

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

OBSTETRIC AND GYNECOLOGICAL
ASSOCIATES OF IOWA CITY AND
CORALVILLE, P.C., JILL GOODMAN, MD,
LORI WENZEL, MD, AND JAMI
SHEPARD, MD,

Plaintiff,

vs.

MMIC INSURANCE, INC.,
CONSTELLATION, INC., NICOLE
GRAZIANO, and SHUTTLEWORTH &
INGERSOLL, P.L.C.,

Defendants.

Case No.: _____

PETITION AT LAW
AND JURY DEMAND

COME NOW the Plaintiffs, Jill Goodman, MD, Lori Wenzel, MD, and Jami Shepard, MD, and OB-GYN Associates (hereinafter “OB-GYN Associates”), by and through their undersigned counsel, and for their claims against Defendants MMIC Insurance, Inc. (hereinafter “MMIC”), Constellation, Inc. (hereinafter “Constellation”), Nicole Graziano, and Shuttleworth & Ingersoll, P.L.C., d/b/a Shuttleworth & Ingersoll (hereinafter “Shuttleworth”) states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs Jill Goodman, MD, Lori Wenzel, MD, and Jami Shepard, MD, practice medicine in Johnson County, Iowa. These doctors owned and operated Obstetric and Gynecological Associates of Iowa City and Coralville, P.C., a professional corporation incorporated under the laws of the State of Iowa with its principal place of business in Coralville, Johnson County, Iowa.

2. MMIC is a Minnesota corporation with its headquarters at 7701 France Ave. S., Minneapolis, MN 55435, and doing significant business in Iowa. MMIC is the wholly owned subsidiary of Constellation.

3. Constellation is a Minnesota corporation with its headquarters at 7701 France Ave. S., Minneapolis, MN 55435, and doing significant business in Iowa. Constellation is the parent corporation of MMIC.

4. As MMIC and Constellation are subsidiaries and parent corporations acting functionally as one entity, they are referred to jointly in this Petition as MMIC/Constellation.

5. Upon information and belief, at all relevant times, Defendant Nicole Graziano was a resident of Polk County, Iowa, an employee of Constellation, and acted within the scope of her employment.

6. Shuttleworth & Ingersoll, at all times relevant hereto, was a professional corporation organized under the laws of the State of Iowa, with its principal place of business in Cedar Rapids, Linn County, Iowa.

7. Venue is proper in the Iowa District Court for Johnson County as at all times relevant hereto:

- a. The Plaintiffs were insured by MMIC/Constellation at all relevant times.
- b. The acts upon which this action is based arose from damages sustained by OB-GYN Associates as a result of decisions made to a significant degree by Defendants at a trial that took place in Johnson County, Iowa, and
- c. The underlying lawsuit was venued in Johnson County, Iowa.

8. The amount in controversy herein exceeds the jurisdictional amount for small claims court.

GENERAL ALLEGATIONS

9. The underlying case that gives rise to this action is the *Kromphardt* matter, *S.K. v. OB-GYN Associates, P.C., et al.*, LACV081421, in the Iowa District Court for Johnson County.

10. The *Kromphardt* matter arose out of allegedly negligent medical care provided during birth to an infant (S.K.), which they claimed caused the child to suffer hypoxia-ischemia, acidosis, trauma, seizures, and permanent brain injury. As a result of these injuries, S.K. claimed he would be permanently disabled and would need extensive care, treatment, and therapies, including full-time attendant care. S.K. has been diagnosed with cerebral palsy, developmental delay, mixed expressive-receptive language disorder, ischemic brain injury, and HIE (hypoxic-ischemic encephalopathy).

11. Plaintiff OB-GYN Associates was represented in the *Kromphardt* matter by Shuttleworth & Ingersoll. An attorney-client relationship existed between Plaintiff OB-GYN Associates and Shuttleworth & Ingersoll at all times relevant hereto.

12. Shuttleworth & Ingersoll also represented MMIC/Constellation in the *Kromphardt* litigation.

13. Defendant Nicole Graziano was the adjuster for MMIC/Constellation in the *Kromphardt* claim.

14. Before trial, MMIC/Constellation, Nicole Graziano, and Shuttleworth & Ingersoll refused to negotiate with the *Kromphardt* plaintiffs. At no point before trial did Defendants offer a single dollar to the *Kromphardt* plaintiffs to settle their catastrophic claims, thereby exposing OB-GYN Associates to significant risk.

15. At no time did Shuttleworth & Ingersoll explain to Plaintiffs the risks associated with an excess verdict and the impact such a verdict would have on Plaintiffs. Moreover,

MMIC/Constellation did not explain these risks and consequences to the Plaintiffs. Instead, Defendants went forward with the trial, refusing to negotiate with S.K. despite repeated requests by S.K. expressing interest in resolving the underlying case for amounts within the available liability coverage.

16. The jury trial and resulting verdict and Judgment in this case were completely avoidable. The case never should have gone to trial. Plaintiffs did not want this case to go to trial. Plaintiffs wanted the case settled. The only reason the case went to trial was the Defendants' collective failure and refusal to settle the case for an amount of money that was within the limits of the available insurance policy.

17. After a lengthy trial, on March 21, 2022, a Johnson County jury found that Defendants Mercy Hospital and OB-GYN Associates were negligent, that its negligence was a cause of damages to S.K., and that S.K. had sustained damages in the amount of \$97,402,549. Specifically, the jury found damages in the amounts of \$42,203,818 for future medical and custodial care expenses, \$11,698,731 for loss of future earning capacity, \$1,050,000 for past loss of function of the mind and body, \$20,700,000 for future loss of function of the mind and body, \$1,050,000 for past pain and suffering, and \$20,700,000 for future pain and suffering.

18. MMIC/Constellation repeatedly and materially put its financial and political interests ahead of its insureds - OB-GYN Associates and the individually named doctors. It is the Plaintiffs' position that MMIC/Constellation controlled the defense of the underlying claim in bad faith and breached the insurance contract, as will be detailed herein. As further explained, MMIC/Constellation's bad faith defense constitutes a breach of the insurance contract. MMIC/Constellation unreasonably refused to settle and protect OB-GYN Associates and its physicians and refused to pay anything within the policy limits to settle this case. Once a jury

decided the case was worth \$97 million, MMIC/Constellation used the jury's verdict to convince Iowa politicians to put a cap on noneconomic damages in place in the State of Iowa. MMIC/Constellation unreasonably chose not to settle and make the lawsuit and verdict go away and then used OB-GYN Associates's financial and reputational demise as propaganda to pass tort reform in Iowa. MMIC/Constellation had been attempting to get a hard noneconomic damages cap put in place in Iowa for many years. MMIC/Constellation worked hard for many years trying to convince Iowa lawmakers to vote to put the cap in place. MMIC/Constellation knew that the story of a \$97 million verdict and three female OB/GYN physicians having to file bankruptcy and close their practice because of a large jury verdict, would give MMIC/Constellation what it needed to convince Iowa lawmakers to vote to pass the cap.

19. Before the underlying trial, S.K. repeatedly requested that MMIC/Constellation attempt to resolve this matter within policy limits. In addition, Mercy Hospital, OB-GYN Associates, and the doctors likewise repeatedly requested that MMIC/Constellation attempt to resolve this matter within the policy limits. Despite these clear and unequivocal requests, MMIC/Constellation repeatedly refused to negotiate or offer anything to resolve the underlying claim before trial despite the clear possibility of a liability finding and the substantial damages resulting from the claim of malpractice.

20. Following the underlying trial, on October 31, 2022, MMIC/Constellation forced OB-GYN Associates to file for bankruptcy because MMIC/Constellation refused to pay a single dollar of the Judgment and also refused to post a bond. MMIC/Constellation had previously promised to post a bond but refused to do so when the time to pay it came. MMIC/Constellation and the other Defendants coerced Plaintiffs into filing bankruptcy.

21. Further, despite requests for a bond or, at a minimum, a letter assuring OB-GYN Associates that MMIC/Constellation would stand behind any excess verdict over policy limits (comfort letter), MMIC/Constellation utilized the “cooperation clause” to prevent Plaintiffs from negotiating a settlement that would protect them from the consequences of the verdict/judgment.

22. MMIC/Constellation and the other Defendants gave OB-GYN Associates no choice but to file bankruptcy.

23. MMIC/Constellation orchestrated forcing the clinic into bankruptcy as part of a plan to get tort reform passed in Iowa and to avoid having to either post a bond or provide confirmation that it would cover the verdict if the appeal were unsuccessful (providing a “comfort letter”).

24. MMIC/Constellation found, hired, and paid the bankruptcy lawyers. MMIC/Constellation put its financial interests ahead of OB-GYN Associates and its insured doctors because, based on information and belief, it had a deceitful and fraudulent scheme/plan. MMIC/Constellation’s strategy was calculated to protect its financial interests over those of OB-GYN Associates and its insured doctors. MMIC/Constellation’s strategy was to buy the bad faith claim from the bankruptcy trustee for enough to cover OB-GYN Associates’s bankruptcy-associated expenses after the bankruptcy was filed. This would protect MMIC/Constellation regarding the excess verdict but leave OB-GYN Associates, its doctors, and S.K. with little or nothing. This plan was a scandalous scam by the insurance company Defendants, and it almost succeeded.

25. MMIC/Constellation was only days away from getting what it wanted when the Bankruptcy Judge stepped in and dismissed the bankruptcy. The Bankruptcy Judge reviewed everything and decided that the Bankruptcy was filed in bad faith. See the Bankruptcy Judge’s Order attached hereto as “Exhibit A.”

26. While working to execute its scandalous scheme and plan, MMIC/Constellation simultaneously held seminars and lobbied for the implementation of noneconomic caps in Iowa, involving the governor in the process. MMIC/Constellation told the story of three female OB/GYN physicians who had to file for bankruptcy and close down their clinic because of greedy trial lawyers and out-of-control civil litigation in Iowa. What MMIC/Constellation failed to share in these seminars and meetings with Iowa lawmakers is the fact that MMIC/Constellation was the insurer in the case of the \$97 million verdict and all of the other large jury verdicts in Iowa and that each case went to trial because MMIC/Constellation refused to negotiate and settle reasonably.

27. MMIC/Constellation's propaganda and narrative selectively omitted critical details, focusing on the claim that the \$97 million verdict had led to the closure of an Iowa obstetrical clinic, causing doctors to leave the state despite the lack of evidence supporting the claim of doctors leaving Iowa. Importantly, it failed to mention that the jury had determined S.K.'s economic damages to exceed \$50 million or that the district court had halved S.K.'s noneconomic damages. Furthermore, it did not disclose that MMIC/Constellation had refused to negotiate in good faith with S.K. or offer even a penny to settle the case. It also omitted that OB-GYN Associates, Mercy Hospital, and the doctors were pleading with MMIC/Constellation to settle, yet it offered no protection to OB-GYN Associates or the doctors even though it knew reasonable medical opinions supported a case in favor of S.K. Instead, it orchestrated the bankruptcy, hired and paid the bankruptcy lawyers in bad faith, and refused to shield OB-GYN Associates or its insured doctors from financial ruin.

28. Dr. Goodman and her partners were all insured by MMIC/Constellation. They were each owed duties by MMIC/Constellation, which were breached, resulting in millions of dollars in economic and non-economic damages. MMIC/Constellation knew its actions would financially

ruin OB-GYN Associates and the individual doctors' business where they had worked their entire careers. Instead, MMIC/Constellation used OB-GYN Associates as its pawn to get the law passed in Iowa that would limit the Civil Rights of all Iowans injured or killed by Medical Negligence. MMIC/Constellation worked to change Iowa law regarding noneconomic damages – telling Iowans and their lawmakers, at best, half-truths and, at worst, straight-up lies.

29. MMIC/Constellation knew that when they used this dishonest strategy to limit noneconomic damages, that was primarily helping MMIC/Constellation and injuring the small percentage of medical malpractice plaintiffs who had suffered catastrophic damages and death. MMIC/Constellation also knew that when a patient is catastrophically injured by malpractice and devastating noneconomic damages significantly exceed \$1 million, injured Iowans agree to settle these cases within the available policy limits. MMIC/Constellation tracks and documents this data. Only catastrophically injured Iowans are left to bear the burden, while MMIC/Constellation's upper management enjoys the spoils, and they use verdicts to scare doctors into paying the highest premium they can extort out of them while boasting about its growing "billions" in net worth.

30. Shuttleworth & Ingersoll and MMIC/Constellation refused to settle the Kromphardt claim for a reasonable amount within the policy limits or advocated on behalf of OB-GYN Associates to resolve the underlying case within policy limits.

31. MMIC/Constellations' conduct exposed OB-GYN Associates to avoidable litigation, financial ruin, and loss of reputation. Shuttleworth & Ingersoll and its lawyers negligently failed to advocate for OB-GYN Associates and inform MMIC/Constellation that it needed to settle the case and protect OB-GYN Associates. MMIC/Constellation and Shuttleworth & Ingersoll breached fiduciary duties, ethical obligations, and contractual duties, thereby exposing OB-GYN Associates to an excess verdict of \$97,000,000.

32. Shuttleworth & Ingersoll and its lawyers get millions of dollars in business annually from MMIC/Constellation and compete with other law firms to get that business. Shuttleworth & Ingersoll did not act in the best interest of OB-GYN Associates and followed MMIC/Constellation's orders to the detriment of their clients.

33. Neither Shuttleworth & Ingersoll nor MMIC/Constellation explained the risks of an excess verdict/judgment and the consequences OB-GYN Associates and its doctors would face.

34. Shuttleworth & Ingersoll breached its duty to communicate and share critical information about the case with its clients.

35. To this day, MMIC/Constellation refuses to provide a comfort letter to OB-GYN Associates, thereby refusing to pay any verdict/Judgment resulting from a new jury trial should the Iowa Supreme Court grant the appeal and remand the case for a new trial. A new jury trial does nothing to protect the Plaintiffs but instead creates a Groundhog Day scenario whereby the next jury verdict and Judgment could be even higher than \$97 million.

36. Defendants have gambled and want to continue to gamble with the financial livelihood, reputations, and mental health of the real human beings who are the insureds and owners of OB-GYN Associates without offering any assurance whatsoever that MMIC/Constellation will stand behind and protect OB-GYN Associates if a second jury trial results in an excess verdict/judgment.

37. Shuttleworth & Ingersoll's representation of OB-GYN Associates fell below the standard of care of reasonably careful and competent attorneys in the State of Iowa. Shuttleworth & Ingersoll's negligent conduct caused OB-GYN Associates to suffer significant economic and non-economic damages.

38. Defendants gave OB-GYN Associates no choice or financial reassurance for the unreasonable gamble that was taken in this case. OB-GYN Associates was forced to close its doors because the lawyers at Shuttleworth & Ingersoll and its employing insurance company and major source of business, MMIC/Constellation, refused to negotiate or provide any reassurance or financial protection even though it had repeated opportunities to settle within the policy limits.

39. Shuttleworth & Ingersoll's long-standing financial/business relationship with insurer MMIC/Constellation was put before the attorney-client relationship with the Plaintiffs and the duties that were required of them as Iowa lawyers.

40. Shuttleworth & Ingersoll and its attorneys breached their fiduciary duties and acted negligently in representing OB-GYN Associates by one or more of the following:

- a. Failing to take reasonable steps to settle the Kromphardt litigation, thereby unreasonably exposing OB-GYN Associates to the risk of a substantial excess judgment;
- b. Putting forth frivolous defenses in the Kromphardt litigation, thereby exposing OB-GYN Associates to the risk of a substantial excess judgment;
- c. Failing to disclose the conflict of interest that existed because of Defendant's business relationship with MMIC/Constellation;
- d. Serving as the lead trial lawyers in such a substantial medical malpractice case against one of America's most successful trial lawyers, Geoffrey Fieger, when more experienced trial counsel or national trial counsel should have been brought into the case (i.e., Shuttleworth & Ingersoll bit off more than it could chew and had no business being lead trial counsel in the case);
- e. Refusing to request that MMIC/Constellation issue a comfort letter;
- f. Never writing to recommend settlement of the Kromphardt litigation; and
- g. Failing to properly communicate and advise OB-GYN Associates of important facts and opinions of expert witnesses.
- h. Failing to properly communicate and advise Plaintiffs about the risks and consequences of an excess verdict.

41. Shuttleworth & Ingersoll's attorneys' negligence and breach of fiduciary duties included unreasonable, reckless, and negligent evaluations of the value of the Kromphardt's case and negligence in how the case was defended and tried to the jury.

42. The Kromphardt verdict significantly damaged OB-GYN Associates' reputation. The individual insureds and clients, the three physicians who founded and owned OB-GYN Associates, suffered substantial economic and non-economic damages because of Shuttleworth & Ingersoll lawyers' negligence and breach of fiduciary and ethical duties.

43. As the Iowa Supreme Court has stated, "This obligation of counsel retained by the insurer is not fulfilled merely by an explanation which amounts to no more than assurances to the insured that his interests are being zealously and faithfully protected by experienced counsel, but rather by laying bare the truth - not only of the potential consequences of a deficiency judgment but of the potential conflict between the interests of the carrier and the insured - in the manner in which the insured would be advised if he consulted private counsel." *Kooyman v. Farm Bureau Mut. Ins. Co.*, 315 N.W.2d 30 (Iowa 1982), quoting *Lange v. Fidelity & Casualty Co.*, 185 N.W.2d 881, 885-86 (Minn. 1971). Shuttleworth & Ingersoll did not lay bare the truth and communicate the truth to the Plaintiffs.

44. The evaluation of the potential exposure and risk that was conducted by Shuttleworth & Ingersoll was grossly negligent. The economic damages claims and expert witness testimony offered by Plaintiffs had close to \$50 million in economic damages, and the case was set to be tried by Geoffrey Fieger, who has a track record of winning jury verdicts for tens of millions of dollars and over a hundred million dollars. The trial experience of the Shuttleworth & Ingersoll lawyers who tried the case for the defense paled in comparison to that of Mr. Fieger and

his team. Shuttleworth & Ingersoll wrote a report that stated that the risk of exposure to an adverse verdict was less than \$10 million.

45. Plaintiffs request a jury trial against Defendants and will prove that Shuttleworth & Ingersoll had no business trying the underlying birth injury medical malpractice case, that their evaluations of the case pretrial and post-trial were negligent, that their handling of the case was negligent, and that their failure to communicate and share information with their actual Iowa clients caused the disaster that this complaint seeks to remedy.

46. The Iowa Rules of Professional Conduct make clear that Shuttleworth & Ingersoll had a fiduciary obligation to protect OB-GYN Associates and inform them of the existence of the existing conflict of interest.

47. As the Iowa Rules of Professional Conduct state, “Where a lawyer has been retained by an insurer to represent the insured pursuant to the insurer’s obligations under a liability insurance policy, the lawyer may comply with reasonable cost-containment litigation guidelines proposed by the insurer if such guidelines *do not materially interfere with the lawyer’s duty to exercise independent professional judgment to protect the reasonable interests of the insured*, do not regulate the details of the lawyer’s performance, and do not materially limit the professional discretion and control of the lawyer...If the lawyer believes that guidelines proposed by the insurer prevent the lawyer from exercising independent professional judgment or from protecting confidential client information, *the lawyer shall identify and explain the conflict of interest to the insurer and insured and also advise the insured of the right to seek independent legal counsel.*” Iowa R. Prof. Cond. 32:1.7, Comment [13a] (emphasis added).

COUNT I –BAD FAITH
(AGAINST DEFENDANTS MMIC/CONSTELLATION AND
NICOLE GRAZIANO)

48. The Plaintiffs re-plead, adopt, and incorporate the paragraphs above.

49. MMIC/Constellation and Nicole Graziano undertook the responsibility to investigate, act upon, monitor, and otherwise handle the medical malpractice claim of S.K. and their insureds, OB-GYN Associates.

50. Nicole Graziano has a reputation in Iowa among lawyers who represent medical malpractice victims as being the worst adjuster to deal with when representing Iowa medical malpractice victims and families. In one case that went to trial, resulting in a verdict of more than \$12 million where a man had his prostate removed, rendering him impotent and incontinent, Nicole Graziano took the position that the case was only worth \$300,000. Most of the large medical malpractice jury verdicts in Iowa that were used as propaganda to get tort reform passed in Iowa were cases that went to trial because Nicole Graziano refused to make reasonable offers to settle. In this case, Nicole Graziano was the one calling the shots for MMIC/Constellation. She is the one who refused to offer a single dollar to settle the case. She is the one who told Plaintiffs that a bond would be posted. She is the one who coerced Plaintiffs into filing for bankruptcy.

51. Due to the inherently unequal bargaining power between an insured and an insurer, a special relationship existed, at all times material herein, between OB-GYN Associates and Defendants MMIC, Constellation, and Graziano, warranting protection of the rights of OB-GYN Associates by those Defendants and giving rise to a duty on the part of those Defendants and their agents to act solely in good faith and for the protection of OB-GYN Associates.

52. This duty of good faith required Defendants to fully, fairly, and promptly investigate, defend, and settle the Kromphardt claim. This duty was breached, resulting in the Plaintiffs suffering many millions of dollars in economic and non-economic damages.

53. Defendants MMIC/Constellation and Nicole Graziano breached their duty of good faith by failing to conduct a proper investigation, by failing to subject the findings of its investigation to a reasonable evaluation and review, and by failing to settle or even offer to settle the Kromphardt case.

54. Because of the bad faith and other wrongful conduct of MMIC/Constellation and Nicole Graziano, the case went to trial, and Defendants exposed OB-GYN Associates to an excess judgment, which ultimately caused it to close.

55. The denial, delay, and refusal to pay reasonable settlement demands by the Kromphardt Plaintiffs were without a reasonable and good faith basis.

56. Damage to OB-GYN Associates was caused by MMIC/Constellation and Nicole Graziano's breach of their duties of good faith, including, but not limited to, the following:

(a) Past incurring of expenses, including but not limited to the incurring of attorney fees and expenses;

(b) Future incurring of expenses, including but not limited to the incurring of attorney fees and expenses;

(c) Past loss of profits;

(d) Future loss of profits;

(e) and in such other ways as will be shown at trial.

57. The conduct of Defendants MMIC/Constellation and Nicole Graziano in breaching their duties of good faith was sufficiently willful and wanton so as to entitle Plaintiffs to punitive or exemplary damages.

COUNT II – LEGAL MALPRACTICE
(AGAINST SHUTTLEWORTH & INGERSOLL)

58. Plaintiffs re-plead, adopt, and incorporate the paragraphs above.

59. In the course of the Kromphardt litigation, an attorney-client relationship existed between the parties, OB-GYN Associates and Shuttleworth & Ingersoll.

60. In the course of its legal representation of OB-GYN Associates, Shuttleworth & Ingersoll was negligent in one or more of the following particulars:

- a. Failing to conduct a proper investigation;
- b. Failing to subject the findings of its investigation to a reasonable evaluation and review;
- c. Failing to make efforts to reasonably settle the Kromphardt case;
- d. Failing to advise OB-GYN Associates that a conflict of interest existed between their interests in the Kromphardt matter and the interests of MMIC/Constellation;
- e. Failing to competently evaluate the Kromphardt case and communicate important facts and findings to Plaintiffs;
- f. Failing to refer and bring in a trial lawyer who would have been able to try the case against Geoffrey Fieger competently;
- g. Coercing Plaintiffs into Bankruptcy;
- h. Failing to disclose a conflict of interest;
- i. Breaching ethical and fiduciary duties owed to Plaintiffs;
- j. Failing to advise the Plaintiffs of the effect of an excess verdict.

61. Due to the negligent conduct of Shuttleworth & Ingersoll, the Kromphardt case went to trial, and an excess verdict was entered against OB-GYN Associates.

62. The conduct of Shuttleworth & Ingersoll in negligently representing OB-GYN Associates was sufficiently willful and wanton so as to entitle OB-GYN Associates to punitive or exemplary damages.

**COUNT III – BREACH OF FIDUCIARY DUTY
(AGAINST SHUTTLEWORTH & INGERSOLL)**

63. Plaintiffs re-plead, adopt, and incorporate the paragraphs above.

64. At the time of the events giving rise to the Plaintiffs' Petition, an attorney-client relationship existed between OB-GYN Associates and Shuttleworth & Ingersoll.

65. At the time of the events giving rise to Plaintiff's Petition, a fiduciary relationship existed between OB-GYN Associates and Shuttleworth & Ingersoll.

66. As shown throughout this Petition, there was a conflict between the interests of MMIC/Constellation and the interests of OB-GYN Associates.

67. Shuttleworth & Ingersoll recklessly and intentionally breached their fiduciary obligations by engaging in the conduct described above and throughout this Petition.

68. Such a breach caused damage to OB-GYN Associates.

69. The conduct of Shuttleworth & Ingersoll was sufficiently willful and wanton so as to entitle OB-GYN Associates to punitive or exemplary damages.

**COUNT IV – BREACH OF CONTRACT
(AGAINST SHUTTLEWORTH & INGERSOLL)**

70. Plaintiffs re-plead, adopt, and incorporate the paragraphs above.

71. Plaintiff OB-GYN Associates and Shuttleworth & Ingersoll were capable of contracting.

72. A contract (written and unwritten) for attorney-client services existed between Plaintiff OB-GYN Associates and Shuttleworth & Ingersoll.

73. This contract provided that Shuttleworth & Ingersoll would provide legal representation to Plaintiff OB-GYN Associates.

74. There was consideration for this contract between Plaintiff OB-GYN Associates and Shuttleworth & Ingersoll.

75. Plaintiff OB-GYN Associates performed all of their obligations under the contract.

76. Shuttleworth & Ingersoll breached the contract.

77. As a result of Defendant's breach, Plaintiff has sustained damages.

PRAYER FOR DAMAGES

WHEREFORE, for the reasons set out above, Plaintiffs pray for Judgment against Defendants for compensatory damages, which include economic and noneconomic damages in a reasonable and proper amount, for exemplary/punitive damages in an amount which will punish them for their reckless, intentional, and otherwise wrongful conduct and which will dissuade other defendants from such conduct in the future. The Plaintiff prays for a judgment that includes interest as allowed by law, the costs of this action, for attorneys' fees if justified by the law and any contracts, and for such other and further relief as is just and proper in the circumstances.

Respectfully Submitted,

By: /s/ Nicholas C. Rowley

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DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, and hereby demands a jury trial on all issues so triable under Iowa law.

Respectfully Submitted,

By: /s/ Nicholas C. Rowley

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