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**COMMONWEALTH OF KENTUCKY
SCOTT CIRCUIT COURT
DIVISION II
CIVIL ACTION NO: 16-CI-28**

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ELECTRONICALLY FILED

SONITA FRYMAN

PLAINTIFF

VS:

**ERIN W. JOHNSON, M.D.,
BLUEGRASS PEDIATRICS & INTERNAL MEDICINE, LLC,
AND RICHARD E. SCALF, M.D.**

DEFENDANTS

PRETRIAL MEMORANDUM

Defendants Erin W. Johnson, M.D. and Bluegrass Pediatrics & Internal Medicine, LLC, through the undersigned counsel and in compliance with the Court’s pretrial order, submit the following pretrial memorandum.

I. FACTS

This is a medical malpractice action involving the alleged 9-month delay in diagnosis of Plaintiff’s breast cancer. The Plaintiff, Sonita Fryman, ultimately underwent treatment and is over six years removed without a recurrence of cancer.

On October 3, 2014, Ms. Fryman was seen by Dr. Johnson for complaints of a lump in her left breast. Physical examination revealed a 2 cm mass at the 4 o’clock position. Based upon the physical findings, Dr. Johnson favored the lump to be benign. Nevertheless, Dr. Johnson ordered a diagnostic mammogram and ultrasound of the left breast.

On October 15, 2014, a mammogram and an ultrasound were performed at Georgetown Community Hospital. An abnormality was identified in the left breast at the 4 to 5 o’clock position. The

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radiologist favored the abnormality to be a cyst. His conclusion was the mass was “PROBABLY BENIGN.” The radiologist recommended a follow-up mammogram and ultrasound in 6 months.

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Dr. Johnson obtained and reviewed the mammogram and ultrasound report. Dr. Johnson communicated the results to Ms. Fryman and had her scheduled for a 6 month follow-up mammogram and ultrasound to take place on April 13, 2015. Ms. Fryman concedes she was told to follow up in 6 months. (Pl. Dep. at 51-52.) Shortly thereafter, Ms. Fryman changed her primary care to another practice and stopped treating with Dr. Johnson’s office. Ms. Fryman failed to keep the April 13, 2015 mammogram appointment scheduled by Dr. Johnson’s office.

On June 24, 2015, three months after the missed appointment for the follow-up mammograms, Ms. Fryman was referred to a gynecologist for unrelated medical issues including contraception consultation. A physical exam revealed an abnormal left breast including skin changes at 5:00 o’clock and a palpable mass. Ms. Fryman was referred to UK Comprehensive Breast Care Center for evaluation. A mammogram and ultrasound on July 10, 2015 was highly suggestive for malignancy, which was confirmed with a needle biopsy.

Ms. Fryman underwent a left mastectomy. She underwent chemotherapy and radiation treatment. She opted for a prophylactic mastectomy of the right breast. Ms. Fryman’s treatment was successful, and, to date, she remains stable and disease free. (Dr. Aft Dep. at 14, 40.)

II. EXPERT PROOF

A. Plaintiff’s Experts

- 1) Dr. Rebecca Aft, general surgery with emphasis on breast cancer.
- 2) Dr. Jeffrey Kopin, internal medicine.
- 3) Dr. Rickey Myhand, Plaintiff’s treating oncologist.

B. Defense Experts

Dr. Johnson’s experts:

- 1) Timothy Fetterman, M.D., family medicine.

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- 2) Eric Byrd, M.D., internal medicine.
- 3) Mark Campbell, M.D., medical oncology.
- 4) Jean Simpson, M.D., breast pathology.

Dr. Scalf's experts:

- 1) Leroy M. Parker, M.D., medical oncology.
- 2) Joseph L. Skeens, M.D., radiology.
- 3) Mignonne B. Morrell, M.D., radiology.

III. DAMAGES

Plaintiff alleges the following damages, not to exceed:

Past Medical Expenses:	\$604,499.44
Pain and Suffering:	\$7,000,000.00

IV. ISSUES TO BE TRIED

- A. Whether Dr. Johnson failed to act as a reasonably prudent internal medicine physician and, if so, whether said failure was a substantial factor in causing Ms. Fryman's injuries.
- B. Whether Dr. Scalf failed to act as a reasonably prudent radiologist and, if so, whether said failure was a substantial factor in causing Ms. Fryman's injuries.
- C. Whether Ms. Fryman failed to act as a reasonable person by not keeping her follow-up mammogram appointment or waiting to follow-up with her primary care physician when she had continuing complaints of breast pain.
- D. Apportionment of fault among the parties;
- E. The amount of Plaintiff's damages, if any.

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Respectfully submitted,

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ROBINSON & HAVENS, PSC
 101 Prosperous Place, Suite 100
 Lexington, KY 40509
 Ph: (859) 559-4533
 Fx: (859) 264-0444
crobinson@robinsonhavens.com
jweber@robinsonhavens.com

/s/ Jonathan D. Weber

CLAYTON L. ROBINSON, ESQ. (85084)
 JONATHAN D. WEBER, ESQ. (89537)
**COUNSEL FOR DEFENDANTS ERIN
 W. JOHNSON, M.D. & BLUEGRASS
 PEDIATRICS & INTERNAL MEDICINE,
 LLC.**

CERTIFICATE OF SERVICE:

It is hereby certified that the foregoing was served upon the parties by e-mailing a true copy of same to her attorney of record on this 1st day of June 2023, as follows:

H. Phil Grossman, Esq.
 Frederick Moore, III, Esq.
 Grossman Green, PLLC
 2000 Warrington Way, Suite 170
 Louisville, KY 40222
COUNSEL FOR PLAINTIFF

Benny C. Epling, II, Esq.
 Sheena Patel, Esq.
 The Law Offices of Benny C. Epling, PSC
 501 Darby Creek Road, Ste. 61
 Lexington, KY 40509
COUNSEL FOR RICHARD E. SCALF, M.D.

/s/ Jonathan D. Weber
 CLAYTON L. ROBINSON, ESQ.
 JONATHAN D. WEBER, ESQ.