E-FILED | 9/16/2026 11:20 AM
CC-20-2026-C-1136
Kanawha County Circuit Clerk
Cathy S. Gatson

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

JOSEPH M. BELLOMY and **DENISE BELLOMY,**
his wife**,**

Plaintiffs,

Civil Action No.: _____

v. Judge: _____

WALTER C. BOARDWINE, D.O., and DAVIS MEMORIAL HOSPITAL d/b/a DAVIS MEDICAL CENTER,

Defendants.

COMPLAINT

NOW COME Plaintiffs by counsel, R. Dean Hartley, Mark R. Staun and Hartley Law Group, PLLC and for their Complaint against the Defendants Walter C. Boardwine, DO, and Davis Memorial Hospital d/b/a Davis Medical Center, state as follows:

PARTIES AND JURISDICTION

1. Plaintiff Joseph M. Bellomy (hereinafter referred to as "Plaintiff" or "Mr. Bellomy") is a resident and citizen of Diana, West Virginia and is the husband of Plaintiff Denise Bellomy.

2. Plaintiff Denise Bellomy (hereinafter referred to as "Mrs. Bellomy") is a resident and citizen of Diana, West Virginia, and is the wife of Plaintiff Joseph M. Bellomy.

3. Defendant Walter C. Boardwine D.O., (hereinafter referred to as "Dr. Boardwine") was, at all times relevant hereto, an orthopedic surgeon practicing at Davis Memorial Hospital d/b/a Davis Medical Center in Elkins, West Viginia.

4. Defendant Davis Memorial Hospital d/b/a Davis Medical Center, (hereinafter sometimes "Davis Medical Center"), is a West Virginia corporation engaged in the business of

providing health care services to patients which has its principal place of business at 812 Gorman Avenue, Elkins, West Virginia. At all times relevant hereto, Davis Medical Center was the employer of Dr. Walter C. Boardwine.

5. Mr. Bellomy received medical care from Dr. Boardwine at Davis Medical Center in Elkins, West Virginia.

6. On December 3, 2025, pursuant to W. Va. Code § 55-7B-6, Plaintiffs, by counsel, mailed via certified mail – return receipt requested, a Notice of Claim (NOC) and a Screening Certificate of Merit (SCOM) to the Defendants. A return receipt indicated that the NOC and SCOM to Davis Memorial Hospital was received on December 10, 2025. The return receipt for the NOC and SCOM to Dr. Boardwine was stamped "return to sender". Thereafter, an additional NOC and a SCOM was mailed, via certified mail, return receipt requested, on January 15, 2026, to Defendant Dr. Boardwine, c/o Farrell & Farrell, PLLC, and received by Dr. Boardwine's lawyers on January 26, 2026.

7. Neither Defendant has requested pre-litigation mediation.

8. Jurisdiction and venue are proper before this Court pursuant to W.Va. Code § 56-1-1(a)(2) in that Defendant, Davis Memorial Hospital's President, Jeff H. Good is a resident of Kanawha County, West Virginia.

OPERATIVE FACTS OF THE CASE

9. Plaintiff Bellomy was initially seen by Alicia Harper, PA-C Orthopedics, at Davis Medical Center Orthopedics on July 5, 2024, for an evaluation of bilateral knee pain (worse on right than left) that he rated a 6/10 in the right knee. Soft tissue swelling was noted, but Mr. Bellomy had full extension and was able to flex to 130 degrees. Mr. Bellomy was ambulating without assistive devices. Ms. Harper's assessment was unilateral primary osteoarthritis right

knee. A cortisone injection was given. Follow-up conservative care continued until Mr. Bellomy was referred to Richard Topper, M.D.

10. Mr. Bellomy was seen by Richard Topper, M.D. in late August 2024 at Davis Medical Center Orthopedics. According to Dr. Topper's notes, Mr. Bellomy's imaging showed right medial meniscus tear. He underwent right arthroscopic partial meniscectomy on September 4, 2024 by Dr. Topper. According to Dr. Topper's operative report, the suprapatellar pouch was normal as was the patellofemoral joint, and the medial compartment had all the pathology. He also had grade 3 chondromalacia of the medial femoral condyle.

11. Following the partial meniscectomy, Mr. Bellomy continued to have some pain and swelling in the right knee. He was given cortisone and hyaluronic injections which did not alleviate his knee issues. Imaging in December 2024 was reviewed by Dr. Topper and interpreted as narrowing of the medial joint space on standing view with loss of medial joint space on lateral view. According to Dr. Topper's notes of December 13, 2024, Mr. Bellomy had only pathology in his medial compartment, and he did not think he needed a total knee replacement. Dr. Topper referred Mr. Bellomy to orthopedic surgeon Dr. Walter Boardwine.

12. Thereafter, beginning in February 2025, Mr. Bellomy sought the care and treatment of Dr. Boardwine for right knee pain. At that time, Mr. Bellomy was fully weight-bearing with no assistive devices needed for ambulation. The impression was bone on bone medial arthritis. It was noted that the lateral component was intact. Dr. Boardwine's conclusion was arthritic changes in the medial component.

13. After ordering imaging studies and conducting a physical examination, Dr. Boardwine concluded that Mr. Bellomy did not need a total knee arthroplasty but instead needed

a unicompartmental arthroplasty of the right knee. The operation was performed on March 26, 2025, by Dr. Boardwine at Davis Memorial Hospital in Elkins, West Virginia.

14. In his operative report, Dr. Boardwine noted that the anterior cruciate ligament and the posterior cruciate ligament were intact and the lateral component was pristine and the medial compartment was severely eburnated.

15. Thereafter, Mr. Bellomy developed a right knee effusion. The strength of his right knee was limited. Mr. Bellomy had localized pain in his right knee. Physical therapy was not initiated until May of 2025.

16. After completing 16 sessions of physical therapy Mr. Bellomy's knee effusion was still present. On June 20, 2025, Mr. Bellomy had a follow-up appointment with Dr. Boardwine. The right knee had been swollen since the surgery of March 2025, and the pain was located on the lateral side of his right knee (related to the swelling in the suprapatellar pouch). Mr. Bellomy's range of motion and mobility were still limited by mid-summer.

17. On July 3, 2025, Mr. Bellomy had another follow-up appointment with Dr. Boardwine. Dr. Boardwine noted that Mr. Bellomy had a limp at this point and still had only limited range of motion and mobility. Dr. Boardwine noted that a right knee x-ray on June 20, 2025, looked good with no displacement of the prosthesis.

18. On August 6, 2025, Mr. Bellomy returned to his referring physician, Richard Topper, M.D. Plaintiff complained that the pain was located laterally. He still had right knee effusion. Mr. Bellomy now rated his pain at 9/10. A CT scan did not reveal any loosening or fracture.

19. By August of 2025, five months post right unicompartmental knee arthroplasty, Mr. Bellomy required assistive devices to ambulate, was in great pain (9/10), was having

difficulty on stairs and had an antalgic gait. There was a large right knee effusion and Mr. Bellomy did not have full right knee extension and only had flexion to 90 degrees in his right knee.

20. On September 3, 2025, Mr. Bellomy sought a second opinion with Dr. Matthew Bullock at Marshall Orthopedics for the ongoing pain and limitations concerning his right knee. Mr. Bellomy noted that his right knee felt worse than it did before the surgery in March of 2025.

21. Dr. Bullock's assessment, based on exams and most recent imaging, was that the medial unicompartmental knee replacement did not appear to be in proper alignment. Dr. Bullock found degenerative changes at the lateral compartment and the patellofemoral joints. These findings were not mentioned by Dr. Boardwine. Dr. Bullock advised that a total knee arthroplasty revision be performed on Plaintiff's right knee.

22. Due to continued knee pain and the length of the wait for Dr. Bullock's surgical schedule to open, Mr. Bellomy had an assessment of his knee's condition by Adam Klein, M.D. at West Virginia University Ruby Memorial Hospital on October 28, 2025. After examining Mr. Bellomy, reviewing his medical records and reviewing his radiology studies, Dr. Klein concluded that Dr. Boardwine had poorly performed an Oxford unicompartmental arthroplasty with overstuffing of the medial joint space and alignment shift to the lateral compartment. There is also varus misalignment of the tibial component with the appearance of subluxation.

23. Prior to the unicompartmental knee arthroplasty performed by Dr. Boardwine, Mr. Bellomy had full extension and flexion in his right knee to 130 degrees. He was able to ambulate without an assistive device. His pain was 6/10.

24. According to medical guidelines, ideal candidates for unicompartmental knee arthroplasty are those who have isolated medial compartment disease, age greater that 60 years

old, low levels of physical activity, weighing less than 82 kg, having a cumulative angular deformity of less than 15 degrees, both cruciate ligaments intact, a preoperative range of flexion of 90 degrees, a flexion contracture of less than 5 degrees, minimal pain at rest, and no radiographic or intraoperative evidence of chondrocalcinosis or patellofemoral osteoarthritis.

25. Prior to the surgery in March of 2025, Mr. Bellomy had a BMI of 33.49 and weighed 112 kg (246 pounds). A BMI of 33.49 is abnormal and falls into the category of "obese." Mr. Bellomy was obese at the time of the surgery. Based upon his weight, the procedure performed by Dr. Boardwine was contraindicated.

26. Prior to the right knee unicompartmental knee arthroplasty performed by Dr. Boardwine, Dr. Boardwine concluded that Mr. Bellomy's only pathology was in the medial compartment of his right knee and that the lateral portion of his right knee was normal.

27. However, imaging reviewed by Dr. Bullock revealed that Mr. Bellomy did indeed have lateral and patellofemoral arthritic changes and not only medial compartment arthritis. This was another contraindication for the right knee unicompartmental knee arthroplasty performed by Dr. Boardwine.

28. On March 30, 2026, Dr. Bullock performed a total knee arthroplasty revision on Plaintiff's right knee.

29. Dr. Bullock's post-operative diagnoses included mechanical instability right medial unicompartmental knee arthroplasty, obesity and lateral and patellofemoral osteoarthritis of the right knee.

30. Plaintiff is currently undergoing physical therapy post right total knee arthroplasty revision.

31. Dr. Boardwine's surgical technique was unsatisfactory, resulting in improper alignment of the prosthesis. Dr. Boardwine failed to diagnose the misalignment error after his surgery and failed to diagnose the abnormal findings on subsequent imaging. Dr. Boardwine failed to provide Mr. Bellomy with the appropriate corrective surgery he required to alleviate his symptoms and restore his mobility.

COUNT I

NEGLIGENCE OF WALTER C. BOARDWINE, DO

32. Plaintiffs incorporate by reference all allegations of the Complaint as if fully restated and re-alleged herein.

33. A duty of care was owed and the standard of care required Dr. Boardwine to accurately assess whether Mr. Bellomy was a candidate for the procedure, a unicompartmental knee arthroplasty.

34. Mr. Bellomy's weight of 112 kg. (approximately 246 pounds) was well over the guidelines of less than 82 kg. (180.77 pounds). The unicompartmental knee arthroplasty should not have been performed given Mr. Bellomy's weight. Dr. Boardwine breached the standard of care in going forward with the procedure despite Mr. Bellomy's weight.

35. Furthermore, the medical guidelines were contrary to Dr. Boardwine's surgical procedure in that at the time of the surgery Mr. Bellomy had lateral and patellofemoral arthritic changes on radiology findings that demonstrate that the unicompartmental arthroplasty was doomed to fail.

36. Performing the unicompartmenal arthroplasty given the radiology findings breached the standard of care.

37. A duty of care was owed to perform the surgical procedure with the proper technique. Dr. Boardwine's surgical technique fell below the standard of care in that it was poorly executed, causing an early failure of the procedure.

38. A duty of care was owed to properly assess Mr. Bellomy's condition post-surgery. Dr. Boardwine breached the standard of care when he failed to diagnose the alignment error post-surgery and failed to offer appropriate corrective surgery.

39. For recovery to occur, the standard of care requires timely physical therapy. Following the procedure, Dr. Boardwine breached the standard of care in failing to order physical therapy for Mr. Bellomy in a timely manner.

40. As a result of the above deviations, Plaintiff Mr. Bellomy suffered worsening ability to bear weight, ambulate, and negotiate stairs, severe, persistent pain and swelling of his right knee, functional impairment and required revision surgery and further physical therapy as is more fully set forth below.

DAMAGES

41. As a direct and proximate result of Dr. Boardwine's acts and/or failures to act and his negligence, Mr. Bellomy has sustained permanent injuries consisting of, but not limited to, exacerbated pain in his right knee, swelling of his right knee, loss of strength of his right knee, limitations regarding extension and flexion of his right knee, the need for an assistive device to ambulate, development of an antalgic gait, diminished range of motion of his right knee, the need for revision surgery to his right knee and the need for additional physical therapy.

42. As a direct and proximate result of Dr. Boardwine's acts and/or failures to act and negligence, Mr. Bellomy has incurred medical bills for his care and treatment and will continue to incur such bills in the future.

43. As a direct and proximate result of Dr. Boardwine's acts and/or failures to act and negligence, Mr. Bellomy has lost wages, has a loss of earning capacity, and has incurred other economic losses, as well as the ability to perform household services and he will continue to incur such losses in the future.

44. As a direct and proximate result of Dr. Boardwine's acts and/or failures to act and negligence, Mr. Bellomy has suffered loss of enjoyment of life and will continue to suffer such loss into the future.

45. As a direct and proximate result of Dr. Boardwine's acts and/or failures to act and negligence, Mr. Bellomy has suffered pain and suffering, physically, mentally, and emotionally and will continue to suffer the same into the future.

46. As a direct and proximate result of Dr. Boardwine's acts and/or failures to act and negligence, Mr. Bellomy has suffered annoyance, aggravation, and inconvenience and will continue to suffer the same into the future.

47. Had Dr. Boardwine complied with the standard of care, Mr. Bellomy, to a reasonable degree of medical probability, would not have sustained, including but not limited to, exacerbated pain in his right knee, swelling of his right knee, loss of strength of his right knee, limitations regarding extension and flexion of his right knee, the need for an assistive device to ambulate, development of an antalgic gait, diminished range of motion of his right knee, the need for revision surgery to his right knee.

48. Had Dr. Boardwine met the standard of care, there is a greater than 25% probability that Mr. Bellomy would not have suffered, and continue to suffer, the aforementioned complaints and complications, including but not limited to, increased pain in his right knee, swelling in his right knee, the need for an assistive device to walk, development of a limp, the

loss of strength in his right knee, the loss of mobility in his right knee, limitations regarding extension and flexion of his right knee, the need for revision surgery to his right knee, the need for additional physical therapy.

49. Mrs. Bellomy has suffered the loss of consortium of Mr. Bellomy including, but not limited to society, companionship, care, assistance, attention, protection, advice, and guidance as a direct and proximate result of the breaches of the standard of care and damage to her husband, as herein mentioned above.

COUNT II

VICARIOUS LIABILITY OF DAVIS MEMORIAL HOSPITAL

50. Plaintiffs incorporate by reference all allegations of the Complaint as if fully restated and re-alleged herein.

51. At all times relevant hereto, Defendant Dr. Boardwine, was the agent, servant or employee of Davis Memorial Hospital d/b/a Davis Medical Center.

52. Defendant Davis Memorial Hospital d/b/a Davis Medical Center as the principal, master, or employer of Dr. Boardwine is vicariously liable for Dr. Boardwine's acts and/or failures to act and negligence, as detailed in Count I of this Complaint.

53. Defendant Davis Memorial Hospital d/b/a Davis Medical Center as the principal, master, or employer of Dr. Boardwine is vicariously liable for all damages allegedly caused by Dr. Boardwine's acts and/or failures to act and his negligence, as detailed in Count I of this Complaint.

WHEREFORE, Plaintiffs demand compensatory damages from the Defendants in an amount in excess of this court's jurisdictional minimum to be determined by the trier of fact.

Plaintiffs further demand prejudgment and post-judgment interest, as well as such other relief as a judge or jury shall find fair and just.

PLAINTIFFS DEMAND A TRIAL BY JURY.

JOSEPH M. BELLOMY and **DENISE BELLOMY**, Plaintiffs

By: */s/ R. Dean Hartley*

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