

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LANDON WHITE, a Minor, by his Next Friend,
NICOLE WHITE,

Plaintiffs,

-vs-

Case No.
Hon.

UNITED STATES OF AMERICA,

Defendant.

_____/

RICHARD L. GROFFSKY P32992
MICHAEL J. CUNNINGHAM P32795
Attorneys for Plaintiffs
One Town Square, 17th Floor
Southfield, Michigan 48076
(248) 355-0300

_____/

*There is no other civil action presently pending.
There was a previously filed case in Charlevoix
County Circuit Court dismissed without prejudice arising
out of the transaction or occurrence alleged in the complaint.*

/s/Michael J. Cunningham P32795

COMPLAINT

NOW COME Plaintiffs, LANDON WHITE, a Minor, by his Next Friend, NICOLE WHITE,
by and through their attorneys, SOMMERS SCHWARTZ, P.C., and complaining against the
above-named Defendant state as follows:

COUNT I

PARTIES AND JURISDICTION

1. That at all times relevant hereto, Plaintiffs, Landon White and his mother, Nicole White, were residents of the City of Central Lake, County of Antrim, State of Michigan.

2. Plaintiffs bring this claim against the Defendant, United States of America, pursuant to the Federal Tort Claim Act (FTCA) 28 USC §1346(b) and §2761-2680.

3. That Jeanne Haberer, D.O. was engaged in the practice of her profession in the Cities of East Jordan and Central Lake, Counties of Charlevoix and Antrim, State of Michigan.

4. That East Jordan Family Health Center conducted and carried on business in the State of Michigan doing business in the Cities of East Jordan and Central Lake, Counties of Charlevoix and Antrim, State of Michigan.

5. That Charlevoix Area Hospital where Plaintiff minor was born carried on and did business in the City of Charlevoix, County of Charlevoix, State of Michigan.

6. That the amount in controversy is in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest, costs and attorney fees.

7. This court has jurisdiction over the federal claims against United States of America under 28 USC §1331 and §1346(B). This court has supplemental jurisdiction over the state law claims under 28 USC §1367.

8. The events, acts and omissions giving rise to these claims occurred within the United States Judicial District of the Western District of Michigan.

9. That venue is proper pursuant to 28 USC §1391(B).

FACTUAL ALLEGATIONS

10. That Jeanne Haberer, D.O. was engaged in the practice of her profession in the Cities of East Jordan and Central Lake, Counties of Charlevoix and Antrim, State of Michigan, and held herself out to the public and in particular to Plaintiff, Nicole Smith, and her then unborn child, minor Plaintiff, Landon White, as a skilled and competent physician specializing in the field of family practice and capable of properly and skillfully treating, caring for, and curing individuals seeking her services.

11. That Jeanne Haberer, D.O. owed Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, the duty to possess that reasonable degree of learning and skill that is ordinarily possessed by a physician specializing in family practice throughout the nation and to use reasonable care and diligence in the exercise of her skill and application of her learning in the care and treatment of Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, in accordance with the prevailing standards throughout the nation.

12. That Jeanne Haberer, D.O. assumed responsibility for treating Plaintiff, Nicole White, and for Plaintiff's then unborn child, minor Plaintiff, Landon White's wellbeing.

13. That Jeanne Haberer, D.O. undertook to examine, diagnose, treat, attend and care for Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White.

14. That East Jordan Family Health Center is duly organized and existing under and by virtue of the laws of the State of Michigan and doing business in the Cities of East Jordan and Central Lake, Counties of Charlevoix and Antrim, State of Michigan.

15. That Plaintiff, Nicole White, attended the offices of family physician, Jeanne Haberer, D.O., at East Jordan Family Health Center, where her pregnancy was confirmed and her prenatal care was managed and said Plaintiff did then and there, impliedly and/or expressly hire and employ Dr. Haberer and East Jordan Family Health Center and other employees, to do that which was proper and necessary in the premises in accordance with the prevailing standards and both Dr. Haberer and East Jordan Family Health Center, by and through its agents, servants and/or employees, did then and there impliedly and/or expressly represent to use due, reasonable and proper skill in the care and treatment of Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White.

16. That East Jordan Family Health Center, by and through its duly authorized agents, servants and/or employees had a duty to provide Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, with the services of a competent, qualified and licensed staff of physicians, nurses and other employees to properly diagnose their condition, render competent advice and assistance in the care and treatment of their cases and to render the same in accordance with the prevailing standards.

17. That on or about January 14, 2011, Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, did deliver and submit herself to Charlevoix Area Hospital, in Charlevoix, Michigan, as an inpatient for the purpose of maternity care, labor and delivery, and did then and there, implied and/or expressly, hire and employ Jeanne Haberer, D.O. to do that which was proper and necessary in the premises, in accordance with the prevailing standards of hospitals, and in accordance with the standards of physicians throughout the nation. That said medical personnel did then and there, implied and/or expressly, represent to use due, reasonable and proper skill in the care and treatment of Plaintiff, Nicole White, and

her then unborn child, minor Plaintiff, Landon White, in accordance with the standards then prevailing throughout the nation. That Landon White was born on January 16, 2011, at 11:18 a.m.

18. That Jeanne Haberer, D.O. disregarded her duties and obligations owed to the Plaintiffs and at variance with the prevailing standards, was guilty of negligence and malpractice in the following particulars:

- a. Failing and neglecting to provide and furnish Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, with the proper and necessary medical care and treatment for which they contracted;
- b. Failing and neglecting to exercise the requisite degree of skill and knowledge in the treatment of Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, all of which could and should have been accomplished;
- c. Failure to appropriately and timely treat Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, all of which could and should have been accomplished;
- d. Failure to provide Plaintiff, Nicole White, and her then unborn child, minor Plaintiff, Landon White, with the appropriate treatment during labor and delivery on January 16, 2011, all of which could and should have been accomplished;
- e. Failing to appropriately manage and monitor Plaintiff, Nicole White's labor and delivery on January 16, 2011, all of which could and should have been accomplished;
- f. Failing to appropriately and timely delivery the infant, minor Plaintiff, Landon White, on January 16, 2011, all of which could and should have been accomplished;
- g. Failing to timely perform an episiotomy to help facilitate delivery, all of which could and should have been performed;
- h. Continually performing vacuum extraction on a prolonged basis with station being so high and the baby being in distress;

- i. Failing to properly manage the immediate delivery of the infant, minor Plaintiff, Landon White, who was in distress, all of which could and should have been accomplished;
- j. Failing to use proper technique when performing the vacuum extraction, all of which could and should have been accomplished;
- k. Failing to obtain and have forceps delivery privileges before attempting this delivery at Charlevoix Area Hospital;
- l. Failing to timely respond to the presence of tachysystole while running Pitocin, all of which should and could have been accomplished;
- m. Failing to timely obtain another doctor to deliver this child when she knew, or should have known, that she was not qualified to do so;
- n. Failing to timely ask for assistance from an OB/GYN to assist in the delivery of this child;
- o. Failure on the part of Dr. Haberer to have recognized signs of fetal distress and abnormal fetal heart tracings earlier in time and to have acted accordingly;
- p. Negligently causing hypoxic/ischemic insult to Landon White perinatally, which could have been avoided;
- q. Failure for Dr. Haberer to attempt forceps delivery;
- r. Other acts of malpractice to be determined by means of discovery.

19. That the acts and/or omissions constituting negligence and/or malpractice on the part of Dr. Haberer and each of them, as hereinbefore alleged, directly and proximately caused and/or contributed to minor Plaintiff, Landon White's severe and grievous injuries, including but not limited to: that as a direct and proximate result of the delay in delivering the infant on a timely basis, he suffered a hypoxic/ischemic injury causing permanent disabilities, including but not limited to cerebral palsy, severe developmental delays and seizures that will render him to depend upon the care of others for the remainder of his life. Further, more likely than not, had delivery been accomplished in an appropriate and timely manner, minor Plaintiff, Landon

White, would have been spared the prolonged hypoxic/ischemic in utero and would have avoided permanent adverse neurological developmental sequelae he experienced.

20. That the acts and/or omissions constituting negligence and/or malpractice on the part of Dr. Haberer and each of them, as hereinbefore alleged, directly and proximately caused and/or contributed to the deprivation of minor Plaintiff's normal enjoyment of life as well as including, but not limited to pain, suffering, humiliation, embarrassment, diminution of earning capacity, mental and emotional anxiety and anguish, and will affect his ability to perform daily functions. All of these conditions are consequences of Dr. Haberer's negligence and malpractice and are permanent and will continue into the future.

21. That the acts and/or omissions constituting negligence and/or malpractice of Dr. Haberer, and each of them, as hereinbefore alleged, directly and proximately caused and/or contributed to Plaintiff's expenses, including, but not limited to expenditures for extensive medical, psychiatric, psychological care and treatment, hospitalization, training, occupation, physical and speech and language therapies, physicians, therapist, nurses, hospitals, appliances, medicinal substances and other items. All of these expenditures became necessary totally or partially as a consequence of Dr. Haberer's negligence and malpractice and minor Plaintiff's condition which requires these expenditures as permanent in nature and will continue indefinitely into the future thus requiring Plaintiff to expend similar sums and incur similar obligations.

COUNT II – FEDERAL TORT CLAIM ACT

22. Plaintiffs repeat and reallege Paragraphs 1 through 21 as though more fully stated herein.

23. That at all times relevant hereto, Jeanne Haberer, D.O. provided medical treatment to Nicole White and her then unborn child, Landon White, she was an employee of the United States government providing medical care at East Jordan Family Health Center and Charlevoix Area Hospital.

24. That on or November 3, 2015, Plaintiff presented a claim for damage, injury or death resulting to Landon White by his next friend, Nicole White, on the Department of Health and Human Services (Exhibit 1).

25. That on or about June 29, 2016, claim was denied by the Department of Health and Human Services (Exhibit 2).

26. That East Jordan Family Health Center is a health center funded by the federal government subject to the Federal Tort Claim Act.

27. That the Defendant, United States of America, through its employee physician, Dr. Jeanne Haberer and East Jordan Family Health Center, in disregard of its duties and obligations to Landon White, a minor, by his next friend, Nicole White, and at variance with the prevailing standards of practice and care, was guilty of negligence and malpractice in the following particulars: Plaintiffs repeat and reallege each and every paragraph in Paragraph 18 of Count I of this Complaint as though more fully set forth herein.

28. Had Dr. Haberer performed a timely, accurate and proper delivery of Landon White on a timely basis, his hypoxic/ischemic injuries would have been avoided causing all the damages outlined in Count I.

29. Plaintiffs repeat and reallege Paragraphs 19 through 21 of Count I of this Complaint as though more fully set forth herein.

WHEREFORE, Plaintiffs, LANDON WHITE, a Minor, by his Next Friend, NICOLE WHITE, respectfully claim judgment against the Defendant, UNITED STATES OF AMERICA, for whatever amount Plaintiffs are found to be entitled as determined by the trier of fact together with interest, costs and attorney fees.

SOMMERS SCHWARTZ, P.C.

by: /s/Michael J. Cunningham (P32795)
MICHAEL J. CUNNINGHAM (P32795)
Attorneys for Plaintiffs
One Towne Square – Suite 1700
Southfield, MI 48076
(248) 355-0300

Dated: September 28, 2017

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-008	
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES OFFICE OF THE GENERAL COUNSEL C/O MEREDITH TORRES ROOM 4767, COHEN BUILDING 330 INDEPENDENCE AVENUE, S.W. WASHINGTON, D.C. 20201			2. Name, Address of claimant and claimant's personal representative, if any. (See Instructions on reverse.) (Number, street, city, state and zip code) LANDON WHITE, a Minor NICOLE WHITE, MOTHER & NEXT FRIEND 2185 DEBLIN ROAD CENTRAL LAKE, MI 49622 MICHAEL J. CUNNINGHAM (P32795) SOMMERS SCHWARTZ, P.C. ATTORNEY FOR CLAIMANTS ONE TOWNE SQUARE, 17TH FL SOUTHFIELD, MI 48076		
3. Type of Employment	4. Date of Birth 01/16/2011	5. Marital Status	Date and Day of Accident JANUARY 16, 2011	7. Time (A.M. OR P.M.)	

8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrences and cause thereof) (Use additional pages if necessary).

UPON INFORMATION AND BELIEF, EAST JORDAN FAMILY HEALTH CENTER IS A FEDERAL AGENCY AND ALL EMPLOYEES (INCLUDING BUT NOT LIMITED TO JEANNE HABERER, D.O.) ARE FEDERAL EMPLOYEES. THIS IS A CLAIM FOR MEDICAL MALPRACTICE ON THE PARTS OF THOSE INDIVIDUALS, FACILITIES LISTED ABOVE ARISING OUT OF THE SUBSTANDARD CARE THEY PROVIDED TO NICOLE WHITE AND HER THEN UNBORN CHILD, MINOR, LANDON WHITE, WHEN SHE WAS ADMITTED TO CHARLEVOIX AREA HOSPITAL FOR LABOR AND DELIVERY.

LANDON WHITE WAS DELIVERED AT CHARLEVOIX AREA HOSPITAL ON JANUARY 16, 2011 AT 11:18 A.M. WITH DEPRESSED APGAR SCORES OF 1/1, 3/5 AND 6/10.

ON JANUARY 14, 2011, LANDON'S MOTHER, NICOLE WHITE, WAS ADMITTED TO THE HOSPITAL AT APPROXIMATELY 1:00 P.M. AT TERM IN HER PREGNANCY. THIS WAS HER FIRST PREGNANCY AND HER PRENATAL CARE ALONG WITH THE LABOR AND DELIVERY WERE MANAGED BY FAMILY PHYSICIAN, JEANNE HABERER, D.O. THE ADMITTING DIAGNOSIS INCLUDED CONCERN FOR FETAL GROWTH AS WELL AS TERM PREGNANCY.

AT THE TIME, NICOLE WAS A 30 YEAR-OLD, GRAVIDA I, PARA 0 WITH EDC OF JANUARY 15, 2011, PER EARLY FIRST TRIMESTER ULTRASOUND, WHO PRESENTED WITH AN INCREASED WEIGHT GAIN OF APPROXIMATELY 70 POUNDS THROUGHOUT HER ENTIRE PREGNANCY AND CONCERN FOR LARGE FOR GESTATIONAL AGE BABY AS SHE WAS MEASURING LARGE. WITH HER INCREASED WEIGHT GAIN, SHE HAD UNDERGONE SERIAL ULTRASOUNDS. HOWEVER, SHE HAD AN ULTRASOUND ON JANUARY 13, 2011 WHICH DEMONSTRATED MINIMAL INTERVAL GROWTH CHANGE FROM AN ULTRASOUND THREE WEEKS PRIOR AND WENT FROM THE 50TH PERCENTILE FOR ESTSIMATED FETAL WEIGHT TO 5TH PERCENTILE. OTHERWISE, SHE HAD A BIOPHYSICAL PROFILE THAT WAS 8/8 AND AN AFI OF 12 AND HAD A REASSURING ULTRASOUND AND GOOD FETAL MOVEMENT.

THE ASSESSMENT AND PLAN INCLUDED INTRAUTERINE PREGNANCY AT 39 6/7 WEEKS AND CONCERN FOR INADEQUATE FETAL GROWTH. SHE WAS GIVEN CERVIDIL FOR INDUCTION AND THEN PITOCIN FOR WHICH SHE GRADUALLY CONTINUED INTO LABOR ON HER OWN WITH EVENTUAL PITOCIN AUGMENTATION.

ON JANUARY 16, 2011 AT 7:20 A.M., AROM (ARTIFICIAL RUPTURE OF MEMBRANES) REVEALED CLEAR FLUID. AT 9:30 A.M., PITOCIN WAS STARTED. AT 10:55 A.M., SVE WAS COMPLETE AND DR. HABERER ARRIVED IN THE ROOM.

AT 10:57 A.M., NICOLE THEN PROGRESSED TO PUSH AT WHICH POINT THERE WERE NONREASSURING FETAL HEART TONES. WHILE PUSHING WITH CONTRACTIONS, THE BABY'S HEART RATE DROPPED DOWN TO THE 70S. THE MOTHER WAS TURNED ON HER LEFT SIDE AND AN O2 MASK WAS APPLIED AND PITOCIN WAS TURNED OFF. FETAL HEART REMAINED FROM 90 TO 70 BPM.

AT 11:03 A.M., PEDIATRICIAN, DR. TINNEY, WAS CALLED TO THE ROOM. AT THE SAME TIME, 11:03 A.M., OB/GYN, DR. IVEY, WAS CALLED TO COME ASSIST WITH THE DELIVERY. A VACUUM EXTRACTOR WAS USED MULTIPLE TIMES BY DR. HABERER WITHOUT SUCCESS. THE BABY'S HEART RATE CONTINUED TO BE IN THE 90S-70S WITH THE MOTHER PUSHING.

THE OB/GYN, DR. IVEY, ARRIVED IN THE DELIVERY ROOM AT 11:16 A.M., A MIDLINE EPISIOTOMY WAS PERFORMED AND THE BABY WAS DELIVERED WITHIN TWO MINUTES, AT 11:18 A.M.

ALSO OF IMPORTANCE, FOR APPROXIMATELY 10 MINUTES PRIOR TO THE FIRST PUSH, THERE WERE SOME DECELS THAT WERE SOMEWHAT CONCERNING, OR VARIABLE DECELS WITH LATE RECOVERY (AT APPROXIMATELY 10:45, 10:46). THEN AT APPROXIMATELY 10:50 A.M., THERE WAS ANOTHER DECEL THAT'S LATE IN APPEARANCE AND A VERY SLOW RECOVERY. IMPORTANTLY, AT THE SAME TIME THE CONTRACTIONS WERE OCCURING MORE FREQUENTLY THAN THEY SHOULD SAFELY BE OCCURRING (OR WHAT IS CALLED TACHYSYSTOLE).

(PLEASE SEE ATTACHED PAGES FOR CONTINUATION OF #8.)

9. **PROPERTY DAMAGE**

Name and Address of Owner, If Other Than Claimant (Number, street, city, state and zip code)

None.

Briefly describe the property, nature and extent of damage and the location where property may be inspected (See instructions on reverse side)

None.

10. PERSONAL INJURY/WRONGFUL DEATH			
State nature and extent of each injury or cause of death, which forms the basis of the claim. If other than claimant, state name of injured person or decedent.			
<p>AS A DIRECT AND PROXIMATE RESULT OF THE BREACHES OF THE STANDARD OF CARE AS EXPLAINED ABOVE, LANDON WHITE, A MINOR, WAS CAUSED TO REMAIN IN A HOSTILE UTERINE ENVIRONMENT FOR A PROLONGED PERIOD OF TIME AND SUFFERED A HYPOXIC ISCHEMIC INJURY CAUSING PERMANENT DISABILITIES, INCLUDING BUT NOT LIMITED TO, CEREBRAL PALSY, SEVERE DEVELOPMENTAL DELAYS AND SEIZURES, THAT WILL RENDER HIM DEPENDENT UPON THE CARE OF OTHERS FOR THE REMAINDER OF HIS LIFE.</p> <p>THE ACTS AND/OR OMISSIONS AND BREACH OF THE STANDARD OF PRACTICE OR CARE DEPRIVED LANDON WHITE OF THE NORMAL ENJOYMENTS OF LIFE AS WELL AS AND INCLUDING, BUT NOT LIMITED TO, PAIN, SUFFERING, HUMILIATION, EMBARRASSMENT, LOSS OF FUTURE EARNINGS, DIMINUTION OF EARNING CAPACITY, MENTAL AND EMOTIONAL ANGUISH AND ANXIETY. ALL OF THESE CONDITIONS ARE CONSEQUENCES OF THE NEGLIGENCE AND MALPRACTICE OF THOSE INDIVIDUALS REFERENCED ABOVE AND ARE PERMANENT AND WILL CONTINUE FOR THE REMAINDER OF HIS LIFE.</p> <p>ADDITIONALLY, THIS HAS REQUIRED LANDON WHITE TO INCUR EXPENSES INCLUDING, BUT NOT LIMITED TO, EXPENDITURES FOR EXTENSIVE MEDICAL, PSYCHIATRIC AND PSYCHOLOGICAL CARE AND TREATMENT, HOSPITALIZATIONS, TRAINING, THERAPY, PHYSICIANS, THERAPISTS, NURSES, APPLIANCES, MEDICAL SUBSTANCES, EQUIPMENT AND OTHER ITEMS AND WILL BE REQUIRED TO INCUR SIMILAR EXPENSES IN THE FUTURE AND FOR THE REMAINDER OF HIS LIFE.</p> <p>HAD DELIVERY BEEN ACCOMPLISHED IN AN APPROPRIATE AND TIMELY MANNER, MORE LIKELY THAN NOT, LANDON WHITE WOULD HAVE BEEN SPARED FROM THE PROLONGED HYPOXIC/ISCHEMIC EVENT AND WOULD HAVE AVOIDED THE PERMANENT ADVERSE NEUROLOGICAL AND DEVELOPMENTAL SEQUELAE HE EXPERIENCED.</p>			
11. WITNESSES			
NAME		ADDRESS (Number, street, city state and zip code)	
NICOLE WHITE, MOTHER		2185 DEBLIN ROAD, CENTRAL LAKE, MI 49622	
MICHAEL WHITE, FATHER		2185 DEBLIN ROAD, CENTRAL LAKE, MI 49622	
JEANNE HABERER, D.O.		7960 W. OLD STATE STREET, CENTRAL LAKE, MI 49622 & 601 BRIDGE STREET, EAST JORDAN, MI 49727	
ALL TREATERS FROM CENTRAL LAKE FAMILY HEALTH CENTER		7960 W. OLD STATE STREET, CENTRAL LAKE, MI 49622	
ALL TREATERS FROM EAST JORDAN FAMILY HEALTH CENTER		601 BRIDGE STREET, EAST JORDAN, MI 49727	
ALL TREATERS FROM CHARLEVOIX AREA HOSPITAL		14700 LAKE SHORE DRIVE, CHARLEVOIX, MI 49720	
ADDITIONAL WITNESS TO BE NAMED			
12. (See Instructions on reverse) AMOUNT OF CLAIM (In dollars)			
12a. Property Damage	12b. Personal Injury	12c. Wrongful Death	12d. Total (Failure to specify may cause forfeiture of your rights.)
	\$50,000,000.00		\$50,000,000.00
I certify that the amount of claim covers not only damages and injuries caused by the accident above and agree to accept said amount in full satisfaction and final settlement of this claim			
13a. Signature of Claimant (See Instructions on reverse side.)		13b. Phone number of signatory	14. Date of Claim
MICHAEL J. CUNNINGHAM (P32795) – Attorney for Claimants		FIRM: (248) 355-0300 DIRECT:(248) 746-4020	9/30/2015
Civil Penalty For Presenting Fraudulent Claim		Criminal Penalty For Presenting Fraudulent Claim Or Making False Statements	
The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States (see 31 U.S.C. 3729)		Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287,1001.)	

Private Act Notice

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3) and concerns the information requested in the letter to which this Notice was attached.

A. *Authority:* The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. *Principal Purpose:* The information requested is to be used in evaluating claims.

C. *Routine Use:* See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. *Effect of Failure to Respond:* Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

Instructions

Complete all items – Insert the word NONE where applicable

A claim shall be deemed to have been presented when a Federal Agency receives from a claimant, his duly authorized agent, or legal representative an executed standard form 95 or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property,

Any instructions or information necessary in the preparation of your claim will be furnished, upon receipt, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to the claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12 of this form.

The amount claim should be substantiated by competent evidence as follows: (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

personal injury or death alleged to have occurred by reason of the incident. The claim must be presented to the appropriate federal agency within two years after the claim accrues.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damages, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public report burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director Torts Branch
Civil Division
U.S. Department of Justice
Washington, DC 20530

and to the
Office of Management and Budget
Paperwork Reduction Project (1105-0008)
Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? Yes, if yes, give name and address of insurance company (Number, street, city, state and zip code) and policy number. No

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

17. If deductible, state amount

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? *(It is necessary that you ascertain these facts)*

19. Do you carry public liability and property damage insurance? Yes, if yes, give name and address of insurance carrier (Number, street, city, state and zip code) and policy number. No



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the General Counsel
General Law Division

330 C Street, SW
Switzer Building, Suite 2600
Washington, DC 20201

JUN 29 2016

CERTIFIED-RETURN
RECEIPT REQUESTED

Michael J. Cunningham, Esquire
Sommers Schwartz Law Offices
One Towne Square, 17th Floor
Southfield, Michigan 48076

Re: Administrative Claim of Nicole White, Next Friend of Landon White
(Minor) - Claim No. 2016-0048

Dear Mr. Cunningham:

On November 3, 2015, on behalf of Nicole White, Melissa Sears, you filed the above-referenced administrative claim, under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), 2671-2680, alleging that, on January 16, 2011, Jeanne Haberer, D.O., and the East Jordan Family Health Center, located in East Jordan, Michigan, failed to timely deliver Landon White, which resulted in a prolonged hypoxia/ischemic event and caused him to suffer permanent disabilities.

The Federal Tort Claims Act ("FTCA") authorizes the settlement of any claim of money damages against the United States for, *inter alia*, damage caused by the negligent, or wrongful, act or omission of an employee of the federal government while acting within the scope of employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. § 2672. In addition, a tort claim against the United States must be presented in writing to the appropriate federal agency within two years after such claim accrues or be forever barred. *See* 28 U.S.C. § 2401(b).

This letter constitutes the notice of final determination on your client's administrative tort claim as required by 28 U.S.C. §§ 2401(b), 2675(a). Your client's administrative tort claim is denied. Your administrative tort claim was received in the Claims Office, Office of the General Counsel, U. S. Department of Health and Human Services on November 3, 2015, more than two and a half years after the two-year statute of limitations expired, and thus, is untimely filed under the FTCA.

JUL 06 2016

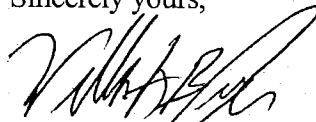
Page 2 - Michael J. Cunningham, Esquire

If your client is dissatisfied with this determination, she is entitled to:

1. file a written request with the agency for reconsideration of the final determination denying the claim within six (6) months from the date of mailing of this determination (28 C.F.R. § 4.19); or
2. file suit against the United States in the appropriate federal district court within six (6) months from the date of mailing of this determination (28 U.S.C. § 2401(b)).

In the event your client requests reconsideration, the agency will review the claim within six (6) months from the date the request is received. If the reconsidered claim is denied, your client may file suit within six (6) months from the date of mailing of the final determination.

Sincerely yours,



William A. Biglow
Deputy Associate General Counsel
Claims and Employment Law Branch

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LANDON WHITE, a Minor, by his
Next Friend, NICOLE WHITE,

Plaintiffs,

-vs-

Case No.
Hon.

UNITED STATES OF AMERICA,

Defendant.

_____ /

RICHARD L. GROFFSKY (P32992)
MICHAEL J. CUNNINGHAM (P32795)
Attorneys for Plaintiffs
One Towne Square – 17th Floor
Southfield, MI 48076
(248) 355-0300

_____ /

AFFIDAVIT OF MERIT – JAMES NICHOLSON, M.D.

LAW OFFICES
SOMMERS SCHWARTZ, P.C.
ONE TOWNE SQUARE • 17TH FLOOR • SOUTHFIELD, MICHIGAN 48076 • (248) 355-0300

Re: Landon White
Our File: 2942

AFFIDAVIT OF MERIT

State of PENNSYLVANIA)
) **ss.**
 County of DAUPHIN)

JAMES NICHOLSON, M.D., having been first duly sworn upon his oath, deposes and states as follows:

1. I am a medical doctor specializing and Board Certified in the field of Family Medicine. I hold an active license to practice medicine in the State of Pennsylvania. I am licensed to practice family medicine in the United States.
2. I have reviewed Plaintiff’s Notice of Intent to File Claim and all medical records supplied to me by Plaintiff’s attorneys concerning the allegations contained in said Notice.
3. During the year immediately preceding the date of occurrence that is the basis for the claim or action, I devoted a majority of my professional time to either or both of the following:
 - a. The active clinical practice of family medicine;
 - b. The instruction of students in an accredited health professional school or accredited residency or clinical research program in family medicine.
4. The applicable standard of practice or care in this matter required Dr. Haberer and East Jordan Family Health Center to do as follows:
 - a. To appropriately manage and monitor the patient’s labor and delivery;
 - b. To timely perform an episiotomy;
 - c. To not continually perform a vacuum extraction on a prolonged basis with the station being so high and the baby being in distress;

- d. To properly manage the immediate delivery of this infant that was in distress;
- e. To use a proper technique when performing the vacuum extraction;
- f. To timely respond to the presence of tachysystole while running Pitocin.

5. That in my opinion the applicable standard of practice or care in this matter was breached by Dr. Haberer and East Jordan Family Health Center, by virtue of their failure to do those things set forth above.

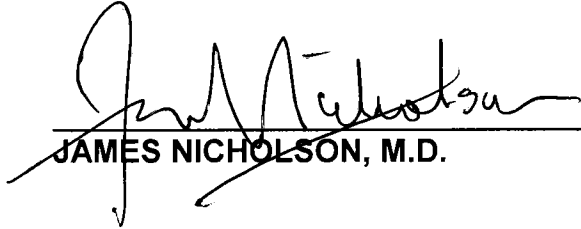
6. That the actions that should have been taken or omitted by Dr. Haberer and East Jordan Family Health Center in order to have complied with the applicable standard of practice or care include:

- a. To timely perform an episiotomy;
- b. To not continually perform the vacuum extraction on a prolonged basis with the station being so high and the baby being in distress;
- c. To properly manage the immediate delivery of this infant that was in distress;
- d. To not use a poor technique when using the vacuum extractor;
- e. To timely respond to the presence of tachysystole while running Pitocin.

7. That as a direct and proximate result of the breaches of the standard of practice or care, Plaintiff, Landon White, a minor, suffered a hypoxic ischemic injury. More likely than not had delivery been accomplished in an appropriate and timely manner, Landon White would have been spared prolonged hypoxia/ischemia in utero.

8. The opinions expressed in this affidavit are based upon the documents and materials referred to in Paragraph 2 above and are subject to modification based upon additional information which might be provided at some future date.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



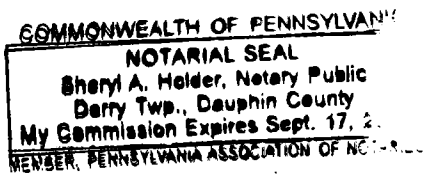
JAMES NICHOLSON, M.D.

STATE OF Pennsylvania
COUNTY OF Dauphin

Sworn to (or affirmed) and subscribed to before me
This 7th day of June, 2016



Notary Public



My Commission Expires: 09/17/2019

Personally known _____
OR Product Identification
Type of Identification Produced Drivers License

LAW OFFICES
SOMMERS SCHWARTZ, P.C.
ONE TOWNE SQUARE • SUITE 1700 • SOUTHFIELD, MICHIGAN 48076 • (248) 355-0300

This Affidavit of Merit is submitted pursuant to MCLA 600.2912d.

SOMMERS SCHWARTZ, P.C.

by:/s/ Michael J. Cunningham (P32795)
MICHAEL J. CUNNINGHAM (P32795)
Attorney for Plaintiff
SOMMERS, SCHWARTZ, P.C.
One Towne Square – Suite 1700
Southfield, MI 48076
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UNITED STATES DISTRICT COURT
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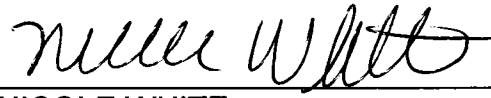
PETITION FOR APPOINTMENT OF NEXT FRIEND

NOW COMES Petitioner, NICOLE WHITE, and respectfully submits unto this Honorable Court:

1. That LANDON WHITE, a Minor, is under the age of fourteen (14) years, his date of birth is January 16, 2011, and he is currently six (6) years old;
2. That heretofore to wit: on or about January 16, 2011, LANDON WHITE, a Minor, sustained severe injuries as a result of the negligence and malpractice of Defendant.
3. That NICOLE WHITE has been advised by counsel that her son, LANDON WHITE, has a right of action and is entitled to maintain a suit thereof for damages against the Defendant.

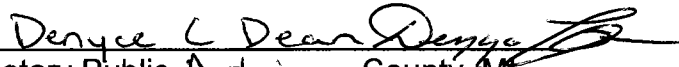
4. That NICOLE WHITE is the mother of LANDON WHITE, a Minor, and that said child, being an infant under the age of fourteen (14) years, is incapable of petitioning this Court in his own behalf, and for whom no general guardian has been appointed.

WHEREFORE, your Petitioner prays that she may be appointed as NEXT FRIEND of LANDON WHITE, a Minor, for the purposes of appearing in said action and becoming security for costs thereof pursuant to the rules in such cases.



NICOLE WHITE

Subscribed and sworn before me on
this 15 day of August, 2017


Notary Public, Antrim County, MI
My Commission Expires: 3/1/2020

SOMMERS SCHWARTZ, P.C.

by: /s/Michael J. Cunningham (P32795)
MICHAEL J. CUNNINGHAM (P32795)
Attorneys for Plaintiffs
One Towne Square – Suite 1700
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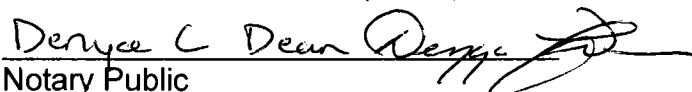
CONSENT

I, NICOLE WHITE, mother of, LANDON WHITE, a Minor, do hereby consent to my appointment as Next Friend of LANDON WHITE, a Minor, for the purposes of this litigation as set forth in the foregoing Petition.



NICOLE WHITE

Subscribed and sworn before me on
this 15 day of August, 2017



Notary Public
My Commission Expires: 3/7/2020

LAW OFFICES
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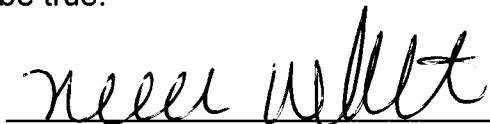
AFFIDAVIT

STATE OF MICHIGAN)
)SS
COUNTY OF ANTRIM)

NICOLE WHITE, being first duly sworn, deposes and says that she has read the foregoing Petition by her subscribed and knows the contents thereof and that the same is true

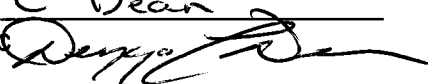
LAW OFFICES
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of her own knowledge except as to those matters therein stated to be on information and belief and, as to those matters, she believes them to be true.



NICOLE WHITE

Subscribed and sworn before me on
this 15 day of August, 2017

Denyce C Dean
Notary Public 

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(248) 355-0300

_____/

ORDER APPOINTING NEXT FRIEND

At a session of said Court held in the City of **Grand Rapids**,
County of **Kent**, and State of Michigan, on:

PRESENT: _____
U.S. DISTRICT COURT JUDGE

Upon reading and filing the Petition of NICOLE WHITE for the appointment of NICOLE WHITE as Next Friend of LANDON WHITE, a Minor, in the suit against Defendant, UNITED STATES OF AMERICA, and the Court being fully apprised therein,

LAW OFFICES
SOMMERS SCHWARTZ, P.C.
ONE TOWNE SQUARE • 17TH FLOOR • SOUTHFIELD, MICHIGAN 48076 • (248) 355-0300

IT IS HEREBY ORDERED that NICOLE WHITE, Mother of LANDON WHITE, a Minor, be and is hereby appointed Next Friend of LANDON WHITE, a Minor, in and about this cause of action and the maintenance of this suit thereon against the above referenced Defendants.

U.S. DISTRICT COURT JUDGE

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