

COMMONWEALTH OF KENTUCKY  
BOYD CIRCUIT COURT  
32<sup>ND</sup> JUDICIAL CIRCUIT  
DIVISION II  
CIVIL ACTION NO. 14-CI-159

FILED  
LINDA KAY BAKER  
MAR 04 2014  
BOYD CIRCUIT/DISTRICT COURT  
BY: WK D.C.

ELEANOR MCINTYRE

-and-

ROBERTA ADAMS

-and-

CATHERINE ALLEN

-and-

ELIZABETH ALLEN

-and-

LARRY ALLTOP

-and-

JOHN AUSTIN

-and-

LESLIE BAER

-and-

WILLARD BAILEY

-and-

JACK BAKER

-and-

THE ESTATE OF GINA YVETTE BARKER  
By and through its Administrator, Michael Barker

-and-

BOBBY BEAM

-and-

MARY BELL

-and-

ROSELLA BESCO

-and-

AUSTIN BIGGS

-and-

RONALD BLAKE

-and-

HARVEY BLANKENSHIP

-and-

DANIEL BLEVINS

-and-

LILLIE BLIZZARD

-and-

JACK BLOSS, JR.

-and-

ANGELA BOCOOK

-and-

LACY BOLEN

-and-

JEANETTA BOLTON

-and-

JAY BOYD

-and-

RONALD BRADFORD

-and-

JAMES BRADLEY

-and-

THE ESTATE OF VONDA BRANHAM JACKSON  
By and through its Executor, Thomas Dale Jackson

-and-

PAMELA BREECE

-and-

THE ESTATE OF CLEO RUSSELL BROWN  
By and through its Co-Executrix, Betty Baker and Mary Frantom

-and-

FRANK BROWNING

-and-

STEPHEN BURKHART

-and-

WILMA BURNS

-and-

DEANNA BUSH

-and-

THE ESTATE OF JIMMY BUSH  
By and through its Administratrix, Sherry Bush

-and-

CARROLL CARMICHAEL  
-and-

THE ESTATE OF ALFRED CARTER  
By and through its Administrator, Ruth Carter

-and-

PHILLIP CARTER

-and-

THE ESTATE OF FRED CASTLE  
By and through its Administrator, Phebie Castle

-and-

JANINE CASTLE

-and-

GLENNIS CAUDILL

-and-

LEASA CHURCH

-and-

TERESA COLE

-and-

JEFFREY COOPER

-and-

THE ESTATE OF LARRY COOPER  
By and through its Administrator, Leona Cooper

-and-

JEFF COSBY

-and-

LORA COX

-and-

MILLARD COX

-and-

THE ESTATE OF JAMES COYAN, SR.  
By and through its Administratrix, Daisy Coyan

-and-

JAMES CRABTREE, II

-and-

PATRICIA CUNNINGHAM

-and-

THE ESTATE OF ROGER DANIELS  
By and through its Administrator, William Daniels

-and-

ROBERTA DASHER

-and-

LOVADA DAY

-and-

LINDA DEERFIELD

-and-

SHARON DELONG

-and-

.

ALBERT DENNISON

-and-

JAMES DERRICK

-and-

JAMES DIALS

-and-

LARRY DILLON

-and-

RICHARD DILLON

-and-

TERRI DODSON

-and-

THE ESTATE OF MAUREEN DOSIER  
By and through its Administrator, James Dosier

-and-

SHIRLEY DUNN

-and-

RICHARD DUVENDECK

-and-

THE ESTATE OF GEORGE ELDRIDGE  
By and through its Administrator, Arlene Gilliam

-and-

BONNIE ELLIOT

-and-

JIM ELSWICK

-and-

JUDITH ESTEP

-and-

PHYLLIS ESTEP

-and-

RODNEY ESTEP

-and-

RONALD FAULKNER

-and-

THE ESTATE OF RICKY ALAN FLANERY  
By and through its Administrator, Anthony Flanery

-and-

LAURIE FLOYD

-and-

REVA FRITZ

-and-

BOBBY FURGESON

-and-

GEORGE GARDNER

-and-

THE ESTATE OF JAMES GARDNER  
By and though its Administrator, Pam Gardner

-and-

THE ESTATE OF WILLIAM GILL  
By and through its Admininstratrix, Garnett Gill

-and-

ELLA GILLUM

-and-

THE ESTATE OF BARBARA GREEN  
By and through its Administrator, Jerry Green

-and-

THELMA GREEN

-and-

DANNY GREENE

-and-

JAMES GRIFFIN

-and-

RONALD GRIFFITH

-and-

ALENA GRIMM

-and-

HENNRIETTA GRIMMETT

-and-

STEVEN GROSSL

-and-

WILLIAM GUNTHER

-and-



JANICE HALE

-and-

JAMES HALL

-and-

JOHN W. HALL

-and-

DEBORAH HAMRICK

-and-

JOHN HANCOCK

-and-

WILLIAM HANCOCK

-and-

MICHAEL HARDIN

-and-

THE ESTATE OF KAREN HARRISON  
By and through its Administrator, William Harrison

-and-

GREGORY HARSHBARGER

-and-

KAYLA HATFIELD

-and-

MARK HELMS

-and-

RICHARD HENDERSON

-and-

PHILIP HIERONIMUS

-and-

BRENDA HITCHCOCK

-and-

THE ESTATE OF EMMA JEAN HOLLEY  
By and through its Executrix, Brenda Keathley

-and-

JOHN HOLMES

-and-

BRENDA HORNSBY

-and-

LINDA HORTON

-and-

THE ESTATE OF ROBERT HOWARD  
By and through its executrix, Tim Howard

-and-

PAUL HUTCHINSON

-and-

THE ESTATE OF BRENDA GAIL ISON  
By and through its Administrator, Katie Richardson

-and-

BETTY JACKSON

-and-

ALISSA JAMES

-and-

ALVIN JARRELL

-and-

DOROTHY JAYNES

-and-

SANDRA JEFFERS

-and-

DENNY JOHNSON

-and-

FERN JOHNSON

-and-

GARRY JOHNSON

-and-

JAMES JOHNSON

-and-

BILLIE JONES

-and-

BARBARA JUSTICE

-and-

MARK JUSTICE

-and-

JOE KEELIN

-and-

OLLIE KING

-and-

NELLAVINE KIRK

-and-

THELMA LAMBERT

-and-

JERRY LEACH

-and-

SANDRA LEADINGHAM

-and-

PAULA LEAKE

-and-

LARRY LITTERAL

-and-

DONALD LUCAS

-and-

MISTY MARCUM

-and-

THE ESTATE OF WALTER MARCUM  
By and through its Administrator, Thelma Booth

-and-

SHIRLEY MARSHALL

-and-

ANNETTE MAYNARD

-and-

KENNETH MAYNARD

-and-

TERRIE MAYNARD

-and-

WILLIAM MAYNARD

-and-

CECIL MAYS

-and-

DELMER MCCALL

-and-

WAYNA MCCALL

-and-

LARRY MCCONAHA

-and-

RUTH MCCOY

-and-

SHEILA MCCOY

-and-

CHARLOTTE MCDOWELL

-and-

ROSA MEEKS

-and-

THE ESTATE OF DANA MESSER  
By and through its Administrator, Kenny Messer

-and-

MELVIN MILLER

-and-

DONALD MONTGOMERY

-and-

JOEY MOORE

-and-

DALE MOOTZ

-and-

SARAH MORGAN

-and-

CHARLOTTE MORRISON

-and-

HAZEL MOTTER

-and-

TAMMY MULLINS

-and-

KATHY MUNCY

-and-

JUANITA MUNCY

-and-

THE ESTATE OF JACK THOMAS NEWMAN  
By and through its Administrator, Penny Newman

-and-

LLOYD NYE

-and-

SHERMAN OWENS

-and-

CHARLES PARKER

-and-

JANET PARSONS

-and-

GARY PAULEY

-and-

KATHY PAYNE

-and-

PHYLLIS PERRY  
By and through her Guardian, Ronald Perry, II

-and-

ROGER PHILLIPS

-and-

LORSIA POLLARD

-and-

STEVEN POTTER

-and-

RAY POWERS

-and-

STEVEN PRESTON

-and-

RALPH PUCKETT, JR.

-and-

THE ESTATE OF ANDREW RABOURN, JR.  
By and through its Executrix, Patricia Rabourn

-and-

SHEILA RAMEY

-and-

BRIAN REED

-and-

REBECCA REEVES

-and-

BONITA RHODES

-and-

JACK RICE

-and-

BURMA RIDDLE

-and-

LINDA RILEY



-and-

SANDRA RILEY

-and-

ROBERT RISLEY

-and-

THE ESTATE OF ROBERT W. ROBERTS  
By and through its Administrator, Lola Roberts

-and-

THE ESTATE OF RICK ROCKEL  
By and through its Administratrix, Deborah Rockel

-and-

BARBARA ROGERS

-and-

DANNY ROWE

-and-

JAMES RUNYON

-and-

ANNA JO SALYER

-and-

HOWARD SALYERS

-and-

SUSAN SALYERS

-and-

TIMOTHY SARGENT

-and-

BRENDA SCAGGS

-and-

KAREN SCARBERRY

-and-

CHARLES SCHUMAN

-and-

PATRICIA SCOTT

-and-

LARRY SEXTON

-and-

THE ESTATE OF WILLIAM SEXTON  
By and through its Administrator, Desirae Sexton

-and-

THE ESTATE OF DONNA SHEPHERD  
By and through its Administrator, Shawn Shepherd

-and-

KRISTI SIDERS

-and-

JAMES SIPLE

-and-

CHRISTOPHER SKEENS

-and-

ELEANOR SKOWRONSKI

-and-

LARRY SLONE

By and through his Power of Attorney, Kelly Cox

-and-

THE ESTATE OF TED SLONE

By and through its Executrix, Tammy Sizemore

-and-

THE ESTATE OF JIMMY DALE SMITH

By and through its Executrix, Joyce Ann Smith

-and-

THE ESTATE OF RONALD SORRELL

By and through its Administratrix, Barbara Sorrell

-and-

HUGH SPARKS

-and-

JENNIFER SPARKS

-and-

THE ESTATE OF PHYLLIS SPEARS

By and through its Administrator, Paul Spears

-and-

BARRY SPEER

-and-

THE ESTATE OF PHILLIP SPRIGGS

By and through its Executrix, Anna Spriggs

-and-

PAUL SPROUSE

-and-

TERRY STAATS

-and-

BRYAN STAMPER

-and-

THE ESTATE OF ARNOLD STEELE  
By and through its Administratrix, Michelle Steele

-and-

LORENE STEELE

-and-

CAROL STEPHENS

-and-

RALPH STEPHENS

-and-

SONYA STEPHENS

-and-

ROBERT STEPHENSON

-and-

CHARLES STEVENS

-and-

JOHN STEVENS

-and-

LEONARD STEVENS

-and-

**THE ESTATE OF THELMA STEVENS**  
**By and through its Administrator, Charles Stevens**

**-and-**

**MICHAEL STEWART**

**-and-**

**VIRGIL STROUD**

**-and-**

**STEVEN TAYLOR**

**-and-**

**CHARLES TERKHORN**

**-and-**

**GARY TERRY**

**-and-**

**JAMES TERRY**

**-and-**

**CONNIE THACKER**

**-and-**

**RANDALL THACKER**

**-and-**

**CALVIN SAMUEL THOMAS**

**-and-**

**ROBERT THOMPSON**

**-and-**

WILMA TOLAND

-and-

THE ESTATE OF ROY FOREST TUCKER  
By and through its Executrix, Pamela Shaw

-and-

SHEILA ULLOM

-and-

PAULA VAN HOOSE

-and-

THE ESTATE OF WILLIAM WADDELL  
By and through its Administrator, Angela Waddell

-and-

JAMES WALLER

-and-

AMY WARD

-and-

BARBARA WARE

-and-

RICHARD WASHBURN

-and-

FRANKLIN WATTS

-and-

CLIFFORD WEBB, JR.

-and-

THE ESTATE OF PENNY ROSE WEBB  
By and through its Administrator, Clifford Webb

-and-

THE ESTATE OF ROY WEBB  
By and through its Executrix, Pamela Cornwell

-and-

KERRON WEDDINGTON

-and-

GLENN WELLMAN

-and-

ANTHONY WHITE

-and-

GORDON WHITE

-and-

TERRY WHITE

-and-

TIMOTHY WHITE

-and-

JOHN WILBURN

-and-

BOBBIE WILLIAMS

-and-

EVERETT WILSON

-and-

SANDRA WILSON

-and-

DAVID WITHROW

-and-

JOHN WOLFE

-and-

LINDA WOODS

-and-

LISA WRIGHT

-and-

JACK YOUNG, JR.

PLAINTIFFS

v.

ASHLAND HOSPITAL CORPORATION  
d/b/a KING'S DAUGHTERS MEDICAL CENTER  
Serve: Sheryl Mahaney  
2201 Lexington Avenue  
Ashland, Kentucky 41101

-and-

KENTUCKY HEART INSTITUTE, INC.  
P.O. Box 151  
Ashland, Kentucky 41101  
d/b/a COMPREHENSIVE HEART & VASCULAR ASSOCIATES, INC.  
and d/b/a TRI-STATE VASCULAR SPECIALISTS  
and d/b/a CARDIOTHORACIC SURGEONS OF KENTUCKY  
and d/b/a KENTUCKY HEART SURGEONS  
and d/b/a KENTUCKY HEART & VASCULAR PHYSICIANS, INC.  
and d/b/a CUMBERLAND CARDIOLOGY  
and d/b/a KING'S DAUGHTERS DIAGNOSTIC CENTER  
and d/b/a TRI-STATE DIAGNOSTIC CENTER  
Serve: Sheryl Mahaney  
2201 Lexington Avenue  
Ashland, Kentucky 41101



-and-

RICHARD E. PAULUS, M.D., P.S.C.  
1330 Carter Avenue  
P.O. Box 551  
Ashland, Kentucky 41105

Serve: Dr. Richard E. Paulus  
1330 Carter Avenue  
P.O. Box 551  
Ashland, Kentucky 41105

-and-

Serve: Richard Paulus, M.D.  
613 23<sup>rd</sup> Street, Suite 230  
Ashland, Kentucky 41101

-and-

CUMBERLAND CARDIOLOGY, P.S.C.  
1330 Carter Avenue  
P.O. Box 551  
Ashland, Kentucky 41105

Serve: Dr. Richard E. Paulus  
1330 Carter Avenue  
P.O. Box 551  
Ashland, Kentucky 41105

-and-

Serve: Richard Paulus, M.D.  
613 23<sup>rd</sup> Street, Suite 230  
Ashland, Kentucky 41101

-and-

RICHARD PAULUS, M.D.  
613 23<sup>rd</sup> Street, Suite 230  
Ashland, Kentucky 41101

DEFENDANTS

\*\*\*\*\*

**COMPLAINT**

\*\*\*\*\*

Come the Plaintiffs: Eleanor McIntyre, Roberta Adams, Catherine Allen, Elizabeth Allen,

Larry Alltop, John Austin, Leslie Baer, Willard Bailey, Jack Baker, The Estate of Gina Yvette Barker by and through its Administrator Michael Barker, Bobby Beam, Mary Bell, Rosella Besco, Austin Biggs, Ronald Blake, Harvey Blankenship, Daniel Blevins, Lillie Blizzard, Jack Bloss, Jr., Angela Bocook, Lacy Bolen, Jeanetta Bolton, Jay Boyd, Ronald Bradford, James Bradley, The Estate of Vonda Branham Jackson by and through its Executor Thomas Jackson, Pamela Breece, The Estate of Cleo Russell Brown by and through its Co-Executrix Betty Baker and Mary Frantom, Frank Browning, Stephen Burkhart, Wilma Burns, Deanna Bush, The Estate of Jimmy Bush by and through its Administratrix Sherry Bush, Carroll Carmichael, The Estate of Alfred Carter by and through its Administrator Ruth Carter, Phillip Carter, The Estate of Fred Castle by and through its Administrator Phebie Castle, Janine Castle, Glennis Caudill, Leasa Church, Teresa Cole, Jeffrey Cooper, The Estate of Larry Cooper by and through its Administrator Leona Cooper, Jeff Cosby, Lora Cox, Millard Cox, The Estate of James Coyan, Sr. by and through its Administratrix Daisy Coyan, James Crabtree, II, Patricia Cunningham, The Estate of Roger Daniels by and through its Administrator William Daniels, Roberta Dasher, Lovada Day, Linda Deerfield, Sharon Delong, Albert Dennison, James Derrick, James Dials, Larry Dillon, Richard Dillon, Terri Dodson, The Estate of Maureen Dosier by and through its Administrator James Dosier, Shirley Dunn, Richard Duvendeck, The Estate of George Eldridge by and through its Administrator Arlene Gilliam, Bonnie Elliot, Jim Elswick, Judith Estep, Phyllis Estep, Rodney Estep, Ronald Faulkner, The Estate of Ricky Alan Flanery by and through its Administrator Anthony Flanery, Laurie Floyd, Reva Fritz, Bobby Furgeson, George Gardner, The Estate of James Gardner by and through its Administrator Pam Gardner, The Estate of William Gill by and through its Administratrix Garnett Gill, Ella Gillum, The Estate of Barbara Green by and through its Administrator Jerry Green, Thelma Green, Danny Greene, James

Griffin, Ronald Griffith, Alena Grimm, Hennrietta Grimmatt, Steven Grossl, William Guinther, Janice Hale, James Hall, John W. Hall, Deborah Hamrick, John Hancock, William Hancock, Michael Hardin, The Estate of Karen Harrison by and through its Administrator William Harrison, Gregory Harshbarger, Kayla Hatfield, Mark Helms, Richard Henderson, Philip Hieronimus, Brenda Hitchcock, The Estate of Emma Jean Holley by and through its Executrix Brenda Keathley, John Holmes, Brenda Hornsby, Linda Horton, The Estate of Robert Howard by and through its Executor Tim Howard, Paul Hutchinson, The Estate of Brenda Gail Ison by and through its Administrator Katie Richardson, Betty Jackson, Alissa James, Alvin Jarrell, Dorothy Jaynes, Sandra Jeffers, Denny Johnson, Fern Johnson, Garry Johnson, James Johnson, Billie Jones, Barbara Justice, Mark Justice, Joe Keelin, Ollie King, Nellavine Kirk, Thelma Lambert, Jerry Leach, Sandra Leadingham, Paula Leake, Larry Litteral, Donald Lucas, Misty Marcum, The Estate of Walter Marcum by and through its Administrator Thelma Booth, Shirley Marshall, Annette Maynard, Kenneth Maynard, Terrie Maynard, William Maynard, Cecil Mays, Delmer McCall, Wayna McCall, Larry McConaha, Ruth McCoy, Shelia McCoy, Charlotte McDowell, Rosa Meeks, The Estate of Dana Messer by and through its Administrator Kenny Messer, Melvin Miller, Donald Montgomery, Joey Moore, Dale Mootz, Sarah Morgan, Charlotte Morrison, Hazel Motter, Tammy Mullins, Kathy Muncy, Juanita Muncy, The Estate of Jack Thomas Newman by and through its Administrator Penny Newman, Lloyd Nye, Sherman Owens, Charles Parker, Janet Parsons, Gary Pauley, Kathy Payne, Phyllis Perry by and through her Guardian Ronald Perry, II, Roger Phillips, Lorsia Pollard, Steven Potter, Ray Powers, Steven Preston, Ralph Puckett, Jr., The Estate of Andrew Rabourn, Jr. by and through its Executor Patricia Rabourn, Sheila Ramey, Brian Reed, Rebecca Reeves, Bonita Rhodes, Jack Rice, Burma Riddle, Linda Riley, Sandra Riley, Robert Risley, The Estate of Robert W. Roberts by and

through its Administrator Lola Roberts, The Estate of Rick Rockel by and through its Administratrix Deborah Rockel, Barbara Rogers, Danny Rowe, James Runyon, Anna Jo Salyer, Howard Salyers, Susan Salyers, Timothy Sargent, Brenda Scaggs, Karen Scarberry, Charles Schuman, Patricia Scott, Larry Sexton, The Estate of William Sexton by and through its Administrator Desirae Sexton, The Estate of Donna Shepherd by and through its Administrator Shawn Shepherd, Kristi Kay Siders, James Siple, Christopher Skeens, Eleanor Skowronski, Larry Slone by and through his Power of Attorney Kelly Cox, The Estate of Ted Slone by and through its Executrix Tammy Sizemore, The Estate of Jimmy Dale Smith by and through its Executrix Joyce Ann Smith, The Estate of Ronald Sorrell by and through its Administratrix Barbara Sorrell, Hugh Sparks, Jennifer Sparks, The Estate of Phyllis Spears by and through its Administrator Paul Spears, Barry Speer, The Estate of Phillip Spriggs by and through its Executrix Anna Spriggs, Paul Sprouse, Terry Staats, Bryan Stamper, The Estate of Arnold Steele by and through its Administratrix Michelle Steele, Lorene Steele, Carol Stephens, Ralph Stephens, Sonya Stephens, Robert Stephenson, Charles Stevens, John Stevens, Leonard Stevens, The Estate of Thelma Stevens by and through its Administrator Charles Stevens, Michael Stewart, Virgil Stroud, Steven Taylor, Charles Terkhorn, Gary Terry, James Terry, Connie Thacker, Randall Thacker, Calvin Thomas, Robert Thompson, Wilma Toland, The Estate of Roy Forest Tucker by and through its Executrix Pamela Shaw, Shelia Ullom, Paula Van Hoose, The Estate of William Waddell by and through its Administrator Angela Waddell, James Waller, Amy Ward, Barbara Ware, Richard Washburn, Franklin Watts, Clifford Webb, Jr., The Estate of Penny Rose Webb by and through its Administrator Clifford Webb, The Estate of Roy Webb by and through its Executrix Pamela Cornwell, Kerron Weddington, Glenn Wellman, Anthony White, Gordon White, Terry White, Timothy White, John Wilburn, Bobbie Williams, Everett

Wilson, Sandra Wilson, David Withrow, John Wolfe, Linda Woods, Lisa Wright, and Jack Young, Jr. (collectively "Plaintiffs") by and through counsel:

and hereby sue and bring claims for negligence/gross negligence; lack of informed consent; negligent misrepresentation; fraud; fraudulent concealment; negligent hiring, credentialing, supervision and privileging; unjust enrichment; civil conspiracy; violation of Consumer Protection Act; and battery against Defendants, Ashland Hospital Corporation d/b/a King's Daughters Medical Center ("KDMC"); Kentucky Heart Institute, Inc., ("KHI") d/b/a Comprehensive Heart and Vascular Associates, Inc., d/b/a Tri-State Vascular Specialists, d/b/a Cardiothoracic Surgeons of Kentucky, d/b/a Kentucky Heart Surgeons, d/b/a Kentucky Heart & Vascular Physicians, Inc., d/b/a/ Cumberland Cardiology, d/b/a King's Daughters Diagnostic Center, and d/b/a Tri-State Diagnostic Center; Richard E. Paulus, M.D., P.S.C.; Cumberland Cardiology, P.S.C.; and Richard Paulus, M.D (collectively, "Defendants"), and in support thereof, state as follows:

### **INTRODUCTION**

1. This case arises out of the pattern and practice by Defendants of performing, allowing to perform, and billing for, medically unnecessary and harmful cardiac procedures such as percutaneous transluminal coronary angioplasty ("PTCA") with stenting, coronary artery bypass grafts ("CABG") and pacemaker and defibrillator implantation.
2. KDMC's cardiology service and certain physicians are currently under investigation by the United State Department of Justice for participating and facilitating the performance of unnecessary cardiac procedures.
3. Defendants in this case routinely misrepresented patients' cardiac conditions in order to justify the performance of procedures on the patients' hearts.

4. The overstating of the extent of disease allows Defendant healthcare providers to bill health insurance companies, federal and state governments, and the patients themselves, for hundreds of unnecessary procedures.

5. Plaintiffs have timely requested their medical records and cardiology films from KDMC, but KDMC has not provided the vast majority of Plaintiffs with complete copies of their medical records and cardiology films.

6. Plaintiffs have made numerous offers to assist KDMC in providing Plaintiffs' medical records and films including offers to provide copy machines and personnel to expedite the production of records. KDMC refused Plaintiffs offers.

7. Plaintiffs also extended an offer to KDMC to enter into a tolling agreement. KDMC refused.

8. As a result of KDMC's refusals and inability to produce Plaintiffs' records and films, Plaintiffs are forced to file suit.

9. Plaintiffs join in this action and assert their right to relief jointly, severally, or in the alternative, as Defendants' actions arise out of the same transaction or occurrence, or series of transactions or occurrences, and Plaintiffs' claims involve common questions of law and fact.

10. Not all Plaintiffs received treatment from Dr. Paulus; however, all Plaintiffs received care and treatment from KDMC. Plaintiffs have made a good-faith to effort to identify the dates and procedures performed on each Plaintiff and to include said information in Exhibit A, despite not receiving medical records from KDMC on the vast majority of Plaintiffs. Exhibit A represents the best information Plaintiffs can provide at this time given the records and films produced to Plaintiffs, as well as Plaintiffs own recollections. KDMC's inability to produce medical records, the death of some Plaintiffs, the onset or advancement of certain disease

processes, and/or the passage of time, have interfered with the ability of Plaintiffs to fully and completely provide each and every procedure they underwent, the date of each procedures and the doctor performing each procedure.

11. Plaintiffs reserve the right to subsequently amend, supplement, or modify Exhibit A and/or the allegations contained in this pleading as KDMC produces medical records and as further specific information is obtained during the course of this litigation.

12. To the extent KDMC, Dr. Paulus, and any other physician negligent/grossly negligently treated a Plaintiff and the spreadsheet attached as Exhibit A omits that procedure, the spreadsheet is not meant to waive any claims, as Defendants know which Plaintiffs the Defendants treated negligently, grossly negligently and/or performed unnecessary procedures upon.

13. Plaintiffs believe they have undergone various unnecessary procedures by physicians at KDMC. After receiving and having time to review their medical records, Plaintiffs can more fully identify the procedures and physicians.

#### **JURISDICTION AND VENUE**

14. The amount in controversy in this action exceeds the minimum jurisdictional limit of the Circuit Court of Boyd County, Kentucky, and jurisdiction and venue are proper in the Circuit Court of Boyd County, Kentucky.

#### **FACTS COMMON TO ALL COUNTS**

15. At all relevant times, Ashland Hospital Corporation owned and/or operated King's Daughters Medical Center.

16. At all relevant times, Defendant Paulus and other any other cardiologist and/or cardio-thoracic surgeon who performed the procedures listed on Exhibit A were the agents,

ostensible agents, apparent agents, servants, or employees of Ashland Hospital Corporation; King's Daughters Medical Center; Kentucky Heart Institute, Inc. and/or any of KHI's assumed names or d/b/a: Comprehensive Heart & Vascular Associates, Inc., Tri-State Vascular Specialists, Cardiothoracic Surgeons of Kentucky, Kentucky Heart Surgeons, Kentucky Heart & Vascular Physicians, Inc., Cumberland Cardiology, King's Daughters Diagnostic Center, Tri-State Diagnostic Center; Cumberland Cardiology, P.S.C; and/or Richard E. Paulus, M.D., P.S.C. (collectively, "Corporate Defendants").

17. As part of their businesses, Defendants held themselves and their actual and/or apparent employees out to Plaintiffs and the general public as able, competent, and qualified medical professionals who rendered and provided health care, treatment, and other services within the ordinary standards of care in their respective fields, including the fields of cardiology, interventional cardiology, and cardio-thoracic surgery. In so doing, Defendants owed a duty to Plaintiffs to exercise reasonable skill and care in performing cardiac procedures and in monitoring, supervising, training, and evaluating the conduct, skills and competencies of their employees and/or physicians to ensure that they possessed and complied with that degree of skill and knowledge ordinarily possessed by those who devote special study and attention to the practice of their selected fields of health care. Defendants had a duty to periodically review all employed and non-employed physician's conduct and procedures to ensure they were performing medically necessary procedures.

18. Defendants also owed all of their patients, including Plaintiffs, a duty to accurately and completely disclose all important medical information, including information regarding the degree of stenosis in a patient's coronary arteries, and whether medical intervention was appropriate or necessary.



19. Defendant physicians performed, and the other Defendants allowed them to perform, multiple unnecessary cardiac procedures on Plaintiffs.

20. On information and belief, Defendants dramatically misrepresented patients' cardiac conditions in order to justify the performance of cardiac procedures.

21. Defendants knowingly subjected such patients, including Plaintiffs, to significant medical risks with no countervailing benefit and procured consent to the procedure based on false representations that the procedure was necessary based on fraudulent concealment of medical facts.

22. The nurses, technicians, and staff in the cardiac catheterization lab at KDMC knew or should have known KDMC's employed and non-employed physicians were performing unnecessary and non-indicated procedures and they failed to prevent or report the physicians' actions.

23. At all relevant times, including during the procedures performed on these Plaintiffs, the actual and apparent employees or agents of KDMC and/or other corporate Defendants (including cardiac catheterization technicians, radiology technicians, and nurses) were physically present during each of the cardiac catheterizations and other cardiac procedures ordered and performed by its physicians in the catheterization lab. These employees had access to and reviewed the medical records, images, and charts of each of the patients who underwent cardiac catheterizations and other cardiac procedures in the catheterization lab, conducted and/or should have conducted pre-procedure workups of each of the patients who underwent cardiac catheterizations and other cardiac procedures ordered and performed by physicians, viewed and monitored the images of the hearts and vascular system of each of the patients who underwent cardiac catheterizations and other cardiac procedures, assisted physicians in the placement of

catheters and other instruments, and provided post-procedure care and treatment to each of the patients.

24. Despite the fact that they knew or should have known that KDMC's employees and non-employees were regularly ordering and performing unnecessary and non-indicated procedures, the Defendants allowed its employees and non-employees to order, perform, and bill for the procedures.

#### **THE PARTIES**

25. Ashland Hospital Corporation, D/B/A King's Daughters Medical Center is a Kentucky corporation with a principal office located at P.O. Box 151 Ashland, Kentucky 41101.

26. Kentucky Heart Institute, Inc. is a Kentucky Corporation with a principal office located at P.O. Box 151 Ashland, Kentucky 41101.

27. Richard E. Paulus, M.D., P.S.C. is a Kentucky professional services corporation with a principal office located at 1300 Carter Avenue, P.O. Box 551, Ashland, Kentucky 41105.

28. Cumberland Cardiology, P.S.C. is a Kentucky professional services corporation with a principal office located at 1300 Carter Avenue, P.O. Box 551, Ashland, Kentucky 41105.

29. In 2008 Kentucky Heart Institute, Inc. assumes the name Cumberland Cardiology.

30. Richard Paulus, M.D. is a physician licensed in Kentucky with a principal office located at 613 23<sup>rd</sup> Street, Suite 230, Ashland, Kentucky 41101.

#### **COUNT I** **NEGLIGENCE/GROSS NEGLIGENCE**

31. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

32. Defendants had a duty to exercise the degree of care and skill which a reasonably competent healthcare provider, medical group, or hospital, engaged in similar practice and similar circumstances, would use.

33. Defendants breached their respective duty or duties and were negligent or grossly negligent in their care and treatment of Plaintiffs by performing unnecessary cardiac procedures.

34. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

**COUNT II**  
**LACK OF INFORMED CONSENT**

35. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

36. Defendants were under a duty to provide Plaintiffs with informed consent before subjecting them to cardiac procedures, including but not limited to disclosure of material information regarding the risks, benefits, and alternatives to the proposed treatment, and disclosure that the risks of such treatment in each particular circumstance exceeded any possible benefit.

37. Defendants failed to provide such informed consent, but rather concealed material facts from Plaintiffs.

38. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

**COUNT III**  
**NEGLIGENT MISREPRESENTATION**

39. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

40. Defendants, owing a duty of care to Plaintiffs, negligently misrepresented and concealed the condition of Plaintiffs' hearts and negligently misrepresented that they would benefit from cardiac procedures.

41. Defendants intended Plaintiffs would rely upon and act upon Defendants misrepresentations and concealment by consenting to undergo the cardiac procedures.

42. Defendants knew Plaintiffs would probably rely upon their negligent medical advice, as they knew Plaintiffs would have opted to not undergo the procedures if Plaintiffs had been provided accurate medical information regarding their individual medical condition and the proposed procedures.

43. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

**COUNT IV**  
**FRAUD AND FRAUDULENT CONCEALMENT**

44. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

45. Defendants performed and billed for unnecessary and contraindicated procedures on Plaintiffs' hearts

46. Defendants fraudulently concealed from Plaintiffs that they did not require the cardiac procedures performed on them.

47. Defendants' false concealment of material information was made knowingly and/or with reckless disregard for their truth.

48. The fraudulent concealing of material information was intended to induce Plaintiffs to consent to the performance of cardiac procedures.

49. Defendants' misrepresentations and concealment were material to Plaintiffs' consent to the cardiac procedures.

50. Plaintiffs justifiably and reasonably relied on Defendants' misstatements and concealment—all done in the context of the healthcare provider-patient relationship of trust and confidence—in agreeing to undergo the unnecessary procedures. But for Defendants' misrepresentations and concealment, Plaintiffs would not have consented to the procedures.

51. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

**COUNT V**  
**NEGLIGENT HIRING, SUPERVISION, CREDENTIALING, AND PRIVILEGING**

52. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

53. Dr. Paulus and other physicians were the actual agents, ostensible agents, servants or apparent employees of Corporate Defendants.

54. Corporate Defendants granted hospital privileges to Dr. Paulus and other physicians, authorizing them to perform medical procedures including the services, treatment and surgery rendered to Plaintiffs.

55. Corporate Defendants owed a duty to Plaintiffs to train, supervise, credential, and privilege employees and/or physicians who were competent for the position and to supervise those employees in a reasonable manner.

56. Corporate Defendants had actual and/or constructive knowledge of Dr. Paulus' and other physicians' pattern and practice of ordering and performing unnecessary and medically inappropriate procedures, and failure to disclose such information to a patient.

57. Corporate Defendants failed to use reasonable care in hiring, supervising, credentialing, privileging, and retaining Dr. Paulus and other physicians.

58. Corporate Defendants deliberately failed to inquire, probe or examine the competency and conduct of Dr. Paulus and other physicians, because all profited and were enriched by their misconduct.

59. Corporate Defendants had an obligation to properly administer a program of quality control. Proper quality control would have resulted in stricter supervision of Dr. Paulus and other physicians and would have prevented Plaintiffs from being subjected to medically unnecessary procedures.

60. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

**COUNT VI**  
**CIVIL CONSPIRACY**

61. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

62. Defendants, by agreement among themselves and pursuant to a common design, committed tortious acts including, but not limited to, knowingly and unlawfully providing medical facilities and substantial assistance needed to perform, and did in fact perform, the unnecessary, non-indicated and unlawful procedures on Plaintiffs.

63. This agreement or understanding allowed all Defendants to benefit financially from unnecessary and non-indicated procedures, and was likely in violation of Kentucky and federal laws regarding kickbacks and referrals.

64. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

**COUNT VII**  
**UNJUST ENRICHMENT**

65. Plaintiffs hereby reassert and incorporate by reference the allegations contained in this Complaint as if set forth herein.

66. At all times material hereto, the Defendants received financial benefits for the performance of medically unnecessary and harmful cardiac procedures.

67. At all times material hereto, the Defendants and their physicians represented to Plaintiffs that the cardiac procedures were necessary, when in fact the Defendants knew that their representations were medically unnecessary and harmful to Plaintiffs.

68. At all times material hereto, the Defendants knew that if they advised Plaintiffs of the risks involved with performing these medically unnecessary cardiac procedures, Plaintiffs would not have consented to the procedures. Therefore, Plaintiffs relied on the false representations of the necessity of these cardiac procedures without knowing of the risk to their health.

69. At all times material hereto, the Defendants failed to disclose to Plaintiffs material facts concerning the harmful effects of the cardiac procedures to Plaintiffs.

70. At all times material hereto, the Defendants knew that if they advised Plaintiffs of the risks to their health by consenting to and undergoing the unnecessary procedures, Plaintiffs would refuse to consent to the Defendant's performance of these procedures. As a result, the Defendants have been unjustly enriched, through profits, bonuses and incentive payments earned by not properly advising Plaintiffs of the risks associated with undergoing unnecessary cardiac procedures.

**COUNT VIII**  
**CONSUMER PROTECTION ACT**

71. Plaintiffs adopt, reiterate and incorporate herein by reference all allegations contained in the other paragraphs of this Complaint.

72. Plaintiffs obtained services from the Defendants primarily for their individual personal purposes.

73. Defendants engaged in unfair, false, misleading and/or deceptive acts or practices in holding themselves out as safe and competent providers of cardiac medical care, all in violation of KRS 367.170.

74. Plaintiffs suffered ascertainable losses as a result of the Defendants unfair, false, misleading and/or deceptive acts or practices.

75. Each individual Plaintiff is within the class of persons intended to be protected by the Kentucky Consumer Protection Act, KRS 367 *et seq.*

76. Each individual Plaintiff has suffered actual damages as alleged in this Complaint as a result of the Defendants violation of KRS 367.170, which they are entitled to recover pursuant to KRS 367.220.

77. Plaintiffs are entitled to recover reasonable attorney's fees and costs of litigation pursuant to KRS 367.220(3).

**COUNT IX**  
**BATTERY**

78. Plaintiffs adopt, reiterate and incorporate herein by reference all allegations contained in the other paragraphs of this Complaint.



79. At all times material hereto, the Defendants represented to Plaintiffs that the cardiac procedures were necessary, when in fact the Defendants knew that their representations were medically unnecessary and harmful to Plaintiffs.

80. Defendants performed unnecessary and unlawful cardiac medical procedures on all Plaintiffs.

81. These unnecessary and unlawful procedures necessarily required the Defendants to physically touch Plaintiffs.

82. Had the Defendants represented to the Plaintiffs that the cardiac procedures were in fact not necessary, they would not have given consent for the touching necessary for the performance of the procedures.

83. As a direct, proximate and foreseeable result of Defendants' conduct Plaintiffs suffered harm as set forth below.

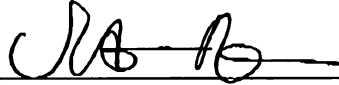
### INJURY

84. As a direct, proximate and foreseeable result of Defendants' conduct, Plaintiffs suffered harm, including by not limited to: unnecessary, painful and dangerous cardiac procedure, serious, painful and permanent injuries to mind and body, and great physical and mental pain and suffering. As a further result of Defendants' misconduct, Plaintiffs are now and will always be at risk for future cardiac interventions, continue to live lives of greatly diminished quality, have incurred unnecessary medical expenses and will continue to incur substantial medical costs, and sustained other pecuniary and non-pecuniary losses past, present and future.

**WHEREFORE**, all Plaintiffs demand judgment against all Defendants, jointly and severally, for compensatory and punitive damages; interest; trial by jury; for costs herein

expended; including but not limited to attorney's fees and emotional distress, loss of power to labor and earn; and for any and all further relief to which Plaintiffs may appear entitled.

Respectfully submitted,



---

Hans G. Poppe  
Warner T. Wheat  
Scarlette R. Burton  
Kirk A. Laughlin  
The Poppe Law Firm  
8700 Westport Road, Suite 201  
Louisville, Kentucky 40242  
(502) 895-3400  
(502) 895-3420 (f)



for William Wilhoit  
with permission

---

William H. Wilhoit  
103 South Hord  
P.O. Box 35  
Grayson, Kentucky 41132-0035  
(606) 474-8833

Counsel for Plaintiffs