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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 II**

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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.)	
)	AFFIDAVIT OF
)	ELIZABETH C. MOULTRIE
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, being first duly sworn, hereby depose and state as follows:

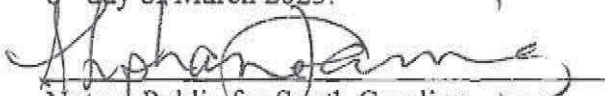
1. I am over the age of eighteen (18) years.
2. I am an employee of Kassel McVey Attorneys at Law, attorneys for Plaintiff in the above-entitled matter.
3. After searching the Secretary of State’s website to identify the Registered Agent for Service of Process for All Seasons Healthcare, on December 9, 2022, I mailed a letter along with a Notice of Intent to File Suit and Expert Affidavit via Certified Mail, Return Receipt Requested, Restricted Delivery, with postage pre-paid and addressed to H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc., 7142 Woodrow St, Irmo, South Carolina 29063. (Exhibit 1.)
4. On December 19, 2022, I received PS Form 3811 (Return Receipt) signed on December 16, 2022, by “All Seasons” with the “Agent” box checked. (Exhibit 2.)

5. On March 16, 2023, I mailed a letter (erroneously dated March 16, 2022) to H. McCloy as Registered Agent for Service of Process for All Seasons Healthcare, Inc., informing her of the pre-suit mediation of this case scheduled for March 30, 2023, at 9:30 AM. In that letter I provided the Zoom link for the pre-suit mediation. (Exhibit 3.)
6. On March 27, 2023, I received a telephone call from "Trish" from All Seasons Healthcare who said she received my letter dated March 16, and confirmed Heather McCloy is Registered Agent for Service of Process but denied the entity had been served with our Notice of Intent to File Suit. Trish provided her email address, and on March 27, 2023, I emailed a copy of the PS Form 3811 dated December 16, 2022, along with a copy of my letter, the Notice of Intent to File Suit, and the Expert Affidavit. (Exhibit 4.)
7. On June 22, 2023, I mailed a letter along with a Plaintiff's previously filed Notice of Intent to File Suit and Expert Affidavit, Plaintiff's Summons and Complaint, Expert Affidavit, and Plaintiff's first discovery requests via Certified Mail, Return Receipt Requested, Restricted Delivery, with postage pre-paid and addressed to H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc., 7142 Woodrow St, Irmo, South Carolina 29063. On June 28, 2023, I received PS Form 3811 indicating service on June 26, 2023, to All Seasons with the "Agent" box checked. (Exhibit 5.)
8. On July 25, 2023, I received an email from H. McCloy acknowledging receipt of the documents mailed June 22, 2023, and requesting a 30-day extension to Answer. (Exhibit 6.)

FURTHER AFFIANT SAYTH NAUGHT.


Elizabeth C. Moultrie

SWORN TO BEFORE ME this
8th day of March 2023.


Notary Public for South Carolina
My Commission Expires: 12/11/2024

Page 2 of 2

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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

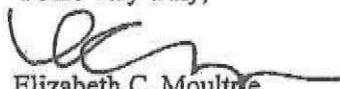
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,
deceased v. All Season's Healthcare, LLC, et al.*
C/A No.: 2022-NI-24-00012

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

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.

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
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7412 Woodrow Street
Irmo, SC 29063

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

Stanley McCloy, MD
All Seasons Healthcare
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Irmo, SC 29063

Allison Woods
All Seasons Healthcare
7412 Woodrow Street
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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)
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Theile B. McVey (16682)
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Jamie Rutkoski (103270)
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KASSEL McVEY ATTORNEYS AT LAW
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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) 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 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.

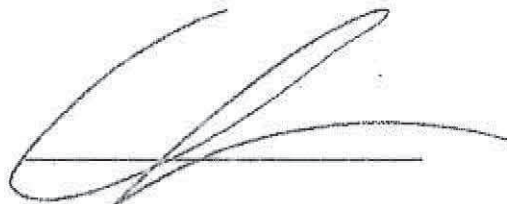
11. In July of 2019, hospice providers indicated Ms. Gee was in stage 7C dementia with dysphagia, which is the last stage of dementia, and her health was rapidly declining with a palliative performance scale of 40%. For hospice physicians, this means they should expect her to aspirate from dysphagia 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 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.

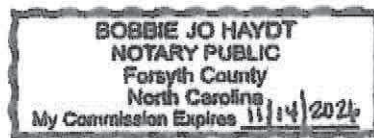
Sworn to and subscribed before me,

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



USPS TRACKING#



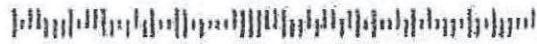
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United States
Postal Service

* 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 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"/> Adult Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) H. McCloy</p> <p>C. Date of Delivery 12-16</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>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>												
<p>2. Article Number (Transfer from service label) 7017 0660 0000 1954 2299</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 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><input type="checkbox"/> Restricted Delivery</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 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
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PS Form 3811, July 2020 PSN 7530-02-000-9059

Domestic Return Receipt



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

KASSEL McVEY

1330 LAUREL STREET
POST OFFICE BOX 1476
COLUMBIA, SC 29202

THEILE B. McVEY
ATTORNEY AT LAW
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TEL 803-256-4242
FAX 803-256-1952
WWW.KASSELLAW.COM

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

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=VGQ4bXFmRTJYY1Z5RXFoZklDbENhdz09>.

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,

	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
	 PERSONAL INJURY LAWYERS

~~~~ 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.



LEAP Email Reference | F:8b94cf64-2b85-4202-884f-17215d463796 | M:8ce08bcd-2081-4374-8f3f-6f4ce0149a48 | (Please do not delete)

JOHN D. KASSEL  
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# KASSEL McVEY

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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's Healthcare, Inc.  
7142 Woodrow St  
Irmo, South Carolina 29063

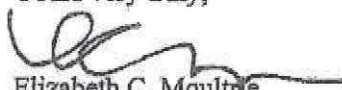
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,  
deceased v. All Season's Healthcare, LLC, et al.*  
C/A No.: 2022-NI-24-00012

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

|                                                                                                           |   |                                 |
|-----------------------------------------------------------------------------------------------------------|---|---------------------------------|
| 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  
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 ) 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 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.

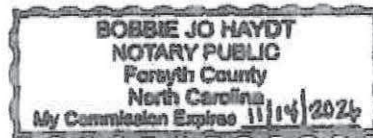
Sworn to and subscribed before me,

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.



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

Jennifer Murphy, as Personal ) Civil Action No.: 2023-CP-40-03086  
Representative of the Estate of Phyllis )  
Gee, )

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

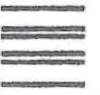
Columbia, South Carolina.



ELECTRONICALLY FILED - 2024 Mar 08 2:24 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

ELECTRONICALLY FILED - 2023 Jun 30 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

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9590 9402 7396 2055 4958 44

United States  
Postal Service

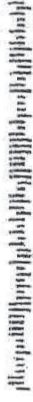
Sender: Please print your name, address, and ZIP+4® in this box:

Elizabeth C Moultrie, Senior Paralegal  
KASSEL McVEY ATTORNEYS  
P O Box 1478  
Columbia SC 29202-1478

82

RECEIVED JUN 28 2023

32-147675



**SENDER: COMPLETE THIS SECTION**

1. Complete items 1, 2, and 3.  
 a. Print your name and address on the reverse so that we can return the card to you.  
 b. Attach this card to the back of the mailpiece, or on the front if space permits.  
 1. Article Addressed to:  
 H. McCloy, as Registered Agent for  
 Service of Process  
 for All Season Healthcare, Inc.  
 7142 Woodrow St  
 Irmo, South Carolina 29063

**COMPLETE THIS SECTION FOR DELIVERY**

A. Signature  Agent  
 Addressee  Address  
 B. Received by: Dennis Newby  Date of Delivery  
 C. Date of Delivery  
 D. Is delivery address different from item  Yes  
 if YES, enter delivery address below:  No

2. Article Number (transfer from service label)  
 9590 9402 7396 2055 4958 87  
 7022 24J0 000J 3076 4815

**SERVICE TYPE**  
 Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery  
 Certified Mail™  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery  
 Insured Mail™  
 Insured Mail Restricted Delivery  
 Insured Mail Restricted Delivery Signature Confirmation

Domestic Return Receipt

PS Form 3811, July 2020 PSN 7530-02-000-9065

ROA 225

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

# KASSEL McVEY

1330 LAUREL STREET  
POST OFFICE BOX 1476  
COLUMBIA, SC 29202

THEILE B. McVEY  
ATTORNEY AT LAW  
TMCVEY@KASSELLAW.COM

TEL 803-256-4242  
FAX 803-256-1952  
WWW.KASSELLAW.COM

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

June 22, 2023

**VIA CERTIFIED MAIL – RETURN RECEIPT REQUESTED – RESTRICTED DELIVERY**  
7022 2410 0001 3098 4865

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.: 2023-CP-40-03086

Dear Mr. McCloy:

Enclosed herewith and served upon you as Registered Agent for Service of Process for All Seasons Healthcare, Inc., is Plaintiffs' previously filed Notice of Intent to File Suit, Summons and Complaint, and Expert Affidavit. I am also herewith serving upon you Plaintiff's Interrogatories to Defendants and Plaintiff's First Request to Produce. Please immediately forward the enclosed documents to your attorney and/or liability insurance carrier.

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

Yours truly,



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

ECM:bmh

Enclosures

cc: Jennifer Murphy (w/o enclosures)

JOHN D. KASSEL, ATTORNEY AT LAW, LLC

|                                                                                                                                               |   |                                    |
|-----------------------------------------------------------------------------------------------------------------------------------------------|---|------------------------------------|
| 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: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)

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



- 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)  
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John D. Kassel (SC Bar No.: 03286)  
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KASSEL McVEY ATTORNEYS AT LAW  
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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 )  
COUNTY OF GREENWOOD )  
Jennifer Murphy, as Personal )  
Representative of the Estate of Phyllis )  
Gee, )  
Plaintiff, )  
v. )  
All Season's Healthcare, LLC, All )  
Seasons Healthcare, Inc., and Mill )  
Creek Manor, LLC. f/k/a Amara )  
Place, )  
Defendants. )

Civil Action No.: 2022-NI-40-  
Affidavit of Carl Grey, MD

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.

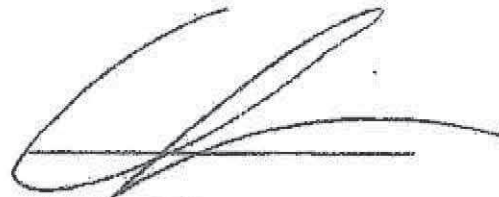
17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30<sup>th</sup>, 2019.
19. Based on my education, experience, and training, it is my opinion to a 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.

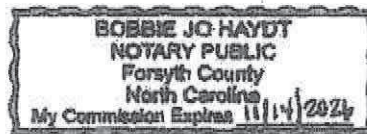
Sworn to and subscribed before me,

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.





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.
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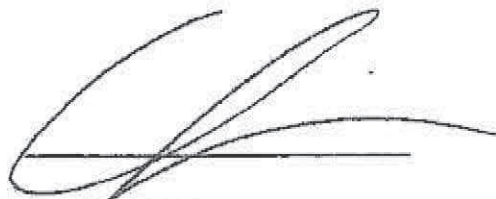
- 17. Witnesses indicate Ms. Gee was struggling and gasping for air as she was dying.
- 18. Three hours after Ativan and Morphine were ordered, Ms. Gee passed. She was pronounced dead at 12:47 AM on December 30<sup>th</sup>, 2019.
- 19. Based on my education, experience, and training, it is my opinion 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.

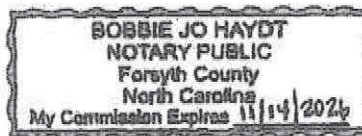
Sworn to and subscribed before me,

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.



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

Jennifer Murphy, as Personal ) Civil Action No.: 2023-CP-40-03086  
Representative of the Estate of Phyllis )  
Gee, )

Plaintiff, )

v. )

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

Defendants. )

**TO: DEFENDANTS AND THEIR ATTORNEYS:**

Pursuant to Rule 33 of the *South Carolina Rules of Civil Procedure*, Plaintiffs requests that the Defendant answer the following interrogatories and that a copy of your answers be served upon the undersigned within forty-five (45) days of service to you at the offices of Kassel McVey, Post Office Box 1476, Columbia, South Carolina 29202. After so answering the following Interrogatories, should further information called for come to Defendants' knowledge, Defendants are required to promptly transmit such information by supplemental answers to the Interrogatories, to the undersigned attorneys in accordance with Rule 26 of the *South Carolina Rules of Civil Procedure*.

**INTERROGATORIES**

1. Give the names and addresses of persons known to the Defendants or their counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded

statements have been taken from the witnesses and, if so, indicate who has possession of such statements.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the Defendants or the Defendants' attorneys that relate to the claim in this case.

3. Set forth the names and addresses 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.

4. List the names and addresses of any expert witnesses whom the Defendants propose to use as a witness at the trial of the case. For each expert, please list:

- a. The subject matter or area in which such person is to testify;
- b. The substance of the facts and opinions in which such person is to testify;
- c. A summary of the grounds or basis for each opinion and fact; and,
- d. A list of books, treatises, articles and other works which such person regards as authoritative on the subject matter on which (s)he is expected to testify.

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

6. Identify any and all internal personnel files, disciplinary files, reports or incident reports related in any way to Phyllis Gee including, but not limited to, the incidents set forth in the Complaint.

7. Identify each legal action or claim (court, attorneys' names, number, state or federal), in which any of the Defendants has been a party or had a claim made against them and

the disposition of such legal action or claim in which it was alleged that a patient in your care was injured or died without receiving properly prescribed medications during the last five (5) years.

8. Identify by name and employment title/position/status of each employee who was caring for or supervising Phyllis Gee from December 28, 2019 through December 30, 2019, while a patient at your facility or in your care.

9. Identify the section or unit of Defendant's facility where Ms. Gee was placed during her stay at your facility or in your care from July 2019 through December 30, 2019.

10. Identify the number of patients admitted in the section or unit where Ms. Gee was a patient in December 2019.

11. Identify the number of patients in hospice care in your facility or in your care from July 2019 through December 30, 2019.

12. Does your facility utilize an acuity-based staffing model to facilitate the evaluation and care of residents. If so, identify the acuity levels of each patient in the unit or section where Ms. Gee was assigned while a resident at your facility.

13. For each shift from December 28, 2019, through December 30, 2019, identify each individual who was working in the section or unit where Ms. Gee was admitted, listing the name, address, job title, duties, certification or degree of each.

14. For each shift from December 28, 2019, through December 30, 2019, identify by name, address and position or title, the supervisory staff in the unit or section where Ms. Gee was admitted.

15. Identify by name and address and title, the current director of nursing of each Defendant.

16. Identify by name and address, the current Administrator of each Defendant.

17. Identify by name and address and title the person or persons most knowledgeable about any and all individualized care plans adopted for Ms. Gee while at your facility.

18. Identify by name and address and title the person or persons most knowledgeable about training, with specific regard to the proper administration of physician-prescribed medications.

19. Identify the names, addresses and titles of any and all auditors, companies, or persons hired to review and/or audit practices, procedures and patient safety at your facility for the last five (5) years.

20. Provide the net worth of each Defendant.

21. Identify each policy and procedure in effect in December 2019 regarding the proper method for administering physician-prescribed medications.

22. Identify by name and address each entity to which you reported the failure to administer medications to Ms. Gee at the time of her death.

23. Identify by name, address, and title the individual(s) who saw Ms. Gee, entered Ms. Gee's room, evaluated or provided care to Mr. Gee between Midnight on December 27, 2019 through 1:00 AM on December 30, 2019.

24. Did the Defendants have a plan for end of life comfort and care for Ms. Gee? If so, please describe.

25. Did Ms. Gee receive the end-of-life comfort medication on December 29<sup>th</sup> and December 30<sup>th</sup>? If so, who gave the medication, what medication was given, and when was the medication given?

26. If end of life comfort medication was not given, please state why not.

27. Who was the hospice nurse on call to care for Ms. Gee on December 29<sup>th</sup> and 30<sup>th</sup> of 2019?

28. Identify by name and address the individual(s) who held ownership interests in 2019 and currently in the following entities:

- a. All Season's Healthcare, LLC;
- b. All Seasons Healthcare, Inc.;
- c. TWG Polo Road, LLC;
- d. Mill Creek Manor, LLC;
- e. Amara Place at Columbia.

29. Describe the business purpose and mission in 2019 and currently of the following entities:

- a. All Season's Healthcare, LLC;
- b. All Seasons Healthcare, Inc.;
- c. TWG Polo Road, LLC;
- d. Mill Creek Manor, LLC;
- e. Amara Place at Columbia.



---

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Theile B. McVey (SC Bar No.: 16682)  
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John D. Kassel (SC Bar No.: 03286)  
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**KASSEL McVEY, ATTORNEYS AT LAW**  
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803-256-4242  
803-256-1952 (Facsimile)

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

Attorneys for Plaintiffs

June 21, 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.: 2023-CP-40-03086                 |
|                                                                                                                                               | ) |                                                    |
| Plaintiff,                                                                                                                                    | ) |                                                    |
|                                                                                                                                               | ) |                                                    |
| v.                                                                                                                                            | ) |                                                    |
|                                                                                                                                               | ) | PLAINTIFF'S FIRST REQUEST TO PRODUCE TO DEFENDANTS |
| 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: DEFENDANTS AND THEIR ATTORNEYS:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure Plaintiff , by and through her undersigned counsel, hereby requests that you produce and permit the undersigned, or someone acting on their behalf, to inspect and/or copy the following documents, materials and/or products at issue within forty-five (45) days after the service of this request. This request shall be deemed continuing and to require supplemental responses if Defendants obtain further documents or materials between the time of production and the time of trial.

**DOCUMENT**

“DOCUMENT” shall mean any and all documents of any kind or nature whatsoever, whether typewritten, handwritten, printed, videotaped and/or audio taped, whether digitally/electronically stored or otherwise.

“DOCUMENT” shall include, but not be limited to, any and all books, transcripts, records, medical records, articles, journals, treatises, letters, photographs, plats, sketches, graphs, graphics,

charts, databases, data, telephone messages, telephone message pads, emails, and/or any and all material substances upon which there is a representation of thoughts by means of some mark or symbol (to include the meaning of such mark or symbol, if not generally known to a layperson).

“DOCUMENT” shall include the original as well as any variations from the original, such as copies upon which notes, diagrams, sketches, or other renderings or writings have been placed.

#### REQUEST TO PRODUCE

1. Please produce all documents identified in your responses to Plaintiff's Interrogatories or used to form your Answers to Interrogatories.

2. Except as already identified in response to Request number 1, produce all photographs, plats, sketches, and recordings whether written, videotaped, audio taped, digital, computerized or electronic that relate to any claims or defenses in this case.

3. Produce all documents containing or relating, in any way, to written or recorded statements that have been taken from any person pertaining to any claims or defenses in this case.

4. Produce all documents and/or exhibits you intend to use at the trial of this case.

5. Produce any and all resumes/*curriculum vitae* for each expert who will testify at trial.

6. Produce all documents, photographs or other tangible things supplied to or relied upon by any expert who is expected to testify at trial.

7. Produce any notes, reports, photographs, documents, or correspondence made by any expert witness whom the Defendant expects to call at trial.

8. Produce the complete chart of Phyllis Gee including, but not limited to, medical records, hospital records, consults, physicians' orders, progress notes, nurses' notes, lab reports, x-rays (on disc), pharmacy records, admission and discharge summaries, hospice notes, medication

records, and an itemized statement of account (for services provided to Ms. Gee while in your care or in your facility July 1, 2019, through December 30, 2019).

9. Produce copies of any and all policies and procedures manuals regarding the proper method(s) of administering medications ordered by a patient's physician in December 2019.

10. Produce any and all documents showing the number of residents and their diagnosis, dependency or disability needs, residing in the section or unit of your facility where Ms. Gee was admitted during the December 2019 time period. Plaintiff understands that Defendants will redact resident names and/or other identifying information.

11. Produce and all documents showing the staffing levels for each shift and the staff to resident/patient ratio for each shift for the unit where Ms. Gee was a resident in December 2019.

12. Produce job descriptions for nurse, both RNs and LPNs, certified nursing assistants and aids working in your facility in December 1029.

13. Produce documents showing your net worth.

14. Produce any and all information pertaining to any and all complaints, to any agency, against your facility, correspondence, internal memorandum, incident reports, South Carolina State Court Complaints or Federal Court Complaints or other instance in which any patient went improperly medicated or not medicated at all at the defendant's facility or under your hospice care during the last five (5) years.

15. Produce a copy of each inspection by SC DHEC and/or any other investigative body that have performed inspections of your facility or of your hospice program for the last five (5) years.

16. Produce a copy of any and all witness statements relating to the December 2019 incident when Ms. Gee went unmedicated despite her physician's orders to provide prescript medication.

17. Produce any and all incident reports regarding Ms. Gee while in your care.

18. Produce the personnel file of the nurses caring for Ms. Gee on December 29<sup>th</sup> and 30<sup>th</sup> of 2019. This would include the nurses employed by the facility and the nurses employed by the hospice company.



Jamie Rae Rutkoski (SC Bar 103270)  
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803-256-4242  
803-256-1952 (Facsimile)  
Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)

ATTORNEYS FOR PLAINTIFF

June 21, 2023

Columbia, South Carolina.

**Elizabeth Moultrie**

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**From:** H McCloy <hmcclloy@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

Irma, 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. )

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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 SCRCP, that there was improper service pursuant to Rule 4 SCRCP 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 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.

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 SCRPC 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) SCRCP. Emailing process to an employee of a defendant is not sufficient service under the civil rules. *See* Rule 4 SCRCP *generally*.

Here, it is uncontested that the three-year statute of limitations ran on December 30, 2022. It is uncontested that Plaintiff filed their Notice of Intent to File Suit less than two months before the expiration of their statutory period in an improper county where no party was domiciled, and no events related to the allegations occurred. S.C. Code § 15-79-125(a) requires Plaintiff to file in a county in which venue would be proper for filing or initiating the civil action. This action was not filed 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 Richland County 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 fails to 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. 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 asserts that Defendants must prove non-service; the Defendants have met this burden and have shown that there is no genuine issue of material fact that Defendant was not served in compliance with the South Carolina Rules of Civil Procedure.

Plaintiff 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. Plaintiff could have rectified the situation by hiring a process server when it became evident that Defendant was not properly served.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is GRANTED, and Plaintiff's claims are 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.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel Discovery is DENIED AS MOOT as a result of the Court's Dismissal of Plaintiff's action.

IT IS SO ORDERED.

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Jocelyn Newman  
Chief Administrative Judge  
Fifth Judicial Circuit

April \_\_, 2024.

## Elizabeth Moultrie

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**From:** Jamie Rutkoski  
**Sent:** Thursday, May 23, 2024 3:39 PM  
**To:** Newman, Jocelyn Secretary (); Newman, Jocelyn Law Clerk (); jnewmanj@sccourts.org  
**Cc:** Jay McKay; Elizabeth Moultrie  
**Subject:** Gee v. All Season's Healthcare, Inc., et al  
**Attachments:** Filed Motion to Alter or Amend MSJ orders.pdf

Judge Newman,

Attached please find Plaintiff's Motion to Alter or Amend the Order of May 13<sup>th</sup> granting summary judgment to Defendant All Season's Healthcare, Inc., served on the Court as required by SCRCP Rule 59.

Sincerely,

***Jamie Rutkoski***

Attorney  
Kassel McVey  
Attorneys At Law  
Post Office Box 1476  
1330 Laurel Street  
Columbia, South Carolina 29202  
(803) 256-4242 fax:(803)256-1952

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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"/> <i>H. McCloy</i> <span style="float: right;"><input checked="" type="checkbox"/> Agent<br/><input type="checkbox"/> Addressee</span></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                     |
|                                                                                                                                                                                                                                                                          | B. Received by (Printed Name)<br><i>H. McCloy</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | C. Date of Delivery<br><i>12-16</i> |
| 1. Article Addressed to:                                                                                                                                                                                                                                                 | D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br>If YES, enter delivery address below: <input type="checkbox"/> No                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                     |
| <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>3. Service Type</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <input type="checkbox"/> Adult Signature<br/> <input type="checkbox"/> Adult Signature Restricted Delivery<br/> <input type="checkbox"/> Certified Mail®<br/> <input checked="" type="checkbox"/> Certified Mail Restricted Delivery<br/> <input type="checkbox"/> Collect on Delivery<br/> <input type="checkbox"/> Collect on Delivery Restricted Delivery<br/> <input type="checkbox"/> Registered Mail™<br/> <input type="checkbox"/> Registered Mail Restricted Delivery<br/> <input type="checkbox"/> Signature Confirmation™<br/> <input type="checkbox"/> Signature Confirmation Restricted Delivery                 </div> <div style="width: 35%;"> <input type="checkbox"/> Priority Mail Express®<br/> <input type="checkbox"/> Registered Mail™<br/> <input type="checkbox"/> Registered Mail Restricted Delivery<br/> <input type="checkbox"/> Signature Confirmation™<br/> <input type="checkbox"/> Signature Confirmation Restricted Delivery                 </div> </div> |                                     |
| <p>2. Article Number (Transfer from service label)<br/>7017 0660 0000 1954 2299</p>                                                                                                                                                                                      | <p>il Restricted Delivery</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                     |
| PS Form 3811, July 2020 PSN 7530-02-000-8053                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 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</p> <p>B. Received by (Printed Name)<br/> <input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No</p> <p>C. Date of Delivery<br/> <input type="checkbox"/> Yes<br/> <input checked="" type="checkbox"/> No</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?<br/>                     If YES, enter delivery address below:</p> <p>3. Service Type</p> <table style="width: 100%; border: none;"> <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 sender 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

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 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.

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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803-256-1952 (Facsimile)  
Other email: [emoultrie@kassellaw.com](mailto:emoultrie@kassellaw.com)

May 23, 2024

Columbia, South Carolina.

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.

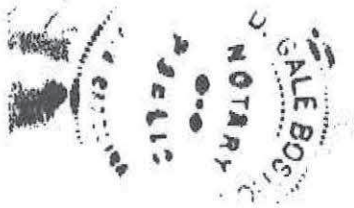
FURTHER AFFIANT SAYETH NOT.

*Heather McCloy*

Heather McCloy

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

D. Gale Bostick



**RECEIVED**

**Jul 29 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Jocelyn Newman, Circuit Court Judge

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

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Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gec.....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 Columbia .....Defendants,

Of whom All Seasons Healthcare, LLC is .....Respondent.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that the Records on Appeal contains all material proposed to be  
included by any party and not any other material.



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