

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

KAREN J. WEST

Plaintiff,

vs.

KAISER FOUNDATION HOSPITAL,
NORTHWEST PERMANENTE, P.C.,
KAISER FOUNDATION HEALTH PLAN
OF THE NORTHWEST, AND JAMES
MICHAEL KONIECZNY, DPM,

Defendants.

Case No.

**COMPLAINT FOR MEDICAL
NEGLIGENCE**

Claim for 6,000,000

ORS 21.160(1)(d)

CLAIMS NOT SUBJECT TO
MANDATORY ARBITRATION

Plaintiff alleges:

1.

At all times mentioned herein, Kaiser Foundation Hospital is and was a California corporation authorized to transact business within the state of Oregon. Northwest Permanente, P.C., was and is an Oregon corporation authorized to transact business within the state of Oregon. Kaiser Foundation Health Plan of the Northwest is and was an Oregon corporation. Defendants Kaiser Foundation Hospital, Northwest Permanente, P.C., and Kaiser Foundation Health Plan of the Northwest (hereinafter referred to as "Kaiser") provided hospitals, doctors, medical staff and medical facilities to the general public and to the Plaintiff. James Michael Konieczny, DPM, was a Doctor of Podiatric Medicine, licensed to practice podiatric medicine within the State of Oregon and held himself out to Plaintiff and the general public as having

1 special skill, training and experience in the treatment and diagnosis of foot injuries, foot disease,
2 foot tumors and foot disorders. Defendant Konieczny was an agent and employee of the
3 Defendant corporations and was acting within the course and scope of his employment.

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5 2.

6 On or about September 16, 2011, Plaintiff Karen J. West, age 26, sought care and
7 treatment from the Defendants and specifically from Defendant Konieczny, for evaluation of a
8 mass in the arch of her right foot. She had been referred to Defendant Konieczny by her primary
9 care physician, Michael P. Grace. The foot was tender while walking on uneven ground. She
10 could not wear an arch in a shoe, could not walk barefoot on beach or grass, or walk on flat
11 ground without pain. On examination, Defendant Konieczny noted a 30 x 30 ml mildly fluctuant
12 soft tissue mass with a 10 x 6 ml medial extension of the mass that was tender to the touch. The
13 mass was painful to pressure. Defendant Konieczny recommended an MRI to determine the
14 etiology of the mass.
15

16 3.

17 An MRI of the mass of Plaintiff's right foot was undertaken on October 21, 2011. The
18 MRI resulted in the reporting of an abnormal enhancing lobulated area extending from the
19 plantar fascia, extending between the flexor digitorum brevis and quadratus plantae muscle,
20 possibly representing unusual appearance of plantar fibromatosis. However, due to the linear
21 extension of mass between the muscles and its proximity next to the neurovascular bundle, a
22 nerve sheath tumor was not entirely excluded. The radiologist reported the findings may be
23 related to plantar fibromatosis requiring clinical correlation. The report was filed by Defendants
24 in the medical chart of Plaintiff.
25
26

1 4.

2 Defendant Konieczny did not provide clinical correlation, did not schedule a follow up
3 appointment, did not notify the Plaintiff either by telephone or in writing of the results of the
4 MRI, and did not see the Plaintiff again. No further action was taken by the Defendants in any
5 respect to assist the Plaintiff in diagnosing the nature, extent, nor severity of the mass in her right
6 foot.
7

8 5.

9 Plaintiff called Defendant Konieczny and Defendant Kaiser's Department of Podiatry
10 numerous times requesting the results of the MRI, but received no return telephone calls.
11

12 6.

13 On May 30, 2012, Plaintiff saw Dr. Thomas W. Harbison, her primary care physician,
14 complaining of the same problems that she had six months earlier. Plaintiff requested a biopsy
15 of the lump and a referral to Podiatry once again, as she had not received any return calls from
16 Dr. Konieczny. No Podiatry referral was made.
17

18 7.

19 Subsequent to May 30, 2012, Plaintiff called Defendant Kaiser requesting additional care
20 and referrals, but received no return calls.
21

22 8.

23 On December 23, 2013, Plaintiff once again requested a copy of the MRI report from Dr.
24 Konieczny and was told to contact the imaging department if she wanted to see the report.
25

26 9.

On January 29, 2014, Plaintiff was referred to Dr. David Arndt for a second opinion
regarding the mass in her right foot. Dr. Arndt immediately concluded that the mass was not

1 consistent with plantar fibromatosis and suggested a repeat MRI and biopsy. A repeat MRI and
2 biopsy were undertaken, which reflected that the tumor had grown significantly and was now
3 invading the tendons, ligaments, muscles, fascia and nerves of the right foot of the Plaintiff. The
4 tumor was diagnosed as a hemosiderotic fibrolipomatous tumor and not plantar fibromatosis.

5
6 10.

7 On or about June 12, 2014, excision of the tumor in the right foot was undertaken with
8 full thickness skin grafts. At surgery, the tumor went deeply into the subcutaneous tissues and
9 around the flexor musculature. The mass extended down to the neurovascular bundle and
10 although the main lateral plantar nerve was not transected, smaller branches of the nerve were
11 involved with the tumor. Due to the size and invasive nature of the tumor, clear margins were
12 not possible, and the full tumor could not be removed without destroying the ability of the foot to
13 function.
14

15 11.

16 The conduct of the Defendants was negligent and fell below the standard of care of a
17 reasonable and prudent physician and surgeon in the following particulars:

- 18 a) In failing to timely notify Plaintiff that the MRI on October 21, 2011 was grossly
19 abnormal and needed further evaluation;
20
21 b) In failing to timely refer the Plaintiff to a physician and surgeon who had the skill,
22 training and experience necessary to remove the tumor;
23
24 c) In failing to warn the Plaintiff that the grossly abnormal tumor was not, in fact, a
25 plantar fibromatosis, but may very well have been a more invasive and aggressive
26 tumor such as a hemosiderotic fibrolipomatous tumor;

- 1 d) In failing to biopsy the tumor in view of a grossly abnormal MRI. A biopsy would
2 have demonstrated that the tumor was, in fact, a hemosiderotic fibrolipomatous
3 tumor;
4 e) In failing to return numerous telephone calls placed by the Plaintiff to the Defendants
5 which would have resulted in Plaintiff's knowledge and understanding of the disease
6 process in her foot;
7 f) In failing to remove the tumor from the Plaintiff's right foot when the tumor was of a
8 size and character that could have been removed, leaving Plaintiff with no permanent
9 disability or injury;
10 g) In failing to timely diagnose a hemosiderotic fibrolipomatous tumor. A timely
11 diagnosis would have allowed complete excision and removal of the tumor to prevent
12 recurrence.
13

14
15 12.

16 As a result of the negligence of the Defendants as alleged above, the tumor in the
17 Plaintiff's right foot grew into and around the muscles, ligaments, tendons and nerves of the
18 Plaintiff's right foot and became impossible to remove from the right foot with clean margins.
19 Because of the failure and inability to remove the entire tumor, Plaintiff will suffer chronic and
20 constant recurrence of the tumor in the future, will require additional invasive surgeries as the
21 tumor continues to grow and spread, and will suffer, at some time in the future, amputation of
22 her right foot, together with a reasonable chance that the tumor will become malignant and
23 metastatic.
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13.

Plaintiff will require future medical care and treatment, including additional invasive surgeries, medical testing, regular and continued MRI evaluations, and additional reasonable and necessary medical expenses, all to her noneconomic damage in the amount of \$500,000. Plaintiff will further sustain a loss of earning capacity, in an amount to be proven at the time of trial.

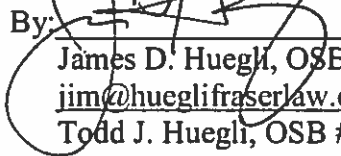
14.

As a result of the negligence of the Defendants, Plaintiff has sustained pain, suffering, disability, loss of self-esteem, depression, disfigurement, the probability of the loss of her right foot by amputation and interference with all aspects of her daily, social, work and family life, all to her noneconomic loss in the amount of \$5,500,000.

WHEREFORE, Plaintiff prays for damages as follows:

1. Economic damages in the amount of \$500,000;
2. Noneconomic damages in the amount of \$5,500,000;
3. Plaintiff's costs and disbursements incurred herein.

Dated this 27th day of May, 2015.

By: 
James D. Huegli, OSB #723062
jim@hueglifraserlaw.com
Todd J. Huegli, OSB # 083655
Trial Attorneys for Plaintiff