

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

**DOCKETED**

OCT 04 2004

MARIA BASILISA APOLINAR,  
Individually and as Mother and Next Friend  
of STEPHANIE HILARIO APOLINAR, a  
Minor,

Plaintiff,

v.

NORTHWESTERN MEMORIAL  
HOSPITAL; VIRGIL REID, III, M.D.;  
R. FELTER WERNDORSER, Midwife; and  
ERIE FAMILY HEALTH CENTER;

Defendants.

No. **04C 6378**

Formerly Case No. 04 L 2243, Circuit Court  
of Cook County, Illinois.

**JUDGE PALLMEYER**

**MAGISTRATE JUDGE MASON**

**NOTICE OF REMOVAL OF A CIVIL ACTION**

TO: Dorothy A. Brown, Clerk  
Circuit Court of Cook County  
1001 Richard J. Daley Center  
Chicago, Illinois 60602

Dr. Virgil C. Reid, III  
1701 West Superior Street  
Chicago, Illinois 60622

Arturo Jauregui  
120 West Madison Street, Suite 400  
Chicago, Illinois 60604

Mary L. Peterson  
Manager, Claims & Litigation  
Northwestern Memorial Hospital  
240 East Ontario Street, Suite 500  
Chicago, Illinois 60611

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, submits this notice of removal of the above-captioned civil action from the Circuit Court of Cook County, Illinois, County Department, Law Division, to the United States District Court for the Northern District of Illinois pursuant to 28 U.S.C. § 2679 and, in support, states the following:

FILED-EDA  
2004 OCT - 10 PM 4:26  
U.S. DISTRICT COURT

1. Plaintiff commenced the above civil action in the Circuit Court of Cook County against, among others, Erie Family Health Center and a midwife employed by Erie Family Health Center, Rebecca Felter-Wernsdorser, alleging, in part, that Felter-Wernsdorser acted negligently in connection with the labor and delivery of plaintiff's baby on March 5-6, 2002. Copies of the pleadings and orders served upon Erie Family Health Center are attached as Exhibit A.

2. This Notice of Removal is filed in accordance with 28 U.S.C. § 2679 upon certification by the designee of the Attorney General of the United States that Erie Family Health Center was a private entity receiving grant money from the Public Health Service pursuant to 42 U.S.C. § 233 and that Rebecca Felter-Wernsdorser was acting within the scope of her employment at Erie Family Health Center.

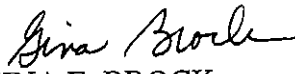
3. Notice of removal may be filed without bond at any time before trial. Trial has not yet been had in this action.

4. Pursuant to the certification by the Attorney General's designee and the filing of this Notice of Removal, the civil action against Erie Family Health Center and Rebecca Felter-Wernsdorser be deemed an action against the United States under 28 U.S.C. § 2679, and the United States shall be substituted as the party defendant for Erie Family Health Center and Rebecca Felter-Wernsdorser.

WHEREFORE, this action now pending in the Circuit Court of Cook County, Illinois, is properly removed to this court pursuant to 28 U.S.C. § 2679(d).

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By:   
GINA E. BROCK  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-7919

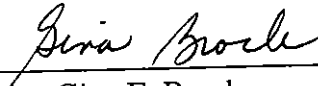
**Certificate of Service**

Gina E. Brock, one of the attorneys for the United States of America, certifies that a copy of the foregoing Notice of Removal was sent by first-class mail on October 1, 2004, to the following persons:

Arturo Jauregui  
120 West Madison Street, Suite 400  
Chicago, Illinois 60604

Mary L. Peterson  
Manager, Claims & Litigation  
Northwestern Memorial Hospital  
240 East Ontario Street, Suite 500  
Chicago, Illinois 60611

Dr. Virgil C. Reid, III  
1701 West Superior Street  
Chicago, Illinois 60622

  
\_\_\_\_\_  
Gina E. Brock

Ex. A

Received by office

JUL 19 2004

of President & CEO

2120 - Served  
2220 - Not Served  
2320 - Served By Mail  
2420 - Served By Publication  
SUM MONS

2121 - Served  
2221 - Not Served  
2321 - Served By Mail  
2421 - Served By Publication  
ALIAS - SUMMONS

(Rev.12/3/01) CCG 0001

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

(Name all parties)

MARIA BASILISA APOLINAR, Individually, and as  
mothe, and Next Friend of Stephanie Hilario  
Apoli ar, a Minor, Plaintiffs

North eastern Memorial Hospital, Virgil Reid, III,  
M.D., J. Felter Wernsdorfer, Midwife, Erie Family  
Health Center. Defendants.

No. 04 L 002243

PLEASE SERVE:  
Erie Family Health Center  
1701 W. Superior  
Chicago, Illinois 60622

SUMMONS

To each defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is  
here attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court at  
the following location:

☒ Richard J. Daley Center, 50 W. Washington, Room \_\_\_\_\_, Chicago, Illinois 60602

☐ District 2 - Skokie  
5600 Old Orchard Rd.  
Skokie, IL 60077

☐ District 3 - Rolling Meadows  
2121 Euclid  
Rolling Meadows, IL 60008

☐ District 4 - Maywood  
1500 Maybrook Ave.  
Maywood, IL 60153

☐ District 5 - Bridgeview  
10220 S. 76th Ave.  
Bridgeview, IL 60455

☐ District 6 - Markham  
16501 S. Kedzie Pkwy.  
Markham, IL 60426

You must file within 30 days after service of this summons, not counting the day of service.

IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF  
REQUESTED IN THE COMPLAINT.

To the officer:

This summons must be returned by the officer or other person to whom it was given for service, with  
endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall  
be returned so endorsed. This summons may not be served later than 30 days after its date.

Atty. No.: 37050

Name: Arturo Jauregui

Atty for: Plaintiff

Add res: 120 W. Madison St. Ste. 400

City/State/Zip: Chicago, Illinois 60604

Telephone: 312/781-9103

WITNESS,

JUL 6 2004  
ROBERTA BROWN  
CLERK OF CIRCUIT COURT

Date of service:

(To be inserted by officer on copy left with defendant  
or other person)

Service by Facsimile Transmission will be accepted at:

(Area Code) (Facsimile Telephone Number)



2120 - Served  
 2220 - Not Served  
 2320 - Served By Mail  
 2420 - Served By Publication  
**SUMMONS**

2121 - Served  
 2221 - Not Served  
 2321 - Served By Mail  
 2421 - Served By Publication  
**ALIAS - SUMMONS**

(Rev.12/3/01) CCG 0001

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**  
**COUNTY DEPARTMENT, LAW DIVISION**

(Name all parties)

**MARIA BASILISA APOLINAR**, Individually, and as  
 mother, and Next Friend of **Stephanie Hilario**  
**Apolinar**, a Minor,  
**Plaintiffs**

**North eastern Memorial Hospital**, **Virgil Reid, III**,  
**M.D.**, **J. Felter Wernsdorfer**, Midwife, **Erie Family**  
**Health Center**.  
**Defendants.**

No. 04 L 002243

**PLEASE SERVE:**  
**Erie Family Health Center**  
**1701 W. Superior**  
**Chicago, Illinois 60622**

**SUMMONS**

To each defendant:

**YOU ARE SUMMONED** and required to file an answer to the complaint in this case, a copy of which is  
 hereto attached, or otherwise file your appearance, and pay the required fee, in the office of the Clerk of this Court at  
 the following location:

☒ **Richard J. Daley Center**, 50 W. Washington, Room \_\_\_\_\_, Chicago, Illinois 60602

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 1500 Maybrook Ave.  
 Maywood, IL 60153

☐ **District 5 - Bridgeview**  
 10220 S. 76th Ave.  
 Bridgeview, IL 60455

☐ **District 6 - Markham**  
 16501 S. Kedzie Pkwy.  
 Markham, IL 60426

**You must file within 30 days after service of this summons, not counting the day of service.**

**IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.**

To the officer:

**This summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this summons shall be returned endorsed. This summons may not be served later than 30 days after its date.**

Att. No.: 37050

Name: Arturo Jauregui

Att. for: Plaintiff

Address: 120 W. Madison St. Ste. 400

City/State/Zip: Chicago, Illinois 60604

Telephone: 312/781-9103

WITNESS,

JUL 6 2004

**DOROTHY BROWN**  
 CLERK OF CIRCUIT COURT

Clerk of Court

Date of service:

(To be inserted by officer on copy left with defendant  
 or other person)

Service by Facsimile Transmission will be accepted at:

(Area Code) (Facsimile Telephone Number)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARIA BASILISA APOLINAR,  
Individually, and as mother, and Next  
Friend of STEPHANIE HILARIO  
APOLINAR, a Minor,

Plaintiff

vs.

NORTHWESTERN MEMORIAL  
HOSPITAL, VIRGIL REID III, M.D.,  
R. FELTER WERNSDORFER, MIDWIFE,  
ERIE FAMILY HEALTH CENTER

Defendants

No. 04 L 002243

Medical Malpractice

Motion Call "D"

04 JUL -6 PM 3:09  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
LAW DIVISION  
DOROTHY BROWN CLERK

**PLAINTIFF'S FIRST AMENDED COMPLAINT AT LAW**

NOW COMES the Plaintiff, MARIA BASILISA APOLINAR, Special Administrator of  
the Estate of STEPHANIE HILARIO APOLINAR, ("Baby Apolinar," ) a Minor, by and through  
her attorneys, JAUREGUI & ASSOCIATES, and complaining of the Defendants,  
NORTHWESTERN MEMORIAL HOSPITAL, its agents, employees, and representatives, and  
VIRGIL REID, M.D., and alleges as follows:

**COUNT I**

**Negligence – Virgil Reid, M.D.**

1. That on March 5, 2003, Defendant VIRGIL REID, M.D., (hereinafter referred to  
as "REID"), and for sometime prior and subsequent thereto, Defendant REID was practicing as  
an obstetrician licensed to engage in his profession in the State of Illinois and held himself out to  
the public, and to plaintiff as fully qualified and trained in the practice of medicine.

2. That On March 5, 2003, and for various dates thereafter, Plaintiff, MARIA

BASILISA APOLINAR received medical care from Defendant REID in connection with the labor and delivery of her daughter, BABY APOLINAR.

3. That at all times mentioned herein, it was the duty of Defendant REID to possess, apply and exercise a degree of skill and care ordinarily used by reasonably well qualified physicians providing care and treatment, and to use the degree of care and skill which physicians would or should have used toward the Plaintiff BABY APOLINAR; Yet notwithstanding, said duty, and in breach of said duty, Defendant REID was guilty of one or more of the following acts of negligence:

- a. Failed to recognize on a timely basis that BABY APOLINAR'S malpresentation would be a difficult delivery which would required constant monitoring by a qualified physician;
- b. Failed to monitor the work of the midwife at all times;
- c. Allowed a midwife to use forceps for the delivery of BABY APOLINAR thereby causing BABY APOLINAR a fractured skull, subdural hematoma, seizures and neurological injuries;
- d. Failed to monitor BABY APOLINAR's condition before, during, and after birth;
- e. Failed to place BABY APOLINAR in the neonatal intensive care unit immediately after her birth;
- f. Failed to recognize, diagnose and treat BABY APOLINAR's neurological injuries on a timely basis, notwithstanding her presentation at birth, including, her floppy appearance and mottled tone, the low APGAR scores at birth, low heart rate, the need to resuscitate her; and the injuries to BABY APOLINAR's head from the use of the forceps;
- g. Otherwise negligently managed plaintiff's labor and delivery.

4. That as a direct and proximate result of one or more of the aforesaid acts of negligence, BABY APOLINAR, did sustain serious injuries; that the aforementioned did directly or proximately cause or contribute to BABY APOLINAR's injuries, including weakness

in her legs and her right arm, lack of coordination and diminish vision in her right eye, and mental retardation; that BABY APOLINAR has suffered great pain, suffering, disability and will in the future continue to endure such pain, psychological and emotional injuries, and will incur large medical expenses; that the Plaintiff did sustain other pecuniary loss and other expenses and damages and will in the future incur other pecuniary loss and expense.

5. That as part of the filing of this Complaint, the Plaintiff, MARIA BASILISA APOLINAR, mother of BABY APOLINAR, was appointed Special Administrator of the Estate STEPHANIE HILARIO APOLINAR, and does bring this cause of action in that capacity and pursuant to 755 ILCS 5/27-6.

6. That pursuant to 735 ILCS 5/2-622 of the Illinois Code of Civil Procedure, there is attached hereto as Exhibit "A" a requisite Affidavit of Plaintiff's counsel and the written report of a health care professional or physician that there is a reasonable and meritorious basis for the filing of said action.

WHEREFORE, the Plaintiff, MARIA BASILISA APOLINAR, as Special Administrator of the Estate of STEPHANIE HILARIO APOLINAR, a Minor, prays that this court enter judgment against defendant VIRGIL REID III, M.D., in a sum in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS.

## COUNT II

### Negligence—Northwestern Hospital

1. That on or about March 5, 2002 NORTHWESTERN MEMORIAL

HOSPITAL, (hereinafter referred to as Defendant "HOSPITAL") was a general hospital located in the Chicago, County of Cook, and State of Illinois, and did hold itself out to the public as capable of providing care, services, and treatment to patients brought to the HOSPITAL.

2. That at all times mentioned herein, the Defendant HOSPITAL did retain agents, servants, and employees who, while acting within the course and scope of their employment or agency, did care, treat, and/or diagnose or undertake to care, treat and/or diagnose, or supervise the care and treatment and medical condition of the Plaintiff, BABY APOLINAR, a minor.

3. That on the aforesaid date, and for sometime prior and subsequent thereto, including March 5, 2002, R. FELTER WERNSDORSE, MIDWIFE (hereinafter "WERNSDORSE"), was practicing as a midwife at defendant HOSPITAL.

4. That on the aforesaid date, Defendant WERNSDORSE was a servant, employee, and/or agent of Defendant HOSPITAL and was acting within the scope of her duties at all times.

5. That on the aforesaid date, WERNSDORSE, was the midwife assigned to assist in the labor and delivery of BABY APOLINAR at Defendant's HOSPITAL, and in that capacity Defendant HOSPITAL did have the duty to supervise, monitor, and train members of the labor and delivery team that were involved in the care and treatment of Plaintiff, BABY APOLINAR.

6. That on March 5, 2002, and continuing through March 6, 2002, BABY APOLINAR, did receive medical care treatment, and attention from various employees and or agents of the Defendant HOSPITAL, including, its agent and or employee, Midwife WERNSDORSE.

7. That on March 5, 2002, and continuing through March 6, 2002, Plaintiff BABYAPOLINAR, received medical care, treatment and attention from defendant

**WERNSDORSER.**

8. That on or about March 5, 2002, Plaintiff BASILISA APOLINAR, was admitted to Defendant Hospital through its agents, and she was at all times within the sole and explicit care, custody and control of the defendants, jointly, individually or by its authorized agents, servants, employees, and representatives, acting within the course and scope of their employment; that all care and treatment and facilities within the NORTHWESTERN MEMORIAL HOSPITAL, and the selections of persons and personnel whose custody and care of MARIA BASILISA APOLINAR and BABY APOLINAR, was made by Defendant HOSPITAL, jointly, individually or by its authorized agents, servants, employees, and representatives, acting within the course and scope of their employment.

9. That at all times mentioned herein, it was the duty of Midwife WERNSDORSER, individually and or as an agent, servant, employee of Defendant HOSPITAL, to exercise ordinary care toward the Plaintiff BABY APOLINAR, yet notwithstanding said duty, and in breach of said duty, the Defendant Hospital and its agents were negligent in one or more of the following acts of negligence:

- a. Failed to recognize on a timely basis that BABY APOLINAR'S malpresentation would be a difficult delivery that required constant monitoring and supervision by a qualified physician;
- b. Failed to monitor and supervise the work of the midwife at all times;
- c. Allowed a midwife to use forceps for the delivery of BABY APOLINAR thereby causing BABY APOLINAR a fractured skull, sudural hematoma, seizures and neurological injuries;
- d. Failed to monitor BABY APOLINAR's condition including her heart rate during and before birth;
- e. Failed to transfer BABY APOLINAR to the neonatal intensive care unit immediately after her birth;

- f. Failed to recognize, diagnose and treat BABY APOLINAR's neurological injuries on a timely basis, notwithstanding her presentation at birth, including, her floppy appearance and mottled tone, the low APGAR scores at birth, low heart rate, the need to resuscitate her; and the injuries to Apolinar's head from the use of the forceps.

10. That as a direct and proximate result of one or more of the aforesaid acts of negligence, BABY APOLINAR, did sustain serious injuries; that the aforementioned did directly or proximately cause or contribute to BABY APOLINAR's injuries, including weakness in her legs and her right arm, lack of coordination and diminish vision in her right eye, and mental retardation; that BABY APOLINAR has suffered great pain, suffering, disability and will in future continue to endure such pain, psychological and emotional injuries, and will incur large medical expenses; that the Plaintiff did sustain other pecuniary loss and other expenses and damages and will in the future incur other pecuniary loss and expense.

11. That as part of the filing of this Complaint, the Plaintiff, MARIA BASILISA APOLINAR, mother of BABY APOLINAR, was appointed Special Administrator of the Estate STEPHANIE HILARIO APOLINAR, and does bring this cause of action in that capacity and pursuant to 755 ILCS 5/27-6.

12. That pursuant to 735 ILCS 5/2-622 of the Illinois Code of Civil Procedure, there is attached hereto as Exhibit "A" a requisite Affidavit of Plaintiff's counsel and the written report of a health care professional or physician that there is a reasonable and meritorious basis for the filing of said action.

WHEREFORE, the Plaintiff, MARIA BASILISA APOLINAR, as Special Administrator of the Estate of STEPHANIE HILARIO APOLINAR, a Minor, prays that this court enter judgment against Defendant HOSPITAL and its agents, in a sum in excess of FIFTY THOUSAND (\$50,000.00) DOLLARS.

### COUNT III

#### **Negligence—Erie Family Health Center**

1. That on or about March 5, 2002 Erie Family Health Center, (hereinafter referred to as Defendant "HEALTH CENTER") was a health clinic located in the Chicago, County of Cook, and State of Illinois, and did hold itself out to the public as capable of providing prenatal care, services, and treatment to patients brought to the HOSPITAL.

2. That at all times mentioned herein, the Defendant HEALTH CENTER did retain agents, servants, and employees who, while acting within the course and scope of their employment or agency, did care, treat, and/or diagnose or undertake to care, treat and/or diagnose, or supervise the care, including prenatal treatment, and medical condition of the Plaintiff, BABY APOLINAR, a minor.

3. That on the aforesaid date, and for sometime prior and subsequent thereto, including March 5, 2002, R. FELTER WERNSDORSE, MIDWIFE (hereinafter "WERNSDORSE"), was practicing as a midwife at defendant HEALTH CENTER.

4. That on the aforesaid date, Defendant WERNSDORSE was a servant, employee, and/or agent of HEALTH CENTER and was acting within the scope of her duties at all times.

5. That on the aforesaid date, WERNSDORSE, was the midwife

assigned to assist in the labor and delivery of BABY APOLINAR at Defendant's HEALTH CENTER, and in that capacity Defendant HEALTH CENTER did have the duty to supervise, monitor, and train members of the labor and delivery team that were involved in the care and treatment of Plaintiff, BABY APOLINAR.

6. That prior March 5, 2002, and continuing through March 6, 2002, BABY APOLINAR, did receive medical care treatment, and attention from various employees and or agents of the Defendant HEALTH CENTER, including, its agent and or employee, Midwife WERNSDORSE.

7. That at all times mentioned herein, it was the duty of Midwife WERNSDORSE, individually and or as an agent, servant, employee of Defendant HEALTH CENTER, to exercise ordinary care toward the Plaintiff BABY APOLINAR, yet notwithstanding said duty, and in breach of said duty, the Defendant HEALTH CENTER and its agents were negligent in one or more of the following acts of negligence:

- a. Failed to recognize on a timely basis that BABY APOLINAR'S malpresentation would be a difficult delivery that required constant monitoring and supervision by a qualified physician;
- b. Failed to monitor and supervise the work of the midwife at all times;
- c. Allowed a midwife to use forceps for the delivery of BABY APOLINAR thereby causing BABY APOLINAR a fractured skull, subdural hematoma, seizures and neurological injuries;
- d. Failed to monitor BABY APOLINAR's condition including her heart rate during and before birth;
- e. Failed to transfer BABY APOLINAR to the neonatal intensive care unit immediately after her birth;
- f. Failed to recognize, diagnose and treat BABY APOLINAR's neurological injuries on a timely basis, notwithstanding her presentation at birth, including, her floppy appearance and mottled tone, the low APGAR scores at birth, low

heart rate, the need to resuscitate her; and the injuries to Apolinar's head from the use of the forceps.

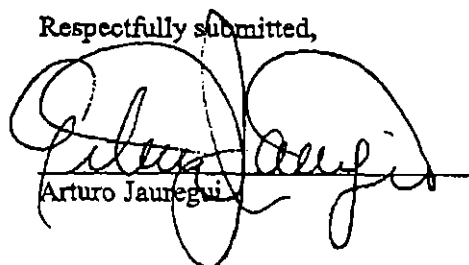
8. That as a direct and proximate result of one or more of the aforesaid acts of negligence, BABY APOLINAR, did sustain serious injuries; that the aforementioned did directly or proximately cause or contribute to BABY APOLINAR's injuries, including weakness in her legs and her right arm, lack of coordination and diminish vision in her right eye, and mental retardation; that BABY APOLINAR has suffered great pain, suffering, disability and will in future continue to endure such pain, psychological and emotional injuries, and will incur large medical expenses; that the Plaintiff did sustain other pecuniary loss and other expenses and damages and will in the future incur other pecuniary loss and expense.

9. That as part of the filing of this Complaint, the Plaintiff, MARIA BASILISA APOLINAR, mother of BABY APOLINAR, was appointed Special Administrator of the Estate STEPHANIE HILARIO APOLINAR, and does bring this cause of action in that capacity and pursuant to 755 ILCS 5/27-6.

10. That pursuant to 735 ILCS 5/2-622 of the Illinois Code of Civil Procedure, there is attached hereto as Exhibit "A" a requisite Affidavit of Plaintiff's counsel and the written report of a health care professional or physician that there is a reasonable and meritorious basis for the filing of said action.

WHEREFORE, the Plaintiff, MARIA BASILISA APOLINAR, as Special Administrator  
of the Estate of STEPHANIE HILARIO APOLINAR, a Minor, prays that this court enter  
judgment against ERIE FAMILY HEALTH CENTER and its agents, in a sum in excess of  
FIFTY THOUSAND (\$50,000.00) DOLLARS.

Respectfully submitted,



Arturo Jauregui

Firm No. 37050  
Jauregui & Associates  
120 West Madison Street  
Suite 400  
Chicago, Illinois 60602  
(312) 781-9103

**CERTIFICATE OF REVIEWING HEALTH PROFESSIONAL  
ILLINOIS CODE OF CIVIL PROCEDURE  
705 ILCS 5/2-622**

**RE: MARIA BASILISA APOLINAR, as the Special Administrator of STEPHANIE  
HILARIO APOLINAR, Minor vs. Northwestern Memorial Hospital and Virgil  
Reid III, M.D.**

I am a physician licensed to practice medicine in all of its branches. I have reviewed the records, facts and other relevant materials pertaining to the above-captioned matter. I am knowledgeable in the relevant issues of this case. I am qualified by experience, I am certified in the field of obstetrics medicine, and I have practiced in the relevant area in question for the last six years. I am of the opinion, which I hold to a reasonable degree of medical certainty, that the acts to follow below reasonably caused and contributed to the chain of events which ultimately led to Plaintiff's injuries. For the reasons to follow below, I find that there is a reasonable and meritorious basis for suit in medical negligence against Northwestern Memorial Hospital and Virgil Ried III, M.D.

On March 5, 2002, and for sometime thereafter, VIRGIL REID III, M.D., by and through their agents, negligently failed to properly manage, monitor and supervise the birth of Stephanie Hilario Apolinar. Maria Basilisa Apolinar, presented to Defendants on March 5, 2002, in active labor for the birth of her daughter.

Defendants VIRGIL REID III, M.D., Northwestern Memorial Hospital, and Erie Family Health Center, through their agents and employees, including Midwife R. FELTER WERNSDORSER, deviated from the standard of care by failing to recognize on a timely basis that Stephanie's malpresentation would require constant monitoring and supervision by a qualified physician during the birthing process; failed to monitor and supervise the work of the midwife at all times; allowed a midwife to use forceps, thereby causing Stephanie's injuries including a fractured skull, subdural hematoma, seizures and other neurological injuries.

Defendants further deviated from the standard of care by failing to diagnosed and treat BABY APOLINAR's neurological injuries on a timely basis, notwithstanding her presentation at birth, including, her floppy appearance and mottled tone, the low APGAR scores at birth, low heart rate, the need to resuscitate her; and the injuries to BABY APOLINAR's head from the use of the forceps; and failed to place Stephanie in the neonatal intensive care unit immediately after her birth.

The breach in the standard of care by the defendants caused or contributed to Stephanie's injuries.

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

MARIA BASILISA APOLINAR,  
Individually, and as mother, and Next  
Friend of STEPHANIE HILARIO  
APOLINAR, a Minor,

Plaintiff

vs.

NORTHWESTERN MEMORIAL  
HOSPITAL, VIRGIL RIED III, M.D.

Defendants

No.

Medical Malpractice

AFFIDAVIT

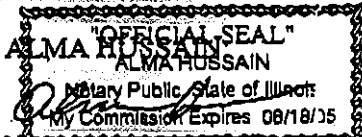
NOW COMES the Affiant, ARTURO JAUREGUI, after being duly sworn under oath,  
states as follows:

1. That I am one of the attorneys for the Plaintiff.
2. That I have consulted and reviewed the facts of this case with a health professional who I reasonably believe is knowledgeable in the relevant issues involved in this particular action; is a licensed medical doctor practicing in all its branches and has practiced in the same area of health care medicine that is at issue in this particular matter within the last six years; and who has demonstrated confidence in the subject of the case.
3. That said health professional has determined in a written report, after review of the medical records, that there is a reasonable and meritorious cause for the filing of this action.
4. That as a result, Affiant, ARTURO JAUREGUI, has concluded on the basis of the reviewing health professional's review and consultation that there is a reasonable and meritorious cause for filing this action against defendants NORTHWESTERN MEMORIAL HOSPITAL, and VIRGIL RIED III, M.D. That a copy of the written report of the reviewing health professional is attached hereto.

FURTHER AFFIANT SAYETH NOTH.

  
Arturo Jauregui

SUBSCRIBED and SWORN to  
before me this 6TH, of July 2004.



NOTARY PUBLIC OF THE STATE OF ILLINOIS

JAUREGUI & ASSOCIATES  
120 West Madison Street  
Suite 400  
Chicago, Illinois 60601  
(312)781-9103  
Firm No. 37050

Master Calendar Motion Courtrooms Case Management Order

(Rev. 2/21/03) CCL 0601

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISIONA. Solinger

Plaintiff(s)

Case No. 04 L 2243Northwestern Memorial Hospital

Defendant(s)

Motion Call "0" Line #: 5**MASTER CALENDAR MOTION COURTROOMS CASE MANAGEMENT ORDER**

(Please check off all pertinent paragraphs and circle proper party name.)

- (8231)      1. Category #1 (12 month Discovery) (8232)      1a. Category #2 (28 Month Discovery)
- (4296)      2. Written discovery & 213(f)(1) and (2) disclosures to be completed by 7/14/04
- (4218)      3. Oral Discovery & 213(f)(1) and (2) depositions to be completed by 10/12/04
- (4218)      4. Treating physicians depositions to be completed by
- (4288)      5. Subpoenas for treating physicians depositions to be issued by
- (4296)      6.      shall complete outstanding written discovery by
- (4218)      7.      shall be presented for deposition by
- (4206)      8. Plaintiff/Defendant/Add. Party shall answer 213 (f)(3) Interrogatories by
- (4218)      9. Plaintiff's 213(f)(3) witnesses to be deposed by
- (4218)      10. Defendant's 213(f)(3) witnesses to be deposed by
- (4218)      11. Additional party's 213(f)(3) witnesses to be deposed by
- (4619)   X   12. The matter is continued for subsequent Case Management Conference on 7/26/04  
at 9:30 AM/PM in Room 2208 for:

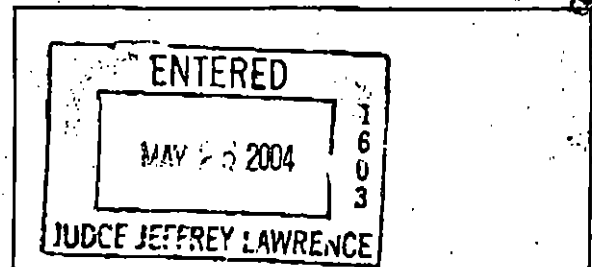
- (A)   X   Proper Service (B)      Appearance of Defendants (C)      Case Value
- (D)      Pleading Status (E)      Discovery Status (F)      Pre-Trial/Settlement
- (G)      Other: Plaintiff is given leave to add Eric Family Health  
Center as a defendant. Plaintiff is given leave to appoint United  
Process Inc as special Process server to serve R. Felter Winkler, Esq.

- (4005)      13. Case is dismissed for want of prosecution. (4040)      The case is voluntarily dismissed under

NOTICE: A.D. R. 18

735 ILCS 5/1-100

- \* Failure of any party to comply with this Case Management Order will be a basis for Rule 219(c) sanctions.
- \* Failure of any party to enforce this Case Management Order will constitute a waiver of such discovery by that party.
- \* All cases arriving on the Trial Call in Courtroom 2005 must have all discovery in Lines 2 through 11 completed.
- \* A copy of this order is to be sent to each party by his/her counsel within 10 (ten) days of the initial Case Management Date.



Judge's Stamp

ENTERED:

Atty. No: 37050

Name: Sorogor & Associates

Atty. for: Plaintiff

Address: 130 W. Madison St. 400

City/State Zip: Chicago, IL 60602

Telephone: 312 781 7103

Judge


Judge's No.

MROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

EX. B

**CERTIFICATION**

Pursuant to the provisions of 42 U.S.C. § 233, and by virtue of the authority delegated to me by the Attorney General under 28 C.F.R. § 15.3 and through the United States Attorney for the Northern District of Illinois, I hereby certify that I have read the complaint in *Maria Basilisa Apolinar, etc. v. Northwestern Memorial Hospital, et al.*, No. 04 L 002243 (Circuit Court of Cook County, Illinois), and all attachments thereto. On the basis of the information now available, I find that at the relevant times, the Erie Family Health Center was a private entity receiving grant money from the Public Health Service pursuant to 42 U.S.C. § 233. Further, I certify that Rebecca M. Felter-Wernsdorfer was acting within the scope of her employment at the Erie Family Health Center with respect to the incidents referred to in the complaint. Accordingly, for purposes of the above case, the Erie Family Health Center and Rebecca M. Felter-Wernsdorfer are deemed to be employees of the United States pursuant to 42 U.S.C. § 233, for Federal Tort Claims Act purposes only.

  
THOMAS P. WALSH  
Chief, Civil Division  
Office of the United States Attorney  
for the Northern District of Illinois

Date: October 1, 2004



## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

MARIA BASILISA APOLINAR, Individually and as Mother and Next Friend of STEPHANIE HILARIO APOLINAR, a Minor

## DEFENDANTS

NORTHWESTERN MEMORIAL HOSPITAL; VIRGIL REID, III, M.D.; R. FELTER WERNDORFER, Midwife; and ERIE FAMILY HEALTH CENTER

(b) County of Residence of First Listed Plaintiff Cook  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant 04C 6378  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. **JUDGE PALLMEYER**

(c) Attorney's (Firm Name, Address, and Telephone Number) **DOCKETED**  
**OCT 04 2004**  
Arturo Jauregui  
120 West Madison Street, Suite 400  
Chicago, Illinois 60604  
(312) 781-9103

Attorneys (If Known)  
Gina E. Brock, Assistant United States Attorney  
Office of the United States Attorney  
219 South Dearborn Street, Suite 500  
Chicago, Illinois 60604 **ASSISTANT JUDGE MASON**

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- DEF DEF  
Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4  
Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5  
Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefit <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input checked="" type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 38 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609

## V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☒ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

FTCA, 42 U.S.C. §2679

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S)

(See instructions):

IF ANY

JUDGE

DOCKET NUMBER

DATE

10-01-2004

SIGNATURE OF ATTORNEY OF RECORD

Gina E. Brock, AUSA

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

This form was electronically produced by Elite Federal Forms, Inc.

**1:04-cv-06378** Apolinar, et al v. NW Mem Hosp, et al  
Rebecca R. Pallmeyer, presiding  
**Date filed:** 10/01/2004  
**Date terminated:** 11/04/2004  
**Date of last filing:** 11/04/2004

## Filers

Name	Type	Added	Terminated
<a href="#">Erie Family Health Center, Inc.</a>	Defendant	10/01/2004	
<a href="#">Northwestern Memorial Hospital</a>	Defendant	10/01/2004	
<a href="#">Virgil Reid III</a>	Defendant	10/01/2004	
<a href="#">R Felter Wernsdorser</a>	Defendant	10/01/2004	

**1:04-cv-06378** Apolinar, et al v. NW Mem Hosp, et al  
Rebecca R. Pallmeyer, presiding  
**Date filed:** 10/01/2004  
**Date terminated:** 11/04/2004  
**Date of last filing:** 11/04/2004

## Parties

**Maria Basilisa Apolinar**

Individually, and as mother, and Next  
Friend

*Added: 10/01/2004*  
*(Plaintiff)*

represented  
by

**Arturo Jauregui**

Jauregui & Associates  
120 West Madison Street  
Suite 400  
Chicago, IL 60602  
(312) 781-9103  
arjauregui@aol.com

*Assigned: 10/01/2004*  
**ATTORNEY TO BE NOTICED**

**Stephanie Hilario Apolinar**

a Minor

*Added: 10/01/2004*  
*(Plaintiff)*

represented  
by

**Arturo Jauregui**

Jauregui & Associates  
120 West Madison Street  
Suite 400  
Chicago, IL 60602  
(312) 781-9103  
arjauregui@aol.com

*Assigned: 10/01/2004*  
**ATTORNEY TO BE NOTICED**

**Erie Family Health Center, Inc.**

*Added: 10/01/2004*  
*(Defendant)*

represented  
by

**Gina Elizabeth Brock**

United States Attorney's Office  
(NDIL)  
219 South Dearborn Street  
Suite 500  
Chicago, IL 60604  
(312) 353-5300  
gina.brock@usdoj.gov

*Assigned: 10/01/2004*  
**ATTORNEY TO BE NOTICED**

**Northwestern Memorial Hospital**

*Added: 10/01/2004*

represented  
by

**Gina Elizabeth Brock**

United States Attorney's Office

*(Defendant)*

(NDIL)  
219 South Dearborn Street  
Suite 500  
Chicago, IL 60604  
(312) 353-5300  
gina.brock@usdoj.gov  
*Assigned: 10/01/2004*  
**ATTORNEY TO BE NOTICED**

**Virgil Reid, III**  
M.D.

*Added: 10/01/2004*  
*(Defendant)*

represented  
by

**Gina Elizabeth Brock**  
United States Attorney's Office  
(NDIL)  
219 South Dearborn Street  
Suite 500  
Chicago, IL 60604  
(312) 353-5300  
gina.brock@usdoj.gov  
*Assigned: 10/01/2004*  
**ATTORNEY TO BE NOTICED**

**R Felter Wernsdorser**  
Midwife

*Added: 10/01/2004*  
*(Defendant)*

represented  
by

**Gina Elizabeth Brock**  
United States Attorney's Office  
(NDIL)  
219 South Dearborn Street  
Suite 500  
Chicago, IL 60604  
(312) 353-5300  
gina.brock@usdoj.gov  
*Assigned: 10/01/2004*  
**ATTORNEY TO BE NOTICED**

**1:04-cv-06378** Apolinar, et al v. NW Mem Hosp, et al  
Rebecca R. Pallmeyer, presiding  
**Date filed:** 10/01/2004  
**Date terminated:** 11/04/2004  
**Date of last filing:** 11/04/2004

## Case Summary

**Office:** Chicago  
**Jury Demand:** None

**Nature of Suit:** 362

**Jurisdiction:** U.S.  
Government Defendant

**County:** Cook  
**Origin:** 2

**Filed:** 10/01/2004

**Demand:** \$0

**Cause:** 28:1441 Petition for  
Removal- Personal Injury

**Disposition:** Dismissed - Settled

**Terminated:** 11/04/2004

**Reopened:**

**Lead Case:**

None

**Related Case:**

None

**Other Court Case:** 04L  
002243[Cir Ct of Cook Co]

**Defendant Custody Status:**

**Flags:** MASON,TERMED

**Plaintiff:** Stephanie Hilario  
Apolinar

**Plaintiff:** Maria Basilisa  
Apolinar

**Defendant:** Northwestern  
Memorial Hospital

**Defendant:** Virgil Reid, III

**Defendant:** R Felter  
Wernsdorser

**Defendant:** Erie Family Health  
Center, Inc.

**represented by**

Arturo Jauregui

**represented by**

Arturo Jauregui

**represented by**

Gina Elizabeth  
Brock

**represented by**

Gina Elizabeth  
Brock

**represented by**

Gina Elizabeth  
Brock

**represented by**

Gina Elizabeth  
Brock

**Phone:**(312) 781-9103

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**Phone:**(312) 353-5300

**Email:** gina.brock@usdoj.gov

**Phone:**(312) 353-5300

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**Phone:**(312) 353-5300

**Email:** gina.brock@usdoj.gov

**Phone:**(312) 353-5300

**Email:** gina.brock@usdoj.gov

**1:04-cv-06378** Apolinar, et al v. NW Mem Hosp, et al  
Rebecca R. Pallmeyer, presiding  
**Date filed:** 10/01/2004  
**Date terminated:** 11/04/2004  
**Date of last filing:** 11/04/2004

## Associated Cases

### Other Court Information

Court Name	Case Number	Start Date	End Date
Cir Ct of Cook Co	04L 002243		

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED

OCT 14 2004

MARIA BASILISA APOLINAR,  
Individually and as Mother and Next Friend  
of STEPHANIE HILARIO APOLINAR, a  
Minor,

Plaintiff,

v.

NORTHWESTERN MEMORIAL  
HOSPITAL; VIRGIL REID, III, M.D.;  
R. FELTER WERNDORFER, Midwife; and  
ERIE FAMILY HEALTH CENTER;

Defendants.

No. 04 C 6378

Formerly Case No. 04 L 2243, Circuit Court  
of Cook County, Illinois

Judge Rebecca Pallmeyer

FILED

OCT 04 2004

MICHAEL J. ...

NOTICE OF MOTION

TO: Arturo Jauregui  
120 West Madison Street, Suite 400  
Chicago, Illinois 60604

Dr. Virgil C. Reid, III  
1701 West Superior Street  
Chicago, Illinois 60622

Mary L. Peterson  
Manager, Claims & Litigation  
Northwestern Memorial Hospital  
240 East Ontario Street, Suite 500  
Chicago, Illinois 60611

PLEASE TAKE NOTICE that on Wednesday, October 13, 2004, at 9:00 a.m., I shall appear before Judge Pallmeyer in the courtroom usually occupied by her in the Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, and present United States' Motion to Dismiss, at which time and place you may appear, if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By: *Gina Brock*

GINA E. BROCK  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-7919

*[Handwritten mark]*

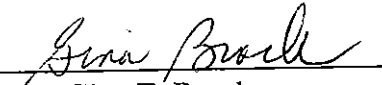
**Certificate of Service**

Gina E. Brock, one of the attorneys for the United States of America, certifies that a copy of the foregoing Motion to Dismiss was sent by first-class mail on October 1, 2004, to the following persons:

Arturo Jauregui  
120 West Madison Street, Suite 400  
Chicago, Illinois 60604

Mary L. Peterson  
Manager, Claims & Litigation  
Northwestern Memorial Hospital  
240 East Ontario Street, Suite 500  
Chicago, Illinois 60611

Dr. Virgil C. Reid, III  
1701 West Superior Street  
Chicago, Illinois 60622

  
Gina E. Brock

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MARIA BASILISA APOLINAR,  
Individually and as Mother and Next Friend  
of STEPHANIE HILARIO APOLINAR, a  
Minor,

Plaintiff,

v.

NORTHWESTERN MEMORIAL  
HOSPITAL; VIRGIL REID, III, M.D.;  
R. FELTER WERNDORSER, Midwife; and  
ERIE FAMILY HEALTH CENTER;

Defendants.

No. 04 C 6378

Formerly Case No. 04 L 2243, Circuit Court  
of Cook County, Illinois

Judge Rebecca Pallmeyer

FILED

OCT 6 2004

MICHAEL J. ...  
CLERK OF COURT

DOCKETED

OCT 14 2004

UNITED STATES' MOTION TO DISMISS COMPLAINT

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, moves to dismiss the complaint filed by plaintiffs pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and, in support of that motion, states as follows:

1. The complaint was filed in the Circuit Court of Cook County, Illinois, against, among others, Erie Family Health Center and Rebecca Felter-Wernsdorser, a midwife employed by Erie Family Health Center, alleging, in part, that Felter-Wernsdorser acted negligently in connection with the labor and delivery of plaintiff's baby on March 5-6, 2002. The case was removed to the United States District Court for the Northern District of Illinois, and the United States was substituted as the party defendant for Erie Family Health Center and Rebecca Felter-Wernsdorser pursuant to 28 U.S.C. § 2679.

2. The Federal Tort Claims Act ("FTCA") is the exclusive remedy for "injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment." 28 U.S.C. § 2679. The government itself, not its agencies or employees, is the only proper defendant in an FTCA suit. 28 U.S.C. §§ 2674, 2679(a), (b).

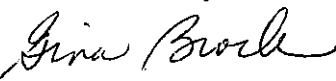
3. The FTCA provides that an action seeking money damages for personal injury against the United States shall not be instituted "unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail." 28 U.S.C. § 2675(a); *see also McNeill v. United States*, 508 U.S. 106, 113 (1993) ("The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies.").

4. According to an attorney in the General Law Division, Office of the General Counsel, Department of Health and Human Services, who searched the agency's computerized database of administrative tort claims, no administrative tort claim was filed by Maria Basilisa Apollinar, Stephanie Hilario Apollinar, or an authorized representative relating to allegations against Erie Family Health Center or Rebecca Felter-Wernsdorfer. *See* Declaration of Meredith Torres, attached as Exhibit A; *see Capitol Leasing Co. v. Federal Deposit Ins. Corp.*, 999 F.2d 188, 191 (7th Cir. 1993) (in a motion to dismiss, court may look beyond the jurisdictional allegations of the complaint to determine whether subject matter jurisdiction exists).

WHEREFORE, the United States requests that the complaint against the United States be dismissed.

Respectfully submitted,

PATRICK J. FITZGERALD  
United States Attorney

By:   
GINA E. BROCK  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604

*See Case  
File For  
Exhibits*

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 6378	DATE	11/4/2004
CASE TITLE	Stephanie Hilario Apolinar, et al vs. Northwestern Memorial Hospital, et al		

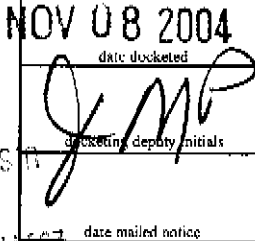

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

--

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☒ Status hearing held.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Government's motion to dismiss (2-1) granted without prejudice; this case is dismissed without prejudice to State court proceedings.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	<div style="text-align: center;">  </div>	<div style="text-align: center;">  </div>	
<input type="checkbox"/> No notices required.			
<input type="checkbox"/> Notices mailed by judge's staff.			
<input type="checkbox"/> Notified counsel by telephone.			
<input checked="" type="checkbox"/> Docketing to mail notices.			
<input type="checkbox"/> Mail AO 450 form.			
<input type="checkbox"/> Copy to judge/magistrate judge.			
ETV	courtroom deputy's initials	number of notices	Document Number
		date docketed	
		docketing deputy initials	
		date mailed notice	
		mailing deputy initials	

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Rebecca R. Pallmeyer	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 6378	DATE	10/13/2004
CASE TITLE	Maria Basilisa Apolinar vs. Northwestern Memorial Hospital		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

United States' Motion To Dismiss

## DOCKET ENTRY:

- (1) ☒ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☒ Status hearing set for 11/4/2004 at 9:00 A.M..
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
  - ☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Response to be filed by or on 10/27/04.
- (11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.	<div>1000 JINUSIG 'S'n</div> <div>69:4 MJ 81 100 4007</div> <div>Date/time received in central Clerk's Office</div>	number of notices	<div>Document Number</div> <div>3</div>
No notices required.		OCT 14 2004 date docketed	
Notices mailed by judge's staff.		rbf docketing deputy initials	
Notified counsel by telephone.		date mailed notice	
✓ Docketing to mail notices.		mailing deputy initials	
Mail AO 450 form.			
Copy to judge/magistrate judge.			
ETV	courtroom deputy's initials		