

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH **15905**

MATTHEW DUKE & ANNIE DUKE,
husband and wife,

Plaintiffs,

v.

NORTHWEST PERMANENTE, P.C., an
Oregon corporation; and KAISER
FOUNDATION HOSPITALS, INC., a
California corporation.

Defendants.

Case No. **1311-15905**

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Medical Malpractice)

Prayer: \$7,000,000

Filing Fee \$793.00 per
ORS 21.160(1)(d)

NOT SUBJECT TO MANDATORY
ARBITRATION

COMES NOW Plaintiffs, Matthew Duke and Annie Duke, husband and wife, and
by way of their Complaint against Defendants, Northwest Permanente, P.C., an Oregon
corporation, and Kaiser Foundation Hospitals, Inc., a California corporation, and hereby
allege as follows:

FIRST CLAIM FOR RELIEF

1.

At all times material herein, defendant Northwest Permanente, P.C. was an
Oregon professional corporation consisting of physician members practicing in various
specialties as employees and agents (actual or apparent) of such defendant, and
providing medical care and treatment to patients.

2.

At all times material herein, defendant Kaiser Foundation Hospitals, Inc. was a
California corporation licensed to do business in the State of Oregon and engaged in the

1 business of operating hospital and other medical facilities in Oregon, including Kaiser
2 Permanente Sunnyside Medical Center (hereinafter "Sunnyside Medical Center"). It
3 employs nurses, physicians assistants and other health professionals who provide and/or
4 assist in providing medical care its patients.

5 3.

6 At all times material herein, defendants Northwest Permanente, P.C. and Kaiser
7 Foundation Hospitals, Inc. have engaged in the joint venture or collective enterprise of
8 providing medical care and services to patients through physician members of defendant
9 Northwest Permanente, P.C. and non-physician medical providers employed by either
10 defendant Northwest Permanente, P.C. or defendant Kaiser Foundation Hospitals, Inc.,
11 both of which will be collectively referred to hereinafter as "defendant Kaiser."

12 4.

13 At all times material herein, defendant Kaiser was acting by and through its
14 employees and/or agents (actual or apparent) who were acting within the course and
15 scope of their employment and/or agency.

16 5.

17 At all times material herein, plaintiffs were husband and wife, and plaintiff
18 Matthew Duke was a patient of defendant Kaiser.

19 6.

20 On or about March 14, 2012, at Sunnyside Medical Center, defendants
21 performed elective lumbar spine surgery on plaintiff Matthew Duke which included a
22 laminectomy at L3-4 and a hemi-laminectomy at L4-5. During surgery defendants
23 accidentally tore the dura and then attempted to repair it. Following the repair effort,
24 continued epidural bleeding was noted, which could not be stopped and the source of
25 which could not be identified. This placed plaintiff at increased risk of developing a post
26 operative fluid collection which could place pressure on the nerves and nerve roots in the

1 lumbar spine resulting in permanent neurologic damage.

2 7.

3 In an effort to prevent or minimize post operative fluid collection around
4 plaintiff's spine, defendants placed a hemovac drain into the area of the bleeding.

5 8.

6 During the post-operative period the hemovac drain failed and was discontinued.
7 Thereafter plaintiff developed a significant accumulation of blood and fluid in and
8 around his lumbar spine which caused pressure on his nerve roots. Plaintiff exhibited,
9 experienced and complained of various signs and symptoms of this increased pressure.

10 9.

11 On March 17, 2012, defendants performed a lumbar MRI which demonstrated a
12 large fluid collection extending along a significant portion of plaintiff's lumbar spine and
13 resulting in compression upon the spinal canal and structures within the spinal canal.

14 10.

15 On March 18, 2012, defendants took plaintiff back to surgery for the purpose of
16 investigating, evacuating and resolving the source of the fluid collection. But by then
17 plaintiff had suffered significant, permanent neurologic damage as a result of the fluid
18 collection and he has cauda equina syndrome.

19 11.

20 Defendants were negligent in one or more of the following ways that caused or
21 contributed to plaintiff's injuries:

- 22 a. In tearing the dura which resulted in, and/or contributed to, a post surgical
23 fluid collection around the structures within the spinal column;
- 24 b. In failing to adequately repair the dural tear;
- 25 c. In failing to locate and stop the source of the intra-operative bleeding
26 associated with the dural tear and/or repair;

- d. In failing to properly install a hemovac drain that adequately prevented or minimized post-surgical fluid collection around plaintiff's lumbar spine;
- e. In failing to respond promptly to and/or treat the signs and symptoms of neurologic deterioration that developed following the March 14, 2012 surgery;
- f. In failing to appropriately monitor and timely assess plaintiff for signs and symptoms of deteriorating neurologic function during the post operative period;
- g. In failing to investigate the reasons for plaintiff's increasing neurologic signs and symptoms by performing a lumbar MRI prior to the one of March 17, 2012;
- h. In failing to promptly investigate and/or replace the hemovac drain when it stopped functioning properly;
- i. In failing to appropriately and timely respond to plaintiff's deteriorating neurologic condition as documented in defendants records;
- j. In prescribing excessive amounts of pain medication and/or sedation to plaintiff which masked, compromised or complicated efforts to appropriately monitor, assess and diagnose his deteriorating neurologic condition caused by the growing fluid accumulation around his spine;
- k. In failing to undertake urgent diagnostic studies, such as an MRI, to evaluate and diagnose plaintiff's deteriorating neurologic condition after the hemovac drain stopped functioning properly;
- l. In failing to take plaintiff back to surgery earlier in order to evacuate the significant fluid collection that developed around and/or within the structures of his spinal column prior to it causing permanent nerve damage;

- 1 m. In failing to appropriately monitor and assess plaintiff in the post
2 anesthesia care unit following the surgery of March 14, 2012, including a
3 failure to recognize and treat his deteriorating neurologic condition;
4 n. In failing to ensure that plaintiff's worrisome post-operative symptoms
5 were timely and accurately reported to his surgeons or others responsible
6 for his definitive neurosurgical care; and
7 o. In failing to emergently or promptly perform and report the findings of the
8 March 17, 2012 lumbar MRI to plaintiff's surgeon or other physician
9 responsible for providing definitive neurosurgical care.

10 12.

11 As a result of defendants' negligence plaintiff Matthew Duke sustained permanent
12 neurologic damage and deficits (often referred to as cauda equina syndrome) including,
13 but not limited to, an inability to control his bowel or bladder functions, impotency,
14 chronic pain, numbness and muscle weakness in and about his lower back and
15 extremities, including, but not limited to, physical, vocational and sexual limitations.

16 13.

17 The injuries alleged above have caused plaintiff Matthew Duke non-economic
18 damages in the approximate amount of \$5,000,000.00.

19 14.

20 The injuries alleged above have caused plaintiff Matthew Duke economic damages
21 in the form of lost income and lost ability to earn income in the future, in the
22 approximate amount of \$500,000.00, as well as past medical expenses and medical
23 therapy and medical device/appliance expenses to be incurred in the future, in the
24 amount of approximately \$500,000.00. (Plaintiff reserves the right to adjust or amend
25 these figures as discovery progresses.)

26 ///

1 SECOND CLAIM FOR RELIEF

2 15.

3 Plaintiffs re-allege and incorporate by reference paragraphs 1-12, above.

4 16.

5 As a result of the injuries and damages sustained by her husband, plaintiff Annie
6 Duke has sustained damages in the form of loss of consortium with her husband, loss of
7 the ability to enjoy social and recreational activities with her husband and loss of
8 intimate personal and sexual experiences all to plaintiff Annie Duke's non-economic
9 damage in the approximate amount of \$1,000,000.00.

10 WHEREFORE, plaintiffs Matthew Duke and Annie Duke, husband and wife, pray
11 for judgment against defendants, and each of them, in the following amounts:

- 12 1. On plaintiff Matthew Duke's First Claim for Relief:
- 13 a. Non-economic damages in an amount not to exceed of
- 14 \$5,000,000.00; and
- 15 b. Economic damages in the approximate amount of \$1,000,000.00.
- 16 2. On plaintiff Annie Duke's Second Claim for Relief:
- 17 a. Non-economic damages in an amount not to exceed \$1,000,000.00.
- 18 3. Plaintiffs' costs and disbursements incurred herein.

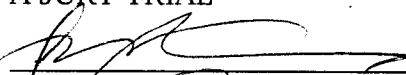
19 DATED this 15 day of November, 2013.

20 MILLER & WAGNER, LLP

21 By: 

22 Robert S. Wagner, OSB #844115
23 David K. Miller, OSB #823370
24 Of Attorneys for Plaintiffs

25 PLAINTIFFS HEREBY DEMAND
26 A JURY TRIAL


Robert S. Wagner, OSB #844115
David K. Miller, OSB #823370