

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 61347/2017

-----X
ADJARATOU ZONGO, As Administratrix of the Estate
of FATIMATA ZONGO, Deceased, and ADJARATOU
ZONGO, Individually,

**AMENDED VERIFIED
COMPLAINT AND
CERTIFICATE OF MERIT**

Plaintiffs,

-against-

DMITRY GERBER, JOHN ILARIO, ZAREEN KHAN,
WESTCHESTERMEDICAL GROUP, P.C., d/b/a
WESTMED, SOUTHERN WESTCHESTER OB/GYN
ASSOCIATES, LLP, and ST. JOHN'S RIVERSIDE
HOSPITAL,

Defendants.
-----X

Plaintiff, above named, complaining of the Defendants herein, through her attorneys, Meagher & Meagher, P.C., upon information and belief, alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

FIRST: The Plaintiff's-Decedent, FATIMATA ZONGO, died on November 28, 2015.

SECOND: Prior hereto on July 28, 2017, Letters of Administration were issued by the Surrogate of the County of Westchester to the Plaintiff herein, ADJARATOU ZONGO, and said Letters of Administration are still in full force and effect.

THIRD: At all times relevant hereinafter mentioned, Plaintiff, ADJARATOU ZONGO, was and is a resident of the County of Westchester, at 108 Jefferson Street, City of Yonkers, State of New York.

FOURTH: At all times hereinafter mentioned, the Defendant, DMITRY

GERBER, (hereinafter referred to as, "GERBER"), was a physician licensed to practice medicine and practicing medicine in the State of New York.

FIFTH: At all times hereinafter mentioned, the Defendant, JOHN ILARIO, (hereinafter referred to as, "ILARIO"), was a physician licensed to practice medicine and practicing medicine in the State of New York.

SIXTH: At all times hereinafter mentioned, the Defendant, ZAREEN KHAN, (hereinafter referred to as, "KHAN"), was a physician licensed to practice medicine and practicing medicine in the State of New York.

SEVENTH: At all times hereinafter mentioned, the Defendant, WESTCHESTER MEDICAL GROUP d/b/a WESTMED, (hereinafter referred to as, "WESTMED"), was a domestic professional corporation, duly organized and existing under and by virtue of the laws of the State of New York.

EIGHTH: At all times hereinafter mentioned, the Defendant, SOUTHERN WESTCHESTER OB/GYN ASSOCIATES, LLP, (hereinafter referred to as, "OB/GYN ASSOCIATES"), was a domestic professional corporation, duly organized and existing under and by virtue of the laws of the State of New York.

NINTH: At all times hereinafter mentioned, the Defendant, WESTMED, acquired the Defendant, OB/GYN ASSOCIATES, and in doing so, assumed its liabilities.

TENTH: At all times hereinafter mentioned, the Defendant, ST. JOHN'S RIVERSIDE HOSPITAL, (hereinafter referred to as, "ST. JOHN'S"), was a general hospital, duly organized and existing under and by virtue of the laws of the State of New York.

ELEVENTH: At all times hereinafter mentioned, the Defendant,

ST. JOHN'S, was a voluntary hospital existing under and by virtue of the laws of the State of New York.

TWELFTH: At all times hereinafter mentioned, the Defendant, ST. JOHN'S, was a domestic not-for-profit corporation, under and by virtue of the laws of the State of New York.

THIRTEENTH: At all times hereinafter mentioned, the Defendant, GERBER, was an employee of the Defendant, WESTMED.

FOURTEENTH: At all times hereinafter mentioned, the Defendant, GERBER, was acting within the scope of his employment as an employee of the Defendant, WESTMED.

FIFTEENTH: At all times hereinafter mentioned, the Defendant, GERBER, was an employee of the Defendant, OB/GYN ASSOCIATES.

SIXTEENTH: At all times hereinafter mentioned, the Defendant, GERBER, was acting within the scope of his employment as an employee of the Defendant, OB/GYN ASSOCIATES.

SEVENTEENTH: At all times hereinafter mentioned, the Defendant, GERBER, was an employee of the Defendant, ST. JOHN'S.

EIGHTEENTH: At all times hereinafter mentioned, the Defendant, GERBER, was acting within the scope of his employment as an employee of the Defendant, ST. JOHN'S.

NINETEENTH: At all times hereinafter mentioned, the Defendant, ILARIO, was an employee of the Defendant, WESTMED.

TWENTIETH: At all times hereinafter mentioned, the Defendant,

ILARIO, was acting within the scope of his employment as an employee of the Defendant, WESTMED.

TWENTY-FIRST: At all times hereinafter mentioned, the Defendant,

ILARIO, was an employee of the Defendant, OB/GYN ASSOCIATES.

TWENTY-SECOND: At all times hereinafter mentioned, the Defendant,

ILARIO, was acting within the scope of his employment as an employee of the Defendant, OB/GYN ASSOCIATES.

TWENTY-THIRD: At all times hereinafter mentioned, the Defendant,

ILARIO, was an employee of the Defendant, ST. JOHN'S.

TWENTY-FOURTH: At all times hereinafter mentioned, the Defendant,

ILARIO, was acting within the scope of his employment as an employee of the Defendant, ST. JOHN'S.

TWENTY-FIFTH: At all times hereinafter mentioned, the Defendant,

KHAN, was an employee of the Defendant, ST. JOHN'S.

TWENTY-SIXTH: At all times hereinafter mentioned, the Defendant,

KHAN, was acting within the scope of her employment as an employee of the Defendant, ST. JOHN'S.

TWENTY-SEVENTH: During the year 2015, and more specifically from

April, 2015 through November, 2015, the Plaintiff-Decedent, FATIMATA ZONGO, was a patient of the Defendant, GERBER.

TWENTY-EIGHTH: During the year 2015, and more specifically from

April, 2015 through November, 2015, the Plaintiff-Decedent, FATIMATA ZONGO, was a patient of the Defendant, ILARIO.

TWENTY-NINTH: During the year 2015, and more specifically in

November, 2015, the Plaintiff-Decedent, FATIMATA ZONGO, was a patient of the Defendant, KHAN.

THIRTIETH: During the year 2015, and more specifically from April, 2015 through November, 2015, the Plaintiff-Decedent, FATIMATA ZONGO, was a patient of the Defendant, WESTMED.

THIRTY-FIRST: During the year 2015, and more specifically from April, 2015 through November, 2015, the Plaintiff-Decedent, FATIMATA ZONGO, was a patient of the Defendant, OB/GYN ASSOCIATES.

THIRTY-SECOND: During the year 2015, and more specifically from April, 2015 through November, 2015, the Plaintiff-Decedent, FATIMATA ZONGO, was a patient of the Defendant, ST. JOHN'S.

THIRTY-THIRD: During the year 2015, and more specifically from April, 2015 through November, 2015, the Defendant, GERBER, provided medical care and treatment to the Plaintiff-Decedent, FATIMATA ZONGO.

THIRTY-FOURTH: During the year 2015, and more specifically from April, 2015 through November, 2015, the Defendant, ILARIO, provided medical care and treatment to the Plaintiff-Decedent, FATIMATA ZONGO.

THIRTY-FIFTH: During the year 2015, and more specifically in November, 2015, the Defendant, KHAN, provided medical care and treatment to the Plaintiff-Decedent, FATIMATA ZONGO.

THIRTY-SIXTH: During the year 2015, and more specifically from April, 2015 through November, 2015, the Defendant, WESTMED, provided medical care and treatment to the Plaintiff-Decedent, FATIMATA ZONGO.

THIRTY-SEVENTH: During the year 2015, and more specifically from

April, 2015 through November, 2015, the Defendant, OB/GYN ASSOCIATES, provided medical care and treatment to the Plaintiff-Decedent, FATIMATA ZONGO.

THIRTY-EIGHTH: During the year 2015, and more specifically from April, 2015 through November, 2015, the Defendant, ST. JOHN'S, provided medical care and treatment to the Plaintiff-Decedent, FATIMATA ZONGO.

THIRTY-NINTH: As a result of the medical care, treatment or lack thereof rendered to the Plaintiff-Decedent, FATIMATA ZONGO, by the Defendants herein, one, some, or all of them, their agents, servants, and/or employees, their departures from accepted standards of medical, hospital, and other good practices, the Plaintiff-Decedent, FATIMATA ZONGO, sustained severe, serious, permanent personal injuries and subsequent death.

FORTIETH: Plaintiff-Decedent's injuries were caused due to the carelessness, negligence, including negligent hiring, retaining, supervising, and credentialing, and departures from accepted and proper medical, hospital, gynecological, obstetrical and other good practices on the part of the Defendants herein, one, some, or all of them, their agents, servants, and/or employees in the care and the treatment or lack thereof that was rendered and tendered to the Plaintiff-Decedent herein, for the period of time she was under the care of the Defendants herein, whereby she incurred pain and suffering and other financial losses without any fault contributing thereto by her.

FORTY-FIRST: This action falls within one or more exceptions set forth in the Civil Practice Laws and Rules Section 1602.

FORTY-SECOND: As a result of such injuries, pain and suffering, and other financial losses, the Plaintiff-Decedent, FATIMATA ZONGO, was caused to suffer damages in an amount of money that exceeds the monetary jurisdiction of all other courts.

AS AND FOR A SECOND CAUSE OF ACTION

FORTY-THIRD: Plaintiff repeats, reiterates, and re-alleges each and every allegation set forth in the FIRST CAUSE OF ACTION inclusive with the same force and effect as if more fully set forth herein.

FORTY-FOURTH: The Defendants herein, one, some, or all of them, their agents, servants, and/or employees, failed to disclose all of the facts that a reasonable doctor or health care personnel under such circumstances would explain to a patient, including a failure to disclose the risks and benefits of various courses of treatment, the alternatives thereto and the risks and benefits relating to the alternatives and otherwise failed to properly, adequately and fully inform the patient.

FORTY-FIFTH: That a reasonable and prudent person in the Plaintiff-Decedent's position would not have undergone the course of treatment prescribed if she had been fully informed, and that the lack of informed consent is a proximate cause of pain and suffering and other financial losses for which recovery is sought.

FORTY-SIXTH: As a result of the foregoing lack of informed consent, the Plaintiff's-Decedent, FATIMATA ZONGO, and Plaintiff herein, ADJARATOU ZONGO, as Proposed Administratrix of the Estate and next of kin, suffered damages in an amount of money that exceeds the jurisdictional limits of all other Courts.

AND AS FOR A THIRD CAUSE OF ACTION

FORTY-SEVENTH: Plaintiff repeats, reiterates and re-alleges each and every allegation set forth in the FIRST and SECOND CAUSES OF ACTION with the same force and effect as if more fully set forth herein.

FORTY-EIGHTH: The aforesaid death of the Plaintiff's-Decedent, FATIMATA ZONGO, was due to the carelessness, negligence, abandonment and/or departures from

accepted and proper medical, hospital, and other good practices on the part of the Defendants herein, one some, or all of them, their agents, servants and/or employees, in the care and treatment or lack thereof that was rendered to the decedent herein, without any negligence on her part contributing thereto by the Plaintiff's-Decedent.

FORTY-NINTH: At the time of death of the Plaintiff's-Decedent herein, the decedent left surviving her sister, ADJARATOU ZONGO, and other next of kin, including a daughter, Leila Otujo, who suffered pecuniary and other losses as a result of her death.

FIFTIETH: As a result of the aforesaid, the Plaintiff herein, ADJARATOU ZONGO, and other next of kin, including a daughter, Leila Otujo, have been damaged in sums of money which exceed the monetary jurisdiction of all other courts.

WHEREFORE, Plaintiff, ADJARATOU ZONGO, as Administratrix of the Estate of FATIMATA ZONGO, Deceased, and ADJARATOU ZONGO, Individually, demands judgment against the Defendants herein, one, some, or all of them, in sums of money that exceed the monetary jurisdiction of all other Courts in the FIRST, SECOND and THIRD CAUSES OF ACTION, in an amount of money that exceeds the monetary jurisdiction of all other Courts, together with interest, costs, attorney's fees and disbursements of this action.

Dated: White Plains, New York
August 15, 2017

Yours etc.,

MEAGHER & MEAGHER, P.C.
Attorneys for Plaintiffs
111 Church Street
White Plains, NY 10601
(914) 328-8844

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 61347/2017

-----X
ADJARATOU ZONGO, As Administratrix of the Estate
of FATIMATA ZONGO, Deceased, and ADJARATOU
ZONGO, Individually,

CERTIFICATE OF MERIT

Plaintiffs,

-against-


DMITRY GERBER, JOHN ILARIO, ZAREEN KHAN,
WESTCHESTERMEDICAL GROUP, P.C., d/b/a
WESTMED, SOUTHERN WESTCHESTER OB/GYN
ASSOCIATES, LLP, and ST. JOHN'S RIVERSIDE
HOSPITAL,

Defendants.
-----X

MERRYL F. WEINER, ESQ., an attorney duly admitted to practice in the Courts of the
State of New York, hereby affirms, pursuant to Section 2106 CPLR:

I have reviewed the facts of this case and have consulted with at least one physician who is
licensed to practice in this state, or any other state, and I reasonably believe that said physician is
knowledgeable as to the relevant issues involved in this particular action and I have concluded on
the basis of such review and consultation that there is a reasonable basis for the commencement of
this action.

Dated: White Plains, New York
August 15, 2017


MERRYL F. WEINER, ESQ.

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

I, Adjaratou Zongo, being duly sworn, depose(s) and say(s):

I am the plaintiff in the within action.

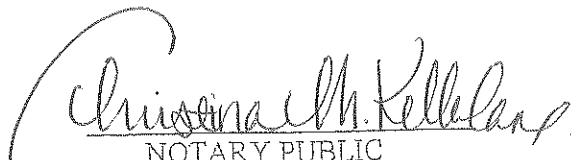
I have read the within Summons & Complaint

and know the contents thereof, and that the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.



(SIGNATURE)

Sworn to before me on this 15th
day of August 2017


NOTARY PUBLIC

CHRISTINA M. KILLERLANE
Notary Public, State of New York
No. 02KI6060976
Qualified in Rockland County
Commission Expires July 9, 2019

INDEX No.: 61347/2017
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Year: 2017

ADJARATOU ZONGO, As Administratrix of the Estate
of FATIMATA ZONGO, Deceased, and ADJARATOU
ZONGO, Individually,
Plaintiffs,

-against-

DMITRY GERBER, JOHN ILARIO, ZAREEN KHAN,
WESTCHESTERMEDICAL GROUP, P.C., d/b/a
WESTMED, SOUTHERN WESTCHESTER OB/GYN
ASSOCIATES, LLP, and ST. JOHN'S RIVERSIDE
HOSPITAL,

Defendants.

AMENDED SUMMONS AND VERIFIED COMPLAINT

MEAGHER & MEAGHER, P.C.
Attorney for Plaintiff
111 Church Street
White Plains, New York 10601
(914) 328-8844

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts
of New York State, certifies that, upon information and belief and reasonable inquiry, the
contentions contained in the annexed documents are not frivolous.

Dated: August 15, 2017

Signature

Print Signature's Name MERRYL F. WEINER, ESQ.

Service of a copy of the within

is hereby admitted.

Dated: _____

Attorney(s) for