

ROBINSON & CHUR

DANIEL E. CHUR 2930  
ANDREW A. CHENG 6696  
Gentry Pacific Design Center  
560 N. Nimitz Hwy, Suite 219  
Honolulu, Hawaii 96817  
Telephone: 524-7900

Attorneys for Plaintiffs  
ALAN WEHMER and KATHRYN WHITMIRE

1ST CIRCUIT COURT  
STATE OF HAWAII  
FILED

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S. TAMANAHA  
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ALAN WEHMER and KATHRYN  
WHITMIRE,

Plaintiffs,

v.

DANIEL DONOVAN, M.D., LEON LIEM,  
M.D., KAISER FOUNDATION  
HOSPITALS, KAISER FOUNDATION  
HEALTH PLANS, INC. JOHN DOES  
1-10, JANE DOES 1-10, DOE  
PARTNERSHIPS 1-10, DOE  
CORPORATIONS 1-10, DOE  
NONPROFIT CORPORATIONS 1-10,  
DOE BUSINESS ENTITIES 1-10 and  
DOE GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO. **13-1-0348-02 V L C**  
(Medical Malpractice)

COMPLAINT; SUMMONS

**COMPLAINT**

Come now, Plaintiffs above-named, by and through their undersigned attorneys, and for a cause of action against Defendants, above-named, avers and alleges as follows:

**X COPY**

1. Plaintiff ALAN WEHMER (hereinafter "Mr. Wehmer") is, and at all relevant times was, a resident of the City and County of Honolulu, State of Hawaii.

2. Plaintiff KATHRYN WHITMIRE (hereinafter "Ms. Whitmire") is, and at all relevant times was, a resident of the City and County of Honolulu, State of Hawaii.

3. Defendant DANIEL DONOVAN, M.D. (hereinafter "Dr. Donovan") is, and at all relevant times was, a physician licensed to practice of medicine and engaging in the practice of medicine in the City and County of Honolulu, State of Hawaii.

4. Defendant LEON LIEM, M.D. (hereinafter "Dr. Liem") is, and at all relevant times was, a physician licensed to practice medicine and engaging in the practice of medicine in the City and County of Honolulu, State of Hawaii.

5. Defendant KAISER FOUNDATION HOSPITALS is, and at all relevant times was, a foreign nonprofit corporation conducting a service-type hospital and medical care program in the City and County of Honolulu, State of Hawaii.

6. Defendant KAISER FOUNDATION HEALTH PLAN, INC. is, and at all relevant times was, a foreign nonprofit corporation that established and maintained comprehensive pre-paid direct service health care plans in the City and County of Honolulu, State of Hawaii.

7. Defendants JOHN DOES 1-10, JANE DOES 1-10, DOE PARTNERSHIPS 1-10, DOE CORPORATIONS 1-10, DOE NONPROFIT CORPORATIONS 1-10, DOE BUSINESS ENTITIES 1-10 and DOE GOVERNMENTAL ENTITIES 1-10 are sued under fictitious names and identities and are presently unknown to Plaintiffs, and their true names, identities, capacities, activities and/or

responsibilities are presently unknown to Plaintiffs or Plaintiffs' attorneys; but said DOE Defendants are in some manner legally and proximately responsible and liable for Plaintiffs' injuries and damages.

8. All events mentioned herein occurred within the jurisdiction of the Circuit Court of the First Circuit, State of Hawaii.

9. The jurisdictional requirements of Chapter 671, Hawaii Revised Statutes, have been met.

**COUNTS I and II**  
**(DEFENDANTS DANIEL DONOVAN, M.D., and LEON LIEM, M.D.)**

10. Plaintiffs reallege and incorporate by reference paragraphs 1 through 9 above as though fully set forth herein.

11. On January 12, 2010, Dr. Donovan performed a surgical procedure on Mr. Wehmer, which included posterior lumbar interbody fusion of L4-L5 and L5-S1, along with interbody cages at L4-L5 and L5-S1.

12. The surgery was performed at Kaiser Moanalua Medical Center (hereinafter "KMMC"), a medical center owned and operated by Defendant KAISER FOUNDATION HOSPITALS and Defendant KAISER FOUNDATION HEALTH PLAN, INC.

13. During the operation, Dr. Donovan did not fully insert the cages at the L5-S1 disk level and failed to identify this malpositioning. The malpositioning of the cages predisposed them to migrate.

14. X-rays taken on January 15, 2010, showed the improper positioning and showed further posterior migration of the cages.

15. Had the malpositioning and displacement of the cages been identified by Dr. Donovan, the standard of care would have required him to surgically revise the positioning of the cages.

16. The aforestated acts and omissions of Dr. Donovan constitute negligence and are a legal cause of the injuries and damages sustained by Plaintiffs alleged herein.

17. On or about January 15, 2010, Mr. Wehmer experienced stabbing pains and muscle spasms in his left hip. The pains were so severe he was unable to stand. From January 15, 2010 through January 22, 2010, Mr. Wehmer was lying in his hospital bed experiencing excruciating and totally debilitating pain and muscle spasms.

18. On January 15, 2010, Dr. Donovan had traveled to the mainland and had turned over Mr. Wehmer's care to Leon Liem, M.D.

19. Mr. Wehmer was a patient of and under the care of Dr. Liem from January 15, 2010 through at least January 18, 2010.

20. Mr. Wehmer was examined by and consulted with Dr. Liem on January 15, 2010, January 16, 2010, January 17, 2010, and January 18, 2010.

21. On January 16, 2010, Dr. Liem reviewed the x-rays taken on January 15, 2010.

22. In reviewing the January 15, 2010 x-rays, Dr. Liem failed to identify the malpositioning and posterior projection of the cages. Had he identified the positioning of the cages, the standard of care would have required him to order further diagnostic studies which would have verified the malpositioned cages and required him to recommend surgery to revise the positioning of the cages.

23. On or about January 16, 2010, Dr. Liem ordered x-rays of Mr. Wehmer's lumbar spine.

24. Mr. Wehmer was taken to the KMMC radiology department for the x-ray ordered by Dr. Liem and he could not undergo the x-ray because he was not able to stand on account of his severe pain.

25. Dr. Liem was aware of Mr. Wehmer's inability to undergo the x-ray.

26. Dr. Liem again ordered x-rays of Mr. Wehmer's lumbar spine on or about January 18, 2010.

27. Mr. Wehmer was taken to the KMMC radiology department for the x-ray ordered by Dr. Liem and he again could not undergo the x-ray because he was not able to stand on account of his severe pain.

28. Mr. Wehmer may have been taken to KMMC radiology department on other occasions with the same result.

29. Dr. Liem failed to follow through on his order for the x-rays and diagnostic imaging studies, failed to order further diagnostic studies, including a CT scan, and failed to diagnose and identify the cause of the sudden increase pain and leg weakness, resulting in a delay in the diagnosis and treatment, including revision surgery, of Mr. Wehmer's condition.

30. The aforesaid acts and omissions of Dr. Liem constitute negligence.

31. On January 20, 2010, Todd Thompson, M.D., who had taken over Mr. Wehmer's care, ordered a CT scan. The CT scan, taken the same day, revealed a posterior malposition of the cages at L5-S1 with encroachment on the intervertebral

foramina, left side worse than right.

32. On January 22, 2010, Dr. Thompson operated on Mr. Wehmer and found that the L5-S1 cage was loose and the L5 nerve root on the left side was draped over the cage, resulting in compression of the nerve root. The left cage was removed and bone graft inserted in its place.

33. Following the surgeries, Mr. Wehmer had persistent and permanent foot-drop and bilateral leg pain resulting from the nerve compression from the cage.

34. As a direct, legal, and proximate result of Dr. Donovan's and Dr. Liem's aforesaid negligence, Mr. Wehmer sustained grievous bodily injuries, psychological trauma, pain and suffering, mental and emotional distress, and loss of enjoyment of life, all of a probably severe and permanent nature and to Mr. Wehmer's damage in an amount to be shown at time of trial.

35. As a further direct, legal, and proximate result of Dr. Donovan's and Dr. Liem's aforesaid negligence, Mr. Wehmer has incurred substantial medical bills and expenses and is anticipated to continue incurring same, all to Mr. Wehmer's damage in an amount to be shown at time of trial.

36. As a further direct, legal, and proximate result of Dr. Donovan's and Dr. Liem's aforesaid negligence, Mr. Wehmer has sustained loss of income and impairment of earning capacity and anticipates further loss of income in the future, all to Mr. Wehmer's damage in an amount to be shown at time of trial.

**COUNT III**  
**KAISER FOUNDATION HOSPITALS AND**  
**KAISER FOUNDATION HEALTH PLAN, INC.**

37. Plaintiffs reallege and incorporate by reference paragraphs 1 through 36 above as though fully set forth herein.

38. The radiology technicians and/or other personnel of KMMC failed to consult with and/or otherwise failed to communicate with the physician to develop a plan to obtain the ordered lumbar spine x-ray or otherwise acquire the necessary information for diagnosis of Mr. Whitmire's condition.

39. Mr. Wehmer sustained facial injuries as a result of the acts or omissions of the anesthesiologist and nurse anesthetist during the January 12, 2010 surgery.

40. The aforesaid radiology technicians and/or personnel, anesthesiologist and nurse anesthetist were employees of Defendant KAISER FOUNDATION HOSPITALS and/or Defendant KAISER FOUNDATION HEALTH PLAN, INC.

41. Defendant KAISER FOUNDATION HOSPITALS and Defendant KAISER FOUNDATION HEALTH PLAN, INC. are vicariously liable for the actions and omissions of their employees undertaken in the course and scope of their employment relationship.

42. Defendant KAISER FOUNDATION HOSPITALS and Defendant KAISER FOUNDATION HEALTH PLAN, INC. are vicariously liable for the actions and omissions of Dr. Donovan, Dr. Liem and other contractors and/or agents under principles of agency and nondelegable duties.

**COUNT IV**  
**INFORMED CONSENT**

43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 above as though fully set forth herein.

44. Defendants failed to obtain the informed consent of Mr. Wehmer for the treatment rendered to him and such failure is the direct, proximate, and legal cause of the damages sustained by Plaintiffs.

**COUNT V**  
**LOSS OF CHANCE**

45. Plaintiffs reallege and incorporate by reference paragraphs 1 through 44 above as though fully set forth herein.

46. The actions and/or omissions of Defendants alleged herein have caused Mr. Wehmer to suffer the loss of chance for a better outcome of the treatment rendered by Defendants and are the direct, proximate, and legal cause of the damages sustained by Plaintiffs.

**COUNT VI**  
**LOSS OF CONSORTIUM**

47. Plaintiffs reallege and incorporate by reference paragraphs 1 through 46 above as though fully set forth herein.

48. Plaintiff KATHRYN WHITMIRE is, and at all relevant times was, the spouse of Plaintiff ALAN WEHMER.

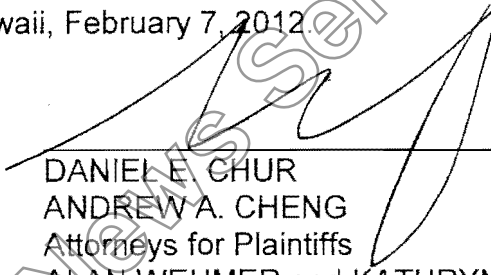
49. As a direct and legal result of the acts and/or omissions of Defendants alleged herein, Plaintiff KATHRYN WHITMIRE suffered a loss of society, services, love, affection and consortium as a result of the injuries and losses to her husband Plaintiff ALAN WEHMER.



WHEREFORE, Plaintiffs pray for judgment against Defendants, jointly and severally, as follows:

1. Special damages in an amount as shall be shown at time of trial;
2. General damages in an amount as shall be shown at time of trial;
3. Costs of suit and reasonable attorney's fees;
4. Pre-judgment interest;
5. Such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawaii, February 7, 2012.



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DANIEL E. CHUR  
ANDREW A. CHENG  
Attorneys for Plaintiffs  
ALAN WEHMER and KATHRYN WHITMIRE