

**IN THE STATE COURT OF DEKALB COUNTY  
STATE OF GEORGIA**

**FERNANDO CLUSTER AND MELINDA  
CLUSTER,**

**Plaintiffs,**

**vs.**

**EMORY HEALTHCARE, INC. and JOHN  
DOES 1-5,**

**Defendants.**

**CIVIL ACTION  
NO.: 24A04593**

**COMPLAINT FOR DAMAGES**

**COME NOW** Plaintiffs Fernando Cluster and Melinda Cluster and shows this Court as follows:

**INTRODUCTION**

1.

This is a simple negligence action arising from Emory University Hospital Midtown losing a piece of Fernando Cluster's skull. Said negligence has caused Plaintiffs extensive damages, including ongoing physical and emotional pain and suffering, and unnecessary medical bills.

**PARTIES JURISDICTION AND VENUE**

2.

Plaintiffs are residents of Georgia and submit to the jurisdiction of this Court.

3.

At all relevant times, Defendant Emory Healthcare, Inc. owned, operated, managed and did business as a hospital facility in Atlanta, Georgia called Emory University Hospital Midtown (“Emory”), located at 550 Peachtree St. NE, Atlanta, GA 30308, Fulton County.

4.

Defendant Emory is a domestic, non-profit corporation organized and existing under the laws of the State of Georgia, with its principal place of business being located at 201 Dowman Drive, 101 Administration Building, Atlanta, GA 30322, DeKalb County.

5.

Service of process may be made upon Defendant Emory by serving its registered agent, Amy Adelman, at 201 Dowman Drive, 101 Administration Building, Atlanta, GA, Dekalb County, Georgia, 30322.

6.

Defendant Emory is subject to the jurisdiction of this Court.

7.

Venue is proper in this Court as to Defendant Emory.

8.

Defendants John Doe 1-5 are individuals or entities that may have liability in this case.

9.

The identities of Defendants John Doe 1-5 are unknown to Plaintiffs but are known to Defendant.

10.

Defendants John Doe 1-5 are subject to the jurisdiction of this court.

**AGENCY AND RESPONDEAT SUPERIOR**

11.

At all times material to this action, Defendant Emory provided medical care and treatment to Plaintiff Mr. Cluster, through its agents and employees, acting incident to and within the course and scope of their agency or employment with Defendant Emory.

12.

At all times material to this action, the individuals who cared for Plaintiff Mr. Cluster, including Defendants John Doe 1-5, were agents and/or employees of Defendant Emory, the principal.

13.

At all times material to this action, the individuals who cared for Plaintiff Mr. Cluster, including Defendants John Doe 1-5, were acting within the scope of their agency and/or employment relationship with Defendant Emory.

14.

The acts and omissions of Defendant Emory's agents and/or employees are imputed to Defendant Emory as a matter of law.

15.

Defendant Emory is therefore vicariously liable for its individual employee and agent's acts and omissions, and for each individual officer, director, employee, agent and servant's negligent acts and omissions, and the resultant injuries to Plaintiffs by application of the doctrine of respondent superior.

## FACTS

16.

On September 30, 2022, Plaintiff Mr. Cluster was admitted to Emory University Hospital Midtown.

17.

Plaintiff Mr. Cluster was diagnosed with an intracerebral hemorrhage and underwent a decompressive hemicraniectomy.

18.

This procedure involved removing a portion of Mr. Cluster's skull (hereinafter referred to as the "bone flap").

19.

The piece of skull removed measured 12 x15 centimeters.

20.

After Plaintiff Mr. Cluster healed from the hemicraniectomy, he was scheduled to have his bone flap re-implanted (hereinafter referred to as the "cranioplasty").

21.

On November 11, 2022, as he was being prepared for the cranioplasty, Emory personnel could not identify Plaintiff Mr. Cluster's bone flap ("the subject incident").

22.

When Emory's personnel went to retrieve the bone flap, "there were several bone flaps with incomplete or missing patient identification" and therefore, Emory "could not be certain which if any of these belonged to Mr. Cluster."

23.

After a delay, Plaintiffs were ultimately informed that Mr. Cluster's bone flap could not be found.

24.

Plaintiff Mr. Cluster was then told that the cranioplasty surgery had to be canceled until a synthetic implant flap could be manufactured.

25.

The cranioplasty was rescheduled and ultimately performed on November 23, 2022.

26.

As a result of Defendant Emory's negligent failure to locate Plaintiff Mr. Cluster's bone flap for the initially scheduled cranioplasty, Plaintiff Mr. Cluster was forced to stay longer in the hospital.

27.

As a result of Defendant Emory's negligent failure, Plaintiff Mr. Cluster had to have synthetic material implanted in his head.

28.

Defendant Emory then charged Mr. Cluster for the cost of the synthetic bone flap and for the additional time Mr. Cluster had to spend in the hospital and the procedures Mr. Cluster had to undergo as a result of the delay and synthetic flap.

29.

As a result of Emory's negligence, Mr. Cluster subsequently suffered an infection in the synthetic flap, thereby necessitating an additional surgery.

**COUNT I – ORDINARY NEGLIGENCE OF DEFENDANTS**

30.

At all times material to this action, Defendants, by and through their agents, had a duty to exercise ordinary care and reasonable care in the provision of services to Plaintiff Mr. Cluster.

31.

Defendants failed to exercise ordinary and reasonable care in their provision of services to Plaintiff Mr. Cluster while he was a patient at Emory.

32.

Defendants failed to exercise ordinary and reasonable care by following appropriate standards and procedures for storing Plaintiff Mr. Cluster's bone flap.

33.

As a result of this negligence, Plaintiff Mr. Cluster suffered injuries.

34.

As a result of this negligence, Defendants are liable to Plaintiffs for their damages.

**COUNT TWO – LOSS OF CONSORTIUM**

35.

At all times pertinent and relevant to the incidents described in this Complaint, Plaintiff Melinda Cluster has been the lawful wife of Plaintiff Fernando Cluster.

36.

As a direct and proximate result of the injuries suffered by Plaintiff Fernando Cluster, Plaintiff Melinda Cluster has been deprived of the love, society, companionship, and consortium of her husband.

**DAMAGES**

37.

As a result of the foregoing acts and omissions and the resultant injuries, Plaintiffs are entitled to recover from Defendants.

38.

All of Plaintiff Mr. Clusters injuries and damages were the direct result of the above-stated acts and omissions of the agents, servants and/or employees of the Defendants.

39.

Plaintiff Mr. Cluster has been physically injured and has experienced physical and emotional pain and suffering as a direct and proximate result of Defendants' negligence.

40.

Plaintiff Mr. Cluster has suffered permanent injuries as a result of Defendants' negligence.

41.

Plaintiff Mr. Cluster has been unable to work as a result of Defendant's negligence.

42.

Plaintiff Mr. Cluster has incurred past medical expenses in excess of \$146,845.60 as a direct and proximate result of Defendants' negligence and he continues to incur medical expenses.

43.

Plaintiffs are entitled to an award of general damages from Defendants.

44.

Plaintiffs entitled to an award of special damages from Defendants.

**WHEREFORE**, Plaintiffs pray for the following relief:

- a. That Summons issue requiring the above-named Defendants to answer each allegation of this Complaint within the time provided by law;
- b. That Plaintiffs obtain a judgment against the above-named Defendants in such amount to compensate Plaintiffs for their injuries and damages resulting from subject incident and Plaintiffs' general and special damages;
- c. That all costs be cast against the above-named Defendants;
- d. That Plaintiffs have a trial by jury on all claims and issues in this action and,
- e. For such other relief as this Court deems just and proper.

This 8<sup>th</sup> day of August 2024.

1180 W Peachtree St NW #200  
Atlanta, Georgia 30309  
Tel: 404-577-1505  
Fax: 404-577-1565

**HORNSBY LAW GROUP**

/s/ Chloe Dallaire  
Chloe E. Dallaire, *Esq.*  
Ga. State Bar No. 203453

Attorneys for Plaintiffs

STATE COURT OF  
DEKALB COUNTY, GA.  
8/8/2024 10:50 AM  
E-FILED  
BY: Monica Gay