

IN THE CIRCUIT COURT OF ADAMS COUNTY, MISSISSIPPI

JOHNNY MACK FORD

PLAINTIFF

VS.

CIVIL ACTION NO. 09-KV-0061-J

JOHN HENRY "RUSTY" FAIRBANKS, JR., M.D.;
J.H. FAIRBANKS, M.D., PLLC;
and JOHN AND JANE DOES 1-10

DEFENDANTS

COMPLAINT

Plaintiff, Johnny Mack Ford, files this his Complaint against John Henry "Rusty" Fairbanks, Jr., M.D., J.H. Fairbanks, M.D., PLLC, and John and Jane Does 1-10, would respectfully show the following:

I. PARTIES

1. Johnny Mack Ford is an adult resident citizen of Waterproof, Tensas Parish, Louisiana.
2. John Henry "Rusty" Fairbanks, Jr., M.D. is an adult resident citizen of the State of Louisiana, who may be served with process at his place of business located at 107 Front Street, Suite 230, Vidalia, Louisiana. John Henry "Rusty" Fairbanks, Jr., M.D. may be referred to herein as "Dr. Fairbanks" or "Defendant."
3. J.H. Fairbanks, M.D., PLLC is a Mississippi company which has its principal place of business located at 107 Front Street, Suite 230, Vidalia, Louisiana, and may be served with process through its registered agent, J. H. Fairbanks, M.D., at his principal place of business located at 107 Front Street, Suite 230, Vidalia, Louisiana.

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EDWARD C. WALKER, CIRCUIT CLERK
BY  D.C.

4. John and Jane Does 1 -10 are fictitious persons who are physicians, nurses and/or agents of Dr. Fairbanks who acted negligently with regard to Johnny Mack Ford's medical care at times pertinent to this action. These defendants may be referred to herein as the "Doe Defendants."

II. JURISDICTION AND VENUE

5. Venue and jurisdiction over this matter is proper in this Court because the Plaintiff's cause of action occurred in Adams County, Mississippi. Also, this case is filed following timely service of notice of this claim pursuant to Section 15-1-36 of the Mississippi Code of 1972, as amended. Specifically, sufficient written notice of Plaintiff's claims was delivered to Dr. Fairbanks on March 27, 2009. No letter of denial of claim has been received by Plaintiff's counsel. Accordingly, this Court has jurisdiction over the claims asserted herein and this action is filed timely.

III. FACTS AND CLAIMS

6. At all relevant times, Johnny Mack Ford was under the continuing medical care of Dr. Fairbanks and the Doe Defendants. On December 3, 2007, Mr. Ford was admitted to Natchez Community Hospital for the purposes of undergoing a left total knee replacement operative procedure. Dr. Fairbanks accepted Mr. Ford into a doctor-patient relationship and agreed to perform the surgery he desired.

7. Mr. Ford's operation proceeded as scheduled on December 3, 2007, and Dr. Fairbanks was his attending physician, as well as the surgeon who performed the operation. Following surgery, Mr. Ford experienced significant bleeding, and he received blood transfusions. Subsequently, on December 11, 2007, a hematoma was found, and Mr. Ford was forced to undergo a second surgical procedure consisting of an incision and drainage of the left knee by Dr. Fairbanks. Mr. Ford continued to complain of severe pain and swelling throughout his hospital admission and treatment by Dr. Fairbanks. Dr. Fairbanks discharged Mr. Ford from Natchez Community Hospital on

December 17, 2007, despite the fact that the surgical procedure was negligently performed and the knee procedure was defective.

8. Following his discharge, Mr. Ford continued to experience severe pain and suffering. Despite Mr. Ford's complaints at each post-operative visit, Dr. Fairbanks informed Mr. Ford how pleased he was with the December 3, 2007 surgery, and how well it was performed.

9. Subsequently, Mr. Ford sought medical care and treatment from other medical providers, and it was discovered that during the December 3, 2007 surgery Dr. Fairbanks placed an unreasonably large/thick polyethylene component and failed to secure the tibial component in Mr. Ford's left knee properly. The tibial component was found to be loose, and at least one of the plate screws protruded posterolaterally at least two inches into the soft tissue surrounding Mr. Ford's left knee. Dr. Fairbanks failed to diagnose and treat properly Mr. Ford's left leg for infection. Dr. Fairbanks also failed to measure and cut the bone or properly install the components in Mr. Ford's left knee. Each of Dr. Fairbanks' failures described herein constituted a breach of the standard of care expected from reasonably prudent minimally competent orthopedic surgeons. Each of Dr. Fairbanks' failures constituted negligence which harmed Mr. Ford.

10. The reasonably prudent minimally competent orthopedic surgeon's standard of care required that each of the above-described duties be satisfied. Specifically, the standard of care for Dr. Fairbanks in connection with his medical care and treatment of Mr. Ford required selection of appropriately sized components, securing the tibial component properly, the tibial component should have been tight and not loose, no screws should have protruded from the knee into the soft tissue materially, the infection should have been diagnosed and treated properly.

11. The reasonably prudent minimally competent orthopedic surgeon is required to read and assess X-ray and other radiography accurately, truthfully, and fairly and to record those

assessments in the medical records. Dr. Fairbanks breached this duty in the care of Mr. Ford by continually recording grossly inaccurate and misleading descriptions about the status of Mr. Ford's knee as shown by the radiography in the medical records.

12. As a direct result of the negligent care by Dr. Fairbanks, Mr. Ford continued to have problems with swelling and infection in the left knee for months following Dr. Fairbanks' December 2007 surgery. As a direct result of the negligent care by Dr. Fairbanks, Mr. Ford was forced to have his knee drained of swelling and infection on multiple occasions. As a direct result of the negligent care by Dr. Fairbanks, Mr. Ford was forced to have a complete physical workup to assess his ability to undergo a repeat arthroscopy to repair the faulty surgery. As a direct result of the negligent care by Dr. Fairbanks, Mr. Ford had a heart catheterization and ventriculogram on May 12, 2008, to clear him for the revision surgery. On June 9, 2008, he underwent an excisional left knee arthroscopy to repair the defective Fairbanks arthroscopy and to address the infected knee with sepsis as a direct result of the negligent care by Dr. Fairbanks. As a direct result of the negligent care by Dr. Fairbanks, a repeat revision procedure was again required on September 8, 2008.

13. Since his left total knee arthroplasty and his discharge from Natchez Community Hospital on December 17, 2007, as a direct result of the negligent care by Dr. Fairbanks, Mr. Ford has suffered with constant swelling of his left knee and leg, chronic and extreme pain, infection and limited mobility. As a result, Mr. Ford has been required to undergo further medical procedures and testing, and three (3) additional surgical procedures in an attempt to correct the damage done by Dr. Fairbanks during and subsequent to the December 3, 2007 surgical procedure he performed on Mr. Ford. Also, as a result of his injuries, Mr. Ford has been forced to procure and take prescription medications, including pain medications, and to use a walker and cane as tools for additional support to maintain his balance and stability while walking. All of the medical procedures following the

December 2007 negligent care by Dr. Fairbanks were reasonably necessary to treat Mr. Ford for the problems that resulted from the negligent surgery. Mr. Ford also missed a great deal of work during his extended recovery period as a result of the negligent care by Dr. Fairbanks.

14. The errors in performing Mr. Ford's December 3, 2007 surgery and follow-up care constitute medical negligence and deviation from appropriate, acceptable standard of care by Dr. Fairbanks.

15. During Mr. Ford's December 3, 2007 surgery, Dr. Fairbanks should have:

- (a) Used a more appropriately sized (smaller) tibial component;
- (b) Properly secured the tibial component;
- (c) Properly measured and cut the tibia or properly installed the tibial component;
- (d) Installed and secured the tibial component using appropriate length screws so that the screws would not extend prominently into the posterolateral aspect and soft tissue of the knee;
- (e) Properly treated Mr. Ford's leg for infection;
- (f) Accurately report in the medical records the descriptions of the images shown on Mr. Ford's X-rays; and
- (g) Immediately revealed and repaired his errors once they were known and obvious.

If Dr. Fairbanks had followed these appropriate procedures, Mr. Ford post-operative recuperation period would have been significantly reduced and he would have been able to return to his normal activities within approximately twelve (12) weeks following the December 3, 2007 surgery. Additionally, if the December 3, 2007 procedure had been performed properly, Mr. Ford would not have had to undergo extended periods of extreme pain, swelling and other discomforts, and he would not have had to undergo any additional surgical procedures. As a result of the negligent care by Dr.

Fairbanks, Mr. Ford's left knee arthroplasty procedure and replacement will never function as it should and would have if it had been performed properly.

IV. COUNT I NEGLIGENCE

16. Plaintiff incorporates paragraphs 1 through 15 as if fully recited herein.

17. Defendants were negligent in the treatment of Mr. Ford on or about December 3, 2007, when he presented to the Defendants for the purposes of undergoing a left total knee replacement operative procedure. Defendants breached their duty to provide reasonably prudent, competent and safe medical care when Dr. Fairbanks placed an unreasonably large/thick polyethylene component and failed to secure the tibial component in Mr. Ford's left knee properly, failed to use and install proper length screws, failed to diagnose and treat properly Mr. Ford's left leg for infection, and failed to measure and cut the bone or properly install the components in Mr. Ford's left knee.

18. Defendants breached their duty to provide reasonably prudent, minimally competent and safe medical care to Mr. Ford on or about December 3, 2007.

19. The medical care rendered to Mr. Ford by the individual Defendants on or about December 3, 2007, fell below the care expected from reasonably prudent, minimally competent medical practitioners under like or similar circumstances. The standard of care for knee replacement surgical procedures requires that the surgeon should select appropriately sized components, should secure the tibial component properly, the tibial component should have been tight and not loose, no screws should have protruded from the knee into the soft tissue materially, and any infection should have been diagnosed and treated properly. This standard of care was breached by Dr. Fairbanks on December 3, 2007. Dr. Fairbanks was therefore negligent.

20. Defendants' negligence was the proximate and efficient cause of Mr. Ford's suffering and injuries.

V. COUNT II MEDICAL MALPRACTICE

21. Plaintiff incorporates paragraphs 1 through 20 as if fully recited herein.

22. The Doe Defendants, Dr. Fairbanks, and other medical staff treating Mr. Ford on or about December 3, 2007, failed to meet the standard of care required of reasonably prudent, minimally competent similarly skilled and equipped practitioners in the United States. The Defendants failed to properly perform the desired left total knee replacement operative procedure, and instead caused additional damage to Mr. Ford's left knee which resulted in extended periods of extreme pain, swelling and discomforts, and additional surgical procedures. The standard of care for knee replacement surgical procedures requires that the surgeon should select appropriately sized components, should secure the tibial component properly, the tibial component should have been tight and not loose so that no screws should have protruded from the knee into the soft tissue materially, and so as not to damage the patient's body unnecessarily. These breaches proximately and efficiently caused Mr. Ford's injury, pain and suffering, and damages. Had the proper standard of care been exercised by Dr. Fairbanks during the surgical procedure, Mr. Ford's post-operative recuperation period would have been significantly reduced and he would have been able to return to his normal activities within approximately twelve (12) weeks following the December 3, 2007 surgery. Additionally, if the December 3, 2007 procedure had been performed properly, Mr. Ford would not have been forced to undergo extended periods of extreme pain, swelling and discomfort, and he would not have had to undergo any additional surgical procedures. The Defendants therefore are liable to Mr. Ford for medical malpractice.

23. As a result of Defendants' malpractice, Mr. Ford was damaged.

VII. DAMAGES

24. Plaintiff incorporates paragraphs 1 through 23 as if fully recited herein.

25. As a direct and proximate result of the Defendants' conduct, Mr. Ford has been damaged in ways including, but not limited to, the following:

- a. past and future pain and suffering;
- b. past and future mental anguish;
- c. resulting past, present and future medical expenses;
- d. permanent scarring and disfigurement;
- e. loss of past, present and future wages, and wage earning capacity;
- f. loss of the enjoyment of life;
- g. loss of the ability to perform domestic chores and other household duties; and
- h. permanent physical disability.

WHEREFORE, the Plaintiff requests judgment against the Defendants for compensatory damages jointly and severally in an amount to be determined at trial (but greater than this Court's jurisdictional minimums). Plaintiff further requests costs, as well as all other proper legal and equitable relief to be accessed against these Defendants.

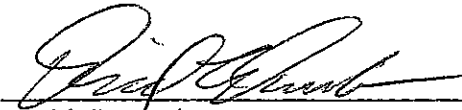
THIS the 2 day of June, 2009.

Respectfully submitted,

JOHNNY MACK FORD

By His Attorneys,

DunbarMonroe, PLLC

BY: 
David C. Dunbar


OF COUNSEL:

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CERTIFICATE OF CONSULTATION

David C. Dunbar, attorney for the Plaintiff, states that pursuant to §11-1-58 of the Mississippi Code of 1972, as amended, he has reviewed the facts of the case and has consulted with at least one (1) expert qualified pursuant to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence who is qualified to give expert testimony as to the standard of care or negligence and who he believes to be knowledgeable in the relevant issues involved in this case. David C. Dunbar further states that he has concluded on the basis of said review and consultation that there is a reasonable basis for the commencement of this civil action.

THIS the 2 day of June, 2009.



David C. Dunbar