IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

S.K., a legally incapacitated Minor by and through his Conservator, THOMAS T. TARBOX, Esq.; and KATHLEEN KROMPHARDT, Individually, and ANDREW KROMPHARDT, Individually	)	**Case No.: LACV081421**
Plaintiffs,	)	**THIRD AMENDED PETITION AND JURY DEMAND**
v.	)	
MERCY HOSPITAL, IOWA CITY, IOWA d/b/a MERCY HOSPITAL d/b/a MERCY IOWA CITY, and JILL C. GOODMAN, M.D., and OBSTETRIC AND GYNECOLOGIC ASSOCIATES OF IOWA CITY AND CORALVILLE, P.C.	)	
Defendants.	)	

NOW COME the Plaintiffs, S.K., a legally incapacitated Minor by and through his Conservator, THOMAS T. TARBOX, Esq.; and KATHLEEN KROMPHARDT, Individually; and ANDREW KROMPHARDT, Individually, and herein state as follows:

JURISDICTION

1. Plaintiff S.K. is a minor, residing in Iowa City, Johnson County, Iowa.

2. On or about October 9, 2019, attorney Thomas T. Tarbox was appointed Conservator of S.K. in the Iowa District for Johnson County (Case No.: 06521 GCPR033002).

3. Plaintiff Andrew Kromphardt (hereinafter "Mr. Kromphardt") is the natural father of S.K., residing with him in Iowa City, Johnson County, Iowa.

4. Plaintiff Kathleen Kromphardt (hereinafter "Mrs. Kromphardt") is the natural mother of S.K., residing with him Iowa City, Johnson County, Iowa.

5. At all material times herein, a health care provider/patient relationship existed between both Kathleen Kromphardt and her unborn baby, and Defendant Mercy Hospital, Iowa City, Iowa d/b/a Mercy Hospital d/b/a Mercy Iowa City (hereinafter "Defendant Hospital").

6. At all material times herein, a health care provider/patient relationship existed between both Kathleen Kromphardt and her unborn baby, and Defendant Jill Goodman, M.D. (hereinafter "Defendant Goodman").

7. At all material times herein, a health care provider/patient relationship existed between both Kathleen Kromphardt and her unborn baby, and Defendant OB-GYN Associates, P.C. (hereinafter "Defendant Clinic").

8. Defendant Hospital is an Iowa corporation, incorporated under the laws of the state of Iowa, doing business as a hospital in Iowa City, Johnson County, Iowa, and is liable for the actions and inactions of its agents and/or employees whether physicians, residents, nurses, and/or other healthcare providers, including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D., and/or other healthcare providers, including administrative staff *vis a vis* their actual employment, *respondeat superior*, apparent agency, and/or other applicable theories of vicarious liability.

9. At all times relevant herein, Defendant Hospital did hold itself out to the general public, and especially to the Plaintiff-minor herein and his mother, Mrs. Kromphardt, that it was conducting a safe place of business, that it was competent, careful, and experienced in the care of pregnant women and newborn patients, and that it would provide medical and delivery care and treatment in accordance with the standard of practice of this and similar medical communities. Furthermore, Defendant Hospital represented that its agents and employees, including but not

limited to the physicians, residents, and nurses that were on its staff, including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D., and/or other healthcare providers would perform the proper and necessary medical care and treatment and/or labor and delivery treatment in accordance with the standards of practice for said health care providers in the same or similar circumstances as each named health care provider herein.

10. Defendant Clinic is an Iowa corporation, incorporated under the laws of the state of Iowa, doing business as a provider of healthcare services in Coralville, Johnson County, Iowa, and is liable for the actions and inactions of its agents and/or employees whether physicians, residents, nurses, and other healthcare providers, including but not limited to, Defendant Goodman and/or other nurses and staff, including administrative staff *vis a vis* their actual employment, *respondeat superior*, apparent agency, and/or other applicable theories of vicarious liability.

11. At all times relevant herein, Defendant Clinic did hold itself out to the general public, and especially to the Plaintiff-minor herein and his mother, Mrs. Kromphardt, that it was conducting a safe place of business, that it was competent, careful, and experienced in the care of pregnant women and newborn patients, and that it would provide labor and delivery care and treatment in accordance with the standard of practice of this and similar medical communities. Furthermore, Defendant Clinic represented that its agents and employees, including but not limited to the physicians, residents, and nurses that were on its staff, including but not limited to Defendant Goodman and/or other labor and delivery healthcare providers would perform the proper and necessary medical care and treatment and/or labor and delivery treatment in accordance with the standards of practice for said health care providers in the same or similar circumstances as each named health care provider herein.

12. Upon information and belief, at all times material herein Defendant Goodman was and is physician, licensed to practice obstetrics and gynecology in the State of Iowa, and maintained employment whose principal place of business was, at all relevant times, located in Johnson County, Iowa.

13. Defendant Goodman, individually and in her capacity at Defendant Hospital and/or Defendant Clinic held herself out to the public as being a competent, careful, and experienced obstetrician and gynecologist in the care of pregnant women and newborn patients and that she would provide labor and delivery care and treatment in accordance with the standard of practice of this and similar medical communities.

14. At all times relevant, Defendant Goodman acted individually and as the actual, apparent, and/or ostensible agent, servant and/or employee of Defendant Hospital and/or Defendant Clinic and acted within the scope of such agency, service, and/or employment.

15. At all times relevant, each and all of the Defendants acted individually, jointly, and as the actual, apparent, and/or ostensible agents, servants and/or employees of the other and within the scope of their agency and/or employment.

16. That Defendant Hospital is/was vicariously liable for the acts and/or omissions of their actual, apparent and/or ostensible agents, servants and/or employees including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D. and/or other healthcare providers, who provided obstetrical care to Mrs. Kromphardt and Baby S.K.

17. That Defendant Clinic is/was vicariously liable for the acts and/or omissions of their actual, apparent and/or ostensible agents, servants and/or employees, including but not limited to Defendant Goodman, who provided obstetrical care to Mrs. Kromphardt and Baby S.K.

18. The negligent acts and/or omissions complained of herein occurred in Johnson County, Iowa.

19. The amount in controversy exceeds the small claims jurisdictional amount.

FACTS

20. After becoming pregnant with her third child, Mrs. Kromphardt received prenatal care primarily from Defendant Clinic and Defendant Goodman.

21. Mrs. Kromphardt received prenatal care on dates including but not limited to 1/9/18; 2/8/18; 3/8/18; 4/5/18; 5/3/18; 5/30/18; 6/21/18; 7/5/18; 7/19/18; 7-25-18; 8/3/18; 8/8/18; 8/10/18.

22. Mrs. Kromphardt's estimated date of confinement was determined to be August 14, 2018 per 20-week ultrasound.

23. That the unborn Baby S.K.'s prenatal condition on dates prior to approximately August 11, 2018 was unremarkable and that he was neurologically intact prior to that date.

24. On the afternoon of August 11, 2018, at or around 13:00, Mrs. Kromphardt was admitted to Defendant Hospital with complaints of painful contractions. At this time Mrs. Kromphardt was 39 years old, G3P2, at approximately 39 4/7 weeks gestation.

25. Following admission, electronic fetal monitoring (EFM) was implemented at or about 13:11.

26. Mrs. Kromphardt was admitted under the care of Defendant Goodman, as attending physician, as well as other healthcare providers at Defendant Hospital.

27. Elizabeth Harl, R.N. ("Nurse Harl") was the primary labor nurse providing care and treatment during Mrs. Kromphardt's labor and delivery.

28. Shortly following admission at or about 13:00 on August 11, 2018, Defendant Goodman performed a vaginal exam, and appreciated Mrs. Kromphardt to be 7cm dilated.

29. At or about 13:30 on August 11, 2018 Defendant Goodman assessed the patients at bedside, performed a vaginal exam and appreciated Mrs. Kromphardt to be 9cm dilated, and instructed Mrs. Kromphardt to push to see if the cervix would push away.

30. At or about 14:00 on August 11, 2018 Mrs. Kromphardt requested an epidural. Also at or about this time both Defendant Goodman and the nurse were at bedside, a fetal spiral electrode (FSE) was placed, and prolonged decelerations were appreciated.

31. At or about 14:10 on August 11, 2018 the EFM was assesses and prolonged decelerations were appreciated.

32. At or about 14:20 on August 11, 2018 Terbutaline was administered pursuant to Defendant Goodman's order. Also at or about this time, Mrs. Kromphardt was prepped for and administered an epidural.

33. Following administration of the epidural, Mrs. Kromphardt demonstrated decreased blood pressures including but not limited to the following: 119/51, 118/50, 115/44, 102/48, 97/28, 94/47, 116/48, 98/54, 103/44, 93/40, 101/39, 102/40, and 99/36.

34. At or about 14:30 on August 11, 2018 Nurse Harl assessed the patients and appreciated the following: fetal heartrate (FHR) baseline 120bpm, moderate variability, prolonged decelerations, and contraction frequency 2-3 minutes.

35. At or about 15:30 on August 11, 2018 Nurse Harl assessed the patients and appreciated the following: FHR baseline 130bpm, moderate variability, prolonged and variable decelerations, and contraction frequency 2-3 minutes.

36. At or about 15:50 on August 11, 2018 Nurse Harl assessed the patients and appreciated prolonged decelerations. At or about this time, Dr. Goodman was notified.

37. At or about 16:00 on August 11, 2018 Defendant Goodman arrived at bedside and Mrs. Kromphardt began pushing using the "tug-o-war method." It was noted that the baby was not tolerating pushing. Also, at this time Nurse Harl assessed the patients and appreciated the following: FHR baseline 155bpm, moderate variability, variable decelerations, and contraction frequency 2-3 minutes.

38. Baby S.K. was in the occiput posterior position. Defendant Goodman and/or another healthcare provider attempted to manually rotate Baby S.K. without success.

39. At or about 16:05 on August 11, 2018 Defendant Goodman unsuccessfully attempted to deliver Baby S.K. by applying forceps to his head. Defendant Goodman thereafter requested a vacuum.

40. At or about 16:07 on August 11, 2018 Defendant Goodman applied a vacuum to Baby S.K.'s head and attempted vacuum-assisted delivery.

41. At or about 16:09 on August 11, 2018 Baby S.K. was delivered via vaginal delivery weighing 6lb 10oz.

42. At birth Baby S.K. was assigned APGARs of 5, 7, and 9 at 1, 3, and 5 minutes respectively, demonstrated respiratory distress, and required resuscitation including positive pressure ventilation (PPV) and continuous positive airway pressure (CPAP).

43. At birth, Baby S.K. was observed to have caput, molding, overriding sutures, ecchymosis to the left ear, and an indentation to the left side of the head/skull measuring approximately 6.5cm x 6cm.

44. Following birth cord blood was analyzed, which was reported as including an arterial pH of 7.22 and base deficit of 8, which is consistent with metabolic acidosis.

45. Following birth on August 11, 2018 Baby S.K. underwent a brain CT scan, wherein the treating radiologist observed the presence of subgaleal hematoma, deformation and fracture of the skull, subdural hemorrhage, cephalohematoma, and subarachnoid hemorrhage.

46. On August 12, 2018 Baby S.K. underwent a brain MRI wherein the treating radiologist again observed the presence of skull fracture and intracranial hemorrhage.

47. Baby S.K. suffered numerous seizures in the immediate newborn period.

48. At or about 18:20 on August 11, 2018 Baby S.K. was transferred from Defendant Hospital to the University of Iowa Hospital (hereinafter "UIHC"). At UIHC, Baby S.K. was diagnosed with ischemic brain injury, seizures, facial nerve palsy, subgaleal hemorrhage, subarachnoid hemorrhage, and skull fracture with subdural hemorrhage.

49. On November 8, 2018 Baby S.K. received ventriculoperitoneal shunt placement surgery, requiring a permanent system in his head for the rest of his life.

50. Aafter spending the first approximately forty-six days of his life in the NICU at UIHC, Baby S.K. was discharged on or about September 26, 2018.

51. During Mrs. Kromphardt's labor, non-reassuring signs developed which required changes in the plan of care, including but not limited to abandonment of attempts at vaginal delivery, and earlier delivery via cesarean section—which were not done and were below the standard of care.

52. The risk of injury to Baby S.K. was unreasonably high, and the labor team either knew or should have known that the failure to properly and timely deliver Baby S.K. subjected

him to said serious and unreasonable risks, including, but not limited to permanent traumatic and/or hypoxic-ischemic brain damage and even death.

53. Had Baby S.K. been delivered sooner as required by the standard of care he would be neurologically intact and would have avoided injury. Instead, Baby S.K. suffered permanent brain damage near the time of his delivery.

54. One or more of the herein negligent acts and/or omissions directly and proximately caused S.K. to suffer hypoxia-ischemia, acidosis, trauma, seizures, permanent brain damage, and his resultant condition.

55. Upon information and belief, Baby S.K.'s current condition includes permanent brain damage, developmental delay, mental and motoric deficits, which caused and will continue to cause severe pain, suffering, disfigurement, disability, and loss of a normal life.

56. Upon information and belief, Baby S.K. will be permanently disabled and will need extensive care, treatment, and/or therapies including full time attendant care, and that he is not likely to be competitively employed.

COUNT I: Negligence of Defendant Hospital

57. Plaintiffs incorporate all of the paragraphs above as if set forth fully herein.

58. That during the year 2018 and at material times herein Defendant Hospital was offering to the public obstetrical and gynecological services by and through its actual, ostensible, and/or apparent agents, servants, and/or employees including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D., and/or other healthcare providers in Johnson County, Iowa.

59. That on or about August 11, 2018 and at all material times herein Defendant Hospital, by and through its nurses, physicians, other healthcare providers, and/or its actual,

ostensible, and/or apparent agents, servants, and/or employees, including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D., and/or other healthcare providers, did undertake the care of Mrs. Kromphardt and Baby S.K., both *in utero* and thereafter, during the course of the prenatal, intrapartum, neonatal, and/or postpartum periods.

60. That on or about August 11, 2018 and at all material times herein it then and there became the duty of Defendant Hospital, individually, and/or by and through its physicians, nurses, staff, and/or its actual, ostensible, and/or apparent agents, servants, and/or employees, including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D., and/or other healthcare providers, to exercise that degree of reasonable care and skill exercised by like health care professionals, hospitals, physicians and nurses of good standing providing obstetrical and newborn care under the same or similar circumstances.

61. After assuming the care and treatment of Mrs. Kromphardt and Baby S.K., the Defendant Hospital, by and through its physicians, nurses, other healthcare providers, and/or its actual, ostensible, and/or apparent agents, servants, and/or employees, including but not limited to Jill Goodman, M.D., Elizabeth Harl, R.N., Moria Lewis, R.N., Kim Widmer, R.N., Morgan Keck, R.N., Moria Lewis, R.N., Walter Maley, M.D., and/or other healthcare providers, deviated from the generally accepted standards of care and were then and there guilty of one or more of the following negligent acts and/or omissions:

a. Failure to carefully and completely advise the patient of her condition and that of her unborn baby;
b. Failure to obtain adequate informed consent;
c. Failure to properly manage this patient's labor and delivery;
d. Failure to be aware of the increased risks attendant to this labor and delivery, including but not limited to changes of the fetal heart monitor,

occiput posterior position, and maternal hypotension, which could make continued labor unreasonably dangerous to the mother and baby, and communicate said risks to the other nurses and physicians during the admission, and advocate for changes in the plan of care;

e. Failure to avoid the increased risks attendant to this labor and delivery and provide careful monitoring of the fetal and/or maternal condition;
f. Failure to timely assess the intrapartum fetal status including but not limited to the fetal heart monitor tracing and changes therein which were indicative of deterioration of the fetal status including but not limited to hypoxia and/or ischemia which necessitated interventions to correct and should said interventions fail to improve the condition, failure to advocate for and/or perform earlier delivery via cesarean section;
g. Failure to recognize evidence of excessive uterine activity and/or fetal intolerance of labor and/or fetal distress as reflected by the electronic fetal monitor (EFM) tracing, and failure to appropriately treat including but not limited to advocacy for and/or performance of an earlier delivery via cesarean section;
h. Failure to obtain and/or maintain good quality electronic fetal monitoring (EFM), including uterine activity and fetal heart rate;
i. Inappropriate use of forceps and/or vacuum;
j. Failure to inform the physicians of excessive uterine activity and/or non-reassuring fetal status and advocate for and/or perform earlier delivery via cesarean section;
k. Failure to timely advocate for changes in the plan of care and, if necessary, utilize the chain of command to advocate for earlier delivery;
l. Failure to timely inform the necessary surgical staff and/or make preparations for performance of a cesarean section;
m. Failure to perform appropriate intrapartum fetal and/or maternal evaluations and intervene earlier;
n. Failure to perform timely delivery via cesarean section without first attempting operative vaginal delivery with forceps and vacuum;
o. Failure to advocate for and/or perform earlier delivery via cesarean section to avoid hypoxic-ischemic and/or traumatic injury to the baby;
p. Failure to advocate against and/or avoid the use of attempted instrument-assisted delivery in the face of a malpresentation and non-reassuring fetal status;
q. Failure to advocate against and/or avoid the use of double instruments due to the elevated risk of traumatic and/or hypoxic-ischemic injury, especially given the clinical context of this labor and delivery;
r. Inappropriate administration of medication;
s. Failure to utilize the chain of command when notification of concerning signs and/or symptoms were not immediately responded to; in other words, the health care provider(s) should have called for and obtained physician(s) to treat the patients, prepare for timely surgery, and expeditiously deliver the baby rather than to allow the baby to continue to deteriorate at a time where the health care provider(s) knew or should have

known that to fail to timely intervene with earlier delivery would substantially increase the risk of harm to the baby;

t. Failure to promulgate, implement, maintain, and/or follow reasonable and appropriate policies and procedures;
u. Failure to comply with JCAHO [Joint Commission on the Accreditation of Healthcare Organizations a/k/a The Join Commission];
v. Failure to maintain and provide proper and adequate documentation including but not limited to progress notes, nursing notes, flowsheets, plan of care, operative report, resuscitation log, nursing assessments, and discharge summary;
w. Failure to carefully assess for, recognize, and/or treat the presence of non-reassuring changes on the EFM including but not limited to fetal heartrate decelerations, decreased variability, marked variability, tachycardia, and/or bradycardia, and timely treat for the same including intravenous fluids, repositioning, administration of oxygen, and advocate for and/or perform earlier delivery;
x. Failure to recognize a non-reassuring fetal monitor strip and immediately advise the patients' provider or other physician(s) of the existence and nature of said findings, and advocate for changes in the plan of care including earlier delivery;
y. Failure to be aware that the development of abnormal and non-reassuring changes on the EFM can and did reflect the increased risk of injurious intrapartum hypoxia-ischemia and metabolic acidosis, and to treat with intrauterine resuscitation measures, notify the physician(s), and advocate for and/or perform sooner delivery;
z. Failure to be aware of abnormal fetal heartrate patterns which were indicative of stress/distress to the baby including but not limited to hypoxia and/or ischemia, such as variable decelerations, late decelerations, prolonged decelerations, decreased variability, marked variability, tachycardia, and/or bradycardia, and take corrective action including intrauterine resuscitation measures, notification of the physician, advocacy for expedited delivery, and/or performance of earlier delivery;
aa. Failure to perform timely delivery to avoid neurologic injury;
bb. Failure to avoid inappropriate and excessive force and/or manipulation of the baby's head during attempts at instrument delivery;
cc. Failure to timely abandon attempts at vaginal delivery to avoid neurologic injury;
dd. Any other acts and/or omissions in the care of Plaintiffs that may become known throughout the course of discovery.

62. That as a direct and proximate result of one or more of the herein acts and/or omissions, Baby S.K. did sustain serious and permanent injuries (including traumatic and/or

hypoxic-ischemic brain damage which has resulted in mental and motoric deficits), which were directly and proximately caused by the aforementioned negligence.

63. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have suffered great (past and future) disability, physical pain, mental anguish, emotional suffering, loss of a normal life, and loss of enjoyment and quality of life.

64. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have sustained other pecuniary loss, expenses, and damages (past and future) including but not limited to loss of future earning capacity.

65. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have sustained, and will continue to incur, significant medical and/or other expenses for the extraordinary needs of Baby S.K. for which they claim compensation herein.

WHEREFORE, Plaintiffs seek damages and judgment against Defendants, jointly and severally, in such amounts as will fully and fairly compensate for their damages, injuries, harms and losses alleged herein, together with interest, costs, and expenses, as allowed by law, and for such other relief and damages as may be appropriate.

COUNT II: Negligence of Defendant Clinic

66. Plaintiffs incorporate all of the paragraphs above as if set forth fully herein.

67. That during the year 2018 and at material times herein Defendant Clinic was offering to the public obstetrical and gynecological services by and through its actual, ostensible, and/or apparent agents, servants, and/or employees including but not limited to Defendant Goodman and/or other healthcare providers in Johnson County, Iowa.

68. That on or about August 11, 2018 and at all material times herein Defendant Clinic, by and through its nurses, physicians, other healthcare providers, and/or its actual, ostensible, and/or apparent agents, servants, and/or employees, including but not limited to Defendant Goodman and/or other healthcare providers, did undertake the care of Mrs. Kromphardt and Baby S.K., both *in utero* and thereafter, during the course of the prenatal, intrapartum, neonatal, and/or postpartum periods.

69. That on or about August 11, 2018 and at all material times herein it then and there became the duty of Defendant Clinic, individually, and/or by and through its physicians, nurses, staff, and/or its actual, ostensible, and/or apparent agents, servants, and/or employees, including but not limited to Defendant Goodman and/or other healthcare providers, to exercise that degree of reasonable care and skill exercised by like health care professionals, hospitals, physicians and nurses of good standing providing obstetrical and newborn care under the same or similar circumstances.

70. After assuming the care and treatment of Mrs. Kromphardt and Baby S.K., the Defendant Clinic, by and through its physicians, nurses, other healthcare providers, and/or its actual, ostensible, and/or apparent agents, servants, and/or employees, including but not limited to Defendant Goodman and/or other healthcare providers, deviated from the generally accepted standards of care and were then and there guilty of one or more of the following negligent acts and/or omissions:

a. Carefully and completely advise the patient of her condition and that of her unborn baby;
b. Failure to obtain adequate informed consent;
c. Failure to properly manage this patient's labor and delivery;
d. Failure to be aware of the increased risks attendant to this labor and delivery, including but not limited to changes of the fetal heart monitor, occiput posterior position, and maternal hypotension, which could make continued labor unreasonably dangerous to the mother and baby, and

communicate said risks to the other nurses and physicians during the admission, and advocate for changes in the plan of care;

e. Failure to avoid the increased risks attendant to this labor and delivery and provide careful monitoring of the fetal and/or maternal condition;
f. Failure to timely assess the intrapartum fetal status including but not limited to the fetal heart monitor tracing and changes therein which were indicative of deterioration of the fetal status including but not limited to hypoxia and/or ischemia which necessitated interventions to correct and should said interventions fail to improve the condition, failure to advocate for and/or perform earlier delivery via cesarean section;
g. Failure to recognize evidence of excessive uterine activity and/or fetal intolerance of labor and/or fetal distress as reflected by the electronic fetal monitor (EFM) tracing, and failure to appropriately treat including but not limited to advocacy for and/or performance of an earlier delivery via cesarean section;
h. Failure to obtain and/or maintain good quality electronic fetal monitoring (EFM), including uterine activity and fetal heart rate;
i. Inappropriate use of forceps and/or vacuum;
j. Failure to inform the physicians of excessive uterine activity and/or non-reassuring fetal status and advocate for and/or perform earlier delivery via cesarean section;
k. Failure to timely inform the necessary surgical staff and/or make preparations for performance of a cesarean section;
l. Failure to perform appropriate intrapartum fetal and/or maternal evaluations and intervene earlier;
m. Failure to perform timely delivery via cesarean section without first attempting operative vaginal delivery with forceps and vacuum;
n. Failure to advocate for and/or perform earlier delivery via cesarean section to avoid hypoxic-ischemic and/or traumatic injury to the baby;
o. Failure to advocate against and/or avoid the use of attempted instrument-assisted delivery in the face of a malpresentation and non-reassuring fetal status;
p. Failure to advocate against and/or avoid the use of double instruments due to the elevated risk of traumatic and/or hypoxic-ischemic injury, especially given the clinical context of this labor and delivery;
q. Inappropriate administration of medication;
r. Failure to promulgate, implement, maintain, and/or follow reasonable and appropriate policies and procedures;
s. Failure to comply with JCAHO [Joint Commission on the Accreditation of Healthcare Organizations a/k/a The Join Commission];
t. Failure to maintain and provide proper and adequate documentation including but not limited to progress notes, nursing notes, flowsheets, plan of care, operative report, resuscitation log, nursing assessments, and discharge summary;
u. Failure to carefully assess for, recognize, and/or treat the presence of non-reassuring changes on the EFM including but not limited to fetal heartrate

decelerations, decreased variability, marked variability, tachycardia, and/or bradycardia, and timely treat for the same including intravenous fluids, repositioning, administration of oxygen, and advocate for and/or perform earlier delivery;

v. Failure to recognize a non-reassuring fetal monitor strip and immediately advise the patients' provider or other physician(s) of the existence and nature of said findings, and advocate for changes in the plan of care including earlier delivery;
w. Failure to be aware that the development of abnormal and non-reassuring changes on the EFM can and did reflect the increased risk of injurious intrapartum hypoxia-ischemia and metabolic acidosis, and to treat with intrauterine resuscitation measures, notify the physician(s), and advocate for and/or perform sooner delivery;
x. Failure to be aware of abnormal fetal heartrate patterns which were indicative of stress/distress to the baby including but not limited to hypoxia and/or ischemia, such as variable decelerations, late decelerations, prolonged decelerations, decreased variability, marked variability, tachycardia, and/or bradycardia, and take corrective action including intrauterine resuscitation measures, notification of the physician, advocacy for expedited delivery, and/or performance of earlier delivery;
y. Failure to perform timely delivery to avoid neurologic injury;
z. Failure to avoid inappropriate and excessive force and/or manipulation of the baby's head during attempts at instrument delivery;
aa. Failure to timely abandon attempts at vaginal delivery to avoid neurologic injury;
bb. Any other acts and/or omissions in the care of Plaintiffs that may become known throughout the course of discovery.

71. That as a direct and proximate result of one or more of the herein acts and/or omissions, Baby S.K. did sustain serious and permanent injuries (including traumatic and/or hypoxic-ischemic brain damage which has resulted in mental and motoric deficits), which were directly and proximately caused by the aforementioned negligence.

72. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have suffered great (past and future) disability, physical pain, mental anguish, emotional suffering, loss of a normal life, and loss of enjoyment and quality of life.

73. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have sustained other pecuniary loss, expenses, and damages (past and future) including but not limited to loss of future earning capacity.

74. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have sustained, and will continue to incur, significant medical and/or other expenses for the extraordinary needs of Baby S.K. for which they claim compensation herein.

WHEREFORE, Plaintiffs seek damages and judgment against Defendants, jointly and severally, in such amounts as will fully and fairly compensate for their damages, injuries, harms and losses alleged herein, together with interest, costs, and expenses, as allowed by law, and for such other relief and damages as may be appropriate.

COUNT III – Negligence of Defendant Goodman

75. Plaintiffs incorporate all of the paragraphs above as if set forth fully herein.

76. That during the year 2018 and at material times herein Defendant Goodman was offering to the public obstetrical and gynecological services in Johnson County, Iowa.

77. That on or about August 11, 2018 and at all material times herein Defendant Goodman did undertake the care of Mrs. Kromphardt and Baby S.K., both *in utero* and thereafter, during the course of the prenatal, intrapartum, neonatal, and/or postpartum periods.

78. That on or about August 11, 2018 and at all material times herein it then and there became the duty of Defendant Goodman to exercise that degree of reasonable care and skill exercised by like health care professionals, hospitals, physicians and nurses of good standing providing obstetrical and newborn care under the same or similar circumstances.

79. After assuming the care and treatment of Mrs. Kromphardt and Baby S.K., the Defendant Goodman deviated from the generally accepted standards of care and were then and there guilty of one or more of the following negligent acts and/or omissions:

a. Carefully and completely advise the patient of her condition and that of her unborn baby;
b. Failure to obtain adequate informed consent;
c. Failure to properly manage this patient's labor and delivery;
d. Failure to be aware of the increased risks attendant to this labor and delivery, including but not limited to changes of the fetal heart monitor, occiput posterior position, and maternal hypotension, which could make continued labor unreasonably dangerous to the mother and baby, and communicate said risks to the other nurses and physicians during the admission, and advocate for changes in the plan of care;
e. Failure to avoid the increased risks attendant to this labor and delivery and provide careful monitoring of the fetal and/or maternal condition;
f. Failure to timely assess the intrapartum fetal status including but not limited to the fetal heart monitor tracing and changes therein which were indicative of deterioration of the fetal status including but not limited to hypoxia and/or ischemia which necessitated interventions to correct and should said interventions fail to improve the condition, failure to advocate for and/or perform earlier delivery via cesarean section;
g. Failure to recognize evidence of excessive uterine activity and/or fetal intolerance of labor and/or fetal distress as reflected by the electronic fetal monitor (EFM) tracing, and failure to appropriately treat including but not limited to advocacy for and/or performance of an earlier delivery via cesarean section;
h. Failure to obtain and/or maintain good quality electronic fetal monitoring (EFM), including uterine activity and fetal heart rate;
i. Inappropriate use of forceps and/or vacuum;
j. Failure to inform the physicians of excessive uterine activity and/or non-reassuring fetal status and advocate for and/or perform earlier delivery via cesarean section;
k. Failure to timely inform the necessary surgical staff and/or make preparations for performance of a cesarean section;
l. Failure to perform appropriate intrapartum fetal and/or maternal evaluations and intervene earlier;
m. Failure to perform timely delivery via cesarean section without first attempting operative vaginal delivery with forceps and vacuum;
n. Failure to advocate for and/or perform earlier delivery via cesarean section to avoid hypoxic-ischemic and/or traumatic injury to the baby;
o. Failure to advocate against and/or avoid the use of attempted instrument-assisted delivery in the face of a malpresentation and non-reassuring fetal status;

p. Failure to advocate against and/or avoid the use of double instruments due to the elevated risk of traumatic and/or hypoxic-ischemic injury, especially given the clinical context of this labor and delivery;
q. Inappropriate administration of medication;
r. Failure to promulgate, implement, maintain, and/or follow reasonable and appropriate policies and procedures;
s. Failure to comply with JCAHO [Joint Commission on the Accreditation of Healthcare Organizations a/k/a The Join Commission];
t. Failure to maintain and provide proper and adequate documentation including but not limited to progress notes, nursing notes, flowsheets, plan of care, operative report, resuscitation log, nursing assessments, and discharge summary;
u. Failure to carefully assess for, recognize, and/or treat the presence of non-reassuring changes on the EFM including but not limited to fetal heartrate decelerations, decreased variability, marked variability, tachycardia, and/or bradycardia, and timely treat for the same including intravenous fluids, repositioning, administration of oxygen, and advocate for and/or perform earlier delivery;
v. Failure to recognize a non-reassuring fetal monitor strip and immediately advise the patients' provider or other physician(s) of the existence and nature of said findings, and advocate for changes in the plan of care including earlier delivery;
w. Failure to be aware that the development of abnormal and non-reassuring changes on the EFM can and did reflect the increased risk of injurious intrapartum hypoxia-ischemia and metabolic acidosis, and to treat with intrauterine resuscitation measures, notify the physician(s), and advocate for and/or perform sooner delivery;
x. Failure to be aware of abnormal fetal heartrate patterns which were indicative of stress/distress to the baby including but not limited to hypoxia and/or ischemia, such as variable decelerations, late decelerations, prolonged decelerations, decreased variability, marked variability, tachycardia, and/or bradycardia, and take corrective action including intrauterine resuscitation measures, notification of the physician, advocacy for expedited delivery, and/or performance of earlier delivery;
y. Failure to perform timely delivery to avoid neurologic injury;
z. Failure to avoid inappropriate and excessive force and/or manipulation of the baby's head during attempts at instrument delivery;
aa. Failure to timely abandon attempts at vaginal delivery to avoid neurologic injury;
bb. Any other acts and/or omissions in the care of Plaintiffs that may become known throughout the course of discovery.

80. That as a direct and proximate result of one or more of the herein acts and/or omissions, Baby S.K. did sustain serious and permanent injuries (including traumatic and/or

hypoxic-ischemic brain damage which has resulted in mental and motoric deficits), which were directly and proximately caused by the aforementioned negligence.

81. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have suffered great (past and future) disability, physical pain, mental anguish, emotional suffering, loss of a normal life, and loss of enjoyment and quality of life.

82. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have sustained other pecuniary loss, expenses, and damages (past and future) including but not limited to loss of future earning capacity.

83. That as a direct and proximate result of one or more of the aforesaid acts and/or omissions of negligence, the Plaintiffs have sustained, and will continue to incur, significant medical and/or other expenses for the extraordinary needs of Baby S.K. for which they claim compensation herein.

WHEREFORE, Plaintiffs seek damages and judgment against Defendants, jointly and severally, in such amounts as will fully and fairly compensate for their damages, injuries, harms and losses alleged herein, together with interest, costs, and expenses, as allowed by law, and for such other relief and damages as may be appropriate.

Respectfully Submitted,

Dated: June 9, 2020

/s/ Jack Beam
Jack Beam (*Pro Hac Vice*)
Matthew M. Patterson (*Pro Hac Vice*)
Ryan Timoney (*Pro Hac Vice*)
BEAM LEGAL TEAM, LLC
954 W. Washington Blvd., Suite 215
Chicago, IL 60607
(312) 733-0930; (312) 733-0921 (fax)
bvotruba@beamlegalteam.com
mpatterson@beamlegalteam.com
rtimoney@beamlegalteam.com

AND

Geoffrey N. Fieger (*Pro Hac Vice*)
FIEGER, FIEGER, KENNEY & HARRINGTON, P.C.
19390 West Ten Mile Road
Southfield, MI 48075
(248) 355-5555; (248) 355-5148 (fax)
g.fieger@fiegerlaw.com

AND

Frederick W. James (AT0003925)
THE JAMES LAW FIRM, P.C.
2600 Grand Avenue, Suite 213
Des Moines, IA 50312
(515) 246-8484; (515) 246-8767 (fax)
frederick@jameslawfirm.com

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

S.K., a legally incapacitated Minor by and through his Conservator, THOMAS T. TARBOX, Esq.; and KATHLEEN KROMPHARDT, Individually, and ANDREW KROMPHARDT, Individually **Plaintiffs,** **v.** **MERCY HOSPITAL, IOWA CITY, IOWA d/b/a MERCY HOSPITAL d/b/a MERCY IOWA CITY, and JILL C. GOODMAN, M.D., and OBSTETRIC AND GYNECOLOGIC ASSOCIATES OF IOWA CITY AND CORALVILLE, P.C.** **Defendants.**	**Case No.: LACV081421** **THIRD AMENDED JURY DEMAND**

NOW COME the Plaintiffs, S.K., a legally incapacitated Minor by and through his Conservator, THOMAS T. TARBOX, Esq.; and KATHLEEN KROMPHARDT, Individually; and ANDREW KROMPHARDT, Individually, and hereby demand a trial by jury.

Respectfully Submitted,

Dated: June 9, 2020

/s/ Jack Beam
Jack Beam (*Pro Hac Vice*)
Matthew M. Patterson (*Pro Hac Vice*)
Ryan Timoney (*Pro Hac Vice*)
BEAM LEGAL TEAM, LLC
954 W. Washington Blvd., Suite 215
Chicago, IL 60607
(312) 733-0930; (312) 733-0921 (fax)
bvotruba@beamlegalteam.com
mpatterson@beamlegalteam.com
rtimoney@beamlegalteam.com

AND

Geoffrey N. Fieger (*Pro Hac Vice*)
FIEGER, FIEGER, KENNEY & HARRINGTON, P.C.
19390 West Ten Mile Road
Southfield, MI 48075
(248) 355-5555; (248) 355-5148 (fax)
g.fieger@fiegerlaw.com

AND

Frederick W. James (AT0003925)
THE JAMES LAW FIRM, P.C.
2600 Grand Avenue, Suite 213
Des Moines, IA 50312
(515) 246-8484; (515) 246-8767 (fax)
frederick@jameslawfirm.com