COMMONWEALTH OF KENTUCKY
WARREN CIRCUIT COURT
DIVISION NO. I
CIVIL ACTION NO. 14-CI-00665

ELECTRONICALLY FILED

ALICE DUFF and LLOYD DEAN DUFF PLAINTIFFS

v. **PLAINTIFFS' PRETRIAL COMPLIANCE**

TAGE F. HAASE, M.D., et al. DEFENDANTS

*** *** *** *** ***

Come the Plaintiffs, by counsel, and for their Pretrial Compliance pursuant to CR 93.04, state as follows:

Page 1 **(a) WITNESSES**
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(a) WITNESSES

Lloyd Duff
Alice Duff
Brandy Tobin, Granddaughter
Debbie Hobbs, Daughter
Sue Kendall, Lloyd Duff's sister
Gary and Sherry Duff
Mary Helen Tibbs, Lloyd Duff's sister

The above witnesses know about some of Alice's hospital and recovery course. Please contact them through Plaintiff's counsel.

Gary Spinks
Alex Sanders
Ray and Janice Dunning
Michele Wilson
Paul Siebert
Phil Steen

Betty Steen
Mary Helen Tibbs
Kayron Willis
Elaine Sanders

The above individuals are witnesses who were at the hospital when Mrs. Duff had her first or second surgery.

Craig Heckman, Assistant Administrator and/or
Representative from Graves-Gilbert Clinic

Bradley Scott, APRN

Kerry Bush, LPN

Patrick Durbin, RN

Carol Kinser, CNA

Amber Nagormay

Jacob Allen Pace

Tage Haase, M.D.
Graves Gilbert Clinic
Greenview Surgery Center
484 Golden Autumn Way, Suite 201
Bowling Green, KY 42103

Dr. Pravin Avula
121 College Street
Smiths Grove, KY 40217

Timothy Wierson, M.D.
Graves Gilbert Clinic
Greenview Surgery Center
484 Golden Autumn Way, Suite 201
Bowling Green, KY 42103

Dr. Kenneth Moffatt
Tennessee Retina
1221 Ashley Circle
Bowling Green, KY 42104

Dr. Amber Hurt
Graves-Gilbert Clinic
201 Park Street
Bowling Green, KY 42101

Dr. John Fitz
Graves-Gilbert Clinic
201 Park Street
Bowling Green, KY 42101
(Cardiologist)

Dr. Sandeep Chhabra
Graves-Gilbert Clinic
201 Park Street
Bowling Green, KY 42101
(Cardiologist)

Dr. Donald F. Rauh
Graves-Gilbert
201 Park Street
Bowling Green, KY 42101
(Gastrointestinal)

Dr. Aaron Porter
McPeak Vision Partners
1403 Andrea Street
Bowling Green, KY 42104
(Eye doctor)

James Hansbrough, M.D.

Wm. H. Moss, M.D.

Rebecca Shadowen, M.D.

Randell Lanier, M.D.

Anson Haieh, M.D.

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Louisville, KY 40202

Plaintiffs also refer the Defendants to any providers contained in their medical records.

Each of the Defendants and their representatives may have knowledge of Mrs. Duff's treatment course.

Any provider in the records of Graves Gilbert Clinic.

Any provider in the records of Norton Hospital Downtown.

Any provider in the records of Commonwealth Specialty

Any provider in the records of The Medical Center.

Any provider in the records of Centennial Medical Center.

Any provider in the records of Tennessee Retina.

Any provider in the records of McPeak Vision Partners.

Any provider identified in any of the medical records of Alice Duff.

Any custodian of any record necessary for authentication, including the custodian of medical records.

Any witness identified during discovery or on the Defendants' Witness List.

Any witness that has been deposed.

Any witness necessary for impeachment or rebuttal.

Any witness necessary to authenticate or lay a foundation for exhibits, documents, or records.

(b)(c) PHYSICAL EVIDENCE/EXHIBITS

Exhibits, physical evidence, drawings and articles have been provided to Defense Counsel, with limited exception, and include the following:

1. Medical records of Alice Duff.
2. Medical expenses of Alice Duff (in summary form pursuant to KRE 1006).
3. Photographs of Alice Duff.
4. Pathology Slides or photos thereof.
5. Duff Day in the Life Video.
6. Bowel Diagrams
7. CT Scans
8. Graves Gilbert Clinic Physicians Policy and Procedure Manual
9. Expert witness disclosures.
10. Any and all exhibits referenced or attached to depositions.
11. Materials, publications, journals, articles, text books, and treatises relied upon by experts.
12. Pleadings and responses filed by any party to this action.
13. Any exhibit listed by Defendants.
14. Curriculum Vitaes of expert witnesses.
15. Any document exchanged during discovery.
16. Any exhibit or document necessary for impeachment or rebuttal.
17. Any documents requested in discovery, even if not furnished.
18. Plaintiffs' and Defendant's written discovery responses, including all exhibits and attachments to the written discovery responses.

19. Plaintiff reserves the right to use demonstrative exhibits at trial, including, but not limited to pictures/videos of Mrs. Duff, medical summaries, and timelines.

(d) EXPERT WITNESSES

***This section may make more sense after reading (e) CLAIMS AND DEFENSES/TRIAL MEMO**

Plaintiffs have retained three expert witnesses, Dr. Barbara Weakley-Jones, a pathologist; Dr. Alan Kravitz, a general surgeon specializing in hernia repair and; Dr. David Pombo, an infectious disease specialist. Plaintiffs also intend to call Dr. Kenneth Moffat, Alice Duff's treating opthalmologist, who has opined that she has suffered blindness stemming the severe infection sustained as a result of Alice's perforated bowel, and Dr. Pravin Avula, her treating family physician, who relates her downstream cascade of problems to the bowel perforation and infection. Plaintiffs' expert witness disclosures have been filed of record and are incorporated by reference, but Plaintiff offers a brief description below.

Plaintiffs plan to introduce portions of depositions of defense experts, including Dr. George Nichols, a pathologist; Dr. Curtis Bower, surgeon; Dr. Jon Jansen, surgeon, and; Dr. Paul Cook, infectious disease. Plaintiffs may elicit opinion testimony from the three surgeons at Graves-Gilbert responsible for Alice Duff's treatment and care, Dr. Tage Haase, Dr. Timothy Wierson, and Dr. Amber Hurt Chambers.

Dr. Barbara Weakley-Jones, Forensic Pathologist

Dr. Barbara Weakley-Jones is the Jefferson County Coroner and former Medical Examiner for the Commonwealth of Kentucky and a board certified forensic pathologist. She will testify that Dr. Tage Haase caught a section of small intestine in a stitch during the surgery he performed on Alice Duff on May 31, 2013. She will explain why his theory that a stitch acted

as a saw blade and cut completely through Alice's small intestine makes no sense and is implausible.

Review of the pathology slides suggests a section of small bowel was encompassed within a stitch that created a ligature that compressed the small bowel, cut off the blood supply, necrosed, died, and the bowel separated into two pieces of open hose. Two open ends of bowel is what Dr. Haase describes finding in his operative note.

The bowel likely had been transected three to four days before Dr. Haase discovered it. Dr. Haase should have ordered an x-ray or CT scan that would have suggested bowel perforation and led to steps to correct the situation before it leaked massive bowel content into the abdomen. Dr. Weakley-Jones will explain that when bowel content leaks into the abdomen, as it did in Alice's case, it spreads dangerous infection, is very painful, causes grave illness and death, and leads to significant future problems like Alice Duff experienced.

Dr. Alan B. Kravitz, Surgeon

Dr. Kravitz will testify that Dr. Haase's acts or omissions fell below the standard of care and caused injury to Alice Duff. Specifically, he will opine that Alice Duff suffered an insult to her small bowel as a result of the 5-31-2013 surgery. Dr. Haase's theory that the suture acted as a saw blade and cut through the bowel is improbable and implausible. It is more likely that Dr. Haase sutured the small intestine, and he will explain how that can occur.

When surgical injuries occur, the standard of care requires prompt discovery. Dr. Haase and the Graves-Gilbert surgical team breached the standard of care by failing to reasonably discover Alice's bowel had been perforated in the face of multiple signs and symptoms that she was suffering from an ongoing infectious process. These signs and symptoms, and very

concerning lab findings, should have prompted Dr. Wierson or Dr. Haase to further investigate the possibility of ongoing infection by ordering additional labs and a CT scan.

A bowel injury can cause severe infection and lead to life-threatening sepsis, and it did here. If a CT had been ordered, it would have revealed findings suggesting a perforated bowel by June 7, post-op day seven, and assuming Dr. Haase stitched through the intestine, it likely would have revealed the perforation even sooner. The longer bowel content leaks into the abdomen, the more life-threatening it is. The damage, subsequent hospitalizations, surgeries, medical expenses, and issues Alice suffered following the bowel perforation were caused by, and flowed from, the toxic perforation and the failure to timely discover and address it.

Dr. David Pombo

Dr. David Pombo is a board certified infectious disease physician who will testify that Alice's clinical presentation between May 31 and June 10 revealed signs and symptoms of infection that should have been recognized by her surgeons and treated sooner. The delayed diagnosis fell below accepted standards of care, caused Alice to become septic, to suffer injury, and to require further treatment and medical procedures.

The endogenous endophthalmitis later diagnosed by Dr. Moffat was caused by the severe sepsis and infections Alice sustained. Dr. Pombo will explain in detail the horrific consequences of bowel content spilling into the abdomen and that it is a wonder Alice lived through it.

DEFENSE EXPERTS- Plaintiffs intend to play the deposition testimony designated by separate filing, but a brief synopsis of each follows:

Dr. George Nichols, Defense Pathologist

Dr. Nichols is a former Medical Examiner for the Commonwealth of Kentucky and forensic pathologist. Despite Dr. Haase's clear operative report that Alice's bowel was completely transected into two pieces of open hose, Dr. Nichols will claim the bowel was not actually completely transected, and for this reason, neither Dr. Haase's "saw blade" explanation, nor Dr. Weakley-Jones' ligature theory, makes sense.

Dr. Nichols admits that if Dr Haase's description of a bowel transection, (which all of Dr. Haase's other experts admit), is accurate, then Dr. Weakley-Jones' ligature theory makes complete sense. Plaintiffs also will read portions of Dr. Nichols's deposition regarding the danger and toxicity of bowel content spilling into the abdomen. Dr. Nichols further tends to agree that Alice's downstream surgeries and complications likely resulted from the toxic effect of the perforated bowel.

Dr. Paul Cook, Defense Infectious Disease Expert

Dr. Paul Cook primarily was disclosed to opine that Alice's eye infection and blindness did not temporally relate to the infections from her multiple surgeries. Plaintiffs have moved to exclude portions of this testimony because Dr. Cook does not have proper qualfications or foundation to support that opinion. As an infectious disease expert, however, Dr. Cook conceded on cross examination that Alice Duff exhibited multiple signs and symptoms of an infection; that Alice's lab findings would make a prudent physician "highly suspicious" of

infection, including a perforated bowel; and that a CT likely would have resulted in findings suggesting a perforated bowel as early as post-op day seven.

Dr. Cook will explain the danger of bowel content filling the abdomen and that Alice Duff's medical course and surgeries after the June 10 bowel repair likely would have been avoided had she not suffered the infectious consequences of the perforated bowel. Dr. Cook will opine that a CT scan is the proper tool to further investigate signs and symptoms (like Alice had) to discover a perforated bowel, and that in his experience, most surgeons already would have ordered a CT scan by post-op day seven, based upon the evidence in this case.

Dr. Jon Jansen, Defense Expert Surgeon

Dr. Jansen will testify that it falls below the standard of care to loop the small bowel within a stitch. He will testify that Alice Duff had signs and symptoms of an infectious process. A CT, which is easy to obtain, would have revealed free air by at least post-op day eight, which should raise suspicions of infection including a perforated bowel. He will explain the danger of bowel contents spilling into the abdomen and that it must be taken seriously; that Alice Duff had signs and symptoms of sepsis after the bowel perforation; and that Alice's surgeries after June 10th more likely than not would have been avoided if she had not suffered the infection and sepsis from the perforated bowel.

Dr. Curtis Bower, Defense Surgeon

Dr. Bower will testify that the transection of Alice's bowel resulted in two ends of open hose and that the saw blade and ligature theories have equal plausibility. The looped or ensnared stitch theory is more likely than the saw blade theory, and he is unaware of any

literature that supports the saw blade theory. Unlike the other experts, he believes neither is below the standard of care.

Dr. Bower will opine that a surgeon should be on the look out for a perforated bowel and infection after six or seven days. X-rays or a CT scan is a good way to rule it out, and they are very easy to obtain, or a surgeon can take the patient straight to the operating room. Alice exhibited signs and symptoms of infection. There was no evidence in the record that Dr. Haase or Dr. Wierson took any steps to address Alice's lab results that suggested infection.

Dr. Bower will explain the dangers of infectious content leaking into the abdomen; that it causes adhesions; and it makes it harder for the body to heal itself. Alice Duff was septic as a result of the perforated bowel. Alice's medical course and surgery after the June 10 bowel repair more likely than not would have been avoided if she had not suffered the infectious consequences of the perforated bowel.

(e) CLAIMS AND DEFENSES–(TRIAL MEMO AND FACTUAL STATEMENT)

Following a May 31, 2013, hernia surgery on his wife Alice, and days of unrelenting pain (while on multiple narcotic medications), vomiting, nausea, elevated white blood counts, and refusals by Dr. Tage Haase to order a CT scan or do further investigation, an exasperated Dean Duff flagged down Dr. Pravin Avula during rounds at The Medical Center on June 10, 2013, and begged for help. Dr. Avula evaluated his long-time patient and found her to be a very sick lady. His consult note said "the patient is clearly very ill." Dr. Avula ordered a CT, and it revealed free air and fluid, obvious indicators of a bowel perforation.

Dr. Haase took Alice to surgery and found a completely transected small bowel–two pieces of open hose. Alice was deathly sick and infected. Toxic bowel content had spilled into

Alice's peritoneum for days and caused her to suffer a cascade of overwhelming infection, sepsis, GI problems, hospitalizations, infection that caused her to go blind, and resulted in medical bills of about $1.3 million.

Dr. Haase evaluated Alice on May 20, 2013, and recommended a hernia repair, which he anticipated to be a 23 hour admit. He scheduled surgery for May 31, 2013, at The Medical Center. Incidently, the date of service is nice for litigation because the post-op days coordinate with the calendar days in June, i.e. post-op day five is June 5.

The surgery was more complicated than expected. Dr. Haase admitted Alice to the hospital, where he thought she may have to stay two or three days. Alice was in severe pain. She could not keep anything down. She had an elevated heart rate. Her white count began to increase. Dean Duff, after giving Dr. Haase the benefit of the doubt for several days, repeatedly tried to explain to Dr. Haase that "something is not right with my wife." He begged Dr. Haase to order a CT scan, a fact Dr. Haase does not dispute. After several more days of excruciating pain in the face of four narcotic pain medications, the inability to keep food down, and knowing "something was not right," Mr. Duff begged Dr. Haase for a CT scan again. He refused. Dr. Haase's progress notes reflect a sit down conversation with Mr. Duff and the family on the evening of Friday, June 7, about her pain and failure to recover. This was post-op day seven. Dr. Haase dismissed Alice's complaints of pain, and said they probably were enhanced because of fibromyalgia.

The morning of June 8, Dr. Haase's partner, Dr. Timothy Wierson, had call. Dr. Haase had ordered labs, and those labs returned and showed a white blood count of 19.9, with a 27% band shift, meaning infectious white blood cells could not reproduce fast enough. Alice was in

severe distress. Dr. Wierson's note makes no mention of the labs. Finally, on post-op day ten, Dr. Avula ordered the CT that revealed the problem.

Dr. Haase immediately took Alice for her second surgery on June 10, and found a completely transected small bowel and fluid in the peritoneum. He cut the dead tissue, sewed the two ends of open hose back together, and kept her in the hospital. Alice was septic and in dire straits. She remained in the hospital until 7-02-13 and was discharged to Commonwealth Regional Specialty, where she remained until 7-19-13. She returned home for a brief time and was admitted to The Medical Center on 7-31-13 due to abdominal pain and swelling secondary to a small bowel obstruction. She remained there until 8-15-13.

She returned to The Medical Center on 8-20-13 with additional pain and problems. Dr. Amber Hurt, Dr Haase's partner, performed an exploratory laparotomy on August 28, an ileostomy on August 31, and placed a PEG tube on September 26. At that point, the surgeons at Graves Gilbert Clinic told the Duffs they could do no more. Alice was doomed to die, but Dean Duff pressed to have her transferred to Norton in Louisville.

Alice presented to Norton Hospital Dowtown on 9-30-13 for skin irritation due to ostomy output and overall distress and decompensation. She was there until 10-17-13. Her next presentation was to Greenview Hospital on 10-17-13. She was readmitted to Greenview on 10-28-13 with kidney issues related to dehydration and insufficient intake. By this time, she was diagnosed with depression and anxiety and transferred to a transitional care unit for continued care on 11-5-13. She was in significant pain, on nebulizers, and experiencing trouble with her vision. She was in Greenview on that admission until 11-29-13. She returned to Greenview on 12-7-13 with generalized weakness, decreased energy, and a kidney injury due to

acid build up in her blood. She remained at Greenview for that admission until 12-24-13. On 12-24-13, she presented to Greenview again, still with an ileostomy bag. She underwent an ileostomy closure on January 20, 2014.

Aside from months of debilitating pain, decompensation, infection, and fear that she would not live to see another day, Alice went blind. Dr. Kenneth Moffat, an ophthalmologist from Nashville with offices in Bowling Green, diagnosed her with endolphthalmitis, which he testified likely stemmed from a perforated bowel and subsequent infection.

The Medical Case

A nicked or cut bowel is a recognized complication of surgery, but taking ten days to figure it out with Alice's symptoms and the family's begging for a CT scan is inexcusable. However, this was not a nicked or cut bowel. It was completely transected, and the way Dr. Haase claims it happened suggests the bowel perforation itself falls below the standard of care. There are two theories of liability in this case: (1) breach of the standard of care for looping the bowel within a stitch, and (2) delayed diagnosis of infection/bowel perforation in the face of obvious signs and symptoms.

Dr. Haase refused to admit that he cut the bowel during surgery. He explained that the bottom layer of regular suture from the mesh acted as a saw blade that cut all the way through the bowel and left it as two pieces of open hose. This has been referred to as the "saw blade theory." If sutures cut through bowels like a knife, it would happen all the time. What makes more sense is if the suture inadvertently was looped around or through the bowel itself. Dr. Haase agreed this is possible, although impossible in this case because he didn't do it. Most

importantly, he acknowledged, as all but one of his experts have acknowledged, that if this happened, it is below the standard of care.

After viewing the pathology slides, Dr. Barbara Weakley-Jones opined that Dr. Haase looped a section of small bowel within his stitch and created a ligature that cut off the blood supply and caused the bowel to necrose and fall apart and ultimately leak bowel content into the abdomen. I attach a series of diagrams that Plaintiffs' experts will use to explain how the stitch looped the bowel, formed a ligature, how it progressed, and how it infected the abdomen.

Instead of ordering tests or a CT scan to diagnose the problem, Dr. Haase kept loading Alice up with pain medicine. She was taking Morphine, Ultran, Zofran, Lidoderm Patch, Tylenol, and Mylanta in overlapping doses for ten days when she wasn't even supposed to be in the hospital according to Dr. Haase's initial projections.

Alice's bowel had been transected for approximately 3-4 days before Dr. Avula–not Haase–discovered it on June 10. When bowel content leaks into the abdomen, it spreads dangerous infection that results in grave illness and compromises organs. It increases the risk of the need for future surgeries, multiple adhesions, and the likelihood of more intestinal obstructions. Dr. Haase's experts agree.

Plaintiffs experts and several defense experts agree that Alice had clear signs and symptoms of a bowel perforation by post-op day 7 and certainly by post-op day 8. All of the defense experts agree that a CT scan is the best tool short of surgery to diagnose a perforated bowel. All defense experts agree that time is of the essence in diagnosing a perforated bowel

and to prevent the spread of infection. The sooner the better. All of the defense experts agree that leakage of bowel content is toxic and causes adhesions and further complications.

As a result, Alice spend most of 9 months in the hospital. She was deathly sick much of that time. Now, she cannot see. She cannot drive. She cannot reliably grocery shop or use the stove. She was so sick she only remembers bits and pieces of her year after this surgery, but she remembers enough, and she remembers thinking she was going to die. Dean Duff gave up a post-retirement job in the funeral business to stay at Alice's side, and he's never left. They do everything together, partially because they want to, but also because they have to. They epitomize for better or worse.

(f) STIPULATIONS

Plaintiffs are willing to stipulate as to the authenticity of the medical records and likely to some experts' qualifications.

(g) ISSUES OF LAW AND FACT

Issues of law are the negligence of the Defendants and the Plaintiffs' damages. Plaintiffs will ask the jury to award an amount that is fair and reasonable based upon the evidence, but in compliance with CR 8, discloses the following:

Past Medical Expenses:	$1,500,000.00
Future Medical Expenses:	$100,000.00
Alice Duff's Pain and Suffering and Lost Enjoyment of Life:	$12,000,000.00
Lloyd "Dean" Duff's Loss of Services, Society, and Companionship:	$8,000,000.00

Respectfully Submitted,

/s/ Chadwick N. Gardner

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email and through the electronic filing system on the 27th day of June, 2022, to the following:

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