

STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE

SHARON GUESS,

Civ. No.:
Judge

Plaintiff,

v.

DEMAND FOR
JURY TRIAL

BAUSCH & LOMB INC. and BAUSCH & LOMB
SURGICAL. INC.

Defendants.

COMPLAINT

Plaintiff, Sharon Guess, allege as follows:

The Parties

1. Plaintiff Sharon Guess, the plaintiff was at all relevant times a citizen of the County of Monroe and State of New York.
2. Upon information and belief, Defendant Bausch & Lomb Inc. is a Corporation with its principal place of business in Rochester, New York.
3. Upon information and belief, Defendant Bausch & Lomb Surgical, Inc. is a Corporation with its principal place of business in Rochester, New York. (Defendants will be referred to collectively as Bausch & Lomb).

Factual Allegations

4. Bausch & Lomb is in the business of, among other things, manufacturing, distributing and selling Accu Glide Disposable Blades for use in Lasik eye surgery. (hereinafter referred to as the "surgical blade").

5. Bausch & Lomb manufactured, designed, distributed and sold the surgical blade that was being used by Dr. Ronald Reed on March 8, 2001.

6. On or about March 8, 2001 plaintiff Sharon Guess, was severely and permanently injured when the Accu Glide Disposable Blade broke due to the negligently designed, tested, manufactured and sold surgical blade.

7. Bausch & Lomb carelessly, negligently, recklessly and wantonly manufactured, distributed, inspected and sold, and was the proximate cause of the catastrophic event that injured Sharon Guess.

8. Bausch & Lomb failed to provide adequate warnings regarding the surgical blade.

9. The surgical blade was dangerously defective in that: the surgical blade was manufactured with a flaw or defect which created a weak spot capable of breaking when subjected to stress; the surgical blade was not subjected to proper and adequate testing and inspection prior to being marketed and sold, thereby causing a dangerous and defective condition; the surgical blade was improperly designed because of a manufacturing defect which could not have been reasonably discovered by plaintiff.

First Cause of Action

10. Plaintiffs repeat paragraphs 1 through 9.

11. Defendants carelessly, negligently, recklessly, wantonly and willfully manufactured, distributed, inspected and sold the surgical blade.

12. The injuries to Sharon Guess were caused solely and wholly as a result of negligence of the defendants.

13. The manufacturing defects existed at the time the surgical blade left the care, custody and control of the defendants.

14. The surgical blade was used for its intended purpose.

15. Nobody other than the defendants could, by the exercise of reasonable care, have discovered the defects or perceived their danger.

16. As a direct and substantial result of the above-referenced acts and omissions of the defendants, plaintiff was caused to sustain severe and permanent injuries, and loss of enjoyment of life, all of which required and will continue to require for the rest of her life intensive care, and hospital and medical treatment for the known complications of said failed surgery.

17. As a result of the negligent acts and omissions by defendants, plaintiff has and will sustain extensive pain and suffering including a nearly total loss of the quality and enjoyment of her life and has, and will, upon information and belief, permanently be in need of care and services, all to her detriment.

18. Solely as a result of the defendants' negligence, Sharon Guess has been damaged in the sum of FIVE MILLION DOLLARS (\$5,000,000.00) in actual damages and FIVE MILLION DOLLARS (\$5,000,000.00) in punitive damages.

Second Cause of Action

19. Plaintiffs repeat paragraphs 1 through 18.

20. The defendants owed Sharon Guess a duty of strict liability not to harm her through the use of the surgical blade.

21. The defective condition of the surgical blade caused, or was a substantial factor, in bringing about the injuries to Sharon Guess.

22. As a result of the strict liability of the defendants, plaintiff was caused to sustain severe and permanent injuries, and loss enjoyment of life, all of which required and will continue to require for the rest of her life intensive, rehabilitation and care and extensive hospital and medical treatment for the known complications of said failed surgery.

23. As a result of the strict liability of the defendants, plaintiff has and will sustain extensive pain and suffering including a nearly total loss of the quality and enjoyment of life and has, and will, upon information and belief, permanently be in need of supportive care and services, all to her detriment.

24. As a result of the strict liability of the defendant, Sharon Guess has been damaged in the sum of FIVE MILLION DOLLARS (\$5,000,000.00) in actual damages and FIVE MILLION DOLLARS (\$5,000,000.00) in punitive damages.

Third Cause of Action

25. Plaintiffs repeat paragraphs 1 through 24.

26. Defendants warranted that the surgical blade was free of defects, of merchantable quality and fit for the purpose and manner intended and made other warranties.

27. Plaintiffs relied upon the express and implied warranties.

28. Defendants wantonly and recklessly breached their warranties, both express and implied.

29. As a result of the breaches of warranty by the defendants, plaintiff was caused to sustain severe and permanent injuries, and loss enjoyment of life, all of which required and will continue to require for the rest of her life services,

rehabilitation and care, and hospital and medical treatment for the known complications of said failed surgery.

30. As a result of the breaches of warranty by the defendants, plaintiff has and will sustain extensive pain and suffering including a nearly total loss of the quality and enjoyment of life and has, and will, upon information and belief, permanently be in need of care and services, all to her detriment.

31. As a result the breaches of warranty, Sharon Guess has been damaged in the sum of FIVE MILLION DOLLARS (\$5,000,000.00) in actual damages and FIVE MILLION DOLLARS (\$5,000,00.00) in punitive damages.

Fourth Cause of Action

32. Plaintiffs repeat paragraphs 1 through 31.

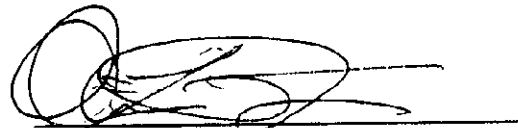
33. Defendants additionally engaged in a pattern of fraud, fraudulent concealment and misrepresentation. Defendants knew for many years that in fact a percentage of its surgical blade left its facility with defects which, could, and have, caused breaks and failures.

34. Upon information and belief, defendants, rather than incurring the costs of improving its manufacturing and quality control methods, have instead advanced its fraudulent concealment efforts be systematically resolving similar cases through "sealed" settlements, thereby avoiding adverse publicity and investigation by the Federal Government.

35. Accordingly, plaintiff Sharon Guess demands compensatory damages against Defendants in the sum of FIVE MILLION DOLLARS (\$5,000, 000.00) and punitive damages in the sum of FIVE MILLION DOLLARS (\$5,000,000.00).

WHEREFORE, plaintiff demands judgment against defendants in the First Cause of Action in the sum of FIVE MILLION DOLLARS (\$5,000,000.00) compensatory, and FIVE MILLION DOLLARS (\$5,000,000.00), punitive; in the Second Cause of Action in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), compensatory and FIVE MILLION DOLLARS (\$5,000,000.00), punitive; in the Third Cause of Action in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), compensatory and FIVE MILLION DOLLARS (\$5,000,000.00), punitive; and in the Fourth Cause of Action in the sum of FIVE MILLION DOLLARS (\$5,000,000.00), compensatory and FIVE MILLION DOLLARS (\$5,000,000.00), together with the costs and disbursements of this action.

Dated: Rochester, New York
December 4th, 2002



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SHARON GUESS

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BAUSH & LOMB INC. and BAUSH & LOMB
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SUMMONS

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TO THE ABOVE NAMED DEFENDANT;

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your answer, or, if the Complaint is not served with the Summons, to serve a Notice of Appearance, on the Plaintiff's Attorney within 20 days after the service of this Summons, exclusive of the day of service or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Date: December 4th, 2002



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