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Lawsuit filed over lost eggs at San Francisco fertility clinic

Patient seeks compensation for eggs lost in refrigeration failure



This undated photo shows Amber and Elliott Ash holding son, Ethan. The Ash's have filed a class action lawsuit against University Hospitals in Cleveland after its fertility clinic in suburban Cleveland discovered a storage tank malfunction March 4 and said last week that as many as 2,000 frozen eggs and embryos may have been damaged. (Ash family photo via AP)

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When “S.M.” sought to save her eggs for future motherhood, the San Francisco woman was assured that they would be safely frozen until she needed them.

But those precious eggs, along with the eggs and embryos of hundreds of other patients, were stored in malfunctioning Tank No. 4 at Pacific Fertility Center’s lab on Francisco Street — and are now presumed damaged.

In this first suit to be filed after a rare malfunction that remains under investigation, the woman, who remains anonymous for privacy, is seeking compensation for negligence and breach of contract from the Prelude Fertility, where she received treatment in 2016, and Pacific Fertility Center, which stored her eggs.

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The law firm, Sauder Schelkopf of Berwyn, PA, is asking the court to certify the case as a class action, saying that at least 400 individuals may have been harmed by the incident. The suit was filed late Tuesday in the U.S. District Court, Northern District of California, San Francisco Division.

“We have been contacted by many people who have been impacted by this heartbreaking incident and we look forward to getting them answers and a meaningful resolution,” said attorney Joseph Sauder.

“The value of the eggs and embryos that Plaintiff and other class members entrusted to Defendants — and for which Defendants accepted legal responsibility to store, preserve, and protect — is substantial,” according to the complaint.

“For some families, these fertility services provide their only opportunity to conceive a child,” it asserts.

The fertility clinic breakdown was one of two refrigeration failures — thought to be the first of their type — to happen nearly simultaneously on March 4. The other clinic, in Ohio’s University Hospitals Cleveland Medical Center, estimates that 2,000 eggs and embryos may have been damaged or destroyed.

At least two lawsuits have been filed against the Cleveland clinic.

The first is on behalf of Amber and Elliot Ash, who live just west of Cleveland. The couple, infertile after Elliott’s cancer treatment, said that their doctor confirmed that two embryos had been in the affected tank and were unusable.

Another Cleveland-based patient, Kate Plants, is suing for the loss of five embryos. She had sought fertility treatment following ovarian and uterine cancer.

Although no one yet knows what went wrong, experts suspect there were leaks in the seals of the tank that holds liquid nitrogen, where frozen embryos are stored.

The San Francisco center states that its system is equipped with a sensor, and an alarm.

But the problem was discovered only when the clinic’s laboratory director was performing a routine check of the steel storage tanks — and saw that the level of liquid nitrogen in one tank was too low, according to the center.

It’s not known whether the failure damaged the eggs and embryos; even if liquid nitrogen levels fall, the storage tanks are slow to warm.

But there’s no way to know until the eggs and embryos are thawed — and they can’t be safely re-frozen.

Retrieving eggs is not a simple medical procedure, and Pacific Fertility’s egg-freezing services are not cheap. One cycle of freezing and retrieval, including storage for a year, costs \$8,345. A second cycle costs \$6,995. Additional costs arise from other of Pacific Fertility’s services, such as new patient

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consultations, lab work, and continuing tissue storage, as well as from needed medications. Pacific Fertility charges an annual fee of \$600 for storing human reproductive tissue. Embryo freezing services similarly involve significant costs.

S.M's insurance company paid for a portion of Defendants' services and necessary medications. She paid the remaining costs — totaling approximately \$10,000—herself.

The suit alleges that the center was negligent by failing to adequately maintain, inspect, monitor, and/or test their liquid nitrogen storage tanks, in accordance with industry standards, including through a functional electronic tank monitoring system capable of detecting a rise in temperature or a drop in liquid nitrogen levels and promptly alerting staff to the immediate problem.

(This information excerpted in full from [this Mercury News piece](#))