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E-FILE

May 7, 2021

Suffolk Superior Court
Clerk's Office
3 Pemberton Square
Boston, MA 02108

Re: Catherine Kane v. Yvonne Gomez-Carrion, M.D., Fong Liu, M.D., and Risk Management Foundation of the Harvard Medical Institutions, Incorporated ("CRICO")
Suffolk Superior Court Civil Action No.: 2184CV00954

Dear Clerk:

Enclosed for docketing and filing with regards to the above captioned matter please find an *Amended Complaint and Jury Demand*.

Thank you for your attention to this matter.

Sincerely,

Jeffrey N. Catalano

JNC/sr
Enclosures

cc: Lisa M. Conserve Esq.
Paul M. McTague, Esq.
Carol A. Kelly, Esq.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
C.A. NO. 2184CV00954

CATHERINE KANE)
)
 Plaintiff,)
)
 v.)
)
 YVONNE GOMEZ-CARRION, M.D.,)
 FONG LIU, M.D., AND THE RISK)
 MANAGEMENT FOUNDATION OF THE)
 HARVARD MEDICAL INSTITUTIONS,)
 INCORPORATED (“CRICO”))
)
 Defendants.)

E-FILED 5/7/2021

AMENDED COMPLAINT AND JURY DEMAND

Parties

1. Plaintiff Catherine Kane (“Mrs. Kane”) is an individual residing at 12 Somerset Place, Wilmington, Massachusetts.

2. Defendant Yvonne Gomez-Carrion, M.D. (“Dr. Gomez”) is a doctor specializing in Obstetrics & Gynecology and registered to practice medicine in the Commonwealth of Massachusetts with a usual place of business at 330 Brookline Avenue, Boston, Massachusetts located in Suffolk County.

3. Defendant Fong Liu, M.D. (“Dr. Liu”) is a doctor specializing in Obstetrics & Gynecology and registered to practice medicine in the Commonwealth of Massachusetts with a usual place of business at 330 Brookline Avenue, Boston, Massachusetts located in Suffolk County.

4. Defendant The Risk Management Foundation of the Harvard Medical Institutions Incorporated (“CRICO”) is a Massachusetts corporation with its principal place of business at 1325 Boylston Street, Boston, Massachusetts located in Suffolk County.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction under G.L. c. 212, § 4.

6. This Court has personal jurisdiction over all Defendants under G.L. c. 223A, §§ 2 and 3.

7. Venue is proper in Suffolk County under G.L. c. 223, § 1, G.L. c. 223, § 8, and G.L. c. 223, § 11.

Facts

8. In 2018, Mrs. Kane was an active 48-year-old, married mother of two young girls ages 12 and 14. She was also a certified nurse for 26 years.

9. Mrs. Kane suffered from heavy periods. She was seen by her OB/GYN Dr. Sandy Mason and NP Abby Posner several times for this problem. An ultrasound confirmed that her bleeding was caused by a uterine fibroid.

10. On November 30, 2017, in an effort to slow the bleeding, Dr. Mason placed an IUD and started her on a progesterone pill. Unfortunately, these methods proved to be unsuccessful.

Treatment by Dr. Gomez at Beth Israel Deaconess Medical Center

11. As a result, on Thursday, May 31, 2018, Mrs. Kane underwent a hysteroscopic myomectomy by Dr. Gomez at Beth Israel Deaconess Medical Center (“BIDMC”). During the myomectomy, Dr. Gomez noted that she perforated her uterus at the fundus.

12. Following the surgery, Mrs. Kane took 200 mg of ibuprofen and was discharged around 9:08 p.m. that night.

13. Shortly after leaving the hospital and while at home, Mrs. Kane continued to experience severe lower abdominal pain. Her husband, David Kane, called Dr. Gomez who instructed them to go to the GYN Triage Unit at BIDMC.

14. Upon arrival at 11:00 p.m., Mrs. Kane was evaluated by an intern Dr. Tooba Anwer (PGY1).

15. Mrs. Kane's pain was noted to be 10/10 in her lower abdomen after taking 200 mg of ibuprofen one hour before presentation. She did not have any nausea or vomiting, lightheadedness, SOB, palpitations, and had a negative review of symptoms.

16. After the intern reported Mrs. Kane's medical condition, Dr. Gomez did not recommend and/or order an x-ray or ultrasound to rule out a bowel perforation.

17. Mrs. Kane was given pain medications including 10 mg of Oxycodone, 400 mg of Motrin, and 1 mg of IV Dilaudid. They drew a CBC and she was determined to be stable for discharge and there was low concern for intra-abdominal bleed.

18. Mrs. Kane's pain improved on the narcotics, so she was discharged at 1:15 a.m. with a prescription for 10 tablets of 5 mg of Oxycodone along with extra strength Tylenol, ibuprofen and Colace.

19. The following day, on Friday, June 1, 2018, Mrs. Kane called the GYN on-call physician since she was still experiencing intense pain, despite taking narcotic pain medication, and was now vomiting as well.

20. The Nurse Practitioner, Marybeth Meservey, returned her call and spoke with Mr. Kane. She suggested that he offer her a small amount of fluid frequently, continue with

Oxycodone and Tylenol, and to try toast/crackers. NP Meservey also advised that they should call if Mrs. Kane does not void for greater than 12 hours.

21. Later that same evening, the Defendant Dr. Gomez spoke with Mr. Kane on the phone and learned that Mrs. Kane was feeling slightly improved with better pain control and tolerating fluids/crackers.

22. However, Dr. Gomez did not instruct them to return to the GYN Triage Unit or go to the Emergency Room that day, despite Mrs. Kane's *ongoing significant pain and recent vomiting*.

Treatment by Dr. Liu in the GYN Triage Unit at BIDMC

23. Shortly after noon the following day, Saturday, June 2, 2018, Mrs. Kane returned to the GYN Triage Unit with severe ongoing abdominal pain that made her double over in pain even though she had been taking ibuprofen and acetaminophen along with Oxycodone every 4 hours and Tylenol.

24. The Defendant Dr. Liu determined that the pain "appears to be within expected for her operation and complication. No concern for acute intra-abdominal pathology (including bleeding, perforation, urinary tract injury) based on hemodynamic stability and benign exam."

25. The discharge note also suggested "For nausea, will provide Reglan PRN given this has pro-motility effects and will not further constipate her. Advised aggressive oral hydration, continue Colace, and add either/both Miralax and Senna for bowel regimen, as constipation may be exacerbating abdominal cramping pain."

26. Mrs. Kane was instructed to continue Dilaudid 2 mg PRN for pain and ibuprofen 600 mg every 6 hours.

27. Dr. Liu failed to order any x-rays or ultrasounds or to draw blood for analysis.

Mrs. Kane was discharged at 1:50 p.m.

28. Shortly after discharge that same day, the Defendant Dr. Gomez spoke with Mr. Kane on the phone and learned that that they had been to the Triage Unit and that she was in severe pain.

29. Even after learning this news and having prior knowledge of her severe on-going symptoms, Dr. Gomez did not call the attending physician, Dr. Liu, to discuss Mrs. Kane's condition or recommend additional testing.

Emergency Department at BIDMC – Bowel Perforation Discovered

30. The very next day, Sunday, June 3, 2018, Mrs. Kane's condition became urgent in that she developed shortness of breath. She had to be carried to the car and rushed directly to the Emergency Department at BIDMC.

31. Upon arrival, she was discovered to be tachypneic to 40 breaths per minute and was emergently intubated. After an ultrasound and exploratory laparotomy, a bowel perforation was discovered.

32. Unfortunately, due to the delayed diagnosis, Mrs. Kane was already in septic shock and had to be admitted to the ICU.

33. As a result of this incident, Mrs. Kane spent a total of 39 days in the hospital. For 11 days, she was in a medically induced coma.

34. Mrs. Kane underwent a small bowel resection followed by numerous subsequent procedures and an ileostomy, which was later reversed on December 17, 2018.

35. While hospitalized, Mrs. Kane's blood pressure became dangerously low, so she was given heavy doses of vasopressors. As a result, her fingers and toes become black and her kidneys shut down, requiring dialysis.

36. The impact of the vasopressors also caused Mrs. Kane to suffer the loss of toes on her left foot and now both feet are severely deformed.

37. Mrs. Kane had a total of *seven surgeries* to help repair and wash out all of the bacteria.

38. Mrs. Kane was finally discharged on July 11, 2018 with an open wound on her abdomen requiring a portable wound vac.

39. As a result of the Defendants' negligent care and treatment, Mrs. Kane sustained a perforated bowel resulting in septic shock, nerve damage in her dominant hand, loss of fine motor skills, loss of toes, and an ileostomy.

40. Mrs. Kane suffers from permanent physical and emotional pain, swelling in her feet and hands, mobility impairment as well as permanent scarring and disfigurement.

41. Mrs. Kane has seen numerous specialists and has undergone additional complications, including hospitalizations for small bowel obstructions due to the scar tissue from the bowel perforation, surgeries on her foot, and extensive physical therapy.

42. Mrs. Kane, previously a confident woman, now has permanent scars all over her face due to her intubations including above her lip, on her nose as well as on both sides of her neck where various invasive lines and the dialysis catheter were placed.

43. In addition to physical scars, Mrs. Kane also sustained emotional scars suffering from extreme emotional distress, mental anguish, Post Traumatic Stress Disorder (PTSD) and major depression, which she did not have prior to this incident.

44. Due to her disability, Mrs. Kane was unable to return to work as a nurse at Tufts Medical Center and was ultimately terminated. This resulted in substantial financial hardship and future lost wages.

45. Prior to May 2018, Mrs. Kane was physically fit. She worked out daily, went to cycling classes, swam, and even ran triathlons.

46. Now, Mrs. Kane cannot run or bike and swimming is limited. Consequently, she has lost muscle mass and fatigues easily.

Notice Pursuant to M.G.L. c. 231 § 60L

47. On June 14, 2019, prior to filing suit, the Plaintiff served a letter on Defendants Yvonne Gomez-Carrion, M.D., Fong Liu, M.D., and CRICO pursuant to G.L. c. 231, § 60L, to put them on notice of the Plaintiff's claims against them arising out of their negligent care and treatment of Mrs. Kane on May 31, 2018.

48. The Plaintiff's letter confirmed that she had the case reviewed by a highly qualified board-certified gynecologist. The Plaintiff provided voluminous medical records, a detailed chart of providers with treatment received from each, photographs of the Plaintiff's injuries, and even offered to provide her expert's affidavit in an effort to resolve this case pre-suit.

49. CRICO failed to respond to the 60L Letters, despite receiving two extensions, and refused to make any offers of settlement or commit to mediation.

50. On information and belief, CRICO participated in and/or controlled the decision to not make any offer of settlement although liability is reasonably clear. Accordingly, CRICO's conduct is a violation of G.L. c. 93A and G.L. c. 176D and constitutes bad faith insurance practices.

M.G.L. c. 93A/176D

51. On March 8, 2021, the Plaintiff served a very detailed 24-page 93A/176D Demand Letter (with 11 exhibits) on CRICO due to its bad faith in willfully failing to make any settlement offer.

52. CRICO deceived Mrs. Kane into believing that a “prompt resolution” of her case was possible by repeatedly making false representations that this case could be promptly resolved via pre-suit mediation.

53. Relying on this “prompt resolution,” Plaintiff’s counsel continuously provided voluminous updated medical records and other materials, including photographs, expert reports, and offered to provide additional records related to her lost income and offered to have Mrs. Kane undergo a pre-suit deposition under oath.

54. However, after nearly two years of full cooperation Plaintiff’s counsel, CRICO inexplicably decided to reverse course and refused to make any offers of settlement or commit to pre-suit mediation by insisting that it needed yet additional information, much of which is unnecessary and/or could have been obtained through a pre-suit deposition of the Plaintiff.

55. This unfair and abrupt change of position caused extreme prejudice and additional emotional distress to Mrs. Kane by forcing her to file suit for a matter that *could and should have been resolved a long time ago*.

56. By letter dated April 7, 2021, CRICO, through attorney Carol A. Kelly, Esq., denied liability under G.L. c. 93A and G.L. c. 176D and refused to tender a settlement offer.

57. CRICO’s involvement in responding to the Plaintiff’s Demand Letter and their bad faith failure to make any offer of settlement, requiring extensive litigation and putting undue

strain on Mrs. Kane to recover amounts due where liability is reasonably clear, constitutes bad faith insurance practices.

COUNT I

**CATHERINE KANE
vs.
YVONNE GOMEZ-CARRION, M.D.**

NEGLIGENCE

58. The Plaintiff repeats the allegations set forth above as if fully contained herein.

59. The Defendant Dr. Gomez owed Mrs. Kane a duty to exercise reasonable skill and attention in her care and treatment of Mrs. Kane.

60. Dr. Gomez failed to exercise reasonable skill and attention during her care and treatment of Mrs. Kane.

61. The conduct of Dr. Gomez deviated from accepted standards of medical practice in 2018.

62. As a direct and proximate result of Dr. Gomez's negligence, Mrs. Kane's perforated bowel was diagnosed much later than it should have been. The delay in the diagnosis, repair, and treatment of Mrs. Kane's perforated bowel resulted in her going into septic shock, losing toes, an ileostomy, deformities, scarring and other serious and permanent complications.

63. Dr. Gomez knew that Mrs. Kane had an intraoperative complication followed by on-going pain, nausea and vomiting that prompted an immediate return to the hospital on Thursday evening, a phone call on Friday, and a return to the Triage Unit on Saturday afternoon.

64. However, Dr. Gomez failed to take measures to further evaluate and diagnose the cause of her severe abdominal pain and/or to consider a bowel perforation resulting from the uterine perforation as the cause of her symptoms.

65. Mrs. Kane suffers from physical pain, mobility impairment, permanent scarring, disfigurement and continues to undergo treatment and therapy for her injuries. She also now suffers from extreme emotional distress, mental anguish, Post Traumatic Stress Disorder (PTSD) and major depression. Furthermore, Mrs. Kane's termination and future lost wages has led to significant financial hardship.

COUNT II

CATHERINE KANE

VS.

FONG LIU, M.D.

NEGLIGENCE

66. The Plaintiff repeats the allegations set forth above as if fully contained herein.

67. The Defendant Dr. Liu owed Mrs. Kane a duty to exercise reasonable skill and attention in her care and treatment of Mrs. Kane.

68. Dr. Liu failed to exercise reasonable skill and attention during her care and treatment of Mrs. Kane.

69. The conduct of Dr. Liu deviated from accepted standards of medical practice in 2018.

70. As a direct and proximate result of Dr. Lui's negligence, Mrs. Kane's bowel perforation was diagnosed much later than it should have been. The delay in the diagnosis, repair, and treatment of Mrs. Kane's perforated bowel resulted in her going into septic shock, losing toes, an ileostomy, deformities, scarring and other serious and permanent complications.

71. Dr. Liu knew that Mrs. Kane had an intraoperative complication followed by on-going pain, nausea and vomiting that prompted an immediate return to the hospital on Thursday evening, a phone call on Friday, and a return to the Triage Unit on Saturday afternoon.

72. However, Dr. Liu failed to take measures to further evaluate and diagnose the cause of her severe abdominal pain and/or to consider a bowel perforation resulting from the uterine perforation as the cause of her symptoms.

73. Mrs. Kane suffers from physical pain, mobility impairment, permanent scarring, disfigurement and continues to undergo treatment and therapy for her injuries. She also now suffers from extreme emotional distress, mental anguish, Post Traumatic Stress Disorder (PTSD) and major depression. Furthermore, Mrs. Kane's termination and future lost wages has led to significant financial hardship.

COUNT III

CATHERINE KANE

vs.

YVONNE GOMEZ-CARRION, M.D. AND FONG LIU, M.D.

NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

74. The Plaintiff repeats the allegations set forth above as if fully stated herein.

75. As a direct result and proximate result of the Defendant's negligence, the Plaintiff has suffered severe emotional distress and anguish, with resulting physical injury.

COUNT IV

CATHERINE KANE

vs.

**THE RISK MANAGEMENT FOUNDATION OF THE HARVARD MEDICAL
INSTITUTIONS INCORPORATED (CRICO)**

UNFAIR CLAIM SETTLEMENT PRACTICES UNDER G.L. C. 93A AND G.L. C. 176D

76. Plaintiff repeats and incorporates the allegations contained in the preceding paragraphs of this Complaint as if each were fully set forth herein.

77. Defendant CRICO refused to pay Plaintiff for her claims without conducting a reasonable investigation based upon all available information, in violation of G.L. c. 93A, §§ 2 and 9, and G.L. c. 176D, §§ 2 and 3(9)(d).

78. Defendant CRICO failed to effectuate a prompt, fair, and equitable settlement of Plaintiff's claims despite the fact that liability was reasonably clear, in violation of G.L. c. 93A, §§ 2 and 9, and G.L. c. 176D, §§ 2 and 3(9)(f).

79. Plaintiff has suffered damages as a result of the bad faith and unfair claim settlement practices of the Defendants.

WHEREFORE, Catherine Kane, requests that this Court grant the following relief:

- i. Enter judgment in favor of the Plaintiff and against Defendants;
- ii. Award to Plaintiff all damages, including punitive damages, in an amount to be determined at trial;
- iii. Award to Plaintiff all costs and attorney's fees as permitted by law;
- iv. Award to Plaintiff pre- and post-judgment interest as permitted by law; and
- v. Grant such other and further relief as this Court deems just and proper.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS SO TRIABLE.

The Plaintiff,

CATHERINE KANE,

By her Attorneys,



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Date: May 7, 2021

CERTIFICATE OF SERVICE

I, Jeffrey N. Catalano, hereby certify that on May 7, 2021, I served a copy of the foregoing on all counsel of record by email and first-class mail to:

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Jeffrey N. Catalano