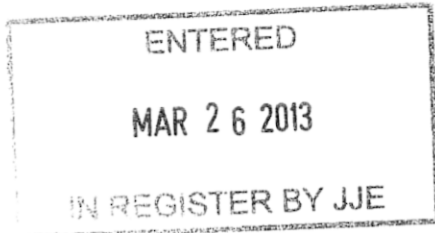


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CIRCUIT COURT
FOR MULTNOMAH COUNTY



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

04379

ROGER A. SUSS, Personal
Representative of the Estate of
CHRISTIE LEE SUSS, Deceased.

Plaintiff,

v.

KAISER FOUNDATION HOSPITALS, a
California nonprofit corporation;
NORTHWEST PERMANENTE P.C.,
an Oregon professional corporation;
KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST doing business
as KAISER PERMANENTE, an Oregon
corporation; SUSAN E. WAGNER,
P.A., an individual; and ROBERT
SCOTT MAHAM, M.D., an individual,

Defendants.

NO. 1303-04379

COMPLAINT

(Medical Negligence/Wrongful
Death)

AMOUNT SOUGHT: \$2,360,000

Ch. 595, Sec. 15(1)(d)

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

Plaintiff alleges:

1.

By virtue of prior proceedings, Roger A. Suss has been and now is the duly
appointed and qualified Personal Representative of the Estate of Christie Lee Suss,
deceased.

2.

At all times material, defendant Kaiser Foundation Hospitals was an active foreign nonprofit corporation authorized to and doing business within the state of Oregon operating Kaiser facilities in and around Portland, Multnomah County, Oregon. At all times material, defendant Northwest Permanente, P.C. was an active Oregon professional corporation with a principal place of business in Multnomah County, Oregon. At all times material, defendant Kaiser Foundation Health Plan of the Northwest, doing business as Kaiser Permanente ("Health Plan"), was an active Oregon corporation. At all times material, plaintiff's decedent was a member of defendant Health Plan. Hereafter, these entities are collectively referred to as defendant Kaiser.

3.

At all times material, defendant Susan E. Wagner was a Physician's Assistant working in the course and scope of her employment for one or more of the other defendant Kaiser entities.

4.

At all times material, Robert Scott Mahan was a Physician licensed to practice medicine with a specialty of radiology, and at all times material was working in the course and scope of his employment for one or more of the other defendant Kaiser entities.

5.

Plaintiff's decedent was a longtime patient of the Kaiser defendants. On or about April 2, 2009, plaintiff's decedent was seen by defendants for diagnosis and treatment of abdominal discomfort, weight loss, some bloating, constipation, diarrhea, and cramping pain. Defendants charted a family history of malignant ovarian/breast cancer and ordered an abdominal ultrasound.

1 6.

2 On or about April 21, 2009, plaintiff's decedent underwent a
3 transvaginal pelvic sonogram and clinical correlation of atypical free pelvic fluid was
4 requested by the radiologist.

5 7.

6 Plaintiff's decedent was seen by Kaiser defendants on or about April 30,
7 2009. A Kaiser physicians who was aware of the April 21, 2009, ultrasound findings
8 reviewed the study. Plaintiff's decedent still had complaints of bloating, anemia,
9 diarrhea, and constipation.

10 8.

11 Plaintiff's decedent was again seen and treated by defendants on June
12 3, 2009, with continuing abdominal pain, constipation and weight loss. It was
13 recommended that if a colonoscopy was normal when performed, that a CT of her
14 abdomen and pelvis would be considered. The colonoscopy was essentially normal,
15 but the follow-up abdominal and pelvic CT was not done for over three years.

16 9.

17 Plaintiff's decedent was again seen and treated in September of 2010
18 by her Kaiser physician, with bloating, diarrhea and constipation. Plaintiff's
19 decedent's family history, including the history of ovarian cancer, which killed
20 plaintiff's decedent's sister, was again discussed.

21 10.

22 On or about November 28, 2011, plaintiff's decedent continued to be
23 seen and treated by the defendants with abdominal pain, back pain, pressure in the
24 stomach, bloating and an inability to have weight placed on the stomach. An
25 ultrasound was ordered for plaintiff's decedent's abdomen and pelvis.

26 ////

11.

On or about December 8, 2011, plaintiff's decedent underwent endovaginal imaging and an abdominal ultrasound by defendant Robert Mahan, M.D. Both exams were incorrectly reported to the plaintiff's decedent as normal and essentially negative. The exams were not accurately read or reported.

12.

Plaintiff's decedent continued to see and treat with defendants Kaiser, and Wagner throughout 2011 and 2012. On or about July 30, 2012, plaintiff's decedent was seen and treated by defendant Wagner for continuing abdominal symptoms including diarrhea and bowel problems. Defendants charted they would consider an ultrasound of the pelvis due to family history if she did not improve. Plaintiff's decedent's spreading ovarian cancer was not diagnosed until mid-November 2012 when it was too late to save plaintiff's decedent's life.

13.

Plaintiff's decedent's developing cancer was not diagnosed or treated by defendants from at least April 2009 through mid-November 2012, proximately causing her death from metastatic ovarian cancer on January 10, 2013.

14.

The conduct of defendants Kaiser Foundation Hospitals, Northwest Permanente, P.C., Kaiser Foundation Health Plan dba Kaiser Permanente, Susan E. Wagner, P.A., and Robert Scott Mahan, M.D. was unreasonable in one or more of the following particulars:

- (a) In failing and neglecting to diagnose and treat plaintiff's decedent's developing ovarian cancer, from at least April 2009 until November 2012, when they knew or reasonably should have known, that given plaintiff's decedent's history, symptoms and family history, she was

1 suffering from a developing ovarian cancer;

2 (b) In failing and neglecting to consider and perform the CT of plaintiff's
3 decedent's abdomen and pelvis as charted in June 2009 for over three
4 years;

5 (c) In repeatedly throughout 2009, 2010, and 2011, failing and neglecting to
6 perform an adequate physical examination of the plaintiff's decedent
7 which would have differentiated GI symptoms from a developing ovarian
8 cancer when the defendants knew or reasonably should have known,
9 that given plaintiff's decedent's family history and her symptoms,
10 including weight loss, bloating and cramping pain, that plaintiff's
11 decedent was suffering from a developing ovarian cancer;

12 (d) In failing and neglecting, following plaintiff's decedent's colonoscopy in
13 June 2009, to make subsequent follow-up appointments for the
14 plaintiff's decedent in the summer and fall of 2009 when defendants
15 knew, or reasonably should have known, that plaintiff's decedent was at
16 significant risk given her family history and symptoms for ovarian cancer
17 and needed close monitoring and evaluation including imaging;

18 (e) In failing and neglecting to monitor the Plaintiff's decedent and schedule
19 any follow-up appointments between September 2010 and November
20 2011, when defendants knew or reasonably should have known, that
21 plaintiff's decedent was at high risk for ovarian cancer and had a
22 developing ovarian cancer given her history, symptoms and her family
23 history;

24 (f) In failing and neglecting in December 2011 to properly read and review
25 the ultrasound results of December 8, 2011 when defendants knew or
26 reasonably should have known that the ultrasound findings of "normal"

1 was incorrect given plaintiff's decedent's history, symptoms, her family
2 history and the images on the ultrasound;

3 (g) In failing and neglecting in December 2011, to read plaintiff's decedent's
4 medical chart and take into account plaintiff's decedent's medical
5 history and the findings on plaintiff's decedent's previous ultrasound
6 from April 2009, in concluding that the December 2011, study was a
7 negative examination;

8 (h) In reporting plaintiff's decedent's December 8, 2011, ultrasound as
9 essentially negative, when in fact, the ultrasound revealed increasing
10 fluid from the previous ultrasound of 2009, fluid sufficient to be
11 described as ascites, including layers of fluid between the bowel loops
12 and a probable adnexal mass next to plaintiff's decedent's left ovary;

13 (i) In reporting plaintiff's decedent's December 8, 2011, abdominal
14 ultrasound as essentially negative, when in fact, the exam demonstrated
15 increasing abdominal fluid including fluid surrounding the liver layered
16 on the surface of the liver, and a thickened gall bladder wall, which
17 should have been read and reported as ascites when defendants knew
18 or reasonably should have known, that given plaintiff's decedent's family
19 history in the previous findings and recommendations on the 2009
20 ultrasound, meant that plaintiff's decedent likely had a malignant left
21 adnexal mass;

22 (j) In reassuring plaintiff's decedent on December 9, 2011 that her
23 ultrasound was normal when defendants knew or reasonably should
24 have known that the ultrasound had been improperly and incompletely
25 read;

26 (k) In failing and neglecting again in December 2011 to perform the CT

1 scan of plaintiff's decedent's abdomen and pelvis, which had been
2 recommended in June 2009;

3 (l) In failing and neglecting to provide for and require follow-up
4 appointments for plaintiff's decedent following her visit of December 9,
5 2011 until July 2012 when defendants knew or reasonably should have
6 known, that plaintiff's decedent was suffering from a developing ovarian
7 cancer when defendants knew or should have reasonably known that
8 given plaintiff's decedent's history, family history and symptoms, as well
9 as indications on plaintiff's decedent's previous imaging that she was
10 suffering from ovarian cancer;

11 (m) In failing and neglecting to have a clinician evaluate whether plaintiff's
12 decedent should have further pelvic imaging, as requested in the July
13 30, 2012, chart note, until November 2012; and

14 (n) In failing and neglecting, following the ultrasound report of April 21,
15 2009, to clinically correlate plaintiff's decedent's endovaginal ultrasound
16 with plaintiff's decedent's history, symptoms and family history.

17 (o) In failing and neglecting on or about April 30, 2009, to identify a mass
18 and structure in the vicinity of plaintiff's decedent's left ovary as a
19 possible tumor when defendants knew or reasonably should have
20 known, that given plaintiff's decedent's history of having a sister who
21 had died of ovarian cancer, that this mass needed to be identified with
22 further imaging and diagnostic testing;

23 (p) In failing and neglecting to adequately identify as a possible sign
24 of cancer, fluid between the bowel loops and plaintiff's
25 decedent's 2009, ultrasound as a likely ascites, which should
26 have required an immediate follow-up CT scan which defendants

1 knew or reasonably should have known, given plaintiff's
2 decedent's history, her family history, and th appearance of a
3 possible mass along with fluid as indications of a possible
4 ovarian malignancy; and

- 5 (q) In failing and neglecting to order a STAT abdominal CT scan of
6 plaintiff's decedent, following the April 30, 2009, vist having identified
7 fluid and a large mass in the vicinity of plaintiff's decedent's left ovary
8 when defendants knew or reasonably should have known, this
9 represented a possible malignant mass;

10 15.

11 As a direct and proximate result of the negligent acts and omissions of
12 defendants combined and concurring as set forth above, plaintiff's decedent's ovarian
13 cancer was neither diagnosed nor treated by all of the defendants November 2012
14 allowing the ovarian cancer to grow and spread throughout plaintiff's decedent's
15 abdomen, proximately resulting in her death as alleged.

16 16.

17 Plaintiff's decedent's family has been deprived of the love, society,
18 affection and companionship of plaintiff's decedent. Plaintiff's decedent suffered
19 significant physical and emotional pain prior to her death, and plaintiff's decedent's
20 family has sustained non-economic damages in the sum of \$850,000.

21 17.

22 Prior to, and up until her death, plaintiff's decedent was employed as a
23 schoolteacher and had State retirement benefits and other benefits associated with
24 her employment. Plaintiff's decedent also provided spousal and parental services to
25 her family and, as a result, plaintiff's decedent suffered pecuniary losses in the sum
26 of \$1,500,000. Plaintiff's decedent's estate has also incurred burial and funeral

1 economic expenses in the sum of \$10,000, all to plaintiff's decedent's economic
2 damages in said sum.

3 18.

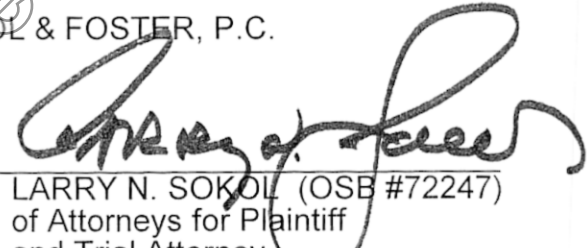
4 The conduct of defendants manifested over the reckless indifference
5 and aggravated disregard for the professional duties and standards for the medical
6 treatment of patients, including preservation of life and death, and plaintiff intends to
7 add a claim for punitive damages against defendants Kaiser on this basis.

8 WHEREFORE, plaintiff prays for judgment against the defendants for
9 non-economic damages in the sum of \$850,000, economic damages in the sum of
10 \$10,000, pecuniary damages in the sum of \$1,500,000, together with his cost and
11 disbursements incurred herein.

12 DATED this 26th day of March, 2013.

13 SOKOL & FOSTER, P.C.

14
15 By


16 LARRY N. SOKOL (OSB #72247)
17 of Attorneys for Plaintiff
18 and Trial Attorney
19 Federal ID #93-1132983
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