

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

AMY A. ABBOTT,	)	CASE NO. CI 18-_____
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CATHOLIC HEALTH INITIATIVES,	)	
d/b/a CHI HEALTH, CHI HEALTH	)	<b>COMPLAINT</b>
CREIGHTON UNIVERSITY MEDICAL	)	
CENTER, MISTY L. KING-GUTIERREZ,	)	
and CREIGHTON UNIVERSITY,	)	
Defendants.	)	
	)	

Plaintiff states and avers as follows:

1. Plaintiff, Amy A. Abbott is a resident of Elkhorn, Douglas County, Nebraska, and was, at the time of the collision described herein, in the course and scope of her employment with Creighton University.

2. Defendant, Catholic Health Initiatives ("CHI") is a foreign non-profit corporation health system doing business in the State of Nebraska through multiple affiliates. CHI Health is an affiliate member of CHI and a trade name through which multiple CHI affiliates do business in Nebraska.

3. CHI Health Creighton University Medical Center was, at all times pertinent hereto, an affiliated member of CHI Health and a general acute care hospital licensed by the State of Nebraska. The hospital facility was located at 601 North 30<sup>th</sup> Street, Omaha, Nebraska 68131 and was previously known as Alegent Creighton Health Creighton University Medical Center. CHI Health Creighton University Medical Center

("Hospital") operated the Hospital facility, including the underground parking garage and the adjacent parking area of Hospital where the collision, which is the subject of this action, occurred.

4. Defendant Misty L. King-Gutierrez ("King-Gutierrez") is a resident of Omaha, Douglas County, Nebraska and at all times pertinent hereto was an employee of Hospital.

5. Plaintiff brings this action for personal injuries suffered in an automobile pedestrian collision which occurred on September 9, 2015.

6. Defendant Creighton University ("University") is a non-profit corporation, qualified in the State of Nebraska and made a party hereto pursuant to *Neb. Rev. Stat.* § 48-118.01. University has paid benefits to plaintiff and may continue to do so in the future. University claims a right of subrogation pursuant to §§ 48-118 *et seq.* and has waived the statutory thirty days written notice of the filing of this action.

#### **FIRST CAUSE OF ACTION**

7. On September 9, 2015, several minutes prior to 6:30 A.M., plaintiff parked her vehicle in the Hospital parking area just outside of the garage entrance to Hospital. As plaintiff walked from her car towards the garage, defendant King-Gutierrez negligently drove her vehicle from an underground parking location of Hospital onto the parking area adjacent to Hospital, turned left at a stop sign without stopping, and collided with plaintiff knocking her to the ground, and causing multiple injuries.

8. Defendant King-Gutierrez was negligent in the operation of her vehicle in one or more of the following particulars:

- a. In failing to observe plaintiff exit her vehicle and walk toward the Hospital garage entrance;
- b. In driving too fast for the circumstances;
- c. In failing to stop at the stop sign between the garage exit and the adjacent parking area;
- d. In making a left turn without taking appropriate precaution for vehicle or pedestrian traffic;
- e. In failing to yield the right of way to plaintiff; or
- f. In failing to exercise due care to avoid pedestrian traffic which was the proximate cause of the collision and injuries.

9. At the time of the collision, defendant King-Gutierrez was an employee of Hospital, in the course and scope of that employment, driving her automobile from her underground parking place provided by Hospital, onto the surface level parking area of Hospital to the place where the collision occurred, all of which was on the premises of Hospital. Hospital is vicariously liable for the negligence of its employee, King-Gutierrez.

10. As a direct and proximate result of the collision, plaintiff suffered multiple injuries including fractures of facial bones requiring plastic surgery; closed head injuries including concussion, a concussive injury and accommodative paresis of the right eye,

traumatic brain injury requiring brain surgery; and other bodily injuries all of which proximately resulted in the following injuries and damages:

- a. The nature and extent of her bodily injuries;
- b. Physical pain and mental suffering in the past and reasonably certain to be incurred in the future;
- c. The reasonable value of the medical care and supplies reasonably needed by and actually provided to the plaintiff in the amount of \$218,217.09 and continuing until time of trial;
- d. The wages and reasonable value of the plaintiff's lost working time in the amount of \$123,689.00 and continuing until time of trial;
- e. The reasonable value of the medical care and supplies reasonably certain to be needed in the future; and
- f. The reasonable value of the earning capacity the plaintiff is reasonably certain to lose in the future.

## SECOND CAUSE OF ACTION

11. Plaintiff incorporates paragraphs 1 through 10 above.
12. Jonathan F. Abbott is plaintiff's husband. Due to plaintiff's injuries, Jonathan F. Abbott suffered a loss of consortium and companionship.
13. Pursuant to *Neb. Rev. Stat.* § 25-304, Mr. Abbott has assigned his claim to plaintiff for purposes of collection.

WHEREFORE, plaintiff prays for judgment against defendants Misty L. King-Gutierrez, Catholic Health Initiatives d/b/a CHI Health, CHI Health Creighton University Medical Center and each of them for special damages in the amount of \$341,906.09, and continuing to accrue, and for general damages in an amount to be proven at trial, interest thereon at the highest legal rate, the costs of this action, and a determination of the subrogation interests of Creighton University.

Dated this 13<sup>th</sup> day of March, 2018.

AMY A. ABBOTT, Plaintiff

By: s/Robert W. Mullin

Robert W. Mullin, #12974

David S. Houghton, #15204

HOUGHTON BRADFORD WHITTED PC, LLO

6457 Frances Street, Suite 100

Omaha, Nebraska 68106

(402) 344-4000; (402) 930-1099 (fax)

E-mail: [bmullin@houghtonbradford.com](mailto:bmullin@houghtonbradford.com)

E-mail: [dhoughton@houghtonbradford.com](mailto:dhoughton@houghtonbradford.com)

*Attorneys for Plaintiff*

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

AMY A. ABBOTT,	)	CASE NO. CI 18-2078
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ALEGENT CREIGHTON HEALTH	)	
CREIGHTON UNIVERSITY MEDICAL	)	<b>FIRST AMENDED COMPLAINT</b>
CENTER, LLC d/b/a CHI HEALTH	)	
CREIGHTON UNIVERSITY MEDICAL	)	
CENTER, MISTY L. KING-GUTIERREZ,	)	
and CREIGHTON UNIVERSITY,	)	
	)	
Defendants.	)	

For her First Amended Complaint herein, plaintiff states and alleges as follows:

1. Plaintiff, Amy A. Abbott is a resident of Elkhorn, Douglas County, Nebraska, and was, at the time of the collision described herein, in the course and scope of her employment with Creighton University.
2. Defendant Alegent Creighton Health Creighton University Medical Center, LLC ("Alegent"), is a Nebraska limited liability company, and at all times pertinent hereto, was the entity operating the hospital facility located at 601 North 30<sup>th</sup> Street, Omaha, Nebraska 68131 including all improvements, all parking areas, common areas, driveways, pavement, utilities, public sidewalks, grounds and other facilities.
3. CHI Health Creighton University Medical Center ("Hospital") was at all times pertinent hereto, a trade name of Alegent and was the name of the hospital in the

license issued by the State of Nebraska at the time of the collision. The Hospital facility included the underground parking garage and the adjacent parking area where the collision, which is the subject of this action, occurred. The Hospital was also frequently referred to as Alegent Creighton Health Creighton University Medical Center.

4. Defendant Misty L. King-Gutierrez (“King-Gutierrez”) is a resident of Omaha, Douglas County, Nebraska and at all times pertinent hereto was an employee of the Hospital. Plaintiff brings this action for personal injuries suffered in an automobile pedestrian collision which occurred on September 9, 2015 on the Hospital premises.

5. Defendant Creighton University (“University”) is a non-profit corporation, qualified in the State of Nebraska and made a party hereto pursuant to *Neb. Rev. Stat.* § 48-118.01. University has paid benefits to plaintiff and may continue to do so in the future. University claims a right of subrogation pursuant to §§ 48-118 *et seq.* and has waived the statutory thirty days written notice of the filing of this action.

### **FIRST CAUSE OF ACTION**

6. On September 9, 2015, several minutes prior to 6:30 A.M., plaintiff parked her vehicle in the Hospital parking area just outside of the garage entrance to Hospital. As plaintiff walked from her car towards the garage, defendant King-Gutierrez negligently drove her vehicle from an underground parking location of Hospital onto the parking area adjacent to Hospital, turned left at a stop sign without stopping, and collided with plaintiff knocking her to the ground, and causing multiple injuries.

7. Defendant King-Gutierrez was negligent in the operation of her vehicle in one or more of the following particulars:

- a. In failing to observe plaintiff exit her vehicle and walk toward the Hospital garage entrance;
- b. In driving too fast for the circumstances;
- c. In failing to stop at the stop sign between the garage exit and the adjacent parking area;
- d. In making a left turn without taking appropriate precaution for vehicle or pedestrian traffic;
- e. In failing to yield the right of way to plaintiff; or
- f. In failing to exercise due care to avoid pedestrian traffic which was the proximate cause of the collision and injuries.

8. At the time of the collision, defendant King-Gutierrez was an employee of Alegent at the Hospital and was in the course and scope of that employment, driving her automobile from her underground parking place provided by Alegent, onto the surface level parking area of Alegent to the place where the collision occurred, all of which was on the Hospital premises. Alegent is vicariously liable for the negligence of its employee, King-Gutierrez.

9. As a direct and proximate result of the collision, plaintiff suffered multiple injuries including fractures of facial bones requiring plastic surgery; closed head injuries including concussion, a concussive injury and accommodative paresis of the right eye, traumatic brain injury requiring brain surgery; and other bodily injuries all of which proximately resulted in the following injuries and damages:

- a. The nature and extent of her bodily injuries;

- b. Physical pain and mental suffering in the past and reasonably certain to be incurred in the future;
- c. The reasonable value of the medical care and supplies reasonably needed by and actually provided to the plaintiff in the amount of \$218,217.09 and continuing until time of trial;
- d. The wages and reasonable value of the plaintiff's lost working time in the amount of \$123,689.00 and continuing until time of trial;
- e. The reasonable value of the medical care and supplies reasonably certain to be needed in the future; and
- f. The reasonable value of the earning capacity the plaintiff is reasonably certain to lose in the future.

## **SECOND CAUSE OF ACTION**

10. Plaintiff incorporates paragraphs 1 through 9 above.

11. Jonathan F. Abbott is plaintiff's husband. Due to plaintiff's injuries, Jonathan F. Abbott suffered a loss of consortium and companionship.

12 Pursuant to *Neb. Rev. Stat.* § 25-304, Mr. Abbott has assigned his claim to plaintiff for purposes of collection.

WHEREFORE, plaintiff prays for judgment against defendants, and each of them, for special damages in the amount of \$341,906.09, and continuing to accrue, and for general damages in an amount to be proven at trial, interest thereon at the highest legal rate, the costs of this action, and a determination of the subrogation interests of Creighton University.

Dated this 28<sup>th</sup> day of September, 2018.

AMY A. ABBOTT, Plaintiff

By: /s Robert W. Mullin

Robert W. Mullin, #12974

David S. Houghton, #15204

HOUGHTON BRADFORD WHITTED PC, LLO

6457 Frances Street, Suite 100

Omaha, Nebraska 68106

(402) 344-4000; (402) 930-1099 (fax)

E-mail: [bmullin@houghtonbradford.com](mailto:bmullin@houghtonbradford.com)

E-mail: [dhoughton@houghtonbradford.com](mailto:dhoughton@houghtonbradford.com)

*Attorneys for Plaintiff*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28<sup>th</sup> day of September, 2018, the foregoing First Amended Complaint was electronically filed with the Clerk of the Court using the Justice E-File System, which will send notification of such filing to the following:

Cathy S. Trent-Vilim  
Patrick G. Vipond  
Lamson Dugan & Murray LLP  
10306 Regency Parkway Drive  
Omaha, NE 68114-3743  
[ctrent-vilim@ldmlaw.com](mailto:ctrent-vilim@ldmlaw.com)  
[pvipond@ldmlaw.com](mailto:pvipond@ldmlaw.com)

Dallas D. Jones  
Baylor, Evnen, Curtiss, Gritmit & Witt, LLP  
Wells Fargo Center  
1248 O Street, Suite 600  
Lincoln, NE 68508-1499  
[djones@baylorevnen.com](mailto:djones@baylorevnen.com)

Stephen L. Ahl  
Kelli Anne Francis  
Wolfe Snowden Hurt Luers & Ahl, LLP  
Wells Fargo Center, Suite 800  
1248 O Street  
Lincoln, NE 68508-1424  
[sahl@wolfesnowden.com](mailto:sahl@wolfesnowden.com)  
[kfrancis@wolfesnowden.com](mailto:kfrancis@wolfesnowden.com)

s/Robert W. Mullin  
Robert W. Mullin, #12974

# Certificate of Service

I hereby certify that on Friday, September 28, 2018 I provided a true and correct copy of the Amended Complaint to the following:

Catholic Health Initiatives represented by Vipond,Patrick,G (Bar Number: 16390) service method: Electronic Service to pvipond@ldmlaw.com

CHI Health CUMC represented by Vipond,Patrick,G (Bar Number: 16390) service method: Electronic Service to pvipond@ldmlaw.com

Abbott,Amy,A represented by David S. Houghton (Bar Number: 15204) service method: Electronic Service to dhoughton@houghtonbradford.com

Creighton University represented by Jones,Dallas,D (Bar Number: 18589) service method: Electronic Service to djones@baylorevnen.com

CHI Health CUMC represented by Trent-Vilim,Cathy Sue (Bar Number: 22489) service method: Electronic Service to ctrent-vilim@ldmlaw.com

King-Gutierrez,Misty,L represented by Kelli Anne Francis (Bar Number: 21339) service method: Electronic Service to kfrancis@wolfesnowden.com

Catholic Health Initiatives represented by Trent-Vilim,Cathy Sue (Bar Number: 22489) service method: Electronic Service to ctrent-vilim@ldmlaw.com

King-Gutierrez,Misty,L represented by Ahl,Stephen,L (Bar Number: 10036) service method: Electronic Service to sahl@wolfesnowden.com

Signature: /s/ Robert W. Mullin (Bar Number: 12974)