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ENTERED

JAN 28 2013

IN REGISTER BY TMK

FILED
13 JAN 28 PM 2:56
CIRCUIT COURT
FOR MULTNOMAH COUNTY

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

KELLY O'MALLEY-McKEE,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST, a corporation;
NORTHWEST PERMANENTE, P.C., a
corporation; and KAISER FOUNDATION
HOSPITALS, a corporation,

Defendants.

01368

Case No. **130101368**

COMPLAINT (Personal Injury; Medical
Negligence)

Claims Not Subject to Mandatory Arbitration

(\$22,700,000 prayer, *subject to amendment*)

Filing fee: \$1,005; ORS 21.160(1)(e);

2011 Or Laws, Chap. 595, §8(1), (2)(h)

Demand for Jury Trial

Plaintiff alleges:

1.

At all material times, defendant Kaiser Foundation Health Plan of the Northwest ("Health Plan") was an Oregon corporation engaged in the business of providing hospital and medical services to its members, and was engaged in regular, sustained business activity in Multnomah County, Oregon.

2.

At all material times, defendant Northwest Permanente, P.C. ("P.C.") was an Oregon professional corporation, engaged in the business of providing medical services to members of the Health Plan, and was engaged in regular, sustained business activity in Multnomah County,

1 Oregon.

2 3.

3 At all material times, defendant Kaiser Foundation Hospitals ("Kaiser Foundation") was a
4 California corporation qualified to do business in Oregon, was engaged in the operation of medical
5 and hospital facilities, and was engaged in regular, sustained business activity in Multnomah
6 County, Oregon.

7 4.

8 At all material times, defendants Health Plan, P.C. and Kaiser Foundation operated
9 together as a joint venture ("Kaiser") in providing medical, hospital and surgical services to
10 members of the Health Plan, including Kelly O'Malley-McKee, the plaintiff herein. At all
11 material times, Kaiser utilized various agents and employees to provide medical, hospital and
12 surgical services to members of the Health Plan, including Kelly O'Malley-McKee, which agents
13 and employees acted within the course and scope of such agency or employment.

14 5.

15 At all material times, plaintiff Kelly O'Malley-McKee was a patient under the care and
16 treatment of defendants. While a patient under the care and treatment of defendants, defendants
17 owed to Kelly O'Malley-McKee the duty to treat her with reasonable care, skill and diligence in an
18 ordinarily careful manner to avoid needlessly creating or causing harm, injury or death.

19 6.

20 In February 2011, plaintiff Kelly O'Malley-McKee felt a lump in her left breast and was
21 examined at a Kaiser clinic in Portland, Oregon by a nurse practitioner. No tests such as an
22 ultrasound or mammogram were performed. Ms. O'Malley-McKee was reassured there was
23 nothing to worry about. In April 2012, Ms. O'Malley-McKee was examined at the Kaiser Clinic
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26

1 in Portland, Oregon. Following this visit, imaging studies showed a cancerous lesion in the left
2 breast measuring over 3 cm in size. Pathology and biopsies showed invasive ductal carcinoma
3 with metastases.

4 Thereafter, Ms. O'Malley-McKee underwent chemotherapy and a lumpectomy, including
5 removal of lymph nodes. However, the surgical margins were not clear leading to further surgery.
6 For further treatment of the breast cancer, Ms. O'Malley-McKee underwent double mastectomies
7 in November 2012. At that time, Ms. O'Malley-McKee was 37 years old.

8
9 7.

10 The negligence of the defendants as set forth herein caused Ms. O'Malley-McKee to
11 undergo additional medical procedures and multiple surgeries including double mastectomies,
12 physical and mental pain and suffering, mental anguish, emotional distress, physical disability and
13 permanent disfigurement. One or more of these injuries, harms and losses are permanent in nature.
14 The negligence of the defendants as set forth herein has also caused Ms. O'Malley-McKee
15 increased risk of recurrence and metastases. For her noneconomic damages, and in accordance
16 with Oregon law, Ms. O'Malley-McKee seeks such amount as the jury may deem just and
17 appropriate, not to exceed the sum of \$22.5 million.

18
19 8.

20 The negligence of the defendants as set forth herein caused Ms. O'Malley-McKee to incur
21 hospital, medical and therapy expenses. The negligence of the defendants as set forth herein
22 caused Ms. O'Malley-McKee to suffer a loss of wages. These expenses and losses are ongoing,
23 and Ms. O'Malley-McKee will amend this complaint at the time of trial to set forth the full amount
24 of such expenses and losses to date. At this time, in accordance with Oregon law and subject to
25 amendment, Ms. O'Malley-McKee seeks economic damages in such amount as the jury may deem
26

1 just and appropriate, not to exceed the sum of \$200,000.00

2 9.

3 Defendants were negligent in one or more of the following particulars:

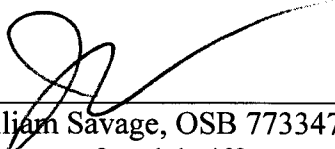
- 4 (a) In failing to perform any ultrasound or mammogram in February 2011;
- 5 (b) In assuming that Ms. O'Malley-McKee's complaints and concerns about a possible
- 6 cancerous lesion in her breast in February 2011 did not require any further evaluation or testing.

7 WHEREFORE, plaintiff prays for judgment against defendants as follows:

- 8 1. For noneconomic damages in such amount as the jury may deem just and appropriate, not to
- 9 exceed the sum of \$22,500,000.00;
- 10 2. For economic damages in such amount as the jury may deem just and appropriate, not to exceed
- 11 the sum of \$200,000.00;
- 12 3. For plaintiff's costs and disbursements incurred herein;
- 13 4. For such other relief as the court may deem appropriate.

14 DATED this 28th day of January, 2013.

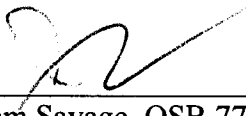
15 J. WILLIAM SAVAGE, P.C.

16 
17 J. William Savage, OSB 773347
18 Of attorneys for plaintiff
19 Trial Attorney
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Jury Trial Demand

Plaintiff hereby demands a trial by jury of all issues triable by a jury.



J. William Savage, OSB 773347
Of attorneys for plaintiff
Trial Attorney

Attorneys for Plaintiff

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Case Number:

130101368

CIVIL CASE MANAGEMENT SHEET

(Not for Small Claims, FEDs, Family Law, Protective Proceedings or Probate Matters)

PARTIES:

Plaintiffs:

Defendants:

KELLY O'MALLEY-McKEE

KAISER FOUNDATION HEALTH PLAN OF THE
NORTHWEST; NORTHWEST PERMANENTE, PC;
KAISER FOUNDATION HOSPITALS

Related cases in Multnomah County Circuit Court (case number(s)):

PLAINTIFF ATTORNEY:

Name: J. William Savage OSB Number: 773347

Phone Number: (503) 222-0200

Address: 620 SW Fifth Avenue, #1125, Portland, OR 97204

☐ If this is not your current address in OJIN, check the box if you wish this to serve as notice of a change of address pursuant to UCR 2.010(14). THE COURT DOES NOT COORDINATE WITH THE OREGON STATE BAR REGARDING CHANGES OF ADDRESS - SEPARATE NOTICE TO THE COURT IS REQUIRED.

Email address FOR ALL COURT-GENERATED NOTICES: jwsavage@earthlink.net

TYPE OF CASE (check ONE):

Tort and Employment

☐ Motor vehicle (including UM & UIM)

☐ Intentional personal injury (including assault, battery, false arrest, intentional infliction of emotional distress)

☐ Product liability

☐ Employer liability (ELL)

☐ Wrongful Death

☐ Employment discrimination/wrongful discharge

☐ Negligence

☐ Wage and hour

☒ Professional negligence

☐ Employment contract

☐ Defamation

☐ Other (specify): _____

☐ Fraud

☐ Intentional injury to property (including nuisance and trespass)

Contract (other than employment)

☐ Collections (consumer credit)

Real Property

☐ Quiet Title

☐ Insurance

☐ Condemnation/Eminent Domain

☐ Negotiable instrument

☐ Foreclosure

☐ Shareholder suit

☐ Specific Performance

☐ Other (specify): _____

☐ Other (specify): _____

Other

☐ Declaratory Judgment/Injunctive Relief

☐ Elder Abuse

☐ Intellectual property

☐ Interpleader (ORCP 31)

☐ Other (specify): _____