

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

TRAVIS DOBBINS and
VERONICA DOBBINS,
31770 Flagstone Road
Gravois Mills, MO 65037

SOPHIA HOM,
1733 S. Kimbrough Ave.
Springfield, MO 65807

KAYLA IMHOFF,
3518 S. Rock Beacon Court
Jefferson City, MO 65109

MICHELE WHITAKER and
RALPH "KELLY" WHITAKER,
2383 Hwy 94
Holts Summit, MO 65043

Plaintiffs,

v.

JAMES STANNARD, M.D.
Serve at:
1100 Virginia Ave.
Columbia, MO 65201

and

JAMES COOK, DVM, OTC, OTSC, PhD
Serve at:
1100 Virginia Ave.
Columbia, MO 65201

Defendants.

Case No.:
Division:

PLAINTIFFS' JOINT PETITION

COME NOW Plaintiffs Travis Dobbins, Veronica Dobbins, Sophia Hom, Kayla Imhoff, Michele Whitaker, and Ralph "Kelly" Whitaker, by and through counsel, and for their causes of action against the above-named defendants allege the following:

I. PARTIES

1. Plaintiff Travis Dobbins is an individual over the age of eighteen (18) and a resident of Morgan County, Missouri.
2. Plaintiff Veronica Dobbins is an individual over the age of eighteen (18) and a resident of Morgan County, Missouri. At all relevant times, plaintiff Veronica Dobbins has been the lawful spouse of plaintiff Travis Dobbins.
3. Plaintiff Sophia Hom is an individual over the age of eighteen (18) and a resident of Greene County, Missouri.
4. Plaintiff Kayla Imhoff is an individual over the age of eighteen (18) and a resident of Cole County, Missouri.
5. Plaintiff Michele Whitaker is an individual over the age of eighteen (18) and a resident of Callaway, Missouri.
6. Plaintiff Ralph “Kelly” Whitaker is an individual over the age of eighteen (18) and a resident of Callaway, Missouri. At all relevant times, plaintiff Ralph “Kelly” Whitaker has been the lawful spouse of plaintiff Michele Whitaker.
7. At all relevant times, defendant James Stannard, M.D. has been a physician licensed in the state of Missouri holding himself out to the public, and in particular to plaintiff, as a health care provider specializing in orthopedic surgery and providing such services to patients in exchange for valuable consideration.
8. At all relevant times, defendant James Cook has been a doctor of veterinary medicine holding himself out to the public, and in particular to plaintiff, as a specialist in orthopedics, osteoarthritis, tissue engineering, sports medicine, and biologic joint

restoration and providing such services to patients in exchange for valuable consideration.

II. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to Art. V, § 14 of the Missouri Constitution.
10. This Court has personal jurisdiction over defendants Stannard and Cook as each is a resident of the state of Missouri and as each committed the tortious acts and statutory violations complained of in the state of Missouri.
11. Venue is proper in this Circuit pursuant to § 508.010.4 R.S.Mo. as this case involves at least one count sounding in tort, and as the tortious acts complained of first caused injury to plaintiffs in Boone County, Missouri.

III. FACTS OF THE OCCURRENCE

A. Traditional Total Knee Joint Replacement.

12. Orthopedic surgeons have used artificial total joint replacements for more than 50 years to treat symptomatic, advanced stage arthritic knee joints that have ceased responding to non-surgical treatments.
13. To perform a total knee replacement, a surgeon replaces the surface of the femur and tibia bones, and sometimes the surface of the patella, with metal and plastic devices.
14. Today, traditional knee replacements are one of the most successful procedures in all of medicine, with approximately 700,000 such procedures taking place each year in the United States.
15. As many as 85 percent of total knee replacements will last 20 years before a revision surgery is necessary.

B. The Use of Osteochondral Allografts in Knee Joint Surgery and its Limitations.

16. Surgeons sometimes use osteochondral allografts to treat certain symptomatic cartilage defects in joints, including the knee joint.
17. An osteochondral allograft is a combination of bone and cartilage tissue taken from the joint of a deceased person, called a donor.
18. In osteochondral allograft transplant surgery, a surgeon removes damaged cartilage and bone from a patient, called a host, and replaces it with the osteochondral allograft harvested from the donor.
19. When an osteochondral allograft is harvested from the donor, it must first be stored and tested prior to implantation in the host patient.
20. To be successfully incorporated into the host patient, the cartilage portion of an osteochondral allograft must maintain viable cartilage cells, called chondrocytes.
21. However, once cartilage tissue is harvested from the donor, cartilage cells in that tissue begin to die.
22. The longer the graft must be stored before implantation, the fewer the amount of viable chondrocytes will be present in the transplanted cartilage tissue, thereby increasing the risk of graft failure.
23. The bone portion of an osteochondral allograft serves as the means by which the surgeon attaches and fixates the graft to the host patient.
24. Surgeons have traditionally employed osteochondral allograft surgery in the knee joint to repair small focal areas of cartilage damage.
25. Surgeons have not traditionally employed osteochondral allograft transplants to treat advanced osteoarthritis of the knee or as a substitute for a total knee replacement.

26. In fact, multicompartament and/or bipolar (2 opposing surfaces) joint resurfacing with osteochondral allografts has not proven successful in the knee joint, with failure rates ranging as high as 86% in some studies.

C. The Mizzou BioJoint Center.

27. The Mizzou BioJoint Center is affiliated with the Missouri Orthopaedic Institute.

28. Both the Mizzou BioJoint Center and the Missouri Orthopaedic Institute are affiliated with the University of Missouri who, at all relevant times, has held out and marketed both the Mizzou BioJoint Center and the Missouri Orthopaedic Institute as being part of the University of Missouri Health System.

29. Defendant Stannard is a physician at the Missouri Orthopaedic Institute who, at all relevant times, has held himself out to the public, and in particular to plaintiff, as the Medical Director of the Mizzou BioJoint Center.

30. Defendant Cook, at all relevant times, has held himself out to the public, and in particular to plaintiff, as the director of operations and scientific director at the Mizzou BioJoint Center.

31. The defendants market and perform a surgical procedure using osteochondral allografts. They claim the procedure is restorative and improves joint function. They refer to this procedure as Mizzou BioJoint Surgery.

32. The defendants do not limit Mizzou BioJoint Surgeries to patients having small focal areas of cartilage damage in the knee joint.

33. To the contrary, the defendants market and perform Mizzou BioJoint Surgeries that result in large osteochondral allografts being implanted into multiple compartments and opposing surfaces of the knee joint in a single procedure.

34. At all relevant times, the defendants have marketed Mizzou BioJoint Surgery as being appropriate for persons who:
- (1) are 55 years old or younger;
 - (2) are nicotine free;
 - (3) have a BMI of 35 or less;
 - (4) are an active non-athlete, a recreational athlete or a high-level athlete; and
 - (5) are experiencing consistent pain in the joint, catching or clicking in the joint, joint, swelling that will not go away, the feeling of a loose joint or an inability to perform their job or daily activities because of joint problems.
35. The Curators have spent millions of dollars advertising and marketing Mizzou BioJoint Surgery to prospective customers.
36. The Curators have engaged multiple advertisement agencies in an effort to help “target” certain types of consumers for Mizzou BioJoint Surgery.
37. The Curators have advertised and marketed Mizzou BioJoint Surgery across multiple forms of media, including television, radio, print, billboard, sporting events and online.
38. The defendants have been responsible, in part, for the content of the Mizzou BioJoint Center advertisements.
39. At all relevant times, the defendants have marketed Mizzou BioJoint Surgery as a viable alternative to artificial joint replacement surgery.
40. At all relevant times, the defendants have marketed Mizzou BioJoint Surgery as being equally successful as traditional artificial joint replacement surgery.
41. At all relevant times, the defendants have marketed Mizzou BioJoint Surgery as being effective for at least 10 years.

42. In some instances, the defendants have marketed Mizzou BioJoint Surgery as being effective for as long as 30 years.
43. The defendants have only been performing Mizzou BioJoint Surgeries since 2014.
44. The defendants publish outcome statistics for their surgeries.
45. The data underlying the outcome statistics shows dramatically different results than the statistics the defendants publish.
46. Additionally, the defendants claim to have developed their own allograft preservation system, which they call the Missouri Osteochondral Allograft Preservation System (MOPS), and which they contend “more than doubles the storage life of bone and cartilage graft from organ donors.”
47. Upon information and belief, the defendants have only been surgically implanting osteochondral allografts stored with the MOPS system since 2016.
48. The defendants have sought patent protection for the MOPS preservation system.
49. The defendants stand to receive financial benefits should MOPS allografts become commercially available.

D. Plaintiff Travis Dobbins.

50. As of July 2014, plaintiff Travis Dobbins was an active 36-year-old construction worker.
51. After a referral and in response to defendants’ advertisements, Travis Dobbins contacted the Mizzou BioJoint Center.
52. On July 30, 2014, Travis Dobbins presented to defendant Stannard for evaluation of his right knee. He reported occasional catching and locking, limited knee flexion, and pain localized to his anterior knee when present.

53. An X-ray on July 30, 2014 showed right knee advanced osteoarthritis. Dr. Stannard noted moderate to severe joint space narrowing in the lateral compartment.
54. On July 30, 2014, Dr. Stannard determined that plaintiff was an excellent candidate to evaluate for a potential Mizzou BioJoint Surgery.
55. Dr. Stannard told plaintiff that a Mizzou BioJoint Surgery would likely prevent him from ever needing an artificial total knee replacement.
56. On July 30, 2014, Dr. Stannard recommended a diagnostic arthroscopic surgery to prepare plaintiff for a BioJoint Surgery.
57. On February 1, 2017, plaintiff again presented to Dr. Stannard with right knee pain. An X-ray on February 1, 2017 showed moderate lateral and patellofemoral compartment osteoarthritis of the right knee.
58. On February 6, 2017, Dr. Stannard performed a right knee arthroscopy on plaintiff.
59. Dr. Stannard documented grade 4 articular cartilage loss of the whole lateral tibial plateau and most of the lateral femoral condyle.

E. Plaintiff Travis Dobbins's First Mizzou BioJoint Surgery.

60. On July 31, 2017, the defendants performed a Mizzou BioJoint Surgery on plaintiff's right knee.
61. During that surgery, defendants placed osteochondral allograft transplants onto opposing, weightbearing surfaces within the plaintiff's right knee.
62. Specifically, defendants performed osteochondral transplants of the right knee lateral femoral condyle and lateral tibial plateau. Dr. Stannard also performed an arthroscopic-assisted lateral meniscus transplant.
63. Each of these implants had been preserved using the MOPs preservation system.

64. Dr. Stannard was listed as the primary surgeon for the July 31, 2017 Mizzou BioJoint Surgery performed on plaintiff.
65. Defendant Cook was listed as "other" for the July 31, 2017 Mizzou BioJoint Surgery.
66. Neither defendant advised plaintiff that defendant Cook was neither a medical doctor nor a licensed physician at any time prior to the surgery.
67. The Mizzou BioJoint Surgery performed on plaintiff ultimately failed.

F. The Failure of Plaintiff Travis Dobbins's the Mizzou BioJoint Surgery.

68. Travis Dobbins saw Dr. Stannard on September 6, 2017 for a 6-week follow-up appointment.
69. X-Rays on September 6, 2017 showed widening of the interface between the allograft and the native femoral condyle and lateral overhang of the tibial allograft.
70. Dr. Stannard noted a fracture of the lateral femoral condyle allograft. He indicated that the grafts would fail without a revision procedure to place additional screws, biologic pins and bone graft.
71. On September 8, 2017, Dr. Stannard performed an open reduction internal fixation of the right posterior lateral femoral condyle allograft fracture.
72. Plaintiff saw Dr. Stannard on November 30, 2017 for a follow up appointment. X-rays on that date showed the right knee allografts were not yet incorporated.
73. Again, on August 8, 2018, X-rays showed no evidence of graft incorporation.
74. On January 30, 2019, Travis Dobbins presented to Dr. Stannard with increased right knee pain and swelling. He reported a fall on ice.

75. X-rays on January 30, 2019 showed a failed lateral femoral allograft with displacement of multiple allograft fragments and new narrowing of the lateral compartment due to cartilage loss or displacement of the meniscal allograft.
76. Dr. Stannard recommended a right knee surgery to remove hardware, remove loose bone fragments, and assess the joint.
77. On February 11, 2019, Dr. Stannard performed a right knee arthroscopy with a debridement of loose bone fragments from the lateral femoral condyle, and hardware removal of one screw arthroscopically from the lateral femoral condyle. He also did an open removal of 4 large bone fragments from the posterior lateral aspect of the knee and open removal of 1 bent screw from the lateral femoral condyle.
78. The Mizzou BioJoint procedure performed on plaintiff's right knee ultimately failed.

G. Plaintiff Travis Dobbins's Second Mizzou BioJoint Surgery.

79. On November 12, 2019, the defendants performed a second Mizzou BioJoint Surgery on plaintiff's right knee.
80. During that surgery, defendants Stannard and Cook placed fresh osteochondral allografts on the lateral tibial plateau, lateral femoral condyle, with a lateral meniscus arthroscopic assisted transplant.

H. The Failure of Plaintiff Travis Dobbins's Second Mizzou BioJoint Surgery.

81. On March 13, 2020, Dr. Stannard saw plaintiff again for a follow-up. Plaintiff reported a sudden increase in swelling and pain.
82. A CT on March 18, 2020 showed partial incorporation of the lateral tibial plateau allograft with cysts at the graft host interface. Regarding the lateral femoral condyle allograft, it showed no evidence of incorporation.

83. The second Mizzou BioJoint Surgery performed on plaintiff ultimately failed.
84. Travis Dobbins sought a second opinion regarding his right knee pain, which confirmed failure of the BioJoint implants.
85. On April 24, 2020, plaintiff Travis Dobbins underwent a right total knee arthroplasty performed by Dr. Tom Aleto.

I. Plaintiff Sophia Hom.

86. As of February 2018, plaintiff Sophia Hom was an active 16-year-old dancer.
87. In response to defendants' advertisements, Sophia Hom contacted the Mizzou BioJoint Center.
88. On February 14, 2018, Sophia Hom presented to defendant Stannard requesting a second opinion related to a contusion of the medial femoral condyle and the medial tibial plateau in her right knee.
89. Dr. Stannard noted that plaintiff had a pain score of zero and a stable knee with "a little bit of medial tenderness."
90. On February 14, 2018, Dr. Stannard determined that plaintiff was an excellent candidate to evaluate for a potential Mizzou BioJoint Surgery.
91. Dr. Stannard told plaintiff that if the procedure failed, the surgery could be revised with new allografts.
92. On February 14, 2018, Dr. Stannard recommended a diagnostic arthroscopic surgery to prepare plaintiff for a BioJoint Surgery.
93. On March 12, 2018, Dr. Stannard performed a "right knee arthroscopy with chondroplasty of the lateral tibial plateau, medial tibial plateau, and medial femoral condyle" on plaintiff.

94. Dr. Stannard documented large areas of damage in plaintiff's right knee medial compartment. He described substantial grade 4 defects on the medial femoral condyle and medial tibial plateau.

J. Plaintiff Sophia Hom's Mizzou BioJoint Surgery.

95. On July 2, 2018, Dr. Stannard performed a Mizzou BioJoint Surgery on plaintiff's right knee.

96. During that surgery, the defendant placed osteochondral allograft transplants onto opposing, weightbearing surfaces within the plaintiff's right knee.

97. Specifically, the defendant performed osteochondral transplants of the medial femoral condyle, tibial plateau, as well as arthroscopic assisted transplant of the medial meniscus.

98. Each of these implants had been preserved using the MOPs preservation system.

99. Dr. Stannard was listed as the primary surgeon for the July 2, 2018 Mizzou BioJoint Surgery performed on plaintiff.

100. The Mizzou BioJoint Surgery performed on plaintiff ultimately failed.

K. The Failure of Plaintiff Sophia Hom's the Mizzou BioJoint Surgery.

101. Sophia Hom saw Dr. Stannard on September 26, 2018 for a 3-month follow-up appointment. She reported stiffness and difficulty with her right knee motion. He noted, "Radiographically, her grafts look great, really healing in nicely and I am very pleased with them."

102. On September 26, 2018, Dr. Stannard recommended plaintiff undergo an arthroscopic lysis of adhesions procedure.

103. On October 23, 2018, Dr. Stannard performed a right knee manipulation and arthroscopic lysis of adhesions on plaintiff. He noted the medial compartment osteoarticular allografts were “in beautiful condition and were healing nicely.”
104. Plaintiff saw Dr. Stannard on May 8, 2019 for a 10-month follow-up appointment. She reported right knee pain. He noted, “I am concerned because she is in that 10-month out period where failures can start to appear.”
105. An MRI on May 15, 2019 indicated partial resorption and full-thickness cartilage loss in the medial femoral condyle allograft and thinning in the medial tibial plateau allograft.
106. The Mizzou BioJoint procedure performed on plaintiff’s right knee ultimately failed.
107. On June 3, 2019, Dr. Stannard performed a second right knee arthroscopy with chondroplasty of the medial tibial plateau and medial femoral condyle during which he determined a shear injury to the articular cartilage on both the tibial plateau and the femoral condyle.
108. Dr. Stannard recommended revision of plaintiff’s right knee BioJoint procedure.
109. Sophia Hom sought a second opinion from Dr. Brian Cole, who performed a right knee revision surgery on October 4, 2019.

L. Plaintiff Kayla Imhoff.

110. As of December 2012, plaintiff Kayla Imhoff was an active 17-year-old.
111. In response to defendants’ advertisements, Kayla Imhoff contacted the Mizzou BioJoint Center.

112. On December 19, 2012, Kayla Imhoff presented to Dr. Stannard requesting a second opinion following multiple right knee patella dislocations. She reported pain with weight bearing and instability.
113. Dr. Stannard recommended a diagnostic arthroscopic surgery to evaluate plaintiff's right knee.
114. On December 31, 2012, Dr. Stannard performed a "right knee arthroscopy with chondroplasty and microfracture of the lateral tibial plateau" on plaintiff.
115. Dr. Stannard documented that in the tibial side of the lateral compartment of plaintiff's right knee there was a substantial area of remarkable shear injury of the articular cartilage. He documented a grade 3 lesion.
116. On April 3, 2013, she presented for a follow-up with continued right knee pain and reported a twisting injury.
117. X-rays on April 3, 2013 indicated the joint spaces were maintained with no evidence of effusion, fracture or dislocation.
118. On July 8, 2013, Dr. Stannard performed a second arthroscopic chondroplasty of the lateral tibial plateau of plaintiff's right knee. He noted a grade 4 osteochondral defect of the lateral tibial plateau.
119. On July 8, 2013, Dr. Stannard determined that plaintiff was an excellent candidate for a Mizzou BioJoint Surgery.

M. Plaintiff Kayla Imhoff's Mizzou BioJoint Surgery.

120. On March 31, 2014, Dr. Stannard performed a Mizzou BioJoint Surgery on plaintiff's right knee.

121. During that surgery, the defendant placed osteochondral allograft transplants onto opposing, weightbearing surfaces within the plaintiff's right knee.

122. Specifically, the defendant performed osteochondral transplants of the lateral tibial plateau and a lateral meniscus transplant.

123. Each of these implants had been preserved using the MOPs preservation system.

124. Dr. Stannard was listed as the primary surgeon for the March 31, 2014 Mizzou BioJoint Surgery performed on plaintiff.

125. The Mizzou BioJoint Surgery performed on plaintiff ultimately failed.

N. The Failure of Plaintiff Kayla Imhoff's Mizzou BioJoint Surgery.

126. Kayla Imhoff saw Dr. Stannard on July 30, 2014 for a 4-month follow-up appointment. She reported pain and swelling that Dr. Stannard associated with hardware. He noted her radiographs looked spectacular.

127. On August 4, 2014, Dr. Stannard performed surgery to remove the hardware from plaintiff's right tibia.

128. Following the hardware removal, plaintiff continued to experience lateral right knee pain that radiated down to her foot.

129. On June 27, 2016, Dr. Stannard performed a right knee peroneal nerve exploration with neural lysis of the peroneal nerve and placement of a nerve wrap. Plaintiff continued to experience ongoing right knee pain after the procedure.

130. On February 6, 2019, plaintiff presented to Dr. Stannard for a follow-up. X-rays that day showed mild interval worsening of the lateral tibiofemoral compartment osteoarthritis. Dr. Stannard noted that, "certainly, the previous osteochondral allograft could be wearing out over time and the MRI will help us to determine this."

131. The Mizzou BioJoint procedure performed on plaintiff's right knee ultimately failed.
132. On February 6, 2019, Dr. Stannard recommended revision of plaintiff's right knee BioJoint procedure.
133. On June 18, 2019, plaintiff visited Dr. Charles Lawrie at Washington University for a second opinion. Dr. Lawrie confirmed failure of the BioJoint procedure performed on plaintiff's right knee. He noted the prior MRI from March 15, 2019 showed osteonecrosis of the tibial allograft and a near complete loss of cartilage.
134. Dr. Lawrie recommended consideration of a partial knee replacement.
135. In October 2019, Dr. Lawrie performed a right partial knee replacement surgery on Kayla Imhoff.

O. Plaintiff Michele Whitaker

136. As of March 2016, plaintiff Michele Whitaker was an active 48-year-old physical education teacher and softball coach.
137. In response to defendants' advertisements, Michele Whitaker contacted the Mizzou BioJoint Center.
138. On March 14, 2016, Michele Whitaker presented to defendant Stannard with bilateral knee pain, which was greater on the left side.
139. Dr. Stannard noted that plaintiff had no prior history of trauma to either of her knees.
140. An X-ray on March 14, 2016 showed mild left knee osteoarthritis in the tibiofemoral joint and enthesopathy of her left patella.

141. On March 14, 2016, Dr. Stannard determined that plaintiff was an excellent candidate to evaluate for a potential Mizzou BioJoint Surgery.
142. On March 14, 2016, Dr. Stannard recommended a diagnostic arthroscopic surgery to prepare plaintiff for a BioJoint Surgery.
143. On March 21, 2016, Dr. Stannard performed a “left knee arthroscopy with a chondroplasty of the trochlea and the lateral tibial plateau” on plaintiff.
144. Dr. Stannard documented that in the lateral compartment, the articular cartilage on the femur and meniscus looked normal. However, he noted a large area of damage to the articular cartilage on the trochlea and lateral tibial plateau.

P. Plaintiff Michele Whitaker’s Mizzou BioJoint Surgery.

145. On January 9, 2017, the defendants performed a Mizzou BioJoint Surgery on plaintiff’s left knee.
146. During that surgery, defendants placed osteochondral allograft transplants onto opposing, weightbearing surfaces within the plaintiff’s left knee.
147. Specifically, defendants performed osteochondral transplants of her trochlea and lateral tibial plateau as well as a lateral meniscus transplant.
148. Each of these implants had been preserved using the MOPs preservation system.
149. Dr. Stannard was listed as the primary surgeon for the January 9, 2017 Mizzou BioJoint Surgery performed on plaintiff.
150. Defendant Cook was listed as “surgeon – other” for the January 9, 2017 Mizzou BioJoint Surgery.
151. Neither defendant advised plaintiff that defendant Cook was neither a medical doctor nor a licensed physician at any time prior to the surgery.

152. The Mizzou BioJoint Surgery performed on plaintiff ultimately failed.

Q. The Failure of Plaintiff Michele Whitaker's Mizzou BioJoint Surgery.

153. Michele Whitaker saw Dr. Stannard on November 1, 2017 for a 10-month follow-up appointment. She reported a "clunking pain" deep in her knee. Dr. Stannard recommended a diagnostic arthroscopy and hardware removal.

154. On November 7, 2017, Dr. Stannard performed a left knee arthroscopy with chondroplasty of the medial femoral condyle, chondroplasty of the patella, debridement of the tip of a bioabsorbable pin, and hardware removal of two screws from plaintiff's proximal tibia.

155. An MRI on January 10, 2018 indicated full-thickness cartilage loss involving the anterior aspect of plaintiff's tibial allograft. The report references postsurgical changes of trochlear osteochondral allograft. Specifically, "incomplete incorporation of the medial margin of the graft with edema in the graft and sclerosis at its interface with the native bone."

156. On August 22, 2018, plaintiff reported a marked increase in her left knee pain and a "catching" sensation related to her patella. Dr. Stannard recommended another arthroscopy to evaluate her grafts.

157. On August 27, 2018, Dr. Stannard performed a left knee arthroscopy with a chondroplasty of the lateral femoral condyle, medial femoral condyle, and lateral tibial plateau. He noted grade four loss in all three compartments of plaintiff's left knee, including on her grafted lateral tibial plateau.

158. Dr. Stannard confirmed failure of the biologic reconstruction and recommended a left total knee replacement.

159. The Mizzou BioJoint Surgery performed on plaintiff's left knee ultimately failed.

160. On December 7, 2018, plaintiff Michele Whitaker underwent a left total knee arthroplasty performed by Dr. James A. Keeney.

IV. CAUSES OF ACTION

COUNT I

(Medical Negligence)

(Plaintiff Travis Dobbins v. Defendants Stannard and Cook)

(Plaintiffs Sophia Hom, Kayla Imhoff and Michele Whitaker v. Defendant Stannard)

161. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

A. Defendant Stannard's Acts of Negligence

162. At all relevant times, defendant Stannard possessed a duty to exercise that degree of skill and learning ordinarily used by members of his profession in the same or similar circumstances when providing medical advice and services to plaintiffs.

163. At all relevant times, and as the Medical Director of the Mizzou BioJoint Center, defendant Stannard possessed a duty to ensure that his Mizzou BioJoint Center patients were receiving sufficient information about Mizzou BioJoint Surgery so that they could make a reasoned and fully informed consent.

164. Defendant breached his duty and committed the following acts of negligence and carelessness, to wit:

- a. In negligently and carelessly failing to obtain proper informed consent;
- b. In negligently and carelessly failing to provide plaintiffs with sufficient information so he/she could make an informed consent to the Mizzou BioJoint Surgery;

- c. In negligently and carelessly making misrepresentations to plaintiffs in order to obtain his/her consent to the Mizzou BioJoint Surgery;
- d. In negligently and carelessly failing to advise plaintiffs that the surgery he was proposing had a failure rate as high as 86%;
- e. In negligently and carelessly failing to disclose the actual risks of Mizzou BioJoint Surgery;
- f. In negligently and carelessly failing to recommend more conservative treatment of plaintiffs' knees;
- g. In negligently and carelessly recommending that plaintiffs undergo the Mizzou BioJoint Surgeries, which were neither medically indicated nor appropriate;
- h. In negligently and carelessly performing the Mizzou BioJoint Surgeries on plaintiffs;
- i. In negligently and carelessly implanting large, osteochondral allografts into multiple compartments of plaintiffs' knees in a single surgery;
- j. In negligently and carelessly implanting large osteochondral allografts into multiple opposing surfaces of plaintiffs' knees in a single surgery;
- k. In negligently and carelessly failing to advise plaintiffs in a timely manner that the Mizzou BioJoint Surgeries had failed;
- l. In negligently and carelessly failing to recommend a total knee replacement in a timely fashion;
- m. In negligently and carelessly failing to cut plaintiffs' allografts to an appropriate size and shape;

- n. In negligently and carelessly recommending and performing unnecessary surgeries on plaintiffs' knees;
- o. In negligently and carelessly failing to advise plaintiffs that defendant Cook was not a licensed physician or an orthopedic surgeon;
- p. In negligently and carelessly allowing defendant Cook to perform parts of the Mizzou BioJoint Surgeries on plaintiffs without appropriate medical direction and supervision;
- q. In negligently and carelessly failing to medically direct and or supervise defendant Cook and other members of the surgery team during plaintiffs' Mizzou BioJoint Surgeries;
- r. In other particulars at present unknown to plaintiffs but which plaintiff reasonably believes will be discerned through discovery.

B. Defendant Cook's Acts of Negligence

165. At all relevant times, defendant Cook possessed a duty to exercise that degree of skill and learning ordinarily used by members of his profession in the same or similar circumstances when providing medical advice and services to plaintiffs.
166. At all relevant times, and as the Director of Operations and Research of the Mizzou BioJoint Center, defendant Cook possessed a duty to ensure that all Mizzou BioJoint Center patients were receiving sufficient information about Mizzou BioJoint Surgery so that they could make a reasoned and fully informed consent.
167. Defendant Cook breached his duty and committed the following acts of negligence and carelessness, to wit:
- a. In negligently and carelessly failing to obtain proper informed consent;

- b. In negligently and carelessly failing to provide plaintiffs with sufficient information so he/she could make an informed consent to Mizzou BioJoint Surgery;
- c. In negligently and carelessly making misrepresentations to plaintiffs in order to obtain his/her consent for Mizzou BioJoint Surgery;
- d. In negligently and carelessly failing to advise plaintiffs that the surgery he was proposing had a failure rate as high as 86%;
- e. In negligently and carelessly failing to disclose the actual risks of Mizzou BioJoint Surgery;
- f. In negligently and carelessly acting as a surgeon in the Mizzou BioJoint Surgeries without proper medical direction or supervision;
- g. In negligently and carelessly implanting large, osteochondral allografts into multiple compartments of plaintiffs' knees during the Mizzou BioJoint Surgeries;
- h. In negligently and carelessly implanting large, osteochondral allografts onto multiple opposing surfaces in plaintiffs' knees during the Mizzou BioJoint Surgeries;
- i. In negligently and carelessly failing to inform plaintiffs that he was not an orthopedic surgeon nor a licensed physician;
- j. In negligently and carelessly failing to cut plaintiffs' allografts to an appropriate size and shape;
- k. In other particulars at present unknown to plaintiffs but which plaintiff reasonably believes will be discerned through discovery.

C. Plaintiffs Travis Dobbins, Kayla Imhoff and Michele Whitaker's Damages

168. As a direct and proximate result of the defendants' acts of negligence and carelessness more fully set forth above, plaintiffs have sustained the following injuries, to wit:

- a. Permanent, irreversible damage to their knee joints;
- b. Permanent, irreversible disfigurement of their knee joints;
- c. Permanent, irreversible loss of cartilage tissue in their knee joints;
- d. Permanent, irreversible loss of bone tissue in their knee joints;
- e. Permanent, irreversible loss of function in their lower extremities.

169. As a direct and proximate result of the defendants' acts of negligence and carelessness more fully set forth above, plaintiffs have sustained the following damages:

- a. Plaintiffs have incurred medical expenses in the past and will be required to expend monies in the future for medical, skilled nursing, therapeutic, rehabilitative, and attendant care;
- b. Plaintiffs have lost income in the past and will lose income in the future;
- c. Plaintiffs have forever lost the ability to enjoy life as they had previously;
- d. Plaintiffs have suffered in the past and will continue to suffer into the future for the remainder of their lifetimes, great physical, mental and emotional pain, anguish and suffering.

D. Plaintiff Sophia Hom's Damages

170. As a direct and proximate result of the defendants' acts of negligence and carelessness more fully set forth above, plaintiff has sustained the following injuries, to wit:

- a. Permanent, irreversible damage to her knee joint;

- b. Permanent, irreversible disfigurement of her knee joint;
- c. Permanent, irreversible loss of cartilage tissue in her knee joint;
- d. Permanent, irreversible loss of bone tissue in her knee joint;
- e. Permanent, irreversible loss of function in her lower extremities.

171. As a direct and proximate result of the defendants' acts of negligence and carelessness more fully set forth above, plaintiff has sustained the following damages:

- e. Plaintiff has incurred medical expenses in the past and will be required to expend monies in the future for medical, skilled nursing, therapeutic, rehabilitative, and attendant care;
- f. Plaintiff has lost income in the past and will lose income in the future;
- g. Plaintiff has forever lost the ability to enjoy life as she had previously;
- h. Plaintiff's has suffered in the past and will continue to suffer into the future for the remainder of her lifetimes, great physical pain and suffering.

172. The defendants' conduct, as set forth more fully above, was experimental, unproven and showed a complete indifference to or conscious disregard for the safety of plaintiffs and others, justifying an award of punitive damages to punish defendants for their conduct and deter these defendants from like conduct in the future.

173. Pleading in the alternative, the defendants' conduct, as more fully set forth above demonstrated willful, wanton and/or malicious misconduct toward plaintiffs and others justifying an award of punitive damages to punish defendants for their conduct and deter these defendants from like conduct in the future.

WHEREFORE, Plaintiffs Travis Dobbins, Sophia Hom, Kayla Imhoff and Michele

Whitaker pray for judgment in their favor on Count I of this Petition in such sums as are fair and

reasonable to compensate Plaintiffs for actual damages sustained, for costs incurred, for punitive damages to punish defendants and deter like conduct in the future, and for any and all other relief permitted by law this Court deems just and proper.

COUNT II

(Loss of Chance of Recovery)

(Plaintiff Travis Dobbins v. Defendants Stannard and Cook)

(Plaintiffs Sophia Hom, Kayla Imhoff and Michele Whitaker v. Defendant Stannard)

174. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

175. At the time of the negligent acts complained of herein and at all times mentioned, plaintiffs had a medical condition that if promptly and properly cared for and treated gave rise to a statistically significant and material chance of her making a full recovery.

176. Defendants acted negligently and carelessly in their care and treatment of plaintiffs in the particulars set forth above.

177. As a direct and proximate result of the negligence and carelessness of the defendants as more fully set forth above, plaintiffs lost a statistically significant and material chance of recovery.

178. Such lost chance of recovery was material and resulted in plaintiffs suffering severe, permanent and devastating injuries and damages as more fully set forth above.

179. The defendants' conduct, as set forth more fully above, was experimental, unproven and showed a complete indifference to or conscious disregard for the safety of plaintiffs and others, justifying an award of punitive damages to punish defendants for their conduct and deter these defendants from like conduct in the future.

180. Pleading in the alternative, the defendants' conduct, as more fully set forth above demonstrated willful, wanton and/or malicious misconduct toward plaintiffs and others justifying an award of punitive damages to punish defendants for their conduct and deter these defendants from like conduct in the future.

WHEREFORE, Plaintiffs Travis Dobbins, Sophia Hom, Kayla Imhoff and Michele Whitaker pray the Court for Judgment on Count II of this Petition for such sums as are fair and reasonable to compensate Plaintiffs for their damages sustained, for costs expended herein, for punitive damages to punish defendants and deter like conduct in the future and for any and all other relief permitted by law this Court deems just and proper.

COUNT III

(Loss of Consortium)

(Plaintiff Veronica Dobbins v. Defendants Stannard and Cook)

(Plaintiff Ralph "Kelly" Whitaker v. Defendant Stannard)

181. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

182. At all relevant times hereto, where applicable, Plaintiffs had spouses (hereafter referred to as "Spouse Plaintiffs") who have suffered injuries and losses as a result of the plaintiffs' injuries from Mizzou BioJoint Surgeries.

183. For the reasons set forth herein, Spouse Plaintiffs necessarily paid and have become liable to pay for medical aid, treatment, monitoring, medications, and other expenditures and will necessarily incur further expenses of a similar nature in the future as a proximate result of defendants' misconduct.

184. For the reasons set forth herein, Spouse Plaintiffs have suffered and will continue to suffer the loss of their loved one's support, services, consortium, companionship, comfort, instruction, guidance, counsel, training, affection, and love.

185. For all Spouse Plaintiffs, Plaintiffs allege that their marital relationship was impaired and depreciated, and the marital association between husband and wife has been altered.

186. Spouse Plaintiffs have suffered great emotional pain and mental anguish.

WHEREFORE, Spouse Plaintiffs pray the Court for Judgment on Count III of this Petition for such sums as are fair and reasonable to compensate them for their damages sustained, for costs expended herein, and for any and all other relief permitted by law this Court deems just and proper.

COUNT IV

(Missouri Merchandising Practices Act)

(Plaintiffs Travis Dobbins, Sophia Hom, Kayla Imhoff and Michele Whitaker v. Defendants Stannard and Cook)

187. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

188. At all relevant times, the defendants have advertised merchandise in the form of Mizzou BioJoint Surgeries in an attempt to induce members of the general public, and in particular plaintiffs, to purchase such merchandise.

189. At all relevant times, the Curators of the University of Missouri, acting in a proprietary function, and University of Missouri-Columbia Medical Alliance f/k/a University of Missouri-Columbia Health System (hereinafter "University of Missouri defendants") have created and published the Mizzou BioJoint advertisements and have been responsible for the content of the Mizzou BioJoint advertisements.

190. At all relevant times, and in addition to the University of Missouri defendants, defendants Stannard and Cook have been responsible for the content of the Mizzou BioJoint advertisements as the director of operations and medical director of the Mizzou BioJoint Program.
191. The defendants collectively advertised and marketed Mizzou BioJoint Surgery for the purpose of increasing revenues at the Missouri Orthopaedic Institute and MU Health System.
192. The defendants collectively advertised and marketed Mizzou BioJoint Surgery for the purposes of enhancing the reputation of the Missouri Orthopaedic Institute and MU Health System.
193. The defendants collectively advertised and marketed Mizzou BioJoint Surgery for the purpose of enhancing the reputations of defendants Stannard and Cook.
194. The defendants collectively advertised and marketed Mizzou BioJoint Surgery for the purposes of testing proprietary medical devices, technologies and surgical techniques in an effort to bring those devices, technologies and techniques to market.
195. The defendants collectively advertised and marketed Mizzou BioJoint Surgery for the purpose of trying to make money from proprietary medical devices, technologies and surgical techniques.
196. The defendants collectively advertised and marketed Mizzou BioJoint Surgery so that the defendants might one day realize and receive patent royalties.
197. The defendants collectively advertised and marketed Mizzou BioJoint Surgery not for the common good of all, but for the purposes of making a profit and specially benefitting the MU Health System and the individual defendants.

198. In advertising and marketing experimental Mizzou BioJoint Surgery, the defendants have collectively acted for proprietary, as opposed to governmental, purposes.

199. The medical devices, technologies and surgeries at issue are experimental and unproven.

200. At all relevant times, the defendants' advertisement, promotion and representations regarding Mizzou BioJoint Surgery have been deceptive and misleading to the general public, and in particular to plaintiff, in the following particulars:

- a. The defendants have failed to advise that Mizzou BioJoint Surgery is experimental;
- b. The defendants have failed to advise that there is insufficient data to determine the long-term success of Mizzou BioJoint Surgery;
- c. The defendants have misrepresented the functional survival of Mizzou BioJoint Surgery as being 10 years or longer;
- d. The defendants have misrepresented that Mizzou BioJoint Surgery can obviate the need for a total knee replacement;
- e. The defendants have misrepresented the functional survival and efficacy statistics regarding multicompartmental and multi-polar osteochondral allograft transplant surgery in the knee joint;
- f. The defendants have misrepresented their experience in performing multicompartmental and multi-polar osteochondral allograft transplant surgeries in the knee joint;

- g. The defendants have misrepresented Mizzou BioJoint Surgery as having comparable success rates to osteochondral allograft transplant surgeries that are designed to treat isolated cartilage damage in the knee;
 - h. The defendants have misrepresented the functional survival and efficacy statistics of Mizzou BioJoint Surgery;
 - i. The defendants have misrepresented the degree of negative impact a Mizzou BioJoint Surgery would have on a subsequent total knee replacement;
 - j. The defendants have misrepresented the actual risks of Mizzou BioJoint Surgery;
 - k. The defendants have misrepresented that their process for implanting osteochondral allografts has been approved by the FDA;
 - l. The defendants have not disclosed that the surgeries performed on patients in advertisements were significantly different than the surgeries performed on patients such as plaintiff;
 - m. The defendants have misrepresented the degree of success for Mizzou BioJoint Surgery in their outcome statistics;
 - n. The defendants have made misrepresentations by holding defendant Cook out as a physician and orthopedic surgeon.
201. As a direct and proximate result of the defendants' deceptive conduct as more fully set forth above, Plaintiffs purchased the merchandise the defendants advertised for personal purposes.
202. As a direct and proximate result of the defendants' deceptive conduct as more fully set forth above, plaintiffs sustained the following ascertainable losses of money:
- a. Plaintiffs incurred medical expenses for the failed Mizzou BioJoint Surgeries;

- b. Plaintiffs incurred medical expenses, and will the incur same in the future, for additional medical treatment made necessary by the failed Mizzou BioJoint Surgeries;
- c. Plaintiffs sustained an ascertainable loss of income and will sustain such losses in the future.

203. The defendants' conduct as set forth more fully above showed a complete and reckless indifference to or conscious disregard for the rights of plaintiffs and others, justifying an award of punitive damages to punish defendants for their conduct and deter these defendants from like conduct in the future.

WHEREFORE, Plaintiffs Travis Dobbins, Sophia Hom, Kayla Imhoff and Michele Whitaker pray for Judgment on Count IV of this Petition for such sums as are fair and reasonable to compensate Plaintiffs for damages sustained, for punitive damages to punish and deter defendants from like conduct in the future, for costs incurred herein, for attorney's fees and for any and all other relief authorized by law this Court deems just and proper.

COUNT V

(Negligent Misrepresentation)

(Plaintiffs Travis Dobbins, Sophia Hom, Kayla Imhoff and Michele Whitaker v. Defendants Stannard and Cook)

204. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

205. In the course of their business, Defendants made misrepresentations to Plaintiffs and the general public regarding Mizzou BioJoint Surgeries in the following particulars:

- a. The defendants misrepresented the experimental status of the Mizzou BioJoint Surgery;

- b. The defendants misrepresented whether there is sufficient data to determine the long-term success of Mizzou BioJoint Surgery;
- c. The defendants have misrepresented the functional survival of Mizzou BioJoint Surgery as being 10 years or longer;
- d. The defendants have misrepresented that Mizzou BioJoint Surgery can obviate the need for a total knee replacement;
- e. The defendants have misrepresented the functional survival and efficacy statistics regarding multicompartmental and multi-polar osteochondral allograft transplant surgery in the knee joint;
- f. The defendants have misrepresented their experience in performing multicompartmental and multi-polar osteochondral allograft transplant surgeries in the knee joint;
- g. The defendants have misrepresented Mizzou BioJoint Surgery as having comparable success rates to osteochondral allograft transplant surgeries that are designed to treat isolated cartilage damage in the knee;
- h. The defendants have misrepresented the functional survival and efficacy statistics of Mizzou BioJoint Surgery;
- i. The defendants have misrepresented the success of Mizzou BioJoint Surgery in their outcome statistics;
- j. The defendants have misrepresented the degree of negative impact a Mizzou BioJoint Surgery would have on a subsequent total knee replacement;
- k. The defendants have misrepresented the actual risks of Mizzou BioJoint Surgery;

- l. The defendants have misrepresented that their process for implanting osteochondral allografts has been approved by the FDA;
- m. The defendants have not disclosed that the surgeries performed on patients in advertisements were significantly different than the surgeries performed on patients such as plaintiff; and
- n. The defendants have made misrepresentations by holding defendant Cook out as a physician and orthopedic surgeon.

206. The defendants made the foregoing misrepresentations without any reasonable ground for believing them to be true. These misrepresentations were made directly by defendants and other authorized agents of defendants, and in publications and other written materials directed to medical patients and the public, with the intention of inducing reliance and in an attempt to induce members of the general public, and in particular Plaintiffs, to undergo Mizzou BioJoint Surgeries.

207. In reliance on the misrepresentations made by the defendants, Plaintiffs were induced to undergo Mizzou BioJoint Surgeries. If Plaintiffs had known the truth and the facts concealed by the Defendants, Plaintiff would not have undergone Mizzou BioJoint Surgeries. The reliance of Plaintiffs upon defendants' misrepresentations was justified because such misrepresentations were made and conducted by individuals and entities that were in a position to know all of the facts.

208. Defendants failed to use ordinary care in making the foregoing misrepresentations.

209. As a result of the foregoing negligent misrepresentations by defendants, Plaintiffs suffered injuries and damages as alleged herein.

WHEREFORE, Plaintiffs Travis Dobbins, Sophia Hom, Kayla Imhoff and Michele Whitaker pray for Judgment on Count V of this Petition for such sums as are fair and reasonable to compensate Plaintiffs for damages sustained, for punitive damages to punish and deter defendants from like conduct in the future, for costs incurred herein, for attorney's fees and for any and all other relief authorized by law this Court deems just and proper.

V. CONSTITUTIONAL CHALLENGES

210. Because it would amount to retrospective application, none of the provisions of Senate Bill 239 (2015), House Bill 452 (2017), or Senate Bill 31 (2017) including the modifications those bills attempted to make to Mo. Rev. Stat. §§ 1.010, 538.205, 538.210, and 490.715 apply in this case. *Klotz v. St. Anthony's Medical Center*, 311 S.W.3d 752 (Mo. banc 2010).

211. Pleading in the alternative, plaintiff makes the following challenges to the constitutionality of Senate Bill 239 and Mo. Rev. Stat. § 1.010 (2015), of House Bill 452 and Mo. Rev. Stat. §§ 538.205 and 538.210 (2017), and of Senate Bill 31 and Mo. Rev. Stat. § 490.715 (2017).

212. Plaintiff further makes the following challenges to the constitutionality of Mo. Rev. Stat. § 538.225 (2005).

A. Right to Trial by Jury Challenges

213. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence case may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate Art. I § 22 of the Missouri Constitution in that they violate plaintiff's right of trial by jury as heretofore enjoyed. *See Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. banc 2012); *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2012).

214. In attempting to abrogate plaintiff's common law cause of action for medical negligence, Mo. Rev. Stat. §§ 1.010 (2) violates Art. I §§ 14 and 22 of the Missouri Constitution in that it violates plaintiff's right of trial by jury as heretofore enjoyed. *See Watts v. Lester E. Cox Medical Centers*, 376 S.W.3d 633 (Mo. banc 2012); *Sanders v. Ahmed*, 364 S.W.3d 195 (Mo. banc 2012).
215. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the right to trial by jury set forth in the Seventh Amendment to the Federal Constitution.
216. In attempting to limit the admissible evidence of a plaintiff's economic damages, Mo. Rev. Stat. § 490.715 violates Art. I § 22 of the Missouri Constitution in that it violates plaintiff's right of trial by jury as heretofore enjoyed.
217. In attempting to limit the admissible evidence of a plaintiff's economic damages, Mo. Rev. Stat. § 490.715 violates the right to trial by jury set forth in the Seventh Amendment to the Federal Constitution.

B. Equal Protection Challenges

218. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the guarantee of equal protection set forth in Art. I § 2 of the Missouri Constitution by treating medical negligence plaintiffs differently than other plaintiffs without a rational basis for doing so and by treating medical negligence plaintiffs differently based upon the severity of their injuries without a rational basis for doing so.

219. In attempting to abrogate plaintiff's common law cause of action for medical negligence, Mo. Rev. Stat. §§ 1.010 (2) violates the guarantee of equal protection set forth in the Missouri Constitution in that it treats medical negligence plaintiffs differently from other plaintiffs without a rational basis for doing so.

220. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the guarantee of equal protection set forth in the United States Constitution by treating medical negligence plaintiffs differently than other plaintiffs without a rational basis for doing so and by treating medical negligence plaintiffs differently based upon the severity of their injuries without a rational basis for doing so.

221. In requiring medical negligence plaintiffs to provide defendants with an affidavit of merit within 90 days of the filing of the petition, § 538.225 violates the guarantee of equal protection set forth in Art. I, § 2 of the Missouri Constitution by treating medical negligence plaintiffs differently than other negligence plaintiffs without a rational basis for doing so.

222. In requiring medical negligence plaintiffs to provide defendants with an affidavit of merit within 90 days of the filing of the petition, § 538.225 violates the guarantee of equal protection set forth in the United States Constitution by treating medical negligence plaintiffs differently than other negligence plaintiffs without a rational basis for doing so.

C. Prohibition Against Special Laws Challenges

223. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the prohibition against special laws contained in Article III, § 40 of the

Missouri Constitution in that they only include medical negligence plaintiffs to the exclusion of other plaintiffs.

224. In attempting to abrogate plaintiff's common law cause of action for medical negligence, Mo. Rev. Stat. §§ 1.010 (2) violates the prohibition against special laws contained in Article III, § 40 of the Missouri Constitution in that it only includes medical negligence plaintiffs to the exclusion of other plaintiffs.

225. In requiring medical negligence plaintiffs to provide defendants with an affidavit of merit within 90 days of filing of the petition, Mo. Rev. Stat. § 538.225 violates the prohibition against special laws contained in Article III, § 40 of the Missouri Constitution in that § 538.225 only includes medical negligence plaintiffs to the exclusion of other plaintiffs.

D. Separation of Powers Challenge

226. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the principle of Separation of Powers set forth in Art. II § 1 of the Missouri Constitution in that it is the function of the Judiciary to remit verdicts.

227. In attempting to limit the admissible evidence of a plaintiff's economic damages, Mo. Rev. Stat. § 490.715 violates the principle of Separation of Powers set forth in Art. II § 1 of the Missouri Constitution in that it is the function of the Judiciary to determine admissibility of evidence.

E. Due Process Challenges

228. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and

538.210 violate Art. I, § 10 of the Missouri Constitution by depriving medical negligence plaintiffs due process of law.

229. In distinguishing the amount of non-economic damages some medical negligence plaintiffs may recover based upon the severity of the plaintiff's injury, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate Art. I, § 10 of the Missouri Constitution by depriving certain medical negligence plaintiffs due process of law.

230. In limiting the amount of non-economic damages a plaintiff asserting a cause of action for medical negligence may recover, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the guarantee of due process of law set forth the United States Constitution.

231. In distinguishing the amount of non-economic damages some medical negligence plaintiffs may recover based upon the severity of the plaintiff's injury, Mo. Rev. Stat. §§ 1.010 (2), 538.205 and 538.210 violate the guarantee of due process of law set forth in the United States Constitution by depriving certain medical negligence plaintiffs due process of law.

232. In limiting admissible evidence of a plaintiff's economic damages, Mo. Rev. Stat. § 490.715 violates Art. I, § 10 of the Missouri Constitution by depriving plaintiffs due process of law.

233. In limiting admissible evidence of a plaintiff's economic damages, Mo. Rev. Stat. § 490.715 the guarantee of due process of law set forth in the United States Constitution by depriving plaintiffs due process of law.

VIII. JURY TRIAL DEMAND

234. Plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,

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