

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
JEAN WATKINS, as Personal)
Representative of the Estate of Mildred)
Watkins,)
)
Plaintiff,)
)
vs.)
)
STERLING HEALTHCARE, INC.,)
COUNTRY WOOD NURSING CENTER,)
LLC, and GUARDIAN RESOURCES, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2016-CP-40-04463

**ORDER AWARDING DAMAGES
TO PLAINTIFF**

RECEIVED
Apr 05 2023
SC Court of Appeals

The Court makes the following findings of fact and law following the damages hearing on November 10, 2022.

I. PROCEDURAL HISTORY¹

On February 28, 2014, Jean Watkins, as Personal Representative of the Estate of Mildred Watkins, brought this action alleging medical malpractice against Sterling Healthcare, Inc., Country Wood Nursing Center, LLC, and Guardian Resources, LLC. Plaintiff served Defendants with discovery requests on August 22, 2014. Thereafter, the Defendants only submitted partial responses. Plaintiff did not receive complete responses from the Defendants and filed a Motion to Compel on July 29, 2015. Thereafter, the case was removed from the roster on July 31, 2015, pursuant to a Rule 40(j) Consent Order which allowed on-going discovery.

¹ The statements in the procedural history section are supported by the documents which were included in the Record on Appeal and the Briefs of the parties submitted to the Court of Appeals in Case No. 2018-000924. For the sake of brevity, citations are omitted. Changes have been made to identities of the parties from Appellant to Defendant and Respondent to Plaintiff.

The case was restored to the docket July 25, 2016.²

At the time the Plaintiff filed her Motion to Compel on July 29, 2015, she remained without complete responses to her discovery requests. In particular, Plaintiff had been provided with only two documents from both Defendant Sterling and Defendant Guardian (the Articles of Incorporation and a "Consulting Agreement" with Country Wood). The Defendants failed to provide any additional documents or responses during this time period.

The Honorable Edgar Dickson heard the Plaintiff's Motion to Compel on February 24, 2016 and verbally ruled in Plaintiff's favor the same day. The formal Order was signed on November 30, 2016 by Judge Dickson, granting Plaintiff's Motion to Compel Against All Defendants. The Defendants were directed to produce the information specified within twenty (20) days of the date of the Order. The time period specified in the Order expired on December 20, 2016.

No information or documents were produced by the Defendants by the December 20, 2016 deadline despite the fact that the Defendants knew at the hearing in February that Judge Dickson had ruled in Plaintiff's favor. On December 29, 2016, Plaintiff's counsel sent a letter to counsel for Defendants asking for production of all documents and information specified in the Order no later than January 6, 2017. Plaintiff's counsel was thereafter contacted by Defendants' attorneys regarding the missed Order deadline.³ Defense counsel requested an extension of one additional week to produce the information specified in the Order. Plaintiff's counsel agreed to withhold the filing of a Rule to Show Cause Motion if she received full and complete production

² The original case number for this litigation was 2014-CP-40-05160.

³ On January 3, 2017 and January 5, 2017, Plaintiff's counsel received emails from defense counsel advising that they "inadvertently did not calendar the date" but were gathering the information. They also stated that they had been unable to communicate with their client about the discovery production ordered by Judge Dickson until that week.



of documents and information by January 13, 2017. As of January 13, 2017, Plaintiff's counsel had received no information from the Defendants.

On January 19, 2017, Plaintiff's counsel received a document entitled Defendants' Supplemental Responses to Plaintiff's Interrogatories and Requests for Production Pursuant to the Order of Judge Dickson. The materials produced therein did not comply with the Order of Judge Dickson in timeliness nor in content.⁴ Plaintiff filed a Motion for Rule to Show Cause and Motion for Sanctions on January 23, 2017. In the six (6) month period that Plaintiff's counsel awaited a hearing date, no further documents or information were produced by any Defendant until just days prior to the hearing.

The case appeared on the July 31, 2017 trial docket, at which time the Plaintiff was still without the complete discovery responses despite Judge Dickson's Order. Plaintiff remained unable to schedule critical depositions necessary to prepare for trial which would now have to be postponed for a second time.⁵

The hearing on Plaintiff's Motion for Rule to Show Cause and Sanctions was held by the Honorable Alison Renee Lee on July 27, 2017. Judge Lee heard the arguments of counsel for both parties, reviewed the written materials submitted, asked questions of counsel of both parties, and ultimately took the matter under advisement. Additionally, Judge Lee ordered that counsel

⁴ Many of Defendants' responses indicated: "[Defendant] is still in the process of collecting information responsive to this request and will fully respond to the same as soon as such information is located." Other examples of noncompliance included responses referring Plaintiff's counsel to government agencies for answers despite Judge Dickson's Order which *specifically stated* that such a response is insufficient. See Order Granting Mot. To Compel Against All Defendants dated Nov. 30, 2016, paragraphs 20, 22, & 30.

⁵ This case was previously removed from the roster July 31, 2015, pursuant to Rule 40(j) with a Consent Order, due to incomplete discovery. The case was restored July 25, 2016. At the time the case was restored, no additional information had been produced to the Plaintiff by the Defendants during the year the case was removed from the docket. The 40(j) Order allowed for on-going discovery during this period.



for Defendants produce a list of documents with their Bates stamped reference numbers, which Defendants' counsel had compiled and had in counsel's possession, to Plaintiff's counsel *prior to leaving the courthouse*. The document was not produced by the Defendants to Plaintiff's counsel that day, *nor has it been produced as of the date of the filing of this Order*.

While awaiting a ruling from Judge Lee, the trial of the case had to be continued several times and was ultimately pushed back by a Scheduling Order. On April 19, 2018, Judge Lee issued a ruling striking the answers of all defendants due to the failure of the Defendants to comply with Judge Dickson's Order and ordered that the matter be set for a damages hearing.

Defendants appealed this ruling to the South Carolina Court of Appeals (2018-000924). Thereafter, the Court of Appeals affirmed Judge Lee's Order on September 8, 2021. The case was remanded back to the circuit court for a damages hearing.

The Court notes that, even as of the filing of this Order, over eight (8) years after discovery was served, Plaintiff remains without critical information which would have enabled her to advance her case, particularly with regard to punitive damages. Additionally, Plaintiff remains without information required by standard discovery rules including liability and excess / umbrella insurance coverage amounts and policies for all Defendants.

II. EVIDENCE PRESENTED AT TRIAL

The damage hearing was held before me on November 10, 2022. The Plaintiff was represented by Jennifer Randolph Purdy, Esq. and the Defendants were represented by Chase Parker, Esq. The Plaintiff offered two witnesses at the damages trial: Jean Watkins, daughter of Mildred Watkins, who serves as the Personal Representative of Mildred Watkins' Estate; and Kim Watkins, daughter of Mildred Watkins. Exhibits were also offered into evidence by the



Plaintiff, all of which had been stipulated to previously by both parties, and were admitted without objection.

Mildred Watkins' other living children were present in the courtroom for the trial. Evidence related to damages was presented through the testimony of the witnesses and exhibits offered into evidence. Based upon the evidence, exhibits, and per applicable law, the Court hereby makes the following finding of fact as detailed below.

A. MILDRED WATKINS' BACKGROUND AND HEALTH

Mildred Watkins was a beloved wife, mother, grandmother, and great-grandmother. She was the neighborhood mom and had a large number of friends and colleagues who loved her. Mrs. Watkins and her husband, Charles, had been married for 52 years at the time of her death. She was described by her daughters as the love of their father's life. Charles died within months of Mildred's passing. At time of her death, Mrs. Watkins had four living children, four grandchildren, and four great-grandchildren. She was predeceased by a daughter, Denise. Mrs. Watkins raised Denise's infant son, Shomar, as her own child after Denise's passing.

Mrs. Watkins worked in a variety of careers over her lifetime but dedicated more than twenty years of her life as a CNA at C.M. Tucker Nursing Center where she was loved by her patients and co-workers. Tragically, Mrs. Watkins was deprived of the same level of care which she showed others when she found herself a rehabilitation resident of Country Wood Nursing Home.

Prior to entering the Defendants' facility for rehabilitation, Mrs. Watkins had been living at home with her husband, her daughter Jean, and her grandson Shomar. She was able to cook, clean, bathe, and feed herself. She enjoyed cooking for her family, crocheting, working puzzles, and spending time with her grandchildren.

Leading up to her stay at Country Wood, Mrs. Watkins had a fall at home and went to Heartland for rehabilitation and strengthening. While at Heartland, Mrs. Watkins suffered a GI bleed and was hospitalized at Palmetto Health Richland until that condition resolved. Upon resolution, her family decided to transfer her to Country Wood to complete her rehabilitation because it was closer to their home.

Mildred Watkins was admitted to Country Wood Nursing Home for rehabilitation on March 1, 2011. She was seventy-two (72) years old. Defendants' own admission records indicate that Mildred Watkins was admitted for rehabilitation, not long-term care. (History & Physical 3/18/11) The Defendants also noted that her rehabilitation potential was "good", the highest level on their form. Id.

Mrs. Watkins was generally in good health upon admission to Country Wood. Her existing health conditions were well maintained. She was on dialysis and had been successfully handling that regimen for more than 10 years. The Defendants' March 18, 2011 Admission History and Physical listed conditions, such as hypertension and GERD, all of which were controlled by medication. Id. Mrs. Watkins had no significant medical conditions which gave any indication that she would not be able to return home after a brief period of rehabilitation. The testimony and records reflect that Mildred Watkins was at Country Wood simply to regain her strength, as noted by the admitting doctor: "admitted for rehab due to general weakness and debility." Id.

Mrs. Watkins was also admitted to Country Wood without any skin problems. Exhibits offered into evidence, including the History and Physical and the Weekly Skin Audits for March, the month of her admission, do not reflect skin issues. (Id. and March Skin Audits) These indicate normal skin with no ulcers, tears, bruises, or problems. Id.

Testimony and exhibits reflect that upon admission to Country Wood, Mrs. Watkins was

able to walk with a walker. She could feed herself, use the toilet for bowel movements⁶, and she entered the facility without a Urinary Tract Infection (UTI). Mrs. Watkins, who was approximately 5 feet tall, weighed approximately 100 pounds at that time.

Jean and Kim Watkins testified that their mother had constant visits from her family and friends while at Country Wood. Jean visited multiple times each day. During those visits, Jean would enjoy spending time with her mother talking and reminiscing, watching cowboy movies, and spending time outside during pleasant weather. Charles Watkins would visit his wife daily. Mrs. Watkins' other children, grandchildren, and great-grandchildren would also visit regularly. Kim Watkins testified that she enjoyed the good-natured bickering she exchanged with her mother when they spent time together. Friends from the neighborhood and church family were also frequent visitors.

Jean Watkins testified that a large crowd gathered to celebrate Mrs. Watkins' 73rd birthday in September of 2011. The photographs entered into evidence reflect a happy woman who was enjoying her family and friends. (Party Photos Exhibit) She does not appear sickly or on the verge of death in less than three (3) months' time. Mrs. Watkins' family and friends enjoyed and cherished Mrs. Watkins, and she enjoyed and cherished them.

Jean Watkins testified that she and other family members had to take on the duties of the Defendants who were not properly caring for Mrs. Watkins. Jean Watkins testified that she had to feed, bathe, and change her mother regularly. She testified that her mother often smelled bad and was regularly in dirty clothes and soiled undergarments. Jean testified that her mother's clothes were missing and/or routinely seen being worn by other patients. She also testified that the food, drinks, and snacks that she brought to her mother would disappear immediately after she

⁶ Due to dialysis, she did not need to toilet for urination.



brought them. Jean Watkins testified that she frequently had to call or demand that the staff call for an ambulance for her mother due to the conditions that she found her mother in as she arrived to visit. Jean Watkins testified about these occasions in detail.

B. HOSPITALIZATIONS

1. HOSPITAL VISIT #1: FIRST 24 HOURS

Jean Watkins testified that her mother was transported by ambulance to the hospital within the first 24 hours of her admission to Country Wood. However, upon arrival at Richland Hospital, the staff could find nothing wrong with her and she was returned to Country Wood.

2. HOSPITAL VISIT #2: MARCH 15, 2011 EMERGENCY ROOM VISIT

Testimony and the March 15, 2011 hospital records were offered into evidence related to this incident. On March 15, 2011, Jean Watkins testified that she went to visit her mother at the Defendants' facility and found her mother unresponsive. No staff was attending to Mrs. Watkins. Jean insisted that an ambulance be called. Her mother was transported to Richland Hospital where she was diagnosed with a UTI with altered mental status. Strong antibiotics were administered, and Mrs. Watkins was returned to Country Wood.

3. HOSPITAL VISIT #3: AUGUST 22-25, 2011 ADMISSION

Testimony and the August 22-25, 2011 hospital records were offered into evidence related to this incident. Jean Watkins testified that she received a phone call on August 22, 2011 that her mother was being taken to the hospital from dialysis due to her altered mental status. Jean met her mother at the hospital where she was diagnosed with an acute UTI. She was admitted for treatment for three days.



4. HOSPITAL VISIT #4: OCTOBER 8-20, 2011 ADMISSION

Testimony and the October 8-20, 2011 hospital records were offered into evidence related to this incident. On October 8, 2011, Jean Watkins arrived at Country Wood and noticed that her mother was acting strangely and had a fever. She was also complaining of pain to her thumb, and upon Jean's observation, her thumb was swollen. Jean testified that she asked the staff what happened to her mother's thumb. They alleged that Mrs. Watkins had injured her thumb by hitting her hand on her bedrail. Again, Jean demanded that an ambulance be called. Mrs. Watkins was then transported to Richland Hospital where she was admitted for a severe UTI and a severely dislocated thumb. The ER doctor attempted to reduce the thumb in the emergency room, but was unable to do so, stating that it was "grossly unstable." Jean Watkins testified that the ER doctor asked her what happened to her mother's hand, and she relayed the Defendants' explanation. Jean Watkins testified that, after speaking with the doctors, it was her understanding that the explanation of the injury by Country Wood did not seem plausible, particularly given the location of her injury, and the injury was more consistent her thumb being pulled down and/or out with force. Mrs. Watkins' hand was splinted and an orthopedic referral was made.

Upon completion of her treatment for the severe UTI, Mrs. Watkins was released from the hospital on October 20, 2011 and returned to Country Wood. During this hospitalization, Jean Watkins also testified that the doctors were concerned that she was underweight. Nutritional supplements and snacks were recommended. Jean Watkins testified that she never saw the Defendants provide snacks or supplements despite Jean being present at the facility 2-3 times per day at various times day and night. Additionally, Jean testified that, on days when her mother had dialysis and was sleepy upon her return, the Defendants would regularly put a meal tray beside her bed while she was sleeping and then remove it before she ever woke up, causing her to miss



important meals. Jean testified that she would feed her mother when she visited to try to make up for the meals she was missing.

5. HOSPITAL VISIT #5: NOVEMBER 7, 2011 EMERGENCY ROOM

Testimony at trial, the November 7, 2011 hospital records, photographs of the laceration, staples, exposed metal on the bedframe, Ombudsman and DHEC Complaints, and Investigation documents were offered into evidence relating to this incident by stipulation and without objection. Jean Watkins testified that on November 7, 2011 she had just returned home from a visit with her mother at Country Wood when she received a phone call from the Defendants stating that her mother had cut her leg. When Jean arrived back at the facility, she found her mother with a large L-shaped gash on her leg, bleeding profusely, and in severe pain. She was initially told Mrs. Watkins caused her own injury, but ultimately an employee admitted that she had cut Mrs. Watkins' leg on a jagged piece of exposed metal protruding from her bed as she tried to lift Mrs. Watkins from her bed to the wheelchair. This jagged metal was created by the Defendants when they sawed off her bedrail and left a raw edge exposed. Defendants' admissions in the exhibits revealed that, shockingly, this had been done to fifteen (15) or more beds in the facility and was confirmed by an investigation performed by Country Wood following Jean Watkins' complaints to DHEC and the Ombudsman's office.

The Defendants had not called an ambulance prior to Jean's arrival, so Jean insisted that one be called immediately. Mrs. Watkins was transported to Richland Hospital where her leg received multiple staples. Jean Watkins testified about the pain that her mother experienced due to the reckless and careless act of the Defendants.



6. HOSPITAL VISIT #6: NOVEMBER 17, 2011 SURGERY

Witness testimony and the November 17, 2011 Operative Report were offered into evidence related to this incident. Mrs. Watkins was again at the hospital on November 17, 2011 for surgery for her severely dislocated thumb. Hardware was implanted to stabilize her thumb. She was placed in a hard cast up to her elbow following the surgery.

7. HOSPITAL VISIT #7: NOVEMBER 20-30 ADMISSION

Trial testimony, the November 20-30 hospital records, wound notes, a shoulder photograph, and the November 30, 2011 Nursing Assessment and History and Physical were offered into evidence related to this incident. Jean Watkins visited her mother on November 20, 2011 and found her acting strangely. She was not eating, she had been vomiting, and she had diarrhea. No one at Country Wood made any effort to call an ambulance until Jean insisted that one be called. Mildred Watkins was transported by ambulance to Richland Hospital where she was admitted for ten (10) days for a serious UTI with possible systemic response syndrome. Due to her cast on one arm and her dialysis port on the other, Richland had to use a central line in her leg to create an IV access. At Richland, Mrs. Watkins was noted to have numerous areas on her body with open wounds, bruises, skin tears, abrasions, and decubitus ulcers. Jean Watkins also took a photo of bruising to her mother's shoulder.

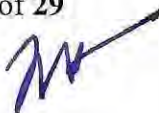
Upon her return to Country Wood, the Defendants confirmed on their November 30, 2011 admission assessment all of the skin abnormalities on Mrs. Watkins which were identified in the Richland Hospital records. The Defendants' report and diagram of Mrs. Watkins' body at this time was drastically different from the skin audits in March which revealed no skin abnormalities whatsoever.



The Defendants also noted Mrs. Watkins' weight to be 89.6 pounds, down at least 10 pounds from her admission in March. On Defendants' History and Physical for Mildred Watkins dated 12/7/2011, it was again noted that she had "good" rehab potential and that she was admitted as a rehabilitation patient and not as a long-term care patient. Mrs. Watkins was certainly not near death due to pre-existing chronic health conditions, as evidenced by Defendants' own records and physician's examination. However, Defendants' records did reveal that, after only a few months of living at Country Wood, Mildred Watkins had numerous wounds, was grossly underweight, had a massive leg laceration, and a surgically repaired thumb.

8. HOSPITAL VISIT #8: DECEMBER 7-15 ADMISSION

Trial testimony, the December 7-15, 2011 hospital records, the Coroner's Report with all photographs, the selected photographs from the Coroner's Report, and the Death Certificate were offered into evidence related to this incident. When Jean Watkins visited her mother on December 7, 2011, she found her non-responsive, slumped over in her wheelchair, and drooling into a saturated bib. She had never worn a bib before, so this was immediately alarming. She was also very dirty. Jean immediately asked the staff what was going on and was told that her mother had been like that for a while. No ambulance had been called. When Jean demanded that an ambulance be summoned, she was told by one of Defendants' staff that there was no need to call an ambulance because her mother was not going to get any better. Jean insisted on an ambulance, and her mother was transported to Palmetto Richland Hospital where she was diagnosed with septic shock from a UTI. Mrs. Watkins was admitted into the MICU. The hospital staff noted the multiple wounds, decubitus ulcers, bruises, and abrasions. Mrs. Watkins also had scratches in areas where she would not be able to reach herself. Due to the severity of her septic condition, Mrs. Watkins continued to



decline, and ultimately passed away on December 15, 2011, despite CPR efforts to save her life.

As a result of the condition of her body and the suspicious nature of her injuries, the hospital staff called the Richland County Coroner. The Coroner arrived and also found the condition of Mrs. Watkins' body to be suspicious for abuse and thereafter called in law enforcement. An autopsy was performed and the Coroner completed a report with photographs, indicating that the cause of death was urosepsis from a UTI. The Death Certificate reflects the same.

C. INVESTIGATIONS AND COMPLAINTS

Trial testimony, the complaints to DHEC and the Ombudsman's office, and Country Wood's Investigation records were offered into evidence. In addition to the Coroner's investigation and report, Jean Watkins reported what she believed to be neglect and abuse to both DHEC and the Ombudsman's office. The Defendants admitted at least some of the reckless acts. These exhibits were admitted by stipulation, without objection.

After the trial, the defense suggested in their Brief that several statements made by the witnesses at trial were improper hearsay statements. This objection is without merit because the very statements that the defense argues are inadmissible hearsay (related to the doctor's statements to Jean Watkins that the injury to Mildred Watkins' thumb was caused by pulling or twisting her thumb) are the same exact statements made by Jean Watkins in her written complaints to the Ombudsman and DHEC. (Plaintiff's Brief, Exhibit 10) The admissibility of these documents and all other exhibits were stipulated to by the parties prior to trial and were admitted without objection from the defense at trial. Furthermore, in their Brief the defense references and even quotes the exact language from the Exhibit wherein Jean Watkins listed the statements from the doctor about how her mother's thumb was injured. To now argue that the testimony of Jean Watkins at trial was inadmissible hearsay is disingenuous when she was recounting the exact same information



contained in written form in the exhibits, which were stipulated to by the parties and admitted without objection. Furthermore, this was a bench trial, not a jury trial, and this Court is capable of properly evaluating and excluding and/or properly weighing hearsay statements when rendering a verdict.

D. FALSIFIED DOCUMENTS

Trial testimony and the August and October Weekly Skin Audits were offered into evidence. The excerpts used as trial exhibits, dated August 23, 2011, August 30, 2011, October 11, 2011, and October 18, 2011, are documents completed and authored by the Defendants which purport to detail skin checks performed by Defendants' staff on Mildred Watkins on those dates. They note how her skin felt to the touch, if she had any visible wounds, etc. However, the testimony of Jean Watkins and the associated medical records related to Mildred Watkins' hospitalizations which were admitted into evidence reveal that Mildred Watkins was at Palmetto Richland Hospital, not Country Wood, on each of the occasions that the Defendants assert that they performed hands-on examinations of Mrs. Watkins. The Defendant could not have performed skin audits at Country Wood during periods of time when Mrs. Watkins was hospitalized. The records were falsified to give the appearance that treatment and attention was being provided to Mrs. Watkins *when she was not even present in the facility*. Regular skin checks are essential in health care and nursing home settings in order to discover any developing wounds or ulcers and to initiate proper treatment therefor. The Defendants' own forms state that staff must check a patient's skin weekly. Failure to perform these checks and maintain the health and integrity of Mildred Watkins' skin, which clearly allowed decubitus ulcers and other wounds to develop and remain untreated and/or improperly treated, contributed to Mildred Watkins' pain and suffering and impacted her overall health. These are egregious acts of fraud and misrepresentation of



medical treatment and alterations of medical records by the Defendants in an attempt to avoid liability. The Court finds that these actions were willful, wanton, and reckless and contributed to the pain, the suffering, and the ultimate death of Mildred Watkins.

Based on the condition of her skin at her death, as evidenced by the hospital records and the Coroner's Report and photos, the Defendants were not making efforts to discover, prevent, monitor, or treat Mrs. Watkins' skin breakdowns. Additionally, because the Plaintiff never received complete discovery, it's unclear if there are many more instances of fraud and falsified documents which would further support an even larger award of punitive damages against the Defendants.

III. DAMAGES ALLOWED IN MEDICAL MALPRACTICE ACTIONS

A judge or jury in a medical malpractice and nursing home action can award compensation for physical pain and suffering, mental anguish, physical disability, loss of enjoyment of life, medical expenses, and any other loss or damage recognized in a personal injury action. *Pearson v. Bridges*, 344 S.C. 366, 372 (2001). Additionally, in a wrongful death action, the Personal Representative can recover "(1) pecuniary loss; (2) mental shock and suffering; (3) wounded feelings; (4) grief and sorrow; (5) loss of companionship; and (6) deprivation of the use and comfort of the intestate's society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries." *Welch v. Epstein*, 342 2749, 304 (Ct. App. 2000).

As outlined herein above, the testimony of the witnesses and evidence presented at the hearing support a large award for pain and suffering, mental anguish, physical disability, loss of enjoyment of life, and medical expenses. The medical expenses presented total \$390,192.34.



Additionally, the funeral expenses presented at the hearing total \$8,077.98. Both Jean and Kim Watkins testified regarding their mother's on-going pain and suffering. Likewise, the photos in the Coroner's Report clearly reflect a torturous existence in the last months of Mrs. Watkins' life.

Punitive damages are also allowed in a medical malpractice claim. The Plaintiff must show that the Defendants' conduct was willful, wanton, or in reckless disregard of the Plaintiff's rights. *Taylor v. Medenica*, 324 S.C. 200, 221-222 (1996) This type of conduct is that which an ordinary person would have been aware would have been an invasion of the Plaintiff's rights. *Id.* Willful conduct is defined as a conscious failure to exercise due care. *Id.*

Punitive damages are permitted under a due process analysis when a court considers: 1) the degree of the defendant's culpability; 2) the duration of the misconduct; 3) the defendant's awareness or concealment of the misconduct; 4) the existence of prior similar misconduct; 5) the likelihood that award of punitive damages will deter others from committing the same misconduct; 6) whether the award is reasonably related to the harm caused; 7) the defendant's ability to pay; and 8) other factors the court deems appropriate. *Gamble v. Stevenson*, 305 S.C. 104 (1991) The court is not required to make specific findings of fact regarding each factor. *Welch*, 342. S.C. at 306.

The Plaintiff is entitled to economic, noneconomic, and punitive damages for both the survival action and the wrongful death action against all three Defendants, as further specified below.

A. SURVIVAL ACTION

1. MEDICAL AND FUNERAL EXPENSES

Jean Watkins testified and submitted into evidence a Medical Summary and Bills related to medical expenses for treatment for injuries sustained in the amount of \$390,192.34 while a



resident of Defendants' facility. Jean Watkins also testified and submitted a funeral bill and program as evidence in the amount of \$8,077.98.

As to the Survival Action, I HEREBY FIND that the Plaintiff has suffered economic damages in the sum of \$398,270.32, which is the total of the medical and funeral expenses.

2. PAIN AND SUFFERING

The testimony from Jean and Kim Watkins regarding their mother's pain and suffering was powerful. Mrs. Watkins had eight (8) Emergency Room visits or hospital admissions between March 1, 2011 and December 7, 2011. Six (6) of these were for severe UTIs, the last of which resulted in her death. It is commonly known that UTIs are extremely uncomfortable and painful. Mrs. Watkins' were so severe, and went on for so long, that her mental status became altered, and she developed fever, nausea, and diarrhea. She suffered with the symptoms of preventable and untreated UTIs for the last ten (10) months of her life.

Mrs. Watkins also suffered greatly due to the severe leg laceration, which was large and bleeding out for an extended period of time. Thereafter, she had to endure the pain of multiple staples in her leg and the on-going pain and permanent scarring left behind.

Mildred Watkins' "grossly dislocated" thumb was no doubt excruciating. She endured painful attempts at reducing the dislocation in the emergency room, wore an uncomfortable splint for weeks, endured a painful surgery with the placement of permanent hardware, and then had to suffer wearing a large heavy cast from her hand to her elbow. The cast ultimately prevented her from having IV access and resulted in the need for a central line during subsequent hospitalizations.

Her extreme weight loss and malnutrition kept her in a weakened state and prevented her from participating in rehabilitation, which was the very basis for her admission. Additionally,



nutrition is well known to be linked to the ability of an individual to heal from wounds and other conditions. Without proper nutrition, healing can be delayed, difficult, or impossible.

Finally, Mildred Watkins entered Country Wood for rehabilitation with no body wounds. Her skin condition at death revealed a pain-filled existence from the date of her admission to her death. She had multiple large, open decubitus ulcers, numerous unexplained bruises, mysterious scratches in areas that she could not reach herself, and a variety of other skin wounds and abrasions which were certainly painful to her every minute of every day. The Coroner's photographs reveal an emaciated lady who was riddled with shocking and painful wounds all over her body.

The Court finds that Mildred Watkins' suffered at the hands of the Defendants daily for ten long months, and the Plaintiff is entitled to compensation for the same.

As to the Survival Action, I HEREBY FIND that the Plaintiff has suffered non-economic damages (pain and suffering) in the sum of \$2,389,621.92, which is six (6) times the economic damages. S.C. Code Ann. §15-32-220 does not apply, as more fully addressed below.

3. PUNITIVE DAMAGES

Punitive damages are applicable against all Defendants. The Defendants, as the owners and operators of Country Wood Nursing Home, repeatedly acted in a grossly negligent, reckless, willful, wanton, and reckless manner toward Mildred Watkins. They repeatedly failed to prevent, diagnose, and treat UTIs, allowing them to become so severe as to require hospitalization, and ultimately her death.

They cut the bedrails off the beds of elderly and sick patients, leaving jagged exposed metal to cut them and require staples. A facility that is charged with caring for those who need help caring for themselves recklessly created an unreasonably dangerous condition on the beds of their



residents, including Mildred Watkins. This reckless and grossly negligent act caused a severe and permanent injury to Mildred Watkins.

The Defendants caused tremendous harm, and ultimately death, to Mrs. Watkins by neglecting and abusing her. The Court also finds that the Defendants' account of Mrs. Watkins' thumb injury is implausible. Jean Watkins testified that the Defendants' employees told her that her mother had dislocated her thumb by hitting her hand on the top of her bedrail. Based on the medical records alone (which were admitted into evidence by stipulation of the parties and without objection) which reflect the location, type, and severity of injury to Mrs. Watkins' thumb, the records are inconsistent with the Defendants' statements. However, even if there is no intentional abuse, and assuming the Defendants' account of the thumb injury is correct, the Defendants were grossly negligent in not preventing Mrs. Watkins' injury when they admittedly had actual knowledge that Mrs. Watkins would regularly hit her hand on the bedrail. This failure to prevent a known risk for severe injury alone is evidence of grossly negligent, reckless, and willful conduct sufficient to warrant punitive damages.

The Defendants acted with reckless disregard of Mildred Watkins' health and failed to prevent, and thereafter treat, her skin breakdowns to the point that there was almost no place on her entire five-foot frame which did not have a wound at the time of her death. They created bruises and scratches that have no logical explanation and warranted a call for a criminal investigation.

Not only did the Defendants fail to rehabilitate Mildred Watkins, they failed to provide even basic nutrition and preventative care and accelerated her demise.

S.C. Code Ann. §15-32-220(E) states that if the Defendants have engaged in fraud or misrepresentation related to the claim, or if they altered or destroyed medical records with the



purpose of avoiding a claim or liability to the claimant, there is no cap on non-economic damages. The Weekly Skin Audits created by the Defendants during multiple periods of time when Mildred Watkins was out of the facility and in the hospital are clear and convincing evidence of fraud, misrepresentation, and the alteration of medical records to avoid liability. (Exhibit 20) These documents alone preclude the Defendants from availing themselves of the protections of the caps on noneconomic damages.

The Defendants knowingly and willfully falsified medical records, pretending to provide treatment and services that they could not have provided, because Mrs. Watkins was hospitalized at the time the alleged examinations were performed. There is clear and convincing evidence of actual fraud. This is overwhelming evidence of the extreme measures which the Defendants would take in order to consciously conceal the inadequate care they provided to Mrs. Watkins.

Furthermore, the Defendants failed to cooperate with discovery and comply with the Orders of this Court, which thwarted the Plaintiff's ability to properly advance her case, particularly with regard to punitive damages, thereby creating delays and hardships for the Plaintiff and this family. This Court will not reward the Defendants with the protections of S.C. Code Ann. §15-32-530(B)(1) when they have obstructed Plaintiff's ability to produce further evidence of fraudulent acts, which would further render this section inapplicable, by withholding discovery and violating Court Orders related thereto. The finding of actual fraud in the skin check records during periods of Mildred Watkins' hospitalizations alone is clear and convincing evidence which renders the protections of §15-32-530(B)(1) and (2) inapplicable. Similarly, §15-32-220(E) applies. The clear and convincing evidence of actual fraud relating to the skin check records operates to deny the Defendants the protections of the non-economic caps.

As to the Survival Action, S.C. Code Ann. §15-32-530(B)(3) applies. Having



thoroughly reviewed and analyzed the requirements of *Gamble*,⁷ the Court finds a multiplier of six (6) is again appropriate against the total economic and non-economic damages, and therefore award \$16,727,353.44 in punitive damages on the Survival Action.⁸

THE TOTAL SURVIVAL ACTION VERDICT IS: \$19,515,245.68.

B. WRONGFUL DEATH

The testimony and evidence revealed that on December 7, 2011, the date that Mildred Watkins would ultimately enter the hospital for the last time, the doctor at Defendants' facility evaluated Mildred Watkins earlier in the day. As documented in Defendants' own Country Wood December 7, 2011 exam records, the Defendants' doctor noted that Mrs. Watkins was still a *rehabilitation* patient and that her potential for rehab was still "good." This was not a woman who the Defendants' own physician felt was near death, or who was even destined for long-term care. The Defendants clearly took away a life that had potential for recovery had they provided her with the care they were entrusted to provide.

⁷ The Court incorporates by reference the *Gamble* analysis beginning on page 23 of this order. That analysis should be taken as applying equally to the punitive damages award for both the survival and wrongful death causes of action.

⁸ *Mitchell Jr v. Fortis Insurance Co.* was instructive in this Court's consideration of the appropriateness of this punitive damages award. This Court finds that due process is not offended by using a multiplier of 6 in this case. In *Fortis* the Supreme Court held that a 13.9 to 1 ratio exceeded due process limits and reduced the award to a 9 to 1 ratio. See *Mitchell Jr v. Fortis Insurance Co.*, 385 S.C. 570, 686 S.E.2d 176, 187 (2009). In doing so, the court noted that the conduct by the defendant was reprehensible enough to warrant an award towards the outer limits of the single digit ratio. *Id.* Not only has this Court stayed within the single digit ratio in utilizing a multiplier of six, but as discussed throughout this opinion, the defendant's behavior leading up to and throughout this litigation warrants such a multiplier and may well have merited a larger award towards the outer limits of the single-digit ratio.



Both Jean and Kim Watkins testified lovingly of their mother and the joy and comfort that she brought to each of them and their family. They testified about how Mrs. Watkins' grandchildren still cannot cope with her death. They testified how Mrs. Watkins loving husband of 52 years, Charles, gave up on living himself when Mildred died. Kim testified about Shomar, the grandson who was treated like a son and who had lived with Mrs. Watkins since he was an infant, who shut down completely after Mildred's death because he had now lost, not one, but two mothers. Kim recounted an episode driving home from work when she received a call and heard Shomar's sobs and screams in the background over the loss of his beloved "mother." Kim, herself overcome with emotion, had to pull the car over when thinking of the loss of her mother and the pain it caused her family. The testimony revealed that the Watkins are a close family. They visit and love each other. They could not have anticipated that their mother would die months after entering Defendants' facility for rehabilitation. Mildred Watkins was only 73 years old at the time of her death. The family was deprived of many years of love, comfort, and companionship. According to the Life Expectancy Tables, S.C. Code Ann. §19-1-150, the Court finds that Mrs. Watkins would have been expected to live an additional 14.31 years.

The family's loss is tremendous, and their suffering has been great. The suffering has been further compounded by their inability to gain closure because of the conduct of the Defendants throughout the course of this litigation. Mildred Watkins died December 15, 2011. We are just past the eleventh (11th) anniversary of her death. The actions of the Defendants in refusing to cooperate, refusing to comply with Orders of the Court, and delaying justice for this family have created additional pain and hardship for this family.

Cognizant of her 14.31 year life expectancy, the Court finds that the Plaintiff is entitled to an award of \$1,500,000.00 to each of the five (5) Wrongful Death claimants. This



calculates to approximately \$287.00 per day of her expected remaining life, a small sum considering the loss of the many experiences the family would have enjoyed with their mother had she survived. This award totals \$7,500,000.00 for compensatory damages.

With regard to punitive damages, the same analysis and facts discussed herein above warrant an award of punitive damages without caps.

Gamble v. Stevenson established three stages in this state to a trial court's review of punitive damages. *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet, Inc.*, 324 S.C. 149, 154, 478 S.E.2d 57, 59 (1996) First, the court must determine whether the defendant's conduct rises to the level of culpability warranting a punitive damage award. *Id.* As discussed above, the Court finds that the Defendant's conduct did rise to this culpability level and that the Plaintiffs presented sufficient evidence of the Defendants willful, wanton, or reckless misconduct to support an award of punitive damages. Second, the trial judge must conduct a post-trial *Gamble* review to ensure the award does not deprive the defendant of due process. *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 239, 763 S.E.2d 615, 619 (Ct. App. 2014) Under the third *Gamble* stage, if the award is determined not to violate the defendant's due process rights, the court must determine whether in exercising its discretion it finds the award excessive or inadequate. *Id.*

In *Gamble*, the South Carolina Supreme Court established 7 factors for a trial court to consider in analyzing whether punitive damages are proper. *Gamble v. Stevenson*, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991) An analysis of the *Gamble* factors favors the Court's award of punitive damages for the following reasons:

- (1) First, the defendant is culpable by and through the willful, wanton, and reckless lack of care and repeated injury to Mildred Watkins by the Defendant's employees.



- (2) Duration of the conduct: The Defendant's conduct was continuous during Mrs. Watkins' ten month stay until she ultimately succumbed to her injuries.
- (3) Defendant's awareness or concealment: The Defendant's fraudulent revision of Mrs. Watkins' treatment records demonstrates they were aware of their grossly negligent conduct and acted to conceal their conduct.
- (4) The existence of similar past conduct: Evidence of complaints to DHEC, the Ombudsman's office, and Country Wood's own investigation records were offered into evidence at trial. Defendant admitted that 15 beds in the facility, including Mrs. Watkins' bed, had sawed off bedrails with exposed raw edges. Given such evidence, it is reasonable to presume that Country Wood staff showed a similar lack of care toward other patients.
- (5) Likelihood the award will deter the defendant or others from like conduct: Regarding the fifth *Gamble* factor, this Court finds it necessary to remind the Defendants, as a facility purporting to provide rehabilitation and care to the vulnerable populations of this State, that the abuse and misconduct which occurred in this case is wholly unacceptable. Punitive damages are necessary in this case to deter the Defendants, who own several rehabilitative facilities, from any similar action in the future, and such an award will serve to deter other facilities from similar reprehensible conduct.
- (6) Whether the award is reasonably related to the harm likely to result from such conduct: As described in the analysis above, this Court must conclude that the defendant's gross negligence and lack of care is directly related to the harm caused to Mrs. Watkins and her family.
- (7) The Defendant's ability to pay: Given the defendants ability to finance eleven years of litigation and continued operation of multiple rehabilitative facilities throughout the



Southeast, it is reasonable to conclude that the Defendants have the means and ability to pay. Notably, the Defendants' failure to comply with discovery hampers the Court's ability to assess their ability to pay. Because of defendants' failure to disclose its finances, the Court cannot fully assess this factor. However, the quality and expense of the lawyers hired by Defendants indicates that they clearly have substantial resources to defend this case.

Having thoroughly reviewed and analyzed the requirements of *Gamble*, the Court awards punitive damages in the sum of \$500,000.00 for each claimant, for a total punitive damages verdict of \$2,500,000.00 in the Wrongful Death Action.

THE TOTAL WRONGFUL DEATH VERDICT IS: \$10,000,000.00.

**IV. NON-ECONOMIC DAMAGES CAPS AND
PUNITIVE DAMAGE CAPS DO NOT APPLY**

Limitations on non-economic damages do not apply if the court determines the defendants were grossly negligent, willful, wanton, or reckless, and the conduct was the proximate cause of Mrs. Watkins' injuries and death. S.C. Code Ann. §15-32-220(E) The testimony of Jean and Kim Watkins, along with the evidence submitted at the damages hearing as detailed above, definitively establishes, by clear and convincing evidence, the grossly negligent, willful, wanton, and reckless conduct by the Defendants which resulted in the injuries sustained by Mildred Watkins, as well as her untimely death. Because these exceptions to the noneconomic damages cap apply, there is no limitation on the amount of nonpecuniary damages that can be awarded to the Plaintiff in the survival and wrongful death actions against all Defendants.

Furthermore, S.C. Code Ann. §15-32-220(E) states that if the Defendants have engaged in fraud or misrepresentation related to the claim, or if they altered or destroyed medical records with



the purpose of avoiding a claim or liability to the claimant, there is no cap on non-economic damages. The Weekly Skin Audits created by the Defendants during multiple periods of time when Mildred Watkins was out of the facility and in the hospital are clear and convincing evidence of fraud, misrepresentation, and the alteration of medical records to avoid liability. These documents alone preclude the Defendants from availing themselves of the protections of the caps on noneconomic damages.

Likewise, pursuant to S.C. Code Ann. §15-32-530, punitive damages caps are not applicable to protect the Defendants in this case. S.C. Code Ann. §15-32-530(B) and (C) detail the requirements for avoiding the punitive damages cap. These sections require the judge to determine if the unreasonably dangerous conduct, together with the high likelihood of injury resulting from the conduct, was motivated by unreasonable financial gain and that such conduct was known or approved by the managing agent, director, officer, or the person responsible for making policy decisions; or if the defendant's actions could subject the defendant to conviction of a felony and the conduct was the proximate cause of the Plaintiff's damages. *Id.* However, according to S.C. Code Ann. §15-32-560(C), there is no cap whatsoever on punitive damages the Court determines that one of the several conditions applies, including: at the time of the injury, the Defendant had an intent to harm, and the Defendant's conduct did in fact harm the claimant. *Id.*

The testimony of the witnesses and the evidence submitted at the hearing clearly reflect that the Defendants operated their facility with callous disregard for the health and safety of their patients and failed to provide adequate staff and services to meet their basic needs, including nutrition and proper hygiene. There is also evidence that the Defendants' abused Mildred Watkins by either dislocating her thumb, or allowing it to become dislocated despite actual knowledge that



she would hit her hand on the bedrail, lacerating her leg by sawing off the bedrails and leaving jagged exposed metal on her bed, by giving her bruises and scratches and multiple bruises and wounds. There was also testimony by Jean Watkins that the Defendants repeatedly failed to call EMS when it was obvious that Mildred Watkins required immediate medical care. Jean Watkins' testimony revealed that on the last day that Mrs. Watkins was at Country Wood, the Defendants had failed to call an ambulance upon finding Mrs. Watkins slumped and drooling in her wheelchair. Instead, they placed her in a bib and did nothing further; they did not even call Jean Watkins. When finally asked to call an ambulance by Jean, one of Defendants' employees stated that there was no need to call an ambulance because Mrs. Watkins was not going to get any better. This is clear and convincing evidence of callous indifference and intent to harm, which did in fact cause harm, to Mildred Watkins.

There is evidence that the Defendants failed to prevent, monitor, and/or treat Mildred Watkins' UTIs. Despite actual knowledge that she had suffered several UTIs while in their care, the Defendants did nothing to prevent, monitor, test, or treat for UTIs. This is clear and convincing evidence of an intent to harm which ultimately resulted in Mrs. Watkins' death.

Finally, evidence was submitted of Mrs. Watkins severe decubitus ulcers, wounds, abrasions, scratches, and other skin conditions prior to and at the time of her death. It is clear from the testimony and evidence submitted that the Defendants failed to take actions to prevent, identify, and/or treat Mrs. Watkins' skin problems. Records and photographs admitted into evidence provide clear, convincing, and graphic evidence that there was an intent to harm which, in fact, did harm Mildred Watkins. The fraudulent Weekly Skin Audits also are clear and convincing acts of intentional misconduct which resulted in harm to Mildred Watkins.

As admitted by the Defendants during an investigation of their facility, jagged metal which



previously held bed rails, like the one that injured Mrs. Watkins, certainly were not removed from fifteen beds throughout the facility without the knowledge and approval of management.

Beyond these examples, the Plaintiff and this Court can never fully know other instances of intentional conduct of which the management ordered or knew because the Defendants wholly failed to cooperate in discovery and thereby deprived the Plaintiff of her right to fully investigate these critical aspects of her case.

All of these are clear and convincing examples of intent to harm Mrs. Watkins, which in fact, did harm and ultimately kill her. If these Defendant companies were individuals, any of these occurrences could result in the offender being convicted of a felony.

The removal of damages caps is completely justified in this case. I am not given to hyperbole or extreme statements, and with this assertion it should be noted that this is the most egregious case of elder neglect/abuse I have ever witnessed – and most of the similar cases I have seen involve the criminal side of my jurisdiction. I recently heard a homicide by child abuse case wherein a helpless infant was beaten to death over the course of three to fifteen minutes. Mrs. Watkins endured abuse for months which ultimately killed her. The infant's death was more merciful than what transpired here. If any of the three corporations were a person, they would be jailed for the rest of their lives. That such abuse could take place, and the only remedy is through the court of common pleas, is an injustice in and of itself. That defendants wholly failed to comply with discovery only exacerbates the criminal conduct which took place in this case. Defendants deserve a much greater punishment than imposed in this court's cool and reasoned civil verdict.

V. DEFENDANTS ARE JOINTLY AND SEVERALLY LIABLE

Pursuant to S.C. Code Ann. §15-38-15, individual defendants would not typically be

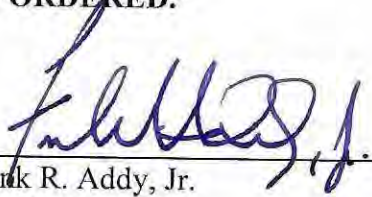


subjected to the traditional common law rule of joint and several liability. However, pursuant to section (F) of that statute, the protection from joint and several liability does not apply to a defendant whose conduct is determined to be willful, wanton, reckless, gross negligent, or intentional. For the numerous reasons outlined above, the conduct of the Defendants would again prevent them from availing themselves of the protection of this limitation on liability. **As such, it is the finding of this Court that all Defendants are jointly and severally liable for the verdict awarded to the Plaintiff.**

VI. CONCLUSION

Therefore, after a lengthy period of review of the evidence and briefs submitted by the parties, contemplation, and calculation of damages, **IT IS ORDERED** that the Plaintiff is awarded the sum of \$19,515,245.68 for the Survival Action and the sum of \$10,000,000.00 for the Wrongful Death Action, for a total award of \$29,515,245.68 against all Defendants, jointly and severally.

This is the Court's VERDICT AND IT IS SO ORDERED.⁹



 Frank R. Addy, Jr.
 Circuit Court Judge

January 31, 2023
 Greenwood, South Carolina

⁹ In anticipation of an appeal of this Order and contemporaneously with the issuance of this Order, the Court has issued a separate Order concerning discovery of any applicable insurance policies or other assets which could be applied to satisfy, in whole or in part, this judgment. The separate Order is being issued in the hopes that the appellate court will allow that Order to be remanded so that, while this Order is on appeal, Plaintiff may continue her efforts to ascertain if there are even assets available to satisfy this judgment.