

CAUSE NO. 2018-39732

CATHERINE KEYS JACKSON,
INDIVIDUALLY
AND AS NEXT FRIEND OF
ERNEST KEYS, AN INCAPACITATED
ADULT

Plaintiffs

V.

CHI ST. LUKE'S HEALTH BAYLOR
COLLEGE OF MEDICINE
MEDICAL CENTER D/B/A
BAYLOR ST. LUKE'S MEDICAL
CENTER, BAYLOR COLLEGE OF
MEDICINE, STEVEN K. SINGH, M.D.,
GEORGE V. LETSOU, M.D., LEO
SIMPSON, M.D.

Defendants

§ IN THE DISTRICT COURT OF

§ HARRIS COUNTY, TEXAS

§ 127th JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION AND REQUESTS FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, CATHERINE KEYS JACKSON, INDIVIDUALLY AND AS NEXT FRIEND OF ERNEST KEYS, AN INCAPACITATED ADULT, Plaintiffs, in the above entitled and numbered cause, complaining of Defendants, CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICAL CENTER D/B/A BAYLOR ST. LUKE'S MEDICAL CENTER, BAYLOR COLLEGE OF MEDICINE, STEVEN K. SINGH, M.D., GEORGE V. LETSOU, M.D., LEO SIMPSON, M.D., and for cause of action would show as follows:

I.
DISCOVERY CONTROL PLAN

Discovery is intended to be conducted under Level 3 of Texas Rule of Civil Procedure 190.1 and 190.4.

II. **PARTIES**

Plaintiff ERNEST KEYS, also known as CHRIS KEYS, is an individual who is a citizen and resident of Bay County, Florida.

Plaintiff, CATHERINE KEYS JACKSON, is an individual who is a citizen and resident of Bay County, Florida and the mother of ERNEST KEYS. Plaintiff brings claims in her individual capacity as well as claims as Next Friend of ERNEST KEYS, an Incapacitated Adult.

Defendant CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICINE MEDICAL CENTER D/B/A BAYLOR ST. LUKE'S MEDICAL CENTER is a Texas corporation with its principal place of business in Harris County, Texas. This Defendant may be served with process by serving its registered agent, CT Corporation, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, or wherever this Defendant and/or registered agent may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of "CHI St. Luke's Health Baylor College of Medicine Medical Center d/b/a Baylor St. Luke's Medical Center" with regards to the events described in this Petition. Plaintiffs expressly invoke their rights under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time on a motion by any party or on the Court's own motion.

Defendant BAYLOR COLLEGE OF MEDICINE, is a Texas corporation with its principal place of business in Harris County, Texas. This Defendant may be served with process by serving its registered agent, James Banfield, One Baylor Plaza, Suite 106A, Houston, Texas 77030, or wherever this Defendant and/or registered agent may be found.

Plaintiffs specifically invoke the right to institute this suit against whatever entity was conducting business using the assumed or common name of “Baylor College of Medicine” with regards to the events described in this Petition. Plaintiffs expressly invoke their rights under Rule 28 of the Texas Rules of Civil Procedure to have the true name of this party substituted at a later time on a motion by any party or on the Court’s own motion.

Defendant STEVEN K. SINGH, M.D., was a physician practicing in the State of Texas and was an individual residing in Harris County, Texas at the time of the events described in this Petition, and is currently an individual residing Middlesex County, Massachusetts. Defendant STEVEN K. SINGH, M.D. may be served with process at 222 Baldpate Hill Rd., Newton, MA 02459 or his place of business, Brigham and Women’s Hospital, Cardiac Surgery, 75 Francis St, CA-219, Boston, MA 02115, or wherever this Defendant may be found.

Defendant GEORGE V. LETSOU, M.D., is a physician practicing in the State of Texas and is an individual residing Harris County, Texas. Defendant GEORGE V. LETSOU, M.D. may be served with process at 6433 Mercer St., Houston, Texas 77005 or his place of business, Baylor Clinic, 6620 Main St., Suite 1325, Houston, TX 77030, or wherever this Defendant may be found.

Defendant LEO SIMPSON, M.D., is a physician practicing in the State of Texas and is an individual residing Harris County, Texas. Defendant LEO SIMPSON, M.D. may be served with process at 3203 Blue Bonnet Blvd., Houston, TX 77025 or his place of business, Baylor Clinic, 6620 Main St., Suite 1225, Houston, TX 77030, or wherever this Defendant may be found.

III.
JURISDICTION AND VENUE

Venue in Harris County is permissible and proper under Section 15.002(a)(2) of the Texas Civil Practice and Remedies Code because Defendants resided in Harris County, Texas at the time the cause of action accrued.

The amounts of the Plaintiffs' damages are in excess of the jurisdictional minimums of this Court.

Plaintiffs have fully complied with the notice provisions of Sections 74.051 and 74.052 of the Texas Civil Practices and Remedies Code.

IV.
BACKGROUND FACTS

Upon information and belief, the following factual allegations are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

At all relevant times, Plaintiff Ernest Keys was a patient of Defendants CHI ST. LUKE'S HEALTH BAYLOR COLLEGE OF MEDICAL CENTER D/B/A BAYLOR ST. LUKE'S MEDICAL CENTER (hereinafter "St. Luke's Hospital"), BAYLOR COLLEGE OF MEDICINE, STEVEN K. SINGH, M.D., GEORGE V. LETSOU, M.D., and LEO SIMPSON, M.D.

On June 25, 2016, Defendants Leo Simpson, M.D., Steven K. Singh, M.D., George Letsou, M.D. made the decision to move forward with orthostatic heart transplant and deceased donor kidney transplant on Plaintiff Ernest Keys, a 44-year old father of five. Mr. Keys had been an inpatient at Defendant St. Luke's Hospital awaiting a heart and kidney transplant, status 1A. Mr. Keys had chronic heart failure and severe pulmonary hypertension, among other things. Defendants Dr. Singh and Letsou

performed the heart transplant on June 25, 2016, and Mr. Keys was taken from the surgery to recovery at approximately 3:12 p.m. Almost immediately after surgery, Mr. Keys became hypotensive and required high doses of vasopressors. At around 7:00 p.m. on June 25, 2016, Defendant Dr. Simpson was informed that Mr. Keys's mean arterial pressures were in the 50s mmHg despite the high doses of vasopressors. At around 7:00 p.m., on June 25, 2016, Defendant Dr. Simpson ordered an emergent insertion of a "TandemHeart" which is a temporary circulatory support device to assist in pumping oxygenated blood to the organs. Mr. Keys continued to have mean arterial pressures in the 50s, and was not taken by St. Luke's Hospital staff to the catheterization lab ("cath lab") until around 10:00 p.m., and the TandemHeart was not placed until approximately 11:29 p.m. At some point in the cath lab, Mr. Keys suffered cardiogenic shock and went into pulseless electrical activity (PEA) arrest for several minutes. Defendant Dr. Singh ordered the placement of an extracorporeal membrane oxygenation (ECMO) circuit, a temporary mechanical support system used to aid in cardiac failure. Mr. Keys was in cardiogenic shock and right-sided heart failure, and suffered a PEA arrest and resulting hypoxic brain injury. Defendant Dr. Singh then performed emergent open heart surgery, followed by at least four other open heart surgeries in next ten days to remove extensive bleeding, clots, a collapsed lung, infection, as well as surgeries for insertion of a tracheotomy, and numerous heart catheterizations. He was continuously hospitalized until August 31, 2016, at which time he was released to a nursing home.

Before Mr. Key's transplant surgery (since July 2014), Defendants St. Luke's Hospital and Baylor College of Medicine knew about the significantly higher death rates of its patients who underwent heart transplants. In fact, from July 2014-December 31,

2016, Defendant St. Luke's Hospital was not within the U.S. Health and Human Services's Organ Procurement and Transplant Network (OPTN)'s thresholds for acceptable performance, yet it continued to accept patients such as Mr. Keys for heart transplant in April 2016.

Defendants St. Luke's Hospital and Baylor College of Medicine even identified the need to improve intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock, among other things; however, Defendants St. Luke's Hospital and Baylor College of Medicine, through its administration, staff, and employees failed to implement appropriate and sufficient methods, policies, and procedures to its heart transplant program in a timely fashion. Mr. Key's suffered right heart failure immediately after the donor heart was transplanted. Defendants St. Luke's Hospital and Baylor College of Medicine's decision to delay changes to its heart transplant program to improve intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock caused and contributed to Mr. Key's immediate right heart failure and subsequent PEA arrest, hypoxic ischemic encephalopathy, and permanent brain injury.

As a result of his hypoxic ischemic encephalopathy brain injury suffered shortly after his heart transplant on June 25, 2016, Mr. Keys is a spastic triplegic who has some purposeful movement of his right arm, with significant cognitive impairment, who cannot speak, although he has some rudimentary forms of verbal communication, and is wheelchair-bound. As a direct result of the acts and omissions of Defendants, Plaintiff Ernest Keys suffered and continues to suffer a devastating permanent brain injury including hypoxic ischemic encephalopathy and severe disabilities.

Further, at all relevant times, the nurses and physicians providing care to Plaintiff Ernest Keys while he was hospitalized at St. Luke's Hospital were the authorized agents, representatives, or employees of St. Luke's Hospital and/or Baylor College of Medicine, acting in the course and scope of their authority as such.

V.
NEGLIGENCE

Upon trial of this case, the evidence will show that Plaintiffs received injuries and damages as a proximate result of the negligence of Defendants.

On the occasion in question, Defendants committed various acts of omission and commission, which collectively and separately constituted negligence. Defendants owed a duty of care to Plaintiff Ernest Keys.

All of the Defendants breached their duty and were negligence in one or more of the following ways:

- a. Failing to institute appropriate medical care and nursing care;
- b. Failing to take precaution to prevent injuries sustained by Plaintiff Ernest Keys;
- c. Failing to prevent further complications of physical or mental harm;
- d. Failing to insert circulatory support devices during the heart transplant surgery and/or immediately following the heart transplant surgery;
- e. Failing to timely diagnose Plaintiff's medical condition;
- f. Failing to timely perform the emergent placement of the circulatory assistance device TandemHeart;
- g. Failing to timely treat Plaintiff's right-sided heart failure;
- h. Failing to properly manage and treat Plaintiff;
- i. Failing to provide medical and nursing care according to the standard of care.

Defendants St. Luke's Hospital and Baylor College of Medicine also breached their duty through direct hospital liability and were negligence in one or more of the following ways:

- a. Failure to establish improved intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock despite knowing of their significantly high death rate of their heart transplant patients;
- b. Failure to implement improved intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock despite knowing of their significantly high death rate of their heart transplant patients;
- c. Failure to establish policies and procedures to reduce the risk for right heart failure and vaso-dilatory shock despite knowing of their significantly high death rate of their heart transplant patients;
- d. Choosing to delay changes to its heart transplant program to improve intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock despite knowing of their significantly high death rate of their heart transplant patients.
- e. Promoting and marketing their heart transplant program as an internationally recognized leader in heart transplantation despite knowing they were not within the U.S. Health and Human Services's Organ Procurement and Transplant Network (OPTN)'s thresholds for acceptable performance.
- f. Accepting heart transplant patients into their heart transplant program despite knowing they were not within the U.S. Health and Human Services's Organ Procurement and Transplant Network (OPTN)'s thresholds for acceptable performance.

Defendants' negligence was a proximate cause of Plaintiffs' injuries and damages.

VI. **GROSS NEGLIGENCE**

Defendants' acts and omissions described in Count V of this Petition, which Plaintiffs wholly adopt and incorporate by reference into this Count VI, involved an extreme degree of risk, when viewed objectively from Defendants' standpoint at the time, considering the probability and magnitude of the potential harm. Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Ernest Keys and other heart transplant patients.

Specifically, Defendants knew before Mr. Key's transplant surgery (since July 2014), about the significantly higher death rates of its patients who underwent heart

transplants. In fact, from July 2014-December 31, 2016, Defendant St. Luke's Hospital was not within the U.S. Health and Human Services's Organ Procurement and Transplant Network (OPTN)'s thresholds for acceptable performance, yet it continued to accept patients such as Mr. Keys for heart transplant in April 2016.

Defendants even identified the need to improve intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock, among other things; however, Defendants, through its administration, staff, and employees failed to implement appropriate and sufficient methods, policies, and procedures to its heart transplant program in a timely fashion. Defendants' decision to delay changes to its heart transplant program to improve intraoperative surgical methods to reduce the risk for right heart failure and vaso-dilatory shock caused and contributed to Mr. Key's immediate right heart failure and subsequent PEA arrest, hypoxic ischemic encephalopathy, and permanent brain injury and endangered their other heart transplant patients. Defendants' decision to continue to accept patients despite their failure to address the problems with their heart transplant program caused and contributed to Mr. Key's immediate right heart failure and subsequent PEA arrest, hypoxic ischemic encephalopathy, and permanent brain injury and endangered their other heart transplant patients.

Defendants' acts and omissions constituted gross negligence, and proximately caused Plaintiff Ernest Keys's injuries and resulting damages.

VII.
RESPONDEAT SUPERIOR

Defendants CHI St. Luke's Health Baylor College of Medicine Medical Center d/b/a Baylor St. Luke's Medical Center and Baylor College of Medicine are liable for the negligence of their employees during the course and scope of their employment.

Specifically, all the employees of CHI St. Luke's Health Baylor College of Medicine Medical Center d/b/a Baylor St. Luke's Medical Center and Baylor College of Medicine, acting within the course and scope of their employment had a general duty to exercise reasonable care in performing their work. Such employees, however, failed to exercise the requisite standards of care. As a result, CHI St. Luke's Health Baylor College of Medicine Medical Center d/b/a Baylor St. Luke's Medical Center and Baylor College of Medicine are liable for Plaintiff Ernest Key's injuries and damages.

VIII. **DAMAGES**

Plaintiffs sustained injuries and damages as a proximate result of Defendants' negligence and gross negligence directly and/or through their vice-principals, agents, servants and/or employees, and Plaintiffs will respectfully request the Court and Jury to determine the amount of loss Plaintiffs have incurred in the past and in the future, not only from a financial standpoint, but also in terms of good health and freedom from pain and worry. There are certain elements of damages which are provided by law that Plaintiffs are entitled to have the Jury in this case consider separately to determine the sum of money for each element that will fairly and reasonably compensate Plaintiffs for the injuries and damages and losses incurred and to be incurred.

From the date of the incident in question up to the time of trial of this case, such elements of damages to be considered separately and individually for the purpose of determining the sum of money to compensate Plaintiffs is as follows:

- A. The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiff Ernest Keys's injuries from the date of the incident in question up to the time of trial;

- B. The physical pain that Plaintiff Ernest Keys, has suffered as a result of the incident in question up to the time of trial;
- C. The mental anguish that Plaintiff Ernest Keys has suffered from the date of the incident in question up to the time of trial;
- D. The damages resulting from the physical impairment suffered by Plaintiff Ernest Keys and the resulting inability to do those tasks and services that he ordinarily would have been able to perform; and
- E. The physical, mental, emotional, psychological impairment and disfigurement that Plaintiff Ernest Keys has suffered as a result of the incident in question up to the time of trial;
- F. The loss of wages;
- G. The loss of household services;
- H. The costs of suit; and
- I. Exemplary damages.

From the time of trial, the elements of damages to be separately considered which Plaintiffs will sustain in the future beyond the time of trial, are such of the following that are shown by a preponderance of the evidence:

- A. The amount of reasonable medical expenses necessarily incurred in the treatment of Plaintiff Ernest Keys's injuries in the future beyond the time of trial;
- B. The physical pain that Plaintiff Ernest Keys will suffer in the future beyond the time of trial;
- C. The mental anguish that Plaintiff Ernest Keys will suffer in the future beyond the time of trial;
- D. The damages resulting from the physical impairment suffered by Plaintiff Ernest Keys and the resulting inability to do those tasks and services that he ordinarily would have been able to perform; and
- E. The physical, mental, emotional, psychological impairment and disfigurement that Plaintiff Ernest Keys will suffer in the future beyond the time of trial;

- F. The loss of earning capacity;
- G. The loss of household services;
- H. The costs of suit; and
- I. Exemplary damages.

IX.
JURY DEMAND

Plaintiffs demand a trial by jury.

X.
REQUESTS FOR DISCLOSURE

Pursuant to Rule 194, Defendants are requested to disclose, within fifty (50) days of service of this Request, the information described in Rule 194.2 to Plaintiffs.

XI.
PRAYER

Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final determination of the cause of action, Plaintiffs receive a judgment against Defendants awarding Plaintiffs as follows:

- a) Actual damages;
- b) Costs of court;
- c) Prejudgment interest at the highest rate allowed by law;
- d) Interest on the judgment at the highest legal rate from the date of judgment until collected; and
- e) All such other and further relief at law and in equity to which Plaintiffs may show themselves to be justly entitled.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited to appear and answer herein, and that upon final trial, they recover the damages, as

specified above, from the Defendants, both jointly and severally, plus costs of court, interest at the legal rate, both pre-judgment and post-judgment, and have such other and further relief, general and special, at law and in equity, to which they may show themselves justly entitled under the facts and circumstances.

Dated: June 25, 2018.

Respectfully submitted,

THOMAS & WAN, LLP



By: _____

LINDA LAURENT THOMAS

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713.529.1177

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ATTORNEYS FOR PLAINTIFFS

Unofficial Copy Office of Civil Superior District Clerk

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon all counsel of record this 25th day of June 2018 by certified mail, return receipt requested; regular mail; hand delivery and/or facsimile.

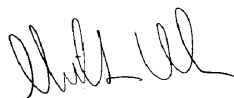
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Dr. Leo Simpson
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Defendant

Dr. Steven K. Singh
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Defendant

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