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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2016-CP-40-04463
Appellate Case No. 2023-000556

Jean Watkins, as Personal
Representative of the
Estate of Mildred
Watkins,

Respondent,

v.

Sterling Healthcare, Inc.,
Country Wood Nursing
Center, LLC, and
Guardian Resources, LLC,

Appellants.

RECORD ON APPEAL

VOLUME I

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: **2014CP4005160**

Jean Watkins

Sterling Healthcare Inc

Mildred Watkins

Country Wood Nursing Center LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 August 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer Randolph Purdy

Erin Lawson Coia

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Shanette W. McBride

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.)

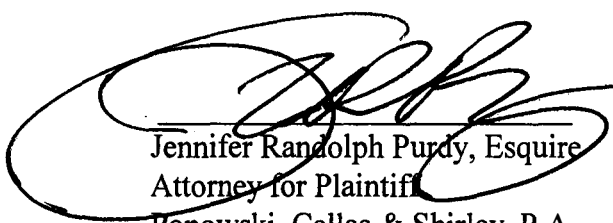
IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

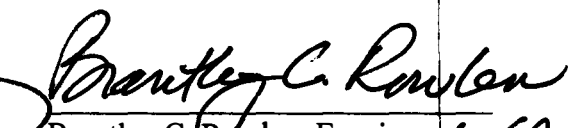
Case No.: 2014-CP-40-05160

CONSENT ORDER FOR 40(j)

2015 AUG -14 AM 10:03
RICHLAND COUNTY
FILED
JANETTE W. HARRIS
C.C.P. & G.S.

Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, the parties agree that the above-referenced case shall be stricken from the docket. The parties further agree that if the claim is restored within one year of the date stricken, the Statute of Limitations shall be tolled as to all consenting parties during the time the case is stricken, and any unexpired portion of the Statute of Limitations on the date the case is stricken shall remain and begin to run on the date that the claim is restored. The parties also agree that the case may be restored to the docket provided a motion to restore the case is made at any time within one year of the date stricken. The parties further agree that discovery will continue during the time period that the case is stricken from the docket.


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Atlanta, Georgia 30309
404.348.8585
404.467.8845 (fax)


with consent

2025.8
13/15

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Alison R. Lee", written over a horizontal line.

The Honorable Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit

Date: July 31, 2015

Nicholas G. Callas
J. Scott Shirley
Vanessa Crittenden Overbay
Jennifer Randolph Purdy*

*Also admitted in Georgia
*Also admitted in North Carolina



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July 29, 2015

VIA FIRST CLASS MAIL and FAX: (803) 576-1768

The Honorable Alison R. Lee
Chief Administrative Judge for the 5th Circuit
P.O. Box 192
Columbia, South Carolina 29202-0192

Re: Jean Watkins, as Personal Representative of the Estate of Mildred
Watkins v. Sterling Healthcare Inc., Country Wood Nursing Center,
LLC, and Guardian Resources, LLC
Civil Action No.: 2014-CP-40-5160

Dear Judge Lee:

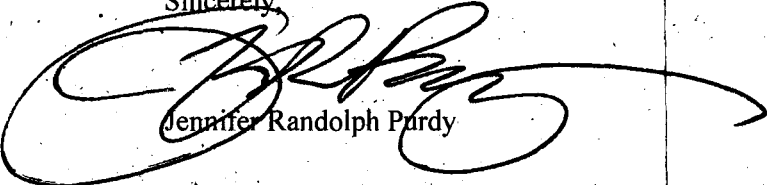
Attached for your review and consideration is a proposed Consent Order for 40(j) related to the above-referenced matter. It is our understanding that this case will appear on the roster for the first time on August 24, 2015.

This is a nursing home negligence / medical malpractice case involving multiple Defendants. Written discovery has been on-going for many months, during which thousands of pages of documents have been exchanged. Additional document exchange is anticipated. Over 55 witnesses have recently been identified in this case and depositions are being scheduled. The Plaintiff has filed a Motion to Compel discovery, which if granted, will require additional disclosures and depositions.

Because of the complexity of the case and the number of documents and witnesses, we ask that you grant our joint request for a 40(j) to afford all parties ample time to complete discovery and prepare the case for trial. I have enclosed a check for the filing fee.

Should you have any questions or wish to discuss this matter further, please do not hesitate to contact me. Thank you in advance for your consideration of this request.

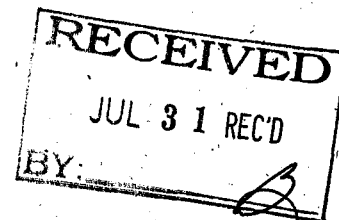
Sincerely,


Jennifer Randolph Purdy

JRP:mm

cc w/enc:

Brantley Rowlen, Esq.
Erin Coia, Esq.



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

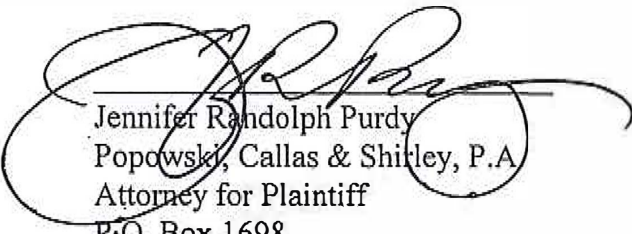
Case No.: 2014-CP-40-05160

**CONSENT ORDER RESTORING
CASE TO DOCKET**

RICHLAND COUNTY
FILED
2016 JUL 27 AM 9:11
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure, the parties consent to restore the above-referenced case to the docket. This case was stricken from the docket pursuant to Rule 40(j) and with the consent of each party on July 31, 2015. The parties acknowledge that this agreement is timely and that it is being filed within one year of the date stricken, and that the Statute of Limitations is tolled as to all consenting parties during the time the case is stricken. The parties consent to the restoration of the case to the docket at this time and to the assignment of a new case number for docketing purposes.

WE CONSENT:


Jennifer Randolph Purdy
Popowski, Callas & Shirley, P.A.
Attorney for Plaintiff
P.O. Box 1698
Columbia, South Carolina 29202
(803) 799-2100

Date:

July 20, 2016

Brantley C. Rowlen

Brantley C. Rowlen, Esquire

Leah Parker, Esquire

Attorneys for Defendants

Lewis, Brisbois, Bisgaard & Smith, LLP

1180 Peachtree Street, N.E., Suite 2900

Atlanta, Georgia 30309

404.348.8585

404.467.8845 (fax)

Date:

July 20, 2016

IT IS SO ORDERED.

~~DeAndrea Benjamin~~
The Honorable DeAndrea Gist Benjamin
Chief Administrative Judge
Fifth Judicial Circuit

Date:

7-25-16

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.: 2014-CP-40-05160

**ORDER GRANTING PLAINTIFF'S
MOTION TO COMPEL AGAINST
ALL DEFENDANTS**

The Plaintiff served all Defendants with discovery requests on or about August 22, 2014. The Defendants submitted partial responses on or about November 20, 2014, May 5, 2015, and September 25, 2015. However, all Defendants failed to fully answer all of Plaintiff's discovery requests. The Plaintiff filed a Motion to Compel on July 29, 2015 and this matter was heard on February 24, 2016. Both parties submitted a Memorandum in support of their positions. Present at the hearing were Jennifer Randolph Purdy, attorney for Plaintiff, and Erin Coia, attorney for Defendants. After review of the Memoranda and documents provided by counsel, and after hearing the arguments of counsel, this Court finds as follows:

AS TO ALL DEFENDANTS:

1. The Court finds that the Plaintiff is still without essential documents and information necessary to prepare her case or even take depositions of critical witnesses. The information withheld from the defense is essential to the Plaintiff's claim and there is no legitimate reason for the defense to withhold the same.

2. All Defendants are hereby ordered to fully and completely respond to Plaintiff's Interrogatories and Requests for Production, including but not limited to the specific items specified in Plaintiff's Memorandum in Support of her Motion to Compel and referenced in this Order.

3. The Plaintiff has demonstrated good cause to exceed fifty (50) Interrogatories and is hereby authorized by the Court to exceed fifty Interrogatories to each Defendant. Any Interrogatory not fully answered by the Defendants on the grounds that the maximum number of Interrogatories had been reached, along with any additional Interrogatories submitted by the Plaintiff, shall now be answered by each Defendant in their entirety.

4. Full and complete responses to all Interrogatories and Requests for Production shall be made by the Defendants within twenty (20) days of the date of this Order.

AS TO DEFENDANT COUNTRY WOOD
INTERROGATORIES

5. Defendant Country Wood shall answer, in their entirety, all Interrogatories propounded to the Defendant, including those specifically referenced in Plaintiff's Memorandum in Support of Motion to Compel.

6. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #2. Additionally, this Order specifically directs the Defendants to produce any and all insurance documents, policies, endorsements, declarations pages, etc. which provide coverage of any type to any or all of the Defendants, owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.

7. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #3. Additionally, this Order specifically directs the Defendants to point to specific

evidence in support of their allegations that other individuals and/or entities are responsible for the Plaintiff's injuries and death and/or to admit that there are no liable parties to this matter other than those already named in this litigation.

8. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #4. Additionally, this Order specifically directs the Defendants to provide the names of any and all witnesses to this matter, and specifically, all individuals who provided any care, treatment, or services to the Plaintiff while she was a resident of Country Wood, including but not limited to those individuals listed in Plaintiff's Memorandum. Defendant is further Ordered to provide employee files for these individuals, including but not limited to those individuals listed in Plaintiff's Memorandum, and to obtain the employee files from independent and contracted individuals and companies. Defendant is also ordered to provide complete and un-redacted contracts between the Defendants and independent contractors and companies providing services to Country Wood and its patients during the period of Plaintiff's residency.

9. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #6 and 30. This request further Orders the Defendant to provide a detailed response to this request and not merely refer the Plaintiff to Bates stamped items 002057-002059, which are not responsive to #30.

10. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatories #7, 8, 9, and 10. These Interrogatories relate to employees, administrators, consultants, and contract workers who had any involvement with the care and treatment of the decedent. The Court orders that the employment status, last known address and present employment be provided for all individuals who had any involvement with the decedent during her residency and that complete employment files be provided for the same. This Order includes,



but is not limited to the list of individuals provided by the Plaintiff in her Memorandum.

11. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #11, including but not limited to the complete employee files of independent contractors and companies providing care or services at Country Wood during the period of Plaintiff's residency. This specifically includes, but is not limited to employees of Evergreen Rehabilitation and Healthcare Services Group. The Court further orders that complete and unredacted copies of all contracts between any and all Defendants and outside independent contractors and/or companies be produced.

12. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #23. This Order includes, but is not limited to the production of any and all manuals, handbooks, policies and procedures, guides, etc., including but not limited to: the Policy and Procedure Manuals for Nursing, Policy and Procedure Manual for Administration, and Employee Handbook / Manual. The copies should also include title pages, tables of contents, indexes, addendums, etc. for all manuals / handbooks in place for any and all Defendants during the period of Plaintiff's residency.

13. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #47. Additionally, this Order specifically directs the Defendants to point to specific evidence and provide documentation in support of their allegations that other individuals and/or entities are responsible for the Plaintiff's injuries and death and/or to admit that there are no liable parties to this matter other than those already named in this litigation. Likewise, any and all opinions held by Defendants' expert related to this topic should be disclosed.

14. Defendant Country Wood is hereby Ordered to completely and fully respond to Interrogatory #53.

15. Defendant Country Wood is hereby Ordered to completely and fully respond to Supplemental Interrogatory #1. It is further ordered that any and all employees, administrators, contractors, staff who currently have, or who have ever had, email addresses in any way affiliated with Sterling and/or Guardian be disclosed with the email address, their position, and dates of employment.

AS TO DEFENDANT COUNTRY WOOD
REQUESTS FOR PRODUCTION

16. Defendant Country Wood shall answer, in their entirety, all Request for Production propounded to the Defendant, including those specifically referenced in Plaintiff's Memorandum in Support of Motion to Compel.

17. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #7. Additionally, this Order specifically directs the Defendants to produce any and all insurance documents, policies, endorsements, declarations pages, etc. which provide coverage of any type to any or all of the Defendants, owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.

18. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #10.

19. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #17. Additionally, Defendants are directed to produce any and all payroll documents for all staff, employees, independent contractors, administrators, owners, executives, etc. along with employee files for these individuals.

20. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #21. Defendants are Ordered to provide all documents responsive to this

request, including Quality Assessment and Assurance documents, and not merely documents related to similar incidents. Furthermore, directing the Plaintiff to government agencies for this information is not an adequate response.

21. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #23, 24, and 25 in their entirety for all Defendants.

22. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #27 in its entirety for all Defendants. It is further Ordered that a reference to government agencies is not a sufficient response, nor is a response only providing "similar incidents".

23. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #33 in its entirety for all Defendants. If there are no documents responsive to this request, it is hereby Ordered that the Defendants indicate whether such documents were ever created by Defendants and/or if such documents were created but have since been lost and/or destroyed by the Defendants.

24. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #39 in its entirety for all Defendants. This Order includes, but is not limited to the production of a complete copy of all handbooks, manuals, policy and procedure guides, including but not limited to those for Employees, Nursing and Administration. Defendants are directed to produce full and complete copies of all manuals, handbooks, etc., including title pages, tables of contents, indexes, addendums, etc. in place during the period of decedent's residency.

25. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #43 in its entirety for all Defendants.

26. Defendant Country Wood is hereby Ordered to completely and fully respond to

Request for Production #44 in its entirety for all Defendants. If Defendants assert that their expert is not in possession of such depositions, the expert is Ordered to provide the names and addresses and case names of counsel in possession of the same.

27. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #56 in its entirety for all Defendants. References to documents obtained independently by the Plaintiff are an insufficient response to this request. Likewise, documents only related to "similar incidents" are not a sufficient response to this request. All documents responsive to this request must be produced.

28. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #57 in its entirety for all Defendants. References to documents obtained independently by the Plaintiff and documents only related to "similar incidents" are an insufficient responses to this request. All documents responsive to this request must be produced.

29. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #66, 67, 68, and 69 in their entirety for all Defendants from 2005-present.

30. Defendant Country Wood is hereby Ordered to completely and fully respond to Request for Production #71 in its entirety for all Defendants from 2005-present. An answer directing the Plaintiff to the Secretary of State's office or other government agency is not a sufficient response. All documents should be produced in their entirety.

AS TO DEFENDANT STERLING
INTERROGATORIES

31. Defendant Sterling shall answer, in their entirety, all Interrogatories propounded to the Defendant, including those specifically referenced in Plaintiff's Memorandum in Support of Motion to Compel.

32. Defendant Sterling is hereby Ordered to completely and fully respond to

Interrogatory #3 in its entirety.

33. Defendant Sterling is hereby Ordered to completely and fully respond to Interrogatory #4 in its entirety. Additionally, this Order specifically directs the Defendants to produce any and all insurance documents, policies, endorsements, declarations pages, etc. which provide coverage of any type to any or all of the Defendants, owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.

34. Defendant Sterling is hereby Ordered to completely and fully respond to Interrogatory #5 in its entirety. Additionally, this Order specifically directs the Defendants to point to specific evidence in support of their allegations that other individuals and/or entities are responsible for the Plaintiff's injuries and death and/or to admit that there are no liable parties to this matter other than those already named in this litigation.

35. Defendant Sterling is hereby Ordered to completely and fully respond to Interrogatory #6 in its entirety. Additionally, this Order specifically directs the Defendants to provide the names of any and all witnesses to this matter, and specifically, all individuals who provided any care, treatment, or services to the decedent while she was a resident of Country Wood, including but not limited to those individuals listed in Plaintiff's Memorandum. Defendant is further Ordered to provide employee files for these individuals, including but not limited to those individuals listed in Plaintiff's Memorandum, and to obtain the employee files from independent and contracted individuals and companies. Defendant is also ordered to provide complete and un-redacted contracts between the Defendants and independent contractors and companies providing services to Country Wood and its patients during the period of the decedent's residency.

36. Defendant Sterling is hereby Ordered to completely and fully respond to

Interrogatory #8 in its entirety. This Order includes, but is not limited to the production of all payroll records for all individuals working at Country Wood during the period of the Plaintiff's residency.

37. Defendant Sterling is hereby Ordered to completely and fully respond to Interrogatory #9 in its entirety. These Interrogatories relate to employees, administrators, consultants, and contract workers who had any involvement with the care and treatment of the Plaintiff. The Court orders that the employment status, last known address and present employment be provided for all individuals who had any involvement with the Plaintiff during her residency and that complete employment files be provided for the same. This Order includes, but is not limited to the list of individuals provided by the Plaintiff in her Memorandum.

38. Defendant Sterling is hereby Ordered to completely and fully respond to Interrogatory #12, 14, 15, 28, 42, 48, and 49 in their entirety.

39. Defendant Sterling is hereby Ordered to completely and fully respond to Supplemental Interrogatory #1 in its entirety.

STERLING
REQUESTS FOR PRODUCTION

40. Defendant Sterling shall answer, in their entirety, all Requests for Production propounded to the Defendant, including those specifically referenced in Plaintiff's Memorandum in Support of Motion to Compel.

41. Defendant Sterling is hereby Ordered to completely and fully respond to Request for Production #2, 3, 5, and 6 in their entirety.

42. Defendant Sterling is hereby Ordered to completely and fully respond to

Request for Production #7 in its entirety. Additionally, this Order specifically directs the Defendants to produce any and all insurance documents, policies, endorsements, declarations pages, etc. which provide coverage of any type to any or all of the Defendants, owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.

43. Defendant Sterling is hereby Ordered to completely and fully respond to Request for Production #11, 12, 16, 17 18, 19, 21, 24, 25, 26, 34, 35, 38, 41, 43, 44, 67, 68, 69, 70, 71, and 72 in their entirety.

AS TO DEFENDANT GUARDIAN
INTERROGATORIES

44. Defendant Guardian shall answer, in their entirety, all Interrogatories specifically propounded to the Defendant, including those referenced in Plaintiff's Memorandum in Support of Motion to Compel.

45. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #4 in its entirety. Additionally, this Order specifically directs the Defendants to produce any and all insurance documents, policies, endorsements, declarations pages, etc. which provide coverage of any type to any or all of the Defendants, owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.

46. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #5 in its entirety. Additionally, this Order specifically directs the Defendants to point to specific evidence in support of their allegations that other individuals and/or entities are responsible for the Plaintiff's injuries and death and/or to admit that there are no liable parties to this matter other than those already named in this litigation.

47. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #5, 8, 14, 15, and 40 in their entirety.

48. Defendant Guardian is hereby Ordered to completely and fully respond to Supplemental Interrogatory #1 in its entirety.

GUARDIAN
REQUESTS FOR PRODUCTION

49. Defendant Guardian shall answer, in their entirety, all Requests for Production propounded to the Defendant, including those specifically referenced in Plaintiff's Memorandum in Support of Motion to Compel.

50. Defendant Guardian is hereby Ordered to completely and fully respond to Request for Production #5, and 6 in their entirety.

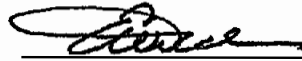
51. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #17 in its entirety. This Order includes but is not limited to the production of all payroll documents and employee files.

52. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #18, 24, 25, 34, and 35 in their entirety.

53. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #37 in its entirety. This Order includes but is not limited to the production of all payroll information and employee files.

54. Defendant Guardian is hereby Ordered to completely and fully respond to Interrogatory #43, 44, 67, 68, 69, 70, and 72 in their entirety.

IT IS SO ORDERED.



~~The Honorable~~ Edgar W. Dickson
Presiding Judge

November 30, 2016
Columbia, South Carolina



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016-CP-40-04463

Jean Watkins, PR of Estate of Mildred
Watkins

Sterling Healthcare, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant**DISPOSITION TYPE (CHECK ONE)**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit);
☐ Rule 43(k), SCRCPP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

After considering all of the arguments, memoranda and case law, I find the conduct of the Defendants is sufficiently egregious to warrant the sanction of striking their answer. Plaintiff's Motion for Rule to Show Cause and Sanctions is GRANTED. The Answer of all Defendants is hereby stricken. Plaintiff's counsel shall prepare an order in word format within 20 days, send to the court by email and send a copy to the Defendants. The Court will review and edit as necessary.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code 2118 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

Jennifer Purdy, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Leah Parker, Esq.

Brantley Rowlen, Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____



Richland Common Pleas

Case Caption: Jean Watkins , plaintiff, et al vs Sterling Healthcare Inc , defendant,
et al
Case Number: 2016CP4004463
Type: Order/Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee

Electronically signed on 2018-04-03 10:14:21 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
JEAN WATKINS, as Personal	)	Case No.: 2016-CP-40-04463
Representative of the Estate of Mildred	)	
Watkins,	)	ORDER STRIKING ANSWERS
	)	OF ALL DEFENDANTS
Plaintiff,	)	
	)	
vs.	)	
	)	
STERLING HEALTHCARE, INC.,	)	
COUNTRY WOOD NURSING CENTER,	)	
LLC, and GUARDIAN RESOURCES, LLC,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court on Plaintiff Jean Watkins' ("Plaintiff") Motion for Rule to Show Cause and Sanctions. A hearing was conducted on July 10, 2017. Present at the hearing were Jennifer Purdy, Esq. for Plaintiff and Brantley Rowlen, Esq. and Leah Parker, Esq. for Defendants Sterling Healthcare, Inc., Country Wood Nursing Center, LLC., and Guardian Resources, LLC. ("Defendants").

Based upon the record, motion, memoranda, and legal arguments of the parties, this Court finds as follows:

PROCEDURAL HISTORY AND FINDINGS OF FACT

The Plaintiff's decedent, Mildred Watkins, was a resident of the Defendants' nursing home, Country Wood, from March 2011 until December 2011. The Plaintiff filed a Complaint against all defendants alleging negligence which resulted in injuries to the Plaintiff and ultimately caused her death. Plaintiff served all Defendants with discovery requests on or about August 22, 2014 and counsel for the Defendants accepted service on September 5, 2014. The Defendants submitted partial responses on or about November 20, 2014. Thereafter, Plaintiff's

counsel wrote defense counsel to request complete responses. On May 5, 2015 and September 25, 2015, Defendant Country Wood partially supplemented their responses.¹ Thereafter, the Plaintiff notified defense counsel that their responses continued to be delinquent and that additional documents and information were needed. The Plaintiff's Care Plans were later produced by defense counsel via email, however, no additional documents or responses were produced at that time.

This case was removed from the roster July 31, 2015, pursuant to Rule 40(j), due to the missing discovery responses and the need for other discovery. The case was restored to the docket on July 25, 2016. During the year the case was removed from the docket, no additional information was produced to the Plaintiff by the Defendants.

The Plaintiff filed a Motion to Compel on July 29, 2015 and the matter was scheduled for a hearing. At the time of the filing of her Motion to Compel, the Plaintiff had been provided with only two documents each from Defendants Sterling and Guardian.²

Even though the case had been stricken pursuant to Rule 40(j) a hearing on the motion to compel was scheduled before the Honorable Edgar Dickson who heard the Plaintiff's Motion to Compel on February 24, 2016. Following the hearing, counsel for both parties received an email from Emily Burgis, the law clerk who assisted Judge Dickson at the hearing, advising that Judge Dickson had granted Plaintiff's Motion to Compel and requesting that both parties submit proposed Orders. On November 30, 2016, Judge Dickson signed the Plaintiff's version of the Order Granting Plaintiff's Motion to Compel Against All Defendants. All Defendants were directed to produce the information specified in the Order within twenty (20) days from the date

¹ The first supplemental production only identified an expert and produced his Curriculum Vitae. The second production included portions of a heavily redacted employee handbook; redacted contracts related to Evergreen and Health Services, which were inapplicable to the period of Plaintiff's residency; records from the Richland County Sheriff's Department; and the fee schedule of the defense expert.

² The Articles of Incorporation and a "Consulting Agreement" with Country Wood.

of the Order. The time period specified in the Order expired on December 20, 2016 and no information or documents whatsoever were produced by the Defendants by that deadline.

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. On January 3, 2017, Plaintiff's counsel received an email from counsel for Defendants, advising that they "inadvertently did not calendar the date" but were gathering the information. Subsequently, on January 5, 2017, co-counsel for Defendants, contacted Plaintiff's counsel by email, again referencing the "inadvertent calendaring", and indicated that counsel had been unable to communicate with Defendants about the discovery production until that week, five (5) weeks after the Order was issued by Judge Dickson.³ Defense counsel requested an additional week to produce the information specified in the Order. Upon agreement by counsel the deadline to produce the discovery was extended to January 13, 2017. No documents or information was forthcoming from the Defendants.

On January 19, 2017, Plaintiff's counsel received Defendants' Supplemental Responses to Plaintiff's Interrogatories and Requests for Production Pursuant to the Order of Judge Dickson.⁴ The materials produced did not fully comply with the Order of Judge Dickson in a variety of ways. Many 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 non-compliant responses referred Plaintiff's counsel to government agencies for answers.⁵ Ultimately, the Defendant's responses speak for themselves and do not comply with Judge Dickson's Order in timeliness or in content.

³ Additionally, defense counsel was aware on February 24, 2016, eleven (11) months earlier, that Judge Dickson had ruled in favor of the Plaintiff pursuant to the email of his law clerk to counsel.

⁴ See Exhibit B to Plaintiff's Notice of Motion and Motion for Rule to Show Cause and Sanctions.

⁵ Judge Dickson's Order specifically stated that such a response is insufficient. See, inter alia, paragraph #20 and #30 of Order.

On January 23, 2017, the Plaintiff filed a Motion for a Rule to Show Cause and Sanctions for Defendants' failure to comply with the November 30, 2016 Order of Judge Dickson. Defendants were properly served with the same. During the six (6) months between the Plaintiff's filing of the Motion and the date of hearing, no further documents or information were produced by any Defendant to the Plaintiff, until just prior to the hearing. At that time, a document production of several hundred pages was made to the Plaintiff. The documents did not reference the discovery requests to which they were responsive. Furthermore, this production again failed to include all of the items Ordered by Judge Dickson.

At the hearing on Plaintiff's Motion for Rule to Show Cause and Sanctions, the Court ordered defense counsel to produce a detailed list to the Plaintiff of all documents produced to date and the specific discovery request to which the document or information was responsive prior to leaving the courthouse.⁶ No such list was produced prior to leaving the courthouse and no such list has been produced to the Plaintiff more than eight (8) months after the hearing.

LAW AND ANALYSIS

"The imposition of sanctions is generally entrusted to sound discretion of the Circuit Court.⁷ The sanction imposed should serve to protect the rights of discovery provided by the Rules.⁸ "Overleniency [in imposition of sanctions] is to be avoided where it results in inadequate protection of discovery."⁹ The most severe sanctions must be available to a court, not only to penalize those whose conduct warrants sanctions, but to deter those who may consider such conduct in the future.¹⁰ The Courts have held that sanctions that are too lenient tend to

⁶ Rule to Show Cause (hereinafter, RTSC) hearing transcript p. 29, ll. 3-20

⁷ *Morgan v. Jones* 281 S.C. 270, 276, 315 S.E.2d 136, 139 (Ct. App. 1984); See also, *Kershaw County Bd. of Educ. v. United States Gypsum Co.*, 302 S.C. 390, 396 S.E.2d 369 (1990).

⁸ *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App 1987).

⁹ *Id.*

¹⁰ *Id.*

encourage, rather than discourage, noncompliance with the Rules.¹¹

In determining whether to order sanctions, the trial judge should consider the nature of the discovery request, the discovery posture of the case, the willfulness of the violation, and the degree of prejudice to the opposing party.¹² When a party fails to comply with a discovery order, the trial court has the discretion to impose a sanction it deems just, including an order dismissing the action.¹³ If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.¹⁴ Severe sanctions are warranted in cases involving bad faith, willful disobedience, or gross indifference to the opposing party's rights.¹⁵

In *McNair v. Fairfield County*, 379 S.C. 462 (Ct. App. 2008), the Court of Appeals upheld the trial court's decision to strike the Defendant's answer as a sanction for discovery abuse. The defendant had failed to produce documents more than seven months after a Court Order compelling production.¹⁶ The Court determined that the delay was unconscionable and the defendant's conduct amounted to contempt.¹⁷ The Court held that sanctions less than striking the Answer would not achieve justice and was a blatant violation of the South Carolina Rules of Civil Procedure, Rule 37(b)(2).¹⁸ The Court specifically stated: "The defendant's conduct in

¹¹ Id.

¹² *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457 (2009); See also, *Griffin Grading & Clearing, Inc.*, 334 S.C. at 199, 511 S.E.2d at 719.

¹³ Rule 37(b)(2)(C), SCRCPP, See also, *Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003).

¹⁴ Rule 37(b)(2)(C), SCRCPP

¹⁵ *Orlando v. Boyd*, 320 S.C. 509, 511, 466 S.E.2d 353, 355 (1996); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 108-09, 410 S.E.2d 537, 541-42 (1991); *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-99, 511 S.E.2d 716, 719 (Ct.App.1999)

¹⁶ *McNair v. Fairfield County*, 379 S.C. 462 (Ct. App. 2008)

¹⁷ Id.

¹⁸ Id.

refusing to provide that which it has been ordered to produce is a serious affront to the integrity of the judicial system.”¹⁹

CONCLUSIONS OF LAW

Over three (3) years and seven (7) months after being served with discovery requests, and despite Judge Dickson’s Order compelling discovery over one (1) year and four (4) months ago, the Plaintiff remains without all of the information ordered by Judge Dickson and has been substantially prejudiced in the advancement of her case. The information withheld by the defense is essential to the Plaintiff’s case and there is no legitimate reason for the defense to withhold the same. To date, the Plaintiff remains without even standard discovery responses such as insurance policies²⁰ and other basic information ordered by Judge Dickson.²¹

At the hearing, Defense counsel admitted that items ordered by Judge Dickson had still not been produced: “We’re missing payroll records, which we’re happy to go to our clients and try to see if they still have those.”²² Payroll records were one of many items specifically identified and Ordered for production by Judge Dickson. Defense counsel admitted that as of the date of the hearing, July 10, 2017, they had made no effort to contact their clients regarding the production of the payroll records following Judge Dickson’s Order.²³ Defense counsel further admitted that they had no list or other documentation which would identify the documents produced to date, or to which Interrogatory and/or Request for Production documents previously

¹⁹ Id.

²⁰ Despite defense counsel’s assertion that all defendants are self-insured, a Certificate of Insurance was produced which indicates the existence of liability coverage. Likewise, the limited tax returns produced by the Defendants reflect itemized deductions for the purchase of liability insurance. Yet, no policies have been produced by any defendant for any policy to date.

²¹ For a complete list of the missing responses and information, please see the spreadsheet compiled by Plaintiff’s counsel and made part of the record as Exhibits 3-8 to Plaintiff’s Memorandum in Support of Rule of Show Cause.

²² RTSC hearing transcript, p. 10, ll. 5-7

²³ RTSC hearing transcript, p. 10, ll. 5-15

produced were responsive.²⁴

In an attempt to justify their failure to produce some documents and information, defense counsel asserted that Defendant Sterling went out of business in 2007 stating: “Sterling went out of business in 2007 prior to the plaintiff’s residency at our nursing home. So there is no information.”²⁵ However, this assertion does not align with the evidence that: 1) the April 1, 2014 Affidavit of Robert Hagan, (President of Defendant Sterling, Defendant Guardian and Defendant Country Wood), acknowledged his role as the President of Defendant Sterling in 2014²⁶; 2) Defendant Sterling’s existence and active involvement is well documented throughout numerous employee files for many years after 2007²⁷; and 3) Defendant Sterling was clearly in existence and actively involved with the defense of the Plaintiff’s claim when Defendant Sterling sent a letter on Sterling letterhead to Plaintiff’s counsel regarding Plaintiff’s claim on February 25, 2014, signed by a Sterling corporate officer²⁸. This letter was sent seven (7) years after defense counsel alleged her client was out of business. Likewise, Sterling Healthcare is currently listed with Medicare and other government agencies as the active operator and/or manager of Country Wood Nursing Home.²⁹ Defendants’ attempts at justification are without merit.

At the hearing, defense counsel asserted “we have gone above and beyond” in responding to discovery requests.³⁰ Yet, defense counsel repeatedly admitted that they do not have even so much as a list or other documentation which reflects the items produced in response to each discovery request to date. In fact, defense counsel acknowledged that until just prior to the Rule to Show Cause hearing, she mistakenly believed that no additional information needed to be

²⁴ RTSC hearing transcript p. 29, ll. 13-16.

²⁵ RTSC hearing transcript p. 24, ll. 9-11.

²⁶ See Affidavit of Robert Hagan, attached as Exhibit 9 to Plaintiff’s Memorandum in Support of Motion to Compel.

²⁷ See Exhibits 16-22 to Plaintiff’s Memorandum in Support of Motion to Compel.

²⁸ See Exhibit 13 to Plaintiff’s Memorandum in Support of Motion to Compel

²⁹ See Exhibit 15 to Plaintiff’s Memorandum in Support of Motion to Compel

³⁰ RTSC hearing transcript, p. 16, l.10

produced pursuant to Judge Dickson's Order.³¹ Defense counsel was unable to determine which items had been produced and which items were still delinquent. Plaintiff's counsel, compiled a spread sheet of the received and missing information³²; however, defense counsel clearly had not significantly reviewed Judge Dickson's Order in detail, to ensure complete and timely compliance. Wholly contrary to going "above and beyond", Defendants have failed to produce even the most basic responses to standard discovery requests and other relevant requests, more than three (3) years after being served with the same. The failure of the Defendants to produce the specific documents and information ordered by Judge Dickson, and their complete lack of effort and diligence in determining what has been produced and what is still due to the Plaintiff, is evidence of their on-going bad faith, willful disobedience, and gross indifference to the rights of the Plaintiff and the authority of the Court.

CONCLUSION

Service of the Plaintiff's discovery requests were accepted by the Defendants on September 5, 2014. The Plaintiff is no further along in the discovery process than she was nearly three (3) years ago when she filed her Motion to Compel. The unreasonable and unjustifiable delays in the production of discovery documents and responses for over three (3) years has resulted in a complete standstill in the progression of the case and the total inability of the Plaintiff's counsel to further her client's interests. In this passing time, memories fade, witnesses disappear, and critical documents can be lost and/or destroyed. The harm to the Plaintiff in this case is irreparable and must be met with the harshest of sanctions against the Defendants. The Defendants have acted in bad faith during the discovery process, with willful disobedience to the Court, and with gross indifference to the Plaintiff's rights and to the rule of law. Based on the

³¹ RTSC hearing transcript, p. 8, ll. 7-15, 22-25 – p. 11, ll. 1-14.

³² See spreadsheets at Exhibits 3-8 to Plaintiff's Memorandum in Support of Rule to Show Cause.

egregious conduct of the Defendants, the sanction of striking the Defendants' Answers is clearly warranted.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Rule to Show Cause and Sanctions is **GRANTED**. It is hereby ordered that the answers of all defendants are stricken. The Clerk of Court is directed to schedule this matter for a damages hearing. Counsel shall consult with the Chief Administrative Judge for Civil Matters to enable the Clerk of Court to schedule adequate time for the hearing.



Richland Common Pleas

Case Caption: Jean Watkins , plaintiff, et al vs Sterling Healthcare Inc , defendant,
et al
Case Number: 2016CP4004463
Type: Order/Sanctions

IT IS SO ORDERED!

s/ Alison Renee Lee

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Jean Watkins, as Personal Representative of the Estate of
Mildred Watkins, Respondent,

v.

Sterling Healthcare, Inc., Country Wood Nursing Center,
LLC, and Guardian Resources, LLC, Appellants.

Appellate Case No. 2018-000924

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2021-UP-324
Submitted May 3, 2021 – Filed September 8, 2021

AFFIRMED

Emily Kate Brobston Cappelmann, of Lewis Brisbois
Bisgaard & Smith, LLP, of Savannah, GA, for
Appellants.

Jennifer Randolph Purdy, of Popowski & Shirley, P.A.,
of Columbia, for Respondent.

PER CURIAM: Sterling Healthcare, Inc., Country Wood Nursing Center, LLC,
and Guardian Resources, LLC (collectively, Appellants) appeal the trial court's

order striking Appellants' answers as a sanction for not complying with a discovery order involving Jean Watkins as the personal representative of the estate of Mildred Watkins (Respondent). We affirm.

Appellants argue the circuit court's order failed to make the requisite factual findings to support its ruling. In their reply brief, they state, "The crux of this appeal is not whether Respondent provided factual support for her arguments, nor whether the trial court had the opportunity to mull over those points." They continue, "Because even if this Court were to accept both as given, the issue persists: the trial court failed to set forth an adequate basis for the exercise of its discretion to strike Appellants' Answers." Appellants did not file a motion to alter or amend asking the trial court to address this alleged failure. Accordingly, we hold this issue is not preserved for appellate review. *See Jackson v. Speed*, 326 S.C. 289, 311, 486 S.E.2d 750, 761 (1997) (holding because the appellant failed to object either at the hearing or in their motion to alter or amend that the trial judge failed to make findings of fact concerning the specific costs expended, the issue is not preserved for appellate review); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."); *Summer v. Carpenter*, 328 S.C. 36, 43, 492 S.E.2d 55, 58 (1997) (stating that when a trial court did not explicitly rule on an issue in its order and appellant did not make a Rule 59, [South Carolina Rules of Civil Procedure (SCRCP)], motion for a ruling, the issue is not preserved for appellate review); *Padgett v. Mercado*, 341 S.C. 229, 233, 533 S.E.2d 339, 341 (Ct. App. 2000) (stating "[a]ny argument alleging an inaccuracy or inconsistency in an order must be raised by a post-trial motion"); *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995) (holding an appellant's argument that the entry of default should be reversed because the trial court neglected to make specific findings of certain factors was not preserved for appellate review because the appellant failed to raise the issue to the trial court in a post-trial motion); *Buist v. Buist*, 410 S.C. 569, 577, 766 S.E.2d 381, 385 (2014) (stating argument that the family court did not adequately apply factors concerning award of attorney's fees was not preserved when husband's argument in Rule 59(e) motion was not sufficiently specific).

Appellants also argue the trial court failed to consider whether lesser sanctions could achieve justice. This issue is unpreserved because Appellants never raised this argument at the hearing; instead, Appellants only generally asserted sanctions should not be ordered, and they never filed a Rule 59(e), SCRCP, motion. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d

903, 907 (2007) (stating "it is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error"); *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733 ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

AFFIRMED.¹

LOCKEMY, C.J., and HUFF and HEWITT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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**

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.

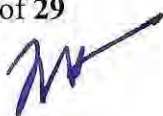
Upon her return to Country Wood, the Defendants confirmed on their November 30, 2011 admission assessment all of the skin abnormalities on Mrs. Watkins which were identified in the Richland Hospital records. The Defendants' report and diagram of Mrs. Watkins' body at this time was drastically different 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

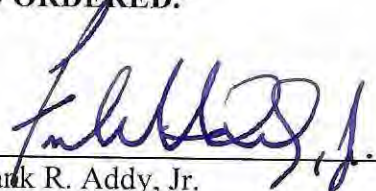


subjected to the traditional common law rule of joint and several liability. However, pursuant to section (F) of that statute, the protection from joint and several liability does not apply to a defendant whose conduct is determined to be willful, wanton, reckless, gross negligent, or intentional. For 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.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Case No.: 2016-CP-40-04463 ¹
JEAN WATKINS, as Personal	)	
Representative of the Estate of Mildred	)	
Watkins,	)	
	)	
Plaintiff,	)	
	)	ORDER COMPELLING PRODUCTION
vs.	)	OF INSURANCE AND FINANCIAL
	)	INFORMATION
STERLING HEALTHCARE, INC.,	)	
COUNTRY WOOD NURSING CENTER,	)	
LLC, and GUARDIAN RESOURCES, LLC,	)	
	)	
Defendants.	)	
	)	

Following the damages hearing on November 10, 2022, the Court issues the following Order to all Defendants:

Because the Defendants have failed to cooperate with discovery and have blatantly disregarded the Orders of the Court, the Plaintiff remains without even the most basic information such as insurance policies and declarations pages, and financial information for each of the Defendants. The Court **HEREBY ORDERS** that all Defendants be required to produce any and all policies of insurance: liability, excess, umbrella, commercial, general and/or otherwise, for each Defendant and all of their owners, members, shareholders, key employees, etc., including but not limited to Robert Hagan.² This includes, but is not limited to the production of all declarations pages, full and complete policies, endorsements, exclusions, and the identities of the individuals and/or entities insured, etc. The Defendants and their owners shall also produce documents related to assets held by the Defendant companies and their owners, members, and shareholders, including

¹ The original case number for this litigation prior to the 40J was 2014-CP-40-5160.

² This is the same information that the Defendants were Ordered to produce by Judge Edgar Dickson on November 30, 2016 and discussed again in Judge Lee's Order Striking Defendants' Answer of April 19, 2018.

but not limited to Robert Hagen. This request includes, but is not limited to the production of tax returns, personal financial statements, yearly financial statements, etc.

The Plaintiff has been denied this information since first issuing discovery requests in 2014, over eight years ago. It is long overdue for the Defendants and their owners to be required to comply with the Orders and Rules of this Court and State.³

The Defendants have intentionally left the Plaintiff, and this Court, in the dark about their insurance status and their ability to pay a verdict rendered in this case. It is clear that some policy of insurance and/or some corporate and/or personal assets exist because some individual(s) and/or entity(s) has been paying multiple attorneys at Lewis Brisbois Bisgaard & Smith, LLP, a large, nationwide law firm, with attorneys for this case based in Atlanta and Savannah, to defend this matter for the past eight (8) years, including the financing of an Appeal. Clearly, the funding of the defense is coming from an insurance carrier, or one or more of the Defendant companies and/or individual owners.

THE COURT HEREBY ORDERS all insurance and financial documents related to corporate and individual assets of the Defendants, their owners, members, shareholders, and key employees, including by not limited to Robert Hagan, be produced within thirty (30) days of the date of this Order.

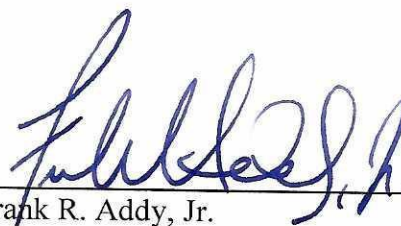
The Court further **ORDERS** that should the Defendants and their owners fail to produce this information within thirty (30) days of the date of this Order, each Defendant and individual owner / member will be required to appear before me under a Rule to Show Cause and will be subject to a finding of contempt and/or be appropriately sanctioned.⁴

³ In a separate Order filed this date, the Court awarded damages to Plaintiff. This jurist sincerely hopes that discovery of the information addressed in the present order may take place while the other Order awarding damages is on appeal.

⁴ Due to logistical issues with assigned terms of court, any subsequent hearings concerning this Order do not have to



IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Frank R. Addy, Jr.", written over a horizontal line.

Frank R. Addy, Jr.
Circuit Court Judge

January 31, 2023

be specifically docketed to be heard by this jurist.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	Case No.: 2016-CP-40-04463
JEAN WATKINS, as Personal	)	
Representative of the Estate of Mildred	)	
Watkins,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENDANT'S
vs.	)	MOTION FOR A NEW TRIAL OR,
	)	ALTERNATIVELY, TO
STERLING HEALTHCARE, INC.,	)	RECONSIDER THE AWARD OF
COUNTRY WOOD NURSING CENTER,	)	DAMAGES TO PLAINTIFF
LLC, and GUARDIAN RESOURCES, LLC,	)	
	)	
Defendants.	)	
	)	

THIS MATTER COMES BEFORE THE COURT on Defendants' February 10, 2023 Motion for a new trial or, alternatively, to reconsider the Court's findings as contained in the January 31, 2023 order awarding damages to Plaintiff. The Court has thoroughly reviewed the Defendants' February 10, 2023 motion as well as Plaintiff's response of February 28, 2023. The Court finds as follows:

Having fully considered the argument of counsel and reflected upon the Court's findings of fact, application of the law, and calculation of damages, the Court declines to alter or amend the Court's prior order awarding damages to Plaintiff and reaffirms the order's findings and rulings.¹

¹ In issuing its order, the Court was wholly familiar with, was guided by, and did comply with the holdings in BMV of North America v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996) and Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (2009), and the order clearly addressed the considerations as outlined in *Gore* and in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). To the extent *Fortis* provides for *de novo* appellate review of a punitive damages award, the Court wishes all *bonam fortunam*, especially considering the egregious nature of Defendants' conduct toward Mrs. Watkins, the fact that Plaintiff, and by extension, the Court, still remain unaware of the extent of Defendants' assets or available insurance coverage, and the procedural posture of this case when the Court conducted the damages hearing.

IT IS SO ORDERED.

March 10, 2023
Greenwood, South Carolina

S/ Frank R. Addy, Jr.

Frank R. Addy, Jr.
Circuit Court Judge



Richland Common Pleas

Case Caption: Jean Watkins , plaintiff, et al vs Sterling Healthcare Inc , defendant,
et al
Case Number: 2016CP4004463
Type: Order/Other

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2023-03-10 15:47:48 page 3 of 3

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 DENYING DEFENDANT'S
MOTION TO RECONSIDER
ORDER COMPELLING
PRODUCTION OF INSURANCE
AND FINANCIAL INFORMATION**

THIS MATTER COMES BEFORE THE COURT on Defendants' February 10, 2023 Motion to Reconsider the Court's order of January 31, 2023 requiring Defendants to provide basic insurance and other financial information pursuant to previous court orders. The Court has thoroughly reviewed the Defendants' February 10, 2023 motion as well as Plaintiff's response of February 28, 2023. The Court finds as follows:

Having fully considered the argument of counsel and reflected upon the Court's ruling, the Court declines to alter or amend the Court's prior order requiring Defendants to comply with basic discovery. Accordingly, the Court reaffirms its findings as outlined in the January 31, 2023 order.

IT IS SO ORDERED.

S/ Frank R. Addy, Jr.
Frank R. Addy, Jr.
Circuit Court Judge

March 10, 2023
Greenwood, South Carolina



Richland Common Pleas

Case Caption: Jean Watkins , plaintiff, et al vs Sterling Healthcare Inc , defendant,
et al
Case Number: 2016CP4004463
Type: Order/Compel

So Ordered

S/ Frank R. Addy, Jr.

Electronically signed on 2023-03-20 12:04:44 page 2 of 2



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29201
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October 04, 2021

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Jean Watkins v. Sterling Healthcare, Inc.
Lower Court Case No. 2016CP4004463
Appellate Case No. 2018-000924

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen

CLERK

Enclosure

cc: Jennifer Randolph Purdy, Esquire
Emily Kate Brobston Cappelmann, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.:

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.)

COMPLAINT
(Medical Malpractice)

RICHLAND COUNTY
FILED
2014 AUG 22 AM 10:22
JEANNETTE W. JOHNSON
C.C.P. & C.S.

TO THE DEFENDANTS ABOVE NAMED:

The Plaintiff, Jean Watkins, as Personal Representative of the Estate of Mildred Watkins, complaining of the acts and omissions of the Defendants would allege and show to the Court the following:

JURISDICTION AND VENUE

1. The Decedent, Mildred Watkins, was a resident of Richland County, South Carolina at the time of her death. The Plaintiff, Jean Watkins, is the duly appointed Personal Representative of the Estate of Mildred Watkins pursuant to an Order of the Richland County Probate Court dated April 10, 2012, and brings this action in her fiduciary capacity as Personal Representative of the Estate of Mildred Watkins under and by virtue of the authority and provisions of §§ 15-5-90 et. seq. S.C. Code Ann. (1976 as amended) to recover on behalf of Decedent's Estate for severe injuries, conscious pain and suffering, excruciating pain and damages suffered and sustained by Decedent prior to her death resulting from the grossly negligent, negligent, reckless and willful conduct complained of herein. Additionally, the

Plaintiff brings this action for wrongful death on behalf of Mildred Watkins' statutory beneficiaries under and by virtue of the authority and provisions of the South Carolina Wrongful Death Act, § 15-51-10 et. seq. S.C. Code Ann. (1976 as amended).

2. Upon information and belief, Defendant Sterling Healthcare, Inc. (hereinafter, Sterling) is a corporation organized and existing under the laws of the State of Georgia and at all times relevant to this matter, was registered to conduct business in the State of South Carolina and did in fact conduct business in the State of South Carolina at a nursing facility, Country Wood Nursing Center, (hereinafter, Country Wood) located in the County of Richland, State of South Carolina. Upon information and belief, at all times relevant hereto, Defendant Sterling had the right and power to direct and control its agents, servants and employees in the performance and manner in which they operated their business at Country Wood. Furthermore, Country Wood is and was at all times relevant to this Complaint, a nursing care facility licensed by the division of Health Licensing of the South Carolina Department of Health and Environmental Control.

3. Upon information and belief, Defendant Country Wood Nursing Center, LLC, (hereinafter, Country Wood), is a corporation organized and existing under the laws of the State of South Carolina and at all times relevant to this matter, was registered to conduct business in the State of South Carolina and did in fact conduct business in the State of South Carolina as a nursing facility, Country Wood Nursing Center, located in the County of Richland, State of South Carolina. Upon information and belief, at all times relevant hereto, Defendant Country Wood had the right and power to direct and control its agents, servants and employees in the performance and manner in which they operated the business of providing nursing care services at Country Wood. Furthermore, Country Wood is and was at all times relevant to this

Complaint, a nursing care facility licensed by the division of Health Licensing of the South Carolina Department of Health and Environmental Control.

4. Upon information and belief, Defendant Guardian Resources, LLC, (hereinafter, Guardian) is a corporation organized and existing under the laws of the State of Georgia and at all times relevant to this matter, conducted business in the State of South Carolina at a nursing facility, Country Wood Nursing Center, (hereinafter, Country Wood) located in the County of Richland, State of South Carolina. Upon information and belief, at all times relevant hereto, Defendant Guardian had the right and power to direct and control its agents, servants and employees in the performance and manner in which they operated the business at Country Wood. Furthermore, Country Wood is and was at all times relevant to this Complaint, a nursing care facility licensed by the division of Health Licensing of the South Carolina Department of Health and Environmental Control.

5. The acts and omissions giving rise to this incident occurred in the County of Richland, State of South Carolina.

6. That this Court has personal jurisdiction over the parties hereto and subject matter jurisdiction over the causes of action set forth herein. Venue is proper in Richland County.

FACTUAL ALLEGATIONS

Plaintiff incorporates herein by reference all the allegations of the preceding paragraphs.

7. The Plaintiff is informed and believes that, at all times material to this Complaint, the agents, servants and/or employees of the Defendants, including those agents, servants and/or employees working at Country Wood, were acting in the course and scope of their employment with Defendants in making decisions, and acting and/or failing to act regarding the care of

Plaintiff's decedent, Mildred Watkins.

8. Defendants hold themselves out as specialists in the field of health care with the expertise necessary to maintain the health and safety of persons unable to care adequately for themselves. Defendants were under contractual and legal duties to provide reasonable and adequate care to the decedent, Mildred Watkins, pursuant to state and federal law, rules, regulations and existing community standards.

9. Upon information and belief, at all times relevant to this matter, Defendant Sterling was in a contractual relationship with Defendant Country Wood to perform various services which were critical to the operation of Country Wood nursing home facility and which had direct and/or indirect impact on the care of patients at the facility, including Mildred Watkins.

10. Upon information and belief, at all times relevant to this matter, Defendant Guardian was in a contractual relationship with Defendant Country Wood to perform various services which were critical to the operation of Country Wood nursing home facility and which had direct and/or indirect impact on the care of patients at the facility, including Mildred Watkins.

11. Upon information and belief, Defendant Sterling, Defendant Guardian, and Defendant County Wood have one or more mutual owners, members, investors and/or corporate officers and the day to day operations of County Wood, including but not limited to policies, procedures, and practices related to patient care were well known to each Defendant at all times relevant to this matter.

12. Upon information and belief, Defendants provided services and made various decisions which had direct and/or indirect impact on the care and well being of patients,

including Mildred Watkins.

13. At all times material to this Complaint, Mildred Watkins was a resident at Country Wood. During the course of her residency at Country Wood, she suffered numerous recurring urinary tract infections, decubitus ulcers, lacerations, broken bones, and other injuries.

14. While in the care of Country Wood, Mildred Watkins had to be hospitalized and/or had to seek emergency medical treatment on numerous occasions for undiagnosed and untreated Urinary Tract Infections (UTIs), including urosepsis, which was the cause of her death.

15. While in the care of Country Wood, Mildred Watkins had to be hospitalized and/or had to seek emergency medical treatment on numerous occasions for fractures / dislocations, severe lacerations, and other injuries.

16. While in the care of Country Wood, Mildred Watkins sustained several suspicious and unexplained injuries and suffered serious and life threatening conditions which were unexplained and untreated.

17. While in the care of Country Wood, Mildred Watkins suffered painful decubitus ulcers which were not treated and/or were improperly treated.

18. While in the care of County Wood, Mildred Watkins did not receive proper nutrition and/or hydration and suffered substantial weight loss.

19. The case of death noted on Mildred Watkins' Death Certificate is "complications of urosepsis".

20. The Plaintiff is informed and believes that the Defendants failed to provide the necessary care and services to maintain Mildred Watkins' physical, mental and psychological well-being, failed to ensure that Mildred Watkins maintained her abilities and activities of daily living, and failed to develop and implement care plans with timely modifications and updates for

Mildred Watkins' medical conditions and changing conditions, all proximately resulting in her death on December 15, 2011.

21. The Plaintiff is informed and believes that during the course of her residency at Country Wood, Mildred Watkins developed decubitus ulcers which worsened and never healed. The Plaintiff is informed and believes that while at Country Wood, Mildred Watkins suffered from dehydration, malnutrition, pain, and other conditions which were not properly addressed or remediated by the facility. The Plaintiff is informed and believes that while at Country Wood, Mildred Watkins suffered falls and other injuries.

22. The Plaintiff is further informed and believes that while a resident at Country Wood, Mildred Watkins exhibited signs and symptoms of infection, including but not limited to urinary tract infections. These infections, and more specifically, the urinary tract infections were not diagnosed and/or were improperly diagnosed, were not addressed and/or were improperly addressed, and were not remediated and/or were improperly and incompletely remediated by the Defendant.

23. The Plaintiff is informed and believes that Mildred Watkins was in great pain and discomfort as a result of her infections, decubitus ulcers, lacerations, fractures/dislocations, and other conditions and that the staff was aware of her complaints of pain, but said complaints were ignored and/or inadequately addressed.

24. That the injuries and damages herein described were the direct, foreseeable and proximate result of the grossly negligent, negligent, careless, reckless, willful, and wanton acts and omissions of the Defendants, jointly and severally, their agents, servants and employees.

FOR A FIRST CAUSE OF ACTION
(Medical and Nursing Home Malpractice – Wrongful Death)

AS TO DEFENDANT STERLING

25. Plaintiff incorporates herein by reference all the allegations of the preceding paragraphs.

26. Upon information and belief, Defendant Sterling, by and through its association with Country Wood, its agents, servants and employees, did undertake the duty to render various services to Country Wood, including those services which would facilitate the ability to provide care to patients of Country Wood, including Mildred Watkins, in accordance with the prevailing professional standards of care for nursing home providers in the state and the national community.

27. Notwithstanding said undertaking, and while Mildred Watkins was under the care of the Defendants at Country Wood, said Defendants, jointly and severally, departed from prevailing professional standards of care and treatment of Mildred Watkins and were thereby grossly negligent, negligent, careless, reckless, willful and wanton and acted in violation of the duties owed to Mildred Watkins in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- (a) In failing to properly monitor and care for Mildred Watkins and her physical and mental well-being while she was residing at Country Wood and thereby failing to care for her in a manner and in an environment that promotes maintenance and enhancement of her quality of life;
- (b) In failing to ensure that Mildred Watkins, based on comprehensive assessments, maintained her abilities and activities of daily living;
- (c) In failing to ensure that Mildred Watkins was properly nourished and hydrated, protected from infection, protected from falls and injuries, protected from

dysphagia and aspiration, protected from the formation of decubitus ulcers and other complications;

- (d) In failing to properly initiate, timely revise and enforce adequate plans of care for Mildred Watkins while she was a resident at Country Wood;
- (e) In failing to properly recognize and diagnose significant changes in Mildred Watkins physical and mental condition and then failing to initial appropriate and timely medical responses thereto;
- (f) In failing to prepare assessments for residents, including Mildred Watkins, which must be conducted promptly after a significant change physical or mental condition and in failing to initiate appropriate medical responses thereto;
- (g) In failing to monitor and deter the continued breakdown of Mildred Watkins' health and changing physical condition and in failing to alter treatment and initiate appropriate medical responses thereto;
- (h) In failing to diagnose and treat Mildred Watkins with regard to urinary tract infections in order to prevent the existence, recurrence, and adverse effects and complications of the infection;
- (i) In failing to provide Mildred Watkins with adequate pain relief;
- (j) In failing to provide the necessary care and services to maintain Mildred Watkins' physical, mental and psychosocial well-being in accordance with comprehensive individualized assessments and plans of care;
- (k) In failing to develop, implement and follow effective, comprehensive, individualized care plans for Mildred Watkins and other residents with timely updates, revisions and modifications for medical conditions, changing needs and other conditions, including, but not limited to: falls, mental and psychosocial functioning, nutrition, hydration, weight management, dysphagia with aspiration prevention, accident, personal grooming, skin health, including decubitus care and prevention, infection prevention, infection control and elimination, medication prescription, medication administration, medication monitoring, and vaccinations;
- (l) In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the prevention of complications and harm to patients, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them and in failing to adequately assess, evaluate and supervise staff at the facility to ensure that Mildred Watkins received care in accordance with said policies, procedure, protocols, rules, regulations, manuals, state and federal laws, rules and regulations;
- (m) In failing to properly and adequately assess, monitor develop, implement and

update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to prevention of harm to and care of fragile patients being handled and attended to by nursing home personnel at Country Wood, which would have prevented the neglect of Mildred Watkins;

- (n) In failing to properly train, educate, supervise and monitor its employees, servants and agents, including, but not limited to the physicians, nurses, nursing assistants, medical personnel, staff and employees at Country Wood and entrusting these agents, servants and employees with the care of residents who are unable to care for themselves, including Mildred Watkins;
- (o) In hiring and retaining as employees at Country Wood, doctors, nurses, nursing assistants, medical personnel, staff and employees who were not properly qualified, not competent, and not adequately educated, and then entrusting these agents, servants and employees with the care of residents who are unable to care for themselves, including Mildred Watkins;
- (p) In failing to timely diagnose infection in Mildred Watkins and in failing to react to the severity thereof;
- (q) In failing to properly treat Mildred Watkins' infections;
- (r) In failing to prescribe and administer medication to Mildred Watkins in order to treat her infections;
- (s) In failing to prescribe and administer medication to the decedent in order to treat and provide comfort for her pain and other symptoms related to her infection;
- (t) In failing to properly monitor Mildred Watkins and prevent the recurrence of urinary tract infections;
- (u) In allowing Mildred Watkins to develop decubitus ulcers, in failing to address and have adequate plans of care in place to prevent the development of decubitus ulcers, in failing to properly treat and diminish the size and severity of the decubitus ulcers, and in and failing to eliminate the ulcers;
- (v) In failing to hire and have present at the facility a sufficient and appropriate number of trained and competent nurses, nurses' aides and other medical staff to care for Mildred Watkins;
- (w) In failing to hire and have present at the facility a sufficient and appropriate number of trained and competent doctors to care for Mildred Watkins;
- (x) In failing to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in patient care, including those involving Mildred Watkins;

- (y) In causing and/or allowing Mildred Watkins to sustain a severe dislocation/fracture to her thumb which required surgery;
- (z) In removing bed rails from resident's beds, including Mildred Watkins' bed, thereby leaving exposed metal which the Defendant knew or should have know would result injuries to its residents, including Mildred Watkins;
- (aa) In causing and/or allowing Mildred Watkins skin to be lacerated by her bed frame, resulting in a severe and painful laceration which required emergency medical care and multiple staples;
- (bb) In failing to provide proper nutrition and hydration and a proper care plan with regard to nutrition and hydration to prevent Mildred Watkins' substantial weight loss;
- (cc) In failing to provide proper hygiene and personal grooming to Mildred Watkins;
- (dd) In causing and/or allowing Mildred Watkins to be assaulted, battered, bruised, scratched and harmed by Defendant's employees and/or other residents;
- (ee) In failing to discharge their legal and lawful obligations by:
 - i. Failing to ensure that all federal and state laws, rules and regulations and guidelines designed to protect the health and safety of patients, such as the decedent, as promulgated by the South Carolina Department of Health and Environmental Control and U.S. Department of Justice are consistently complied with on an ongoing basis;
 - ii. Failing to ensure that the patient care policies were consistently complied with on an ongoing basis;
 - iii. Failing to ensure that the policy and procedure manuals were updated and modified to address problems concerning inadequate patient care as noted from inspections, surveys, citations, and deficiencies done by the South Carolina Department of Health and Environmental Control and the U.S. Department of Justice;
- (ff) In then and there failing to exercise that degree of care which a reasonable and prudent entity would have exercised under the same or similar circumstances and in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure; and
- (gg) In such other particulars as may become evident during discovery and the trial of this matter.

All of which acts and omissions were the actual, direct and proximate cause of the injuries and damages Mildred Watkins and Mildred Watkins' beneficiaries suffered, as are more

fully set forth below, said acts being in violation of the state and federal laws, rules and regulations.

28. All of the above acts or omissions of gross negligence were the proximate cause of the injuries and damages suffered by Mildred Watkins which eventually lead to her death.

29. As a direct and proximate result of the grossly negligent, negligent, careless, reckless, willful and wanton departures from the professional standards of care by the Defendants, jointly and severally, Mildred Watkins, suffered a rapid, significant and debilitating decline in health, complicated by, but not limited to, a severe urinary tract infection, malnutrition, decubitus ulcers, and an untreated urinary tract infection from which she developed urosepsis and ultimately died, by virtue of which, the decedent's statutory beneficiaries have lost the aid, comfort, companionship and society of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiff is entitled to recover on behalf of the statutory beneficiaries, actual damages pursuant to §15-51-10 *et seq S C. Code Ann.* (1976 as amended), in an amount to be determined by the jury at the trial of this action.

AS TO DEFENDANT COUNTRY WOOD

30. Plaintiff incorporates herein by reference all the allegations of the preceding paragraphs.

31. The Defendant Country Wood, by and through Country Wood, its agents, servants and employees, did undertake the duty to render nursing home care to the decedent, Mildred Watkins, in accordance with the prevailing professional standards of care for nursing home providers in the state and the national community.

32. Notwithstanding said undertaking, and while Mildred Watkins was under the care

of the Defendants at Country Wood, said Defendants, jointly and severally, departed from prevailing professional standards of care and treatment of Mildred Watkins and were thereby grossly negligent, negligent, careless, reckless, willful and wanton and acted in violation of the duties owed to Mildred Watkins in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- (a) In failing to properly monitor and care for Mildred Watkins and her physical and mental well-being while she was residing at Country Wood and thereby failing to care for her in a manner and in an environment that promotes maintenance and enhancement of her quality of life;
- (b) In failing to ensure that Mildred Watkins, based on comprehensive assessments, maintained her abilities and activities of daily living;
- (c) In failing to ensure that Mildred Watkins was properly nourished and hydrated, protected from infection, protected from falls and injuries, protected from dysphagia and aspiration, protected from the formation of decubitus ulcers and other complications;
- (d) In failing to properly initiate, timely revise and enforce adequate plans of care for Mildred Watkins while she was a resident at Country Wood;
- (e) In failing to properly recognize and diagnose significant changes in Mildred Watkins physical and mental condition and then failing to initial appropriate and timely medical responses thereto;
- (f) In failing to prepare assessments for residents, including Mildred Watkins, which must be conducted promptly after a significant change physical or mental condition and in failing to initiate appropriate medical responses thereto;
- (g) In failing to monitor and deter the continued breakdown of Mildred Watkins' health and changing physical condition and in failing to alter treatment and initiate appropriate medical responses thereto;
- (h) In failing to diagnose and treat Mildred Watkins with regard to urinary tract infections in order to prevent the existence, recurrence, and adverse effects and complications of the infection;
- (i) In failing to provide Mildred Watkins with adequate pain relief;

- (j) In failing to provide the necessary care and services to maintain Mildred Watkins' physical, mental and psychosocial well-being in accordance with comprehensive individualized assessments and plans of care;
- (k) In failing to develop, implement and follow effective, comprehensive, individualized care plans for Mildred Watkins and other residents with timely updates, revisions and modifications for medical conditions, changing needs and other conditions, including, but not limited to: falls, mental and psychosocial functioning, nutrition, hydration, weight management, dysphagia with aspiration prevention, accident, personal grooming, skin health, including decubitus care and prevention, infection prevention, infection control and elimination, medication prescription, medication administration, medication monitoring, and vaccinations;
- (l) In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the prevention of complications and harm to patients, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them and in failing to adequately assess, evaluate and supervise staff at the facility to ensure that Mildred Watkins received care in accordance with said policies, procedure, protocols, rules, regulations, manuals, state and federal laws, rules and regulations;
- (m) In failing to properly and adequately assess, monitor develop, implement and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to prevention of harm to and care of fragile patients being handled and attended to by nursing home personnel at Country Wood, which would have prevented the neglect of Mildred Watkins;
- (n) In failing to properly train, educate, supervise and monitor its employees, servants and agents, including, but not limited to the physicians, nurses, nursing assistants, medical personnel, staff and employees at Country Wood and entrusting these agents, servants and employees with the care of residents who are unable to care for themselves, including Mildred Watkins;
- (o) In hiring and retaining as employees at Country Wood, doctors, nurses, nursing assistants, medical personnel, staff and employees who were not properly qualified, not competent, and not adequately educated, and then entrusting these agents, servants and employees with the care of residents who are unable to care for themselves, including Mildred Watkins;
- (p) In failing to timely diagnose infection in Mildred Watkins and in failing to react to the severity thereof;
- (q) In failing to properly treat Mildred Watkins' infections;
- (r) In failing to prescribe and administer medication to Mildred Watkins in order to

treat her infections;

- (s) In failing to prescribe and administer medication to the decedent in order to treat and provide comfort for her pain and other symptoms related to her infection;
- (t) In failing to properly monitor Mildred Watkins and prevent the recurrence of urinary tract infections;
- (u) In allowing Mildred Watkins to develop decubitus ulcers, in failing to address and have adequate plans of care in place to prevent the development of decubitus ulcers, in failing to properly treat and diminish the size and severity of the decubitus ulcers, and in failing to eliminate the ulcers;
- (v) In failing to hire and have present at the facility a sufficient and appropriate number of trained and competent nurses, nurses' aides and other medical staff to care for Mildred Watkins;
- (w) In failing to hire and have present at the facility a sufficient and appropriate number of trained and competent doctors to care for Mildred Watkins;
- (x) In failing to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in patient care, including those involving Mildred Watkins;
- (y) In causing and/or allowing Mildred Watkins to sustain a severe dislocation/fracture to her thumb which required surgery;
- (z) In removing bed rails from resident's beds, including Mildred Watkins' bed, thereby leaving exposed metal which the Defendant knew or should have known would result in injuries to its residents, including Mildred Watkins;
- (aa) In causing and/or allowing Mildred Watkins' skin to be lacerated by her bed frame, resulting in a severe and painful laceration which required emergency medical care and multiple staples;
- (bb) In failing to provide proper nutrition and hydration and a proper care plan with regard to nutrition and hydration to prevent Mildred Watkins' substantial weight loss;
- (cc) In failing to provide proper hygiene and personal grooming to Mildred Watkins;
- (dd) In causing and/or allowing Mildred Watkins to be assaulted, battered, bruised, scratched and harmed by Defendant's employees and/or other residents;
- (ee) In failing to discharge their legal and lawful obligations by:
 - i. Failing to ensure that all federal and state laws, rules and regulations and guidelines designed to protect the health and safety of patients, such as the

- decedent, as promulgated by the South Carolina Department of Health and Environmental Control and U.S. Department of Justice are consistently complied with on an ongoing basis;
- ii. Failing to ensure that the patient care policies were consistently complied with on an ongoing basis;
 - iii. Failing to ensure that the policy and procedure manuals were updated and modified to address problems concerning inadequate patient care as noted from inspections, surveys, citations, and deficiencies done by the South Carolina Department of Health and Environmental Control and the U.S. Department of Justice;
- (ff) In then and there failing to exercise that degree of care which a reasonable and prudent facility would have exercised under the same or similar circumstances and in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure; and
- (gg) In such other particulars as may become evident during discovery and the trial of this matter.

All of which acts and omissions were the actual, direct and proximate cause of the injuries and damages Mildred Watkins and Mildred Watkins' beneficiaries suffered, as are more fully set forth below, said acts being in violation of the state and federal laws, rules and regulations.

33. All of the above acts or omissions of gross negligence were the proximate cause of the injuries and damages suffered by Mildred Watkins which eventually lead to her death.

34. As a direct and proximate result of the grossly negligent, negligent, careless, reckless, willful and wanton departures from the professional standards of care by the Defendant, Mildred Watkins suffered a rapid, significant and debilitating decline in health, complicated by, but not limited to, a severe urinary tract infection, malnutrition, decubitus ulcers, and an untreated urinary tract infection from which she developed urosepsis and ultimately died, by virtue of which, the decedent's statutory beneficiaries have lost the aid, comfort, companionship and society of the decedent, and have suffered severe and extreme emotional distress, anxiety,

grief and sorrow, for which the Plaintiff is entitled to recover on behalf of the statutory beneficiaries, actual damages pursuant to §15-51-10 *et seq S C. Code Ann.* (1976 as amended), in an amount to be determined by the jury at the trial of this action.

AS TO DEFENDANT GUARDIAN

35. Plaintiff incorporates herein by reference all the allegations of the preceding paragraphs.

36. Upon information and belief, Defendant Guardian, by and through its association with Country Wood, its agents, servants and employees, did undertake the duty to render various services to Country Wood, including services which would facilitate the ability to provide care to patients of Country Wood, including Mildred Watkins, in accordance with the prevailing professional standards of care for nursing home providers in the state and the national community.

37. Notwithstanding said undertaking, and while Mildred Watkins was under the care of the Defendants at Country Wood, said Defendants, jointly and severally, departed from prevailing professional standards of care and treatment of Mildred Watkins and were thereby grossly negligent, negligent, careless, reckless, willful and wanton and acted in violation of the duties owed to Mildred Watkins in that they committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- (a) In failing to properly monitor and care for Mildred Watkins and her physical and mental well-being while she was residing at Country Wood and thereby failing to care for her in a manner and in an environment that promotes maintenance and enhancement of her quality of life;
- (b) In failing to ensure that Mildred Watkins, based on comprehensive assessments,

maintained her abilities and activities of daily living;

- (c) In failing to ensure that Mildred Watkins was properly nourished and hydrated, protected from infection, protected from falls and injuries, protected from dysphagia and aspiration, protected from the formation of decubitus ulcers and other complications;
- (d) In failing to properly initiate, timely revise and enforce adequate plans of care for Mildred Watkins while she was a resident at Country Wood;
- (e) In failing to properly recognize and diagnose significant changes in Mildred Watkins physical and mental condition and then failing to initiate appropriate and timely medical responses thereto;
- (f) In failing to prepare assessments for residents, including Mildred Watkins, which must be conducted promptly after a significant change physical or mental condition and in failing to initiate appropriate medical responses thereto;
- (g) In failing to monitor and deter the continued breakdown of Mildred Watkins' health and changing physical condition and in failing to alter treatment and initiate appropriate medical responses thereto;
- (h) In failing to diagnose and treat Mildred Watkins with regard to urinary tract infections in order to prevent the existence, recurrence, and adverse effects and complications of the infection;
- (i) In failing to provide Mildred Watkins with adequate pain relief;
- (j) In failing to provide the necessary care and services to maintain Mildred Watkins' physical, mental and psychosocial well-being in accordance with comprehensive individualized assessments and plans of care;
- (k) In failing to develop, implement and follow effective, comprehensive, individualized care plans for Mildred Watkins and other residents with timely updates, revisions and modifications for medical conditions, changing needs and other conditions, including, but not limited to: falls, mental and psychosocial functioning, nutrition, hydration, weight management, dysphagia with aspiration prevention, accident, personal grooming, skin health, including decubitus care and prevention, infection prevention, infection control and elimination, medication prescription, medication administration, medication monitoring, and vaccinations;
- (l) In failing to have in place proper and adequate policies, procedures, protocols, rules and regulations for the prevention of complications and harm to patients, or if such policies, procedures, protocols, rules and regulations were in place, in failing to enforce them and in failing to adequately assess, evaluate and supervise staff at the facility to ensure that Mildred Watkins received care in accordance

with said policies, procedure, protocols, rules, regulations, manuals, state and federal laws, rules and regulations;

- (m) In failing to properly and adequately assess, monitor develop, implement and update policies, procedures, protocols, rules and regulations in response to knowledge garnered from published guidelines and case reviews relating to prevention of harm to and care of fragile patients being handled and attended to by nursing home personnel at Country Wood, which would have prevented the neglect of Mildred Watkins;
- (n) In failing to properly train, educate, supervise and monitor its employees, servants and agents, including, but not limited to the physicians, nurses, nursing assistants, medical personnel, staff and employees at Country Wood and entrusting these agents, servants and employees with the care of residents who are unable to care for themselves, including Mildred Watkins;
- (o) In hiring and retaining as employees at Country Wood, doctors, nurses, nursing assistants, medical personnel, staff and employees who were not properly qualified, not competent, and not adequately educated, and then entrusting these agents, servants and employees with the care of residents who are unable to care for themselves, including Mildred Watkins;
- (p) In failing to timely diagnose infection in Mildred Watkins and in failing to react to the severity thereof;
- (q) In failing to properly treat Mildred Watkins' infections;
- (r) In failing to prescribe and administer medication to Mildred Watkins in order to treat her infections;
- (s) In failing to prescribe and administer medication to the decedent in order to treat and provide comfort for her pain and other symptoms related to her infection;
- (t) In failing to properly monitor Mildred Watkins and prevent the recurrence of urinary tract infections;
- (u) In allowing Mildred Watkins to develop decubitus ulcers, in failing to address and have adequate plans of care in place to prevent the development of decubitus ulcers, in failing to properly treat and diminish the size and severity of the decubitus ulcers, and in and failing to eliminate the ulcers;
- (v) In failing to hire and have present at the facility a sufficient and appropriate number of trained and competent nurses, nurses' aides and other medical staff to care for Mildred Watkins;
- (w) In failing to hire and have present at the facility a sufficient and appropriate

number of trained and competent doctors to care for Mildred Watkins;

- (x) In failing to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in patient care, including those involving Mildred Watkins;
- (y) In causing and/or allowing Mildred Watkins to sustain a severe dislocation/fracture to her thumb which required surgery;
- (z) In removing bed rails from resident's beds, including Mildred Watkins' bed, thereby leaving exposed metal which the Defendant knew or should have known would result in injuries to its residents, including Mildred Watkins;
- (aa) In causing and/or allowing Mildred Watkins skin to be lacerated by her bed frame, resulting in a severe and painful laceration which required emergency medical care and multiple staples;
- (bb) In failing to provide proper nutrition and hydration and a proper care plan with regard to nutrition and hydration to prevent Mildred Watkins' substantial weight loss;
- (cc) In failing to provide proper hygiene and personal grooming to Mildred Watkins;
- (dd) In causing and/or allowing Mildred Watkins to be assaulted, battered, bruised, scratched and harmed by Defendant's employees and/or other residents;
- (ee) In failing to discharge their legal and lawful obligations by:
 - i. Failing to ensure that all federal and state laws, rules and regulations and guidelines designed to protect the health and safety of patients, such as the decedent, as promulgated by the South Carolina Department of Health and Environmental Control and U.S. Department of Justice are consistently complied with on an ongoing basis;
 - ii. Failing to ensure that the patient care policies were consistently complied with on an ongoing basis;
 - iii. Failing to ensure that the policy and procedure manuals were updated and modified to address problems concerning inadequate patient care as noted from inspections, surveys, citations, and deficiencies done by the South Carolina Department of Health and Environmental Control and the U.S. Department of Justice;
- (ff) In then and there failing to exercise that degree of care which a reasonable and prudent entity would have exercised under the same or similar circumstances and in such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure; and
- (gg) In such other particulars as may become evident during discovery and the trial of this matter.

All of which acts and omissions were the actual, direct and proximate cause of the injuries and damages Mildred Watkins and Mildred Watkins' beneficiaries suffered, as are more fully set forth below, said acts being in violation of the state and federal laws, rules and regulations.

38. All of the above acts or omissions of gross negligence were the proximate cause of the injuries and damages suffered by Mildred Watkins which eventually lead to her death.

39. As a direct and proximate result of the grossly negligent, negligent, careless, reckless, willful and wanton departures from the professional standards of care by the Defendants, jointly and severally, Mildred Watkins suffered a rapid, significant and debilitating decline in health, complicated by, but not limited to, a severe urinary tract infection, malnutrition, decubitus ulcers, and an untreated urinary tract infection from which she developed urosepsis and ultimately died, by virtue of which, the decedent's statutory beneficiaries have lost the aid, comfort, companionship and society of the decedent, and have suffered severe and extreme emotional distress, anxiety, grief and sorrow, for which the Plaintiff is entitled to recover on behalf of the statutory beneficiaries, actual damages pursuant to §15-51-10 *et seq S C. Code Ann.* (1976 as amended), in an amount to be determined by the jury at the trial of this action.

AS TO ALL DEFENDANTS

FOR A SECOND CAUSE OF ACTION
(Medical and Nursing Home Malpractice – Survivorship Action)

40. Plaintiff incorporates herein by reference all the allegations of the preceding paragraphs.

41. The Estate of Mildred Watkins, as a direct, foreseeable and proximate result of

the aforesaid grossly negligent, negligent, careless, willful, wanton and reckless acts and omissions of the Defendants, jointly and severally, as set forth herein above and incorporated herein by reference, Mildred Watkins suffered injuries and damages, including but not limited to the following, all of which are elements in her survival action claim:

- (a) extreme pain and discomfort;
- (b) suffering and agony;
- (c) sorrow;
- (d) mental anguish and emotional distress;
- (e) shock;
- (f) grief;
- (g) medical expenses;
- (h) funeral expenses;
- (i) severe, serious, painful and fatal injuries;
- (j) hospitalization for a long period of time;
- (k) subjection to multiple medical procedures and strong and potent medications for a long period of time;
- (l) disfigurement and scarring;
- (m) being deprived of the enjoyment of life; and
- (n) any other further relief as this Court deems just and proper,

All of which are elements of damages for which the Plaintiff's decedent's Estate is entitled to an award of damages pursuant to §15-5-90, *et seq*, *S.C. Code Ann.* (1976 as amended).

42. That as a direct, foreseeable and proximate result of the aforesaid grossly negligent, careless, reckless, willful and wanton acts and omissions of the Defendants, jointly

and severally, as set forth herein above and incorporated herein by reference, Mildred Watkins' Estate and its beneficiaries, as represented by Jean Watkins, as Personal Representative of the Estate of Mildred Watkins, have suffered injuries and damages, which have caused and in the future will cause her beneficiaries to suffer one or more of the following elements of damages, including but not limited to the following, all of which are elements of damages in a survival action:

- (a) Pecuniary loss;
- (b) Medical bills and expenses;
- (c) Funeral expenses;
- (d) Mental anguish, shock, pain, suffering, and discomfort;
- (e) Grief and sorrow;
- (f) Loss of companionship and love;
- (g) Deprivation of use and comfort of Mildred Watkins' society, including loss of her experience, knowledge and judgment;
- (h) Inability to pursue their normal and usual vocations, thereby being deprived of income; and
- (i) Inability to pursue many of their usual avocations, thereby being deprived of the enjoyment of life,

All of which are elements of damages for which the Plaintiff's decedent's Estate is entitled to an award of damages pursuant to §15-5-90, *et seq.* S.C. Code Ann. (1976 as amended).

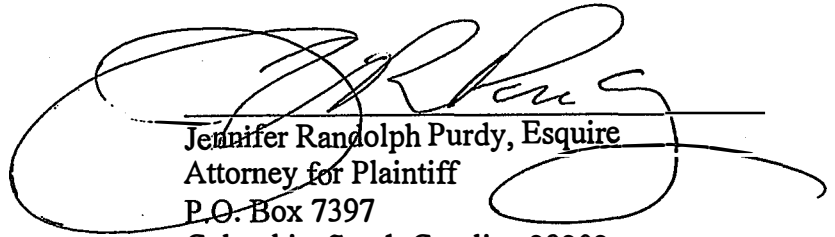
AS TO ALL CAUSES OF ACTION AND ALL DEFENDANTS

43. Plaintiff incorporates herein by reference all the allegations of the preceding paragraphs.

44. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants, jointly and severally, in the sum of such actual, consequential and punitive damages that a jury may find, together with the costs of this action.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, for such sum of actual and consequential damages that a jury may find, for the costs of this action, and for such other relief as the Court may deem just and proper.

POPOWSKI, CALLAS & SHIRLEY, P.A.



Jennifer Randolph Purdy, Esquire
Attorney for Plaintiff
P.O. Box 7397
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(803) 799-2100 phone
(803) 254-8074 fax
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Dated this 22nd day of August, 2014.
Columbia, South Carolina

copy

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

JEAN WATKINS, as Personal Representa-)
tive of the Estate of Mildred Watkins,)

Plaintiff,)

v.)

CIVIL ACTION NO. 2014-CP-40-5160

STERLING HEALTHCARE, INC.,)
COUNTRY WOOD NURSING CENTER,)
LLC, and GUARDIAN RESOURCES, LLC,)

Defendants.)
_____)

DEFENDANT STERLING HEALTHCARE, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

COMES NOW Sterling Healthcare, Inc. (hereinafter "Defendant" or "Sterling"), Defendant in the above-captioned civil action, and, subject to any and all affirmative defenses, qualifications, motions and any other pleadings, and without waiving any defenses as to jurisdiction or venue, files this its Answer and Affirmative Defenses to the Plaintiff's Complaint, stating as follows:

To the extent any allegations in Plaintiff's Complaint are not specifically admitted by this Defendant, they are hereby denied.

AS TO FACTS AND ALLEGATIONS

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint; accordingly, these allegations stand denied.

2.

Defendant admits it is a corporation organized and existing under the laws of the State of Georgia and at all times relevant to this matter was registered to conduct business in the State of South Carolina, but denies the remaining allegations contained in Paragraph 2 of Plaintiff's Complaint.

3.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Complaint; accordingly, these allegations stand denied.

4.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Complaint; accordingly, these allegations stand denied.

5.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint; accordingly, these allegations stand denied.

6.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Complaint; accordingly, these allegations stand denied.

FACTUAL ALLEGATIONS

7.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Complaint; accordingly, these allegations stand denied.

8.

Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9.

Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10.

Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11.

Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12.

Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Complaint; accordingly, these allegations stand denied.

14.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Complaint; accordingly, these allegations stand denied.

15.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Complaint; accordingly, these allegations stand denied.

16.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Complaint; accordingly, these allegations stand denied.

17.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint; accordingly, these allegations stand denied.

18.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint; accordingly, these allegations stand denied.

19.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Complaint; accordingly, these allegations stand denied.

20.

Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21.

Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22.

Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Complaint

23.

Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24.

Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

FOR A FIRST CAUSE OF ACTION
(Medical and Nursing Home Malpractice - Wrongful Death)

AS TO DEFENDANT STERLING

25.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 24 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 24 above, as if fully set forth herein.

26.

Defendant denies the allegations contained in Paragraph 26 of Plaintiff's Complaint.

27.

Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 27 as follows:

- (a) Defendant denies the allegations contained in Paragraph 27(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 27(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 27(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 27(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 27(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 27(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 27(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 27(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 27(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 27(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 27(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 27(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 27(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 27(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 27(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 27(p) of Plaintiff's Complaint.

- (q) Defendant denies the allegations contained in Paragraph 27(q) of Plaintiff's Complaint.
- (r) Defendant denies the allegations contained in Paragraph 27(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 27(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 27(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 27(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 27(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 27(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 27(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 27(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 27(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 27(aa) of Plaintiff's Complaint.

- (bb) Defendant denies the allegations contained in Paragraph 27(bb) of Plaintiff's Complaint.
- (cc) Defendant denies the allegations contained in Paragraph 27(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 27(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 27(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 27(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 27(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 27(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 27(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 27(gg) of Plaintiff's Complaint.

28.

Defendant denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29.

Defendant denies the allegations contained in Paragraph 29 of Plaintiff's Complaint.

AS TO DEFENDANT COUNTRY WOOD

30.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 29 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 29 above, as if fully set forth herein.

31.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiff's Complaint; accordingly, these allegations stand denied.

32.

Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 32 as follows:

- (a) Defendant denies the allegations contained in Paragraph 32(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 32(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 32(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 32(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 32(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 32(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 32(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 32(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 32(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 32(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 32(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 32(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 32(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 32(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 32(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 32(p) of Plaintiff's Complaint.

- (q) Defendant denies the allegations contained in Paragraph 32(q) of Plaintiff's Complaint.
- (r) Defendant denies the allegations contained in Paragraph 32(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 32(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 32(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 32(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 32(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 32(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 32(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 32(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 32(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 32(aa) of Plaintiff's Complaint.

- (bb) Defendant denies the allegations contained in Paragraph 32(bb) of Plaintiff's Complaint.
- (cc) Defendant denies the allegations contained in Paragraph 32(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 32(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 32(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 32(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 32(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 32(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 32(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 32(gg) of Plaintiff's Complaint.

33.

Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34.

Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Complaint.

AS TO DEFENDANT GUARDIAN

35.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 34 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 34 above, as if fully set forth herein.

36.

Defendant is without knowledge or information sufficient to form a basis as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint; accordingly, these allegations stand denied.

37.

Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 37 as follows:

- (a) Defendant denies the allegations contained in Paragraph 37(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 37(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 37(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 37(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 37(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 37(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 37(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 37(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 37(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 37(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 37(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 37(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 37(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 37(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 37(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 37(p) of Plaintiff's Complaint.

- (q) Defendant denies the allegations contained in Paragraph 37(q) of Plaintiff's Complaint.
- (r) Defendant denies the allegations contained in Paragraph 37(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 37(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 37(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 37(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 37(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 37(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 37(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 37(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 37(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 37(aa) of Plaintiff's Complaint.

- (bb) Defendant denies the allegations contained in Paragraph 37(bb) of Plaintiff's Complaint.
- (cc) Defendant denies the allegations contained in Paragraph 37(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 37(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 37(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 37(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 37(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 37(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 37(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 37(gg) of Plaintiff's Complaint.

38.

Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39.

Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Complaint.

AS TO ALL DEFENDANTS

FOR A SECOND CAUSE OF ACTION

(Medical and Nursing Home Malpractice – Survivorship Action)

40.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 39 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 39 above, as if fully set forth herein.

41.

Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Complaint, and specifically responds to the allegations contained in the subparagraphs of Paragraph 41 as follows:

- a. Defendant denies the allegations contained in Paragraph 41(a) of Plaintiff's Complaint.
- b. Defendant denies the allegations contained in Paragraph 41(b) of Plaintiff's Complaint.
- c. Defendant denies the allegations contained in Paragraph 41(c) of Plaintiff's Complaint.
- d. Defendant denies the allegations contained in Paragraph 41(d) of Plaintiff's Complaint.
- e. Defendant denies the allegations contained in Paragraph 41(e) of Plaintiff's Complaint.

- f. Defendant denies the allegations contained in Paragraph 41(f) of Plaintiff's Complaint.
- g. Defendant denies the allegations contained in Paragraph 41(g) of Plaintiff's Complaint.
- h. Defendant denies the allegations contained in Paragraph 41(h) of Plaintiff's Complaint.
- i. Defendant denies the allegations contained in Paragraph 41(i) of Plaintiff's Complaint.
- j. Defendant denies the allegations contained in Paragraph 41(j) of Plaintiff's Complaint.
- k. Defendant denies the allegations contained in Paragraph 41(k) of Plaintiff's Complaint.
- l. Defendant denies the allegations contained in Paragraph 41(l) of Plaintiff's Complaint.
- m. Defendant denies the allegations contained in Paragraph 41(m) of Plaintiff's Complaint.
- n. Defendant denies the allegations contained in Paragraph 41(n) of Plaintiff's Complaint.

42.

Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Complaint, and specifically responds with regard to the subparagraphs of Paragraph 42 as follows:

- (a) Defendant denies the allegations contained in Paragraph 42(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 42(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 42(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 42(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 42(e) of Plaintiff's Complaint.
- (f) Defendant denies the allegations contained in Paragraph 42(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 42(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 42(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 42(i) of Plaintiff's Complaint.

AS TO ALL CAUSES OF ACTION AND ALL DEFENDANTS

43.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 42 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 42 above, as if fully set forth herein.

44.

Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Failure to State a Claim)

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Failure to File Expert Affidavit)

Plaintiff's Complaint is subject to dismissal on the merits for failure to state a claim upon which relief may be granted due to Plaintiff's failure to comply with S.C. Code Ann. §§ 15-36-100 & 15-79-125 by failing to file an affidavit of an expert qualified to render opinions pursuant to S.C. Code Ann. § 15-36-100(A) and S.C. R. Evid. 702 & 703 simultaneously with Plaintiff's Complaint in this case.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Expiration of Statute of Limitations)

Some or all of Plaintiff's claims may be barred by the expiration of the statute of limitations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Deviation from the Standard of Care)

At all times relevant hereto, any care and treatment rendered to Mildred Watkins by Defendant Sterling Healthcare, Inc., met or exceeded the standard of care applicable to members of the elder care profession generally under the same or similar circumstances.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Negligence)

Defendant denies any negligence in the care and treatment rendered to Mildred Watkins.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Causal Relationship)

There is no causal relationship between any alleged acts and/or omissions on the part of Defendant and any alleged injuries to Mildred Watkins.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Proximate Cause)

Even if the Defendants were negligent as alleged in the Complaint, which is specifically denied, the negligence of the Defendants is not the direct or proximate cause of any injury alleged by the Plaintiff's Decedent and, therefore, the Defendants are not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Contributory or Comparative Negligence)

Mildred Watkins was either contributorily or comparatively negligent and/or assumed the risks of the events alleged in Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Liability)

The injuries allegedly suffered by Mildred Watkins may have been the result of actions or omissions of individuals over whom Defendant had no control; therefore, Defendant cannot be liable to the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Insufficient Service of Process)

There has been an insufficiency of service of process as to this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Punitive Damage Awards)

No award for punitive damages shall exceed the statutory limits contained in South Carolina Code Ann §15-32-530. The Defendants also reserve all other rights applicable to this case pursuant to South Carolina Code Ann §15-32-510, et seq.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Punitive Damages Unconstitutional)

Any award for assessment of punitive damages as prayed for by the Plaintiff would violate the Defendant's Constitutional rights under the Fifth, Sixth and Fourteenth

Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Evidence of Conduct Necessary to Claim Punitive Damages)

There is not clear and convincing evidence that this Defendant was guilty of willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences, and, accordingly, Plaintiffs are not entitled to recover punitive damages in any sum whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Joint and Several Liability)

Defendant Sterling Healthcare, Inc., is not jointly and severally liable to Plaintiff. In the event Defendant Sterling is found liable to Plaintiff, which Defendant expressly denies, its liability, if any, is less than 50% of the total liability of all parties, and Defendant is entitled to apportionment of damages pursuant to S.C. Code Ann. § 15-38-15(B) & (C).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Noneconomic Damage Awards)

No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, S.C. Code Ann. § 15-32-200, et seq. The Defendant is a health care provider or health care institution as defined by S.C. Code Ann § 15-32-210 and pursuant to § 15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Reservation of Additional Defenses)

Defendant reserves any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

To the extent any allegations in Plaintiff's Complaint have not been specifically answered by this Defendant, they are hereby denied.

WHEREFORE, having fully answered Plaintiff's Complaint, Sterling Healthcare, Inc. respectfully prays for the following relief from this Honorable Court:

1. That Plaintiff's claims be denied and Plaintiff's Complaint be dismissed with prejudice;
2. That all costs, attorney's fees, and expenses of this action be taxed against Plaintiff;
3. That the case be tried before a jury of twelve (12) persons; and
4. For such other and further relief as this Honorable Court deems just and proper.

This 15th day of September, 2014.

[Signature contained on the following page.]

LEWIS BRISBOIS BISGAARD & SMITH, LLP



Erin L. Coia
South Carolina Bar No. 77666

Attorney for the Defendant
Guardian Resources, LLC

1180 Peachtree Street, N.E.
Suite 2900
Atlanta, Georgia 30309
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Facsimile: (404) 467-8845
Erin.Coia@lewisbrisbois.com

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

JEAN WATKINS, as Personal Representa-)
tive of the Estate of Mildred Watkins,)
Plaintiff,)

v.)

STERLING HEALTHCARE, INC.,)
COUNTRY WOOD NURSING CENTER,)
LLC, and GUARDIAN RESOURCES, LLC,)
Defendants.)

CIVIL ACTION NO. 2014-CP-40-5160

**DEFENDANT COUNTRY WOOD NURSING CENTER, LLC'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

COMES NOW Country Wood Nursing Center, LLC (hereinafter "Defendant" or "Country Wood"), Defendant in the above-captioned civil action, and, subject to any and all affirmative defenses, qualifications, motions and any other pleadings, and without waiving any defenses as to jurisdiction or venue, files this its Answer and Affirmative Defenses to the Plaintiff's Complaint, stating as follows:

To the extent any allegations in Plaintiff's Complaint are not specifically admitted by this Defendant, they are hereby denied.

AS TO FACTS AND ALLEGATIONS

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint; accordingly, these allegations stand denied.

2.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Complaint; accordingly, these allegations stand denied.

3.

Defendant admits it is a corporation organized and existing under the laws of the State of South Carolina and at all times relevant to this matter, was registered to conduct business in the State of South Carolina and did in fact conduct business in the State of South Carolina as a nursing facility, Country Wood Nursing Center, located in the County of Richland, State of South Carolina, but denies the remaining allegations contained in Paragraph 3 of Plaintiff's Complaint.

4.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of Plaintiff's Complaint; accordingly, these allegations stand denied.

5.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint; accordingly, these allegations stand denied.

6.

Defendant admits that jurisdiction and venue are proper as to this Defendant. Any other allegations contained in Paragraph 6 of Plaintiff's Complaint not specifically admitted are denied.

FACTUAL ALLEGATIONS

7.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Complaint; accordingly, these allegations stand denied.

8.

Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9.

Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10.

Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11.

Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12.

Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Complaint; accordingly, these allegations stand denied.

14.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Complaint; accordingly, these allegations stand denied.

15.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Complaint; accordingly, these allegations stand denied.

16.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Complaint; accordingly, these allegations stand denied.

17.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint; accordingly, these allegations stand denied.

18.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint; accordingly, these allegations stand denied.

19.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Complaint; accordingly, these allegations stand denied.

20.

Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21.

Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22.

Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Complaint

23.

Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24.

Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Medical and Nursing Home Malpractice – Wrongful Death)

AS TO DEFENDANT STERLING

25.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 24 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 24 above, as if fully set forth herein.

26.

Defendant denies the allegations contained in Paragraph 26 of Plaintiff's Complaint.

27.

Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 27 as follows:

- (a) Defendant denies the allegations contained in Paragraph 27(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 27(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 27(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 27(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 27(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 27(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 27(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 27(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 27(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 27(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 27(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 27(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 27(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 27(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 27(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 27(p) of Plaintiff's Complaint.

- (q) Defendant denies the allegations contained in Paragraph 27(q) of Plaintiff's Complaint.
- (r) Defendant denies the allegations contained in Paragraph 27(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 27(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 27(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 27(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 27(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 27(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 27(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 27(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 27(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 27(aa) of Plaintiff's Complaint.

- (bb) Defendant denies the allegations contained in Paragraph 27(bb) of Plaintiff's Complaint.
- (cc) Defendant denies the allegations contained in Paragraph 27(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 27(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 27(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 27(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 27(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 27(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 27(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 27(gg) of Plaintiff's Complaint.

28.

Defendant denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29.

Defendant denies the allegations contained in Paragraph 29 of Plaintiff's Complaint.

AS TO DEFENDANT COUNTRY WOOD

30.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 29 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 29 above, as if fully set forth herein.

31.

Defendant denies the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32.

Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 32 as follows:

- (a) Defendant denies the allegations contained in Paragraph 32(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 32(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 32(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 32(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 32(e) of Plaintiff's Complaint.
- (f) Defendant denies the allegations contained in Paragraph 32(f) of Plaintiff's Complaint.

- (g) Defendant denies the allegations contained in Paragraph 32(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 32(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 32(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 32(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 32(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 32(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 32(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 32(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 32(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 32(p) of Plaintiff's Complaint.
- (q) Defendant denies the allegations contained in Paragraph 32(q) of Plaintiff's Complaint.

- (r) Defendant denies the allegations contained in Paragraph 32(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 32(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 32(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 32(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 32(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 32(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 32(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 32(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 32(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 32(aa) of Plaintiff's Complaint.
- (bb) Defendant denies the allegations contained in Paragraph 32(bb) of Plaintiff's Complaint.

- (cc) Defendant denies the allegations contained in Paragraph 32(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 32(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 32(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 32(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 32(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 32(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 32(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 32(gg) of Plaintiff's Complaint.

33.

Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34.

Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Complaint.

AS TO DEFENDANT GUARDIAN

35.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 34 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 34 above, as if fully set forth herein.

36.

Defendant is without knowledge or information sufficient to form a basis as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint; accordingly, these allegations stand denied.

37.

Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 37 as follows:

- (a) Defendant denies the allegations contained in Paragraph 37(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 37(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 37(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 37(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 37(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 37(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 37(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 37(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 37(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 37(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 37(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 37(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 37(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 37(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 37(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 37(p) of Plaintiff's Complaint.

- (q) Defendant denies the allegations contained in Paragraph 37(q) of Plaintiff's Complaint.
- (r) Defendant denies the allegations contained in Paragraph 37(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 37(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 37(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 37(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 37(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 37(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 37(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 37(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 37(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 37(aa) of Plaintiff's Complaint.

(bb) Defendant denies the allegations contained in Paragraph 37(bb) of Plaintiff's Complaint.

(cc) Defendant denies the allegations contained in Paragraph 37(cc) of Plaintiff's Complaint.

(dd) Defendant denies the allegations contained in Paragraph 37(dd) of Plaintiff's Complaint.

(ee) Defendant denies the allegations contained in Paragraph 37(ee) of Plaintiff's Complaint.

i. Defendant denies the allegations contained in Paragraph 37(ee)(i) of Plaintiff's Complaint.

ii. Defendant denies the allegations contained in Paragraph 37(ee)(ii) of Plaintiff's Complaint.

iii. Defendant denies the allegations contained in Paragraph 37(ee)(iii) of Plaintiff's Complaint.

(ff) Defendant denies the allegations contained in Paragraph 37(ff) of Plaintiff's Complaint.

(gg) Defendant denies the allegations contained in Paragraph 37(gg) of Plaintiff's Complaint.

38.

Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39.

Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Medical and Nursing Home Malpractice – Survivorship Action)

40.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 39 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 39 above, as if fully set forth herein.

41.

Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Complaint, and specifically responds to the allegations contained in the subparagraphs of Paragraph 41 as follows:

- a. Defendant denies the allegations contained in Paragraph 41(a) of Plaintiff's Complaint.
- b. Defendant denies the allegations contained in Paragraph 41(b) of Plaintiff's Complaint.
- c. Defendant denies the allegations contained in Paragraph 41(c) of Plaintiff's Complaint.
- d. Defendant denies the allegations contained in Paragraph 41(d) of Plaintiff's Complaint.
- e. Defendant denies the allegations contained in Paragraph 41(e) of Plaintiff's Complaint.
- f. Defendant denies the allegations contained in Paragraph 41(f) of Plaintiff's Complaint.

- g. Defendant denies the allegations contained in Paragraph 41(g) of Plaintiff's Complaint.
- h. Defendant denies the allegations contained in Paragraph 41(h) of Plaintiff's Complaint.
- i. Defendant denies the allegations contained in Paragraph 41(i) of Plaintiff's Complaint.
- j. Defendant denies the allegations contained in Paragraph 41(j) of Plaintiff's Complaint.
- k. Defendant denies the allegations contained in Paragraph 41(k) of Plaintiff's Complaint.
- l. Defendant denies the allegations contained in Paragraph 41(l) of Plaintiff's Complaint.
- m. Defendant denies the allegations contained in Paragraph 41(m) of Plaintiff's Complaint.
- n. Defendant denies the allegations contained in Paragraph 41(n) of Plaintiff's Complaint.

42.

Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Complaint, and specifically responds with regard to the subparagraphs of Paragraph 42 as follows:

- (a) Defendant denies the allegations contained in Paragraph 42(a) of Plaintiff's Complaint.

- (b) Defendant denies the allegations contained in Paragraph 42(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 42(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 42(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 42(e) of Plaintiff's Complaint.
- (f) Defendant denies the allegations contained in Paragraph 42(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 42(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 42(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 42(i) of Plaintiff's Complaint.

AS TO ALL CAUSES OF ACTION AND ALL DEFENDANTS

43.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 42 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 42 above, as if fully set forth herein.

44.

Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Failure to State a Claim)

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Failure to File Expert Affidavit)

Plaintiff's Complaint is subject to dismissal on the merits for failure to state a claim upon which relief may be granted due to Plaintiff's failure to comply with S.C. Code Ann. §§ 15-36-100 & 15-7-125 by failing to file an affidavit of an expert qualified to render opinions pursuant to S.C. Code Ann. § 15-36-100(A) and S.C. R. Evid. 702 & 703 simultaneously with Plaintiff's Complaint in this case.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Expiration of Statute of Limitations)

Some or all of Plaintiff's claims may be barred by the expiration of the statute of limitations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(No Deviation from the Standard of Care)

At all times relevant hereto, the care and treatment of Mildred Watkins by Defendant Country Wood Nursing Center, LLC, met or exceeded the standard of care applicable to members of the elder care profession generally under the same or similar circumstances.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Negligence)

Defendant denies any negligence in the care and treatment rendered to Mildred Watkins.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Causal Relationship)

There is no causal relationship between any alleged acts and/or omissions on the part of Defendant and any alleged injuries to Mildred Watkins.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Proximate Cause)

Even if the Defendants were negligent as alleged in the Complaint, which is specifically denied, the negligence of the Defendants is not the direct or proximate cause of any injury alleged by the Plaintiff's Decedent and, therefore, the Defendants are not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Contributory or Comparative Negligence)

Mildred Watkins was either contributorily or comparatively negligent and/or assumed the risks of the events alleged in Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Liability)

The injuries allegedly suffered by Mildred Watkins may have been the result of actions or omissions of individuals over whom Defendant had no control; therefore, Defendant cannot be liable to the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Insufficient Service of Process)

There has been an insufficiency of service of process as to this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Punitive Damage Awards)

No award for punitive damages shall exceed the statutory limits contained in South Carolina Code Ann §15-32-530. The Defendants also reserve all other rights applicable to this case pursuant to South Carolina Code Ann §15-32-510, et seq.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Punitive Damages Unconstitutional)

Any award for assessment of punitive damages as prayed for by the Plaintiff would violate the Defendant's Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Evidence of Conduct Necessary to Claim Punitive Damages)

There is not clear and convincing evidence that this Defendant was guilty of willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences, and, accordingly, Plaintiffs are not entitled to recover punitive damages in any sum whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Joint and Several Liability)

Defendant Country Wood Nursing Center, LLC, is not jointly and severally liable to Plaintiff. In the event Defendant Country Wood is found liable to Plaintiff, which Defendant expressly denies, its liability, if any, is less than 50% of the total liability of all parties, and Defendant is entitled to apportionment of damages pursuant to S.C. Code Ann. § 15-38-15(B) & (C).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Noneconomic Damage Awards)

No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, South Carolina Code Ann § 15-32-200, et seq. The Defendant is a health care provider or health care institution as defined by S.C. Code Ann § 15-32-210 and pursuant to § 15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Reservation of Additional Defenses)

Defendant reserves any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

To the extent any allegations in Plaintiff's Complaint have not been specifically answered by this Defendant, they are hereby denied.

WHEREFORE, having fully answered Plaintiff's Complaint, Country Wood Nursing Center, LLC, respectfully prays for the following relief from this Honorable Court:

1. That Plaintiff's claims be denied and Plaintiff's Complaint be dismissed with prejudice;
2. That all costs, attorney's fees, and expenses of this action be taxed against Plaintiff;
3. That the case be tried before a jury of twelve (12) persons; and
4. For such other and further relief as this Honorable Court deems just and proper.

This 15th day of September, 2014.

[Signature contained on the following page.]

LEWIS BRISBOIS BISGAARD & SMITH, LLP



Erin L. Coia

South Carolina Bar No. 77666

Attorney for the Defendant

Country Wood Nursing Center, LLC

1180 Peachtree Street, N.E.
Suite 2900
Atlanta, Georgia 30309
Telephone: (404) 348-8585
Facsimile: (404) 467-8845
Erin.Coia@lewisbrisbois.com

copy

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

JEAN WATKINS, as Personal Representa-)
tive of the Estate of Mildred Watkins,)
)
Plaintiff,)

v.)

CIVIL ACTION NO. 2014-CP-40-5160

STERLING HEALTHCARE, INC.,)
COUNTRY WOOD NURSING CENTER,)
LLC, and GUARDIAN RESOURCES, LLC,)
)
Defendants.)
_____)

FILED
2014 SEP 19 PM 9:03
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

DEFENDANT GUARDIAN RESOURCES, LLC'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT

COMES NOW Guardian Resources, LLC (hereinafter "Defendant" or "Guardian"), Defendant in the above-captioned civil action, and, subject to any and all affirmative defenses, qualifications, motions and any other pleadings, and without waiving any defenses as to jurisdiction or venue, files this its Answer and Affirmative Defenses to the Plaintiff's Complaint, stating as follows:

To the extent any allegations in Plaintiff's Complaint are not specifically admitted by this Defendant, they are hereby denied.

AS TO FACTS AND ALLEGATIONS

1.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint; accordingly, these allegations stand denied.

2.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Complaint; accordingly, these allegations stand denied.

3.

Defendant is without information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of Plaintiff's Complaint; accordingly, these allegations stand denied.

4.

Defendant admits it is a corporation organized and existing under the laws of the State of Georgia, but denies the remaining allegations contained in Paragraph 4 of Plaintiff's Complaint.

5.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of Plaintiff's Complaint; accordingly, these allegations stand denied.

6.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Complaint; accordingly, these allegations stand denied.

FACTUAL ALLEGATIONS

7.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of Plaintiff's Complaint; accordingly, these allegations stand denied.

8.

Defendant denies the allegations contained in Paragraph 8 of Plaintiff's Complaint.

9.

Defendant denies the allegations contained in Paragraph 9 of Plaintiff's Complaint.

10.

Defendant denies the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11.

Defendant denies the allegations contained in Paragraph 11 of Plaintiff's Complaint.

12.

Defendant denies the allegations contained in Paragraph 12 of Plaintiff's Complaint.

13.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Complaint; accordingly, these allegations stand denied.

14.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of Plaintiff's Complaint; accordingly, these allegations stand denied.

15.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of Plaintiff's Complaint; accordingly, these allegations stand denied.

16.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiff's Complaint; accordingly, these allegations stand denied.

17.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint; accordingly, these allegations stand denied.

18.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiff's Complaint; accordingly, these allegations stand denied.

19.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of Plaintiff's Complaint; accordingly, these allegations stand denied.

20.

Defendant denies the allegations contained in Paragraph 20 of Plaintiff's Complaint.

21.

Defendant denies the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22.

Defendant denies the allegations contained in Paragraph 22 of Plaintiff's Complaint

23.

Defendant denies the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24.

Defendant denies the allegations contained in Paragraph 24 of Plaintiff's Complaint.

FOR A FIRST CAUSE OF ACTION
(Medical and Nursing Home Malpractice – Wrongful Death)

AS TO DEFENDANT STERLING

25.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 24 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 24 above, as if fully set forth herein.

26.

Defendant denies the allegations contained in Paragraph 26 of Plaintiff's Complaint.

27.

Defendant denies the allegations contained in Paragraph 27 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 27 as follows:

- (a) Defendant denies the allegations contained in Paragraph 27(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 27(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 27(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 27(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 27(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 27(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 27(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 27(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 27(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 27(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 27(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 27(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 27(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 27(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 27(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 27(p) of Plaintiff's Complaint.

- (q) Defendant denies the allegations contained in Paragraph 27(q) of Plaintiff's Complaint.
- (r) Defendant denies the allegations contained in Paragraph 27(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 27(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 27(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 27(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 27(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 27(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 27(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 27(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 27(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 27(aa) of Plaintiff's Complaint.

- (bb) Defendant denies the allegations contained in Paragraph 27(bb) of Plaintiff's Complaint.
- (cc) Defendant denies the allegations contained in Paragraph 27(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 27(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 27(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 27(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 27(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 27(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 27(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 27(gg) of Plaintiff's Complaint.

28.

Defendant denies the allegations contained in Paragraph 28 of Plaintiff's Complaint.

29.

Defendant denies the allegations contained in Paragraph 29 of Plaintiff's Complaint.

AS TO DEFENDANT COUNTRY WOOD

30.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 29 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 29 above, as if fully set forth herein.

31.

Defendant denies the allegations contained in Paragraph 31 of Plaintiff's Complaint.

32.

Defendant denies the allegations contained in Paragraph 32 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 32 as follows:

- (a) Defendant denies the allegations contained in Paragraph 32(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 32(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 32(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 32(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 32(e) of Plaintiff's Complaint.
- (f) Defendant denies the allegations contained in Paragraph 32(f) of Plaintiff's Complaint.

- (g) Defendant denies the allegations contained in Paragraph 32(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 32(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 32(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 32(j) of Plaintiff's Complaint.
- (k) Defendant denies the allegations contained in Paragraph 32(k) of Plaintiff's Complaint.
- (l) Defendant denies the allegations contained in Paragraph 32(l) of Plaintiff's Complaint.
- (m) Defendant denies the allegations contained in Paragraph 32(m) of Plaintiff's Complaint.
- (n) Defendant denies the allegations contained in Paragraph 32(n) of Plaintiff's Complaint.
- (o) Defendant denies the allegations contained in Paragraph 32(o) of Plaintiff's Complaint.
- (p) Defendant denies the allegations contained in Paragraph 32(p) of Plaintiff's Complaint.
- (q) Defendant denies the allegations contained in Paragraph 32(q) of Plaintiff's Complaint.

- (r) Defendant denies the allegations contained in Paragraph 32(r) of Plaintiff's Complaint.
- (s) Defendant denies the allegations contained in Paragraph 32(s) of Plaintiff's Complaint.
- (t) Defendant denies the allegations contained in Paragraph 32(t) of Plaintiff's Complaint.
- (u) Defendant denies the allegations contained in Paragraph 32(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 32(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 32(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 32(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 32(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 32(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 32(aa) of Plaintiff's Complaint.
- (bb) Defendant denies the allegations contained in Paragraph 32(bb) of Plaintiff's Complaint.

- (cc) Defendant denies the allegations contained in Paragraph 32(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 32(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 32(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 32(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 32(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 32(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 32(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 32(gg) of Plaintiff's Complaint.

33.

Defendant denies the allegations contained in Paragraph 33 of Plaintiff's Complaint.

34.

Defendant denies the allegations contained in Paragraph 34 of Plaintiff's Complaint.

AS TO DEFENDANT GUARDIAN

35.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 34 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 34 above, as if fully set forth herein.

36.

Defendant is without knowledge or information sufficient to form a basis as to the truth of the allegations contained in Paragraph 36 of Plaintiff's Complaint; accordingly, these allegations stand denied.

37.

Defendant denies the allegations contained in Paragraph 37 of Plaintiff's Complaint, and specifically responds to the subparagraphs of Paragraph 37 as follows:

- (a) Defendant denies the allegations contained in Paragraph 37(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 37(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 37(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 37(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 37(e) of Plaintiff's Complaint.

- (f) Defendant denies the allegations contained in Paragraph 37(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 37(g) of Plaintiff's Complaint.
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- (i) Defendant denies the allegations contained in Paragraph 37(i) of Plaintiff's Complaint.
- (j) Defendant denies the allegations contained in Paragraph 37(j) of Plaintiff's Complaint.
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- (p) Defendant denies the allegations contained in Paragraph 37(p) of Plaintiff's Complaint.

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- (u) Defendant denies the allegations contained in Paragraph 37(u) of Plaintiff's Complaint.
- (v) Defendant denies the allegations contained in Paragraph 37(v) of Plaintiff's Complaint.
- (w) Defendant denies the allegations contained in Paragraph 37(w) of Plaintiff's Complaint.
- (x) Defendant denies the allegations contained in Paragraph 37(x) of Plaintiff's Complaint.
- (y) Defendant denies the allegations contained in Paragraph 37(y) of Plaintiff's Complaint.
- (z) Defendant denies the allegations contained in Paragraph 37(z) of Plaintiff's Complaint.
- (aa) Defendant denies the allegations contained in Paragraph 37(aa) of Plaintiff's Complaint.

- (bb) Defendant denies the allegations contained in Paragraph 37(bb) of Plaintiff's Complaint.
- (cc) Defendant denies the allegations contained in Paragraph 37(cc) of Plaintiff's Complaint.
- (dd) Defendant denies the allegations contained in Paragraph 37(dd) of Plaintiff's Complaint.
- (ee) Defendant denies the allegations contained in Paragraph 37(ee) of Plaintiff's Complaint.
 - i. Defendant denies the allegations contained in Paragraph 37(ee)(i) of Plaintiff's Complaint.
 - ii. Defendant denies the allegations contained in Paragraph 37(ee)(ii) of Plaintiff's Complaint.
 - iii. Defendant denies the allegations contained in Paragraph 37(ee)(iii) of Plaintiff's Complaint.
- (ff) Defendant denies the allegations contained in Paragraph 37(ff) of Plaintiff's Complaint.
- (gg) Defendant denies the allegations contained in Paragraph 37(gg) of Plaintiff's Complaint.

38.

Defendant denies the allegations contained in Paragraph 38 of Plaintiff's Complaint.

39.

Defendant denies the allegations contained in Paragraph 39 of Plaintiff's Complaint.

AS TO ALL DEFENDANTS

FOR A SECOND CAUSE OF ACTION

(Medical and Nursing Home Malpractice – Survivorship Action)

40.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 39 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 39 above, as if fully set forth herein.

41.

Defendant denies the allegations contained in Paragraph 41 of Plaintiff's Complaint, and specifically responds to the allegations contained in the subparagraphs of Paragraph 41 as follows:

- a. Defendant denies the allegations contained in Paragraph 41(a) of Plaintiff's Complaint.
- b. Defendant denies the allegations contained in Paragraph 41(b) of Plaintiff's Complaint.
- c. Defendant denies the allegations contained in Paragraph 41(c) of Plaintiff's Complaint.
- d. Defendant denies the allegations contained in Paragraph 41(d) of Plaintiff's Complaint.
- e. Defendant denies the allegations contained in Paragraph 41(e) of Plaintiff's Complaint.

- f. Defendant denies the allegations contained in Paragraph 41(f) of Plaintiff's Complaint.
- g. Defendant denies the allegations contained in Paragraph 41(g) of Plaintiff's Complaint.
- h. Defendant denies the allegations contained in Paragraph 41(h) of Plaintiff's Complaint.
- i. Defendant denies the allegations contained in Paragraph 41(i) of Plaintiff's Complaint.
- j. Defendant denies the allegations contained in Paragraph 41(j) of Plaintiff's Complaint.
- k. Defendant denies the allegations contained in Paragraph 41(k) of Plaintiff's Complaint.
- l. Defendant denies the allegations contained in Paragraph 41(l) of Plaintiff's Complaint.
- m. Defendant denies the allegations contained in Paragraph 41(m) of Plaintiff's Complaint.
- n. Defendant denies the allegations contained in Paragraph 41(n) of Plaintiff's Complaint.

42.

Defendant denies the allegations contained in Paragraph 42 of Plaintiff's Complaint, and specifically responds with regard to the subparagraphs of Paragraph 42 as follows:

- (a) Defendant denies the allegations contained in Paragraph 42(a) of Plaintiff's Complaint.
- (b) Defendant denies the allegations contained in Paragraph 42(b) of Plaintiff's Complaint.
- (c) Defendant denies the allegations contained in Paragraph 42(c) of Plaintiff's Complaint.
- (d) Defendant denies the allegations contained in Paragraph 42(d) of Plaintiff's Complaint.
- (e) Defendant denies the allegations contained in Paragraph 42(e) of Plaintiff's Complaint.
- (f) Defendant denies the allegations contained in Paragraph 42(f) of Plaintiff's Complaint.
- (g) Defendant denies the allegations contained in Paragraph 42(g) of Plaintiff's Complaint.
- (h) Defendant denies the allegations contained in Paragraph 42(h) of Plaintiff's Complaint.
- (i) Defendant denies the allegations contained in Paragraph 42(i) of Plaintiff's Complaint.

AS TO ALL CAUSES OF ACTION AND ALL DEFENDANTS

43.

Defendant incorporates herein by reference its responses to the allegations contained in Paragraphs 1 through 42 of Plaintiff's Complaint, which are stated in Paragraphs 1 through 42 above, as if fully set forth herein.

44.

Defendant denies the allegations contained in Paragraph 44 of Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Failure to State a Claim)

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Failure to File Expert Affidavit)

Plaintiff's Complaint is subject to dismissal on the merits for failure to state a claim upon which relief may be granted due to Plaintiff's failure to comply with S.C. Code Ann. §§ 15-36-100 & 15-79-125 by failing to file an affidavit of an expert qualified to render opinions pursuant to S.C. Code Ann. § 15-36-100(A) and S.C. R. Evid. 702 & 703 simultaneously with Plaintiff's Complaint in this case.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(Expiration of Statute of Limitations)

Some or all of Plaintiff's claims may be barred by the expiration of the statute of limitations.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
DEFENDANT ALLEGES
(No Deviation from the Standard of Care)

At all times relevant hereto, any care and treatment rendered to Mildred Watkins by Defendant Guardian Resources, LLC, met or exceeded the standard of care applicable to members of the elder care profession generally under the same or similar circumstances.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Negligence)

Defendant denies any negligence in the care and treatment rendered to Mildred Watkins.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Causal Relationship)

There is no causal relationship between any alleged acts and/or omissions on the part of Defendant and any alleged injuries to Mildred Watkins.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Proximate Cause)

Even if the Defendants were negligent as alleged in the Complaint, which is specifically denied, the negligence of the Defendants is not the direct or proximate cause of any injury alleged by the Plaintiff's Decedent and, therefore, the Defendants are not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Contributory or Comparative Negligence)

Mildred Watkins was either contributorily or comparatively negligent and/or assumed the risks of the events alleged in Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Liability)

The injuries allegedly suffered by Mildred Watkins may have been the result of actions or omissions of individuals over whom Defendant had no control; therefore, Defendant cannot be liable to the Plaintiffs.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Insufficient Service of Process)

There has been an insufficiency of service of process as to this Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Punitive Damage Awards)

No award for punitive damages shall exceed the statutory limits contained in South Carolina Code Ann §15-32-530. The Defendants also reserve all other rights applicable to this case pursuant to South Carolina Code Ann §15-32-510, et seq.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Punitive Damages Unconstitutional)

Any award for assessment of punitive damages as prayed for by the Plaintiff would violate the Defendant's Constitutional rights under the Fifth, Sixth and Fourteenth

Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Evidence of Conduct Necessary to Claim Punitive Damages)

There is not clear and convincing evidence that this Defendant was guilty of willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences, and, accordingly, Plaintiffs are not entitled to recover punitive damages in any sum whatsoever.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(No Joint and Several Liability)

Defendant Guardian Resources, LLC, is not jointly and severally liable to Plaintiff. In the event Defendant Guardian is found liable to Plaintiff, which Defendant expressly denies, its liability, if any, is less than 50% of the total liability of all parties, and Defendant is entitled to apportionment of damages pursuant to S.C. Code Ann. § 15-38-15(B) & (C).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Noneconomic Damage Awards)

No award for noneconomic damages shall exceed the statutory limits contained in the Noneconomic Damages Awards Act of 2005, S.C. Code Ann. § 15-32-200, et seq. The Defendant is a health care provider or health care institution as defined by S.C. Code Ann § 15-32-210 and pursuant to § 15-32-220 of the Noneconomic Damage Awards Act of 2005, any potential recovery of noneconomic damages is limited to the amounts stated therein.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
DEFENDANT ALLEGES
(Reservation of Additional Defenses)

Defendant reserves any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

To the extent any allegations in Plaintiff's Complaint have not been specifically answered by this Defendant, they are hereby denied.

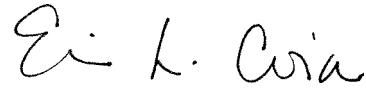
WHEREFORE, having fully answered Plaintiff's Complaint, Defendant Guardian Resources, LLC, respectfully prays for the following relief from this Honorable Court:

1. That Plaintiff's claims be denied and Plaintiff's Complaint be dismissed with prejudice;
2. That all costs, attorney's fees, and expenses of this action be taxed against Plaintiff;
3. That the case be tried before a jury of twelve (12) persons; and
4. For such other and further relief as this Honorable Court deems just and proper.

This 15th day of September, 2014.

[Signature contained on the following page.]

LEWIS BRISBOIS BISGAARD & SMITH, LLP



Erin L. Coia
South Carolina Bar No. 77666

Attorney for the Defendant
Guardian Resources, LLC

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S

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-04463

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.)

Transcript of Record

July 10, 2017
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:

Jennifer R. Purdy, Esquire
Attorney for the Plaintiff

Leah Fox Parker, Esquire
Attorney for the Defendants

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
Certificate Page.	35

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>
No exhibits introduced.		

1 THE COURT: The next matter is docket number
2 2016-CP-40-04463, *Jean Watkins vs. Sterling Healthcare,*
3 *Incorporated.* On behalf of the plaintiff is Jennifer
4 Purdy. Is that correct?

5 MS. PURDY: Yes, ma'am.

6 THE COURT: And on behalf of the defendant?

7 MS. PARKER: Leah Parker, Your Honor.

8 THE COURT: And, Ms. Parker, you've been admitted *pro*
9 *hac vice*?

10 MS. PARKER: No. I'm a licensed South Carolina
11 attorney.

12 THE COURT: We're here on a motion for a rule to show
13 cause. I've had the opportunity to review the information
14 and, Ms. Purdy, to save you the time to go through all of
15 the documents, I've read your motion, I've read your
16 affidavit, I've read the order from Judge Dickson, and I
17 have read the responses, and so unless there's really
18 something that you want to say, I'm interested to hear from
19 the defense.

20 MS. PURDY: I will certainly concede the floor to
21 defense counsel at this time.

22 THE COURT: And, Ms. Fox, I have -- I'm sorry, Ms.
23 Parker, I have reviewed your response which you filed in
24 the matter. I have reviewed again your answers, and I
25 think I've covered everything that I received unless there

1 was something I might have missed, which I don't think
2 there is. So, can you tell me basically how you believe
3 that these documents satisfy the order of Judge Dickson?

4 MS. PARKER: Yes, Your Honor. I think first off we
5 would, with respect to the court and to Judge Dickson, like
6 to state that this is the most broad discovery order
7 anybody in our firm has -- who's seen this case has ever
8 seen before, especially in this type of case.

9 So, this order demanded our production of documents
10 that our clients have never had to produce before, never
11 anticipated having to produce before. So, obtaining these
12 documents was a much more complicated endeavor than simply
13 pulling documents that we're used to having ---

14 THE COURT: Sure.

15 MS. PARKER: --- produced before.

16 THE COURT: And I understand that, and I got that
17 information. I also realize that Judge Dickson's order did
18 not give you an awful lot of time to be able to ---

19 MS. PARKER: Yes.

20 THE COURT: --- respond to the request, but I still
21 didn't see in any of the correspondence and information,
22 the emails that went back and forth that talked about, you
23 know, giving additional -- well, other than the fact that
24 it wasn't calendared by your office, and that then Ms.
25 Purdy offered to give you additional time, that there

1 wasn't any subsequent responses about trying to obtain any
2 additional time. Matter of act, based upon what I've seen,
3 the request had been outstanding for quite some period of
4 time, and I understand that it may have been information
5 that your client had not had to ever produce before. There
6 may have been some issues related to wanting to produce or
7 trying to produce the information, but I never saw any
8 correspondence that showed any attempt to have discussions
9 with counsel about the information, or even tailoring the
10 request in a more narrow way, or any real argument about
11 the merits of your objections that were raised to the
12 initial documents that may have been before Judge Dickson.

13 Now, granted, I did not read the transcript; I don't
14 even think I had access to the transcript. I think there
15 may have been -- the transcript may have been sent to me,
16 but I have a real hard time, given the request that was
17 made and the specificity of Judge Dickson's order. And I
18 understand that there were some issues around which order
19 he was going to sign once he heard the motion. That you
20 were told one thing and then he changed his mind and all of
21 that. I didn't see where there was a request back to Judge
22 Dickson to say Judge Dickson, we need more time to be able
23 to respond to this, given the specificity of what you've
24 ordered.

25 I'm dismissing all of that and basically when I read

1 your answers, they are no more -- they don't provide any
2 more information than what your initial answers provided.
3 I don't know, I don't know how you can say that the
4 documents have already been provided without listing out
5 what information was provided. This request of names and
6 addresses, I got names but there are no addresses listed.
7 There are no telephone numbers. There's no, there's no
8 real substance.

9 MS. PARKER: With respect to that specifically, I will
10 say that that information is in the personnel files that
11 have been produced. What I noticed this weekend while
12 going through all this in extreme detail is that I was
13 under the impression that the personnel files had been
14 redacted.

15 Well, let me, I guess, let me preface this by saying
16 that I came on to this case after Judge Dickson's hearing.
17 So, I, I haven't read the transcript either, and some of my
18 information -- you know, I've been learning this case as
19 well. But the information that was produced in the
20 personnel files indicates addresses, phone numbers, and
21 employment status of employees. What I did notice this
22 weekend while going through that information is that I was
23 under the impression that only Social Security numbers had
24 been redacted. That's the only objection that we have
25 continued to maintain since the discovery order. We simply

1 don't understand how producing Social Security numbers
2 into the record of numerous employees of our company would
3 be remotely relevant or even acceptable with regard to
4 their privilege rights. We -- if Your Honor demands that
5 we produce their Social Security numbers, we will do that
6 but ---

7 THE COURT: Well, that's just a small part.

8 MS. PARKER: Sure.

9 THE COURT: I mean, to ---

10 MS. PARKER: Well, I think the ---

11 THE COURT: --- to quibble over a Social Security
12 number is not the issue.

13 MS. PARKER: Right. Well, and so what, I guess what
14 I'm trying to say is what, what I realized is that there is
15 addition information that's been redacted from those
16 personnel files in addition to those Social Security
17 numbers. I noticed that this weekend, and some of that
18 does include some of the addresses and some of the phone
19 numbers. So, I'm happy -- we're talking about, I think,
20 something like sixty-five personnel files at about seventy
21 pages each. So, several thousand pages of documents.
22 We're happy to have a paralegal go through those this week
23 and completely change all the redactions to remove nothing
24 but the Social Security numbers and provide that. That
25 should handle all the, all of the address and phone number

1 issues that we have. It should clarify the status of the
2 employment.

3 And to the extent that it doesn't, we're happy to go
4 back to our client and find out, you know, supplemental
5 information from the date that those personnel files were
6 received by us, whether those employees are still in the
7 employ. That -- I, I was under the impression that had
8 already been produced because the personnel files had
9 already been produced. So, that, as I said, was an error.

10 In addition, you know, we didn't -- I don't believe
11 that we submitted our -- I guess we did submit our second
12 and third supplemental responses, which included all of the
13 financial information in all of our client's possession
14 which was requested. That was one of the big things that
15 was missing following Judge Dickson's order. And, I mean,
16 that, you know, along with the, the breadth of the order is
17 information that typically we would never produce before a
18 post-judgment hearing. So, that wasn't in our -- did not
19 anticipate having to produce.

20 And obtaining that information, I think it's important
21 to know that these clients -- Country Wood is still in
22 business but Sterling's been out of business since 2007.
23 They've been out of business for a decade and Guardian's
24 been out of business since 2013. So, that's another
25 element to consider in the length of time that it takes to

1 obtain these documents. These aren't companies that, that
2 are continuing to function and that continue to have this,
3 this information at the ready. So, we've continued to work
4 with them in order to obtain that information in doing
5 that.

6 In our ability -- it was the second supplement
7 following the order. We produced the financial records,
8 including, including budgets, including financial
9 statements, including income summary statements and tax
10 returns.

11 THE COURT: What about the policies and procedures
12 that were in effect?

13 MS. PARKER: The policies and procedures that were in
14 effect, we have produced the entire unredacted employee
15 handbook. The other policies and procedures that were in
16 effect is a 600-page nursing manual. We've produced all of
17 the relevant portions of that. We don't have in our
18 possession -- and that, that's our firm -- have possession
19 of the 600-page book. My understanding is that it's
20 actually -- and this may be actually incorrect. My
21 understanding is that it's actually a book. So, we are
22 going to have to find a way to get that from our client,
23 produce it. We have no problem with doing that. That's
24 one other document that I noted this weekend I have not
25 been produced in full and am happy to do that.

1 The only other document that we -- that I noted in my
2 notes that has not been produced in full, we're missing one
3 personnel file which is from a third-party employee --
4 third-party subcontractor. That was a nutritionist, I
5 believe, or dietician named Diane Hicks. We're missing
6 payroll records, which we're happy to go to our clients and
7 try to see if they still have those.

8 THE COURT: You haven't already made those inquiries?

9 MS. PARKER: Those are the inquiries that we just
10 realized that we -- we, we advised plaintiff's counsel
11 towards the end of last week that we were under the
12 impression we had produced everything that we were supposed
13 to have produced under the order following our fourth
14 supplement which Your Honor does not have because it was
15 after the date of our memorandum. That supplement produced
16 360 pages of incident reports. Incident reports for
17 nursing homes are documents that we have never had to
18 produce before because they're -- we would typically
19 consider them HIPAA privileged for third-party. They're
20 essentially medical records of other patients, but we did
21 produce those in compliance with the order as well.

22 So, it was our understood after producing those that
23 we had nothing left, and after going through this in
24 extreme detail over the weekend, the three things that I
25 noted that we still need to produce are the fully

1 unredacted personnel files, which we can do by the end of
2 this week; the nursing services manual, which we will talk
3 to our client today to see how soon we can get it and
4 produce it in full, and like I said, we've already produced
5 all the relevant portions of that document; and then the
6 payroll records for the employees of Country Wood.

7 The personnel file of -- Diane Hicks is a third-party
8 subcontractor we've tried to locate, and I've been unable
9 to do so. We're happy to continue doing that, but that's
10 not something we have been able to obtain. It is something
11 that we have requested from our clients.

12 If there's more information that plaintiff's counsel
13 believes that she needs in addition to that, we're happy to
14 talk about it. We're working to meet the demands of this
15 case. We've produced in this case something like 10,500
16 pages from Country Wood, Sterling, and Guardian, not to
17 mention over 10,000 pages of documents from third parties
18 with over, I think, something like 21,000 pages of
19 documents produced to date.

20 Plaintiff's arguments in this case are that she's been
21 unable to take depositions because she doesn't have the
22 information sufficient for her to be able to do that, but
23 we were able to depose her expert who was able to opine on
24 causation in this case. So, if he was able to do that, we,
25 we frankly don't understand why, if nothing else, there

1 wasn't the ability to depose simple medical practitioners
2 in this case to date. We don't feel that the documents
3 that have been missing from our production have been --
4 have caused the delay of plaintiff's case in any way or
5 should have caused that. We understand that it has taken
6 us a long time to obtain these documents, but we assure the
7 court that we're continuing to work on it, and we're
8 absolutely trying to comply with discovery as best that we
9 can.

10 Pursuant to the laws of South Carolina and the
11 requirements for producing documents and working with
12 discovery, we don't feel like this is a case that merits
13 sanctions. Frankly, the cases where sanctions were merited
14 are cases where discovery orders were issued and absolutely
15 no response was received whatsoever, where responses were
16 repeatedly requested and never received, where sanctions
17 hearings went forward, where clients were given additional
18 time and where sanctions -- where documents were still
19 never produced, and we're absolutely not in that position
20 in this case. We have supplemented and supplemented and
21 supplemented, and we continue to request documents from our
22 client as we hear from plaintiff that she needs additional
23 information.

24 THE COURT: Let me ask you this. Looking at your
25 responses, how do you know what documents were produced

1 because there's nothing, there's nothing -- I've read them.
2 There's nothing in here that identifies the documents.
3 There may be one or two exceptions but it says -- they're
4 saying that we've reviewed the documents, we've reviewed
5 the information, and we've already produced the documents,
6 but your previous response doesn't say what documents were
7 produced. It just says see attached.

8 So, how do you know and how does your client know what
9 documents are produced without referencing what they are?
10 There were many requests for manuals and worksheets and
11 other information. It doesn't -- when I read it, it
12 doesn't tell me, it doesn't tell me what was produced. It
13 just says we gave you documents.

14 MS. PARKER: Yes, Your Honor. Well, we have all of
15 the documents in this case that have been produced with the
16 exception of the full employee handbook, which was produced
17 in response -- in the first supplemental response with a
18 Bates number, and we have an extremely detailed list of
19 every single thing that has been produced with the
20 corresponding Bates number. So, if the court would like me
21 to -- I have a handwritten copy, but if the court would
22 like me to type it up and send it to you, I'll be happy to
23 do that.

24 THE COURT: Have you provided that to the plaintiff?

25 MS. PARKER: We, we have not. We'd be happy to do

1 that as well.

2 THE COURT: So, unless the documents are kept in a
3 specific form, in specific order based upon the request,
4 how does the plaintiff know which documents are responsive
5 to which request for production or interrogatories which
6 you refer to in documents?

7 MS. PARKER: Well, Your Honor, there have been
8 multiple correspondences in the past. Not, not since the
9 order but previously, with plaintiff's counsel specifically
10 addressing certain interrogatories and requests that were
11 -- that she deemed to be missing and requests that we
12 deemed to be responded to. And throughout all of those
13 correspondences -- many of those, I think, were used as
14 exhibits or in discussion in the prior hearing. Like I
15 said, I wasn't there, but that's my understanding. Those,
16 those address specific documents, specific concerns about
17 specific information, and throughout all those, we've
18 specifically addressed the documents that were, that were
19 referenced.

20 For instance, one of the ones off the top of my head
21 that I recall, our Bates number 2061 to 2072 are the
22 nosocomial infection summaries, and at one point
23 plaintiff's counsel requested that those be produced in
24 color copy and, and that she be advised who the person was
25 that prepared those documents, and we provided the

1 information for the preparation to her and advised that
2 those documents were never in color. So, we were unable to
3 produce them in color. But that type of detailed
4 information has been discussed and handled for numerous of
5 these interrogatories and request for production.

6 THE COURT: And are you lead counsel for this case?

7 MS. PARKER: I would say that lead counsel is Brant,
8 Brantley Roland, who is pro hac'd in out of Atlanta, and
9 that I am local counsel and...

10 THE COURT: Local with the same firm?

11 MS. PARKER: Local with the same firm, yes, ma'am.

12 THE COURT: Anything else you want to say?

13 MS. PARKER: Just that, you know, I'd like to
14 reiterate that -- well, one other comment I guess that I
15 would like to state just from plaintiff, from plaintiff's
16 demands related to the order. She seems to consistently
17 request that we produce documents that would be in the
18 possession of third parties and government entities. In
19 certain instances in the order, that is demanded and we
20 have worked to do that. But in many of them, it simply
21 demands that we fully respond to interrogatory, request for
22 production. And repeatedly it appears that plaintiff's
23 counsel has been unhappy with responses that we do not
24 possess documentation in response to requests.

25 But under the South Carolina Rules of Civil Procedure,

1 our obligation is to provide documents that are in our
2 possession, custody, and control. It's not to go out to
3 third parties and seek documentation that we never had
4 possession of in order to determine whether they exist so
5 that we can produce that for plaintiff. If she wishes to
6 obtain those types of documents, I mean, under the rules
7 she has every right to do that herself.

8 So, I believe that a lot of this information, you
9 know, we've -- in a lot of situations, I would just like to
10 point out that we've gone above and beyond, and we've
11 actually obtained documentation for her that we have then
12 produced in our responses, and I think that in addition to,
13 you know, our continuing to try to work with her and try to
14 work with the court to obtain and produce as much as we
15 can, that that shows our good faith in this matter.

16 THE COURT: Ms. Purdy.

17 MS. PURDY: Yes, ma'am. May it please the court?

18 THE COURT: Let me ask you. Are there documents that
19 still have not been produced?

20 MS. PURDY: Yes, ma'am, a large number of documents.
21 If I can, I have something to hand up to the court that
22 will help to simplify that, and I also have the transcript
23 from Judge Dickson's hearing if you would like that in the
24 file.

25 THE COURT: And I think I have that.