

COMMONWEALTH OF KENTUCKY
BOYD CIRCUIT COURT
32ND JUDICIAL CIRCUIT
DIVISION II
CIVIL ACTION NO. H. CT. 160

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

ELBERT ROSS

PLAINTIFFS

and

DIANA ADAMS

and

WILLIAM ADAMS

and

MINNIE ALLEY

and

ROBERT ANDERS

and

WILLIAM ANDERSON

and

DEANNA ARNOLD

and

TRENT BALDRIDGE

and

WILLIAM H. BARE

and

WILLIAM T. BARE

and

BOBBY BARKER

and

SHARON BARNETT

and

PATRICIA BENTLEY

and

BARBIE BLEVINS

and

GENEVA BOLEY

and

PATRICIA BOWLING

and

ERIC BRADSHAW

and

BILLY BRAMMER

and

RONALD BRAMMER

and

DONALD BREWSTER

and

BRYAN BRIGNER

and

CONNIE BROWN

and

REBECCA BROWN

and

SHANNON BRUCE

and

GARY CALLICOAT, SR.

and

GARY CALLIHAN

and

ROBERT CANIFF

and

MIKE CARLEY

and

JOHN D. CARPER

and

JOHN M. CARPER

and

JANET CASELL

and

VIVIAN OPAL CAUDILL

By and through her Power of Attorney, James Caudill

and

JONATHAN CHAFIN

and

CINDA CHARLTON

and

CHERYL CHILDERS

and

JAMES CHURCH

and

ELIJAH COLLINS

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CAROL CONLEY

and

LLOYD CONLEY

and

PAULINE CONN

and

RHONDA CORDLE

and

PAUL CUNNINGHAM

and

ROGER DALE DANIELS

and

AARON DAVIS

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CHRISTOPHER DAVIS

and

RALPH DEER

and

KEVIN DEFOE

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CHARLES DELONG

and

LINDA DENNISON

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CLARENCE DEPRIEST

and

ORA DICKESS

and

CHARLENE DIXON

and

FRANCES DODDRIDGE

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ELBERT DUTTON

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DEBRA EARLE

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GARY EDWARDS

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SHERYL EDWARDS

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BARRY ELLIOTT

and

CONNIE ERWIN

and

RANDY ESTEP

and

JOHNNY EVANS

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LINDA EVANS

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PHILLIP EVANS

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RHEDA EVANS

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RAENOTTA FANNIN

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NAOMI FELTY

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GLENDON FITZPATRICK

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THOMAS FLETCHER

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LAWRENCE FRAZER

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GEORGE GALLION

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BOBBIE GARRETT

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RICKEY GIBBS

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PATRICIA GLASS

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TIMOTHY GOLDIE

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ARCHIE GRAHAM

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SAMMY GRAY

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VICKIE GREGORY

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JANICE GULLETT

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HURSHEL HAGLEY

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ANNALEA HALL

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CREED HALL

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ROBERT HALL

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GLEND A HARLEN

and

WILLIAM HARLISS

and

MARY HARMON

and

DEBORAH HATFIELD

and

JANE HIERONIMUS

and

ROBERT HILL

and

DANIEL HOGAN

and

ARTHUR HOLBROOK

and

DAVID HOLBROOK

and

JAMES HOLBROOK

and

DEBRAH HOLCOMB

and

PAMELA HOOD

and

JIM HOWARD

and

GARY HUNT

and

APRIL ICENHOWER

and

RICKY INGRAM

and

MAX ISON

and

MARK JAMISON

and

DANNY JAYJOHN, SR.

and

GARY JENKINS

and

RONNIE JENKINS

and

MARGARET JOBIN

and

HOMER JOHNSON

and

LARRY JOHNSON

and

ORVILLE JONES, JR.

and

JULIA JONES

and

MALINDA JONES

and

NATHAN JUDE

and

LYDIA JUSTICE-EDWARDS

and

JAYSON KINDHART

and

GARY KIPP

and

RICHARD KOUNS

and

BETTY LAMB

and

LARRY LAYNE

and

FREDERICK LEFFINGWELL

and

AMANDA LEMASTER

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EILEEN LEWIS

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JAMES LEWIS

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CARRIE LOCKHART

and

AMBROSE LONG

and

JOHN LONG

and

TERRY LOWE

and

NOELLA MANGUS

and

KENNETH MARSILLET

and

SUSAN MARTIN

and

CHARLES MAYNARD

and

JOANN MAYNARD

and

TENNIS MAYNARD

and

DAVID MAYS

and

GEORGE McGHEE

and

RICK McGRANAHAN

and

CHRYSTAL McKENZIE

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SHANNON McKINNEY

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KAY McVEY

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LARRY MEDCALF

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TIMOTHY MEDDINGS

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BRENDA MEIKLE

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MICHAEL MORGAN

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NEWT MULKEY

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GENEVA MULLINS

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JEANNIE MURPHY

and

JEPSY BRYAN MURRELL

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TIMOTHY NICHOLAS

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SHEILA NICHOLS

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JOHN NIXON

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GRADY PACK

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DELBERT PANCAKE

and

TERRY PENNINGTON

and

JOHN PETTY

and

BEVERLY PICKLESIMER

and

MICHELL PICKLESIMER

and

PHYLLIS PRATT

and

MARK PURYEAR

and

LAWRENCE RATLIFF

and

KENNETH REEVES

and

ANGELA RENEAU

and

JOHN RICE

and

CECIL RIGGS, SR.

and

LEONARD RISNER

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ROGER RISTER

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SALLY ROACH

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JOHN ROBERT

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BOBBY ROBERTSON

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TOMMY RODGERS

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ALLAN ROE

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BENNIE ROSE

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MICHELLE ROUSH

and

JOHNNY ROWE

and

PATRICIA RUTHERFORD

and

DAVID SALYERS, SR.

and

TIMOTHY SCAGGS

and

DAVID SCARBERRY

and

GERTRUDE SCARBERRY

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EDDIE SCOTT

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INA SCOTT

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RICK SCOTT

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HELEN SEAGRAVES

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WILLIAM SEEK

and

DONALD SENSABAUGH

and

CHARLES SESHER

and

DENNIS SEXTON

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PAUL SINGLETON

and

BARBARA SIZEMORE

and

KATHY SLONE

and

CONSTANCE SMITH

and

MERLIN SMITH

and

MILDRED CHAFFINS-SMITH

and

PHYLLIS SMITH

and

JACQUELINE SNYDER

and

CHARLES SPEARS

and

DEBORAH SPEARS

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TEDDY SPEARS

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BETTY SPILLMAN

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ANNA SPRIGGS

and

HAL SPURLOCK

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HANSFORD STAPLETON, SR.

and

RUSH STARR

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JACKY STEELE

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PAULINE STEPHENS

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JAMES STEPP

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DAVID STEVENS

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GREGORY STEVENS

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YETTA STEVENS

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JAMES STILL

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RONALD STONE

and

ALLEN TACKETT

and

LONNIE TACKETT

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RAY TACKETT

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CHARLES TAYLOR

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CHARLES RICHARD TAYLOR

and

DORIS TAYLOR

and

JIMMIE THAYER

and

VIRGINIA THOMAS

and

CAROLYN THOMPSON

and

JOHN THOMPSON

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TODD THOMPSON

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ANGELA THORNESBERRY

and

CHARLES THORNTON

and

BETTY TUMBLESON

and

SHIRLEY TURNER

and

JAMES TWINAM

and

REBECCA UNDERWOOD

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RONALD VAN BIBBER

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DEBORAH VAN HORN

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ORTAN VIA

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RONALD VINCENT

By and through his Power of Attorney, Angela Vincent

and

GEORGE VIRGIN

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GLEN WAGGH

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DANNY WAGNER

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BARBARA WALIZER

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STEPHEN WALKER

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and

DIXIE WATTS

and

LINDA WATTS

and

WAYNE WEBB

and

BILL WELLS

and

TEMPHRA WILLIAMS-COLLINS

and

BARBARA WILLIAMS

and

LORI WILLIAMS

and

HENRY WILLIS

and

WILLIAM WITHROW

and

AMY WOLFE

and

MARY WOLFORD

and

PATRICIA YATES

and

WALTER YORK

and

JOHN YOUNCE

and

DONNA YOUNG

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
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RICHARD PAULUS, M.D.
613 23rd Street, Suite 230
Ashland, Kentucky 41101

DEFENDANTS

COMPLAINT

Come the Plaintiffs: Elbert Ross, Diana Adams, William Adams, Minnie Alley, Robert Anders, William Anderson, Deanna Arnold, Trent Baldrige, William H. Bare, William T. Bare, Bobby Barker, Sharon Barnett, Patricia Bentley, Barbie Blevins, Geneva Boley, Patricia Bowling, Eric Bradshaw, Billy Brammer, Ronald Brammer, Donald Brewster, Bryan Brigner,

Connie Brown, Rebecca Brown, Shannon Bruce, Gary Calliccoat, Sr., Gary Callihan, Robert Caniff, Mike Carley, John D. Carper, John M. Carper, Janet Casell, Vivian Opal Caudill by and through her Power of Attorney James Caudill, Jonathan Chafin, Cinda Charlton, Cheryl Childers, James Church, Elijah Collins, Carol Conley, Lloyd Conley, Pauline Conn, Rhonda Cordle, Paul Cunningham, Roger Dale Daniels, Aaron Davis, Christopher Davis, Ralph Deer, Kevin Defoe, Charles Delong, Linda Dennison, Clarence Depriest, Ora Dickess, Charlene Dixon, Frances Doddridge, Elbert Dutton, Debra Earle, Gary Edwards, Sheryl Edwards, Barry Elliott, Connie Erwin, Randy Estep, Johnny Evans, Linda Evans, Phillip Evans, Rheda Evans, Raenotta Fannin, Naomi Felty, Glendon Fitzpatrick, Thomas Fletcher, Lawrence Frazer, George Gallion, Bobbie Garrett, Rickey Gibbs, Patricia Glass, Timothy Goldie, Archie Graham, Sammy Gray, Vickie Gregory, Janice Gullett, Hurshel Hagley, Annalea Hall, Creed Hall, Robert Hall, Glenda Harlen, William Harliss, Mary Harmon, Deborah Hatfield, Jane Hieronimus, Robert Hill, Daniel Hogan, Arthur Holbrook, David Holbrook, James Holbrook, Debrah Holcomb, Pamela Hood, Jim Howard, Gary Hunt, April Icenhower, Ricky Ingram, Max Ison, Mark Jamison, Danny Jayjohn, Sr., Gary Jenkins, Ronnie Jenkins, Margaret Jobin, Homer Johnson, Larry Johnson, Orville Jones, Jr., Julia Jones, Malinda Jones, Nathan Jude, Lydia Justice-Edwards, Jayson Kindhart, Gary Kipp, Richard Kouns, Betty Lamb, Larry Layne, Frederick Leffingwell, Amanda LeMaster, Eileen Lewis, James Lewis, Carrie Lockhart, Ambrose Long, John Long, Terry Lowe, Noella Mangus, Kenneth Marsillett, Susan Martin, Charles Maynard, Joann Maynard, Tennis Maynard, David Mays, George McGhee, Rick McGranahan, Chrystal McKenzie, Shannon McKinney, Kay McVey, Larry Medcalf, Timothy Meddings, Kenneth Meddock, Brenda Meikle, Rebecca Messer, Clarence Miller, Clay Miller, Roger Miller, David Mollett, Charlene Morgan, Michael Morgan, Newt Mulkey, Geneva Mullins, Jeannie Murphy, Jepsy Bryan Murrell, Timothy Nicholas, Sheila Nichols, John Nixon, Grady Pack, Delbert Pancake,

Terry Pennington, John Petty, Beverly Picklesimer, Michell Picklesimer, Phyllis Pratt, Mark Puryear, Lawrence Ratliff, Kenneth Reeves, Angela Reneau, John Rice, Cecil Riggs, Sr., Leonard Risner, Roger Rister, Sally Roach, John Robert, Bobby Robertson, Tommy Rodgers, Allan Roe, Bennie Rose, Michelle Roush, Johnny Rowe, Patricia Rutherford, David Salyers, Sr., Timothy Scaggs, David Scarberry, Gertrude Scarberry, Eddie Scott, Ina Scott, Rick Scott, Helen Seagraves, William Seek, Donald Sensabaugh, Charles Seshier, Dennis Sexton, Paul Singleton, Barbara Sizemore, Kathy Slone, Constance Smith, Merlin Smith, Mildred Chaffins-Smith, Phyllis Smith, Jacqueline Snyder, Charles Spears, Deborah Spears, Teddy Spears, Betty Spillman, Anna Spriggs, Hal Spurlock, Hansford Stapleton, Sr., Rush Starr, Jacky Steele, Pauline Stephens, James Stepp, David Stevens, Gregory Stevens, Yetta Stevens, James Still, Ronald Stone, Allen Tackett, Lonnie Tackett, Ray Tackett, Charles Taylor, Charles Richard Taylor, Doris Taylor, Jimmie Thayer, Virginia Thomas, Carolyn Thompson, John Thompson, Todd Thompson, Angela Thornesberry, Charles Thornton, Betty Tumbleson, Shirley Turner, James Twinam, Rebecca Underwood, Ronald Van Bibber, Deborah Van Horn, Ortan Via, Ronald Vincent by and through his Power of Attorney Angela Vincent, George Virgin, Glen Waggh, Danny Wagner, Barbara Walizer, Stephen Walker, Janet Walters, Dixie Watts, Linda Watts, Wayne Webb, Bill Wells, Tempyra Williams-Collins, Barbara Williams, Lori Williams, Henry Willis, William Withrow, Amy Wolfe, Mary Wolford, Patricia Yates, Walter York, John Younce, and Donna Young, 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 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 procedure 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 KDCM's employed and non-employed physician's 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 23rd 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,



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