

**IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

THOMAS LEACHMAN,

Plaintiff,

v.

DAWNE HOOD, M.D. and KAISER
PERMANENTE INSURANCE
COMPANY

Defendants.

CIVIL ACTION

FILE NO.:

13A48944-7

COMPLAINT

COMES NOW Thomas Leachman ("Leachman" or "Plaintiff"), Plaintiff in the above-captioned matter, by and through his undersigned counsel, Kenneth S. Nugent, P.C., and states his Complaint against the Defendants as follows:

JURISDICTION AND VENUE OVER THE PARTIES

1.

Defendant Dawne Hood, M.D. ("Dr. Hood") is a licensed physician in the State of Georgia, and a Summons and a copy of the Complaint may be served upon her at 5440 Hillandale Drive, Lithonia, DeKalb County, Georgia, 30058, and is therefore subject to the jurisdiction of the Court.

2.

Defendant Kaiser Permanente Insurance Company is a California corporation licensed to do business under the laws of the State of Georgia. In accordance with O.C.G.A. §9-10-72, a Second Original Summons and copy of Complaint may be served upon its registered agent, Corporation Service Company, at its registered office located at 40 Technology Parkway South,

Suite 300, Norcross, Gwinnett County, Georgia, 30092, and is therefore subject to the jurisdiction of this Court.

3.

Beginning on or about October 27, 2011, Mr. Leachman became a patient of Defendant Hood, and came under her care and treatment.

4.

While rendering treatment and care to Mr. Leachman, Defendant Hood deviated from generally acceptable standards of medical care and failed to exercise a degree of skill and care ordinarily required by physicians working in a hospital or clinical environment, thereby proximately causing injuries to Mr. Leachman.

5.

Defendant Hood is directly liable for her negligent acts and omissions.

6.

Defendant Kaiser Permanent Insurance Company ("Kaiser") is responsible for the actions of Defendant Hood pursuant to the doctrine of *Respondeat Superior*, and is therefore liable to the Plaintiff for the injuries proximately caused by Defendant Hood's negligent acts and omissions.

7.

Jurisdiction and venue are appropriate in this Court pursuant to the Ga. Const. 1983, Art. VI, § II, ¶ VI.

FACTS

8.

Plaintiff hereby realleges and reincorporates every paragraph, allegation and count of this Complaint contained in Paragraphs 1 through 7 as if fully set forth herein.

9.

On October 27, 2011, Rodney Leachman presented to Kaiser Permanente Piedmont with throbbing left ear pain, erythema and discharge.

10.

Specifically, he complained of bloody discharge with pus coming out of his left ear.

11.

As opposed to running tests to confirm the cause of the bloody discharge, Dr. Dawne Hood diagnosed Mr. Leachman with "swimmer's ear" and discharged him from her care.

12.

After being discharged from Dr. Hood's care, Mr. Leachman's condition worsened. He experienced headaches, neck and shoulder pain.

13.

Mr. Leachman suffered a seizure at his home five hours after being discharged by Dr. Hood.

14.

When rescue workers arrived at Mr. Leachman's home, he was slumped in a chair, unresponsive and completely unable to speak. Additionally, he was noted to be urinary incontinent and drooling on himself.

15.

Mr. Leachman was transferred by ambulance to DeKalb Medical Center where a CT exam showed left mastoid disease and blood cultures were positive for gram-positive cocci.

16.

Mr. Leachman was diagnosed (correctly) at that time with pneumococcal otitis, meningitis and mastoiditis with sepsis.

17.

Mr. Leachman had to undergo a left myringostomy and tympanostomy tube placement in his left ear.

18.

This incident further required him to undergo a cortical mastoidectomy.

19.

Mr. Leachman continues to have tinnitus and diminished hearing in his left ear which appears to be permanent.

COUNT I
PROFESSIONAL NEGLIGENCE

20.

Plaintiff hereby realleges and reincorporates every paragraph, allegation and count of this Complaint contained in paragraphs 1 through 19 as if fully set forth herein.

21.

Mr. Leachman presented to Dr. Hood with classic symptoms of meningitis and his condition was misdiagnosed as swimmer's ear.

22.

Defendant Hood deviated from generally acceptable standards of a physician's care and failed to exercise said degree of skill and care ordinarily required by physicians working in this environment under like conditions and circumstances by:

- (1) Failing to properly examine Mr. Leachman; and
- (2) Failing to make the proper diagnosis.

23.

Dr. Hood's deviations from the standard of care prevented Mr. Leachman from receiving the care that he required which proximately caused or allowed him to suffer an avoidable stroke.

24.

Mr. Leachman continues to suffer tinnitus and diminished hearing in his left ear.

25.

Defendant Hood's deviations from the standard of care prevented Mr. Leachman from receiving the care that he required by failing to properly examine and diagnose Mr. Leachman, all of which proximately caused Mr. Leachman to needlessly suffer from worsening of his condition, ultimately leading to a seizure.

26.

Pursuant to O.C.G.A. § 9-11-9.1 of the Georgia Civil Practice Act, the Plaintiff has attached hereto the Affidavit of Barry J. Benjamin, M.D., an expert witness qualified to render opinions on the acts and/or omissions of negligence, professional malpractice and other deviations from the standard of care alleged in this case. This Affidavit is hereby incorporated by reference, as if fully set forth herein. Attached to this Affidavit is a copy of Dr. Benjamin's Curriculum Vitae establishing his credentials and qualifications.

27.

Defendant Hood's deviations from the standard of care, as described above, and as specifically set forth in the Affidavit of Barry J. Benjamin, M.D. proximately caused Mr. Leachman to needlessly suffer personal injuries, medical expenses and pain and suffering.

COUNT II
RESPONDEAT SUPERIOR

28.

Plaintiff hereby realleges and reincorporates and reincorporates every paragraph, allegation and count of this Complaint contained in paragraphs 1 through 27 as if fully set forth herein.

29.

When Defendant Hood performed the examination and diagnosis described above, she was acting within the course and scope of her agency and/or employment by Defendant Kaiser as a physician.

30.

Defendant Hood's negligent actions were warranted under the express authority granted her by virtue of her agency and/or employment relationship with Defendant Kaiser as a physician.

31.

Defendant Hood was acting under the direction and control of Defendant Kaiser, and was acting within the scope of her employment and in the furtherance of Defendant Kaiser's business.

32.

Defendant Kaiser is therefore liable to the Plaintiff under the theory of *Respondeat Superior*, for the negligent acts and omissions of their agent and/or employee, Defendant Hood, as such acts were committed in the course and scope of her agency and/or employment by Defendant Kaiser, and proximately caused the Plaintiff's injuries.

COUNT III
DAMAGES

33.

Plaintiff hereby realleges and reincorporates and reincorporates every paragraph, allegation and count of this Complaint contained in paragraphs 1 through 32 as if fully set forth herein.

33.

As a result of the aforesaid negligence of the Defendants, said Defendants are liable for the personal injuries and general pain and suffering of Mr. Leachman.

34.

As a direct and proximate result of the negligence of the Defendants, Mr. Leachman incurred medical expenses and other losses and expenses.

35.

As a result thereof, Plaintiff is entitled to recover compensatory damages for the general pain and suffering caused to Mr. Leachman as determined by the enlightened conscience of an impartial jury.

36.

Plaintiff brings this action to recover judgment against the Defendants in such sums as may constitute fair pain and compensation for the injuries and damages, and as such Plaintiff demands judgment in excess of \$15,000.00.

WHEREFORE, Plaintiff prays as follows:

- (a) that the Defendants be served with summons and process and be required to answer this lawsuit;

- (b) that Plaintiff recover recompensive damages from the Defendants for all special damages in an amount to be proven at trial;
- (c) that Plaintiff recovers recompensive damages from the Defendants for the mental and the physical pain and suffering and all their general damages in an amount in excess of \$15,000.00;
- (d) that Plaintiff has a trial before a jury; and
- (e) for any such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this the 30th day of September, 2013.

KENNETH S. NUGENT, P.C.

By: 

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Georgia State Bar No. 174337

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STATE COURT OF
DEKALB COUNTY, GA.

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FILED

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BY: 

DEPUTY CLERK