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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
The Honorable Jocelyn Newman, Circuit Court Judge

Civil Action No.: 2023CP4003086
Appeal Number: 2024-001802

Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee.....Plaintiff/Appellant,

v.

All Seasons Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill
Creek Manor, LLC f/k/a Amara Place at ColumbiaDefendants,

Of whom All Seasons Healthcare, LLC isRespondent.

**RECORD ON APPEAL
VOLUME I**

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-NI-40-
)	
)	
Plaintiff,	)	Notice of Intent to File Suit
)	
v.)	
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
)	
Defendants.)	

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

Factual Background

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 11) Between July and December of 2019, Ms. Gee's health continued to decline.
- 12) On December 28th, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 15) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 16) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

Primary Mediator

Secondary Mediator

INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

ANSWER: Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

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**Stanley McCloy, MD
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**Allison Woods
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2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records:

**All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)**

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

ANSWER: See, Answer Number 1 and Answer Number 2.

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

ANSWER: Plaintiff is unaware of the insurer for Defendant.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: There are no medical bills associated with the claim.

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER: Carl Grey, MD
Department of Medicine
Section of Gerontology and Geriatrics
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Medical Center Boulevard
Winston-Salem, NC 27157
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cgrey@wakehealth.edu**

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski

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November 10, 2021

Columbia, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-NI-40-
Representative of the Estate of Phyllis)
Gee,)

Plaintiff,) Notice of Intent to File Suit
)

v.)

All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and Mill)
Creek Manor, LLC. f/k/a Amara)
Place,)

Defendants.

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

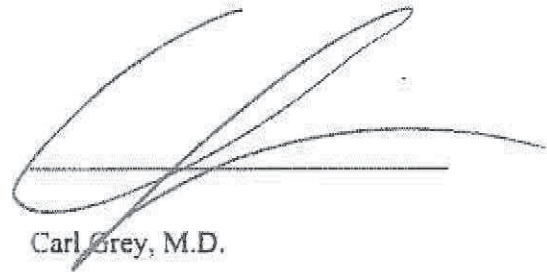
11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28th, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was "shivering and clammy" and "making a sound like she was going to vomit." As a result, All Seasons Healthcare was notified.
13. On December 29th, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate "Debra" and "Katie" from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

- 17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
- 18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.
- 19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

Sworn to and subscribed before me,

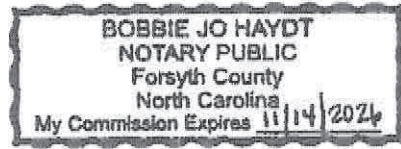
Bobbie Jo Haydt

this 7th day of November, 2022



Carl Grey, M.D.

Bobbie Jo Haydt
 My Commission Expires 11/14/2026
 Notary Public for North Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,)	Civil Action No.: 2022-NI-40-
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Plaintiff,)	Notice of Intent to File Suit
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v.)	
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All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
Defendants.)	

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

Factual Background

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
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- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
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- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

Primary Mediator

Secondary Mediator

INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

ANSWER: Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

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2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records:

**All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)**

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

ANSWER: *See, Answer Number 1 and Answer Number 2.*

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

ANSWER: *Plaintiff is unaware of the insurer for Defendant.*

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: *There are no medical bills associated with the claim.*

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER: Carl Grey, MD
Department of Medicine
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cgrey@wakehealth.edu**

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski
John D. Kassel (SC Bar 3286)
jkassel@kasselaw.com
Theile B. McVey (16682)
tmevey@kasselaw.com
Jamie Rutkoski (103270)
jrutkoski@kasselaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
P.O. Box 1476
Columbia, SC 29202
803-256-4242
803-256-1952 (Facsimile)
Other email: emoultire@kasselaw.com

November 10, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-NI-40-
)	
)	
Plaintiff,	)	Notice of Intent to File Suit
)	
v.)	
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
)	
Defendants.)	

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28th, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was “shivering and clammy” and “making a sound like she was going to vomit.” As a result, All Seasons Healthcare was notified.
13. On December 29th, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate “Debra” and “Katie” from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.
19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
- a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

Sworn to and subscribed before me,

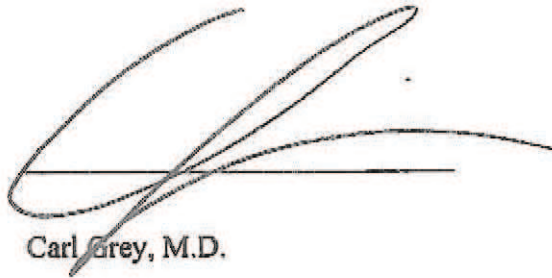
Bobbie Jo Haydt

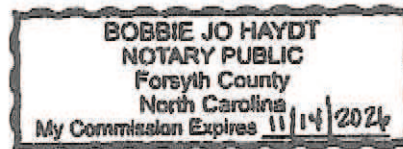
this 7th day of November, 2022

Bobbie Jo Haydt

My Commission Expires 11/14/2026

Notary Public for North Carolina


Carl Grey, M.D.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-CP-40-_____
)	
)	
Plaintiff,)	
)	
v.)	
	)	SUMMONS
	)	(Jury Trial Demanded)
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia,)	
)	
)	
Defendants.)	

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Jamie Rutkoski
 Jamie Rae Rutkoski (SC Bar No.:103270)
jrutkoski@kassellaw.com
 Theile B. McVey (SC Bar No.: 16682)
tmcvey@kassellaw.com
 John D. Kassel (SC Bar No.: 03286)
jkassel@kassellaw.com
 KASSEL McVEY ATTORNEYS AT LAW
 1330 Laurel Street
 Post Office Box 1476
 Columbia, South Carolina 29202
 803-256-4242
 803-256-1952 (Facsimile)
 Other email: emoultric@kassellaw.com

May 23rd, 2023
Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-CP-40-_____
)	
)	
Plaintiff,)	
)	
v.)	
	)	Complaint
	)	(Jury Trial Demanded)
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia,)	
)	
)	
Defendants.)	

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant TWG Polo Road d/b/a Amara Place (Amara Place) is a business or corporation formerly incorporated in the state of South Carolina. At all times relevant to this action, Amara Place provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.
- 7) On November 11, 2022, Plaintiff filed a Notice of Intent in Greenwood County (see, Exhibit 1). All parties were properly served.
- 8) Defendants were notified via certified mail of a scheduled mediation with mediator Robert McMahan. Mediation was held on April 20th, 2022, and neither defendant attended. Mr. McMahan filed his mediation report on May 24th, 2023. (see, Exhibit 2)
- 9) The Notice of Intent was errantly filed in Greenwood County. The proper venue for this action is Richland County.

Factual Background

- 10) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 11) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 12) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.

- 13) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 14) Between July and December of 2019, Ms. Gee's health continued to decline.
- 15) On December 28th, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 16) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.
- 17) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 18) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 19) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 20) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 21) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 22) There is no medical note or record showing the administration of either Ativan or Morphine.
- 23) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 24) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.

25) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:

- a. Failing to properly implement a plan for end-of-life comfort and care;
- b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
- c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

26) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

WHEREFORE, Plaintiff prays for judgment in this matter in a sum sufficient to adequately compensate them for their damages, for punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

{signature block on following page}

Respectfully submitted

s/Jamie Rutkoski

Jamie Rae Rutkoski (SC Bar No.:103270)

jrutkoski@kassellaw.com

Theile B. McVey (SC Bar No.: 16682)

tmcvey@kassellaw.com

John D. Kassel (SC Bar No.: 03286)

jkassel@kassellaw.com

KASSEL McVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202

803-256-4242

803-256-1952 (Facsimile)

Other email: cmoultrie@kassellaw.com

May 23rd, 2023

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-NI-40-
Representative of the Estate of Phyllis)
Gee,)

Plaintiff,)

v.)

Affidavit of Carl Grey, MD

All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and Mill)
Creek Manor, LLC. f/k/a Amara)
Place,)

Defendants.

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
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true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

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16. Records indicate this medication was not administered.

17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.

18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.

19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:

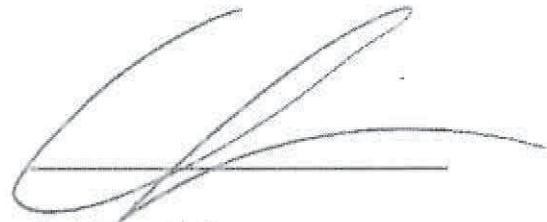
- a. Failing to properly implement a plan for end-of-life comfort and care;
- b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
- c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

Sworn to and subscribed before me,

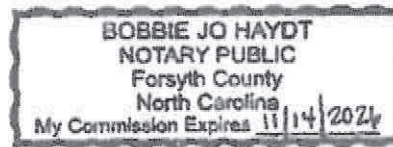
Bobbie Jo Haydt

this 7th day of November, 2022

Bobbie Jo Haydt
My Commission Expires 11/14/2024
Notary Public for North Carolina



Carl Grey, M.D.



STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2023-CP-40-03086

Jennifer Murphy, as Personal Representative)
of the Estate of Phyllis Gee,)
)
Plaintiff,)

**ANSWER ON
BEHALF OF THE DEFENDANT, ALL
SEASONS HEALTHCARE, INC.**

v.)

All Season's Healthcare, LLC, All Seasons)
Healthcare, Inc., and TWG Polo Road, LLC)
d/b/a Mill Creek Manor, LLC f/k/a Amara)
Place at Columbia,)
)
Defendants.)

TO: JOHN D. KASSEL, ESQUIRE, THEILE B. MCVEY, ESQUIRE AND JAMIE RUTKOSKI, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF:

The Defendant, All Seasons Healthcare, Inc., (hereinafter "Defendant"), reserving all rights to file Rule 12 Motions, hereby answers the Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained.

FOR A SECOND DEFENSE

2. Defendant admits on information and belief the allegations of paragraphs 1 and 2 of the Complaint.

3. Defendant admits so much of paragraph 3 of the Complaint, as Amara Place provided care and residence to Ms. Gee but has no information sufficient to formulate beliefs as to the remainder of the allegations, denies same, and would crave reference to the medical records

for a more complete and accurate response to said allegations.

3. Defendant admits so much of paragraph 4 of the Complaint as Plaintiff alleges it is a corporation created in the State of South Carolina but denies the remainder of the allegations as stated. Defendant has no information sufficient to formulate beliefs as to the remainder of the allegations, denies same.

4. Defendant admits so much of paragraph 5 of the Complaint as it is a South Carolina Corporation, but denies the remainder of the allegations, as stated, and would crave reference to the medical records for a more complete and accurate response.

5. Defendant denies the allegations of paragraph 6 of the Complaint.

6. Defendant has no information sufficient to formulate a belief as to the allegations of paragraphs 7, 8 and 9 of the Complaint, denies same.

7. Defendant admits the allegations of paragraph 10 of the Complaint.

8. Defendant admits so much of the allegations in paragraph 11 of the Complaint as Ms. Gee opted for hospice care but denies the remainder of the allegations.

9. Defendant admits so much of the allegations of paragraph 12 of the Complaint as Dr. McCloy visited her, but denies the remainder of the allegations as stated, and would crave reference to the medical records for a more complete and accurate response to said allegations.

10. Defendant admits the allegations of paragraphs 13 and 14 of the Complaint.

11. Defendant has no information to formulate a belief as to the allegations of paragraphs 15, 16 and 17 of the Complaint and denies same and would crave reference to the medical records for a more complete and accurate response to said allegations.

12. Defendant denies the allegations of paragraph 18 of the Complaint as stated but admits Ms. Gee was prescribed Atropine but would crave reference to the medical records for a more complete and accurate response to said allegation.

13. Defendant has no information to formulate a belief as to the allegations of paragraphs 19 and 20 of the Complaint and denies same but would crave reference to the medical records for a more complete and accurate response to said allegations.

14. Defendant admits the allegations of paragraphs 21 and 22 of the Complaint.

15. Defendant admits so much of paragraph 23 of the Complaint as Ms. Gee was dying from a terminal illness which was the reason for her hospice care.

16. Defendant admits so much of paragraph 24 of the Complaint as Ms. Gee was declared dead.

17. Defendant admits so much of paragraph 25 of the Complaint as alleges Plaintiff has named an expert, but denies the remainder of the allegations as stated, including subparts.

18. Defendant denies paragraph 26 of the Complaint.

FOR A THIRD DEFENSE

19. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.

FOR A FOURTH DEFENSE

20. Defendant acted in accordance with accepted standards of care for a hospice provider, exercised sound medical judgment in their care and treatment of the Decedent and bears no liability to Plaintiffs for an unfortunate result from properly employed medical care, and is not an insurer of a cure or guarantors of results

FOR A FIFTH DEFENSE

21. This action is barred by the statute of limitations.

FOR A SIXTH DEFENSE

22. Defendant asserts improper service of process against it in that it has never been properly served and moves that the Complaint be dismissed.

FOR A SEVENTH DEFENSE

23. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged in the Complaint were caused and occasioned by events over which this Defendant had no control or right of control, thereby relieving Defendant from any liability or responsibility herein and Defendant pleads an unavoidable accident as a complete bar to this action.

FOR AN EIGHTH DEFENSE

24. Any injury or damage sustained by the Plaintiffs as a result of the matters alleged in the Complaint were a proximate result of one or more independent, efficient and intervening causes which the Defendant affirmatively pleads as a complete bar to this action.

FOR A NINTH DEFENSE

25. Defendant avers that punitive damages are unconstitutional, have no meaningful standard by which they can be ascertained, subject Defendant to a double recovery and violate equal protection and due process of law.

FOR A TENTH DEFENSE

26. Defendant pleads all caps on damages and special defenses as set forth in the South Carolina Medical Malpractice Tort Reform Act. Defendant pleads all statutory caps on actual and punitive damages, including but not limited to the caps described in S.C. Code §15-32-210 and §15-32-220, et seq. and §15-32-530, et. seq., as amended.

FOR AN ELEVENTH DEFENSE

27. Defendant reserves any addition of further defenses as may be revealed by additional information during the course of discovery and investigation and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Complaint, the Defendant prays that it be dismissed, with prejudice, for their costs and for such other and further relief as the Court deems just and proper.

/s/Julius W. McKay, II
Julius W. McKay, II
The McKay Firm, PA
3700 Forest Drive, Suite 404
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645 - Phone
(803) 765-1839 - Fax
jmckay@mckayfirm.com
Attorney for Defendant, All Seasons Healthcare, Inc.

Columbia, South Carolina
August 23, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2023-CP-40-03086

Jennifer Murphy, as Personal Representative)
of the Estate of Phyllis Gee,)
)
Plaintiff,)

**MOTION FOR SUMMARY JUDGMENT
OR IN THE ALTERNATIVE
MOTION TO DISMISS ON
BEHALF OF THE DEFENDANT,
ALL SEASONS HEALTHCARE, INC.**

v.)

All Season's Healthcare, LLC, All Seasons)
Healthcare, Inc., and TWG Polo Road, LLC)
d/b/a Mill Creek Manor, LLC f/k/a Amara)
Place at Columbia,)
)
Defendants.)

TO: JOHN D. KASSEL, ESQUIRE, THEILE B. MCVEY, ESQUIRE AND JAMIE RUTKOSKI, ESQUIRE, ATTORNEYS FOR THE PLAINTIFF:

You will please take notice that within ten (10) days of the service hereof, the Defendant, All Seasons Healthcare, Inc., (hereinafter "Defendant"), hereby moves before the Court of Common Pleas for Richland County for an order dismissing Plaintiff's Complaint and all claims raised against them. This motion is made pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and §15-79-125 and §15-36-100, Code of Laws of South Carolina, as amended, and the Common Law of the State of South Carolina.

Specific grounds for this motion are as follows:

- 1. Failure to timely serve the Complaint pursuant to Rule 3 of the South Carolina Rules of Civil Procedure.**

The Complaint was filed on June 13, 2023. However, Defendant has never been properly served with a copy of the Summons and Complaint, as it was not served on the registered agent of the corporation.

2. Improper service of process pursuant to Rule 4 of the SCRCP.

Plaintiff has failed to ever serve Defendant by personal service, as required by the Rule or by statutory service by certified mail pursuant to Rule 4(d)(8) as this lawsuit was not properly served on the registered agent for the corporation.

As such, the registered agent has never been served but if the Court believes that service was proper, it was untimely in that it is after the one hundred twenty (120) days required from filing of the Complaint.

3. This action is barred by the statute of limitations.

South Carolina has a three (3) year statute of limitations which was not met against the Defendant.

Section 15-3-545(a) Code of Laws of South Carolina provides: *"any action ...to recover damages for injury to the person arising out of any medical... treatment, omission... by any licensed healthcare provider...acting within the scope of his profession must be commenced within **three (3) years** from the date of treatment, omission or operation giving rise to the cause of action or three (3) years from the date of discovery or when it reasonably ought to have been discovered".*

The Complaint alleges the incident giving rise to this claim occurred on December 30, 2019, in Richland County, South Carolina where Decedent died. It is clear that Plaintiff was aware of the issues giving rise to this claim as of that date. Plaintiff filed a Notice of Intent to File Suit in Greenwood County Court of Common Pleas on November 11, 2022. This was not a county in which venue would be proper for filing this lawsuit. Moreover, All Seasons Healthcare, Inc., was never properly served with the Notice of Intent as required by statute. Plaintiff filed the Complaint

in this action in Richland County Court of Common Pleas on June 13, 2023, but the statute of limitations had already expired on December 30, 2022. As such, the lawsuit is time barred by the statute of limitations against this Defendant as it was never properly served or commenced against them.

For the reasons set forth herein, Defendant moves for summary judgment of the Complaint. Motion is based upon the pleadings, statutes and authorities, affidavits, and other documents to be filed.

/s/Julius W. McKay, II
Julius W. McKay, II
The McKay Firm, PA
3700 Forest Drive, Suite 404
P.O. Drawer 7217
Columbia, SC 29202
(803) 256-4645 - Phone
(803) 765-1839 - Fax
jmckay@mckayfirm.com
Attorney for Defendant, All Seasons Healthcare, Inc.

Columbia, South Carolina
August 23, 2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2023-CP-40-03086
)	
)	
Plaintiff,	)	Plaintiff's Response to Defendant All Season's Healthcare, Inc.'s Motion for Summary Judgment or Motion to Dismiss
)	
v.)	
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
Defendants.)	

To: Julius W. McKay, III, Esq., attorney for Defendant All Season's Healthcare, Inc.:

Plaintiff, by and through undersigned counsel, respectfully requests this court deny Defendant All Seasons Healthcare, Inc.'s, Motion for Dismissal or Summary Judgment, as the defendant was properly served with Notice of Intent to File Suit within the statute of limitations. This action tolled the statute of limitations. Plaintiff then filed and served the complaint on Defendant within the statutorily prescribed time period. Thus, Defendant's motion should be denied.

Facts

Phyllis Gee was admitted to a nursing facility called Amara Place in 2019. She was receiving hospice care through All Season's Healthcare, LLC. Ms. Gee suffered from advanced dementia and between July and December of 2019, her health significantly deteriorated. Ms. Gee's hospice healthcare plan indicated she would receive comfort care and pain reduction as her

health deteriorated. However, Defendants failed to adhere to the standard of care and did not provide pain relief to Ms. Gee as she was dying. She suffered for hours without proper medication, as prescribed in her medical chart. On December 30th, 2019, Ms. Gee passed.

On November 11th, 2022, Plaintiff filed her Notice of Intent to File Suit with the statutorily required expert affidavit attached in Greenwood County. (see, Exhibit 1) On December 16th, 2022, Defendant All Season's Healthcare, Inc, was served via certified mail. Proof of service was returned to Plaintiff's counsel. (see, Exhibit 2).

Defendants did not obtain counsel at this time. On March 16th, 2023, Plaintiff mailed a letter to All Season's Healthcare, Inc. informing them that Plaintiff had scheduled the procedurally required pre-suit mediation prior to filing a complaint for March 30th, 2023. (see, Exhibit 3).

On March 27th, 2023, a woman by the name of Trish who identified herself as an employee of All Season's Healthcare, Inc., called Plaintiff's counsel's office to inquire about the pre-suit mediation. At that time, Elizabeth Moultrie, paralegal to Plaintiff's counsel, sent an email to Trish attaching the Cover Letter, Notice of Intent, and Proof of Service. (see, Exhibit 4).

On April 20th, mediator Robert McMahon, Esq., conducted pre-suit mediation with Plaintiff's counsel and Stuart Mottern, CFO of Mill Creek Manor, LLC. On May 24th, 2023, Proof of ADR was filed with Greenwood County Clerk of Court (see, Exhibit 5).

On June 6th, 2023, Plaintiff's Counsel filed a Motion to Change Venue from Greenwood County to Richland County, as all parties are domiciled in Richland County and all of the events related to this lawsuit occurred in Richland County. The motion was granted.

On June 13th, 2023, Plaintiff filed their Complaint with Richland County Clerk of Court. On June 26th, 2023, All Seasons Healthcare was served by registered agent, Heather McCloy, via certified mail return receipt requested. (see, Exhibit 6).

On July 25th, 2023, Heather McCloy, Chief Executive Officer and Registered Agent for All Seasons Healthcare, Inc., emailed Plaintiff's counsel indicating she was in receipt of "documentation" and that her insurance carrier of record was denying coverage. (see, Exhibit 7). In the email, Ms. McCloy also requested a 30-day extension to retain an attorney and file an answer. Plaintiff's counsel agreed to the extension.

Statute of Limitations

All Season's Healthcare, LLC, is a privately owned corporation and any claims of negligence against them carries a three-year statute of limitations. Thus, the statute of limitations would run on December 30th, 2022.

On November 11th, 2022, more than a month before the statute of limitations would run on Plaintiff's claims, Plaintiff filed the Notice of Intent against both defendants with the statutorily required expert affidavit. Pursuant to Section 15-79-125(A) of the South Carolina Code Annotated, "[f]iling the Notice of Intent to File Suit tolls all applicable statutes of limitations." The filing of the Notice of Intent to File Suit on November 11th, 2022, tolled the statute of limitations. Section 15-79-125(E)(1) requires the Plaintiff's complaint to be filed "within sixty days after the mediator determines that the mediation is not viable, that an impasse exists, or that the mediation should end." Mediation was held on April 20th, 2023. Proof of ADR was filed May 24th, 2023. Using either the date of the mediation or the date Proof of ADR was

filed, Plaintiff's filing of the Complaint on June 13th, 2023, was within sixty days of the mediator's determination. Thus, the complaint was timely filed within the statute of limitations.

Plaintiff's initial filing of the Notice of Intent to File Suit with the Greenwood County Clerk of Court is not relevant in determining timeliness of filing. Rule 82(b) of the South Carolina Rules of Civil Procedure states "[w]hen an action is brought in the wrong county or in the wrong court, the court *shall not dismiss* the action but shall transfer it to any proper county or court in which it could have been brought." SCRCP 82, emphasis added. Although Greenwood County was an improper venue, the South Carolina Rules of Civil Procedure explicitly state this is not reason for dismissal. The Court acted properly in transferring the case to the proper county.

Service

Defendant All Seasons Healthcare, Inc., argues they were not properly served with the Summons and Complaint in this case. As noted above, All Seasons Healthcare, Inc.'s registered agent, Heather McCloy, was served on June 26th, 2023, thirteen days after the Complaint was filed. She was served by certified mail, return receipt requested, restricted delivery as required by rule 4(d)(8) of the South Carolina Rules of Civil Procedure.

Ms. McCloy emailed Plaintiff's counsel on July 26th, 2023, requesting an extension to answer the Complaint indicating she had tendered the summons and complaint to her insurance company. However, the insurance company denied coverage. Plaintiff's counsel agreed to the extension to allow Defendant All Seasons to obtain counsel.

The plaintiff need only show compliance with the rules. *Roche v. Young Bros., Inc., of Florence, S.C.*, 456 S.E.2d 897 (1995). When the civil rules on service are followed, there is a

presumption of proper service. *Id.* "When the civil rules on service are followed, there is a presumption of proper service." *Id.*, 318 S.C. at 211, 456 S.E.2d at 900.

When Plaintiff became aware of Defendant's position regarding service of process, Plaintiff requested to depose their corporate representative on the issue. Plaintiff noticed the deposition for February 7th, 2024. Defendant requested the deposition be pushed to March 27th, 2024. Thus, there is a pending deposition to determine the facts and circumstances surrounding service of process.

Conclusion

Pursuant to the foregoing, Plaintiff filed the Notice of Intent to File Suit within the statute of limitations, which tolled the statute of limitations. Plaintiff then filed the Complaint within the statutorily required time frame of sixty days from the date mediation was deemed unsuccessful. The registered agent of Defendant All Seasons Healthcare, Inc. was timely and properly served by restricted certified mail, return receipt requested. As a result, Defendant's Motion to Dismiss and Motion for Summary Judgment should be denied.

s/Jamie Rae Rutkoski

Jamie Rae Rutkoski (SC Bar No.: 103270)

jrutkoski@kasselaw.com

Theile B. McVey (SC Bar No.: 16682)

tmevey@kasselaw.com

John D. Kassel (SC Bar No.: 3286)

KASSEL McVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202-1476

803-256-4242

803-256-1952 (Facsimile)

Other email: emoultrie@kasselaw.com

March 6, 2024

Columbia, South Carolina.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2022-NI-40-
Representative of the Estate of Phyllis)
Gee,)
)
)
Plaintiff,) Notice of Intent to File Suit
)
)
v.)
)
All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and Mill)
Creek Manor, LLC. f/k/a Amara)
Place,)
)
)
Defendants.)

Plaintiff would respectfully show that:

Parties

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.



- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

Factual Background

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25th, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 11) Between July and December of 2019, Ms. Gee's health continued to decline.
- 12) On December 28th, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29th at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 15) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 16) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30th, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

MEDIATION

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

Primary Mediator

Secondary Mediator

INTERROGATORIES

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

ANSWER: Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

Josh Gee
c/o Kassel McVey Attorneys
at Law
P O Box 1476
Columbia, SC 29202-1476

Judy Price
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Jennifer Murphy
c/o Kassel McVey Attorneys
at Law
P O Box 1476
Columbia, SC 29202-1476

Krista Kell
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Debra Reigle
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Mackie Carter
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Stanley McCloy, MD
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Allison Woods
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Andrea Hansche
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Juanita Watts, RN
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Santana Staten
All Seasons Healthcare
7412 Woodrow Street
Irmo, SC 29063

Mikisha Smith, HSD
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Trista Gollman, Med Tec
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Robin Lawson, ED
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Lanita Long, MCRA
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Destiny Sabb, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Lavern Stewart, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Kimberly Young, HSD
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Nikechia Foskey, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Lekeish Waller, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Kamaleh Wilson, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

M Kisha Smith, HSD
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Rose Davis, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Trista Gollman, Med Tech
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Guinichard Fuzeme, ALRA
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

Patricia Henderson, ALMT
Amara Place Hospice
651 Polo Rd
Columbia SC 29223

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

ANSWER: Medical Records:

All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

ANSWER: See, Answer Number 1 and Answer Number 2.

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

ANSWER: Plaintiff is unaware of the insurer for Defendant.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: There are no medical bills associated with the claim.

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

ANSWER: Carl Grey, MD
Department of Medicine
Section of Gerontology and Geriatrics
Wake Forest School of Medicine
Medical Center Boulevard
Winston-Salem, NC 27157
(336) 713-9022
cgrey@wakehealth.edu

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski
John D. Kassel (SC Bar 3286)
jkassel@kasselaw.com
Theile B. McVey (16682)
tmcvey@kasselaw.com
Jamie Rutkoski (103270)
jrutkoski@kasselaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
P.O. Box 1476
Columbia, SC 29202
803-256-4242
803-256-1952 (Facsimile)
Other email: emoultire@kasselaw.com

November 10, 2021

Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022-NI-40-
)	
)	
Plaintiff,	)	Notice of Intent to File Suit
)	
v.)	
)	
All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place,)	
)	
)	
Defendants.)	

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
 - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
 - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28th, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was “shivering and clammy” and “making a sound like she was going to vomit.” As a result, All Seasons Healthcare was notified.
13. On December 29th, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate “Debra” and “Katie” from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

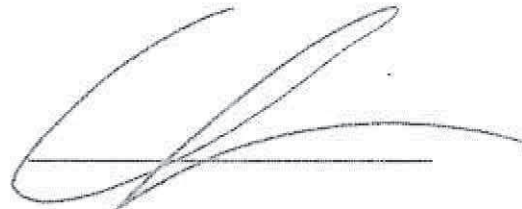
17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30th, 2019.
19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
 - a. Failing to properly implement a plan for end-of-life comfort and care;
 - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;
and
 - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

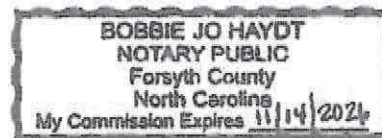
Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7th day of November, 2022

Bobbie Jo Haydt
My Commission Expires 11/14/2026
Notary Public for North Carolina


Carl Grey, M.D.



USPS TRACKING#



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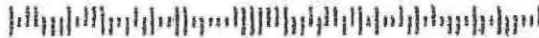


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* Sender: Please print your name, address, and ZIP+4® in this box*

Elizabeth C Moultrie, Senior Paralegal
KASSEL McVEY ATTORNEYS
P O Box 1476
Columbia SC 29202-1476



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>H. McCloy, as RA for Service of Process for All Season' Healthcare Inc. 7142 Woodrow St Irmo, South Carolina 29063</p> <p>9590 9402 7396 2055 4955 28</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Restricted Delivery</p> <p><input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>2. Article Number (Transfer from service label)</p> <p>7017 0660 0000 1954 2299</p>	

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt



ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

JOHN D. KASSEL
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March 16, 2022

H. McCloy, as Registered Agent for Service of Process
for All Season's Healthcare, Inc.
7142 Woodrow St
Irmo, South Carolina 29063

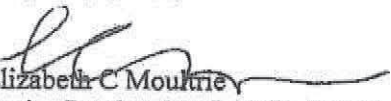
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,
deceased v. All Seasons Healthcare, LLC, et al.*
C/A No.: 2022-NI-24-00012

Dear Mr. McCloy:

On December 16, 2022, you were served with Plaintiffs' Notice of Intent and Expert Affidavit. To date, no attorney has appeared on your behalf; therefore, I have scheduled the pre-suit mediation to take place at 9:30 AM on March 30, 2023. In order to participate as required by law, you must join the mediation via Zoom at <https://us02web.zoom.us/j/83404496044?pwd=VGO4bXFmRTJYY1Z5RXFoZk1DbENhdz09>.

Thank you for your kind consideration and attention. If you have any questions or concerns, please do not hesitate to contact your liability carrier or attorney.

Very truly yours,


Elizabeth C. Moultrie
Senior Paralegal to John D. Kassel,
Theile B. McVey, and Jamie Rae Rutkoski
emoultrie@kassellaw.com

ECM:bmh



JOHN D. KASSEL, ATTORNEY AT LAW, LLC

Elizabeth Moultrie

From: Elizabeth Moultrie
Sent: Monday, March 27, 2023 4:59 PM
To: trish@allseasonshealthsc.com
Cc: Jamie Rutkoski; John Kassel
Subject:
Attachments: Letter serving NOI on McCloy as RA for All Season's Healthcare.pdf, Filed NOI - Gee.pdf, Proof of Service on All Seasons.pdf

Categories: LEAP
Tracking: **Recipient** **Delivery**
trish@allseasonshealthsc.com
Jamie Rutkoski Delivered: 3/27/2023 4:59 PM
John Kassel Delivered: 3/27/2023 4:59 PM

Dear Trish:

Attached please find my cover letter, the filed Notice of Intend, and my Proof of Service of service on Mr. McCloy who you confirmed to me works in your office. I want to make sure you have anything you should to send to your liability carrier and your attorney. You advised that today you received your notice of Pre-Suit Mediation. Please provide me with the name of your attorney and I will be happy to provide him or her with all of the documents and information you have been provided with.

Yours very truly,

	<p>Elizabeth C. Moultrie Senior Paralegal 1330 Laurel Street | P.O Box 1476 Columbia, South Carolina 29202 Phone: (803) 256-4242 Fax: (803) 256-1952 emoultrie@kasselaw.com www.KasselLaw.com</p>
<p>KASSEL  McVEY PERSONAL INJURY LAWYERS</p>	

~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments. All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure.





JOHN D. KASSEL  
ATTORNEY AT LAW  
JKASSEL@KASSELLAW.COM

KASSEL  McVEY

1330 LAUREL STREET  
POST OFFICE BOX 1476  
COLUMBIA, SC 29202

THEILE B. McVEY  
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FAX 803-256-1952  
WWW.KASSELLAW.COM

JAMIE R. RUTKOSKI  
ATTORNEY AT LAW  
JRUTKOSKI@KASSELLAW.COM

December 9, 2022

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED—RESTRICTED DELIVERY  
Article Number 7017 0660 0000 1954 2299

H. McCloy, as Registered Agent for Service of Process  
for All Season' Healthcare, Inc.  
7142 Woodrow St  
Irmo, South Carolina 29063

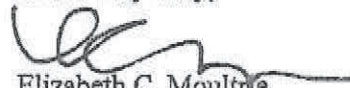
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,  
deceased v. All Season's Healthcare, LLC, et al.*  
C/A No.: 2022-NI-24-00012

Dear H. McCloy:

Enclosed herewith and served upon you as Registered Agent for Service of Process please find Plaintiff's Notice of Intent to File Suit against Defendants named in the pleadings. Please note that this matter must be mediated within 90 days, but no more than 120 days, of the date of filing. Please provide a copy of the enclosed immediately to your liability carrier and/or legal counsel.

Thank you for your kind consideration and cooperation. If you have any questions or concerns, please contact your attorney.

Yours very truly,



Elizabeth C. Moultrie  
Senior Paralegal to John D. Kassel,  
Theile B. McVey, and Jamie Rae Rutkoski

ECM:bmh

Enclosures

JOHN D. KASSEL, ATTORNEY AT LAW, LLC

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

|                                                                                                           |   |                                 |
|-----------------------------------------------------------------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                                                                                   | ) | IN THE COURT OF COMMON PLEAS    |
|                                                                                                           | ) |                                 |
| COUNTY OF GREENWOOD                                                                                       | ) | FOR THE EIGHTH JUDICIAL CIRCUIT |
|                                                                                                           | ) |                                 |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                 | ) | Civil Action No.: 2022-NI-40-   |
|                                                                                                           | ) |                                 |
| Plaintiff,                                                                                                | ) | Notice of Intent to File Suit   |
|                                                                                                           | ) |                                 |
| v.                                                                                                        | ) |                                 |
|                                                                                                           | ) |                                 |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and Mill Creek Manor, LLC. f/k/a Amara Place, | ) |                                 |
|                                                                                                           | ) |                                 |
| Defendants.                                                                                               | ) |                                 |

Plaintiff would respectfully show that:

**Parties**

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant Mill Creek Manor f/k/a Amara Place is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant Mill Creek Manor provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.

#### **Factual Background**

- 7) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 8) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 9) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.
- 10) On July 25<sup>th</sup>, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 11) Between July and December of 2019, Ms. Gee's health continued to decline.
- 12) On December 28<sup>th</sup>, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 13) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.

- 14) The following day, on December 29<sup>th</sup> at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 15) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 16) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 17) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 18) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 19) There is no medical note or record showing the administration of either Ativan or Morphine.
- 20) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 21) Ms. Gee was declared dead at 12:47 AM on the morning of December 30<sup>th</sup>, 2019.
- 22) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:
  - a. Failing to properly implement a plan for end-of-life comfort and care;
  - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
  - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.
- 23) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary

pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

**MEDIATION**

Please take note that this dispute is subject to pre-suit mediation within 120 days. Please list your choices for the primary and secondary mediators.

\_\_\_\_\_  
Primary Mediator

\_\_\_\_\_  
Secondary Mediator

**INTERROGATORIES**

1. Give the names and addresses of persons known to the plaintiff or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

**ANSWER:** Other than the Affidavit of Carl Gray, MD, being filed contemporaneously herewith, no witness has provided a written or recorded statement.

Josh Gee  
c/o Kassel McVey Attorneys  
at Law  
P O Box 1476  
Columbia, SC 29202-1476

Judy Price  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Jennifer Murphy  
c/o Kassel McVey Attorneys  
at Law  
P O Box 1476  
Columbia, SC 29202-1476

Krista Kell  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Debra Reigle  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Mackie Carter  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Stanley McCloy, MD  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Allison Woods  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Andrea Hansche  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Juanita Watts, RN  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Santana Staten  
All Seasons Healthcare  
7412 Woodrow Street  
Irmo, SC 29063

Mikisha Smith, HSD  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Trista Gollman, Med Tec  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Robin Lawson, ED  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Lanita Long, MCRA  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Destiny Sabb, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Lavern Stewart, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Kimberly Young, HSD  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Nikechia Foskey, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Lekeish Waller, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Kamaleh Wilson, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

M Kisha Smith, HSD  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Rose Davis, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Trista Gollman, Med Tech  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Guinichard Fuzeme, ALRA  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

Patricia Henderson, ALMT  
Amara Place Hospice  
651 Polo Rd  
Columbia SC 29223

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or defense in the case.

**ANSWER: Medical Records:**

All Seasons Healthcare 06-03-2019 to 01-03-2020 (000001 - 000088)  
Amara Place (n/k/a Mill Creek Manor) 07-11-2019 to 1218-2019 (0001-0063)

3. In cases involving personal injury set forth the names and address of all physicians who have treated the party and all the hospitals to which the party has been committed in connection with said injuries and set forth a statement of all medical costs involved.

**ANSWER: *See, Answer Number 1 and Answer Number 2.***

4. Set forth the names and address of all insurance companies which have liability insurance coverage relating to the claim and set forth the numbers of the policies involved, and the amount of liability coverage provided in each policy.

**ANSWER: Plaintiff is unaware of the insurer for Defendant.**

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

**ANSWER: There are no medical bills associated with the claim.**

6. List the name and address of each expert witness the plaintiff expects to call as a witness at the trial of the case.

**ANSWER:** Carl Grey, MD  
Department of Medicine  
Section of Gerontology and Geriatrics  
Wake Forest School of Medicine  
Medical Center Boulevard  
Winston-Salem, NC 27157  
(336) 713-9022  
[cgrey@wakehealth.edu](mailto:cgrey@wakehealth.edu)

7. For each person known to the plaintiff or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

**ANSWER:** There are no written or recorded statements. All medical witnesses and nursing home witnesses are expected to testify regarding their care and treatment of the decedent, as well as all measures taken to prevent the pain and suffering at the end of her life. The children of the decedent are expected to testify regarding their mother's final hours and the effect her death has had on their lives.

s/Jamie Rutkoski  
John D. Kassel (SC Bar 3286)  
[jkassel@kasselaw.com](mailto:jkassel@kasselaw.com)  
Theile B. McVey (16682)  
[tmcvey@kasselaw.com](mailto:tmcvey@kasselaw.com)  
Jamie Rutkoski (103270)  
[jrutkoski@kasselaw.com](mailto:jrutkoski@kasselaw.com)  
KASSEL McVEY ATTORNEYS AT LAW  
1330 Laurel Street  
P.O. Box 1476  
Columbia, SC 29202  
803-256-4242  
803-256-1952 (Facsimile)  
Other email: [emoultire@kasselaw.com](mailto:emoultire@kasselaw.com)

November 10, 2021

Columbia, South Carolina.



4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
  - a. Amara Place 07-11-2019 to 12-18-2019 (0001-0063)
  - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

- true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.
11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
  12. On December 28<sup>th</sup>, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was "shivering and clammy" and "making a sound like she was going to vomit." As a result, All Seasons Healthcare was notified.
  13. On December 29<sup>th</sup>, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
  14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
  15. At 9:39 PM, records indicate "Debra" and "Katie" from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
  16. Records indicate this medication was not administered.

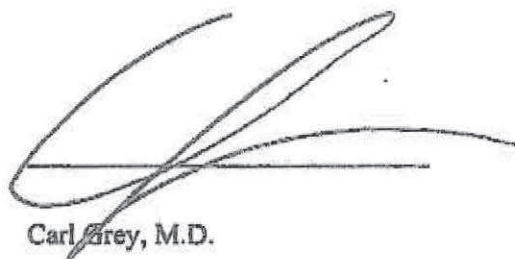
- 17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
- 18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30<sup>th</sup>, 2019.
- 19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
  - a. Failing to properly implement a plan for end-of-life comfort and care;
  - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
  - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7<sup>th</sup> day of November, 2022

Bobbie Jo Haydt  
My Commission Expires 11/14/2026  
Notary Public for North Carolina

  
Carl Grey, M.D.

BOBBIE JO HAYDT  
NOTARY PUBLIC  
Forsyth County  
North Carolina  
My Commission Expires 11/14/2026

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENWOOD )  
 )  
Jennifer Murphy, as Personal )  
Representative of the Estate of Phyllis )  
Gee, )  
Plaintiff, )  
 )  
vs )  
 )  
All Season's Healthcare LLC, All )  
Seasons Healthcare, Inc. and Mill Creek )  
Manor, LLC. f/k/a Amara Place )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT

PROOF OF ADR

Docket No. 2022 NI 24 00012

*(Within 10 days of the conclusion of ADR and no later than 300 days after filing, an original must be filed with the Clerk of Court and a copy forwarded to the attorneys for the parties.)*

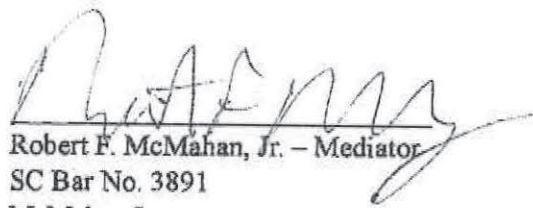
PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR)

1. Alternative Dispute Resolution (ADR) was conducted on the 20<sup>th</sup> day of April, 2023 in the form of
  - a.  X  mediation
  - b. \_\_\_\_\_ non-binding arbitration
  - c. \_\_\_\_\_ binding arbitration (attached appropriate order of dismissal)
2. The neutral was Robert F. McMahan, Jr.
3. Present at the ADR conference were:
  - a. \_\_\_ Plaintiff
  - b.  X  Defendant Stuart Mottern CFO of Mill Creek Manor, LLC
  - c.  X  Lawyers for Plaintiff Jamie Rutkoski, Esq.
  - d. \_\_\_ Lawyer for Defendant
  - e. \_\_\_ Representative for Insurance Carrier
  - f. \_\_\_ Guardian *ad litem*
  - g. \_\_\_ Expert(s)
  - h. \_\_\_ Others
4. As a result of ADR, this case should be considered (check one)
  - a. \_\_\_ fully settled by Consent Judgment to be filed by \_\_\_\_\_
  - b. \_\_\_ fully settled Voluntary Dismissal to be filed by \_\_\_\_\_



c.  Partially settled  
d.  at an impasse

Submitted this 20 day of April, 2023



Robert F. McMahan, Jr. – Mediator

SC Bar No. 3891

McMahan Law

PO Box 26314

Greenville, SC 29616


803-261-1299

[rfm@robertmcmahanlaw.com](mailto:rfm@robertmcmahanlaw.com)

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086  
ELECTRONICALLY FILED - 2023 May 24 2:09 PM - GREENWOOD - COMMON PLEAS - CASE#2022NI2400012  
ELECTRONICALLY FILED - 2023 Jun 13 8:55 AM - RICHLAND - COMMON PLEAS - CASE#2023NI4000043

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS       |
|                                                                                                                                               | ) |                                    |
| COUNTY OF RICHLAND                                                                                                                            | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
|                                                                                                                                               | ) |                                    |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2023-CP-40-03086 |
|                                                                                                                                               | ) |                                    |
| Plaintiff,                                                                                                                                    | ) |                                    |
|                                                                                                                                               | ) |                                    |
| v.                                                                                                                                            | ) |                                    |
|                                                                                                                                               | ) | PROOF OF SERVICE                   |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Defendants.                                                                                                                                   | ) |                                    |

I, Elizabeth C. Moultrie, do hereby certify that on the 26th day of June 2023, I served upon Defendant ALL SEASONS HEALTHCARE, INC., a true and correct copy of the SUMMONS & COMPLAINT and Plaintiff's First Discovery Requests by Certified Mail, Return Receipt Requested, Restricted Delivery to H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, INC., as evidenced by United States Postal Form 3811, postmarked 26 June 2023, and received in my office on 28 June 2023, attached hereto and incorporated herein by reference.

  
Elizabeth C. Moultrie

June 30, 2023  
Columbia, South Carolina.



USPS TRACKING #



9590 9402 7396 2055 4958 94

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Elizabeth C Moultrie, Senior Paralegal  
KASSEL McVEY ATTORNEYS  
P O Box 1476  
Columbia SC 29202-1476

*Jee*

RECEIVED JUN 30 2023

12-147676



| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                   | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>                                              | <p>A. Signature <input checked="" type="checkbox"/> Agent<br/><i>[Signature]</i> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery<br/><i>[Signature]</i> <i>6/30</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>1. Article Addressed to:</p> <p>H. McCloy, as Registered Agent for<br/>Service of Process<br/>for All Season' Healthcare, Inc.<br/>7142 Woodrow St<br/>Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4958 87</p> | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0001 3098 4865</p>                                                                                                                                                                                                                          | <p>3. Service Type <input type="checkbox"/> Priority Mail Express®<br/> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail™<br/> <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail Restricted Delivery<br/> <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Signature Confirmation™<br/> <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery<br/> <input type="checkbox"/> Collect on Delivery<br/> <input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p>Restricted Delivery</p> |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

ELECTRONICALLY FILED - 2024 Mar 07 8:36 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086  
ELECTRONICALLY FILED - 2023 Jun 30 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS       |
|                                                                                                                                               | ) |                                    |
| COUNTY OF RICHLAND                                                                                                                            | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
|                                                                                                                                               | ) |                                    |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2022-CP-40-_____ |
|                                                                                                                                               | ) |                                    |
| Plaintiff,                                                                                                                                    | ) |                                    |
|                                                                                                                                               | ) |                                    |
| v.                                                                                                                                            | ) |                                    |
|                                                                                                                                               | ) | <b>SUMMONS</b>                     |
|                                                                                                                                               | ) | (Jury Trial Demanded)              |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Defendants.                                                                                                                                   | ) |                                    |

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

s/Jamie Rutkoski  
 Jamie Rae Rutkoski (SC Bar No.:103270)  
[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)  
 Theile B. McVey (SC Bar No.: 16682)  
[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)  
 John D. Kassel (SC Bar No.: 03286)  
[jkassel@kassellaw.com](mailto:jkassel@kassellaw.com)  
 KASSEL McVEY ATTORNEYS AT LAW  
 1330 Laurel Street  
 Post Office Box 1476  
 Columbia, South Carolina 29202  
 803-256-4242  
 803-256-1952 (Facsimile)  
 Other email: [cmoultrie@kassellaw.com](mailto:cmoultrie@kassellaw.com)

May 23<sup>rd</sup>, 2023  
Columbia, South Carolina.

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS       |
|                                                                                                                                               | ) |                                    |
| COUNTY OF RICHLAND                                                                                                                            | ) | FOR THE FIFTH JUDICIAL CIRCUIT     |
|                                                                                                                                               | ) |                                    |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2022-CP-40-_____ |
|                                                                                                                                               | ) |                                    |
| Plaintiff,                                                                                                                                    | ) |                                    |
|                                                                                                                                               | ) |                                    |
| v.                                                                                                                                            | ) |                                    |
|                                                                                                                                               | ) | <b>Complaint</b>                   |
|                                                                                                                                               | ) | <b>(Jury Trial Demanded)</b>       |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                    |
|                                                                                                                                               | ) |                                    |
| Defendants.                                                                                                                                   | ) |                                    |

Plaintiff would respectfully show that:

**Parties**

- 1) Jennifer Murphy is a citizen and resident of the State of South Carolina and a resident of the county of Richland. Jennifer Murphy is the appointed Personal Representative of Phyllis Gee.
- 2) Phyllis Gee, deceased, was a citizen and resident of the State of South Carolina and a resident of the county of Richland at all times relevant to this action and up until the date of her death.
- 3) Defendant TWG Polo Road d/b/a Amara Place (Amara Place) is a business or corporation formerly incorporated in the state of South Carolina. At all times relevant to this action, Amara Place provided care and residence to Ms. Gee within their facility located at 651 Polo Road Columbia, South Carolina 29223.

- 4) Defendant All Seasons Healthcare, LLC, is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 5) Defendant All Seasons Healthcare, Inc., is a business or corporation incorporated in the state of South Carolina. At all times relevant to this action, Defendant All Season's Healthcare, LLC, provided care to Ms. Gee at her residence in Columbia, South Carolina.
- 6) Upon information and belief, All Seasons Healthcare, Inc., and All Seasons Healthcare, LLC, are both entities working under the name of All Seasons Healthcare to provide hospice and palliative care to patients like Phyllis Gee. These entities together will be referred to as "All Seasons" throughout this pleading.
- 7) On November 11, 2022, Plaintiff filed a Notice of Intent in Greenwood County (see, Exhibit 1). All parties were properly served.
- 8) Defendants were notified via certified mail of a scheduled mediation with mediator Robert McMahan. Mediation was held on April 20<sup>th</sup>, 2022, and neither defendant attended. Mr. McMahan filed his mediation report on May 24<sup>th</sup>, 2023. (see, Exhibit 2)
- 9) The Notice of Intent was errantly filed in Greenwood County. The proper venue for this action is Richland County.

#### **Factual Background**

- 10) Ms. Gee was a resident of Amara Place as a result of her advanced dementia.
- 11) At least as early as July of 2019, Ms. Gee opted for hospice care from providers at All Seasons Healthcare.
- 12) Ms. Gee was regularly visited by Dr. Stanley McCloy and members of All Seasons' nursing staff between July and December of 2019.

- 13) On July 25<sup>th</sup>, 2019, Dr. McCloy noted Ms. Gee was suffering from stage 7C dementia. This is the last stage of dementia. Ms. Gee's health was declining rapidly and she had a palliative performance scale of 40%. This typically indicates a patient will die within several months.
- 14) Between July and December of 2019, Ms. Gee's health continued to decline.
- 15) On December 28<sup>th</sup>, 2019, Amara Place employees noted Ms. Gee sounded like she was trying to throw up after eating dinner and that Ms. Gee was shivering and clammy.
- 16) Ms. Gee had aspirated. Amara Place staff notified All Seasons of this development.
- 17) The following day, on December 29<sup>th</sup> at 3:39 PM, Amara Place employees noted Ms. Gee was gasping for air. Amara Place employees noted it sounded like Ms. Gee was congested. All Seasons was notified.
- 18) All Seasons nurses presented to Ms. Gee's residence and prescribed Atropine to decrease secretions.
- 19) At 7:10 PM, All Seasons staff presented to Ms. Gee's residence to follow up with her status and ordered the staff at Amara Place to discharge all standing medications, to keep Ms. Gee propped up in the bed, and to keep Ms. Gee on oxygen support at all times.
- 20) Ms. Gee's family and friends were with Ms. Gee and became concerned about Ms. Gee gasping for air and showing signs of stress. The family contacted All Seasons.
- 21) At 9:39 PM, Dr. McCloy, an All Seasons physician, prescribed Ativan and Morphine.
- 22) There is no medical note or record showing the administration of either Ativan or Morphine.
- 23) For the next several hours, Ms. Gee suffered and gasped for air as she was dying.
- 24) Ms. Gee was declared dead at 12:47 AM on the morning of December 30<sup>th</sup>, 2019.

25) Plaintiff's nursing palliative care physician expert has given an opinion Defendants were negligent in failing to provide proper end-of-life care to Phyllis Gee by:

- a. Failing to properly implement a plan for end-of-life comfort and care;
- b. Failing to administer medication to facilitate comfort while Ms. Gee was dying; and
- c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

26) Defendant was negligent, grossly negligent, and willful and wanton in breaching the standard of care as stated above causing Phyllis Gee to experience unnecessary pain and suffering while she was dying. Phyllis Gee's family experienced pain and suffering as they watched Ms. Gee die in pain.

**WHEREFORE**, Plaintiff prays for judgment in this matter in a sum sufficient to adequately compensate them for their damages, for punitive damages, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

{signature block on following page}

Respectfully submitted

s/Jamie Rutkoski

Jamie Rae Rutkoski (SC Bar No.: 103270)

[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)

Theile B. McVey (SC Bar No.: 16682)

[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)

John D. Kassel (SC Bar No.: 03286)

[jkassel@kassellaw.com](mailto:jkassel@kassellaw.com)

KASSEL McVEY ATTORNEYS AT LAW

1330 Laurel Street

Post Office Box 1476

Columbia, South Carolina 29202

803-256-4242

803-256-1952 (Facsimile)

Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)

May 23<sup>rd</sup>, 2023

Columbia, South Carolina.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF GREENWOOD ) FOR THE EIGHTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal ) Civil Action No.: 2022-NI-40-  
Representative of the Estate of Phyllis )  
Gee, )  
 )  
Plaintiff, )  
 )  
v. ) Affidavit of Carl Grey, MD  
 )  
All Season's Healthcare, LLC, All )  
Seasons Healthcare, Inc., and Mill )  
Creek Manor, LLC. f/k/a Amara )  
Place, )  
 )  
Defendants.

Carl Gray, MD, being duly sworn deposes and says:

1. I am a medical doctor licensed in the states of New York and North Carolina specializing in Gerontology and Geriatrics. I hold a bachelor's degree of Science/Biology from West Virginia University which I received in 2000. I also obtained my medical degree from West Virginia University School of Medicine in 2004. I completed residency at the West Virginia University School of Medicine in Internal Medicine in 2009. I completed a fellowship in Geriatric Medicine in 2010 and a fellowship in Hospice and Palliative Medicine in 2011 at Icahn School of Medicine at Mount Sinai in New York, New York.
2. I am board certified in Internal Medicine since 2011 with added qualifications of Hospice and Palliative Medicine since 2012 and Geriatric Medicine since 2013.
3. I currently work as an Associate Professor in the Department of Internal Medicine at Wake Forest School of Medicine and I am the Enterprise Director of Hospice and Palliative Care at Atrium Health, and the Director of Palliative Care at Wake Forest Baptist.

4. I have actual professional knowledge and experience in the area of patient care at end of life, specifically with regards to patients admitted to hospice with advanced dementia preparing for end of life.
5. Through my professional training as set forth above, I am familiar with the applicable standards of care for medical professionals in a hospice setting as it pertains to end of life care and comfort measures.
6. This affidavit is made pursuant to section 15-36-100 of the 1976 South Carolina Code of laws which requires that this affidavit must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit. As other information is provided to me, I reserve the right to review, and if necessary, change or further explain, any opinions rendered.
7. The evidence made available to me for my review prior to making this affidavit includes:
  - a. Amara Place 07-11-2019 to 1218-2019 (0001-0063)
  - b. All Seasons Healthcare 07-05-2019 to 12-27-2019 (0001-0088)
8. Phyllis Gee was a resident at Amara Place (now known as Mill Creek Manor) for several years due to her advanced dementia. While a resident of Amara Place, Ms. Gee was treated by All Seasons Healthcare who provided hospice and palliative care to Ms. Gee as early as July of 2019.
9. The purpose of hospice care is to provide care and comfort to a patient who is approaching the end of life. This includes care to optimize comfort as a patient is actively dying.
10. The records note Ms. Gee may have been allergic to morphine. The records did not explain the allergy, or the side effects Ms. Gee suffered after morphine administration. A

true morphine allergy is extremely rare, and is often mistaken for common side effects such as itching and nausea. The records did not indicate if morphine could be used at end of life nor do the records indicate a plan for medication use at end of life if morphine could not be utilized.

11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia and die in the next few months. This gave them ample time to prepare a care plan and understand any barriers to carry out this care plan at Amara place before it took place.
12. On December 28<sup>th</sup>, 2019, providers at Amara Place indicated Ms. Gee was throwing up after dinner. They noted she was "shivering and clammy" and "making a sound like she was going to vomit." As a result, All Seasons Healthcare was notified.
13. On December 29<sup>th</sup>, 2019, at 3:39 PM, employees of Amara Place believed Ms. Gee to be vomiting and gasping for air. All Seasons Healthcare was notified.
14. Records indicated a provider from All Seasons Healthcare arrived at Amara Place at 7:10 PM and provided medication in an attempt to clear up secretions, explained Ms. Gee should be kept on oxygen support, and ordered Amara Place employees to discharge any other medications.
15. At 9:39 PM, records indicate "Debra" and "Katie" from All Seasons spoke with the hospice physician who prescribed Ativan and Morphine for Ms. Gee, as she was struggling to breathe and was rapidly declining.
16. Records indicate this medication was not administered.

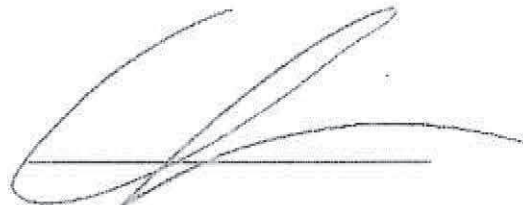
17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30<sup>th</sup>, 2019.
19. Based on my education, experience, and training, it is my opinion to a reasonable degree of medical certainty that employees acting within the course and scope of their employment at the Defendants' facility committed negligent acts which constitute a failure to comply with the appropriate standard of care by:
  - a. Failing to properly implement a plan for end-of-life comfort and care;
  - b. Failing to administer medication to facilitate comfort while Ms. Gee was dying;  
and
  - c. Failing to assess Ms. Gee's alleged Morphine allergy to determine its utility for pain or air hunger at end of life.

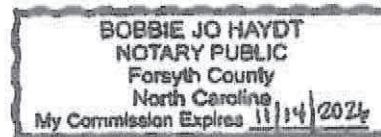
Sworn to and subscribed before me,

Bobbie Jo Haydt

this 7<sup>th</sup> day of November, 2022

Bobbie Jo Haydt  
My Commission Expires 11/14/2026  
Notary Public for North Carolina

  
\_\_\_\_\_  
Carl Grey, M.D.



**Elizabeth Moultrie**

---

**From:** H McCloy <hmccloy@allseasonshealthsc.com>  
**Sent:** Tuesday, July 25, 2023 5:37 PM  
**To:** Jamie Rutkoski; John Kassel; Elizabeth Moultrie  
**Subject:** Extension Requested

Good Afternoon-

Upon receipt of documentation (6/2023), our insurance carrier of record at time of coverage was notified. This afternoon at approximately 4:45pm we received a phone call in the office notifying us they are denying coverage for this claim. By my calculations, our answer is due tomorrow. We are requesting a 30-day extension.

All Seasons disagrees with denial of coverage, however, All Seasons will need a 30 day extension to retain an attorney to handle this matter.

H.McCloy

Chief Executive Officer

All Seasons Healthcare

7142 Woodrow Street

Irmo, South Carolina 29063

(803) 602-0300



STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Jennifer Murphy, as Personal Representative )  
of the Estate of Phyllis Gee, )

Plaintiff, )

v. )

All Season's Healthcare, LLC, All Seasons )  
Healthcare, Inc., and TWG Polo Road, LLC )  
d/b/a Mill Creek Manor, LLC f/k/a Amara )  
Place at Columbia, )

Defendants. )

IN THE COURT OF COMMON PLEAS

C/A NO.: 2023-CP-40-03086

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT  
OR IN THE ALTERNATIVE  
MOTION TO DISMISS ON  
BEHALF OF THE DEFENDANT,  
ALL SEASONS HEALTHCARE, INC.**

**PRELIMINARY STATEMENT**

Pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and §15-79-125 and §15-36-100, Code of Laws of South Carolina, as amended, and the Common Law of the State of South Carolina on the ground that Defendant All Seasons Healthcare, Inc. (herein "Defendant"), has not been properly served with the Notice of Intent to File Suit or Summons and Complaint pursuant to Rule 3 SCRPC, that there was improper service pursuant to Rule 4 SCRPC and that if this action were properly served, it is barred by the statute of limitations.

**FACTUAL BACKGROUND**

All Seasons Healthcare, Inc., is a South Carolina corporation with its principal place of business in Irmo, South Carolina, which is in Lexington County. It provides nursing hospice care services to patients who have been deemed appropriate for end of life hospice care. Its employees

work at various healthcare facilities and also serve clients/patients at their home. It is not an employee or agent of Co-Defendant Amara Place but did provide hospice care to patients there.

At all times, Heather McCloy was registered agent for All Seasons Healthcare, Inc. [See Exhibit A].

Phyllis Gee had been diagnosed with late onset Alzheimer's disease and was a resident at Amara Place. In September 2018, Ms. Gee and her family elected hospice care and agreed to be administered pain medication and requested a DNR (Do Not Resuscitate). All Seasons Hospice nurses do not carry pain medications or schedule drugs, as those were kept in the Amara Place under control of their staff. [See Exhibit B].

In the afternoon of December 29, 2019, the hospice nurse for All Seasons Healthcare, Inc., advised Amara Place to administer Ativan to help alleviate the patient's anxiety. The family called the hospice nurse at 11:42 p.m., stating the patient's condition was not relieved and the hospice nurse returned to the facility approximately at 12:15 a.m. The nurse arrived, questioned the med tech if the patient received any medication since she left, and the med tech stated that the patient had not. She requested that the Amara Place med tech administer medications, but they refused. Plaintiff's decedent passed away on December 30, 2019, less than thirty minutes after the hospice nurse arrived.

Plaintiff filed a Notice of Intent to File Suit on November 11, 2022, in Greenwood County. None of the parties are domiciled in Greenwood County, and Defendant administered no care to the Decedent in Greenwood County. Plaintiff attempted to serve Defendant with the Notice of Intent on December 16, 2022, but the certified mail receipt shows that delivery was not restricted to the addressee and was instead ostensibly received by someone who signed "All Seasons" on the return receipt. [Exhibit C].

Plaintiff then sought to move their own action to Richland County on or about June 6, 2023. On or about June 12, 2023, the “Notice of Intent” action was initiated in Richland County under a new case number; three years and 164 days after the death of the Decedent. Plaintiff then filed the Summons and Complaint on June 13, 2023, and attempted to serve Defendant on June 26, 2023. [Exhibit D].

### DISCUSSION

Defendant’s Motion must be granted because Plaintiff failed to serve Complaint as required by Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. Proper service by certified mail under SCRCF Rule 4(d)(8) is effected when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery **restricted to the addressee.**” Rule 4(d)(8) SCRCF. Service by mail is defective where either an unauthorized person signed the receipt or if delivery was not restricted to the addressee. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). The burden of showing compliance is upon the party asserting proper service. *Roche v. Young Brothers, Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In *Zanin v. Carolina Specialty Products, Inc.*, the Court of Common Pleas in Charleston County addressed a very similar situation. In *Zanin*, the plaintiff attempted service by mail upon defendant ABP. *Zanin v. Carolina Specialty Products, Inc.*, 2012WL9490703 (Civil Action No. 2010-CP-10-01515 in Charleston County Ct. of Common Pleas). The plaintiff’s certified mailing was addressed to ABP’s owner Scott Amaral, but the mailing was not restricted to the addressee and the return receipt was signed by a “D. Reilly.” *Id* at 1.

The Court in *Zanin* ruled that the plaintiff’s attempt to serve the defendant pursuant to Rule 4(d)(8), which requires service by certified mail be done with return receipt requested and delivery restricted to the addressee, was defective. *Id* at 2. The plaintiff did not comply with the plain

meaning of Rule 4(d)(8) which firmly requires restricted delivery to the addressee only. *Id.* The Court granted defendant ABP's Motion for Summary Judgment because the plaintiff's attempt at service by mail, in which an unauthorized person signed the receipt and delivery not restricted to the addressee, was defective and therefore the Court had no personal jurisdiction over ABP.

Our case is nearly identical to *Zanin*. Here, Plaintiff's filed Proof of Service for the Notice of Intent dated December 16, 2022, contains a scan of a return receipt addressed to "H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc." [Exhibit C]. This return receipt, though marked for restricted delivery, is clearly not marked for restricted delivery *to the addressee* as required by Rule 4(d)(8) as shown by the top right checkboxes on the return receipt. Plaintiff made this same error in their attempt to serve the Summons and Complaint on the return receipt dated June 26, 2023, where the delivery was not restricted to the addressee. [Exhibit D]. The affidavit of Elizabeth C. Moultrie confirms that counsel for Plaintiff did not restrict delivery to the addressee only. *See* Affidavit of Elizabeth C. Moultrie ¶¶ 4, 7.

Further, Defendant's registered agent Heather McCloy did not sign the return receipt, and Defendant does not know who signed the return receipts. [See Exhibit B]. Defendants cannot be sure what employee signed the return receipts, or if any employee or agent of Defendant signed them at all, as the signature block only reads "ALL SEASONS." This occurred because Plaintiff did not serve either the Notice of Intent or the Summons and Complaint as required by Rule 4 and *Langley*; as a result, Defendant was never properly put on notice of Plaintiff's claims. The goal of Rules 3 and 4 of the South Carolina Rules of Civil Procedure, and service of process rules in general, is to require the plaintiff to provide sufficient notice to the defendant of what their claims are and the basis for those claims. Here, Plaintiff's failure to adhere to SCRCP Rule 4(d)(8) thwarted this goal, and Defendant would now suffer prejudice in having to defend claims served

out of time due to Plaintiff's own error.

The Notice of Intent to File Suit must be served upon all named defendants in accordance with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure. S.C. Code § 15-79-125(a). If a Summons and Complaint are not served within the statute of limitations, actual service must be accomplished no later than 120 days after filing. Rule 3(a) SCRPC. Emailing process to an employee of a defendant is not sufficient service under the civil rules. *See* Rule 4 SCRPC *generally*.

Here, the three-year statute of limitations ran on December 30, 2022. Plaintiff filed their Notice of Intent to File Suit less than two months before the expiration of their statutory period and in an improper county where no party was domiciled and no events related to the allegations occurred. This action was not properly initiated in Richland County until June 12, 2023; 164 days after the running of the statute of limitations.

Also, since Plaintiff did not serve the Notice prior to December 30, 2022, Plaintiff was required to serve it within 120 days of filing; in this case, before April 29, 2023. Plaintiff filed her Summons and Complaint on June 13, 2023, and since the statute of limitations expired on December 30, 2022, Plaintiff had 120 days to serve this as well.

Plaintiff may attempt to argue that service was proper under Rule 4(d)(3) and that delivery restricted to an "agent" is sufficient. However, Rule 4(d)(3) does not govern service by mail, and service by mail requires delivery restricted to the addressee only. Also, Plaintiff cannot show that any officer, managing or general agent, or any other agent authorized to receive service of process actually received and "signed" for the Complaint. Plaintiff may also argue that service was proper under South Carolina's long arm statute similar which allows service to non-residents "by any form of mail addressed to the person to be served and requiring a signed receipt." *See generally*

*Jacobson v. Sternberg*, 305 S.C. 337, 408 S.E.2d 245, 246 (1991). However, this broader rule only applies to non-resident defendants. Defendant here is domiciled and incorporated in South Carolina, so Rule 4(d)(8)'s restricted delivery rule governs.

To this day, neither the Notice of Intent to File Suit nor the Summons and Complaint have been properly served on Defendant. Plaintiff, as the party asserting proper service, bears the burden of proving such proper service. Plaintiff here plainly failed to restrict delivery of their Notice of Intent to File Suit and Complaint to the addressee as shown by the return receipt, and thus created the scenario where no addressee listed on Plaintiff's initial service attempt, registered agent of Defendant, nor proper agent authorized to accept service on behalf of Defendant received any timely notice of Plaintiff's claims or filing. Plaintiff also cannot provide any evidence that the addressee herself ever received the mailed Notice of Intent or Summons and Complaint or wrote "ALL SEASONS" in the signature block due to failure to sufficiently restrict delivery. Therefore, Defendant's Motion for Summary Judgment must be granted, and Plaintiff's claims must be dismissed due to failure to comply with Rule 4(d)(8), and dismissal must be with prejudice as Plaintiff's claims are barred by the applicable statute of limitations.

Respectfully submitted,

/s/Julius W. McKay, II  
Julius W. McKay, II  
The McKay Firm, PA  
3700 Forest Drive, Suite 404  
P.O. Drawer 7217  
Columbia, SC 29202  
(803) 256-4645 - Phone  
(803) 765-1839 - Fax  
[jmckay@mckayfirm.com](mailto:jmckay@mckayfirm.com)  
Attorney for Defendant, All Seasons Healthcare, Inc.

Columbia, South Carolina  
March 12, 2024

# EXHIBIT A

# Business Entities Online

File, Search, and Retrieve Documents Electronically

## ALL SEASONS HEALTHCARE, INC.

### Corporate Information

Entity Id: 00571432  
Entity Type: Corporation  
Status: Good Standing  
Domestic/Foreign: Domestic  
Incorporated State: South Carolina

### Important Dates

Effective Date: 01/01/2014  
Expiration Date: N/A  
Term End Date: N/A  
Dissolved Date: N/A

### Registered Agent

Agent: H. McCloy  
Address: 7142 WOODROW STREET  
IRMO, South Carolina 29063

### Official Documents On File

| Filing Type                                                                                       | Filing Date |
|---------------------------------------------------------------------------------------------------|-------------|
| Notice of Change of Registered Office or Registered Agent or Both of a South Carolina Corporation | 02/05/2020  |
| Change of Agent or Office                                                                         | 04/16/2014  |
| Incorporation                                                                                     | 12/13/2013  |

# EXHIBIT B

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 )  
 Jennifer Murphy, as Personal )  
 Representative of the Estate of Phyllis )  
 Gee, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 All Season's Healthcare, LLC, All )  
 Seasons Healthcare, Inc., and TWG Polo )  
 Road, LLC d/b/a Mill Creek Manor, )  
 LLC f/k/a Amara Place at Columbia, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**IN THE COURT OF COMMON PLEAS**

Civil Action No. 2023-CP-40-03086

**AFFIDAVIT OF  
HEATHER MCCLOY**

PERSONALLY APPEARED before me, Heather McCloy., who being duly sworn, deposes and says:

1. My name is Heather McCloy, and I am the President of All Season's Healthcare, Inc., a South Carolina Corporation with its principal place of business in Irmo, South Carolina. I am over eighteen years of age and competent to give this testimony.
2. All Seasons Healthcare, Inc. provides hospice nursing care to patients who have elected to receive hospice care in nursing homes throughout the Midlands of South Carolina.
3. I was the registered agent for All Seasons Healthcare, Inc. from February 25, 2020, to December 14, 2023. A true and correct copy of my registration as a registered agent attached hereto is Exhibit B.
4. Decedent Phyllis Gee was not housed or admitted to a facility owned and operated by All Seasons Healthcare, Inc. Instead, personnel employed by All Seasons

Healthcare, Inc. administered care to Ms. Gee at the Amara Place nursing facility where Ms. Gee resided.

5. On December 29, 2019, the hospice nurse went to Amara Place at 7:10 p.m. and provided comfort care to Ms. Gee and instructions to the employees of Amara Place regarding care of Ms. Gee. I am informed and believe that the hospice physician was contacted to prescribe Ativan and Morphine for Ms. Gee. At approximately at 12:15 a.m., December 30, 2019, our hospice nurse returned to Amara Place and requested that Amara Place employees administer the Ativan and Morphine to Ms. Gee. The Amara place employees refused to administer the morphine and Ms. Gee was pronounced dead at approximately 12:47 a.m., on December 30, 2019. Our hospice nurses did not have access to Ms. Gee's medication because the medications were under the exclusive and total control of Amara Place.

6. Despite requesting they provide the medications, Amara Place refused. Ms. Gee was subsequently pronounced dead at 12:47 a.m., on December 30, 2019. I am informed and believe that the All Seasons hospice nurses did everything appropriately but could not administer medication which they did not have in their possession, and they do not carry scheduled medications with them. *See generally* Paragraphs 12 through 16 of the Notice of Intent to File Suit.

7. The Proofs of Service filed by Plaintiff (Plt. Exhibits 2 and 5) contend that All Seasons Healthcare, Inc., was served with the Notice of Intent to File Suit on December 16, 2022, and served with the Summons and Complaint on June 26, 2023. The documents attached Plaintiff's certificates of service do not have my signature and I did not authorize any other person to accept service for me. I do not know who signed the return receipts, and I do not know of any agent or employee of All Seasons Healthcare, Inc. that received or signed for these alleged mailings. I am the Registered Agent for service of process and did not sign the return

receipts. I am informed and believe that I have never been properly served with either the Notice of Intent to File Suit or the Summons and Complaint.

FURTHER AFFIANT SAYETH NOT.

*Heather McCloy*

Heather McCloy

SWORN TO AND SUBSCRIBED BEFORE ME )  
this 12<sup>th</sup> day of March, 2024 (CP) )  
D. Gale Rostick )  
NOTARY PUBLIC FOR SOUTH CAROLINA )  
My Commission Expires: 23 February 2031 )

D. Gale Rostick

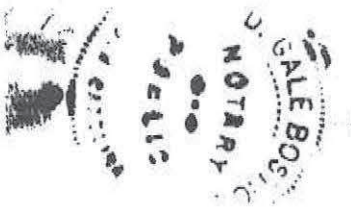


EXHIBIT C

ROA 100

USPS TRACKING #



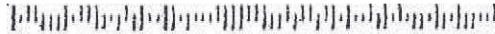
9590 9402 7396 2055 4955 28

First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

Sender: Please print your name, address, and ZIP+4® in this box\*

Elizabeth C Moultrie, Senior Paralegal  
KASSEL McVEY ATTORNEYS  
P O Box 1476  
Columbia SC 29202-1476



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

H. McCloy, as RA for Service of  
Process for All Season' Healthcare  
Inc.  
7142 Woodrow St  
Irmo, South Carolina 29063



9590 9402 7396 2055 4955 28

Article Number (Transfer from service label)

7017 0660 0000 1954 2299

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *H. McCloy*

Agent  
 Addressee

B. Received by (Printed Name)

*H. McCloy*

C. Date of Delivery

*12-16*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery
- Restricted Delivery

# EXHIBIT D

ROA 102



ELECTRONICALLY FILED - 2024 Mar 12 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086  
 ELECTRONICALLY FILED - 2023 Jun 30 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

USPS TRACKING #

9590 9402 7396 2055 4958 87

First-Class Mail  
 Postage & Fees Paid  
 USPS  
 Permit No. G-10

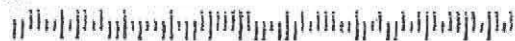
United States  
 Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box®

Elizabeth C Moultrie, Senior Paralegal  
 KASSEL McVEY ATTORNEYS  
 P O Box 1476  
 Columbia SC 29202-1476

RECEIVED JUN 22 2023

12-147676



| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                   | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>                              | <p>A. Signature* <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>                 If YES, enter delivery address below: <input type="checkbox"/> No</p>                                                                                                                                                                                                                                                                                                                                              |
| <p>1. Article Addressed to:</p> <p>H. McCloy, as Registered Agent for<br/>                 Service of Process<br/>                 for All Season' Healthcare, Inc.<br/>                 7142 Woodrow St<br/>                 Irmo, South Carolina 29063</p> <p>9590 9402 7396 2055 4958 94</p> | <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> |
| <p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0001 3098 4858</p>                                                                                                                                                                                                          | <p>Restricted Delivery</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt



ARGUMENT AND LAW

Rule 4(d)(8) of the South Carolina Rules of Civil Procedure states service is effective when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery restricted to the addressee.” Plaintiff mailed the Notice of Intent using the United States Postal Service’s “Certified Mail Restricted Delivery” option. As shown below, the United States Postal Service explains that Restricted Delivery “allows the mailer to direct delivery only to the addressee or the addressee’s authorized agent.” As a result, Certified Mail Restricted delivery complies with Rule 4(d)(8).



**What is Restricted Delivery?**

Selecting Restricted Delivery allows the mailer to direct delivery only to the addressee or the addressee's authorized agent.

Defendant cites to a case in the Court of Common Pleas in Charleston County, *Zanin v. Carolina Specialty Products Inc.* In *Zanin*, the Court granted summary judgment in favor of the defendant because service of the Amended Complaint was “defective because it was not served by restricted delivery.” In that case, Plaintiff Zanin filed a Memorandum in Opposition to Summary Judgment on August 27<sup>th</sup>, 2012, with exhibits (See, Exhibit A). In that memorandum, Plaintiff

admits they did not check the “restricted delivery” box, located in the bottom right of the green card, when they sent the Amended Complaint by certified mail. (Ex A, pg 3). Because the restricted delivery box was not checked, Plaintiff Zanin did not comply with Rule 4(d)(8).

The facts in *Zanin* are wholly inconsistent with the facts in this matter. As shown below, Plaintiff checked the “restricted delivery” box when the Notice of Intent was mailed to Defendant All Season’s Healthcare, Inc, and pursuant to the United States Postal Services’ definition of restricted delivery, Plaintiff fully complied with Rule 4(d)(8). Defendant mistakenly asserts it is the sender’s job to check “addressee” in the top right box of the green card when sending the mail Certified, Restricted Delivery. However, as you can see in the photo below, the directions for that box are to “complete this section on delivery.” Thus, the recipient fills out that box and identifies themselves as agent or addressee. When the recipient signed this card on December 16<sup>th</sup>, 2022, service was effective.

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                                                                        | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|------------------------------------------|-------------------------------------------------|--------------------------------------------------------------|-------------------------------------------|------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------|----------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------|--|----------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>                                                                                                                   | <p>A. Signature<br/> <input checked="" type="checkbox"/> Agent<br/> <input type="checkbox"/> Addressee</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <p>1. Article Addressed to:</p> <p>H. McCloy, as RA for Service of<br/>                     Process for All Season’ Healthcare<br/>                     Inc.<br/>                     7142 Woodrow St<br/>                     Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4955 28</p> | <p>B. Received by (Printed Name)<br/>                     H. K. Seeger</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p>C. Date of Delivery<br/>                     12-16</p> |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <p>2. Article Number (Transfer from service label)<br/>                     7017 0660 0000 1954 2299</p>                                                                                                                                                                                                                                                                             | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>                     If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Restricted Delivery</td> <td></td> </tr> </table> |                                                           | <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® | <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ | <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery | <input checked="" type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery | <input type="checkbox"/> Collect on Delivery Restricted Delivery |  | <input type="checkbox"/> Restricted Delivery |  |
| <input type="checkbox"/> Adult Signature                                                                                                                                                                                                                                                                                                                                             | <input type="checkbox"/> Priority Mail Express®                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <input type="checkbox"/> Adult Signature Restricted Delivery                                                                                                                                                                                                                                                                                                                         | <input type="checkbox"/> Registered Mail™                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <input type="checkbox"/> Certified Mail®                                                                                                                                                                                                                                                                                                                                             | <input type="checkbox"/> Registered Mail Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <input checked="" type="checkbox"/> Certified Mail Restricted Delivery                                                                                                                                                                                                                                                                                                               | <input type="checkbox"/> Signature Confirmation™                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <input type="checkbox"/> Collect on Delivery                                                                                                                                                                                                                                                                                                                                         | <input type="checkbox"/> Signature Confirmation Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |
| <input type="checkbox"/> Restricted Delivery                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |                                              |  |

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

“When the civil rules on service are followed, there is a presumption of proper service.” *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995). Because Plaintiff in this case met the requirements for service of process, it is presumed Defendant All Season’s Healthcare, Inc. was properly served. “Under Rule 4(d)(8) the defendant, not the plaintiff, must prove that the receipt was signed by an unauthorized person. The plaintiff need only show compliance with the rules.” *Id.* In this case, Defendant All Season’s cannot prove the receipt was signed by an unauthorized person, as exhibited by their admission in their memorandum in support filed March 12, 2024, and their response to the interrogatory seen below.

9. Identify by names, address and title the All Season’s Healthcare, LLC employees and/or agents who accepted and signed the certified letter serving the Notice of Intent on December 16<sup>th</sup>, 2022.

**ANSWER:** Unknown.

It is important to note that when Defendant All Season’s Healthcare, Inc. was served with the Summons and Complaint on June 26<sup>th</sup>, 2023, the recipient of the Summons and Complaint wrote “All Seasons” on the signature line and marked the “agent” box, identical to the signature and check mark as the recipient had done when served with the Notice of Intent. We know the service of the Summons and Complaint was effectuated because Ms. McCloy contacted her insurance carrier, was denied coverage, and ultimately requested an extension to answer the complaint. Now this Defendant is claiming the identical proof of service of the Notice of Intent did not put the Defendant on notice.

This is not the first time Ms. McCloy has attempted to evade service. Ms. McCloy and her husband, Dr. McCloy, failed to pay over \$150,000.00 in federal taxes between the years of 2011 and 2015. Beginning in 2018, the IRS attempted to levy these owed taxes. Dr. and Ms. McCloy

failed to pay back the taxes and in March of 2020, the IRS filed an action against them in South Carolina District Court. The United States of America attempted to serve Ms. McCloy at her place of business located at 8142 Woodrow St, Columbia, South Carolina- the same location the Plaintiff in this matter served the Notice of Intent and, later, Summons and Complaint. Ms. McCloy notified the process server she would not accept service, despite service being effectuated. The IRS then served Ms. McCloy at her personal residence out of an abundance of caution. (see, Exhibit B) This repeated behavior of attempting to dodge service and liabilities should not be rewarded.

Because the defendant cannot meet their burden in proving the receipt was signed by an unauthorized person, the presumption of proper service cannot be refuted. As a result, defendant's Motions for Summary Judgment and Dismissal should be denied.

Respectfully submitted,


s/Jamie Rae Rutkoski  
Jamie Rae Rutkoski (SC Bar No.: 103270)  
[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)  
Theile B. McVey (SC Bar No.: 16682)  
[tmevey@kassellaw.com](mailto:tmevey@kassellaw.com)  
John D. Kassel ( SC Bar No.: 3286)  
[jkassel@kassellaw.com](mailto:jkassel@kassellaw.com)  
KASSEL McVEY ATTORNEYS AT LAW  
1330 Laurel Street  
Post Office Box 1476  
Columbia, South Carolina 29202-1476  
803-256-4242  
803-256-1952 (Facsimile)  
Other email: [cmoultrie@kassellaw.com](mailto:cmoultrie@kassellaw.com)

April 15, 2024

Columbia, South Carolina.

FILED

STATE OF SOUTH CAROLINA )  
2012 AUG 27 PM 2: 15 )  
COUNTY OF CHARLESTON ) IN THE COURT OF COMMON PLEAS  
JULIE J. ARMSTRONG )  
CLERK OF COURT )

BY  )  
Frank Zanin and Mary Zanin, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Carolina Specialty Products, Inc., Earthcore )  
Industries, LLC and American Building )  
Products, LLC )  
 )  
Defendants. )

Civil Action No. 2010-CP-10-1515

**MEMORANDUM IN OPPOSITION TO**  
**DEFENDANT AMERICAN BUILDING**  
**PRODUCTS, LLC'S MOTION FOR**  
**SUMMARY JUDGMENT**

Plaintiffs hereby submit this Memorandum in opposition to Defendant American Building Products, LLC's (hereafter "American Building") Motion for Summary Judgment on the grounds that the Amended Complaint was timely served upon American Building, American Building was fully aware and notified of the pending complaint in October 2011, as evidenced by its repeated contact with Plaintiffs' counsel, and, accordingly, summary judgment is not proper.

**Factual Background**

On January 21, 2009, a fire occurred at the Plaintiffs' home which originated in the area behind the fireplace in the home. On September 1, 2011, the Amended Complaint was filed in this Court, adding American Building as a party Defendant. On October 14, 2011, Plaintiffs served American Building with a copy of the Summons and Complaint via Certified Mail, Return Receipt at its place of business in Myrtle Beach, South Carolina. On October 21, 2011, Plaintiffs' counsel spoke with Scott P. Amaral, the owner of American Building. Amaral stated

that he had received the Summons and Complaint and requested that American Building be dismissed from the case for reasons relating to the manner in which American Building acquired Defendant Carolina Specialty Products, Inc. (See Affidavit of Attorney Goodwyn, attached as **Exhibit 1**). Mr. Amaral also forwarded an unsigned Letter of Intent to Attorney Goodwyn on that same day, which Amaral asserted was evidence of the terms and conditions of American Building's acquisition of Carolina Specialty. In response, Attorney Goodwyn requested that Mr. Amaral forward a signed copy of the purchase and sale agreement. See **Exhibit 1**. Despite having received the Summons and Complaint, American Building filed no response to the Amended Complaint, and Plaintiffs moved for an Order of Default Judgment on December 14, 2011. On April 2, 2012, Mr. Amaral contacted Attorney Goodwyn via e-mail to inquire as to why he was receiving default motions and asserting that the purchase of Carolina Specialty was an "asset only" purchase. Mr. Amaral stated that "my assumption was that you received the document I sent you [on October 21, 2011] and had dropped us from the case." See **Exhibit 1**.

#### **Legal Standard**

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008).

### Argument

**1. The owner of American Building was on notice of, and in receipt of, the Summons and Complaint as of October 21, 2011, and therefore Plaintiffs' claims are not time-barred.**

American Building argues that the Plaintiffs' claims are barred by the Statute of Limitations because an Acceptance of Service was signed by American Building's counsel on May 21, 2012.<sup>1</sup> This argument completely ignores that service of the Amended Complaint was made on October 14, 2011 on an American Building employee, who promptly informed American Building's owner, Mr. Amaral. Mr. Amaral had actual and/or constructive knowledge of service of the pleadings on October 14, 2011, and had possession of the pleadings by October 21, 2011, when he telephoned Plaintiffs' counsel. Despite such awareness, American Building failed to answer the Amended Complaint or otherwise appear in any way until May 2012. To now assert that service was not perfected until May 2012 is beyond the bounds of reasonableness.

It is undisputed that Rule 4(d)(8), SCRCP, requires that service made by mail shall be certified, return receipt requested, and restricted delivery. In the instant case, service was by certified mail, but the restricted delivery box was not checked.<sup>2</sup> Despite this technical deficiency, it is undisputed that the American Building was in actual and constructive receipt of the Plaintiffs' claims by October 21, 2011 - well within the statute of limitations. American Building's owner, Mr. Amaral, simply failed to respond - relying upon his position that his statements to Mr. Goodwyn regarding an "asset only" sale, and the blank Letter of Intent, were sufficient to allow him to ignore this pending action. Such reliance is misplaced.

---

<sup>1</sup> American Building, upon notice of the motion for default judgment, proceeded to hire counsel to appear at the motion hearing on May 14, 2012 and filed an answer to the Amended Complaint and served discovery on the Plaintiffs.

<sup>2</sup> Plaintiffs' motion for default judgment was denied in part as a result of this inadvertent technical error.

Our Supreme Court has noted that "Rule 4, SCRPC, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action. *We have never required exacting compliance with rules to effect service of process.* Rather we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and *the defendant has notice of the proceedings.*" Roche v. Young Brothers, Inc. of Florence, 318 S.C.207, 456 S.E.2d 897, 899 (1995) (internal citations omitted) (emphasis added); See also Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009) (holding that hotel owner who was absent from premises when process was served upon front desk clerk could not be relieved from default on grounds of ineffective service where owner spoke to process server on the phone and acknowledged he was aware of service; where owner instructed clerk to fax the summons and complaint to his insurance agent; and where owner failed to follow up on litigation).

There is no dispute that American Building's employee accepted service of the Amended Complaint on October 14, 2011 and that by October 21, 2011, American Building's owner, Mr. Amaral, had received the pleadings and contacted Plaintiffs' counsel to discuss the case and his position as to American Building's liability (or lack thereof) under the Letter of Intent. To now argue that service was not effected until May 21, 2012 is simply not supportable. Much like the hotel owner in Richardson, supra, Mr. Amaral was aware that the pleadings had been served; was in possession of the pleadings in October 2011; and simply failed to do anything about it. To now assert that the Plaintiffs' claims are barred by the statute of limitations is simply not supported by the law or the facts. "A party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney....[W]here the [party] was duly served with the

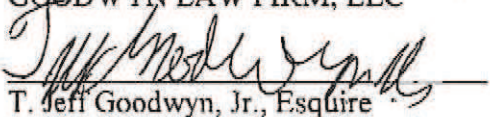
summons and complaint, it was his duty to answer the complaint...." Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894, 897-898 (Ct. App. 2001).

*A. Allowing American Building to Avoid the Plaintiffs' Claims Would Be Inequitable*

Even assuming for purposes of this Memorandum that Plaintiffs' claims are time-barred, which is expressly denied, the statute of limitations should be equitably tolled in order to allow the case to go forward. "In order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." Hooper v. Ebenezer Senior Services, 687 S.E.2d 29, 32, 386 S.C. 108 (2009). "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Id. at 33 (citing Hausman v. Hausman, 199 S.W.3d 38 (Tex. App. 2006). "Unlike equitable estoppel, equitable tolling does not require a showing that the defendant has made a misrepresentation to the plaintiff." Magnolia North Property Owner's Assoc. v. Heritage Communities, Inc., 725 S.E.2d 112, 397 S.C. 348 (Ct. App. 2012) (noting that equitable tolling is judicially created and stems from the judiciary's inherent power to formulate rules of procedure where justice demands it .)

In Hooper, the plaintiff "diligently pursued service" on what turned out to be a non-existent registered agent for the corporate defendant, but was unable to effect service in a timely manner -- the plaintiff was one week past the 120 day time period outlined in Rule 3(a)(2), SCRCP. The South Carolina Supreme Court, in equitably tolling the statute of limitations, noted that "public policy and the interests of justice weigh heavily" in favor of allowing her claims to proceed. Id. at 34.

Similarly, to allow American Building to avoid this litigation would work a severe injustice on the Plaintiffs. Plaintiffs' counsel attempted to serve American Building in a timely fashion and proceeded to communicate with Mr. Amaral via telephone and email on October 21, 2011. This communication with Mr. Amaral – where Mr. Amaral clearly and unequivocally indicated that he was aware of the lawsuit having been served on his employee- indicates that American Building simply chose to ignore this lawsuit without any further inquiry or appearance. To reward American Building's disinterest is to work a drastic consequence – dismissal – on the Plaintiffs. Such a result is clearly against public policy and not in the Court's interest in seeing claims actually litigated.

GOODWYN LAW FIRM, LLC  
  
T. Jeff Goodwyn, Jr., Esquire  
2519 Devine Street  
Suite A  
Columbia, SC 29205  
(803) 251-4517  
Attorney for Plaintiff

Columbia, South Carolina  
August 24, 2012

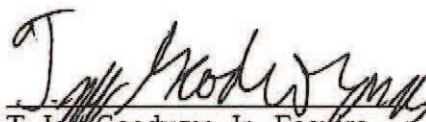


purchase.

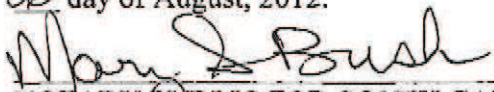
5. Mr. Amaral sent me a blank Letter of Intent, attached to his e-mail, purporting to support his position that American Building Products should be dismissed. See Exhibit B.

6. American Building Products never responded to the Amended Complaint and I proceeded to file an Affidavit of Default and Motion for Default Judgment.

7. On April 2, 2012, Scott Amaral sent me another e-mail acknowledging that he had received the Summons and Complaint and default documents and that he had assumed that I had dismissed American Building Products, LLC from the suit after he sent me the Letter of Intent on October 21, 2011 (see email dated April 2, 2012 attached as Exhibit C).

  
T. Jeff Goodwyn, Jr., Esquire  
Goodwyn Law Firm, LLC  
2519 Devine Street, Suite A  
Columbia, SC 29205  
(803) 251-4517  
Attorney for Plaintiffs

SWORN to before me this  
23<sup>rd</sup> day of August, 2012.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 10-19-2019

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Frank Zanin and Mary Zanin,

Civil Action No. 2010-CP-10-1515

Plaintiffs,

**PROOF OF SERVICE**

vs.

Carolina Specialty Products, Inc., Earthcore Industries, L.L.C. and American Building Products, L.L.C.

Defendants.

FILED  
2011 DEC 14 PM 1:32  
CLERK OF COURT

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                              | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul> | <p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Recipient by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No<br/>if YES, enter delivery address below:</p>                                                                                                                              |
| <p>1. Article Addressed to:</p> <p>Scott Amaral, Owner<br/>American Building Products, LLC<br/>4706 F Northgate Blvd.<br/>Myrtle Beach, SC 29577</p>                                                                                                                                                                       | <p>D. Reilly 11/10/14</p> <p>4706 F Northgate Blvd<br/>Myrtle Beach, SC 29577</p> <p>3. Service Type<br/> <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/> <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/> <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| <p>2. Article Number<br/><i>(Transfer from service label)</i></p>                                                                                                                                                                                                                                                          | <p>7009 0960 0000 8368 0857</p>                                                                                                                                                                                                                                                                                                                                                                                                                            |



**Jeff Goodwyn**

**From:** Jeff Goodwyn [jgoodwyn@goodwynlaw.com]  
**Sent:** Friday, October 21, 2011 5:22 PM  
**To:** 'Scott P Amaral'  
**Subject:** RE: File no. 2000-0002  
Scott -

It was good to talk to you today too. Please send me the executed version of the purchase agreement when you get back to SC.

Thanks -

T. Jeff Goodwyn, Jr., Esquire  
Goodwyn Law Firm, LLC  
2519 Devine Street  
Suite A  
Columbia, S.C. 29205  
Telephone: (803) 251-4517  
Facsimile: (803) 251-4527  
[www.Goodwynlaw.com](http://www.Goodwynlaw.com)

-----  
**CONFIDENTIAL & PRIVILEGED**

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

-----  
**From:** Scott P Amaral [mailto:samaral@abp-llc.net]  
**Sent:** Friday, October 21, 2011 4:41 PM  
**To:** jgoodwyn@goodwynlaw.com  
**Subject:** File no. 2000-0002

Jeff,

Thank you for returning my call today. Attached please find the LOI/Purchase agreement entered into by ABP, LLC and CSP, Inc. June, 2008. If you have further questions please give



10/21/2011

me a call,

Thanks,

Scott P Amaral  
c: 843-241-0368  
f: 508-355-0058  
[samaral@abp-llc.net](mailto:samaral@abp-llc.net)

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10/21/2011

ROA 120

dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

---

**From:** Scott P Amaral [mailto:[samaral@abp-llc.net](mailto:samaral@abp-llc.net)]  
**Sent:** Monday, April 02, 2012 3:30 PM  
**To:** [jgoodwyn@goodwynlaw.com](mailto:jgoodwyn@goodwynlaw.com)  
**Subject:** Re: File no. 2000-0002

Mr. Goodwyn,

I am writing you because I received a package a week ago from my office in SC in regards to the Zanin Case against Carolina Specialty Products, Inc. below is the email in which I sent you the purchase agreement between ABP and CSP which states that it was an asset only purchase. at that time you said you'd get back to me, which I never received a response and now I'm getting default motions. Carolina Specialty Products Inc. went out of business when we acquired their assets and we did not assume their liabilities as I stated to you before. and as I also mentioned to you, I do not work in that office and did not personally sign for any of these services as you can see in the proof of service it was signed for by a local employee who did not get it to me until recently. My assumption was that you received the document i sent you and had dropped us from the case. Could you please let me know what is going on.

Thanks,

Scott P Amaral  
c: 843-241-0368  
f: 508-355-0058  
[samaral@abp-llc.net](mailto:samaral@abp-llc.net)

On Oct 21, 2011, at 4:41 PM, Scott P Amaral wrote:

Jeff,

Thank you for returning my call today. Attached please find the LOI/Purchase agreement entered into by ABP, LLC and CSP, Inc. June, 2008. If you have further questions please give me a call.

Thanks,



STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Frank Zanin and Mary Zanin,

Civil Action No. 2010-CP-10-1515

Plaintiffs,

**CERTIFICATE OF SERVICE**

vs.

Carolina Specialty Products, Inc., Earthcore  
Industries, LLC and American Building  
Products, LLC

Defendants.

This is to certify that a copy of the foregoing **Memorandum in Opposition to Defendant American Building Products, LLC's Motion for Summary Judgment** and an **Affidavit of T. Jeff Goodwyn, Jr.** along with **exhibits** have been served upon the following party(s) by depositing a copy of the same in the United States Mail, postage prepaid, addressed as shown below on this 24<sup>th</sup> day of August, 2012.

James D. Smith, Esquire  
McAngus, Goudelock & Courie, LLC  
P.O. Box 650007  
Mt. Pleasant, SC 29465



Mary S. Bush  
Paralegal to T. Jeff Goodwyn, Jr., Esquire  
Goodwyn Law Firm, LLC  
2519 Devine Street, Suite A  
Columbia, S.C. 29205  
(803) 251-4517

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

|                              |   |                          |
|------------------------------|---|--------------------------|
| UNITED STATES OF AMERICA,    | ) |                          |
|                              | ) | Case No.: 3:20-00639-JMC |
|                              | ) |                          |
| Plaintiff,                   | ) |                          |
| v.                           | ) |                          |
|                              | ) |                          |
| ALL SEASONS HEALTHCARE, INC. | ) |                          |
| a/k/a ALL SEASONS MEDICAL    | ) |                          |
| ASSOCIATES, LLC,             | ) |                          |
|                              | ) |                          |
| Defendant.                   | ) |                          |
| _____                        | ) |                          |

**REQUEST FOR ENTRY OF CLERK’S DEFAULT AGAINST DEFENDANT**

The United States of America, by and through undersigned counsel, files this application for an entry of default against defendant All Seasons Healthcare, Inc. a/k/a All Seasons Medical Associates, LLC (“All Seasons”) pursuant to Fed. R. Civ. P. 55(a) and as grounds therefore states as follows:

1. The United States commenced this action to enforce an Internal Revenue Service levy served on All Seasons to collect the outstanding federal income tax liabilities of Dr. Stanley McCloy and Heather Wood a/k/a Heather McCloy (“Heather McCloy”) who are employed by the company. (ECF Entry No. 1).
2. As established by the return of service filed with the Court on May 18, 2020, a summons and complaint were originally served on All Seasons on March 24, 2020, by leaving the summons and complaint with Heather McCloy, All Seasons’s owner and designated agent for service of process in South Carolina, at All Seasons’s place of business located at 7142 Woodrow Street, Columbia, South Carolina. (ECF Entry No. 6-1). However, Heather McCloy informed the process server that she would not accept service. (*Id.*). Thus, in an abundance of

caution, the summons and complaint were personally served on Heather McCloy at her residence located at 10 Ferrell Lane, Columbia, South Carolina on April 22, 2020. (ECF Entry No. 6-2).

3. Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), All Seasons was to serve an answer or other response under Rule 12 of the Federal Rules of Civil Procedure by May 13, 2020. However, pursuant to the Court's Standing Order entered on March 16, 2020 (Standing Order, Misc. Number: 3:20-mc-105), all deadlines in civil cases "are [] extended by 21 days from the current deadline sent." (See also Amended Standing Order, Misc. Number: 3:20-mc-139). Therefore, the deadline for All Seasons to file its response to the complaint was extended until June 3, 2020.

4. To date, All Seasons has failed to file either an answer nor any other motion or response within the deadline provided by the Court's Standing Order. Accordingly, All Seasons is in default and the United States is entitled to the entry of a default pursuant to Fed. R. Civ. P. 55(a).

5. The United States knows of no reason why a default should not be entered against All Seasons.

WHEREFORE, the United States prays that the Clerk enters the default against All Seasons in accordance with Fed. R. Civ. P. 55(a).

Respectfully submitted,

June 23, 2020

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General  
Tax Division

Pascale Guerrier  
Trial Attorney, Tax Division  
U.S. Department of Justice  
555 4th Street, N.W., Room 6223  
Washington, D.C. 20001  
Phone: (202) 353-1978  
Telecopier: (202) 514-4963  
Pascale.Guerrier@usdoj.gov

PETER M. MCCOY, JR.  
United States Attorney  
District of South Carolina

By: s/ Robert Sneed  
Robert Sneed  
Assistant United States Attorney (AUSA)  
Civil Division  
U.S. Attorney's Office, District of  
South Carolina  
55 Beattie Place, Suite 700  
Greenville, SC 29601  
(864) 282-2100, robert.sneed@usdoj.gov

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UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

|                              |   |                          |
|------------------------------|---|--------------------------|
| UNITED STATES OF AMERICA,    | ) |                          |
|                              | ) | Case No.: 3:20-00639-JMC |
|                              | ) |                          |
| Plaintiff,                   | ) |                          |
| v.                           | ) |                          |
|                              | ) |                          |
| ALL SEASONS HEALTHCARE, INC. | ) |                          |
| a/k/a ALL SEASONS MEDICAL    | ) |                          |
| ASSOCIATES, LLC,             | ) |                          |
|                              | ) |                          |
| Defendant.                   | ) |                          |
| _____                        | ) |                          |

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the District of South Carolina and is a person of such age and discretion as to be competent to serve papers.

That on June 23, 2020, she served a copy of the attached:

**UNITED STATES' REQUEST FOR ENTRY OF CLERK'S  
DEFAULT AGAINST DEFENDANT**

by placing said copy in an postpaid envelope addressed to the person(s) hereinafter named, at the places(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Greenville, South Carolina.

All Seasons Healthcare, Inc.  
a/k/a All Seasons Medical Associates, LLC  
7142 Woodrow Street  
Irmo, SC 29063

s/Jennifer Ludwiczak  
Jennifer Ludwiczak  
Legal Assistant



Plaintiff mailed letters to both Defendants notifying them of pre-suit mediation, as required by S.C. Code Ann. § 15-79-125. On March 27<sup>th</sup>, 2023, “Trish” from All Season’s Healthcare called Plaintiff’s counsel’s office to discuss the contents of the letter. Plaintiff’s counsel’s office confirmed the date of the mediation with Trish and requested an email address to send the relevant information. Immediately after that phone call, Elizabeth Moultrie emailed Trish at [trish@allseasonshealthsc.com](mailto:trish@allseasonshealthsc.com) with the relevant documentation to attend the scheduled pre-suit mediation. (*see*, Exhibit A). Neither Defendant appeared at mediation.

Once the mediator filed the ADR paperwork in Greenwood County, Plaintiff transferred the Greenwood County case to Richland County. Plaintiff then filed the Complaint in Richland County and served both All Season’s Healthcare, Inc. and TWG Polo Rd., L.L.C.

#### Law

Defendants assert that failure to file the Notice of Intent in the proper venue negates the tolling of the statute of limitations and, as such, should result in dismissal of this case. S.C. Code Ann. § 15-79-125 states: “the plaintiff shall contemporaneously file a Notice of Intent to File Suit and affidavit of an expert witness . . . in a county in which venue would be proper for filing or initiating the civil action.” However, the statute does not specify the consequence for failure to strictly comply with the directions in the statute. Nowhere in the statute does the legislature suggest that strict compliance is required to toll the statute of limitations and nowhere in the statute does the legislature suggest that failure to strictly comply should result in dismissal of a potentially meritorious claim.

The South Carolina Supreme Court has addressed the purpose and intention of S.C. Code Ann. § 15-79-125 in *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013). In

*Ross*, plaintiffs failed to complete the pre-suit mediation within 120 days as prescribed by the statute. Just as the statute states that the Notice of Intent “shall” be filed in the proper venue, the statute also states mediation “shall” take place within 120 days. However, the Supreme Court found that failure to strictly comply with the statute should not result in dismissal of the claim. *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013).

The Court found that the legislature in no way meant for S.C. Code Ann. § 15-79-125 to be a “trap” to confuse litigants and result in dismissal of meritorious claims. *Id.*, at 63, 550. Instead, the Court found that “[i]t is clear that the Legislature enacted section 15-79-125 to provide an informal and expedient method of culling prospective medical malpractice cases by fostering the settlement of potentially meritorious claims and discouraging the filing of frivolous claims.” *Id.*

Rule 82(b) of the South Carolina Rules of Civil Procedure states: “when an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer it to any proper county or court in which it could have been brought.” If this were a case that didn’t require the filing of a Notice of Intent, and a complaint was filed in this case in Greenwood County on November 11<sup>th</sup>, 2023, the remedy would be that the case be transferred to the proper venue. The case could not be dismissed for filing a complaint in an improper venue. The idea that the enactment of S.C. Code Ann. § 15-79-125 creates a new procedural hurdle, as opposed to the statute’s intention of culling unmeritorious cases and encouraging resolution, is contrary to the Supreme Court’s ruling in *Ross v. Waccamaw* and contrary to the intention of the legislature.

The Court’s decision in *Ross v. Waccamaw* in conjunction with Rule 82 of the South Carolina Rules of Civil Procedure can lead to only one reasonable conclusion: the remedy for filing a Notice of Intent in an improper venue is to transfer the case to the proper venue, not to

dismiss the case. The purpose of S.C. Code Ann. § 15-79-125 is to cull malpractice claims with no merit. It is not meant to be a procedural trap for Plaintiffs who otherwise would be able to move forward with meritorious claims.

Respectfully submitted,

s/Jamie Rae Rutkoski  
Jamie Rae Rutkoski (SC Bar No.: 103270)  
[jrutkoski@kassellaw.com](mailto:jrutkoski@kassellaw.com)  
Theile B. McVey (SC Bar No.: 16682)  
[tmcvey@kassellaw.com](mailto:tmcvey@kassellaw.com)  
John D. Kassel ( SC Bar No.: 3286)  
[jkassel@kassellaw.com](mailto:jkassel@kassellaw.com)  
KASSEL McVEY ATTORNEYS AT LAW  
1330 Laurel Street  
Post Office Box 1476  
Columbia, South Carolina 29202-1476  
803-256-4242  
803-256-1952 (Facsimile)  
Other email: [emoultric@kassellaw.com](mailto:emoultric@kassellaw.com)

April 18, 2024

Columbia, South Carolina.





Inc, was served on December 16<sup>th</sup>, 2022, through certified mail, restricted delivery, return receipt requested. The return receipt was returned to Plaintiffs signed "All Seasons Healthcare."

Defendant All Season's Healthcare, Inc., did not have an attorney appear on the record. Plaintiffs notified Defendant All Season's Healthcare, Inc., of the pre-suit mediation by way of letter. On March 1<sup>st</sup>, 2023, Elizabeth Moultrie, a paralegal employed by Plaintiff's counsel, took a phone call from "Trish," an employee of All Season's Healthcare, Inc., regarding the pre-suit mediation. Ms. Moultrie then provided the documents related to the Notice of Intent to "Trish" after the phone call. Still, no attorneys appeared for Defendant. Plaintiff moved forward with pre-suit mediation.

Plaintiff then transferred the Notice of Intent to Richland County, the undisputed proper venue, on June 13<sup>th</sup>, 2023. Plaintiff then filed the Summons and Complaint in this case in Richland County on June 13<sup>th</sup>, 2023. Defendant All Season's Healthcare, Inc., was served in the same manner as the Notice of Intent. Again, the return receipt was returned with the signature line reading "All Seasons Healthcare." Defendant's insurance company was notified by Defendant All Seasons' Healthcare, Inc., and denied the claim. Heather McCloy, registered agent and owner of All Season's Healthcare, Inc., requested a continuance to answer the complaint. Plaintiff granted the request.

- II. South Carolina law shifts burden to Defendant to prove improper service when Plaintiff meets the service requirements of Rule 4 of the South Carolina Rules of Civil Procedure.

Rule 4(d) of the South Carolina Rules of Civil Procedure sets out the process with which defendants must be served. "When the civil rules on service are followed, there is a presumption

of proper service.” *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995). In *Roche*, Plaintiff sued Young Brothers, Inc., a corporation which owned and operated the hotel where Plaintiff was injured. Plaintiff filed their Summons and Complaint and served Young Brothers, Inc., by mailing the summons and complaint certified mail, return receipt requested addressed to the Registered Agent Mr. Edward L. Young. The return receipt was signed by J.N. Young. Defendants never answered the complaint. Plaintiff filed a Motion for Default, underwent a default hearing, and was granted a judgment. Plaintiff served Young Brothers, Inc., with the judgment in the same manner with which the complaint was served. Again, J.N. Young signed the return receipt. At that point, Young Brother’s Inc. finally made an appearance in an effort to set aside the default.

Although J.N. Young was not the Registered Agent named on the certified mail, the record showed that he signed for the mail and distributed it throughout the facility. The Supreme Court of South Carolina found that Plaintiff had met the requirements of Rule 4(d)(3). Further the Supreme Court specifically articulated that it was not Plaintiff’s burden to prove that an agent signed the return receipt. Instead, the burden shifts to the defendant to prove that whoever signed as an agent of the defendant corporation was not granted authority to do so. *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

This matter is similar to *Roche v. Young Brothers* in three important aspects: 1) Plaintiff met the requirements proper service as described in Rule 4(d)(8) of the South Carolina Rules of Civil Procedure, 2) service was effected twice, in the same manner, on the same defendant, and Defendant chose only to respond the second time, and 3) Defendant cannot prove the return receipt was signed by an unauthorized agent, as required by South Carolina law.

Rule 4(d)(8) notes service on a corporation is effective when the summons and complaint are sent “by registered or certified mail, return receipt requested and delivery restricted to the addressee.” In this case, Plaintiff mailed the Notice of Intent using the United States Postal Service’s “Certified Mail Restricted Delivery” option.

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                                                                                                               | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------|--------------------------------------------------------------|-------------------------------------------|------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------|----------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>                                                                                                                                                    | <p>A. Signature<br/> <input checked="" type="checkbox"/> Agent<br/> <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)<br/>                 H. McCloy</p> <p>C. Date of Delivery<br/>                 12-16</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <p>1. Article Addressed to:</p> <p style="text-align: center;">H. McCloy, as RA for Service of<br/>                 Process for All Season' Healthcare<br/>                 Inc.<br/>                 7142 Woodrow St<br/>                 Irmo, South Carolina 29063</p>  <p style="text-align: center;">9590 9402 7396 2055 4955 28</p> | <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>                 If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table> | <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® | <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ | <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery | <input checked="" type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery | <input type="checkbox"/> Collect on Delivery Restricted Delivery |  |
| <input type="checkbox"/> Adult Signature                                                                                                                                                                                                                                                                                                                                                                                    | <input type="checkbox"/> Priority Mail Express®                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Adult Signature Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                | <input type="checkbox"/> Registered Mail™                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Certified Mail®                                                                                                                                                                                                                                                                                                                                                                                    | <input type="checkbox"/> Registered Mail Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input checked="" type="checkbox"/> Certified Mail Restricted Delivery                                                                                                                                                                                                                                                                                                                                                      | <input type="checkbox"/> Signature Confirmation™                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Collect on Delivery                                                                                                                                                                                                                                                                                                                                                                                | <input type="checkbox"/> Signature Confirmation Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7017 0660 0000 1954 2299</p>                                                                                                                                                                                                                                                                                                          | <p><input type="checkbox"/> Restricted Delivery</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

As shown below, the United States Postal Service explains that Restricted Delivery “allows the mailer to direct delivery only to the addressee or the addressee’s authorized agent.”<sup>1</sup> As a result, Certified Mail Restricted delivery complies with Rule 4(d)(8).

<sup>1</sup> <https://faq.usps.com/s/article/What-is-Restricted-Delivery>



## What is Restricted Delivery?

Selecting Restricted Delivery allows the mailer to direct delivery only to the addressee or the addressee's authorized agent.


Further, Rule 4(d)(3) of the South Carolina Rules of Civil Procedure permits service of the Summons and Complaint on “an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of process.” Although Heather McCloy was the Registered Agent of All Season’s Healthcare, Inc., at the time the Notice of Intent was served, she is not the only individual who had authority to accept service on behalf of the company. Thus, relying on an affidavit indicating Ms. McCloy did not sign the return receipt is improper because the evidence is insufficient to prove the return receipt was not signed by an authorized agent, as required under the Supreme Court’s ruling in *Roche. Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

Plaintiff in this case met the requirements for service of process, so it is presumed Defendant All Season’s Healthcare, Inc. was properly served. “Under Rule 4(d)(8) the defendant, not the plaintiff, must prove that the receipt was signed by an unauthorized person. The plaintiff need

only show compliance with the rules.” *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

Defendant cited to, and the Court’s order relied on, a case in the Court of Common Pleas in Charleston County, *Zanin v. Carolina Specialty Products Inc.* In *Zanin*, the Court granted summary judgment in favor of the defendant because service of the Amended Complaint was “defective because it was not served by restricted delivery.” In that case, Plaintiff Zanin filed a Memorandum in Opposition to Summary Judgment on August 27<sup>th</sup>, 2012, with exhibits. In that memorandum, Plaintiff admits they did not check the “restricted delivery” box, located in the bottom right of the green card, when they sent the Amended Complaint by certified mail. Because the restricted delivery box was not checked, Plaintiff Zanin did not comply with Rule 4(d)(8).

The facts in *Zanin* are wholly inconsistent with the facts in this matter. As shown on the return receipt below, Plaintiff checked the “restricted delivery” box when the Notice of Intent was mailed to Defendant All Season’s Healthcare, Inc, and pursuant to the United States Postal Services’ definition of restricted delivery, Plaintiff fully complied with Rule 4(d)(8). Defendant mistakenly asserts it is the sender’s job to check “addressee” in the top right box of the green card when sending the mail Certified, Restricted Delivery. However, as you can see in the photo below, the directions for that box are to “complete this section on delivery.” Thus, the recipient fills out that box and identifies themselves as agent or addressee. When the recipient signed this card on December 16<sup>th</sup>, 2022, service was effective.

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                       | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|------------------------------------------|-------------------------------------------------|--------------------------------------------------------------|-------------------------------------------|------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------------|--------------------------------------------------|----------------------------------------------|---------------------------------------------------------------------|------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> <li>Complete items 1, 2, and 3.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>                                  | <p>A. Signature<br/> <input checked="" type="checkbox"/> Agent<br/> <input type="checkbox"/> Addressee<br/> X <i>H. McCloy</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <p>1. Article Addressed to:</p> <p>H. McCloy, as RA for Service of<br/> Process for All Season's Healthcare<br/> Inc.<br/> 7142 Woodrow St<br/> Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4955 28</p> | <p>B. Received by (Printed Name)<br/> <i>H. McCloy</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <p>C. Date of Delivery<br/> 12-16</p> |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <p>2. Article Number (Transfer from service label)<br/> 7017 0660 0000 1954 2299</p>                                                                                                                                                                                                                | <p>D. Is delivery address different from item 1?<br/> If YES, enter delivery address below:</p> <p><input type="checkbox"/> Yes<br/> <input type="checkbox"/> No</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
|                                                                                                                                                                                                                                                                                                     | <p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td></td> </tr> </table> |                                       | <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® | <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ | <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery | <input checked="" type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Signature Confirmation™ | <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery | <input type="checkbox"/> Collect on Delivery Restricted Delivery |  |
| <input type="checkbox"/> Adult Signature                                                                                                                                                                                                                                                            | <input type="checkbox"/> Priority Mail Express®                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Adult Signature Restricted Delivery                                                                                                                                                                                                                                        | <input type="checkbox"/> Registered Mail™                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Certified Mail®                                                                                                                                                                                                                                                            | <input type="checkbox"/> Registered Mail Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input checked="" type="checkbox"/> Certified Mail Restricted Delivery                                                                                                                                                                                                                              | <input type="checkbox"/> Signature Confirmation™                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Collect on Delivery                                                                                                                                                                                                                                                        | <input type="checkbox"/> Signature Confirmation Restricted Delivery                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |
| PS Form 3811, July 2020 PSN 7530-02-000-9053                                                                                                                                                                                                                                                        | Domestic Return Receipt                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                       |                                          |                                                 |                                                              |                                           |                                          |                                                              |                                                                        |                                                  |                                              |                                                                     |                                                                  |  |

In this case, Defendant All Season's cannot prove the receipt was signed by an unauthorized person, as exhibited by their admission in their memorandum in support filed March 12, 2024, and their response to the interrogatory seen below.

9. Identify by names, address and title the All Season's Healthcare, LLC employees and/or agents who accepted and signed the certified letter serving the Notice of Intent on December 16<sup>th</sup>, 2022.  
**ANSWER:** Unknown.

It is important to note that when Defendant All Season's Healthcare, Inc. was served with the Summons and Complaint on June 26<sup>th</sup>, 2023, the recipient of the Summons and Complaint wrote "All Seasons" on the signature line and marked the "agent" box, identical to the signature and check mark as the recipient had done when served with the Notice of Intent. We know the service of the Summons and Complaint was effectuated because Ms. McCloy contacted her insurance carrier, was denied coverage, and ultimately requested an extension to answer the

complaint. Now this Defendant is claiming the identical proof of service of the Notice of Intent did not put the Defendant on notice.

This is not the first time Ms. McCloy has attempted to evade service. Ms. McCloy and her husband, Dr. McCloy, failed to pay over \$150,000.00 in federal taxes between the years of 2011 and 2015. Beginning in 2018, the IRS attempted to levy these owed taxes. Dr. and Ms. McCloy failed to pay back the taxes and in March of 2020, the IRS filed an action against them in South Carolina District Court. The United States of America attempted to serve Ms. McCloy at her place of business located at 8142 Woodrow St, Columbia, South Carolina- the same location the Plaintiff in this matter served the Notice of Intent and, later, Summons and Complaint. Ms. McCloy notified the process server she would not accept service, despite service being effectuated. The IRS then served Ms. McCloy at her personal residence out of an abundance of caution. (see, Exhibit B) This repeated behavior of attempting to dodge service and liabilities should not be rewarded.

Because the defendant cannot meet their burden in proving the receipt was signed by an unauthorized person, the presumption of proper service cannot be refuted. As a result, this Court should reverse the Order granting Defendant All Season's Healthcare Inc.'s Motions for Summary Judgment and Dismissal on these grounds.

### III. Filing a Notice of Intent in an improper venue is not grounds for dismissal.

Defendants assert that failure to file the Notice of Intent in the proper venue negates the tolling of the statute of limitations and, as such, should result in dismissal of this case. S.C. Code Ann. § 15-79-125 states: "the plaintiff shall contemporaneously file a Notice of Intent to File Suit and affidavit of an expert witness . . . in a county in which venue would be proper for filing or initiating the civil action." However, the statute does not specify the consequence for failure to

strictly comply with the directions in the statute. Nowhere in the statute does the legislature suggest that strict compliance is required to toll the statute of limitations and nowhere in the statute does the legislature suggest that failure to strictly comply should result in dismissal of a potentially meritorious claim.

The South Carolina Supreme Court has addressed the purpose and intention of S.C. Code Ann. § 15-79-125 in *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013). In *Ross*, plaintiffs failed to complete the pre-suit mediation within 120 days as prescribed by the statute. Just as the statute states that the Notice of Intent “shall” be filed in the proper venue, the statute also states mediation “shall” take place within 120 days. However, the Supreme Court found that failure to strictly comply with the statute should not result in dismissal of the claim. *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013).

The Court found that the legislature in no way meant for S.C. Code Ann. § 15-79-125 to be a “trap” to confuse litigants and result in dismissal of meritorious claims. *Id.*, at 63, 550. Instead, the Court found that “[i]t is clear that the Legislature enacted section 15-79-125 to provide an informal and expedient method of culling prospective medical malpractice cases by fostering the settlement of potentially meritorious claims and discouraging the filing of frivolous claims.” *Id.*

Rule 82(b) of the South Carolina Rules of Civil Procedure states: “when an action is brought in the wrong county or in the wrong court, the court shall not dismiss the action but shall transfer is to any proper county or court in which it could have been brought.” If this were a case that didn’t require the filing of a Notice of Intent, and a complaint was filed in this case in Greenwood County on November 11<sup>th</sup>, 2023, the remedy would be that the case be transferred to the proper venue. The case could not be dismissed for filing a complaint in an improper venue. The idea that the enactment of S.C. Code Ann. § 15-79-125 creates a new procedural hurdle, as

opposed to the statute's intention of culling unmeritorious cases and encouraging resolution, is contrary to the Supreme Court's ruling in *Ross v. Waccamaw* and contrary to the intention of the legislature.

The Court's decision in *Ross v. Waccamaw* in conjunction with Rule 82 of the South Carolina Rules of Civil Procedure can lead to only one reasonable conclusion: the remedy for filing a Notice of Intent in an improper venue is to transfer the case to the proper venue, not to dismiss the case. The purpose of S.C. Code Ann. § 15-79-125 is to cull malpractice claims with no merit. It is not meant to be a procedural trap for Plaintiffs who otherwise would be able to move forward with meritorious claims.

Based on the foregoing, Plaintiff respectfully requests this Court reverse the Order of May 13<sup>th</sup>, 2024, and deny Defendant All Season's Healthcare, Inc's. motion for summary judgment.

Respectfully submitted,

s/Jamie Rae Rutkoski  
Jamie Rae Rutkoski (SC Bar No.: 103270)  
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Theile B. McVey (SC Bar No.: 16682)  
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Other email: [emoultrie@kasselaw.com](mailto:emoultrie@kasselaw.com)

May 23, 2024

Columbia, South Carolina.

|                                                                                                                                               |   |                                 |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|---------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                       | ) | IN THE COURT OF COMMON PLEAS    |
|                                                                                                                                               | ) |                                 |
| COUNTY OF GREENWOOD                                                                                                                           | ) | FOR THE EIGHTH JUDICIAL CIRCUIT |
|                                                                                                                                               | ) |                                 |
| Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,                                                                     | ) | Civil Action No.: 2022NI2400012 |
|                                                                                                                                               | ) |                                 |
|                                                                                                                                               | ) |                                 |
| Plaintiff,                                                                                                                                    | ) |                                 |
|                                                                                                                                               | ) |                                 |
| v.                                                                                                                                            | ) | ORDER GRANTING                  |
|                                                                                                                                               | ) | <i>Ex Parte</i>                 |
|                                                                                                                                               | ) | MOTION TO CHANGE VENUE          |
|                                                                                                                                               | ) |                                 |
| All Season's Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill Creek Manor, LLC f/k/a Amara Place at Columbia, | ) |                                 |
|                                                                                                                                               | ) |                                 |
|                                                                                                                                               | ) |                                 |
| Defendants.                                                                                                                                   | ) |                                 |

This matter comes before the Court on Plaintiff's Motion pursuant to the *South Carolina Code of Laws* § 15-7-30 and Rule 12(b)(3) of the South Carolina Rules of Civil Procedure, for an Order changing the venue from Greenwood County to Richland County. Defendants are residents of and/or have a principal place of business in Richland County and the subject alleged medical malpractice/negligence occurred in Richland County. Similarly, Plaintiff's decedent was a resident of Richland County at the time of her passing.

This Motion having come on this day upon the *ex parte* Motion of Plaintiff for a change of venue, and the Court having considered the Motion and attachments thereto submitted, find that proper venue for this action is Richland County; and, therefore,

IT IS HEREBY ORDERED that this matter be transferred to Richland County.

*[Signature appears on the following page.]*



Greenwood Common Pleas

**Case Caption:** Jennifer Murphy , plaintiff, et al VS All Season'S Healthcare Llc ,  
defendant, et al  
**Case Number:** 2022NI2400012  
**Type:** Order/Change of Venue

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2023-06-12 10:41:35 page 2 of 2

ELECTRONICALLY FILED - 2023 Jun 12 4:11 PM - GREENWOOD - COMMON PLEAS - CASE#2022NI2400012

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 Jennifer Murphy, as Personal Representative )  
 of the Estate of Phyllis Gee, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 All Season's Healthcare, LLC, All Seasons )  
 Healthcare, Inc., and TWG Polo Road, LLC )  
 d/b/a Mill Creek Manor, LLC f/k/a Amara )  
 Place at Columbia, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 C/A NO.: 2023-CP-40-03086

**ORDER GRANTING  
 MOTION FOR SUMMARY JUDGMENT  
 ON BEHALF OF THE DEFENDANT,  
 ALL SEASONS HEALTHCARE, INC.**

This matter comes before the Court on April 17, 2024, on Defendant All Season's Healthcare, Inc.'s Motion for Summary Judgment and Motion to Dismiss, filed March 12, 2024, pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and S.C. Code §15-79-125 and §15-36-100. The grounds for said Motion are that Defendant All Season's Healthcare, Inc. was not properly served with the Notice of Intent to File Suit or Summons and Complaint pursuant to Rule 3 SCRCPP, that there was improper service pursuant to Rule 4 SCRCPP and that if this action were properly served, it is barred by the statute of limitations.

The pleadings, documents, and affidavits filed in this matter establish the following uncontested facts: All Seasons Healthcare, Inc., is a South Carolina corporation with its principal place of business in Irmo, South Carolina, which is in Lexington County. It provides nursing hospice care services to patients who have been deemed appropriate for end-of-life hospice care.

Its employees work at various healthcare facilities and also serve clients/patients at their home. It is not an employee or agent of Co-Defendant Amara Place but did provide hospice care to patients there.

At all times, Heather McCloy was registered agent for All Seasons Healthcare, Inc.

Phyllis Gee had been diagnosed with late onset Alzheimer's disease and was a resident at Amara Place. In September 2018, Ms. Gee and her family elected hospice care and agreed to be administered pain medication and requested a DNR (Do Not Resuscitate). All Seasons Hospice nurses do not carry pain medications or schedule drugs, as those were kept in the Amara Place under control of their staff.

In the afternoon of December 29, 2019, the hospice nurse for All Seasons Healthcare, Inc., advised Amara Place to administer Ativan to help alleviate the patient's anxiety. The family called the hospice nurse at 11:42 p.m., stating the patient's condition was not relieved and the hospice nurse returned to the facility approximately at 12:15 a.m. The nurse arrived, questioned the med tech if the patient received any medication since she left, and the med tech stated that the patient had not. She requested that the Amara Place med tech administer medications, but they refused. Plaintiff's decedent passed away on December 30, 2019, less than thirty minutes after the hospice nurse arrived.

Plaintiff filed a Notice of Intent to File Suit on November 11, 2022, in Greenwood County. None of the parties are domiciled in Greenwood County, and Defendant administered no care to the Decedent in Greenwood County. Plaintiff attempted to serve Defendant with the Notice of Intent on December 16, 2022, but the certified mail receipt shows that delivery was not restricted to the addressee and was instead ostensibly received by someone who signed "All Seasons" on the return receipt.

Plaintiff then sought to move their own action to Richland County on or about June 6, 2023. On or about June 12, 2023, the “Notice of Intent” action was initiated in Richland County under a new case number; three years and 164 days after the death of the Decedent. Plaintiff then filed the Summons and Complaint on June 13, 2023, and attempted to serve Defendant on June 26, 2023. The return receipt was not signed by registered agent H. McCloy.

### DISCUSSION

Plaintiff failed to serve Complaint as required by Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. Proper service by certified mail under SCRCP Rule 4(d)(8) is effected when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery **restricted to the addressee.**” Rule 4(d)(8) SCRCP. Service by mail is defective where either an unauthorized person signed the receipt or if delivery was not restricted to the addressee. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). The burden of showing compliance is upon the party asserting proper service. *Roche v. Young Brothers, Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In *Zanin v. Carolina Specialty Products, Inc.*, the Court of Common Pleas in Charleston County addressed a very similar situation. In *Zanin*, the plaintiff attempted service by mail upon defendant ABP. *Zanin v. Carolina Specialty Products, Inc.*, 2012WL9490703 (Civil Action No. 2010-CP-10-01515 in Charleston County Ct. of Common Pleas). The plaintiff’s certified mailing was addressed to ABP’s owner Scott Amaral, but the mailing was not restricted to the addressee and the return receipt was signed by a “D. Reilly.” *Id* at 1.

The Court in *Zanin* ruled that the plaintiff’s attempt to serve the defendant pursuant to Rule 4(d)(8), which requires service by certified mail be done with return receipt requested and delivery restricted to the addressee, was defective. *Id* at 2. The plaintiff did not comply with the plain

meaning of Rule 4(d)(8) which firmly requires restricted delivery to the addressee only. *Id.* The Court granted defendant ABP's Motion for Summary Judgment because the plaintiff's attempt at service by mail, in which an unauthorized person signed the receipt and delivery not restricted to the addressee, was defective and therefore the Court had no personal jurisdiction over ABP.

The present case is nearly identical to *Zanin*. Here, Plaintiff's filed Proof of Service for the Notice of Intent for the Greenwood County case dated December 16, 2022, contains a scan of a return receipt addressed to "H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc." This return receipt, though marked for restricted delivery, is clearly not marked for restricted delivery *to the addressee* as required by Rule 4(d)(8) as shown by the top right checkboxes on the return receipt. Plaintiff made this same error in their attempt to serve the Richland County Summons and Complaint on the return receipt dated June 26, 2023, where the delivery was not restricted to the addressee. The affidavit of Elizabeth C. Moultrie confirms that counsel for Plaintiff did not restrict delivery to the addressee only.

Further, Defendant's registered agent Heather McCloy did not sign the return receipt, and Defendant does not know who signed the return receipts. The signature block only reads "ALL SEASONS." This occurred because Plaintiff did not serve either the Notice of Intent or the Summons and Complaint as required by Rule 4 and *Langley*; as a result, Defendant was never properly put on notice of Plaintiff's claims. The goal of Rules 3 and 4 of the South Carolina Rules of Civil Procedure, and service of process rules in general, is to require the plaintiff to provide sufficient notice to the defendant of what their claims are and the basis for those claims. Here, Plaintiff's failure to adhere to SCRCP Rule 4(d)(8) thwarted this goal, and Defendant would now suffer prejudice in having to defend claims served out of time due to Plaintiff's own error.

The Notice of Intent to File Suit must be served upon all named defendants in accordance