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COMMONWEALTH OF KENTUCKY  
KNOTT CIRCUIT COURT  
CIVIL ACTION 22-CI-00099  
**ELECTRONICALLY FILED**

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PHILLIP JED MAGGARD *et al.*

PLAINTIFFS

vs. **PLAINTIFFS' TRIAL MEMORANDUM AND ITEMIZATION OF DAMAGES**

PRIMARY CARE CENTERS OF EASTERN KENTUCKY, LLC *et al.*

DEFENDANTS

\* \* \* \* \*

**INTRODUCTION**

Come now the Plaintiffs, Phillip “Jed” Maggard and Tonya Lynn Maggard, by counsel, and respectfully submit the following Trial Memorandum pursuant to the Court’s Civil Jury Trial Order. The trial is scheduled to commence in the above Court on January 19, 2026, and last for two (2) weeks.

**1. KIND OF ACTION**

This is a medical negligence lawsuit. Plaintiff Phillip “Jed” Maggard contends that the Defendants, James Hall, APRN, Kendall Bowling, D.O., Primary Care Centers of Eastern Kentucky, LLC, failed to timely diagnose, treat, and manage his left distal biceps tendon rupture injury. Plaintiff Tonya Lynn Maggard has a spousal consortium claim.

The parties have mediated this matter on February 23, 2024, and March 20, 2025, respectively, but did not resolve the case.

**2. ISSUES OF FACT AND LAW TO BE DECIDED**

The Plaintiffs have filed their Motions *in limine* and the Defendants have done the same. All parties are anticipated to file written response to those Motions *in limine* on which they cannot agree. These issues are best discussed in those motions and responses, which are scheduled to be

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addressed at the November 13, 2025, pretrial conference in this case. Other than the  
aforementioned issues, the Plaintiffs are unaware of any other outstanding legal issues at this time.

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The factual issues in this case are:

1. Whether the Defendants (James Hall, APRN and Kendall Bowling D.O., as employees of Primary Care Centers of Eastern Kentucky, LLC) complied with the standard of care;
2. Whether the Defendants' conduct was a substantial factor in causing Plaintiffs' damages; and
3. The value of Plaintiffs' damages.

### 3. SUMMARY OF FACTS

This is a medical negligence case stemming from Plaintiff Phillip Jed Maggard's ("Jed") left distal biceps tendon rupture injury on May 25, 2021, for which he sought the care and treatment of Defendant James Hall, APRN, and Defendant Kendall Bowling, D.O., both of whom are employed at Defendant Primary Care Centers of Eastern Kentucky, LLC.

Unfortunately for Jed, the Defendants failed to meet the standard of care by failing to timely diagnose, treat, and manage Jed's biceps injury, thereby causing the Plaintiffs their injuries. Jed's injuries include permanent damage to his left distal biceps tendon. Jed is left-hand/arm dominant.

Both in May 2021 and now, Jed, a 48-year-old male and Knott Co. native, works as an IT district network technician for the Knott County Board of Education. On May 25, 2021, as Jed was moving a box of computer parts in his office in anticipation of the next school year, and as he pulled a box, he felt a pop and instant pain. The pain got worse as his work day progressed and continued as he got home. When he got home that night, without any improvement in his symptoms and after some quick Google searches, Jed became concerned about a potential biceps injury, so

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he decided he would stop by the Defendant Primary Care Centers of Eastern Kentucky, LLC's Hindman location for a walk-in appointment. This practice is located just a few hundred yards from his office.

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The next day, on May 26, 2021, Jed presented to Defendant APRN James Hall at the Defendant Primary Care Centers of Eastern Kentucky, LLC's Hindman office location and informed Defendant APRN Hall that he believed he had torn his biceps. Defendant APRN Hall failed to appreciate that Jed had a fully torn left biceps tendon injury, recommended Jed treat his injury with ibuprofen, heat, and range of motion exercises. Defendant APRN Hall did not refer Jed to an orthopedist that day, beginning an unreasonable and unnecessary delay in the further diagnosis, management, and treatment of his left biceps tendon injury. Unsure in his diagnosis, Defendant APRN Hall asked Jed to go for an MRI study as well to rule in or rule out the possibility of a biceps tear.

Defendant Dr. Kendall L. Bowling also failed to timely intervene and simply co-signed Defendant APRN Hall's May 26, 2021, note and treatment plan on June 4, 2021, without any request to place or expedite a referral to an orthopedic surgeon or for a completion of further radiologic testing. Dr. Bowling also did not discuss the care and treatment of Jed with APRN Hall during this time.

On June 9, 2021, Jed's MRI study confirmed what Jed suspected to be true within 24 hours of his injury: that his left distal biceps was ruptured—that is, it was fully, not partially, torn.

On June 10, 2021, after receipt of the MRI study report eventually made its way to Defendant APRN Hall, he finally ordered a referral for Jed to be seen by an orthopedic surgeon (Dr. Ryan Shepherd).

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June 21, 2021, was the earliest date that Jed could be seen by Dr. Shepherd at his office.

At this appointment, Dr. Shepherd noted his concern that it had already been four (4) weeks since

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Jed's biceps had ruptured, but nonetheless scheduled Jed for surgery.

On June 29, 2021, Dr. Shepherd was unsuccessful in his surgical attempt to repair Jed's injured tendon. Dr. Shepherd let Jed and his wife know the same after the surgical case was aborted.

Without improvement in his symptoms and desperate to regain strength, stamina, and functionality of his dominant arm, Jed scheduled a consult with Dr. Yuji Umeda, an orthopedic surgeon at The Cleveland Clinic.

On February 7, 2023, Dr. Umeda evaluated Jed and informed him that his injury was non-operative and that he could not re-attach the biceps. Jed's best hope was to perform physical therapy exercises in an attempt to try and strengthen his arm. Thereafter, Jed attended physical therapy at Eastern Kentucky Physical Therapy, but his overall limitations have remained the same as his left distal biceps tendon remains detached.

Phillip Jed Maggard now seeks compensatory damages, in the form of past medical expenses, lost wages and impairment of his power to labor and earn money, and pain and suffering, both physical and mental, from the Defendants for this deviation from the standard of care. His wife of six (6) years, Tonya Lynn Maggard, has brought an independent loss of consortium claim, as this injury has affected their relationship and the litany of active hobbies and outdoor activities that the couple used to enjoy together, including but not limited to boating, kayaking, swimming, bowling, or shooting.

Consequently, it is the Plaintiffs' expert witnesses' opinions that the injuries and damages that the Plaintiffs have suffered were directly and proximately caused by the Defendants.

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Plaintiffs' standard of care experts, APRN Jill Baldwin (with experience in primary care clinic and emergency room setting) and board-certified family medicine physician Dr. Michelle Morris have both opined that: (1) Defendant APRN Hall failed to recognize the significance of Jed's orthopedic injury and (2) Defendant APRN Hall failed to make a timely referral to an orthopedist at this May 26, 2021, office visit. Dr. Morris has also opined that absent Defendant APRN Hall acting appropriately under the standard of care, Defendant Dr. Bowling had the same duty and his lack of intervention and oversight with Defendant APRN Hall likewise represents a deviation from the standard of care.

While Dr. Morris is anticipated to opine that earlier intervention could have prevented damage, she will naturally defer to Plaintiffs' causation and damages expert witness Dr. Nikhil Verma, who is the Chicago White Sox team physician, and who is expected to opine, within reasonable medical probability, that Jed's failed biceps tendon surgery, occurred as a result of not being timely referred to orthopedics.

Dr. Verma will testify that Jed should have presented for a left distal biceps tendon repair surgery within two to four weeks of Jed's initial date of injury (May 25, 2021) to, more likely than not, produce a surgical outcome wherein Jed's left biceps tendon was successfully repaired.

Plaintiffs' vocational economist expert, Sara Ford, will discuss Jed's impairment of his power to labor and earn money over the course of his lifetime as a result of his injuries.

The Defendants' theory of the case rests on the expert opinions of two experts: Dr. Eric Byrd, an internal medicine physician from North Carolina, and Dr. Wesley Cox, an orthopedic surgeon from Arkansas. In sum, Dr. Byrd will primarily testify that the Defendants met the

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standard of care and timely and appropriately treated and managed Jed's biceps injury. Similarly, Dr. Cox is expected to opine on the same topics, albeit from an orthopedist's perspective.

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The Defendants also later disclosed Ralph Crystal, Ph.D, a vocational economic expert, who is limited to addressing only some of the Plaintiffs' damages, notably his lost wages and impairment of his power to labor and earn.

The remaining factual issues will be best left to the province of the jury to decide after weighing all of the evidence and trial testimony.

#### 4. PLAINTIFFS' ITEMIZATION OF DAMAGES

The Plaintiffs' Itemization of Damages is attached hereto as Exhibit A to this Pretrial Compliance.

#### 5. APPLICABLE PRINCIPLES OF LAW

Appropriate jury instructions, with accompanying citations, have been tendered to the Court by the Plaintiffs in compliance with the Court's Jury Trial Order.

Respectfully submitted,

/s/ Nicholas Craddock  
Nicholas Craddock (KBA #96338)  
John E. Abaray (KBA #96629)  
Patrick J. Smith (KBA #95724)  
ABARAY CRADDOCK & SMITH, PLLC  
209 Townepark Circle, Ste. 200  
Louisville, KY 40243  
Main: 502-215-0257  
Fax: 502-324-4686  
[nick@acslawky.com](mailto:nick@acslawky.com)  
*Co-Counsel for Plaintiffs*

-AND-

J. Tyler Ward II (KBA #96575)  
WARD + ASSOCIATES, PSC  
P.O. Box 100  
Whitesburg, KY 41858

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Phone: 606-634-9600

[efile@wardandassociates.com](mailto:efile@wardandassociates.com)*Co-Counsel for Plaintiffs*

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was electronically filed using the KCOJ e-filing system, and electronically served this 6<sup>th</sup> day of November 2025, upon the following:

Clayton L. Robinson (KBA #85084)

Nick W. Edwards (KBA #95628)

Ellen L. Black (KBA #97056)

ROBINSON &amp; WEBER, PSC

101 Prosperous Place, Suite 100

Lexington, KY 40509

859-559-4533

859-264-0444 Fax

[crobinson@robinsonweber.com](mailto:crobinson@robinsonweber.com)[nedwards@robinsonweber.com](mailto:nedwards@robinsonweber.com)[eblack@robinsonweber.com](mailto:eblack@robinsonweber.com)[cslatten@robinsonweber.com](mailto:cslatten@robinsonweber.com)[ladams@robinsonweber.com](mailto:ladams@robinsonweber.com)*Counsel for Defendants*

Morgan J. Fitzhugh

HASSMAN &amp; FITZHUGH, PLLC

333 West Vine Street, Suite 300

Lexington, KY 40509

859-252-2001

859-252-2009 Fax

[morgan@hfdefense.com](mailto:morgan@hfdefense.com)*Counsel for Intervening Plaintiff**Kentucky Employers Mutual Insurance Co.*/s/Nicholas Craddock*Co-Counsel for Plaintiffs*

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# EXHIBIT A

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vs.

**PLAINTIFFS' ITEMIZATION OF DAMAGES**

PRIMARY CARE CENTERS OF EASTERN KENTUCKY, LLC *et al.*

DEFENDANTS

\* \* \* \* \*

Come now the Plaintiffs, by counsel, and respectfully submit the following Itemization of Damages as part of the Plaintiffs' Trial Memorandum pursuant to the Court's Civil Jury Trial Order:

**ITEMIZATION OF DAMAGES**

Plaintiffs Phillip "Jed" Maggard and Tonya Lynn Maggard will claim the following damages at trial:

Phillip Jed Maggard's Pain and Suffering:	\$ 2,000,000.00
Phillip Jed Maggard's Past Hospital and Medical Expenses:	\$ 23,432.00*
Phillip Jed Maggard's Lost Wages and Impairment of his Power to Labor and Earn Money	\$ 153,266.00
Tonya Lynn Maggard's Spousal Loss of Consortium	\$ 500,000.00

\* The final amount may be subject to change based on expenses incurred for any related treatment until the trial of this case. Please see the attached spreadsheet detailing the Plaintiff's Past Medical Expenses. These bills have previously been produced to the Defense through discovery and by and through Intervening Plaintiff Kentucky Employers' Mutual Insurance (KEMI). The Plaintiffs will supply additional copies upon request.

The Plaintiffs specifically reserves the right to amend this Itemization of Damages until the case is submitted to the Jury.

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Respectfully submitted,

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/s/ Nicholas Craddock  
Nicholas Craddock (KBA #96338)  
John E. Abaray (KBA #96629)  
Patrick J. Smith (KBA #95724)  
ABARAY CRADDOCK & SMITH, PLLC  
209 Townepark Circle, Ste. 200  
Louisville, KY 40243  
Main: 502-215-0257  
Fax: 502-324-4686  
[nick@acslawky.com](mailto:nick@acslawky.com)  
*Co-Counsel for Plaintiffs*

-AND-

J. Tyler Ward II (KBA #96575)  
WARD + ASSOCIATES, PSC  
P.O. Box 100  
Whitesburg, KY 41858  
Phone: 606-634-9600  
[efile@wardandassociates.com](mailto:efile@wardandassociates.com)  
*Co-Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was electronically filed using the KCOJ e-filing system, and electronically served this 6<sup>th</sup> day of November 2025, upon the following:

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ROBINSON & WEBER, PSC  
101 Prosperous Place, Suite 100  
Lexington, KY 40509  
859-559-4533  
859-264-0444 Fax  
[crobinson@robinsonweber.com](mailto:crobinson@robinsonweber.com)  
[nedwards@robinsonweber.com](mailto:nedwards@robinsonweber.com)  
[eblack@robinsonweber.com](mailto:eblack@robinsonweber.com)  
[cslatten@robinsonweber.com](mailto:cslatten@robinsonweber.com)  
[ladams@robinsonweber.com](mailto:ladams@robinsonweber.com)  
*Counsel for Defendants*

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Morgan J. Fitzhugh  
HASSMAN & FITZHUGH, PLLC  
333 West Vine Street, Suite 300  
Lexington, KY 40509  
859-252-2001  
859-252-2009 Fax  
[morgan@hfdefense.com](mailto:morgan@hfdefense.com)  
*Counsel for Intervening Plaintiff*  
*Kentucky Employers Mutual Insurance Co.*

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/s/Nicholas Craddock  
*Co-Counsel for Plaintiffs*



Bill Detail By Claim Number Report

Post Date : 5/25/2021 - 3/18/2025

Total Duplicates are Included; Claim Number:'224468';

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Bill No.	Bill Type	Bill Status	Claim No.	Provider	DOS	Charges	Allowances
<b>MAGGARD, PHILLIP J</b>							
KEY-21699	M	R	224468	TRIANGLE ANESTHESIA GROUP PSC	6/29/2021 - 6/29/2021	640.00	314.12
KEY-9293937	M	R	224468	PRIMARY CARE CENTERS OF EASTERN KY	5/26/2021 - 5/26/2021	75.00	67.50
KEY-9296103	M	R	224468	ARH HAZARD FAMILY HEALTH	6/21/2021 - 6/21/2021	304.00	232.50
KEY-9296565	O	R	224468	ARH REG MED CENTER	6/9/2021 - 6/9/2021	3,207.00	810.82
KEY-9297715	M	R	224468	ARH HAZARD FAMILY HEALTH	6/29/2021 - 6/29/2021	2,546.00	200.53
KEY-9298232	O	R	224468	ARH REG MED CENTER	6/29/2021 - 6/29/2021	15,560.00	3,933.98
KEY-9301562	M	R	224468	Hazard Radiology Associates	6/9/2021 - 6/9/2021	230.00	140.44
KEY-9303561	M	R	224468	Hazard Radiology Associates	6/9/2021 - 6/9/2021	230.00	0.00
KEY-9311873	M	R	224468	TRIANGLE ANESTHESIA GROUP	6/29/2021 - 6/29/2021	640.00	0.00
KEY-9354388	M	R	224468	TRIANGLE ANESTHESIA GROUP	6/29/2021 - 6/29/2021	0.00	314.12
Totals for: MAGGARD, PHILLIP J					10 Bill(s)	23,432.00	6,014.01
<b>Totals for:</b>					<b>10 Bill(s)</b>	<b>23,432.00</b>	<b>6,014.01</b>

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Report Totals:

10 Bill(s)

23,432.00