

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas  
State Claims Commission

AUG 16 2016

BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

RECEIVED

- ☐ Mr. Erika Counts and Paul Counts, Individually  
☐ Mrs. & as Special Co-Personal Representatives for the  
☐ Ms.  
☐ Miss Estate of Dalton Counts, a Decased Minor

Claimant

vs.

State of Arkansas, Respondent - University of AR Medical Sci  
 Erika Counts and Paul Counts, Individually  
 & as Special Co-Personal Representatives  
 for the Estate of Dalton Counts, a Decased  
 Minor

## COMPLAINT

Do Not Write in These Spaces		
Claim No.	17-0127-CC	
Date Filed	August 16, 2016	
	(Month)	(Day) (Year)
Amount of Claim \$		
Fund	UAMS	
Wrongful Death (minor)		

the above named Claimant, of 5301 S. 45th St. Rogers  
 (Name) (Street or R.F.D. & No.) (City)  
 AR 72758 870-336-4747 County of Benton represented by McDaniel Law Firm, PLC  
 (State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)  
 of 400 South Main St. Jonesboro AR 72401 870-336-4747 870-932-0919, says:  
 (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: UAMS - Per Attached Complaint Amount sought: Greater than 75,000

Month, day, year and place of incident or service: 11/18/14 through 11/21/14

## Explanation:

Claimant alleges wrongful death of decedent Dalton Counts, as a result of various acts and/or omissions falling beneath the applicable standard of care for those persons identified in the attached Complaint. All such persons were acting in the course and scope of their employment with UAMS and/or the State of Arkansas at all times pertinent to this matter. Claimant has separately filed suit against those providers identified in the attached Complaint in the Circuit Court of Pulaski County, Case No. 60CV-16-4021. Following any responsive pleading by Respondent, Claimant requests this matter be stayed pending resolution of the Pulaski County Circuit Court Action.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?  
 No ; when? : to whom? suit pending in Pulaski County Circuit Court per above.  
 (Yes or No) (Month) (Day) (Year) (Department)

: and that the following action was taken thereon:  
 and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address  
 (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)  
 and that the nature thereof is as follows:  
 : and was acquired on , in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Brett McDaniel, Attorney  
 (Print Claimant/Representative Name)

(Signature of Claimant/Representative)



SWORN TO and subscribed before me at

on this 4th day of August 2016  
 (Date) (Month) (Year)

(Notary Public)

My Commission Expires: 07 10 23  
 (Month) (Day) (Year)

IN THE STATE CLAIMS COMMISSION OF ARKANSAS

ERIKA COUNTS AND PAUL COUNTS,  
INDIVIDUALLY, AND AS SPECIAL CO-  
PERSONAL REPRESENTATIVES FOR THE  
ESTATE OF DALTON COUNTS, A DECEASED  
MINOR

PLAINTIFFS

VS.

CV-16-\_\_\_\_\_

STATE OF ARKANSAS (UNIVERSITY OF  
ARKANSAS FOR MEDICAL SCIENCES;  
JESSICA B. BEAVERS, M.D.; AMY BRUNT,  
M.D.; MARLA Y. JOHNSON, M.D.; SRIDHAR  
ENUGANTI, M.D.; SHILPA V. HEGDE, M.D.;  
BILLY R. THOMAS, M.D.; CHARLOTTE  
HOBBS, M.D.; KELLY V. BORA, M.D.; ZANE  
HENLEY, M.D.; ZACK SHEARER, M.D.;  
FRANCESCA MIQUEL-VERGES, M.D.; JOHN  
DOE 1; JOHN DOE 2; JOHN DOE 3; and JOHN  
DOE 4

DEFENDANTS

COMPLAINT

COME NOW Plaintiffs Erika Counts and Paul Counts, individually, and as Special Co-  
Personal Representatives for the Estate of Dalton Counts, a deceased minor, by and through their  
attorneys, McDaniel Law Firm, PLC, and for their Complaint against Defendants, captioned  
above, state as follows:

1. That Dalton Counts, deceased, born November 18, 2014, at all times referred to in  
this Complaint until the time of his death on November 21, 2014, was domiciled at 5301 S. 45<sup>th</sup>  
Street, Rogers, Benton County, Arkansas 72758.
2. That Dalton Counts, deceased, is survived by the following heirs and beneficiaries

at

law:

McDANIEL  
LAW FIRM, PLC  
400 SOUTH MAIN  
JONESBORO, AR 72401  
(870) 336-4747  
Fax (870) 932-0919

<u>NAME</u>	<u>RELATIONSHIP</u>	<u>ADDRESS</u>
Paul Counts	Father	5301 S. 45 <sup>th</sup> Street Rogers, AR 72758
Erika Counts	Mother	5301 S. 45 <sup>th</sup> Street Rogers, AR 72758
Seanna Counts	Sister (minor)	5301 S. 45 <sup>th</sup> Street Rogers, AR 72758
Logan Counts	Brother (minor)	5301 S. 45 <sup>th</sup> Street Rogers, AR 72758

3. That Plaintiffs Erika Counts and Paul Counts were duly appointed Special Co-Personal Representatives of the Estate of Dalton Counts, deceased, on or about May 21, 2015, by Order of the Probate Court of Benton County. Letters of Personal Representation were filed with the Court on June 15, 2015.

4. That Plaintiffs Erika Counts and Paul Counts were, at the time of the occurrence of this action and at the time of the filing of this action, domiciled in Benton County, Arkansas, at 5301 S. 45<sup>th</sup> Street, Rogers, Arkansas 72758.

5. That Defendant Jessica B. Beavers, M.D., hereinafter referred to as "Dr. Beavers," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had her principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

6. That Dr. Beavers was, at all times pertinent to the events referred to herein, a member of the attending teaching faculty at UAMS in the department(s) of pediatrics and/or neonatology.

7. That Defendant Amy Brunt, M.D., hereinafter referred to as "Dr. Brunt," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had her principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

8. That Dr. Brunt was, at all times pertinent to the events referred to herein, a member of the attending teaching faculty at UAMS in the department(s) of pediatrics and/or neonatology.

9. That Defendant Marla Y. Johnson, hereinafter referred to as "Dr. Johnson," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of neonatology and/or perinatal care and had her principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

10. That Dr. Johnson, was, at all times pertinent to the events referred to herein, a neonatology fellow working at UAMS in the department(s) of neonatology and/or perinatology.

11. That Defendant Sridhar Enuganti, M.D., hereinafter referred to as "Dr. Enuganti," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had his principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

12. That Dr. Enuganti, was, at all times pertinent to the events referred to herein, a resident working at UAMS in the department(s) of pediatrics and/or neonatology.

13. That Defendant Shilpa V. Hegde, M.D., hereinafter referred to as "Dr. Hegde," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatric radiology and/or radiology and had

her principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

14. That Dr. Hegde, was, at all times pertinent to the events referred to herein, a member of the attending teaching faculty at UAMS in the department of radiology.

15. That Defendant Billy R. Thomas, M.D., hereinafter referred to as "Dr. Thomas," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had his principal place of business at University of Arkansas for Medical Sciences Hospital, hereinafter referred to as "UAMS," 4301 W. Markham Street, Little Rock, Arkansas 72205.

16. That Dr. Thomas was, at all times pertinent to the events referred to herein, a member of the attending teaching faculty at UAMS in the department(s) of pediatrics and/or neonatology.

17. That Defendant Charlotte Hobbs, M.D., hereinafter known as "Dr. Hobbs," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had her principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

18. That Dr. Hobbs was, at all times pertinent to the events referred to herein, a member of the attending teaching faculty at UAMS in the department(s) of pediatrics and/or neonatology.

19. That Defendant Kelly V. Bora, M.D., hereinafter referred to as "Dr. Bora," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had her principal

place of business at her principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

20. That Dr. Bora, was, at all times pertinent to the events referred to herein, a resident working at UAMS in the department(s) of pediatrics and/or neonatology.

21. That Defendant Zane Henley, M.D., hereinafter known as "Dr. Henley," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had his principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

22. Upon information and belief, Dr. Henley was, at all times pertinent to the events referred to herein, a resident at UAMS in the department(s) of pediatrics and/or neonatology.

23. That Defendant Zack Shearer, M.D., hereinafter known as "Dr. Shearer," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology and had his principal place of business at UAMS, 4301 W. Markham Street, Little Rock, Arkansas 72205.

24. Upon information and belief, Dr. Shearer was, at all times pertinent to the events referred to herein, a resident at UAMS in the department(s) of pediatrics and/or neonatology.

25. That Defendant Francesca Miquel-Verges, M.D., hereinafter known as "Dr. Miquel-Verges," was, at all times pertinent to the events referred to herein, a medical doctor practicing in Little Rock, Pulaski County, Arkansas, in the field(s) of pediatrics and/or neonatology/perinatology and had her principal place of business at Arkansas Children's Hospital (hereinafter "ACH"), 1 Children's Way, Little Rock, Arkansas 72202.

26. That Dr. Miquel-Verges was, at all times pertinent to the events referred to herein,

a member of the attending teaching faculty at UAMS in the department(s) of pediatrics and/or neonatology/perinatology.

27. That all the acts of medical negligence of all defendant physicians, Dr. Beavers, Dr. Brunt, Dr. Johnson, Dr. Enuganti, Dr. Hegde, Dr. Thomas, Dr. Hobbs, Dr. Bora, Dr. Henley, Dr. Shearer, Dr. Miquel-Verges, and/or John Doe Nos. 1 - 4 (as set forth below) occurred in Little Rock, Pulaski County, Arkansas.

28. That pursuant to Ark. Code Ann. § 16-56-125, any person, for the purpose of tolling the statute of limitations, may file a complaint stating his or her cause of action in the appropriate court of this state, whenever the identity of the tortfeasor is unknown.

29. That, in the alternative, the name of an unknown tortfeasor, individual, person, or entity, shall be designated by the pseudo-name John Doe. Thus, in this case, John Doe 1 - 4, is the official name of any individual person, defendant, or entity with which any individual person defendant may be associated. Furthermore, John Doe 1 - 4 represents any other unknown tortfeasor person or entity which negligently caused or contributed to Plaintiffs' damages.

30. That upon determining the identity of any current unknown tortfeasor person or entity, Plaintiffs will amend the Complaint by substituting the real name for the pseudo-name.

31. That Plaintiffs have attached as "**Exhibit 1**" hereto the affidavit of Plaintiff's attorney affirming the identity of the tortfeasor(s) is unknown pursuant to Ark. Code Ann. § 16-56-125.

32. That Plaintiffs specifically allege and aver no person or entity, except as referred to herein, provided negligent care causing or contributing to Plaintiffs' or Dalton's damages, other than those defendants referred to herein.

33. That this Commission has jurisdiction over this cause of action.

34. That this Commission has jurisdiction over the parties to this action.

35. That the venue of this action is properly placed with this Commission.

36. That this action is timely filed within the applicable statute of limitations.

37. That decedent, Dalton Corbin Counts, hereinafter referred to as "Dalton," was born on November 18, 2014 at UAMS. Dalton and his twin brother, Logan Counts, hereinafter referred to as "Logan," were approximately thirty-three weeks 5 days gestational age on the date of their birth.

38. That following birth and stabilization, Dalton and Logan were admitted to the Neonatal Intensive Care Unit, hereinafter referred to as "NICU," of UAMS for observation and treatment.

39. That, in the delivery room or immediately following admission to the NICU, Dalton and Logan each received an umbilical venous catheter, hereinafter referred to as "UVC," and an umbilical arterial catheter, hereinafter referred to as "UAC." These catheters were placed for purposes including, but not limited to, administration of medication and nutrition.

40. That following insertion of Dalton's UVC and UAC, he underwent physical examination and various radiology studies to confirm safe and proper placement of the respective catheters. Upon physical examination and review of the various radiological studies, the respective catheters including, but not limited to, the UVC were interpreted as being in central and proper position.

41. On or about November 19, 2014, Dalton was placed on total parenteral nutrition (TPN) for purposes of nutrition and fluids. These liquids were administered by way of Dalton's

umbilical venous catheter.

42. From the time of Dalton's original umbilical line placement through his ultimate decompensation and distress, he was continuously and/or intermittently monitored and/or followed by or on behalf of each designated Defendant.

43. At approximately 6:00 a.m. on the morning of November 21, 2014, Dalton, still in the NICU at UAMS, had critical lab value(s) which were personally reported to Dr. Henley. These critical lab value(s) were separately discovered and again noted by Dr. Johnson at approximately 6:30 a.m. Shortly thereafter, Dalton was observed to be acutely deteriorating, grunting, mottled, having poor perfusion/delayed capillary refill, and exhibiting significant abdominal distention. By 8:00 a.m., Dalton is charted as ashen with his abdominal area taut and significantly distended.

44. Upon recognizing Dalton's distress on the morning of November 21, 2014, various blood panels and labs were ordered to be performed. At approximately 6:42 a.m., abdominal and chest x-rays were ordered stat. At that time, a bowel perforation was suspected by Dr. Thomas, Dr. Hobbs, Dr. Johnson, and/or Dr. Bora.

45. Prior to and following his November 21, 2014 x-ray studies, Dalton was given various resuscitative fluids, antibiotics, pressor support, sedation and analgesia doses of medicines including, but not limited to, Vancomycin, Zosyn, Dopamine, Ativan, and Morphine, Fentanyl, and saline. Despite repeated doses of these various fluids and medicines, Dalton largely failed to respond.

46. Following Dalton's initial x-ray studies on November 21, 2014, he was intubated and placed on a ventilator.

47. By approximately 7:46 a.m. and upon review of that morning's x-ray studies by physicians including, but not limited to, Dr. Thomas, Dr. Hobbs, Dr. Johnson, Dr. Bora, and/or Dr. Shearer, the decision was made to transport Dalton to ACH for surgical evaluation secondary to suspected bowel perforation with suspected pneumoperitoneum.

48. Dr. Hobbs contacted Dr. Miquel-Verges at that time regarding Dalton's transfer to ACH. At that time and through Dalton's departure to ACH, Dr. Hobbs communicated with Dr. Miquel Verges concerning Dalton's history, presentation, examination, and treatment(s).

49. From the time Dr. Hobbs contacted ACH through Dalton's placement in the care of the operative team at ACH, Dr. Miquel-Verges collaborated with his providers concerning his condition, diagnosis, and treatment protocol, including, but not limited to, ordering and/or recommending various doses of medicines and resuscitative fluids. Dalton remained largely unresponsive to these fluids and medicines.

50. The ACH transport team took Dalton from the NICU of UAMS at approximately 8:40 a.m. on November 21, 2014.

51. At the time Dalton was released for transport to ACH by Dr. Thomas, Dr. Hobbs, Dr. Johnson, Dr. Bora, and/or Dr. Shearer, he was hypotensive, fully ventilated, and was not stable for transport.

52. Upon his arrival to ACH, Dalton was critically ill with his heart rate dropping into the 80's before being placed into the NICU bed. Resuscitative efforts including chest compressions began at 8:52 a.m.

53. By approximately 9:00 a.m., pediatric surgery had made findings of abdominal compartment syndrome through physical examination, had decompressed Dalton's abdomen,

and had placed a drain removing a large amount of milky fluid from his abdomen. All UVC fluids were likewise stopped.

54. By approximately 9:05 a.m., with Dalton having no audible heart rate, a pericardiocentesis procedure was performed removing further milky fluid. At 9:22, pericardiocentesis was again performed removing more milky fluid. At 9:28 a.m., bilateral thoracentesis was performed with a large amount of milky fluid removed from the right side. The pericardium was tapped again at 9:36 a.m. and additional milky fluid was removed.

55. Over the course of the various centesis procedures, epinephrine and chest compressions were administered. Although a heart rate was restored, it was soon lost. At 9:41 a.m., resuscitative efforts were stopped and Dalton was pronounced dead.

56. At approximately 9:30 a.m., Dalton's x-rays from earlier that morning were interpreted by Dr. Robert F. Buchman, a radiologist at UAMS, as depicting abnormal, suspect, and/or unsafe positioning of Dalton's UVC line, as well as lucency/gas accumulated around and superior to the tip of the UVC. Dalton's x-rays further revealed "obvious" fluid/ascites in the abdomen with right sided pleural effusion and diffuse interstitial prominence in the chest, as well as opacification with under aerated lung.

57. At the time of his death, Dalton was three days old. Dalton's twin, Logan, was subsequently discharged from UAMS and is thriving.

58. An autopsy was performed at ACH's recommendation on or about November 24, 2014. A copy of Dalton's autopsy report is attached hereto as "**Exhibit 2**" and speaks for itself.

59. As reflected in **Exhibit 2**, examination of Dalton's small and large intestines were negative and revealed no perforations. Examination of Dalton's chest and abdominal area did

however reveal bilateral pleural effusions with white opaque fluid consistent with TPN and focal hepatic necrosis (or lesion on the liver).

60. As further reflected in **Exhibit 2**, it was found and determined that the main cause of death for Dalton was "most likely a complication of the umbilical venous catheter with development of bilateral pleural effusions, pericardial effusions, and peritoneal distention."

61. "Perforated UVC" was also the post-operative diagnosis of Dalton's treating surgeons at ACH.

62. As stated by Dr. Miquel-Verges after Dalton's death, fluid accumulation in the body cavities is a "rare but known complication from UVC use in newborns."

63. That Dr. Beavers, Dr. Brunt, Dr. Johnson, and/or Dr. Enuganti were individually, collectively, and/or concurrently negligent in matters including, but not limited to, failing to confirm safe and proper placement or positioning of Dalton's UVC and/or failing to recognize abnormal, suspect, and/or improper placement of Dalton's UVC (including their individual, collective, and/or concurrent failure to separately review, consider, and/or interpret Dalton's various confirmatory x-ray images) following his birth on or about November 18, 2014.

64. That Dr. Hegde negligently failed to interpret Dalton's confirmatory x-ray images including, but not limited to, the lateral views as indicating abnormal, suspect, and/or improper placement of Dalton's UVC.

65. That Dr. Thomas, Dr. Hobbs, Dr. Johnson, Dr. Bora, Dr. Henley, Dr. Shearer, and/or Dr. Miquel-Verges were individually, collectively, and/or concurrently negligent in their respective care and treatment of Dalton following his acute event on the morning of November 21, 2014. Such acts of negligence include, but are not limited to, failing to timely and/or

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**ERIKA COUNTS AND PAUL COUNTS,  
INDIVIDUALLY AND AS SPECIAL  
CO-PERSONAL REPRESENTATIVES FOR  
THE ESTATE OF DALTON COUNTS, A  
DECEASED MINOR**

**CLAIMANTS**

**V.**

**CLAIM NO. 17-0127-CC**

**UNIVERSITY OF ARKANSAS FOR  
MEDICAL SCIENCES, ET AL.**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the "Claims Commission") is the Joint Motion to Approve Release and Settlement Agreement and to Dismiss with Prejudice (the "Joint Motion"). Attached to the Joint Motion is the Release and Settlement Agreement signed by the parties.

Based upon a review of the Joint Motion, the Claims Commission hereby APPROVES the Release and Settlement Agreement and refers this claim to the General Assembly for review and, if approved, an appropriation pursuant to Ark. Code Ann. § 19-10-215(b).

IT IS SO ORDERED.

*Henry C. Kinslow*

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth  
Henry Kinslow, Co-Chair  
Bill Lancaster  
Sylvester Smith  
Mica Strother, Co-Chair

DATE: December 18, 2017

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. See Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).