

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

BONNIE FORTNER  
456 Susan Court  
Linthicum, MD 21090

*Plaintiff*

v.

KAISER FOUNDATION HEALTH PLAN  
OF THE MID-ATLANTIC STATES, INC.

Resident Agent:  
The Prentice-Hall Corp. System, MA  
7 St. Paul Street, Suite 1660  
Baltimore, MD 21202

MID-ATLANTIC PERMANENTE MEDICAL  
GROUP, P.C.

Resident Agent:  
The Prentice-Hall Corp. System, MA  
7 St. Paul Street, Suite 1660  
Baltimore, MD 21202

*Defendants*

\* \* \* \* \*

**FILED**

OCT 6 2014

CIVIL DIV.  
CIRCUIT COURT FOR  
BALTIMORE CITY

Case: 24-C-14-005710  
CV File New  
\$80.00  
Appear Fee  
\$20.00  
NLEC  
\$55.00  
TOTAL \$155.00

COMMENT:  
BONNIE FORTNER VS  
KAISER FOUNDATION HEALT

Case No.:

Receipt #201400024513  
Cashier: DB COBCX82  
10/07/14 10:28am

**COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, Bonnie Fortner, by and through her attorneys, Keith Forman, Christopher Norman, and Wais, Vogelstein & Forman, LLC, hereby sues Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and for her cause of action states as follows:

## JURISDICTION, VENUE AND PARTIES

1. The medical malpractice claim in this action is instituted pursuant to Md. Cts. & Jud. Proc. Art. §§ 3-2A-01 – 3-2A-10, for the recovery of damages in excess of Thirty Thousand Dollars (\$30,000.00).

2. The Circuit Court has jurisdiction over the subject matter of this case pursuant to MD. CODE ANN., CTS. & JUD. PROC. § 1-501.

3. Venue is proper in Baltimore City, Maryland.

4. The Plaintiff avers that she has satisfied all conditions precedent to the filing of this lawsuit, including having filed a Statement of Claim with accompanying Certificate of Merit and Expert Report and Waiver of Arbitration in the Health Care Alternative Dispute Resolution Office of Maryland. Attached hereto and incorporated herein by reference is the Certificate of Qualified Expert and Report of Bruce Charash, M.D.

5. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. is, and at all times relevant hereto was, a Maryland corporation engaged in the operation of providing health care services to individuals in need thereof, and engaged in the business of providing prepaid direct service health care plans to customers such as the Plaintiff. At all times material hereto, Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. acted by and through its agents, servants, and/or employees Maia Patel, M.D., Dana Sloane, M.D., Mark Walker, M.D., and Michele Henley, M.D.

6. Defendant Mid-Atlantic Permanente Medical Group, P.C. is, and at all times relevant hereto was, a Maryland corporation engaged in the operation of providing health care services to individuals in need thereof. At all times material hereto, Mid-Atlantic Permanente

Medical Group, P.C. acted by and through its agents, servants, and/or employees Maia Patel, M.D., Dana Sloane, M.D., Mark Walker, M.D., and Michele Henley, M.D.

7. The Defendants are herein after collectively referred to as “Kaiser”.

### STATEMENT OF FACTS

8. During the events which are the subject of this action, Mrs. Fortner was a Kaiser “member”, and had “Kaiser Permanente Signature” health care coverage through Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

9. Upon information and belief, at all times relevant hereto, Plaintiff’s premiums owed to Kaiser were paid in a timely fashion.

10. As a Kaiser member, Mrs. Fortner received from Kaiser a guide to her benefits and services – Evidence of Coverage (“EOC”), which sets out the terms of the health care agreement between Kaiser and Mrs. Fortner.

11. The EOC Mrs. Fortner received from Kaiser includes a number of provisions relevant to the allegations made in the instant action. (1) The EOC states that the member may be liable for the cost of non-covered services or services obtained from non-plan providers, *except as provided in the EOC for “Emergency Services”*. (2) The EOC defines “Emergency Services” as health care services that are provided by a Plan or Non-Plan Provider after the sudden onset of a medical condition that manifests itself by symptoms of sufficiently severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson, who possess an average knowledge of health and medicine, to result in (a) placing the patient’s health in serious jeopardy, (b) serious impairment to bodily functions, and/or (c) serious dysfunction of any bodily organ or part. According to the EOC, “Emergency Services” by non-Plan Providers are limited to Emergency Services required before the member can, without

medically harmful consequences, be transported to a Plan Hospital. (3) The EOC states that Kaiser will cover transplants of organs if: (a) the member satisfies all medical criteria developed by Medical Group (defined in the EOC as Mid-Atlantic Permanente Medical Group, P.C.) and by the facility providing the transplant; (b) the facility is certified by Medicare; and (c) A Plan Provider provides a written referral for care at the facility.

12. Mrs. Fortner was seen by Dr. Patel on June 30, 2011 for follow up from a recent hospitalization. During this visit, Dr. Patel ordered various laboratory studies, which were drawn on this date and showed, among other things, an AST of 100, an ALT of 73, and an ALKP of 150.

13. On July, 1, 2011, Mrs. Fortner was seen by Dr. Mark Walker for, among other things, hypocalcemia. He noted that Mrs. Fortner has also recently experienced muscle spasm and weakness, low potassium, calcium, and magnesium, indigestion and reflux, and loose bowels.

14. On July 7, 2011, Dr. Patel noted that she was referring Mrs. Fortner to a gastroenterologist. Dr. Patel also noted that she "ordered a broad workup per LFT abnormality guidelines", and that she ordered repeat laboratory work in light of Mrs. Fortner's previously elevated liver enzymes. The labs completed on this date showed an AST of 139, an ALT of 81, and an ALKP of 162. Additional laboratory work done on this date was negative for Hepatitis A, B, and C. She was also found to have high iron and FE/TIBC. Additional lab work done on August 4, 2011 apparently showed an AST of 64 and an ALT of 60.

15. Mrs. Fortner saw Dr. Sloane on August 8, 2011 for an evaluation of her abnormal liver associated tests, diarrhea, and GERD. Dr. Sloane noted that a review of potential risk factors revealed the Mrs. Fortner had a blood transfusion in 2001, and that she has multiple

tattoos. Dr. Sloane also noted that Mrs. Fortner had no history of IV drug use, excessive alcohol or other illicit drug use, hepatotoxic or herbal medication use, history of previous hepatitis or jaundice, family history of liver disease, or extensive travel outside of the United States. Mrs. Fortner reported unintentional weight loss. The note indicates that Mrs. Fortner's liver was palpable 4 cm below the right coastal margin. Dr. Sloane's recommendations included, among other things, a right upper quadrant ultrasound, a complete serologic evaluation including hepatitis, and follow up in 6 weeks. The note also indicates that Dr. Sloane advised the patient to refrain from all alcohol, tobacco, and drug use.

16. Additional laboratory work was returned on August 9, 2011. The results were negative for hepatitis B and C, but positive for hepatitis A. Ferritin was high. The results also showed normal IGG, IGA, IGM, ACTIN IGG, MITOCHONDRIA AB, and Alpha 1 fetoprotein.

17. Dr. Walker sent Mrs. Fortner a message on August 16, 2011. This message indicates that Dr. Walker was aware of Mrs. Fortner's recent visit with Dr. Sloane. The message also states that "most of the labs you did for me was [sic] fine, but the carotene was low, suggesting you are not absorbing nutrients in your gut." This message chain also indicates that Dr. Walker was aware of the labs that Mrs. Fortner did recently for Dr. Patel, and suggests doing additional labs for Dr. Walker in 2-3 weeks.

18. Mrs. Fortner sent Dr. Sloane a message on August 24, 2011 to let her know that she had to cancel her appointment for September 21<sup>st</sup> and that she needed to cancel her upcoming ultrasound in light of her work schedule. Mrs. Fortner stated that she wanted to reschedule her ultrasound for September 29, and her appointment for October 21. Dr. Sloane responded that Mrs. Fortner's request to reschedule was no problem, and that she should contact radiology directly to reschedule.

19. The next follow up from any Kaiser medical provider did not occur until Mrs. Fortner sent Dr. Sloane a message on March 11, 2012 asking for a refill of her Protonix, a medication used to treat GERD. Dr. Sloane responded to Mrs. Fortner's request and provided a refill for the Protonix, but did not inquire regarding the ultrasound and follow up appointment that she requested for Mrs. Fortner back in August of 2011. Dr. Sloane did not see Mrs. Fortner at this time.

20. The next contact Mrs. Fortner had with Dr. Patel did not occur until June 5, 2012, when Mrs. Fortner reached out to Dr. Patel and asked for follow up labs. Dr. Patel responded by ordering labs for Mrs. Fortner, and also letting her know that she moved her office to White Marsh, and that Dr. Henley was now listed as Mrs. Fortner's doctor at the Severna Park location.

21. The lab work that Mrs. Fortner requested was returned on June 14, 2012 – it showed an AST of 62, an ALT of 37, and normal ALKP and bilirubin.

22. Mrs. Fortner saw Dr. Michele Henley for the first time on June 27, 2012 for a health assessment. Although Dr. Henley's note indicates that Mrs. Fortner had a history of abnormal liver function tests, her assessment and plan did not address that historical finding.

23. On January 4, 2013, Mrs. Fortner was again seen by Dr. Henley. Mrs. Fortner was reporting pain, nausea, vomiting, and diarrhea, and a feeling as though she was having a recurrence of shingles. Mrs. Fortner was noted to be mildly dehydrated. Again, Dr. Henley's assessment and plan did not address Mrs. Fortner's liver function abnormalities.

24. Mrs. Fortner sent a message to Dr. Henley on January 6, 2013, telling her that she was still feeling very sore and weak. Mrs. Fortner explained that she was unable to go to work, and requested a work note. Mrs. Fortner sent a similar message again on January 10, 2013.

25. Mrs. Fortner saw Dr. Sloane on January 16, 2013, for the first time in 17 months since her initial appointment back in August of 2011. Dr. Sloane noted that Mrs. Fortner was previously seen on August 8, 2011 for evaluation of abnormal liver associated tests. Dr. Fortner's "impression" note reads "history of abnormal liver associated tests, no follow up since 2011." Dr. Sloane noted that Mrs. Fortner had been experiencing persistent nausea, vomiting, and diarrhea for the last two weeks. Lab results from this date include an AST of 177, an ALT of 132, an ALKP of 124, and normal bilirubin. Dr. Sloane's recommendations were: counseled on gentle perianal care, obtain stool studies, pending result consider empiric treatment for small intestine bacterial overgrowth, counseled on lactose avoidance, check iron indices – hereditary hemochromatosis, contact with questions or concerns, follow up after stool studies. Again, no mention was made of a plan for determining the cause of Mrs. Fortner's liver function abnormalities.

26. On February 21, 2013, Mrs. Fortner was seen by Dr. Michele Henley for follow up from a recent hospitalization for hand cramps. Dr. Henley's note includes lab results from the recent hospitalization, including an AST of 112, an ALT of 82, an ALKP of 127, and normal bilirubin. Again, Dr. Henley's assessment and plan did not address Mrs. Fortner's liver function abnormalities.

27. Mrs. Fortner saw Dr. Walker again on February 27, 2013 for routine follow up of her hypocalcemia. Dr. Walker noted that Mrs. Fortner's energy was poor. Her bowels were still loose liquid, and contained undigested food. He noted that she had been to the ER recently for muscle spasm, facial numbness, tingling and difficulty breathing. He also noted a mild tremor in her hands.

28. Dr. Sloane sent Mrs. Fortner a message on March 21, 2013, telling Mrs. Fortner that her concern at that point was either a neuroendocrine process causing the diarrhea, or an underlying small bowel Crohn's disease.

29. On June 3, 2013, Mrs. Fortner saw a new primary care physician, Dr. Akoto, for the first time. According to Dr. Akoto, Mrs. Fortner's diagnoses at the time included fatigue, hypocalcemia, hypomagnesemia, hypokalemia, impaired fasting glucose, abnormal finding on liver function, rash, and chronic bronchitis. Dr. Akoto noted that Mrs. Fortner was suffering from chronic fatigue, myalgias, anhedonia, poor appetite, and recent agoraphobia. The note indicates that she has not been able to work due to her symptoms. The note also states that Mrs. Fortner was found to have multiple electrolyte and vitamin abnormalities and has been seeing endocrinology for that. Her mood was worse. The note states that Mrs. Fortner wanted screening for her chronic complaints.

30. Labs were drawn on June 4, 2013. The results included, among other things, an AST of 246, an ALT of 101, an ALKP of 200, high bilirubin, and a low BUN. Dr. Akoto sent Mrs. Fortner a message on this date stating: "Your liver function is considerably worse and the worse [sic] that it has ever been. I want you to follow up with Dr. Sloane as soon as possible for evaluation. Did you ever get a liver biopsy? Do you drink any alcohol or take any over the counter supplements or herbs? Your vitamin D level was also low. I would like you to supplement this with vitamin D." Mrs. Fortner responded: "I drink about 6 glasses of wine a day, this helps me with my depression and ability to sleep. No I have never had my liver biopsied. Dr. Sloane has mentioned that my liver function had high levels, but never mentioned getting a biopsy."



31. Dr. Akoto sent Mrs. Fortner another message on June 5 stating: “You need to stop drinking. Your liver function is much worse than before. Your liver can’t tolerate the amount of alcohol at this point. You are starting to get higher levels of bilirubin in your bloodstream ...your hepatitis tests were normal so the drinking is probably the major cause of the liver damage. The liver can regenerate itself but not if you keep drinking ... I would recommend stopping and letting us recheck the enzymes in 1 month ...”

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32. On June 18, 2013, Dr. Sloane sent Mrs. Fortner a message saying that the results of her labs were possibly consistent with a neuroendocrine problem as the cause of her diarrhea. Dr. Sloane suggested an octreotide scan at Hopkins to look for any anatomic cause of a hormone problem.

33. The octreotide scan was done at Johns Hopkins on July 31, 2013. The scan evidenced hepatomegaly, profound fatty liver, pericholecystic fluid collection, gallbladder wall thickening, and mesenteric fatty stranding in the right lower quadrant.

34. Dr. Sloane sent Mrs. Fortner a message on August 5, 2013 regarding the results of the octreotide scan. Dr. Sloane did not notify Mrs. Fortner in this message of the diagnosis of fatty liver, but instead just told Mrs. Fortner that the octreotide scan did not show any evidence of a neuroendocrine tumor.

35. On August 15, 2013, Mrs. Fortner was seen by Dr. Akoto. This note indicates that the octreotide scan evidenced fatty liver and a fluid collection. Lab results from this visit include a low BUN, low eGFR, low albumin, normal ALT, AST of 82, ALKP of 159, and high bilirubin.

36. Mrs. Fortner was admitted to St. Agnes Hospital on August 17, 2013. The records from this admission indicate that Mrs. Fortner was sent to the hospital by her Kaiser primary care physician after having multiple bouts of nausea, vomiting, and diarrhea, with complete p.o.

intolerance and abdominal pain. She had a 38lb weight loss in the last two months. Imaging studies during this admission showed fatty infiltration of the liver which was enlarged with ill-defined areas of hypoattenuation. Labs during this admission include the follow results, among others: BUN 5, Creatinine 1.2, eGFR 48, total bilirubin 2, direct bilirubin 1.2, indirect bilirubin .8, AST 60, ALT 19, albumin 2.7, and lipase 10. On physical exam she was noted to be mildly jaundiced. A gastroenterology consult during this admission noted, among other things, that Mrs. Fortner's liver was massively enlarged, hard, and slightly irregular. At the time of the gastroenterology consult an MRI was pending – it was noted that if the MRI was not helpful, a liver biopsy would be needed. During her stay at St. Agnes Hospital, Mrs. Fortner's bilirubin and INR began trending up, while her bicarb remained low. Her MELD score was also elevated at 25. The health care providers at St. Agnes Hospital felt that due to her liver failure, she would benefit from continued care in a tertiary facility, such as the University of Maryland Medical Center (“UMMC”). UMMC is not a Kaiser affiliated provider.

37. Mrs. Fortner was transfer from St. Agnes to UMMC on September 6, 2013. Her diagnoses at the time of discharge included, among many other things, hepatic steatosis and cirrhosis.

38. While at UMMC, there is a note in the Kaiser records stating that “prior evaluation from 1/2013 demonstrated fluctuating liver associated tests. Liver biopsy was discussed, but deferred for evaluation/management of diarrhea.”

39. Dr. Barth, a physician caring for Mrs. Fortner at UMMC, apparently requested authorization from Kaiser for permission to perform a surgical consultation on Mrs. Fortner regarding liver transplantation at UMMC.

40. On September 28, 2013, Kaiser sent a letter to Mrs. Fortner informing her that they were not approving Dr. Barth's request for authorization for the surgical consultation for liver transplantation with UMMC because "the requested service is not medically necessary". The September 28<sup>th</sup> letter states that Mrs. Fortner did "not meet the Kaiser Permanente National Transplant Network Services Patient Selection Criteria for Liver Transplant." Specifically, Mrs. Fortner was told that there was no documentation that she had been free of nicotine, alcohol and other substances for at least 6 months, or that she had been evaluated by a substance abuse program. Additionally, the letter states that her nutritional status was not adequate. The letter goes on to state that, "[y]our benefit plan specifically states that, according to your Kaiser Permanente Evidence of Coverage, the requested service is covered only if the Service is Medically Necessary." Finally, the letter explains that Kaiser's "National Transplant Network Services Patient Selection Criteria for Liver Transplant" says that liver transplantation may be considered for patients with end-stage liver diseases who have no prospect for prolonged survival, or whose quality of life is severely impaired, however, the patient must have adequate social support systems and a proven record of adherence to medical treatment. They explain, among other things, that liver transplantation is contraindicated for patients with: (1) other life limited disorders not corrected by liver transplant, and (2) patients with psycho-social behavioral and support issues, such as active alcohol abuse or patients who have not been free from alcohol abuse for at least 6 months (although the letter specifically states that exceptions may be made on a case-by-case basis).

41. The records indicate that Mrs. Fortner stopped drinking in June of 2013, presumably as a result of Dr. Akoto's message informing her of her abnormal liver function

tests, inquiring about her alcohol use, informing her of the affect of alcohol on her liver, and telling her that she needed to stop drinking.

42. The negligence of Kaiser's own healthcare providers resulted in Mrs. Fortner's liver disease and the cause of her liver disease being diagnosed less than 6 months prior to her need for liver transplant, therefore, it was impossible for her to have met Kaiser's previously undisclosed criteria of remaining alcohol free for at least 6 months prior to transplant.

43. In response to Kaiser's letter of September 28, 2013 denying Dr. Barth's request for authorization to perform a surgical consultation for liver transplantation on Mrs. Fortner at UMMC, Mrs. Fortner's husband timely requested an appeal of that decision via a letter that he faxed to Susan Fleagle at Kaiser on September 30, 2013. In his letter, Mr. Fortner explains that he is requesting "that liver transplant surgery be done on [Mrs. Fortner] so that she can continue to live. The transplant team here at UMMC is willing to complete this surgery to save her live. Please approve this request so that my wife can be saved." Mr. Fortner's appeal goes on to explain that the reason that Mrs. Fortner had not stopped drinking alcohol earlier was because "she was never diagnosed with liver problems" and "the blood work requested by Dr. Akoto on June 3<sup>rd</sup> [sic] caused him to ask her about alcohol use. He told her not to drink anymore, and she stopped. Previous to this ... no one ever asked her about alcohol use." Mrs. Fortner's appeal appears to have been denied.

44. On October 3, 2013, there is a note made by a Kaiser provider which suggests that the UMMC physicians discussed Mrs. Fortner's care with the University of Pennsylvania Medical Center ("UPenn") (a Kaiser affiliated transplant center). It appears from this note that plans were made to transfer Mrs. Fortner to UPenn once a bed became available and the MICU attendings had spoken.

45. On October 23, 2013, there is another Kaiser note indicating that the MICU attendings at UMMC and UPenn had spoken and determined that Mrs. Fortner *was too unstable for transfer at that time*, and that Mrs. Fortner's family did not want her transferred to UPenn.

46. Thereafter, Dr. Dana Sloane, Mrs. Fortner's *Kaiser employed/affiliated gastroenterologist*, apparently requested authorization from Kaiser for Mrs. Fortner to receive a liver-kidney transplant to be performed by Dr. Barth at UMMC.

47. On December 16, 2013, Kaiser sent another letter to Mrs. Fortner, in which they denied *Dr. Sloane's request* for approval for a liver-kidney transplant to be performed by Dr. Barth at UMMC because "the requested service is not medically necessary per physician review." Kaiser listed a number of reasons why the transplant requested by Dr. Sloane was "not medically necessary" including: (1) their assertion that Mrs. Fortner had hepatorenal syndrome, pulmonary problems and increasing problems with difficulty weaning off of the vent, etc., making the transplant high risk; (2) their assertion that UMMC was not a plan provider under Mrs. Fortner's plan; (3) their assertion that, although Mrs. Fortner was offered the opportunity to transfer to a plan provider (UPenn), [she] declined (as we know from the previously explained note, Mrs. Fortner was not transferred to UPenn at least in part because her healthcare providers determined that she was not stable for transfer); and (4) their assertion that Mrs. Fortner would need complete rehab/strengthening before she could be considered for transplantation care.

48. Ultimately, Kaiser declined to cover Mrs. Fortner's liver and kidney transplant at UMMC. Despite this, the transplant team at the University of Maryland performed a liver and kidney transplant and saved Mrs. Fortner's life. Mrs. Fortner was discharged in early 2014.

**COUNT I**  
**MEDICAL MALPRACTICE**

Plaintiff, Bonnie Fortner, by and through her undersigned counsel, hereby sues Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and for her cause of action states as follows:

~~49. Plaintiff repeats, re-alleges, adopts, and incorporates by reference the above paragraphs of this Statement of Claim as if fully set forth herein.~~

50. In their care and treatment of Bonnie Fortner, Defendants Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., acting by and through their agents, servants, and/or employees Maia Patel, M.D., Dana Sloane, M.D., Mark Walker, M.D., and Michele Henley, M.D., owed Bonnie Fortner a duty to exercise that degree of care and skill which a reasonably competent healthcare provider would have exercised under similar circumstances.

51. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., acting by and through their agents, servants, and/or employees Maia Patel, M.D., Dana Sloane, M.D., Mark Walker, M.D., and Michele Henley, M.D., breached the aforesaid duty of care to Bonnie Fortner and were negligent in the following ways, among others:

- a. By failing to thoroughly review Mrs. Fortner's medical history, including her historical laboratory results, and to be aware of Mrs. Fortner's abnormal liver function tests;
- b. By failing to promptly inform Mrs. Fortner of her abnormal liver function values, which were first noted on June 30, 2011;

- c. By failing to immediately suspect alcohol as the cause of Mrs. Fortner's liver function abnormalities in light of the fact that the AST was higher than the ALT, which generally does not occur in non-alcoholic liver disease;
- d. By failing to order imaging studies in an attempt to definitively diagnose the cause of Mrs. Fortner's abnormal liver function tests, and failing to ensure that those imaging studies were completed in a timely manner, particularly in light of the fact that blood tests ruled out other causes of Mrs. Fortner's liver function abnormalities such as hepatitis;
- e. By failing to directly question Mrs. Fortner regarding her alcohol usage, over and beyond the general questioning done when taking a typical social history;
- f. By failing to counsel Mrs. Fortner regarding the affect of alcohol on her liver, and aid Mrs. Fortner in getting help for her alcohol use if necessary;
- g. By failing to send Mrs. Fortner for a liver biopsy;
- h. By failing to ensure that Mrs. Fortner was seen in follow up on a regular basis until the cause of her abnormal liver function tests was determined;
- i. By failing to consult, coordinate, and confer with Mrs. Fortner's other treating healthcare providers to ensure that the cause of Mrs. Fortner's abnormal liver function tests was being worked up and treated appropriately;
- j. And were in other ways negligent.

52. As a direct and proximate result of the above-mentioned deviations from the applicable standards of care by Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., acting by and through their agents, servants, and/or employees Maia Patel, M.D., Dana Sloane, M.D., Mark Walker, M.D., and Michele Henley, M.D., Bonnie Fortner suffered the following injuries, amongst others:

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- a. Liver failure;
- b. Kidney failure;
- c. Hypoxic respiratory failure;
- d. Hepatic encephalopathy;
- e. Hepatic steatosis and cirrhosis;
- f. Abdominal ileus;
- g. Aspiration pneumonia;
- h. Chronic diarrhea with electrolyte derangements;
- i. Anasarca with lower extremity swelling and ascites;
- j. Microcytic anemia;
- k. Septic shock;
- l. Nausea;
- m. Fatigue;
- n. Weight loss;
- o. Leukocytosis;
- p. Hypoalbuminemia;
- q. Diarrhea;
- r. Conscious physical pain and emotional anguish;



- s. Depression, anxiety, and other psychological illness;
  - t. Past and future medical expenses for health care in the treatment of her injuries described above;
  - u. Past and future lost wages;
  - v. Past and future loss of household services and other pecuniary damages;
- 
- w. Other injuries and damages.

WHEREFORE, Plaintiff, Bonnie Fortner, brings this action against Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and seeks damages that will adequately and fairly compensate her, plus costs and such other and further relief as may be deemed appropriate.

**COUNT II**  
**BREACH OF CONTRACT**

Plaintiff, Bonnie Fortner, by and through her undersigned counsel, hereby sues Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and for her cause of action states as follows:

53. Plaintiff hereby reaffirms and re-alleges the allegations set forth in Paragraphs 1-52 as if fully set forth herein.

54. Plaintiff and Kaiser entered into a fully enforceable and binding contract, the terms of which are definite and certain, and are set forth in the EOC.

55. The agreement between Plaintiff and Kaiser constitutes a fair and equitable contract supported by adequate consideration.

56. Plaintiff fully and properly performed all of her obligations under the contract by taking such actions including, but not limited to, remitting to Kaiser all necessary insurance premium payments.

57. Under the terms of the agreement between the parties, Kaiser had a duty to provide the Plaintiff with insurance coverage for the services she received at UMMC, including, but not limited to, the UMMC hospitalization and the liver and kidney transplant performed at UMMC.

58. Kaiser refused to provide the coverage required by them under the terms of the agreement between the parties. Kaiser also breached its implied duty of good faith and fair dealing. As set forth previously herein, the negligence of Kaiser and its employees and/or agents necessitated the care at UMMC which Kaiser then declined to authorize and/or cover.

59. By way of example, Kaiser and/or its authorized employees, agents and/or representatives: (a) denied coverage for a transplant because it was “not medically necessary” despite the fact that such transplant was considered medically necessary by the world-renowned transplant team at UMMC and authorization for the transplant was requested by Dr. Dana Sloane, Mrs. Fortner’s *Kaiser employed/affiliated gastroenterologist*; (b) denied coverage for transplant services based on previously undisclosed exclusion criteria (*i.e.*, 6 months alcohol free, inadequate nutrition, other concomitant illness, etc.) which Mrs. Fortner was not able to satisfy *only as a result of the Defendants’ own previous negligent care and treatment*, and even in light of the fact that Mrs. Fortner met all of the other requirements for transplantation under the EOC, including the fact that UMMC deemed Mrs. Fortner fit for transplantation, Mrs. Fortner satisfied UMMC’s criteria for transplantation, UMMC is certified by Medicare, and a Kaiser Plan Provider (Dr. Sloane) provided a written referral for the transplant care at UMMC; and Kaiser (c) denied coverage for “Emergency Services” to be rendered by a non-party provider, despite the fact that Mrs. Fortner’s claims for coverage fit squarely within the EOC’s definition of eligibility for such services.

60. As a direct and proximate result of Kaiser's breach of the agreement, Plaintiff has suffered damages including, but not limited to, medical expenses.

WHEREFORE, Plaintiff is entitled to all damages caused by Kaiser's breach of contractual duty, in an amount that exceeds Seventy-Five Thousand Dollars (\$75,000), as well as interest, costs, and any other relief deemed appropriate by the Court.

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**COUNT III**  
**INTENTIONAL MISREPRESENTATION – FRAUD**

Plaintiff, Bonnie Fortner, by and through her undersigned counsel, hereby sues Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and for her cause of action states as follows:

61. Plaintiff hereby reaffirms and re-alleges the allegations set forth in Paragraphs 1-60 as if fully set forth herein.

62. Upon entering into the insurance agreement with Plaintiff, Kaiser owed a duty of care to the Plaintiff to inform Plaintiff accurately regarding Plaintiff's health insurance coverage. The statements made by Kaiser to Plaintiff in the EOC regarding what health care related services would be covered and under what circumstances constitute assertions of false representations of material facts to Plaintiff.

63. Kaiser knew that its statements regarding what health care related services would be covered and under what circumstances were false when made to Plaintiff upon delivering the EOC. Kaiser was desirous of inducing Plaintiff to acquire and pay for health care coverage. Kaiser's representations were made for the purpose of defrauding Plaintiff, and with the intent of having Plaintiff act and rely upon the representations set forth in the EOC.

64. Kaiser knew or should have known that Plaintiff would reasonably rely upon its assertions of false representations of material facts regarding what health care related services would be covered and under what circumstances.

65. Plaintiff's action of paying Kaiser for health care coverage, seeking Emergency Services at UMMC at the direction of Kaiser Plan Providers, and seeking coverage for her transplant care from a non-Plan Provider while meeting all of the reasonable criteria for doing so under the EOC were undertaken in justified reliance upon Kaiser's false representations.

66. As a result of Kaiser's intentional misrepresentations, Plaintiff incurred damages. WHEREFORE, Plaintiff is entitled to all damages caused by Kaiser's intentional misrepresentation, in an amount that exceeds Seventy-Five Thousand Dollars (\$75,000), including economic and non-economic damages, punitive damages, interest, costs, and any other relief to which she is entitled by law and which is deemed appropriate by the Court.

**COUNT IV**  
**NEGLIGENT MISREPRESENTATION**

Plaintiff, Bonnie Fortner, by and through her undersigned counsel, hereby sues Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and for her cause of action states as follows:

67. Plaintiff hereby reaffirms and re-alleges the allegations set forth in Paragraphs 1-66 as if fully set forth herein.

68. Upon entering into the insurance agreement with Plaintiff, Kaiser owed a duty of care to the Plaintiff to inform Plaintiff accurately regarding Plaintiff's health insurance coverage. The statements made by Kaiser to Plaintiff in the EOC regarding what health care related services would be covered and under what circumstances constitute negligent assertions of false statements of material facts to Plaintiff.

69. Kaiser intended for Mrs. Fortner to act or rely upon their negligent assertions.

Kaiser was desirous of inducing Plaintiff to acquire and pay for health care coverage.

70. Kaiser knew that Mrs. Fortner would probably rely upon their negligent assertions of false statements of material facts which, if erroneous, would cause Mrs. Fortner damages.

71. Plaintiff's action of paying Kaiser for health care coverage, seeking Emergency Services at UMMC at the direction of Kaiser Plan Providers, and seeking coverage for her transplant care from a non-Plan Provider while meeting all of the reasonable criteria for doing so under the EOC were undertaken in justified reliance upon Kaiser's negligent assertions of false statements of material facts.

72. As a result of Kaiser's negligent misrepresentations, Plaintiff incurred damages.

WHEREFORE, Plaintiff is entitled to all damages caused by Kaiser's negligent misrepresentations, in an amount that exceeds Seventy-Five Thousand Dollars (\$75,000), including economic and non-economic damages, punitive damages, interest, costs, and any other relief to which she is entitled by law and which is deemed appropriate by the Court.

**COUNT V**  
**TORT ARISING FROM BREACH OF CONTRACT – ACTUAL MALICE**

Plaintiff, Bonnie Fortner, by and through her undersigned counsel, hereby sues Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. and Mid-Atlantic Permanente Medical Group, P.C., and for her cause of action states as follows:

73. Plaintiff hereby reaffirms and re-alleges the allegations set forth in Paragraphs 1-72 as if fully set forth herein.

74. The insurance agreement constitutes a valid and enforceable agreement between Plaintiff and Kaiser.

75. As described above, Kaiser acted without legal justification or excuse but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure Plaintiff, such that the Plaintiff would not get the insurance coverage and proper medical care and treatment that she had paid Kaiser for, and suffer other economic and financial damages. Kaiser knew or should have known that Mrs. Fortner's transplants were medically necessary, that Mrs. Fortner was unstable for transfer to a Kaiser transplant provider, and that Mrs. Fortner more likely than not would have died if she did not receive the transplants.

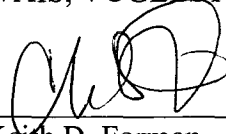
76. Kaiser's actions have directly and proximately caused Plaintiff to incur substantial economic and non-economic loss and damages.

WHEREFORE, Plaintiff prays this Court for judgment as follows:

- a. Declaring that Plaintiff is entitled to insurance coverage under the insurance agreement for the Damage described herein;
- b. Awarding damages that exceed Seventy-Five Thousand Dollars (\$75,000) for Kaiser's breaches of the insurance agreement;
- c. Punitive damages arising from Kaiser's actual malice in its handling of Mrs. Fortner's rightful requests for authorizations and claims for coverage;
- d. Pre and Post Judgment Interest, costs, and any other relief and damages that will fairly and adequately compensate Plaintiff.

Respectfully submitted,

WAIS, VOGELSTEIN & FORMAN, LLC



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Keith D. Forman  
Christopher S. Norman