

LOISTENE LASSITER
8306 Spadderdock Way
Laurel, MD 20724

Plaintiff,

v.

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

2101 E. Jefferson Street
Rockville, MD 20852

SERVE: Counsel for Defendant --
Cory Silkman & Diane D'Aiutolo
TYDINGS & ROSENBERG, LLP
100 East Pratt Street, 26th Floor
Baltimore, MD 21202

Defendant.

IN THE
CIRCUIT COURT
FOR
HOWARD COUNTY

Case No.: 13C14100276

COMPLAINT (and demand for Jury Trial)

Transfer from Health Care Alternative
Dispute Resolution Office¹ (Medical Malpractice)

Mrs. Loistene Lassiter, Plaintiff, sues Kaiser Foundation Health Plan of the
Mid-Atlantic States, Inc., Defendant, and says:

JURISDICTION

1. Plaintiff is a resident of Laurel, Maryland, and in 2008, was under the care
of Dr. Jacqueline Shepard-Lewis and Dr. Tracy Gutierriz of Mid-Atlantic

¹ Attached are [1] the Election of Waiver of Arbitration by Defendant and [2] the ORDER of
Transfer by the Health Care Alternative Dispute Resolution Office.

ORIGINAL

2014 AUG 22 PM 12: 12
CIRCUIT COURT
HOWARD COUNTY

FILED

Courthouse News Service

Permanente Medical Group, P.C. of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., 2101 East Jefferson Street, Rockville, Maryland 20852 (the address is the principal office of Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. according to the Maryland Department of Assessments and Taxation).

2. Defendant is the corporation employing and/or responsible for the doctors who provided care to Plaintiff in 2008-2011 and holds itself out to the public as [i] “Kaiser Permanente” and [ii] employer of the doctors aforementioned, being responsible for their medical decisions, acts, and treatment.

FACTS

1. On January 10, 2008, while under the care of Defendant, Ms. Loistene Lassiter (hereinafter “Ms. Lassiter”) had a CT of her Abdomen and Pelvis.

2. The findings revealed the following, “There is a subcentimeter, approximately 7 mm hyperdense lesion involving the posteromedial mid left kidney. It may represent a small hyperdense cyst....”

3. The “IMPRESSION” stated the following, “1. Subcentimeter hyperdense lesion involving the mid left kidney may represent a hyperdense cyst, or other etiology. *Suggest correlation with sonography of the kidneys or consider follow-up with CT in three months to assess for stability or change.*” (emphasis added).

4. On the next day, Dr. Jacqueline Shepard-Lewis of Kaiser Permanente informed Ms. Lassiter in a letter that her most recent CT revealed no acute findings.

5. Throughout 2008, 2009, and 2010, Ms. Lassiter had various appointments with doctors at Kaiser Permanente for physical examines, breast mammograms, allergic rhinitis, hypertension, osteoarthritis of her knee, etc., and nothing was ever said of the hyperdense lesion on her left kidney nor did any follow-up occur concerning it.

6. On January 11, 2011, Ms. Lassiter reported to her doctor that she was experiencing lower back pain covering a period of three (3) weeks. She stated that the pain had expanded to the lower right side, below her stomach. She also indicated that heat and cold packs, Epsom salt soaks, and medication like Advil had not resolved the pain. She also mentioned that upon urinating, she experienced a burning sensation and noticed some blood.

7. Her doctor (Dr. Tracy L. Gutierrez of Kaiser Permanente) responded the same day, suggesting a kidney stone or infection and directed Ms. Lassiter to come in for a urine test and x-ray.

8. Ms. Lassiter visited Kaiser Permanente on January 11, 2011 and provided samples to the lab as instructed. The next day (January 12, 2011), diagnostic

imaging showed moderate obstipation and calcified lucent centered densities in the pelvis.

9. Following Ms. Lassiter's office visit of January 27, 2011, she was directed to provide more specimens for the lab.

10. Such was collected on February 8, 2011, and the results of diagnostic imaging at this time revealed the following, "Left Kidney is 9.4 x 5.0 x 4.9 cm contains a complex heterogeneous hypoechoic mass measuring 3.8 x 4.1 x 4.0 cm suspicious for neoplasm (i.e., new and abnormal growth, such as a tumor).

11. What had been a millimeter in size (and not monitored by Ms. Lassiter's doctors) had now grown to centimeters, i.e., it grew from .02 inches to 1.5 inches.

12. Very upset about this matter, Ms. Lassiter contacted her primary care physician (Dr. Tracy L. Gutierrez) and inquired about [a] the failure to discuss the cyst with any doctors over the years, [b] the failure to discuss the test results in 2008 and possible options, [c] the failure of Kaiser to "flag" her medical record for observation, and [d] the failure to monitor this matter and discuss it before 2011.

13. Her doctor informed her that she never had conversations with her about the cyst because she did not know about it until recently!

14. The doctor said that "Zillions of people have small cysts on their kidneys – it is incredibly common and not typically worrisome."

15. On February 18, 2011, Ms. Lassiter submitted to diagnostic imaging and the “IMPRESSION” was disturbing. It stated, “A 4.5 cm solid, partially enhancing mass arising from the left kidney correlates with the prior sonographic findings. This is worrisome for neoplasm/renal cell carcinoma. Surgical consultation is suggested.”

16. Ms. Lassiter was referred to and visited Chesapeake Urology Associates, P.A. (hereinafter “CUA”) on March 9, 2011.

17. CUA reported that Ms. Lassiter “has a left renal mass that appears amenable to partial nephrectomy on a MRI of the abdomen and pelvis.... The mass measures 4.5 x 3.7 cm. It is partly exophytic and partly endophytic mass, but it is located in the mid portion of the posterior left kidney. I discussed the various etiologies of renal masses and the potential for malignancy that is significant. I had a long and detailed discussion regarding the potential risks of left retroperitoneal robotic-assisted laparoscopic partial nephrectomy. Certainly these risks include but are not limited to infection, bleeding,... stroke, death.”

18. URA also noted that Ms. Lassiter did not get follow-up from 2008 until 2011 for the left renal cyst, and that it had been gradual and has been occurring in a persistent pattern for years.¹

¹ Attached are Plaintiff’s Certificate of Qualified Expert and Expert Report. Furthermore, the specific reference to medical records in paragraph 1, 4, 10, 15, and 17 are available, and were

19. Ms. Lassiter underwent major surgery to remove a part of her left kidney in June 2011. The pre and post operation pain, stress, and anguish were significant.

INJURIES (Stress, Anguish, Pain, Loss of Consortium)

20. When Ms. Lassiter was made aware of the centimeter-size cyst on her kidney, the potential for cancer, and the need to see a specialist in the Winter of 2011, she “immediately went into a state.”

21. She struggled with whether “this was really happening,” should she inform her family, is this a threat to her life, will she have to live with cancer the rest of her life, is this just a mistaken diagnosis, etc.

22. After Ms. Lassiter met with the specialist (Dr. Alice Tsao of Chesapeake Urology), she learned that 85% of cysts like hers are malignant. Her stress was at maximum level due to her receiving the “bad news” alone since she had not informed her family of anything.

23. Dr. Tsao also confirmed that the type of cancer Ms. Lassiter faced did not respond to chemo or radiation, and the only hope of survival was if the cancer had not spread to other parts of the body.

actually provided to Defendant during the parties’ proceeding before the Health Care Alternative Dispute Resolution Office. All these documents are hereby incorporated by reference.

24. Because of the magnitude of the bad news, Ms. Lassiter sought a second opinion and learned from the second doctor that the malignancy percentage was actually higher, i.e., 95% (as opposed to the 85% she learned from Dr. Tsao).

25. Sharing the news with her family produced more mental anguish than Ms. Lassiter ever experienced in her life. The questions, fears, anxiety, etc. were overwhelming.

26. The numerous visits to the Urologist, follow-up tests, consultations, lab work, etc. caused Ms. Lassiter to miss substantial time from her job. All of her vacation plans were “shut down” to undergo the in-out patient surgery and the major surgery. Her life of tennis competition and participation was stopped.

27. Once the news of her condition was shared with family, friends, and co-workers, the concern expressed and sadness revealed produced more emotional stress.

28. The strain on relationships was also palpable. Her husband was gravely concerned and questioned the doctor about numerous things. Sex was not occurring, and this lifestyle change was one of many endured due to Ms. Lassiter’s medical condition.

29. She kept her conversations very limited with her children, grandchildren, sisters, brothers, nieces, and nephews so as to not upset them. Keeping details

from family members was highly stressful since the possibility of death warranted telling them more, but the possibility of the family “unraveling” compelled Ms. Lassiter to not share more.

30. The in-out surgery on May 24, 2011 was a very painful experience (i.e., procedure to insert stent). There was burning sensation at every urination, and the need to urinate was constant.

31. For several days, Ms. Lassiter suffered with discomfort and pain.

32. Following major surgery on June 24, 2011, the pain was excruciating.

33. After release from the hospital, Ms. Lassiter remained in pain. She was prescribed powerful medication. She did not experience “livable” recovery until eight (8) full weeks had elapsed.

34. Ms. Lassiter lives with a large percentage of her kidney removed, external scars from the surgery, and internal scarring of surrounding areas caused by the removal.

35. She experiences anguish about her current and future health condition, and she must have follow-up medical attention for the rest of her life!

36. Every pain or discomfort causes thoughts about cancer returning, more surgery, other organs being cancerous, dying from cancer, etc.

37. The inattention by Ms. Lassiter's provider produced immeasurable pain, suffering, uncertainty, and mental anguish to both Ms. Lassiter and her family for what appears to be limitless in terms of time.

38. The loss of consortium by her husband relates to lost time, lost intimacy, lost communication, missed affairs, skipped events, cancelled vacations, periods of inconsolable sadness, uncertainty about future life affecting future plans, etc.

WHEREFORE, Ms. Lassiter demands judgment against the Defendant for five million dollars (\$5,000,000.00) in compensatory damages, plus interest, costs, and attorney's fees.

I solemnly affirm, under the penalty of perjury, that the forgoing information is true.

Ms. Loistene Lassiter 8/20/14
Ms. Loistene Lassiter Date

Respectfully submitted,

Rickey Nelson Jones

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