

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

MARK WINTERS, et al.)	
)	
Plaintiffs,)	
)	
v.)	Case No. CV96-16557
)	
THE CLINIC FOR WOMEN, INC.,)	
et al.)	
)	
Defendants.)	

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE
FIRST AMENDED PETITION FOR DAMAGES**

COME NOW Plaintiffs, by and through counsel, and for their Suggestions in Support of Plaintiffs’ Motion For Leave to File First Amended Petition for Damages attached as Exhibit “A” pursuant to Missouri Rule 55.33, moving the Court for its Order granting leave to file the attached First Amended Petition for Damages in the above-styled action, in order to bring additional causes of action arising out of the injury and subsequent death of Decedent Marjorie Joyce Winters.

SUPPORTING SUGGESTIONS

Missouri Rule of Civil Procedure 55.33 provides for the amending of pleadings. Plaintiffs seek to amend the original Petition in order to add a Wrongful Death claim pursuant to Missouri Revised Statute §§ 537.080 and 537.090 and add necessary parties to said claim including: Jeffrey, Jessica, Matthew and Gregory Winters. These four individuals are the natural children of Decedent Marjorie Joyce Winters. The Wrongful Death claim of the children will be brought by and through their Next Friend and natural father Plaintiff Mark Winters.

On July 24, 1996, Marjorie Joyce Winters and Mark Winters instituted a medical

malpractice action against the defendants as a result of their failure to diagnose Marjorie Winters' breast cancer. The original Petition contained three counts: Count I was a personal injury claim brought by Marjorie Winters against the defendants; Count II was a lost chance of recovery claim also brought by Marjorie Winters; and Count III was a loss of consortium claim brought by Mark Winters. On May 13, 1997, Marjorie Joyce Winters passed away as a result of defendants' negligence in failing to timely and properly diagnose a malignant ductal carcinoma.

The attached First Amended Petition for Damages reflects the dual appointment of Plaintiff Mark Winters as both Plaintiff Ad Litem on behalf of Decedent Marjorie Joyce Winters in order to proceed with her lost chance of recovery or survival claim and as Next Friend on behalf of Jeffrey, Jessica, Matthew and Gregory Winters to allow the children to bring a Wrongful Death claim pursuant to RSMo § 537.080. Plaintiffs' First Amended Petition likewise sets forth three Counts: Count I is for the Wrongful Death of Marjorie Joyce Winters; Count II is for the lost chance of recovery or survival claim which survives decedent's death; Count III is the loss of consortium claim brought originally by Plaintiff Mark Winters.

Pursuant to Missouri Rule 55.33, this Court should grant leave for plaintiffs to amend their original Petition in order to accurately reflect the above-stated amendments due to the death of Marjorie Joyce Winters during the course of this action.

The attached Amended Petition will not prejudice any of the defendants as the allegations of the Amended Petition are virtually the same as the original. The sole changes include the addition of a Wrongful Death Count subsuming Decedent Marjorie Joyce Winters' personal injury claim found in the original Petition, and the proper addition of the Mark Winters' natural children as plaintiffs in order to pursue possible damages for the Wrongful Death of their natural

mother.

WHEREFORE, by reason of the statements contained herein, Plaintiffs, by and through counsel, pray that this Court grant them leave to file the attached First Amended Petition for Damages.

Respectfully submitted,

**BARTIMUS, KAVANAUGH, FRICKLETON
& PRESLEY, P.C.**

BY:

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I hereby certify that a copy
of the foregoing was mailed
this _____ day of December,
1997, to:

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