

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

FILED
CIVIL INTAKE

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA

DELMY CARBALLO
829 Marcy Avenue
Apartment 104
Oxon Hill, Maryland 20745

Plaintiff

vs.

TORISEJU DONNA BINITIE WHYTE, M.D.
6501 Loisdale Court
Springfield, Virginia 22150

and

KAISER FOUNDATION HEALTH PLAN OF
THE MID-ATLANTIC STATES, INC.
t/a Kaiser Permanente
6501 Loisdale Court
Springfield, Virginia 22150
Serve: Corporation Service Company
100 Shockoe Slip
2d Floor
Richmond, Virginia 23219

Defendants.

CA No. 2018 09583

COMPLAINT

COMES NOW Plaintiff Delmy Carballo, by counsel, and states the following Complaint against Defendants Toriseju Donna Binitie Whyte, M.D. and Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.:

John A. DiNucci (VSB No. 29270)
8180 Greensboro Drive, Suite 1150
McLean, Virginia 22102
tel.: (703) 821-4232
fax: (703) 790-9863
e-mail: dinuccilaw@outlook.com

Parties

1. Plaintiff Delmy Carballo (Ms. Carballo) is a resident and domiciliary of the State of Maryland. Her residence address is 829 Marcy Avenue, Apartment 104, Oxon Hill, Maryland 20745.

2. Defendant Toriseju Donna Binitie Whyte, M.D. (Dr. Whyte) is a medical doctor who is licensed to practice medicine in the Commonwealth of Virginia. Dr. Whyte practices obstetrics and gynecology. At all times relevant hereto, she was an employee of Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. (hereinafter "Kaiser") and her principal office address was 6501 Loisdale Court, Springfield, Virginia 22151.

3. Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. is a corporation that was formed under the laws of the State of California that is authorized to conduct business in the Commonwealth of Virginia. Kaiser provides health care services to persons at a medical center located at 6501 Loisdale Court, Springfield, Virginia 22151 and at a medical center located at 8008 Westpark Drive, McLean, Virginia 22102 (hereinafter the "Medical Center").

Facts

4. On or about October 14, 2014, during an appointment at Kaiser's facility in Springfield, Virginia, Ms. Carballo

informed one or more employees or agents of Kaiser that she wished to be sterilized and, specifically that she wanted to undergo a tubal ligation.

5. On or about October 31, 2014, Ms. Carballo underwent a pre-operative assessment at the Medical Center. Said assessment was performed by one or more employees or agents of Kaiser, including Dr. Whyte.

6. Kaiser scheduled laparoscopic surgery (hereinafter the "Surgery") on Ms. Carballo for January 9, 2015.

7. On January 9, 2015, Ms. Carballo presented at the Medical Center for the Surgery.

8. Dr. Whyte was the physician assigned by Kaiser to perform the Surgery.

9. Dr. Whyte proceeded to initiate laparoscopic surgery on Ms. Carballo in order to effect said tubal ligation.

10. In performing the Surgery on Ms. Carballo, Dr. Whyte used one or more instruments designed for laparoscopic gynecological surgery, including a trocar, to probe into the abdomen.

11. In performing the Surgery, Dr. Whyte inserted a trocar into muscle.

12. In performing the Surgery, Dr. Whyte perforated one of Ms. Carballo's gonadal arteries with one of said surgical

instruments. On information and belief, a trocar was the instrument which caused said perforation.

13. In performing the Surgery, Dr. Whyte also caused injury to the omentum with one of said surgical instruments.

14. As a direct and proximate result of said perforation, Ms. Carballo began hemorrhaging a significant amount of blood.

15. As a direct and proximate result of said injuries, including said hemorrhaging, Ms. Carballo was transported by ambulance to Virginia Hospital Center (hereinafter "VHC") in Arlington, Virginia.

16. As a direct and proximate result of said injuries, Ms. Carballo underwent surgery at VHC to repair said perforation of said gonadal artery.

17. Ms. Carballo remained in VHC until January 14, 2015, when she was discharged.

COUNT I

(Dr. Whyte -- Negligence)

18. Ms. Carballo incorporates herein by reference the allegations of Paragraphs 1 through 17 of this Complaint as if said allegations were fully set forth herein.

19. Dr. Whyte owed Ms. Carballo a duty to exercise due care in performing the Surgery, including to adhere to each applicable standard of care in performance thereof. For example, but not by way of limitation, Dr. Whyte owed Ms.

Carballo a duty to exercise due care in inserting any surgical instrument, including any trocar into Ms. Carballo's abdomen.

20. In performing the Surgery on Ms. Carballo, Dr. Whyte breached her duty to exercise due care toward Ms. Carballo, which breach included a departure from one or more of the applicable standards of care. For example, but not necessarily by way of limitation, Dr. Whyte failed to exercise due care in inserting one or more surgical instruments, including a trocar, into Ms. Carballo's abdomen.

21. As a direct and proximate result of said breach of duty, Dr. Whyte caused Ms. Carballo's omentum to be injured and caused Ms. Carballo's gonadal artery to be perforated.

22. As a direct and proximate result of said breaches of duty, Ms. Carballo needed additional surgery to remedy said injuries.

23. As a direct and proximate result of said breaches of Dr. Whyte's duty of due care, Ms. Carballo has suffered various damages, including, but not necessarily limited to, bodily injury, additional surgery, pain and suffering, medical expenses and lost wages.

WHEREFORE, the premises considered, Plaintiff Delmy Carballo requests the following relief:

a. entry of a judgment against Toriseju Donna Binitie Whyte, M.D. for compensatory damages in the amount of Three

Hundred and Fifty Thousand Dollars (\$350,000), with pre-judgment interest and post-judgment interest at the judgment rate;

b. an award of her costs expended; and

c. an award of such other or further relief as this Court might deem just and proper

COUNT II

(Dr. Whyte - *Res Ipsa Loquitur*)

24. Ms. Carballo incorporates herein by reference the allegations of Paragraphs 1 through 23 of this Complaint as if said allegations were fully set forth herein.

25. Dr. Whyte had exclusive possession of and control over the surgical instruments, including each trocar, and processes by which said injuries were caused.

26. Dr. Whyte had and has exclusive knowledge of the manner in which said surgical instruments, including each trocar, were used.

27. Ms. Carballo did not have any knowledge of the manner in which said surgical instruments, including each trocar, were used.

28. Ordinarily an injury to the omentum and/or a perforation of a gonadal artery does not occur during laparoscopic gynecological surgery if the physician exercises due care in using surgical instruments, including said trocar, and performing said surgery.

29. Dr. Whyte failed to use due care in employing one or more of said surgical instruments, such as a trocar, during said surgery.

30. As a direct and proximate result of said failure to exercise due care, Ms. Carballo has suffered various damages, including, but not necessarily limited to, bodily injury, additional surgeries, pain and suffering, medical expenses and lost wages.

WHEREFORE, the premises considered, Plaintiff Delmy Carballo requests the following relief:

- a. entry of a judgment against Defendant Toriseju Donna Binitie Whyte, M.D. for compensatory damages in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000), plus pre-judgment and post-judgment interest at the judgment rate;
- b. an award of her costs expended; and
- c. an award of such other or further relief as this Court might deem just and proper.

COUNT III

(Kaiser -- *Respondeat Superior*)

31. Ms. Carballo incorporates herein by reference the allegations of Paragraphs 1 through 30 of this Complaint as if said allegations were fully set forth herein.

32. On information and belief, at all times relevant hereto Dr. Whyte was an employee of Kaiser.

33. Alternatively, on information and belief, Kaiser conducted itself in such a manner as to lead a reasonable person to believe that Dr. Whyte was an employee of Kaiser. Dr. Whyte, therefore, was actual or ostensible agent of Kaiser.

34. In performing the Surgery, Dr. Whyte acted within the scope and course of her employment with Kaiser.

35. Alternatively, in performing the Surgery, Dr. Whyte acted within the scope and course of her actual or ostensible agency.

36. Kaiser is liable for the negligence of Dr. Whyte under the doctrine of *respondeat superior*.

WHEREFORE, the premises considered, Plaintiff Delmy Carballo requests the following relief:

a. entry of a judgment against Defendant Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc. in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000), plus pre-judgment interest and post-judgment interest at the judgment rate; and

b. an award of such other or further relief as this Court might deem just and proper.

Respectfully submitted,

DELMY CARBALLO

By: _____

John A. DiNucci (VSB No. 29270)
8180 Greensboro Drive
Suite 1150
McLean, Virginia 22102
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JURY DEMAND

Plaintiff Delmy Carballo hereby demands a trial by jury.

DELMY CARBALLO

By: _____

John A. DiNucci