

UNITED STATES BANKRUPTCY COURT Northern District of Texas (Dallas Division)

PROOF OF CLAIM

Name of Debtor: Erickson Retirement Communities, LLC

Case Number: 09-37010

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):

Marilyn Kasser and Saltz, Mongeluzzi, Barrett & Bendesky, PC

Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:

MARILYN KASSER SALTZ, MONGELUZZI, BARRETT & BENDESKY 1650 MARKET STREET, 52ND FLOOR PHILADELPHIA, PA 19103

YOUR CLAIM IS SCHEDULED AS: Schedule/Claim ID: s292 AMOUNT/CLASSIFICATION UNKNOWN UNSECURED [Contingent/Unliquidated/Disputed]

Court Claim Number: (If known)

Filed on:

FILED

Name and address where payment should be sent (if different from above):

Robert Braker Saltz Mongeluzzi, Barrett & Bendesky, PC One Liberty Place, 1650 Market Street, 52nd Floor Philadelphia, PA 19103 Telephone number: (215) 496-8282

FEB 09 2010 TAWANA C. MAXWELL, CLERK U.S. BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS

Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ In excess of \$50,000.00

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.

Specify the priority of the claim.

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)().

Amount entitled to priority:

\$

*Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

2. Basis for Claim: Personal Injury (See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor:

3a. Debtor may have scheduled account as: (See instruction #3a on reverse side.)

4. Secured Claim (See instruction #4 on reverse side.)

Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

Nature of property or right of setoff: Real Estate Motor Vehicle Other

Value of Property: \$ Annual Interest Rate %

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: \$ Basis for perfection:

Amount of Secured Claim: \$ Amount Unsecured: \$

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6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date: 2/3/10

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

332

FOR COURT USE ONLY

Erickson Ret. Comm. LLC



00855

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324
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720
96

COURT OF COMMON PLEAS
OF BUCKS COUNTY
OFFICE
OF
COURT ADMINISTRATOR
DOYLESTOWN, PA 18901

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PROTHONOTARY
OF BUCKS COUNTY

02 SEP 26 PM 2:37

CIVIL COVER SHEET

The information provided herein is for case flow and calendar management purposes only. It does not replace or supplement the filing and service of pleadings or other papers as required by law or rules of court. This sheet will not be used as a source for making docket entries except to note the type of action commenced. This is not a substitute from documents for commencement of actions

Case No. 0809871-242

PLAINTIFFS

vs.

DEFENDANTS

Marilyn Kasser

Ann's Choice c/o Erickson Retirement
and William Leingang

Robert N. Braker #62583

Attorney Name & ID #

Attorney Name & ID #

NATURE OF SUIT

(Check one classification only)

ASSUMPSIT (Contracts)

- Mechanics Lien 057
- Employment 525
- Insurance 526
- No-Fault Insurance 527
- Negotiable Instrument 528
- Product Liability 529
- Warranty 530
- Mortgage Foreclosure 060
- Replevin (With Order) 054
- Assumpsit 046
- Other 531
- Writ of Summons 112

TRESPASS

- Motor Vehicle 047
- Non-Motor Vehicle 048
- Other Personal Injury 049
- Assault 532
- Libel/Slander 533
- Medical/Malpractice 534
- Medical Malpractice Writ 819
- Medical Malpractice Transfer 821
- Legal Malpractice 535
- Professional Malpractice 816
- Product Warranty Liability 536
- Other 537
- Writ of Summons 110

EQUITY

- Ejectment 053
- Partition 309
- Quiet Title 062
- Labor Dispute 540
- Mandamus 055
- Declaratory Judgment 061
- Equity 051
- Quo Warranto 056
- Other 539
- Writ of Summons 310

EMINENT DOMAIN

Declaration of
Taking 0067
(WRIT) REINSTATED

APPEALS

- DJ Appeal - Assumpsit 025
- DJ Appeal - Trespass 337
- Award of Viewers 501
- Board of Assessment 301
- Pa. Labor Relations Board 369
- Board of Elections 319
- Local Agency 262
- Zoning Hearing Board or Land Use 030
- Suspension of Operator's License 134
- Suspension of Registration 694
- Other 538

OTHER

Petition

Patricia A. Zimmerman
Deputy Prothonotary

BUCKS COUNTY PROTHONOTARY
CASE NUMBER: 200809871 B09
DATE 09/26/2008 TIME 09:28:34:34114



DEMAND over \$50,000
 under \$50,000
 Not Applicable

JURY DEMAND

Check only if demanded in Complaint.
 Yes No

THIS FORM SHOULD BE RETURNED TO THE PROTHONOTARY'S OFFICE

0.00
81.50
81.50
81.50

10/17/08 THE WITHIN COMPLAINT
(WRIT) REINSTATED
Virginia Lupatka

REV 05/2008

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

BY: ROBERT N. BRAKER, ESQUIRE

IDENTIFICATION NO.: 62583

52ND FLOOR

1650 MARKET STREET

PHILADELPHIA, PA 19103

(215) 496-8282

ATTORNEY FOR PLAINTIFF

MARILYN KASSER

11517 Ann's Choice Way

Warminster, PA 18974

BUCKS COUNTY

COURT OF COMMON PLEAS

LAW DIVISION

v.

No. **0809871-24-2**

ANN'S CHOICE

c/o ERICKSON RETIREMENT

COMMUNITY

10000 Ann's Choice Way

Warminster, PA 18974

And

WILLIAM LEINGANG

12301 Ann's Choice Way

Warminster, PA 18974

JURY TRIAL DEMANDED

NOTICE TO DEFEND

NOTICE

"You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

BUCKS COUNTY BAR ASSOCIATION
155 East State Street
P.O. Box 300
Doylestown, Pennsylvania 18901
(215) 348-9413 or (800) 479-8585"

AVISO

"Le han demandado en corte. Si usted quiere defenderse contra las demandas nombradas en las páginas siguientes, tiene veinte (20) días, a partir de recibir esta demanda y la notificación para entablar personalmente o por un abogado una comparecencia escrita y también para entablar con la corte en forma escrita sus defensas y objeciones a las demandas contra usted. Sea avisado que si usted no se defiere, el caso puede continuar sin usted y la corte puede incorporar un juicio contra usted sin previo aviso para conseguir el dinero demandado en el pleito o para conseguir cualquier otra demanda o alivio solicitados por el demandante. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO INMEDIATAMENTE. SI USTED NO TIENE ABOGADO (O NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO), VAYA EN PERSONA O LLAME POR TELEFONO LA OFICINA NOMBRADA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL. ESTA OFICINA PUEDE PROPORCIONARLE LA INFORMACION SOBRE CONTRATAR A UN ABOGADO.

SI USTED NO TIENE DINERO SUFICIENTE PARA PAGAR A UN ABOGADO, ESTA OFICINA PUEDE PROPORCIONARLE INFORMACION SOBRE AGENCIAS QUE OFRECEN SERVICIOS LEGALES A PERSONAS QUE CUMPLEN LOS REQUISITOS PARA UN HONORARIO REDUCIDO O NINGUN HONORARIO.

BUCKS COUNTY BAR ASSOCIATION
135 East State Street
P.O. Box 300
Doylestown, Pennsylvania 18901
(215) 348-9413 or (800) 479-8585"

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08 SEP 26 PM 2:57

COMPLAINT

Plaintiff, Marilyn Kasser, claims of defendants, Ann's Choice c/o Erickson Retirement Community and William Leingang, jointly and severally, separate sums in excess of \$50,000.00 in damages, upon causes of action whereof the following are true statements:

1. Plaintiff, Marilyn Kasser, is an individual and citizen of the Commonwealth of Pennsylvania, residing at 11517 Ann's Choice Way, Warminster, PA.
2. Defendant, Ann's Choice c/o Erickson Retirement Community (hereinafter referred to as Ann's Choice), is a business entity, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business located at 10000 Ann's Choice Way, Warminster, PA 18974.
3. Defendant, William Leingang, is an individual and citizen of the Commonwealth of Pennsylvania, residing at 12301 Ann's Choice Way, Warminster, PA 18974.
4. At all times material hereto, defendant, Ann's Choice, owned, operated, possessed, maintained and controlled the retirement community and premises known as Ann's Choice Way, including the Banner Café.
5. At all times material hereto, defendant, Ann's Choice was acting by its agents, servants, workmen and employees acting within the cause and scope of their employment.
6. On or about January 9, 2007, it was the duty of defendant, Ann's Choice, to keep and maintain the Banner Café and its adjacent areas in a reasonably safe condition for pedestrian travel.

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OF
BUCKS COUNTY
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7. At all times material hereto, defendant, Ann's Choice was responsible for the Banner Café, and said Café was under the care, control, direction and supervision of said defendant.

8. Plaintiff avers that defendant, Ann's Choice had, or should have had notice of the dangerous condition of the walkways in the Banner Café for a substantial period of time prior to plaintiff's accident.

9. On January 9, 2007, plaintiff, while a business invitee and lawful and proper pedestrian walking in the Banner Café of Ann's Choice at 10000 Ann's Choice Way in Warminster, PA was knocked to the floor by William Leingang, also a pedestrian.

10. At the time and place aforesaid, defendant, William Leingang, was careless and negligent, by negligently crashing into plaintiff, by not yielding the right of way to other pedestrians such as plaintiff as he traveled through the hallway of the aforesaid restaurant and knocked plaintiff down to the floor causing her to sustain serious and permanent personal injuries more specifically set forth hereinafter.

11. At the time and place aforesaid, defendant, Ann's Choice was careless and negligent, by improperly creating a dining area in a café without proper site lines for pedestrians and for improperly placing a food cart and potted tree in known pedestrians site lines, causing plaintiff to be struck by a fellow pedestrian, defendant, William Leingang, causing her to sustain those most serious and permanent injuries more specifically set forth hereinafter.

COUNT I
MARILYN KASSER V. ANN'S CHOICE C/O ERICKSON RETIREMENT
COMMUNITY

12. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 6 of Plaintiff's Complaint, as fully as though the same were herein set forth at length.

13. Defendant, Ann's Choice, was careless and negligent in:

- a. Creating a dangerous walkway in the café;
- b. Utilizing and maintaining a food cart at a dangerous location in their café which made it difficult for pedestrians to see one another as they were walking;
- c. Utilizing and maintaining a potted tree at a dangerous location in their café which made it difficult for pedestrians to see one another as they were walking;
- d. Failing to install a proper and safe walkway for pedestrians and diners at their café;
- e. Blocking the site lines of diners and pedestrians in their café with a food cart and potted tree;
- f. Failing to use signs and/or other markings to help diners and pedestrians safely navigate through their café;
- g. Being otherwise negligent;
- h. Failing to correct the dangerous condition of the premises;
- i. Failing to adequately and properly inspect the walkways of Banner Café to determine that they created a danger to persons such as plaintiff walking upon same;
- j. Failing to adequately and properly maintain said premises in a safe, reasonable and proper manner; and
- k. Failing to take proper precautions to ensure that business invitees, such as plaintiff, would not be injured on the premises.

14. By reason of the carelessness and negligence of defendant, Ann's Choice, as aforesaid, plaintiff, Marilyn Kasser, was caused to sustain serious, disabling and permanent personal injuries: she sustained a fractured right hip; she has suffered from severe hip and leg

pain; she was required to undergo an open reduction internal fixation surgery to her right hip; she has sustained a significant inability to walk properly; she will likely be required to undergo a hip replacement surgery; she sustained a fracture of her right wrist; she has suffered from severe wrist and arm pain; she was required to be hospitalized at Abington Memorial Hospital from January 9, 2007 through January 15, 2007; she was required to be hospitalized at Willow Ridge Rehab Center from January 15, 2007 though March 29, 2007; she was required to undergo significant amounts of therapy; she sustained further injuries to the bones, muscles, nerves, tissues and ligaments of her body, the full extent of which is yet to be determined; she sustained other injuries to her nerves and nervous system; she sustained other orthopedic, neurologic and psychological injuries, the full extent of which is yet to be determined; she has in the past been required and may in the future continue to be required to submit to x-rays, MRIs and other diagnostic studies; she has in the past suffered and may in the future continue to suffer agonizing aches, pains and mental anguish; she has in the past and may in the future continue to endure pain and suffering; she has in the past been and may in the future continue to be disabled from performing her usual duties, occupations and avocations, all to her great loss and detriment.

15. As a direct result of the aforesaid accident, the plaintiff has been compelled to expend various sums of money for medicines and medical care and treatment in attempting to alleviate and cure the aforesaid injuries, and may be required to expend additional sums for the same purpose in the future.

WHEREFORE, plaintiff, Marilyn Kasser, claims of defendant, Ann's Choice, jointly and severally, a separate sum in excess of \$50,000.00 in damages and brings this action to recover same.

COUNTY II
MARILYN KASSER V. WILLIAM LEINGANG
NEGLIGENCE

16. Plaintiff incorporates herein the allegations contained in paragraphs 1 through 15 of Plaintiff's Complaint, as fully as though the same were herein set forth at length.

17. Defendant, William Leingang, was careless and negligent in:

- a. Rushing through said premises;
- b. Not looking where he was going while walking through said premises;
- c. Not being careful while walking through said premises;
- d. Striking plaintiff, Marilyn Kasser and knocking her to the ground;
- e. Not yielding the right of way to plaintiff;
- f. Walking too fast for the circumstances; and
- g. Being otherwise negligent.

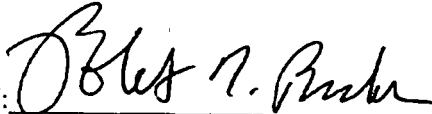
18. By reason of the carelessness and negligence of defendant, William Leingang, as aforesaid, plaintiff, Marilyn Kasser, was caused to sustain serious, disabling and permanent personal injuries: she sustained a fractured right hip; she has suffered from severe hip and leg pain; she was required to undergo an open reduction internal fixation surgery to her right hip; she has sustained a significant inability to walk properly; she will likely be required to undergo a hip replacement surgery; she sustained a fracture of her right wrist; she has suffered from severe wrist and arm pain; she was required to be hospitalized at Abington Memorial Hospital from January 9, 2007 through January 15, 2007; she was required to be hospitalized at Willow Ridge Rehab Center from January 15, 2007 though March 29, 2007; she was required to undergo significant amounts of therapy; she sustained further injuries to the bones, muscles, nerves, tissues and ligaments of her body, the full extent of which is yet to be determined; she

sustained other injuries to her nerves and nervous system; she sustained other orthopedic, neurological and psychological injuries, the full extent of which is yet to be determined; she has in the past been required and may in the future continue to be required to submit to x-rays, MRIs and other diagnostic studies; she has in the past suffered and may in the future continue to suffer agonizing aches, pains and mental anguish; she has in the past and may in the future continue to endure pain and suffering; she has in the past been and may in the future continue to be disabled from performing her usual duties, occupations and avocations, all to her great loss and detriment.

19. As a direct result of the aforesaid accident, the plaintiff has been compelled to expend various sums of money for medicines and medical care and treatment in attempting to alleviate and cure the aforesaid injuries, and may be required to expend additional sums for the same purpose in the future.

WHEREFORE, plaintiff, Marilyn Kasser, claims of defendant, William Leingang, jointly and severally, a separate sum in excess of \$50,000.00 in damages and brings this action to recover same.

SALTZ, MONGELUZZI, BARRETT & BENDESKY, P.C.

BY: 

ROBERT N. BRAKER
Attorney for plaintiff, Marilyn Kasser

VERIFICATION

The averments or denials of fact contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer has knowledge or information sufficient to form a belief that one of them is true. This Verification is made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.

DATE:

9/19/08

Marilyn Kasser
MARILYN KASSER

CENTER FOR ADVANCED ORTHOPAEDICS, PC

RICHARD J. MANDEL, MD
DENNIS P. McHUGH, DO
TIMOTHY P. AMANN, DO
TED M. FELDMAN, PA-C

Arthroscopic Surgery • Hand & Shoulder Surgery • Joint Replacement • Sports Medicine • Occupational Orthopaedics

July 16, 2009

Robert N. Braker, Esq.
Saltz, Mongeluzzi, Barrett & Bendesky
1 Liberty Place, 52nd Floor
1650 Market Street
Philadelphia, PA 19103

Re: Marilyn Kasser
D/I: 01/09/07

Dear Mr. Braker:

I had the opportunity to see Marilyn Kasser today for an Independent Orthopedic Evaluation at your request. Prior to beginning the examination, I informed Ms. Kasser that the purpose of the examination was for evaluation only, that no treatment would be rendered, no medical advice would be given and no doctor/patient relationship would be established. She understood and was agreeable to these terms.

HISTORY:

The patient gives a history of being an 84-year-old right hand dominant female and resident of Ann's Choice, an independent living facility, who states that she was injured at Ann's Choice on January 9, 2007. She was walking in the hallway when another resident who was walking and looking the other way walked into her, knocking her down. She noted immediate right hip pain and right wrist pain. She was unable to ambulate. She was taken to the emergency department of Abington Memorial Hospital where she was evaluated and admitted. She underwent hip surgery at Abington and underwent casting for a right wrist fracture.

She was not able to return to her residence following hospitalization. She was maintained non-weightbearing on both the right upper and right lower extremities and was sent to a skilled nursing facility (Willow Ridge) for three months. During most of this time, she remained non-weightbearing on the right lower extremity. Following discharge from Willow Ridge, she returned to her residence. She received some additional physical therapy there, utilizing a walker for ambulating short distances. She was never able to eliminate the walker and, in fact, she was never able to ambulate more than a short distance secondary to ongoing right hip pain. She was not able to resume driving. She was not able to return to work.

PLEASE SEND ALL CORRESPONDENCE TO: 716 WEST GERMANTOWN PIKE • EAST NORRITON, PA 19403

PHONE (610) 630-4414 • FAX (610) 630-8818

716 West Germantown Pike • East Norriton, PA 19403
717 Bethlehem Pike • Suite 220 • Erdenheim, PA 19038

Re: Marilyn Kasser

July 16, 2009

Page 2

She had worked as a bookkeeper and payroll clerk prior to the accident. She was no longer able to carry out her normally active lifestyle. According to her daughter who accompanied her, she was quite vigorous prior to the incident. She was able to ambulate unlimited distances and quickly. It was difficult for other people to keep up with her.

Following her return to her residence, her walking gradually became more limited. She became wheelchair dependent at most times. She states that the hip pain progressively increased. The right wrist remained stiff with gradual improvement in motion. The wrist never returned to normal.

PRESENT COMPLAINTS:

At the present time, her chief complaint is of right hip pain. The hip pain occurs with weightbearing, walking, and after sitting for a short period of time. She therefore spends most of her time lying in bed. She spends a fair amount of time sitting in a wheelchair. She can walk only a few feet at a time. Using the walker she is able to walk from her bed to the bathroom. The pain is mainly located in the right groin area and is generally achy in nature. There is some pain that radiates to the lateral aspect of the hip.

She states that her balance is only fair and she is afraid of falling. She has not seen her orthopedist recently but states that at the last visit, he discussed hip replacement surgery with her. She is fearful of undergoing major surgery at her age and is not interested in further surgery.

With regard to the right wrist, she notes persistent wrist stiffness and swelling. There is no wrist pain.

She is able to dress herself. She is not able to clean her apartment. She is not able to shower independently. She is not able to wash her hair. An aide assists her twice a week in showering or bathing activities.

REVIEW OF SYSTEMS:

Review of systems is positive for bilateral ankle swelling and some sacral soreness from sitting.

Re: Marilyn Kasser

July 16, 2009

Page 3

PAST MEDICAL HISTORY:

The patient and her daughter deny any hip symptoms prior to the event in question. There was no soreness, stiffness or limitation of any activity. Her past history is positive for a myocardial infarct in 1990 and increased cholesterol.

PHYSICAL EXAMINATION:

On examination, she was a thin Caucasian woman in no acute distress.

Examination of the right wrist revealed a prominence of the distal ulna and ulnar styloid and obvious shortening and displacement of the distal radius with a residual silver fork deformity. There was no tenderness about the wrist. Wrist circumferences were 6½ inches on the right and 6 inches on the left. Forearm circumferences were equal at 7½ inches. Range of motion of the left wrist was normal. Range of motion on the right was to 45 degrees of volar flexion, 70 degrees of dorsiflexion, 20 degrees of radial and ulnar deviation and full pronation and supination. Grip strength was diminished on the right at 20 pounds as compared to 30 pounds on the left (Jamar dynamometer position 2). Upper extremity reflexes were normally active and symmetrical. There were no long tract signs. There was no sensory deficit. Provocative maneuvers for carpal tunnel syndrome and other peripheral neuropathies were negative.

Lower extremity examination was carried out with difficulty. The patient was able to transfer from a wheelchair to a walker to the examining table with great difficulty and assistance of one. She was not willing to lie on the examining table secondary to pain. She was able to recline and in this position, I was able to carry out a limited examination of the right hip. There was 90 degrees of flexion. The presence or absence of any flexion contracture could not be determined. There was 0 degrees of rotation both internally and externally. Range of motion was painful. The right femur appeared to be slightly shorter than the left, although an actual leg length could not be determined with certainty. Left hip motion was full and unrestricted, and painless.

Lower extremity reflexes were +2 and symmetrical. Her gait was with significant antalgia on the right utilizing using a walker and significant weightbearing on both upper extremities. Her gait was step to in type.

Re: Marilyn Kasser

July 16, 2009

Page 4

MEDICAL RECORDS:

Voluminous medical records were available for review.

The emergency department records from Abington Memorial Hospital from 01/09/07 indicate that the patient was 81-years-old and the time of presentation. She complained of right hip and right wrist pain after a fall. She stated that someone bumped into her at her independent living facility and knocked her over, causing her fall onto her right side. Evaluation including radiographs resulting in diagnosis of intertrochanteric fracture of the right hip and a fracture of the right distal radius. She was admitted to the orthopedic service. She underwent surgery while hospitalized and when discharged to the Willow Ridge facility on 01/15/07, instructions were provided for non-weightbearing ambulation on the right upper extremity and toe touch weightbearing on the right lower extremity. Discharge summary indicated that she underwent ORIF of the right hip on January 11, 2007 and that she was placed on Coumadin post-operatively for DVT prophylaxis. She was not safe to be sent directly home and, therefore, was discharged to a skilled nursing facility.

At outpatient follow-up by Jeffrey Rubin, M.D. on 02/05/07, she was to remain on limited weightbearing for the next three to four weeks for the right hip. He noted at that time that she did have some arthritis involving the hip joints so that even after the fracture healed, she might have some groin discomfort related to the arthritis. The wrist fracture was noted to be well-aligned at that time. By 04/02/07, she was able to bear weight on the hip for short distances using a walker but was taking OxyContin and Percocet for pain. On 09/05/07, she was still using a walker to ambulate. She felt that the hip was not as good as she would like it to be. She was not able to walk to the dining room for meals. On examination, there was some restriction of motion of the right hip. Radiographs revealed that the fracture was healed. There was significant arthritis involving the right hip. It was Dr. Rubin's impression that her problem was no longer with the fracture but rather, with arthritis. Total hip arthroplasty was discussed with her and her daughter.

Records from the Willow Ridge facility from 01/15/07 through 03/26/07 were reviewed.

Evaluation by Peter Schwartz, M.D. of 05/14/09 from Ann's Choice Medical Center was for evaluation of multiple medical problems. His impression was of improved lumbar radiculopathy, osteoarthritis right hip, coronary artery disease, hypothyroidism, hypercholesterolemia and vitamin D deficiency.

Re: Marilyn Kasser

July 16, 2009

Page 5

Multiple physical therapy records were reviewed.

The operative report of 01/11/07 by Dr. Rubin regarding ORIF of a peritrochanteric fracture of the right hip was reviewed.

I was able to personally review post-injury radiographs of the pelvis and right hip from 01/11/07. Noted was an intertrochanteric fracture of the right hip with a subtrochanteric extension extending approximately 4 cm inferior to the lesser trochanter. Also noted was degenerative arthritic change of the hip joint of moderate severity with joint space narrowing, mild subchondral cyst formation, and minimal marginal osteophyte formation.

A post-operative radiograph of the right hip of 01/11/07 revealed a screw and side plate and a supplementary cannulated screw transfixing the fracture. A six hole side plate was present with an excellent reduction of the fracture, both intertrochanteric and subtrochanteric components. The hardware was appropriately positioned.

A pre-operative CT scan of the right hip of 01/11/07 confirmed the radiographic findings noted on plain x-ray.

AP and lateral radiographs of the right wrist of 01/09/07 were personally reviewed. There was a fracture of the distal radius involving the radial styloid involving some dorsal comminution with loss of volar tilt of the distal radius. There was an associated intra-articular component involving the radial styloid with some loss of normal radial angle. On the lateral view, there was approximately 10 degrees of dorsal angulation of the distal radius.

I also reviewed several medical illustrations of the patient's surgery and pre and post operative conditions. These illustrations are medically accurate.

COMMENTS:

My impression is that the patient sustained an intertrochanteric/subtrochanteric fracture of the right hip and an intra-articular and displaced fracture of the right distal radius which required her to undergo the surgery and treatment referenced above as a result of the incident of 01/09/07. She has healed with residual shortening of the distal radius and resultant deformity, loss of range of motion and grip weakness on the right. With regard to the right hip, the fracture itself has healed.

Re: Marilyn Kasser

July 16, 2009

Page 6

According to the patient and her daughter, she was entirely asymptomatic prior to the incident in question. Assuming this to be correct, it is my opinion that the injury of 01/09/07 resulted in a permanent aggravation of underlying osteoarthritis of the right hip such that she is now significantly impaired and disabled. In my opinion, the accident accelerated the underlying asymptomatic hip arthritis.

She is at maximum medical improvement. Continued loss of ambulatory ability is anticipated as she ages and as her arthritis progresses. As a result of this accident, Ms. Kasser can now only walk a few feet at a time. Since the accident she has been required to use a wheelchair and will continue to need the wheelchair for the rest of her life. She is a candidate for total hip arthroplasty. However, at her advanced age and considering her level of infirmity, the procedure would carry with it significant risks of medical complications including the risk of death. Under the circumstances, her decision not to undergo surgery is reasonable.

She will continue to require assistance and will require greater assistance in the future. Her activities will remain significantly restricted and become more so in the future. She will require an assisted living situation in the future.

These opinions are provided to within a reasonable degree of medical certainty.

Sincerely,



Richard J. Mandel, M.D.

RJM/jvd