

CV 06 5864

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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L. G., a minor, by and through his parents
and next friends, DROR GERGES and
SIVAN GERGES; DROR GERGES,
individually, father of L. G., a minor;
and SIVAN GERGES, individually,
mother of L. G., a minor;

Plaintiffs

(S.F.)

FILED
Case No. _____ IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 30 2006 ★

LONG ISLAND OFFICE

COMPLAINT

v.

**DANIEL J. KRIMSKY and
MOGEN CIRCUMCISION
INSTRUMENTS, LTD.,**

Defendants

WEINSTEIN, J.

GO, M.

-----X

COMES NOW L.G., a minor, by and through his parents and next friends DROR GERGES and SIVAN GERGES; DROR GERGES, individually, father of L. G., a minor; and SIVAN GERGES, individually, mother of L. G., a minor; and after naming themselves as Plaintiffs in the above-styled civil action show the Court as follows:

I. PARTIES

1.

Plaintiff L. G. is a minor male child, having been born December 9, 2004. His natural parents are Plaintiffs Dror Gerges. and Sivan Gerges. All Plaintiffs are members of the Jewish faith. They all reside in and are citizens of the State of Florida.

2.

Defendant Daniel J. Krinsky. (hereinafter "Defendant Krinsky") is a Jewish rabbi and mohel, who holds himself out to the public as being "certified" to perform religious circumcisions in a ceremony known as a "bris milah." He is not a physician or medical doctor. Defendant Krinsky is a resident of and citizen of the State of New York. He may be served with process at his residence address at 3414 Lindbergh Avenue, Oceanside, New York 11572. He is subject to the jurisdiction of this court.

3.

Defendant Mogen Circumcision Instruments, Ltd. is a New York corporation with its principal place of business in that state and within this judicial district. It manufactured the Mogen clamp that Defendant Krinsky used in his circumcision of Plaintiff L. G. as set forth below. It manufactured, sold, and placed into the stream of commerce the said Mogen clamp with the intention that the same be used in the States of New York and Florida and elsewhere throughout the United States. It is subject to the jurisdiction of this Court and venue as to it is properly laid herein.

II. JURISDICTION AND VENUE

4.

This Court has jurisdiction of this action because there is complete diversity of citizenship between the Plaintiffs and the Defendants and because the amount in controversy exceeds \$150,000.00 exclusive of interest and costs. 28 U.S.C. § 1332 (a) (1).

5.

Venue is proper in this Court because the two individually identified Defendants reside in this judicial district and State. 28 U.S.C. § 1391 (a).

6.

The substantive law of the State of Florida applies in this diversity action because the events giving rise to the claims stated herein arose in the State of Florida.

III. COUNT ONE

7.

Plaintiffs incorporate herein by reference paragraphs 1 through 6 above as if each were set forth herein in its entirety.

8.

On December 16, 2004 Defendant Krimsy circumcised Plaintiff L. G., an eight day old newborn male infant, at his home in Florida. For this circumcision Defendant Krimsy used a Mogen clamp. In circumcising Plaintiff Defendant Krimsy was negligent and his conduct fell below the standard of care and skill required of Jewish mohelim and circumcisers generally under the same conditions and like circumstances.

9.

During the circumcision Defendant Krimsy negligently allowed Plaintiff L. G.'s glans penis to become entrapped in the clamp or shield so that a large part of Plaintiff's L. G.'s distal glans penis was cut off with the foreskin.

10.

As a direct and proximate result of the negligence of Defendant Krimsy as aforesaid Plaintiff L. G. was severely injured and suffered the cutting off of a large portion of his distal glans penis.

11.

Defendant Krinsky was also negligent in the follow-up care that he rendered to Plaintiff L. G. and his conduct fell below the standard of care and skill required of Jewish mohelim and circumcisers generally under the same conditions and like circumstances. Indeed, rather than call in a physician to care for Plaintiff L. G., Defendant Krinsky intentionally concealed his negligence and the resulting damage from Plaintiffs Dror Gerges and Sivan Gerges. It was only when a physician who was attending the bris milah noticed the damage to Plaintiff L. G.'s penis that necessary medical care and attention was obtained to treat the damage. This delay in obtaining necessary medical care and attention resulted in much greater permanent damage to Plaintiff L. G.'s penis than would otherwise have occurred had appropriate medical care and attention been obtained immediately.

12.

Further, as a direct and proximate result of the negligence and willful, wanton, reckless, and intentional misconduct of Defendant Krinsky as aforesaid and the damage caused by it, Plaintiff L. G. was required to undergo corrective surgery under general anaesthetic, which was not entirely successful. Plaintiff L. G. may be required to undergo additional corrective surgery in the future. Plaintiffs Dror Gerges and Sivan Gerges have incurred medical and hospital expenses on behalf of Plaintiff L. G. for such corrective surgery and will incur medical, hospital, psychiatric, psychological and other such expenses in the future up to the time Plaintiff L. G. becomes eighteen (18) years of age as a direct and proximate result of the negligence of Defendant Krinsky as aforesaid, all in an amount in excess of one hundred fifty thousand dollars (\$150,000.00). Thereafter Plaintiff L. G. will incur other medical, hospital, psychiatric,

psychological and other such expenses himself as a direct and proximate result of the negligence of Defendant Krinsky as aforesaid.

13.

Further, as a direct and proximate result of the negligence and the willful, wanton, reckless, and intentional misconduct of Defendant Krinsky as aforesaid Plaintiff L. G. has been permanently disfigured and mutilated and will suffer forever from a disfigured and mutilated penis and from the loss of sexual feeling and function caused thereby.

14.

As a direct and proximate result of his negligence and his willful, wanton, reckless, and intentional misconduct as aforesaid, Defendant Krinsky is liable to Plaintiffs Dror Gerges and Sivan Gerges for damages for medical, hospital, psychiatric, psychological and other such expenses, past, present, and future, which they have incurred or will incur as a result of the damage caused to their son Plaintiff L. G. until such time as he reaches the age of majority in an amount in excess of one hundred fifty thousand dollars (\$150,000.00), to Plaintiff L. G. for physical and mental pain and suffering, past, present, and future, and for medical, hospital, psychological and other such expenses he will incur after he reaches the age of majority in a total amount in excess of one hundred fifty thousand dollars (\$150,000.00), to each Plaintiff for punitive damages in an amount to be determined by the enlightened conscience of an impartial jury, and to each Plaintiff for his or her expenses of litigation, including reasonable attorney's fees, as proven by the evidence at trial.

WHEREFORE Plaintiffs pray:

(a) that process issue and that the Defendants be served in a manner and within the time provided by law;

(b) that Plaintiffs Dror Gerges and Sivan Gerges have judgment against Defendant Krinsky for medical, hospital, psychiatric, psychological and other such expenses, past, present, and future, which they have incurred or will incur as a result of the damage to their son Plaintiff L. G. until such time as he reaches the age of majority in an amount in excess of one hundred fifty thousand dollars (\$150,000.00), plus interest after judgment as provided by law; and that Plaintiff L. G. have judgment against Defendant Krinsky for physical and mental pain and suffering, past, present, and future, and for medical, hospital, psychological and other such expenses he will incur after he reaches the age of majority, all in a total amount in excess of one hundred fifty thousand dollars (\$150,000.00), plus interest after judgment as provided by law; that all Plaintiffs have judgment against Defendant Krinsky for punitive damages in amounts to be determined by the enlightened conscience of an impartial jury, plus interest after judgment as provided by law; that all Plaintiffs have judgment against Defendant Krinsky for their reasonable expenses of litigation, including attorneys fees, in such amounts as may be proven by the evidence at trial plus interest after judgment as provided by law;

(c) that Plaintiffs have a trial by jury of all issues that may be tried by a jury;

(d) that Plaintiffs have all costs of this action; and

(e) that Plaintiffs have all other relief that the Court may find just and appropriate in the circumstances.

COUNT II

15.

Plaintiffs incorporate herein by reference paragraphs 1 through 14 above as if each were set forth herein in its entirety.

16.

Defendant Krinsky held himself out to Plaintiffs Dror and Sivan Gerges as being a "certified" mohel and as having the requisite skill and training to perform Jewish ritual circumcisions properly. However, Defendant Krinsky at the time he made such representations knew that the same were false, knew that he was not "certified" by any recognized Jewish organization that certifies mohelim, and knew that he did not have the requisite skill and training to perform Jewish ritual circumcision properly. Plaintiffs Dror and Sivan Gerges relied upon his representations as aforesaid and allowed him to circumcise their eight day old son, Plaintiff L.G., to the detriment of all Plaintiffs. If they had known that his representation of certification and of having the requisite skill and training was not true, Plaintiffs Dror and Sivan Gerges would not have allowed Defendant Krinsky to circumcise Plaintiff L. G. and Plaintiff L. G. would not have been injured. Defendant Krinsky's lack of the requisite skill and training was a concurring proximate cause of Defendant Krinsky's severing of a portion of Plaintiff L. G.'s glans during the circumcision, Defendant Krinsky's lack of correct follow-up care, and the permanent damage caused to Plaintiff L. G.'s penis thereby as aforesaid.

17.

As a direct and proximate result of the fraud, lack of requisite skill and training, and negligence of Defendant Krinsky as aforesaid, said Defendant is liable to Plaintiffs Dror Gerges and Sivan Gerges for damages for medical, hospital, psychiatric, psychological and other such expenses, past, present, and future, which they have incurred or will incur as a result of the damage to their son Plaintiff L. G. until such time as he reaches the age of majority in an amount in excess of one hundred fifty thousand dollars (\$150,000.00), and to Plaintiff L. G. for physical and mental pain and suffering, past, present, and future, and for medical, hospital, psychiatric,

psychological and other such expenses he will incur after he reaches the age of majority in a total amount in excess of one hundred fifty thousand dollars (\$150,000.00).

18.

As a direct and proximate result of the fraud committed by Defendant Krinsky as aforesaid Defendant Krinsky is liable to all Plaintiffs for punitive damages in amounts to be determined by the enlightened conscience of an impartial jury.

19.

Defendant Krinsky is liable to all Plaintiffs for their expenses of litigation, including attorney's fees, incurred in this action in such amounts as may be proven by the evidence at trial.

WHEREFORE Plaintiffs pray:

(a) that process issue and that the Defendant be served in a manner and within the time provided by law;

(b) that Plaintiffs Dror Gerges and Sivan Gerges have judgment against Defendant Krinsky for medical, hospital, psychiatric, psychological and other such expenses, past, present, and future, which they have incurred or will incur as a result of the damage to their son Plaintiff L. G. until such time as he reaches the age of majority in an amount in excess of one hundred fifty thousand dollars (\$150,000.00), plus interest after judgment as provided by law; that Plaintiff L. G. have judgment against Defendant Krinsky for physical and mental pain and suffering, past, present, and future, and for medical, hospital, psychiatric, psychological and other such expenses he will incur after he reaches the age of majority, all in a total amount in excess of one hundred fifty thousand dollars (\$150,000.00), plus interest after judgment as provided by law; that all Plaintiffs have judgment against Defendant Krinsky for punitive damages in amounts to be determined by the enlightened conscience of an impartial jury, plus

interest after judgment as provided by law; that all Plaintiffs have judgment against Defendant Krinsky for their reasonable expenses of litigation, including attorneys fees, in such amounts as may be proven by the evidence at trial plus interest after judgment as provided by law;

- (c) that Plaintiffs have a trial by jury of all issues that may be tried by a jury;
- (d) that Plaintiffs have all costs of this action; and
- (e) that Plaintiffs have all other relief that the Court may find just and appropriate in the circumstances.

COUNT III

PRODUCTS LIABILITY, FAILURE TO WARN, AND BREACH OF WARRANTIES

20.

Plaintiffs incorporate herein by reference paragraphs 1 through 14 above as if each were set forth herein in its entirety.

21.

At all times material hereto Defendant Mogen Circumcision Instruments, Ltd. was either a designer, formulator, manufacturer, producer, distributor, seller, or all or some of the same of the Mogen circumcision clamp Defendant Krinsky used when he circumcised Plaintiff L. G.

22.

At all times material hereto Defendant Mogen Circumcision Instruments, Ltd. manufactured, marketed, sold, and distributed to mohelim residing in New York, Florida, and other states Mogen circumcision clamps, including the one Defendant Krinsky used when he circumcised Plaintiff L. G.

23.

Defendant Mogen Circumcision Instruments, Ltd. was under a duty at all material times hereto to use due and reasonable care in either some or all of the planning, designing, formulating, manufacturing, producing, inspecting, testing, packaging, labeling, distributing, and selling the Mogen clamp in order to protect those persons upon whom the same might be used from undue risk of harm.

24.

Defendant Mogen Circumcision Instruments, Ltd. in its planning, designing, formulating, manufacturing, producing, inspecting, testing, packaging, labeling, distributing, and selling the Mogen clamp was reckless and behaved in a willful and wanton manner, and showed an utter disregard for the consequences in numerous and substantial respects and in failing to warn mohelim, including Defendant Krinsky, of the dangers associated with the use of the Mogen clamp, including the fact that the clamp even in proper use can entrap a portion of the glans penis so that the same is severed during the circumcision.

25.

In particular, but without limitation, Defendant Mogen Circumcision Instruments, Ltd. knew well before December 16, 2004, the date of Plaintiff L. G.'s circumcision, that the representation contained in the instructional brochure accompanying each Mogen clamp that there was "NO injury to glans possible, because of beveled under edge and narrow aperture" was false and that the medical literature as of the end of 1996 had reported at least two cases of glanular amputation during use of the Mogen clamp. In the journal Pediatrics in 1996 one physician had reported a case of glanular amputation using the Mogen clamp and specifically noted: "The company producing this clamp refused to accept a report of this occurrence or

reveal whether they had knowledge of similar occurrences.” Strimling, B. S., “Partial Amputation of Glans Penis During Mogen Clamp Circumcision,” 97 Pediatrics 906-907 (1996). That same year a group of physicians reported on a number of glanular reattachments following circumcision mishaps, including one in which the Mogen clamp was used. Sherman, J., et al., “Circumcision: Successful Glanular Reconstruction and Survival Following Traumatic Amputation,” 156 The Journal of Urology, 842-844 (August, 1996). Further in 1996 another article reported on a technique to avoid glanular amputation while noting that “[a] few cases of inadvertent partial glans amputation during Mogen circumcision have been reported.” Reynolds, R.D., “Use of the Mogen Clamp for Neonatal Circumcision,” 54 American Family Physician 177-182, 180 (1996). Moreover, said Defendants knew that on August 29, 2000 the U. S. Food and Drug Administration has issued a warning of the danger of drawing too much tissue into the jaw gap and removing a portion of the glans penis. “Potential for Injury from Circumcision Clamps,” U.S. Food and Drug Administration, Rockville, MD 20857, USA, August 29, 2000. Nevertheless despite these articles and the warning letter and knowledge of these and similar damaging mishaps, said Defendant intentionally continued to manufacture, produce, market, distribute, and sell the Mogen clamp with accompanying literature containing this false statement of safety and without warning mohelim and others who had purchased the Mogen clamps of the known danger of glanular amputation.

26.

Defendant Mogen Circumcision Instruments, Ltd. knew prior to the manufacture, distribution, sale, and ultimate use of the Mogen clamp at issue herein of the dangers of glanular amputation with its use and of the inadequacy of the warnings distributed with the clamp.

27.

Despite the prior knowledge of the specific cases discussed in the literature cited above as well as other cases of glanular injury when the Mogen clamp had been used in circumcisions, Defendant Mogen Circumcision Instruments, Ltd. participated in either, some, or all of the planning, designing, formulating, manufacturing, producing, inspecting, testing, selling, packaging, assembling, and labeling of the particular Mogen clamp in question and placed it into the stream of commerce with inadequate warnings. Said Defendant expected the Mogen clamp to reach consumers in the condition in which it was sold.

30.

The conduct of Defendant Mogen Circumcision Instruments, Ltd. constituted a conscious disregard for the safety of the public, including Plaintiff L. G., recklessness, willful and wanton misconduct, and intentional misconduct, authorizing the imposition of punitive damages.

31.

As a direct and proximate result of the willful, wanton, reckless, and intentional misconduct of Defendant Mogen Circumcision Instruments, Ltd. as aforesaid, Plaintiff L. G. suffered serious, permanent injuries to his penis, suffered physical and mental pain and suffering, which he still suffers and will continue permanently to suffer, and may incur medical, hospital, psychiatric, psychological, and other such expenses when he reaches the age of majority, and Plaintiffs Leor and Sivan Gerges incurred medical and hospital expenses to treat Plaintiff L. G.'s injuries and will incur medical, hospital, psychiatric, psychological, and other such expenses until L. G. reaches the age of majority, for which Defendant Mogen Circumcision Instruments, Ltd. is liable.

32.

Defendant Mogen Circumcision Instruments, Ltd. manufactured, produced, sold, packaged, and labeled the Mogen clamp as new property, and such new property, when sold by said Defendant, was not merchantable, was not reasonably suited for the use intended, was defective in its manufacture and production, was defective in its packaging and in its failure to warn adequately of its dangerous propensities and of the dangers of its use, including the known risk of glanular injuries from advancing too much ventral foreskin into its opening, and of the proper precautions to be taken when using the same.

33.

Such defective conditions of the said new property when sold by Defendant Mogen Circumcision Instruments, Ltd. was the proximate cause of the injuries and damages suffered by Plaintiffs.

34.

Defendant Mogen Circumcision Instruments, Ltd. knew prior to the manufacture, sale, and distribution of the Mogen clamp involved herein, of numerous instances of glanular injuries to males undergoing circumcision performed with the use of the Mogen clamp.

35.

Defendant Mogen Circumcision Instruments, Ltd. is strictly liable in tort to the Plaintiffs for all of the Plaintiffs' damages sustained as a result of the use of the Mogen clamp during Plaintiff L. G.'s circumcision, including the medical, hospital, psychiatric, and psychological bills incurred or to be incurred prior to L. G.'s reaching the age of majority, similar bills thereafter, and L. G.'s physical and mental pain and suffering, past, present, and future.

36.

Further Defendant Mogen Circumcision Instruments, Ltd. breached its implied warranties of merchantability and fitness for a particular purpose for the said Mogen clamp in that the clamp supplied with the printed instructions was not merchantable, nor was it fit for its ordinary, intended use, which breaches were further the direct and proximate cause of the injuries for which said Defendant is liable to Plaintiffs.

37.

In addition Defendant Mogen Circumcision Instruments, Ltd. expressly warranted that the said Mogen clamp when used in accordance with its accompanying instructions could not injure the glans penis "because of beveled under edge and narrow aperture." Said Defendant breached this express warranty, which breach was further the direct and proximate cause of the injuries for which said Defendant is liable to Plaintiffs.

37.

Defendant Mogen Circumcision Instruments, Ltd. has acted in bad faith, thereby entitling Plaintiffs to recover of it their expenses of litigation, including reasonable attorney's fees.

WHEREFORE Plaintiffs pray:

(a) that process issue and that the Defendant be served in a manner and within the time provided by law;

(b) that Plaintiffs Dror Gerges and Sivan Gerges have judgment against Defendant Mogen Circumcision Instruments, Ltd. for medical, hospital, psychiatric, psychological and other such expenses, past, present, and future, which they have incurred or will incur on behalf of their son, Plaintiff L. G., until such time as he reaches the age of majority, and that Plaintiff L.

G. have judgment against said Defendants jointly and severally for physical and mental pain and suffering, past, present, and future, and for medical, hospital, psychiatric, psychological and other such expenses he will incur after he reaches the age of majority, all in a total amount in excess of one hundred fifty thousand dollars (\$150,000.00), plus interest after judgment as provided by law;

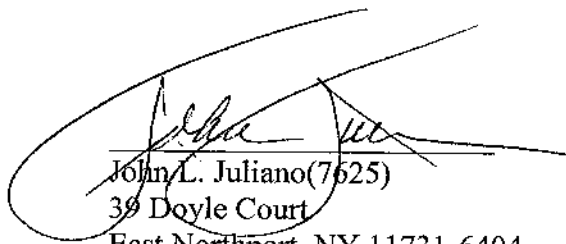
(c) that each Plaintiff have judgment against Defendant Mogen Circumcision Instruments, Ltd. for punitive damages in such amounts as may be determined by the jury in its enlightened conscience;

(d) that Plaintiffs have judgment against Defendant Mogen Circumcision Instruments, Ltd. for their expenses of litigation, including reasonable attorney's fees;

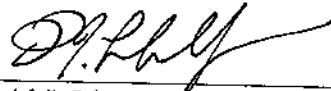
(e) the Plaintiffs have a trial by jury of all issues that may be tried by a jury;

(f) that Plaintiffs have all costs of this action; and

(g) that Plaintiffs have all other relief that the Court may find just and appropriate in the circumstances.



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