregoing with consequential effects upon the neck, back, spine, bones, joints, muscles, tissues, blood vessels, ligaments and nerves directly or indirectly affected by the injuries sustained in the accident and the natural sequelae thereof; all of the foregoing requiring medication and rest; all of the foregoing resulting in disfigurement, scarring, scar tissue and/or bony overgrowth in those areas that were injured or affected by the accident complained of herein; all of the foregoing with pain, sensitivity and trauma to the affected areas; all of the foregoing with severe emotional reaction thereto; shock to the nervous system and depression; all of the foregoing with physical pain, disability, weakness and anxiety; limitation of motion, anguish and distress. All of the aforementioned injuries, complications, and sequelae, have and/or will require plaintiff Kathryn Lumbar to incur necessary medical expenses for her care and treatment who has been rendered disabled and will otherwise be deprived of any of the pleasures and enjoyment of life as a result thereof.
20. That the liability of the defendants arises from the use, operation or ownership of a motor vehicle within the meaning of CPLR Section 1602 and/or a non-delegable duty and/or the doctrine of respondent superior and/or the reckless disregard of the defendants for the safety of others within the meaning of CPLR Section 1602 and accordingly, to the extent that limited liability would impair, modify, abrogate or restrict the right of the plaintiff as against the defendants is not entitled to invoke the limited liability provision of Article 16 of the CPLR and to the extent, if any, that any defendant in this action contends that any of the employers of the plaintiff bears any culpability with respect to the injuries of the said plaintiff, the benefits of CPLR Section 1602 are claimed by the plaintiff.

21. As a result of the foregoing, plaintiff Kathryn Lumbard requests money damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

22. Plaintiff, KATHRYN LUMBARD repeats, reiterates and re-alleges each and every allegation contained in Paragraphs marked and numbered "1" through "21", inclusive, with the same force and effect as if more fully set forth at length herein.

23. Defendants, jointly, individually and severally failed and neglected to provide plaintiff informed consent to the procedure and in so doing violated all applicable New York laws, rules, regulations and standards, including all applicable federal laws and standards.

24. As a consequence of the foregoing failure of defendants to inform plaintiff of the risks associated with such product, to wit, the I.U.D. as alleged herein, she underwent a procedure she would not have undergone had she been fully informed as to the risks of the procedure; and as a consequence thereof she sustained the bodily injuries, mental anguish and other damages and symptomology as herein alleged in the First Cause of Action.

25. As a result of the foregoing, plaintiff Kathryn Lumbard requests money damages in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

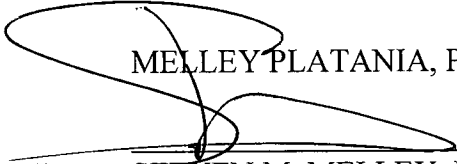
WHEREFORE, plaintiff demands judgment against the defendants as follows:

- 1) In the First Cause of Action in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction,
- 2) In the Second Cause of Action in an amount which exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction;

together with the costs and disbursements of this action and for such other and further relief as to this Court may seem just and proper.

Dated: Rhinebeck, New York
December 28, 2012

MELLEY PLATANIA, PLLC


By: STEVEN M. MELLEY, ESQ.

Attorney for Plaintiffs
24 Closs Drive
Rhinebeck, NY 12572
(845) 876-4057

ADDRESS OF DEFENDANTS:

PLANNED PARENTHOOD OF THE MID-
HUDSON VALLEY, INC.

PLANNED PARENTHOOD FEDERATION
OF AMERICA, INC.

EILEEN MELTZER, NP

JOHN DOE, MD

JANE DOE, MD.

INDIVIDUAL VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

KATHRYN LUMBARD being duly sworn, says:

I am plaintiff in the action herein; I have read the annexed Summons and Verified Complaint and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following: personal knowledge and file information.


KATHRYN LUMBARD

Sworn to before me this
28th day of December, 2012

NOTARY PUBLIC

STEVEN M. McILLEY
Notary Public, State of New York
Qualified in Dutchess County
Comm. exp. # 24121
Commission Expires Dec. 31, 2014

Steven M. McIlley
Notary Public
State of New York
Qualified in Dutchess County
Commission Expires 12/31/2014