

United States District Court
Eastern District of Michigan
Southern Division

M.L.T., a minor, by her Next Friend
and Mother, **Shamia Lee**, and **Shamia
Lee**, Individually

Plaintiffs,

v.

Civil No. 19-10065

Honorable Paul D. Borman
Mag. Judge Stephanie Dawkins Davis

United States of America,

Defendant.

United States of America,

Third-Party Plaintiff,

v.

DMC Hutzell Women's Hospital, an assumed
name of VHS Harper-Hutzell Hospital, Inc., **VHS
Harper-Hutzell Hospital, Inc.**, a Delaware Corporation,
Elizabeth Bryant, M.D., **Steven Dudick, M.D.**, **Erica Loudon, M.D.**,
Wayne State University Physician Group, and
Karoline Puder, M.D.,

Third-Party Defendants.

Third-Party Complaint

Pursuant to Fed. R. Civ. P. 14(a), third-party plaintiff, the United States of
America, alleges that third-party defendants, DMC Hutzell Women's Hospital,
VHS Harper-Hutzell Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D.,

Erica Loudon, M.D., Wayne State University Physician Group, and Karoline Puder, M.D., are or may be liable to the United States for all or part of the alleged claims of plaintiffs M.L.T., a minor, and Shamia Lee.

1. The United States of America has been named as a defendant in the above-captioned action brought by M.L.T., a minor, by her Next Friend and Mother, Shamia Lee, and Shamia Lee, individually, under the Federal Tort Claims Act (FTCA) 28 U.S.C. §§ 1346(b)(1), 2671 *et seq.* The amended complaint alleges that Theodore Graham, M.D., at all relevant times, was an employee of the Detroit Community Health Connection, and acting within the scope of his employment as an employee of a deemed community health center and covered under the FTCA for purposes of the claims asserted in the complaint.

2. This Third-Party Complaint is filed under Fed. R. Civ. P. 14(a). The Court has jurisdiction over the subject matter of this Third-Party Complaint under 28 U.S.C. §§ 1345, 1346 and the principles of ancillary and supplemental jurisdiction. *See* 28 U.S.C. § 1367.

3. DMC Hutzel Women's Hospital, an assumed name of VHS Harper-Hutzel Hospital, Inc., is a hospital and health system operating in and around Detroit, Michigan. DMC Hutzel Women's Hospital sponsors the Wayne State University School of Medicine Obstetrics and Gynecology residency program.

4. At all relevant times, DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., was the employer of Elizabeth Bryant, M.D., Steven Dudick, M.D., and Erica Louden, M.D., and, as such, either controlled or had the right to control the manner, method and/or means of conduct of each of its agents, servants and employees, including its doctors, residents, nurses and pediatricians, and is accordingly responsible for the acts and omissions of its agents, servants and employees, including under principles of *respondeat superior*, vicarious liability, agency, master-servant, and right of control.

5. At all relevant times, Wayne State University Physician Group was the employer of Karoline Puder, M.D., as such, either controlled or had the right to control the manner, method and/or means of conduct of each of its agents, servants and employees, including its doctors, residents, nurses and pediatricians, and is accordingly responsible for the acts and omissions of its agents, servants and employees, including under principles of *respondeat superior*, vicarious liability, agency, master-servant, and right of control.

6. Venue in this district is proper under 28 U.S.C. § 1391.

7. Plaintiffs allege that Dr. Theodore Graham was the attending physician who had the ultimate responsibility to supervise and direct the care rendered to his patients by the residents.

8. Plaintiffs allege that Dr. Theodore Graham breached the standard of care during the labor and delivery of M.L.T., and that as a direct and proximate result of the negligence caused severe and permanent bodily injuries to minor plaintiff, M.L.T., which, in turn, caused the infliction of emotional and nervous disturbances to plaintiff Lee.

9. Plaintiffs claim Karoline Puder, M.D., Elizabeth Bryant, M.D., Steven Dudick, M.D., and Erica Louden, M.D., performed vital duties in their official capacities during the labor and delivery of M.L.T.

10. During the relevant time, Karoline Puder, M.D., Elizabeth Bryant, M.D., Steven Dudick, M.D., and Erica Louden, M.D. were not employed by the federally-funded clinic; therefore, the United States cannot be held liable for their allegedly wrongful acts or omissions.

11. During the relevant time, Elizabeth Bryant, M.D., Steven Dudick, M.D., and Erica Louden, M.D., were medical residents with DMC Hutzel Women's Hospital.

12. Elizabeth Bryant, M.D., Steven Dudick, M.D., and Erica Louden, M.D., were supervised by Karoline Puder, M.D.

13. Karoline Puder, M.D., is a physician licensed in Michigan and specializing in Obstetrics and Gynecology during the relevant time. On

information and belief, Dr. Puder was employed by Wayne State University Physician Group during the relevant time.

14. Elizabeth Bryant, M.D., is a physician licensed in Michigan and specializing in Obstetrics and Gynecology during the relevant time. On information and belief, Dr. Bryant was employed by DMC Hutzel Women's Hospital during the relevant time.

15. Steven Dudick, M.D., was a physician licensed in Michigan and specializing in Obstetrics and Gynecology during the relevant time. On information and belief, Dr. Dudick was employed by DMC Hutzel Women's Hospital during the relevant time.

16. Erica Loudon, M.D., is a physician licensed in Michigan and specializing in Obstetrics and Gynecology during the relevant time. On information and belief, Dr. Loudon was employed by DMC Hutzel Women's Hospital during the relevant time.

17. The FTCA adopts state law for purposes of determining liability. *Premo v. United States*, 599 F.3d 540, 545 (6th Cir. 2010). Under Michigan law, “[i]f an action includes a medical malpractice claim against a person or entity . . . [i]f the plaintiff is determined to be without fault under subsections (1) and (2), the liability of each defendant is joint and several.” M.C.L. § 600.6304(6)(a).

18. Plaintiffs allege that they were without fault in this matter. (ECF No. 6, Pl. Am. Compl., PageID.290).

19. Plaintiff Shamia Lee arrived at Harper Hospital on May 2, 2016, at approximately 34 weeks gestation for labor and delivery. Fetal monitoring was commenced at approximately 10pm on May 2, 2016.

20. Dr. Puder, Dr. Dudick, Dr. Bryant, and Dr. Loudin monitored Lee's labor on May 4, 2016, and noted non-reassuring fetal heart tones.

21. On May 4, 2016, at approximately 6:30am, Dr. Dudick examined Lee and found that she was at 5/100/0.

22. At approximately 7:20am, Dr. Bryant examined Lee and found she was at 5/80/-2.

23. At approximately 7:20am, Dr. Puder and Dr. Dudick reviewed a Category II tracing with infrequent decelerations.

24. At approximately 7:20am, Dr. Bryant performed a scalp stimulation.

25. At approximately 7:20am, staff paged Dr. Graham, who was on his way to the hospital.

26. At 7:42am, Dr. Bryant obtained consent from Lee for a c-section due to non-reassuring fetal heart tones.

27. At approximately 8:38am, Dr. Loudin ordered a stat c-section.

28. Dr. Graham did not arrive at the hospital until approximately 8:40am when Lee was on her way to the operating room for a c-section.

29. Dr. Graham performed the c-section.

30. M.L.T. was born on May 4, 2016 with Apgars of 0, 4, 5, and 6 and arterial cord blood gas of pH 6.741/pCO₂ 124/ pO₂ 14.6/BE-24.2.

31. An MRI performed on May 18, 2016 showed results concerning for hypoxic ischemic encephalopathy.

32. The standard of care requires licensed physicians specializing in obstetrics to observe and appropriately respond to fetal heart monitoring.

33. The standard of care requires licensed physicians specializing in obstetrics to timely perform a c-section in response to non-reassuring fetal heart tones when the mother is remote from delivery.

34. Drs. Puder, Dudick, Bryant, and Loudin had a duty to monitor plaintiff M.L.T.'s fetal heart tones and timely order a c-section.

35. Drs. Puder, Dudick, Bryant, and Loudin failed to properly monitor plaintiff M.L.T.'s fetal heart tones and timely order a c-section.

36. The aforementioned deviations from applicable standards of care by third-party defendants DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Louden, M.D., Wayne State University Physician Group, and Karoline Puder, M.D., were the

proximate, direct and sole cause of all or part of the injuries, damages and losses alleged in plaintiffs' Amended Complaint.

37. If plaintiffs are found to be entitled to recovery against defendant/third-party plaintiff, the United States of America, for their losses (which putative entitlement to recovery is specifically denied), it is because of the sole, primary and/or active negligence of third-party defendants DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Loudon, M.D., Wayne State University Physician Group, and Karoline Puder, M.D., which proximately caused the aforementioned deviations from the applicable standard of care and were the proximate, direct cause of all or part of the injuries, damages and losses alleged in the Complaint.

38. In the event that it is found in plaintiffs' medical malpractice action that the United States is negligent and/or liable for any injuries or damages, then DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Loudon, M.D., Wayne State University Physician Group, and Karoline Puder, M.D., are liable to the United States for all or part of the damages assessed against the United States for plaintiffs' claims under common law principles of contribution and indemnity and M.C.L. § 600.292a.

39. DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Louden, M.D., Wayne State University Physician Group, and Karoline Puder, M.D., are liable to the United States by virtue of its duties to plaintiffs and independent of plaintiffs' claims against the United States.

40. Third-party defendants DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Louden, M.D., Wayne State University Physician Group, and Karoline Puder, M.D.'s negligence as herein alleged was an independent and intervening act of negligence that was not foreseeable to the United States.

41. To the extent, if any, that the United States is liable to plaintiffs, DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Louden, M.D., Wayne State University Physician Group, and Karoline Puder, M.D. are liable to the United States.

WHEREFORE, defendant/third-party plaintiff, the United States of America, demands judgment against third-party defendants, DMC Hutzel Women's Hospital, VHS Harper-Hutzel Hospital, Inc., Elizabeth Bryant, M.D., Steven Dudick, M.D., Erica Louden, M.D., Wayne State University Physician Group, and Karoline Puder, M.D., for all sums which may be adjudged against the United States as defendant/third-party plaintiff and in favor of M.L.T., a minor,

and Shamia Lee, her mother, together with costs of suit, and for such other and further relief as the Court deems appropriate in this action.

Respectfully submitted,

Matthew Schneider
United States Attorney

/s/ Zak Toomey
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Dated: April 29, 2019

Certificate of Service

I hereby certify that on April 29, 2019, the foregoing Third Party Complaint has been sent by U.S. mail to the following:

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Detroit, MI 48201

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/s/ Zak Toomey

Zak Toomey

Assistant United States Attorney