

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Opinion No. 5197 (Ct. App. filed Feb. 12, 2014)

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S.C. Supreme Court

Gladys Sims, as the Duly Appointed Petitioner
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood)

v.

Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center,
and C. Edward Creagh, M.D., ... Respondents.

AMENDED APPENDIX

Volume I of II

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Gladys Sims, as the Duly Appointed Guardian and
Conservator of Kristy L. Orlowski (a/k/a Kristy Wood),
Appellant/Respondent,

v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical
Center, and C. Edward Creagh, M.D.,
Respondents/Appellants.

Appellate Case No. 2012-212956

Appeal From York County
S. Jackson Kimball, III, Special Circuit Court Judge

Opinion No. 5197
Heard January 9, 2014 – Filed February 12, 2014

AFFIRMED AS MODIFIED

Chad A. McGowan, Ashley W. Creech, and Jordan C.
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Inc., d/b/a Piedmont Medical Center.

LOCKEMY, J.: In this medical malpractice action, Gladys Sims, as the guardian and conservator of Kristy L. Orlowski, (Orlowski) appeals the circuit court's grant of summary judgment, arguing the court erred in estopping Orlowski from pursuing a medical negligence claim against Dr. C. Edward Creagh and Amisub of South Carolina, d/b/a Piedmont Medical Center (the Hospital). Dr. Creagh and the Hospital cross-appeal, arguing the circuit court erred in denying their motions for summary judgment because (1) Orlowski's claim was barred by the statute of limitations, and (2) the tolling provisions of section 15-3-40 of the South Carolina Code (2005) are not applicable. We affirm as modified.

FACTS/PROCEDURAL BACKGROUND

In 2003, Orlowski received prenatal care from Dr. R. Norman Taylor, III, and his practice, Rock Hill Gynecological & Obstetrical Associates, P.A. (RH GYNOB). On September 12, 2003, Orlowski suffered an eclamptic seizure. Following the seizure, she remained at the Hospital from September 12, 2003, until November 24, 2003.

On November 25, 2003, Orlowski was re-admitted to the Hospital by Dr. Creagh, who diagnosed her with a left pleural effusion. She was discharged on November 27, 2003. On November 29, 2003, Orlowski was re-admitted to the Hospital for persistent vomiting. An MRI revealed a hydro-pneumothorax in Orlowski's left lung. Her condition continued to decline, and on December 3, 2003, she suffered a cardiopulmonary arrest. Orlowski was transferred to Carolinas Medical Center where she remained through March 29, 2004.

Orlowski alleges she has been mentally incompetent since September 12, 2003, the date of the eclamptic seizure. On March 5, 2004, Orlowski's husband, Christopher T. Orlowski, was appointed as her guardian and conservator. Orlowski's mother, Gladys Sims, is her current guardian and conservator.

On August 24, 2006, Orlowski, through Sims, filed a medical malpractice action (the Taylor lawsuit) against Dr. Taylor and RH GYNOB. In the Taylor lawsuit, Orlowski alleged that as a direct and proximate result of Dr. Taylor's and RH GYNOB's medical negligence, she "suffered severe, debilitating, and permanent neurological deficits." Specifically, Orlowski claimed Dr. Taylor and RH GYNOB breached their duty of care by negligently failing to: (1) diagnose preeclampsia; (2) refer her to a specialist for further evaluation; and (3) supervise medical personnel

and staff in her treatment. Orlowski claimed past, present, and future injuries and damages, including: (1) chronic pain and suffering; (2) substantial medical expenses; (3) disfigurement; (4) mental anguish; (5) loss of enjoyment of life; (6) loss of income and related benefits; (7) need for full time medical and nursing care; (8) permanent restrictions and impairments that make it impractical for her to care for even her most basic of personal needs; and (9) other damages as may be identified during the course of this litigation.

The Taylor lawsuit was tried in April 2009. During the trial, Orlowski presented expert medical testimony from Drs. Stephen Pliskow and Barry Schiffrin, who opined, to a reasonable degree of medical certainty, that Orlowski's medical problems were caused by the September 12, 2003 eclamptic seizure which could have been avoided had Dr. Taylor hospitalized Orlowski on September 11, 2003. Orlowski's experts testified her damages were a direct and proximate result of Dr. Taylor's negligence occurring on or before September 12, 2003. The jury returned a defense verdict in the Taylor lawsuit; however, Orlowski received \$300,000 as a result of a high-low settlement agreement.

Orlowski, through Sims, commenced the present action against Dr. Creagh and the Hospital (collectively, the Respondents) on November 24, 2009. Orlowski alleged the medical negligence of the Respondents occurring between November and December 2003 caused her to suffer "severe debilitating injuries which have resulted in her incompetent state due to the hypotensive episode and hypoxic condition which has caused physical suffering, severe physical, cognitive and emotional pain and distress, and has ultimately caused [her] permanent and severely disabled physical and mental state."

Orlowski claimed Dr. Creagh breached his duty of care by negligently failing to: (1) detect her deteriorating condition; (2) diagnose and treat her pulmonary deterioration; (3) diagnose and treat her for acute respiratory distress syndrome (ARDS); (4) transfer her to more qualified physicians; (5) order, review, or evaluate testing during her treatment; and (6) order the correct treatment and medication. Additionally, Orlowski claimed the Hospital breached its duty of care by negligently failing to: (1) ensure she was properly monitored during her stay; (2) have in place proper policies, procedures, and protocols for the management and discharge of patients; (3) notify proper medical personnel during her declining health; (4) diagnose and treat her ARDS, pneumonia, and empyema of her left lung which resulted in her cardiopulmonary arrest and hypoxic injuries; (5) properly train nurses and staff; (6) monitor and respond to her worsening symptoms; (7) properly and timely notify the appropriate physicians of her deteriorating

condition; (8) have appropriate policies and procedures to ensure that patients with conditions similar to hers are treated appropriately; (9) insure that proper diagnostic procedures were conducted; and (10) intervene on her behalf rather than discharging her. Orlowski sought damages against the Respondents for the same injuries and damages claimed in the Taylor lawsuit.

The Respondents filed motions for summary judgment asserting Orlowski's suit was barred by the statute of limitations for medical malpractice actions pursuant to section 15-3-545(A) of the South Carolina Code (2005). They further argued Orlowski's suit was barred by collateral estoppel based upon the adjudication of the Taylor lawsuit. The motions were heard by the circuit court on July 18, 2012. Thereafter, in August 2012, the circuit court granted summary judgment on the estoppel defense but denied summary judgment on the statute of limitations defense. This appeal followed.

STANDARD OF REVIEW

When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRPC. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* In determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the non-moving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

LAW/ANALYSIS

I. Orlowski's Appeal

Orlowski argues the circuit court erred in estopping her from pursuing her medical negligence claims against the Respondents.

A. Collateral Estoppel

Under South Carolina law, "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action,

regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

In its order, the circuit court found Orlowski was collaterally estopped from pursuing her negligence claims against the Respondents because her "presentation of evidence on liability and damages in the [Taylor lawsuit] was premised on the assumption that all of [her] injuries, damages, expenses . . . were directly and proximately caused by the negligence of Dr. Taylor and [RH GYNOB]." The court found it was "clear that [Orlowski] sought to prove that Dr. Taylor's negligence was entirely responsible for all of [Orlowski]'s injuries and damages." The court noted that at the hearing Orlowski acknowledged that the Respondents could have been joined as parties, yet she "sought to lay all blame for [her] condition and resulting damages upon Dr. Taylor and [RH GYNOB], to the exclusion of . . . [the Respondents]."

The circuit court relied on *Graham v. State Farm Fire & Casualty Insurance Co.*, 277 S.C. 389, 287 S.E.2d 495 (1982), in granting the Respondents' summary judgment motions. In *Graham*, the plaintiff's automobile was destroyed by fire while parked in the garage of his residence. 277 S.C. at 390, 287 S.E.2d at 495. The plaintiff first sued his auto insurance company for insurance proceeds. *Id.* The auto insurer defended on the basis that the fire was deliberately set and the jury ruled in favor of the insurer. *Id.* at 390, 287 S.E.2d at 495-96. The plaintiff then brought a subsequent suit under his homeowner's policy for breach of contract. *Id.* at 390, 287 S.E.2d at 496. In that action the circuit court granted summary judgment for the homeowner's insurer and ruled that the insured was collaterally estopped by the prior judgment from bringing the second lawsuit. *Id.* The supreme court affirmed, finding "[i]t appears from the transcript of record that the appellant has had his day in court." *Id.* at 391, 287 S.E.2d at 496. The court found the sole issue in both actions was the origin of the fire and that issue was adjudicated in the first action. *Id.*

The *Graham* court cited favorably to *Jenkins v. Atlantic Coast Line Railroad Co.*, 89 S.C. 408, 71 S.E. 1010 (1911), in which the plaintiff was injured in a train accident. The plaintiff brought suit against the railroad company which owned the tracks where the accident occurred. 89 S.C. at 408, 71 S.E. at 1011. The case was tried on the merits, and judgment was entered in favor of the railroad company. *Id.*

The plaintiff then brought a second suit against another railroad company that owned and operated the train at the time of the accident. *Id.* The supreme court barred the second suit, holding:

[T]he true ground upon which a former judgment, in a case like this, should be allowed to operate as a bar to a second action is not *res judicata*, or technical estoppel, because the parties are not the same, and there is no such privity between them as is necessary for the application of that doctrine; but that in such cases, on grounds of public policy, the principle of estoppel should be expanded, so as to embrace within the estoppel of a judgment, persons who are not, strictly speaking, either parties or privies. *It is rested upon the wholesome principle which allows every litigant one opportunity to try his case on the merits, but limits him, in the interest of the public, to one such opportunity.*

Id. at 408, 71 S.E. at 1012 (emphasis added).

Here, the circuit court concluded that the "wholesome principle" described in *Graham and Jenkins* was equally applicable in the present case. The court ruled Orlowski had "had her day in court" and made the decision to assert that only Dr. Taylor and RH GYNOB had caused all of her injuries and damages. As a result, the court found Orlowski was precluded from arguing the Respondents were liable for the same injuries and damages.

On appeal, Orlowski argues her assertion of negligence claims against Dr. Taylor and RH GYNOB does not preclude her from asserting that the Respondents' actions were also proximate causes of her damages. She contends Dr. Taylor, RH GYNOB, Dr. Creagh, and the Hospital can all be proximate causes of her permanent damages. Orlowski further argues she cannot be collaterally estopped from asserting negligence claims against the Respondents because the issue of their negligence was not actually litigated in the Taylor lawsuit. According to Orlowski, her claims against the Respondents are not an attempt to re-litigate *the* cause of her injuries, but are an attempt to determine whether the treatment she received from the Respondents was *a* cause of her injuries.

The Respondents assert that in the Taylor lawsuit, Orlowski argued she was totally and permanently disabled as a result of negligence attributable solely to Dr. Taylor

and RH GYNOB. They maintain Orlowski did not place any blame on the Respondents nor did she argue any medical negligence occurred after she was re-admitted to the Hospital on November 25, 2003. The Respondents note the injuries and damages Orlowski asserted in the Taylor lawsuit are the identical injuries and damages she asserts in the present suit. Therefore, they argue, Orlowski is barred by collateral estoppel from re-litigating issues decided in the Taylor lawsuit.

We agree with Orlowski. Orlowski's negligence claims against the Respondents were not "actually litigated" during the Taylor lawsuit. Additionally, we disagree with the Respondents' assertion that Orlowski claimed in the Taylor lawsuit that Dr. Taylor and RH GYNOB were the *only* causes of her injuries and damages. We are mindful that while the alleged negligence of the Respondents was never raised in the Taylor lawsuit, Orlowski's own expert, Dr. Pliskow, testified:

Q: Within a reasonable degree of medical certainty were all of [Orlowski]'s problems; medical problems, were they caused by the eclamptic episode on September 12th?

A: Yes they were.

While this testimony supports a finding that Dr. Taylor was a proximate cause of Orlowski's injuries, it does not foreclose a claim that a different medical provider was also a proximate cause of her injuries. A review of the complaints filed in both suits reveals a distinction between the deviations in the standard of care claimed against Dr. Taylor and RH GYNOB and those claimed against the Respondents. In the present suit, Orlowski is suing for a separate negligence which she contends contributed to the worsening of her condition. This negligence was not litigated in the Taylor lawsuit.

The Respondents also assert Orlowski could have joined the Respondents as parties to the Taylor lawsuit, but chose only to claim that Dr. Taylor and RH GYNOB were the cause of her injuries. In its order, the circuit court noted:

[B]y the time of trial in [Orlowski]'s action against Dr. Taylor in April, 2009, [Orlowski] and her counsel were fully apprised through discovery of the entire extensive medical record in this case, including every aspect of these Defendants['] involvement in [Orlowski]'s treatment and care. This includes every act which

[Orlowski] now claims to be negligent treatment and care causing [Orlowski]'s injuries and damages.

We find Orlowski was not required to join the Respondents in the Taylor lawsuit. Pursuant to Rule 20(a), SCRCP, a party may choose to join multiple parties as defendants but joinder is not required. *See* Rule 20(a), SCRCP ("[a]ll persons *may* be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.") (emphasis added).

In sum, the issue in the Taylor lawsuit was whether Dr. Taylor and RH GYNOB caused Orlowski's injuries and damages. The issue in the present suit is whether the Respondents caused Orlowski's injuries and damages. Because these are two different issues, the circuit court erred in finding Orlowski was collaterally estopped from pursuing her claims against the Respondents.

B. Judicial Estoppel

Orlowski asserts it is unclear whether the circuit court applied the doctrine of collateral estoppel or judicial estoppel in granting summary judgment. Therefore, she addresses both doctrines in her brief. Although the circuit court discussed the principles of both collateral and judicial estoppel during the summary judgment motions hearing, the court only addressed collateral estoppel in its order. The Respondents argue that whether or not judicial estoppel was the basis for the circuit court's ruling, it is also an additional sustaining ground for the grant of summary judgment. Therefore, we address it below.

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). In *Cothran*, our supreme court held that the following elements are necessary for the doctrine of judicial estoppel to apply:

- (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in

maintaining that position and have received some benefit;
(4) the inconsistency must be part of an intentional effort
to mislead the court; and (5) the two positions must be
totally inconsistent.

357 S.C. at 215-16, 592 S.E.2d at 632.

We find Orlowski asserted inconsistent claims in the Taylor lawsuit and the present suit against the Respondents. In the Taylor lawsuit, Orlowski claimed Dr. Taylor and RH GYNOB caused her injuries and damages; however, in the present suit, she claims the Respondents caused her injuries and damages. While the positions asserted by Orlowski are inconsistent, there is no evidence they were intentionally asserted to mislead the court. Accordingly, Orlowski's claims against the Respondents are not barred by judicial estoppel.

C. Additional Sustaining Ground

As an additional sustaining ground, the Respondents argue Orlowski's medical malpractice claims are barred pursuant to the three-year statute of limitations for medical malpractice actions contained in section 15-3-545 of the South Carolina Code (2005). Additionally, they contend disability tolling for "insane" persons under section 15-3-40 of the South Carolina Code (2005) does not apply to medical malpractice claims.

1. Appealability and Preservation

In *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000), our supreme court discussed the law governing additional sustaining grounds. The court explained that "in raising an additional sustaining ground in an appeal, the party who prevailed in the lower court urges an appellate court to affirm the lower court's ruling for a reason other than one primarily relied upon by the lower court." *Id.* at 417, 526 S.E.2d at 722.

Orlowski argues the Respondents are asking this court to deviate from precedent refusing consideration of denied summary judgment motions by claiming that their statute of limitations argument represents an additional sustaining ground. Orlowski contends the Respondents are precluded from raising additional sustaining grounds because they did not prevail in the circuit court on the statute of limitations issue. We disagree.

The Respondents raised two grounds for summary judgment: (1) estoppel and (2) expiration of the statute of limitations. The circuit court granted summary judgment as to estoppel, and therefore, the Respondents prevailed in the lower court. Although the circuit court denied the statute of limitations defense, the Respondents are not precluded from raising this defense as an additional sustaining ground. We note "[t]he appellate court may affirm any ruling, order, or judgment upon any ground(s) appearing in the record." Rule 220(c), SCACR. Further, "the denial of summary judgment does not *finally* determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings." *Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (emphasis in original).

Orlowski also contends the Respondents' statute of limitations argument is not preserved for review because their arguments on appeal are different than those argued to the circuit court. We disagree. A respondent "may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On*, 338 S.C. at 419, 526 S.E. 2d at 723. Thus, this court can, at our discretion, review the Respondents' statute of limitations argument, and if we find it is proper and fair to do so, rely on it to affirm the lower court's judgment. *See id.*

2. Statute of Limitations

Orlowski alleges the injuries and damages she suffered as a result of the medical negligence of the Respondents occurred in November 2003. She commenced the present action against the Respondents in November 2009.

Section 15-3-545(A) establishes the statute of limitations for medical malpractice actions. Specifically, section 15-3-545(A) provides that a medical malpractice action

must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, *or as tolled by this section.*

S.C. Code Ann. § 15-3-545(A) (2005) (emphasis added). The only tolling provision in section 15-3-545 is found in subsection D, which provides limited tolling applicable only to minors. See S.C. Code Ann. § 15-3-545(D) (2005).

Orlowski asserts that although she did not file suit against the Respondents until six years after the alleged negligent treatment, she is excused from the three-year statute of limitations because she has been mentally incompetent since September 2003. Specifically, Orlowski maintains section 15-3-40 applies to extend her limitations period from three to eight years because she qualifies as an "insane" person. Section 15-3-40 provides:

If a person entitled to bring an action . . . under Chapter 78 of this title . . . is at the time the cause of action accrued either:

(1) within the age of eighteen years; or

(2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

(a) more than five years by any such disability, except infancy; nor

(b) in any case longer than one year after the disability ceases.

S.C. Code Ann. § 15-3-40 (2005).

The Respondents argue Orlowski's action is barred by application of the statute of limitations provided in section 15-3-545(A) because section 15-3-40 is inapplicable to toll the limitations period on her claims. We agree with the Respondents.

In *Langley v. Pierce*, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993), our supreme court held

[s]ubsection (D) of 15-3-545 provides a limited tolling provision, applicable only to minors. Inclusion of the phrase '*or as tolled by this section*' in subsection (A) clearly indicates that the *only* tolling of [section] 15-3-545(A) intended by the legislature is that contained in subsection (D).

Thus, the supreme court held tolling for minors was the only tolling of the medical malpractice statute of limitations. Consequently, because Orlowski filed her medical negligence action against the Respondents more than three years after the alleged negligence, the present suit is barred by the statute of limitations. We further note Orlowski was aware of the Respondents' alleged negligence when she filed suit against Dr. Taylor in August 2006. However, she did not file suit against the Respondents until November 2009. Thus, even if the commencement date of the statute of limitations was August 2006, Orlowski still failed to file suit within the statute of limitations. Additionally, if section 15-3-40 did apply to medical malpractice actions it would be in conflict with the six-year statute of repose set forth in section 15-3-545(A).

As an alternative ground, the Respondents assert that assuming section 15-3-40 applied, Orlowski's disability ended, and the three-year statute of limitations commenced, in March 2004 when a conservator was appointed. Thus, Orlowski was required to file suit before March 2007, which she failed to do. While the Respondents cite persuasive authority from Georgia, North Carolina, and New Hampshire supporting their position that the appointment of a conservator affects the viability of a person's insanity for tolling purposes, we need not address this issue as *Langley* is controlling in this case. We also note we are hesitant to adopt a rule that has not previously been adopted by our courts.

II. The Respondents' Appeal

The Respondents argue the circuit court erred in denying their motions for summary judgment because Orlowski's negligence claim was barred by the statute of limitations and the tolling provisions of section 15-3-40 are not applicable. According to the Respondents, they filed cross-appeals in order to preserve the statute of limitations issue for consideration by this court as an additional sustaining ground. Dr. Creagh notes in his brief that he "fully recognizes and accepts that an order denying summary judgment is not ordinarily appealable." However, he states he "has presented this additional sustaining ground by way of a cross-appeal out of an abundance of caution."

We decline to address the Respondents' statute of limitations arguments as cross-appeals because orders denying summary judgment are not appealable. *See Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003) ("[T]he denial of a motion for summary judgment is not appealable, even after final judgment."). As stated previously, these issues are also raised as additional sustaining grounds in Orlowski's appeal and are addressed above.

CONCLUSION

The circuit court erred in finding Orlowski was collaterally estopped from filing the present suit against the Respondents. However, we affirm the circuit court's grant of summary judgment based upon the expiration of the statute of limitations.

AFFIRMED AS MODIFIED.

HUFF and GEATHERS, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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May 19, 2014

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Re: Gladys Sims v. Amisub
Appellate Case No. 2012-212956

Dear Counsel:

Enclosed is a copy of an order of the panel denying your petition for rehearing. Your petition for rehearing en banc was distributed to the judges, but it has been rejected. See Rule 219, SCACR.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: William U. Gunn, Esquire
H. Spencer King, Esquire
Andrew F. Lindemann, Esquire
Joshua Tate Thompson, Esquire

The South Carolina Court of Appeals

Gladys Sims, as the Duly Appointed Guardian and
Conservator of Kristy L. Orlowski (a/k/a Kristy Wood),
Appellant/Respondent,

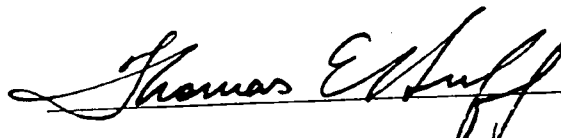
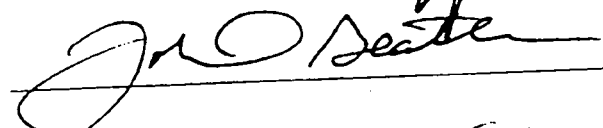
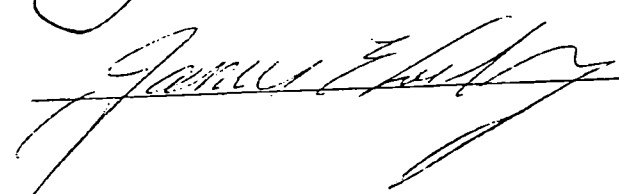
v.

Amisub of South Carolina, Inc., d/b/a Piedmont Medical
Center, and C. Edward Creagh, M.D.,
Respondents/Appellants.

Appellate Case No. 2012-212956

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

FILED

5/19/14

Chad Alan McGowan, Esquire
William U. Gunn, Esquire
H. Spencer King, Esquire
Andrew F. Lindemann, Esquire
Joshua Tate Thompson, Esquire
Whitney Boykin Harrison, Esquire
The Honorable S. Jackson Kimball, III

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2009-CP-46-5178

Gladys Sims, as the Duly Appointed Appellant
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood)

v.

Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center,
and C. Edward Creagh, M.D., ... Respondents.

PETITION FOR REHEARING AND PETITION FOR EN BANC

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FEB 19 2014

SC Court of Appeals

Appellant Gladys Sims, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski petitions the Court for rehearing and reconsideration of Opinion No. 5197 filed February 12, 2014, pursuant to Rule 221(a), SCACR. Appellant specifically asks this Court to reconsider: (1) the preservation of the statute of limitations argument because Respondents took a position on appeal inconsistent with their position at the trial court and (2) the applicability of the tolling provision of section 15-3-40 of the South Carolina Code (2005). In support of the petition, Appellant respectfully submits the following:

I. Pertinent Facts

Gladys Sims, as Kristy's guardian and conservator filed suit on November 24, 2009, based on Dr. Edward Creagh and Piedmont Medical Center's ("PMC") negligence arising out of Kristy's November 2003 hospital admission.¹ The Complaint alleged that Dr. Creagh and PMC negligently provided Kristy's medical treatment beginning with the November 25, 2003 hospitalization. (R. p. 22-28 at ¶ 21-25; 31-35). Kristy alleged Dr. Creagh and PMC failed to timely diagnose her condition, failed to properly monitor her, and failed to take proper interventions. (R. p. 28 at ¶ 33). Kristy suffered cardiopulmonary arrest, hypoxic brain injury, and permanent impairment as a direct and proximate result of Dr. Creagh and PMC's negligence.

¹ Kristy Orlowski was pregnant with her first child and suffered severe complications near the delivery in September 2003. Kristy suffered a seizure and was found unresponsive in her home. (R. p. 15 at ¶ 21). Kristy was rushed to PMC where she was placed on a ventilator. (R. p. 15 at ¶ 22). She remained hospitalized from September 12 through most of November 2003. (R. p. 15 at ¶ 24). During this hospitalization, Kristy endured multiple surgical procedures, severe respiratory distress, and other life-threatening conditions. (R. p. 15 at ¶ 24). Kristy was discharged on November 24th but was rushed back to PMC hours later with severe chest pain and shortness of breath. (R. p. 20 at ¶ 12). Dr. Creagh admitted Kristy and was responsible for her care during this hospitalization. (R. p. 20 at ¶ 12). Kristy was sent home on November 27, 2003, but returned to PMC two days later. (R. p. 20 at ¶ 12-13). A CT scan revealed a hydropneumothorax in Kristy's left lung. *Id.* Kristy's condition deteriorated rapidly over the next several days. On December 3, 2003, Kristy suffered a cardiopulmonary arrest. (R. p. 21 at ¶ 17-18). Kristy was resuscitated but suffered permanent and severe damages caused by extended oxygen deprivation. (R. p. 21 at ¶ 19-20). Kristy was rendered permanently unable to care for any of her own needs.

(R. p. 29 at ¶ 34). Defendants moved for summary judgment on two grounds: (1) Kristy is estopped from pursuing a claim against Dr. Creagh and AMISUB because of a previous claim filed on her behalf against her obstetrician; and (2) Kristy's 2009 Complaint was filed outside the applicable statute of limitations.

At the summary judgment hearing, Appellant's counsel took the position that section 15-3-40 and section 15-3-545 provided an eight year statute of limitations for Kristy's claim to be filed. (R. 254). Respondents contended that the appointment of a conservator or guardian removed the disability, thereby causing the statute of limitations to run. The trial court sought clarification on the interplay between the statutes and Respondent counsel's concern over the effect of an appointment of a conservator. The following was stated:

THE COURT: Okay. Just to be sure we've got all the record straight here, I think I sort of directed you away from talking about 15-3-545 awhile ago. But, your position on that is that 15-3-40 doesn't have any effect - - that it stands alone, in medical malpractice cases.

MR. GUNN: Yes, sir. I think - -

THE COURT: With an outside limit, --

MR. GUNN: Right.

THE COURT: -- regardless of 15-3-40

MR. GUNN: No, I think that if - - I think that if a - - for purpose of the statute of limitations, if a conservator had never been appointed, the Plaintiff might well have - - even though the three-year statute is pursuant to Section 15-3-545, applies to a three-year statute from the date of discovery, 15-3-40, *in the absence of a conservator might well give the Plaintiff eight years, no question.*

(R. 257-258) (emphasis added).

The trial court denied the motion on the statute of limitations issue and granted the motion on collateral estoppel.

II. Preservation

The Court erred in finding the statute of limitations issue was preserved for review. The Court stated “[a] respondent ‘may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.’” *Sims v. Amisub of South Carolina*, Op. No. 5197 (S.C. Ct. App. filed February 11, 2014) (Shearouse Adv. Sh. No. 6 at 34) (quoting *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000)). The issue now before the Court of Appeals is not as simple as whether an issue was raised and/or ruled upon by the lower court and found within the record. In this instance, Respondents took the position that an eight year statute of limitations could exist but for the appointment of a conservator. On appeal, Respondents now argue that an eight year statute of limitations cannot exist. This position is inconsistent and Respondents should be barred from changing their stated position.

I’On stands for the proposition that additional sustaining grounds are an available resource upon which an appellate court can rely. *Id.*, 338 S.C. at 421, 526 at 723. They undoubtedly promote both judicial economy and finality. However, in this instance the use of this argument as an additional sustaining ground is unjust. This opinion unfairly rewards an inconsistency between a concession made to the trial court and the arguments presented to an appellate court. The South Carolina Supreme Court explained in *I’On* that additional sustaining grounds should be used unless they are “unjust” or “unwise.” *Id.*, 338 S.C. at 420, 526 at 723. Allowing a concession to be recanted on appeal undermines the traditional notions of equity and the principles driving the South Carolina Rules of Civil Procedure. It would be a mistake to

allow a concession that would be viewed as a waiver in any other context to be condoned as an additional sustaining ground. Therefore, Appellant respectfully requests this Court to reconsider its position on preservation.

III. Statute of Limitations

The Court erred in its interpretation of the statutory interplay between Section 15-3-545 of the South Carolina Code (2005), which establishes the statute of limitations for medical malpractice actions, and section 15-3-40, which extends limitations periods for "insane" persons. Specifically, this Court found section 15-3-40 is inapplicable to toll Appellant's claims because the claims arise under section 15-3-545, which in this Court's opinion only tolls for minors. This finding misconstrues a plain reading of 15-3-545(D) and completely ignores the Legislature's overarching intent to protect those citizens who are deemed insane, as set forth in section 15-3-40. Section 15-3-40 provides:

If a person entitled to bring an action . . . under Chapter 78 of this title . . . is at the time the cause of action accrued either:

- (1) within the age of eighteen years; or
- (2) insane;

the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended:

- (a) more than five years by any such disability, except infancy; nor
- (b) in any case longer than one year after the disability ceases.

Section 15-3-545 provides, in pertinent part:

- (A) . . . must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

....

(D) Notwithstanding the provisions of Section 15-3-40, if a person entitled to bring an action against a licensed health care provider acting within the scope of his profession is under the age of majority at the date of the treatment, omission, or operation giving rise to the cause of action, the time period or periods limiting filing of the action are not tolled for a period of more than seven years on account of minority, and in any case more than one year after the disability ceases. Such time limitation is tolled for minors for any period during which parent or guardian and defendant's insurer or health care provider have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

Section 15-3-545(D) narrowly tailors the tolling provisions related to minors, while acknowledging the existence of section 15-3-40. Subsection (D) plainly states "[n]otwithstanding the provisions of Section 15-3-40." The Legislature only modified the tolling provision of minors and maintained the tolling provisions for insane persons. Without a statutory modification for insane persons, section 15-3-40 must stand and Appellant should be afforded the full benefit of the tolling provision as the Legislature intended.

The Court and Respondents relied on *Langley v. Pierce*, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993), in justifying the Opinion's statutory interpretation. The statutory design of section 15-3-40 and the text of *Langley* are inconsistent with this Court's holding that section 15-3-40 cannot operate to toll Appellant's statute of limitations. The South Carolina Supreme Court in *Langley* was addressing a tolling provision for an out-of-state defendant not referenced or envisioned in the medical malpractice statute. 313 S.C. at 402, 438 S.E.2d at 243. The Supreme Court found the only tolling intended by the Legislature was what found in section 15-3-545. *Id.* Unlike the statutory provision reviewed in *Langley*, section 15-3-40's tolling provision is specifically included and referenced in subsection (D) of section 15-3-545, thereby demonstrating the Legislature's intent to narrow the minors' tolling provisions while

acknowledging and allowing the general tolling on those who are insane under section 15-3-545. Furthermore, the *Langley* Court's interpretation of section 15-3-545 was limited to the statute of repose. *Id.*, 313 S.C. at 401, 438 S.E.2d at 242. All of the Court's public policy discussion concerned specific policy justifications unique to the statute of repose, not the statute of limitations. *Id.* at 403-04, 438 S.E.2d at 243-44. The distinction between a statute of limitations and a statute of repose is an important one and severely limits the utility of *Langley* in the present case.

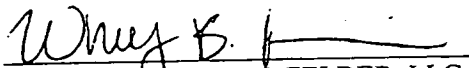
By its terms, the disability tolling provision for insane persons applies to all claims mentioned in Article 5 of Chapter 15 of the South Carolina Code. Medical negligence claims fall within this category, thereby entitling Kristy to the benefit of tolling. Therefore, Appellant respectfully requests this Court to reconsider the interpretation of section 15-3-40.

CONCLUSION

For the foregoing reasons, Appellant requests this Court to grant this Petition for Rehearing and Petition for En Banc.

Respectfully submitted,

February 19, 2014


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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

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FEB 19 2014

SC Court of Appeals

Case No. 2009-CP-46-5178

Gladys Sims, as the Duly Appointed Appellant
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood)

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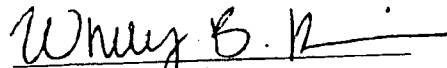
CERTIFICATE OF SERVICE

I, Whitney B. Harrison, Attorney with McGowan, Hood & Felder, LLC do hereby certify
that on February 19, 2014, I served a copy of the following *Petition for Rehearing and Petition
for En Banc* by depositing in the United States mail in Columbia, South Carolina with proper
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SC Court of Appeals

APPEAL FROM YORK COUNTY
S. Jackson Kimball, Special Circuit Court Judge

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SC Court of Appeals

Opinion No. 5197
(S.C. Ct. App. filed February 12, 2014)

Gladys Sims, as the Duly Appointed Guardian
and Conservator of Kristy L. Orlowski
(a/k/a Kristy Wood), ... Appellant-Respondent,

v.

Amisub of South Carolina, Inc. d/b/a
Piedmont Medical Center and
C. Edward Creagh, M.D., ... Respondents-Appellants.

RESPONDENTS-APPELLANTS' RETURN TO
PETITION FOR REHEARING
AND PETITION FOR REHEARING EN BANC

On February 12, 2014, this Court issued a published decision affirming as
modified the order of Special Circuit Court Judge S. Jackson Kimball granting

summary judgment to the Respondents-Appellants C. Edward Creagh, M.D. and Amisub of South Carolina, Inc. ("Hospital") on the basis of their statute of limitations defense.

The Appellant-Respondent Gladys Sims, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski (hereafter referred to as "Orlowski"), has now filed a petition for rehearing *en banc*. In response, Dr. Creagh and the Hospital submit that this Court correctly addressed each of the issues raised by Orlowski in her petition for rehearing *en banc*. Dr. Creagh and the Hospital submit the following discussion with respect to the arguments raised in the petition:

I.

As an initial argument for rehearing, Orlowski contends that this Court erred in finding that the statute of limitations was preserved for appellate review. More specifically, Orlowski argues that Dr. Creagh and the Hospital took an inconsistent legal position in the lower court, agreeing that "an eight-year statute of limitations could exist but for the appointment of a conservator." Orlowski insists that Dr. Creagh and the Hospital cannot "recant a concession" or change their "stated position" on appeal. As this Court correctly ruled, there is no merit to Orlowski's argument. This Court correctly recognized that the statute of limitations defense was preserved and could be properly raised as an additional sustaining ground.

To the extent that counsel for Dr. Creagh and/or the Hospital "agreed" that absent the appointment of the conservator there "may well" be an eight year statute of limitations, that would have been incorrect as a statement of applicable law. Without question, an eight-year statute of limitations in a medical malpractice case is a legal impossibility, and Orlowski does not argue to the contrary. An eight-year statute of limitations would clearly contravene the six-year statute of repose set forth in Section 15-3-545(A). *See, Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003).

Therefore, if the colloquy between counsel and Judge Kimball suggests that an eight-year statute of limitations is possible, that is a mistaken statement of law. The colloquy likewise cannot be read as a concession or stipulation made by Dr. Creagh and/or the Hospital.¹ But even if construed as such, a mistaken statement of law or even a stipulation of law is not binding on appeal.² South Carolina law is clear on this specific point. In *Walterboro Community Hospital v. Meacher*, 392 S.C. 479, 709 S.E.2d 71 (Ct. App. 2011), this Court recently held that stipulations as to the law are not binding on the appellate court and may not be adjudged to be

¹ The record from the hearing below is far from conclusive that such a "concession" was even made. Counsel for the Hospital followed the colloquy included by Orlowski in her petition with the following statement: "So, it does come into play -- or, conceivably, arguably, it could hypothetically come into play that way." (R. 258, lines 8-10). To state that an opponent's legal interpretation of a statute is "arguable" or "conceivable" is not a concession or stipulation.

² *See, Jennings v. Jennings*, 401 S.C. 1, 736 S.E.2d 242, 243 (2012) ("[d]etermining the proper interpretation of a statute is a question of law").

"conclusive proof." 709 S.E.2d at 75. This Court further cited to the Supreme Court case of *Greenville County Fair Association v. Christenberry*, 198 S.C. 338, 17 S.E.2d 857 (1941), for the proposition that a "stipulation as to the law" is generally not binding upon the courts. 17 S.E.2d at 859. See also, *McDuffie v. McDuffie*, 308 S.C. 401, 418 S.E.2d 331, 336 (Ct. App. 1992) (holding a stipulation concerning a question of law is not binding on the court); *Alltel Communications, Inc. v. South Carolina Department of Revenue*, 399 S.C. 313, 731 S.E.2d 869,872 (2012) (holding that an "issue of law [is] to be decided by the court, rather than the parties" and "courts are not bound by parties' stipulations of law").³ In short, even if counsel's statement that absent the appointment of the conservator there "may well" be an eight year statute of limitations was construed as a "concession" or "stipulation," it involved an issue of law, that is, an issue of statutory interpretation, and that mistaken statement of law is not dispositive or "conclusive proof" or binding on this Court.⁴

³ In *McDuffie v. McDuffie*, 308 S.C. 401, 418 S.E.2d 331 (Ct. App. 1992), this court further explained that "[i]t has generally been stated that the resolution of questions of law rests upon the court, uninfluenced by stipulations of the parties, and accordingly, virtually all jurisdictions recognize that stipulations as to the law are invalid and ineffective." 418 S.E.2d at 336-337, citing 73 Am. Jur.2d *Stipulations* § 5, at 539-40.

⁴ Notably, Orlowski does not argue that Dr. Creagh or the Hospital should be judicially estopped from changing any legal position taken in the lower court. Judicial estoppel does not apply here because one of the elements for judicial estoppel requires proof that "the party taking the position must have been successful in maintaining that position and have received some benefit." *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629, 631 (2004). Dr. Creagh and the Hospital lost on the statute of limitations in the court below, and as a result, no

II.

As her second issue for rehearing, Orlowski contends that this Court erred in its reliance on the Supreme Court's decision in *Langley v. Pierce*, 313 S.C. 401, 438 S.E.2d 242 (1993). To the contrary, *Langley* is dispositive of the statute of limitations issue, and this Court's reliance on *Langley* was proper.

Section 15-3-545, which establishes the statute of limitations for medical malpractice claims, includes a tolling provision within Section 15-3-545(D). In *Langley*, the Supreme Court, in answering a certified question posed by the Fourth Circuit Court of Appeals, held that "[s]ubsection (D) of 15-3-545 provides a limited tolling provision, applicable only to minors." 438 S.E.2d at 243. The Court further explained that "[i]nclusion of the phrase '*or as tolled by this section*' in subsection (A) clearly indicates that the *only* tolling of § 15-3-545(A) intended by the legislature is that contained in subsection (D)." *Id.* (Emphasis in original). Thus, the Supreme Court has clearly held that Section 15-3-545(D) provides tolling only for minors and that Section 15-3-545(D) provides for the "only tolling" of the medical malpractice statute of limitations.

Orlowski again attempts to "distinguish" *Langley* by arguing that the Supreme Court was addressing the impact of a different tolling provision, Section

benefit or success was achieved by even agreeing that there "may well" be an eight year statute of limitations.

15-3-30 rather than Section 15-3-40. Orlowski also argues that the issue in *Langley* involved the tolling of a statute of repose rather than a statute of limitations. Yet, in actuality, the Supreme Court was addressing the impact of a tolling provision on Section 15-3-545(A), which includes both a statute of limitations and a statute of repose. Section 15-3-545(A) provides that a medical malpractice action "must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, *or as tolled by this section.*" S.C. Code Ann. § 15-3-545(A). (Emphasis added). The Supreme Court construed the italicized language – "or as tolled by this section" – in *Langley* as "clearly indicat[ing] that the *only* tolling of § 15-3-545(A) intended by the legislature is that contained in subsection (D)." *Langley*, 438 S.E.2d at 243. (Emphasis in original). The Supreme Court expressly used the words "only tolling" meaning that Section 15-3-545(D) trumps all other tolling statutes – not just Section 15-3-30. The Supreme Court then explained in clear terms that "[s]ubsection (D) of 15-3-545 provides a limited tolling provision, applicable only to minors." *Id.* In short, the Supreme Court's analysis cannot be read as limited to the tolling of the statute of repose and not to the tolling of the statute of limitations, both of which are contained in Section 15-3-545(A).

This Court was correct in concluding that the Supreme Court's analysis in *Langley* is controlling and that tolling for insanity is not available in medical malpractice actions. Because Orlowski filed her medical malpractice action more than three years after the alleged negligence by Dr. Creagh and the Hospital, her action is barred by the statute of limitations. There is no basis for a rehearing or a rehearing *en banc*.⁵

⁵ Even if Orlowski is correct and the tolling provisions of Section 15-3-40 apply to a medical malpractice case despite the language in Sections 15-3-545(A) and (D) to the contrary, her claims are still time-barred. Dr. Creagh and the Hospital contend that the three-year statute of limitations should run from the date that Orlowski was appointed a conservator or at a minimum from the date that her conservator took action to protect her interests and filed her medical malpractice action against R. Norman Taylor, III, M.D. and his practice. This Court did not find it necessary to reach this issue because "*Langley* is controlling in this case," but this Court did note the "persuasive authority from Georgia, North Carolina, and New Hampshire supporting [the] position that the appointment of a conservator affects the viability of a person's insanity for tolling purposes." In the event that this Court grants a rehearing, Dr. Creagh and the Hospital request that the Court rule on this alternative ground.

CONCLUSION

Based on the foregoing discussion, the Respondent-Appellants C. Edward Creagh, M.D. and Amisub of South Carolina, Inc. respectfully request that this Court deny the petition for rehearing *en banc*.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

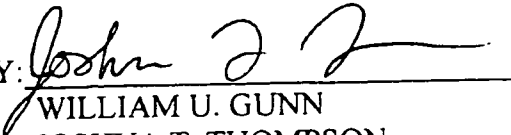
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February 28, 2014

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In The Court of Appeals

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S. Jackson Kimball, Special Circuit Court Judge SC Court of Appeals

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v.

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Piedmont Medical Center and
C. Edward Creagh, M.D., ... Respondents-Appellants.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., attorneys for the Respondents-Appellants, does hereby certify that service of **Respondents-Appellants' Return to Petition for Rehearing and Petition for Rehearing En Banc** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 28th day of February 2014:

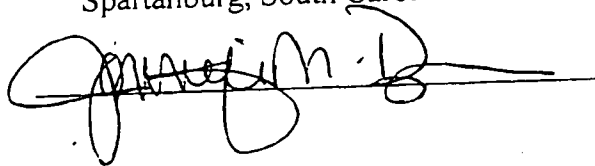
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A handwritten signature in black ink, appearing to read "William U. Gunn", written over a horizontal line.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

Case No. 2009-CP-46-5178

Gladys Sims, as the Duly Appointed Appellant
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v.

Amisub of South Carolina, Inc.,
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STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

FILED-RECEIVED

CASE NO: 2009CP4605178

IN THE COURT OF COMMON PLEAS

2010 JUN 25 PM 1:02

Gladys Sims vs. Amisub Of South Carolina Inc
C.C.C.P. & G.S.
YORK COUNTY, SC

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☒ Statement of Judgment by the Court:

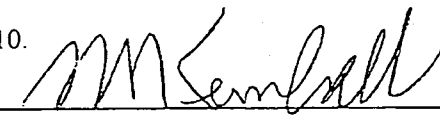
This matter came before me on June 17, 2010, upon Motion for Summary Judgment of Defendants Alleyene and Creagh. Representing the parties were: Chad McGowan for Plaintiff; and, James Hudgens for Defendant.

Summary judgment is appropriate only when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. Defendants' motion involves construction and application of the statute of limitations, S.C. Code Ann. § 15-3-40 (1976, as amended), to the facts of this case. I find and conclude that the appointment of a guardian or conservator for a person under disability does not operate to remove the disability for the purposes of the time period for commencing an action. I further find and conclude that this action was commenced within the time permitted by S.C. Code Ann. § 15-3-545 (1976, as amended).

Therefore, it is ordered that Defendants' motion for summary judgment be denied.
AND IT IS SO ORDERED.

Dated at York, South Carolina, this June 17, 2010.

Court Reporter: Wanda Nelson


S. JACKSON KIMBALL, SPECIAL CIRCUIT JUDGE

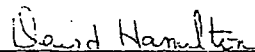
This judgment was entered on the 25th of June, 2010, and a copy mailed first class this 25th of June, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Philip Lee Smith 1922 India Hook Rd. Rock Hill, SC 29732
Chad McGowan McGowan Hood & Felder L L C 1539
Health Care Dr. Rock Hill, SC 29732

H Spencer King Attn: Donna Hill/ The Ward Law Firm, Pa
P.O. Box 3188 Spartanburg, SC 29304
William U Gunn Holcombe Bomar Gunn & Bradford, P.
P.O. Box 1897 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



David Hamilton - Clerk of Court

SCRCP APP-24/FORM 4

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP4605178

Gladys Sims Kristy Wood	Kristy L Orlowski	Amlsub Of South Carolina Inc William Alleyne	Piedmont Medical Center C Edward Creagh
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED:

- ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a	n/a	n/a

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

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

S/S. Jackson Kimball
Circuit Court Judge

3063
Judge Code

August 10, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on August 15, 2012, and a copy mailed first class or placed in the appropriate attorney's box on August 15, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Chad McGowan McGowan Hood & Felder LLC 1539 Health Care Dr Rock
Hill, SC 29732
John Eversole III Mase Lara Eversole Pa 2601 South Bayshore Drive suite
800 Miami, FL 33133

ATTORNEY(S) FOR THE PLAINTIFF(S)

H Spenceer King Attn: Donna Hill/ The Ward Law Firm, PA P.O. Box 3188
Spartanburg, SC 29304
William U Gunn Holcombe Bomar Gunn & Bradford PA PO Box 1897
Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF
COMMON PLEAS

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood),

Plaintiff,

vs.

Amisub of South Carolina, Inc., d/b/a Piedmont
Medical Center; and, C. Edward Creagh, MD,

Defendants.

ORDER

Case No. 2009-CP-46-5178

FILED-RECEIVED
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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, S.C.

This matter came before me on July 18, 2012, upon motions of Defendants for summary judgment. Representing Plaintiff was Ashley W. Creech; representing Defendant Amisub of South Carolina, Inc., ("Amisub") was William U. Gunn; and, representing Defendant C. Edward Creagh, MD, ("Creagh") was H. Spencer King. Based on the considerable record presented and the arguments of counsel, I make the following findings and conclusions.

STANDARD OF REVIEW

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct.App.1999); Rule 56(c), S.C.R.C.P. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998); *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct.App. 1997). In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 445 S.E.2d 659 (Ct.App. 1994).

Summary judgment is appropriate when facts exist on which reasonable minds cannot differ, and it is not appropriate where further inquiry into the facts is desirable to clarify the application of law. It is not, however, sufficient that the nonmoving party seeks to create an

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inference that is not reasonable, or an issue of fact that is not genuine, in order to avoid summary judgment. *Rothrock v. Copeland*, 305 S.C. 402, 409 S.E.2d 366 (1991).

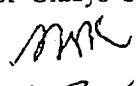
A party seeking summary judgment has the burden of clearly establishing, with use of the record properly before the court, the absence of a triable issue of fact. *Stanford Fire Ins. Co. v. Marine Contracting and Towing*, 301 S.C. 418, 392 S.E.2d 460 (1990). Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party must come forward with facts showing there is a genuine issue for trial in order to avoid summary judgment. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). On those issues where the nonmoving party will have the burden of proof, it is that party's obligation to confront the motion for summary judgment with specific facts demonstrating all elements of the claim. *Id.*

BACKGROUND

This action claims medical negligence, arising out of personal injuries suffered by Kristy L. Orlowski, a/k/a Kristy Wood ("Kristy"). The real party in interest is Gladys Sims, Kristy's duly appointed guardian and conservator. In her Complaint, Plaintiff seeks actual and punitive damages for personal injuries suffered by Kristy, allegedly as a result of negligent medical care by Creagh and Amisub in late November, 2003. She contends that as a result of negligence occurring during the period November 24, 2003, through December 8, 2003, she suffered cardiopulmonary arrest, which left her in a permanently disabled and debilitated condition. In her Complaint in this action, Plaintiff seeks damages for the following:

- (a) chronic pain and suffering;
- (b) substantial medical expenses;
- (c) disfigurement;
- (d) mental anguish;
- (e) loss of enjoyment of life;
- (f) loss of income and related benefits;
- (g) need for full-time medical and nursing care to assist her with activities of daily living;
- (h) permanent restrictions and impairments that make it impracticable for her to care for even her most basic of personal needs; and,
- (i) for such other damages as may be identified during the course of this litigation as may be provided for by the laws of the State of South Carolina.

In August, 2006, Kristy, through her conservator, husband and guardian Christopher Orlowski, filed suit against Rock Hill Gynecological & Obstetrical Associates, P.A., and R. Norman Taylor, III, M.D. During the course of that litigation, Christopher Orlowski and Kristy were divorced, and the present conservator Gladys Sims was substituted as conservator and



guardian. That case came on for a jury trial in April, 2009. The jury rendered a verdict for Defendants. However, Plaintiff and Defendants had entered into a "high-low" agreement, under the terms of which Defendants' insurer paid Plaintiff the "low" figure of \$300,000.

In that action, damages were sought on behalf of Kristy for medical negligence, the primary contention being that Dr. Taylor was negligent in failing to properly treat preeclampsia, which resulted in Kristy suffering an eclamptic seizure on September 12, 2003. That seizure resulted in a significant period of hospitalization for Kristy, which was continuous from September 12, 2003, through November 24, 2003. During that period of time, she suffered extreme respiratory distress, was placed on a ventilator, and endured thoracotomies, thoracostomies, and placements of chest tubes.

Kristy was discharged home on November 24, 2003, but the following day was brought back to Piedmont Medical Center by ambulance and admitted by Creagh for pleural effusion. She was discharged again two days later on November 27, 2003, in guarded condition. She was then readmitted on November 29, 2003, and remained hospitalized through December 8, 2003, when she suffered a cardiorespiratory arrest. Three days later she was transferred to Carolinas Medical Center where she remained through March 29, 2004. She presently requires full-time care.

Defendants contend the following in their present motions:

- (1) Plaintiff's current action was filed in November, 2009, and, therefore, is not timely filed within the three-year statute of limitations applicable to medical malpractice actions, as provided in S.C. Code Ann. §15-3-545 (1976, as amended); and,
- (2) Plaintiff is collaterally estopped, or estoppel by judgment, arising out of the prior judgment in the suit against Dr. Taylor and his group filed in August, 2006, and concluded adversely to Plaintiff in April, 2009.

DISCUSSION

A. Statute of limitations.

The first ground of Defendants' motions is based upon South Carolina's three year statute of limitations for medical malpractice actions contained in S.C. Code Ann. § 15-3-545(A) (1976, as amended). However, in opposition to the motion, Plaintiff asserts and relies upon S.C. Code Ann. § 15-3-40 (1976), which provides that a statute of limitations may be tolled for up to five years if a claimant is a minor or "insane."

For purposes of the tolling statute, "insane" means "... a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability

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to understand or protect one's rights, because of an over-all inability to function in society, . . .” *Wiggins v. Edwards*, 314 S.C. 126, 129, 442 S.E.2d 169, 170 (1994).

The following facts are not disputed. Kristy was admitted to Piedmont Medical Center multiple times in November-December, 2003. On December 8, 2003, Kristy's condition continued to deteriorate to the point that she suffered cardiopulmonary arrest. As a result of her worsening condition, Kristy suffered permanent hypoxic encephalopathy and other mental impairments that prevent her from caring for herself, and have left her incapable of managing her own affairs. I find and conclude that Kristy's "insanity" commenced on or about December 8, 2003, and continues to this day.

Defendants do not dispute the applicability of the tolling statute, but argue that the statute began to run when Kristy first had a Guardian and Conservator appointed for her on March 5, 2004. If that were true, the statute would have expired on March 5, 2007.

I find and conclude that the plain language of § 15-3-40 does not support that interpretation. It states: “. . . the time of the disability is not a part of the time limited for the commencement of the action, . . .” (Emphasis added.) Thus, the statute specifically provides that the statute of limitations begins to run upon the cessation of the disability, not the appointment of someone to manage the affairs of the person who remains under a disability.

Kristy's disability coincides with the accrual of the cause of action asserted in this case. §15-3-40 specifically provides that the maximum period of tolling by reason of "insanity" is five years. This action was commenced in November, 2009, which is within the statute of limitations as extended by the tolling statute. Therefore, I find and conclude that Defendants' motion as to the statute of limitations must be denied.

B. Collateral estoppel.

The second ground of Defendants' Motion for Summary Judgment is based upon the defense of collateral estoppel, or estoppel by judgment. Defendants assert that in the prior lawsuit against Dr. Taylor and his group, Plaintiff contended that she was totally and permanently disabled as a result of negligence attributable to Dr. Taylor occurring on September 12, 2003. Defendants further assert that in the trial of that case in April, 2009, Plaintiff contended that Kristy's total and permanent disability was solely the result of the alleged negligence of Dr. Taylor and his group. Defendants further assert that Plaintiff contended in the prior trial that all damages flowed directly and proximately the negligence of Dr. Taylor and his group, and that all of Plaintiff's evidence as to damages was directed to that claim.

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More particularly, Defendants assert that the record in the prior case, as established by Requests for Admission and responses to the same in the present action, show conclusively that Kristy's injuries and damages were asserted to be entirely the fault of Dr. Taylor and his group. They assert that, therefore, there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law.

In this action, Creagh served the following Request for Admission upon Plaintiff:

4. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schifrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

Q: And, Doctor Schifrin, had Doctor Taylor met the standard of care do you have an opinion within a reasonable degree of medical certainty whether Kristy Wood would be well today; whether Breanna would be well today and be a little girl growing up?

In answer to that Request for Admissions, Plaintiff stated:

A: I believe that is most probably that both of them would have been; would have survived intact.

Additionally, Creagh posed the following Request for Admissions:

6. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Stephen Pliskow, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

Q: Within a reasonable degree of medical certainty were all of Kristy's problems; medical problems, were they caused by the eclamptic episode on September 12th?

Answering that request, Plaintiff stated:

A: Yes they were. Kristy eventually went home after her recovery from the seizure at Piedmont but was never really well. She was having chest pains and difficulty breathing, panic attacks. Went back to the hospital for a two day stay only one or two days after she had gone home. She really wanted to go back home. They sent her home and subsequently two days later was put right back in the hospital. She was diagnosed with an empiema which is

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an abscess or an infection on the outside of the lungs and that was from the tube, the breathing tube that she had because -- Well the chest tubes that she had because when she was admitted with the eclampsia and had the aspiration of pneumonia she wound up developing pneumothorax. Pneumothorax is basically when the lungs collapse. And the way they treat that is they put chest tubes in they suck the air out of the chest wall and allows the walls of the lungs to re-expand. So those cites from the foreign bodies that were in her chest cavity wound up getting infected and those got infected with MRSA so that was defiantly related to the hospitalization. Also she wound up with pseudopneumonia. Pseudopneumonia is not a normal pneumonia that you would get community acquired. It's something that you definitely see hospital acquired and that's from her being intubated for a long time. Having had aspiration pneumonia so the answer is yet her readmission to Piedmont, her subsequent cardiac arrest during that admission and then her transfer to CMC the Carolina's Medical Center was all related back to her eclamptic seizure.

Q: Doctor, within a reasonable degree of medical certainty were Breanna's problems leading up to her passing away caused by the eclamptic episode on September 12th that we discussed?

A: Yes they were.

Q: Within a reasonable degree of medical certainty could all of that in your opinion Breanna's death, all of Kristy's problems that she has today been prevented by hospitalization of Kristy Wood on September 11, 2003?

A: Yes, I believe that if she was admitted on the 11th within a reasonable degree of medical certainty she would have been delivered before the seizure. But even if we say that she would have seized in the hospital she would have been fine. Most patients more likely than not patients that seize in the hospital with the medical care that we have for them there they do much better and she would be fine.

Crcagh also served an additional Request for Admission pertaining to the testimony of Plaintiff's economic damage expert witness, Dr. Oliver Wood, establishing the amount of Kristy's damages, particularly future damages. The testimony in that regard is extensive and comprehensive. It is clear from my review and consideration of the testimony that it encompasses all damages incurred, and to be incurred in the future, all of which were attributed to the alleged negligence of Dr. Taylor and his group in the presentation of the case. A verbatim recitation of that considerable evidence is not necessary.

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A fair reading of the foregoing testimony from the trial of the prior action leads to the conclusion that Plaintiff's presentation of evidence on liability and damages in the prior trial was premised on the assumption that all of Kristy's injuries, damages, expenses of every kind, past and future, were directly and proximately caused by the negligence of Dr. Taylor and his group.

It is inescapable that by the time of trial in Plaintiff's action against Dr. Taylor in April, 2009, Plaintiff and her counsel were fully apprised through discovery of the entire and extensive medical record in this case, including every aspect of these Defendants involvement in Kristy's treatment and care. This includes every act which Plaintiff now claims to be negligent treatment and care causing Kristy's injuries and damages. At the hearing on the present motions, Plaintiff acknowledged that there is no reason Creagh and Amisub could not have been named as Defendants, and charged with negligence leading to Kristy's condition. Rather, Plaintiff sought to lay all blame for Kristy's condition and resulting damages upon Dr. Taylor and his group, to the exclusion of the present Defendants.

In refuting this logic, Plaintiff argues that while the negligent acts of Dr. Taylor caused serious injury and damage to Kristy, her condition was worsened by the negligent acts claimed in this action. However, from the record in the prior action, it is clear that Plaintiff sought to prove that Dr. Taylor's negligence that was entirely responsible for all of Kristy's injuries and damages.

Plaintiff also argues that Creagh and Amisub were not parties defendant in the prior action, and that collateral estoppel is therefore not a proper defense in this action.

In *Graham v. State Farm Fire and Casualty Insurance Company*, 277 S.C. 389, 287 S.E.2d 495 (1982), insureds sued their homeowners' insurer for the value of their automobile that was damaged in a fire. In a prior action, plaintiffs had sued their automobile insurance carrier for the same damages. The auto insurer defended on the basis that the fire was deliberately set, and that the insureds' caused the damage. The jury hearing the case returned a verdict for the insurer. In the action against the homeowners' carrier, the circuit court granted summary judgment to the insurer, ruling that the insureds were collaterally estopped by the prior judgment to bring the action against the homeowners' carrier. The Supreme Court affirmed the ruling.

In the appeal, the insureds argued that lack of privity between the two insurance companies precluded applying collateral estoppel by judgment. The court disagreed and stated:

The modern trend is to disregard the privity requirement in applying estoppel by judgment. In determining the defense of collateral estoppel notwithstanding a lack of privity, the courts have taken into consideration: whether the doctrine is used offensively or defensively, and whether the party adversely affected had a full and

fair opportunity to litigate the relevant issue effectively in the prior action. 31 ALR 3rd 1052. (The South Carolina Supreme Court has recognized estoppel by judgment without privity in the case of *Jenkins v. Atlantic Coastline Railroad Company*, 89 S.C. 408, 71 S.E. 1010, and in the case of *Watson v. Goldsmith*, 205 S.C. 215, 31 S.E. 2d, 317.) 277 S.C. at 390-391, 287 S.E.2d at 496.

In *Jenkins, supra*, the court stated:

... [T]he true ground upon which a former judgment, in a case like this, should be allowed to operate as a bar to a second action is not *res judicata*, or technical estoppel, because the parties are not the same, and there is no such privity between them as is necessary for the application of that doctrine, but that in such cases, on grounds of public policy, the principle of estoppel should be expanded, so as to embrace within the estoppel of a judgment, persons who are not, strictly speaking, either parties or privies. It is rested upon the wholesome principle which allows every litigant one opportunity to try his case on the merits, but limits him, in the interest of the public, to one such opportunity. 89 S.C. at 421, 71 S.E. at 1012.

It is appropriate that this "wholesome principle" be applied in the present case. Here, the present Plaintiff had the opportunity to try her case on the merits in the previous action. Pre-trial discovery provided all the evidence that now forms the basis for this action; yet, Plaintiff used all of that evidence to mount a claim charging only Dr. Taylor and his group alone with Kristy's injuries and damages. Plaintiff should not be permitted now to charge these Defendants with the same injuries and damages. She has had her day in court.

Thus, whether the legal theory of the defense is collateral estoppel or estoppel by judgment, Plaintiff is not entitled to maintain this action, and Defendants' motions will be granted.

ORDER

Based on the foregoing discussion, it is ordered as follows:

- (1) Defendants' Motion for Summary Judgment based on the statute of limitations is denied.
- (2) Defendants' Motion for Summary Judgment based upon collateral estoppel, or estoppel by judgment, is granted.
- (3) Plaintiff's complaint is dismissed with prejudice.

AND IT IS SO ORDERED.

August 10, 2012



S. Jackson Kimball
Special Circuit Court Judge
York County

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

CHRISTOPHER T. ORLOWSKI,
AS THE DULY APPOINTED
GUARDIAN AND CONSERVATOR
OF KRISTY L. ORLOWSKI (A/K/A
KRISTY WOOD

PLAINTIFF,

vs.

ROCK HILL GYNECOLOGICAL &
OBSTETRICAL ASSOCIATES, P.A.
and R. NORMAN TAYLOR, III, M.D.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL
CIRCUIT

CIVIL ACTION NO.
2008 CP 46 - 2213

COMPLAINT

JURY TRIAL DEMANDED

FILED-RECEIVED
2008 AUG 24 AM 11:48
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

Plaintiff, complaining of Defendants, alleges as follows:

PARTIES

- 1) Plaintiff, Christopher T. Orlowski, (hereinafter "Orlowski"), resides in York County, South Carolina.
- 2) Plaintiff Orlowski is also the duly appointed guardian and conservator of Kristy L. Orlowski (a/k/a Kristy Wood, hereinafter "Kristy") pursuant to an order of appointment from the Honorable Lois H. Roddey, Probate Court Judge, Chester County, South Carolina, dated March 5, 2004.
- 3) Defendant, Rock Hill Gynecological & Obstetrical Associates, P.A. is, upon information and belief, a Professional Association formed under the laws of the State of South Carolina, and at all times relevant to this action, was doing business in York County, South Carolina.

COPY

4) Upon information and belief, at all times relevant to this action, Defendant R. Norman Taylor, III, M.D. (hereinafter "Taylor") was an employee and/or agent of Defendant Rock Hill Gynecological & Obstetrical Associates, P.A. and was employed in York County, South Carolina.

FACTS GIVING RISE TO THESE CAUSES OF ACTION

5) At all times relevant to this action, Defendant R. Norman Taylor, III, M.D. (hereinafter "Taylor") was acting within the course and scope of his employment and/or agency.

6) At all times relevant to this action, Defendant Rock Hill Gynecological & Obstetrics Associates, P.A., undertook to provide to Kristy, gynecological and obstetrical services including, but not limited to diagnostic and medical evaluation.

7) At all times relevant to this action, Defendant Rock Hill Gynecological & Obstetrics Associates, P.A., undertook to provide to Kristy, such physicians and nurses as were needed to perform such services, including, but not limited to supervision of such physicians and nurses.

8) At all times relevant to this action, Defendant Rock Hill Gynecological & Obstetrics Associates, P.A., held itself out to the public in general, and the Plaintiff and Kristy in particular, as an institution qualified to render evaluation and treatment for prenatal care and any complaints and symptoms which may have been exhibited by the Plaintiff.

9) At all times relevant to this action, Defendant Taylor was a physician licensed in South Carolina who held himself out to the world as a specialist in the field of gynecology and obstetrics.

10) At all times material to this Complaint, Defendant Taylor was a treating physician of Kristy, and was a supervising physician of other employees and servants of Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.

11) During the early stages of her pregnancy, Kristy sought the professional services of the Defendants for her pre-natal care.

12) During the term of her pregnancy, Kristy relied upon the medical care and treatment provided by the Defendants to ensure the safety of her unborn child as well as that of herself.

13) Over the course of approximately seven months, Kristy went to the Defendants for her pre-natal visits and complied with all their instructions and requests.

14) Over the course of approximately seven months, while she was a patient of the Defendant's, Kristy was never received any indication or warning from the Defendants or their agents, servants or employees, that her medical condition was such that it posed any potential health risk, or danger to the unborn child or to Kristy.

15) On September 11, 2003, Kristy was seen at Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.'s office.

16) Beginning in late June, 2003, Kristy began to experience swelling of her hands and her feet.

17) In July, 2003 and later, Kristy began to experience headaches, dizziness, and nausea.

18) Kristy was seen by the Defendants on a regular basis between late June, 2003 and September 11, 2003.

19) Upon information and belief, Kristy communicated to the Defendants, their employees and / or their agents her physical problems and complaints.

20) On September 11, 2003, when Kristy was seen at Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.'s office, she was examined and she was sent home without being given any special instructions or warnings as to her medical condition such as would reasonably cause Kristy to believe that she her medical examination and her lab results were normal.

21) Less than twenty-four hours later, on the morning of September 12, 2003, a family member found Kristy was found in her own home in an unresponsive condition.

22) On September 12, 2003, Kristy was transported to a hospital where she was placed on a ventilator and was sent to the operating room for an immediate cesarean section.

23) The child, Brianna, was born by cesarean section on the above-referenced date.

24) Kristy, as a result of the seizures, aspiration and hypoxia, suffered a very difficult life-threatening course in several hospitals before she was finally discharged with severe and permanent neurological deficits.

25) At the September 11, 2003 visit, Kristy showed several signs and symptoms of preeclampsia which were not noted, not detected, not understood and/or ignored by agents, employees and servants of Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.

26) The Defendants owed a duty of care to Kristy which they breached in one or more of the following acts of omission or commission:

- a. Negligently and carelessly failed to properly diagnose preeclampsia;

- b. Negligently and carelessly failed to timely perform additional diagnostic studies to rule out preeclampsia;
- c. Negligently and carelessly failed to recognize the signs and symptoms and/or to inquire into specific areas which would have shown signs and symptoms of preeclampsia and/or failed to inquire into areas that would have further led to a correct diagnosis of preeclampsia;
- d. Negligently and carelessly failed to continue the diagnostic testing of Kristy to either diagnose preeclampsia or to rule out preeclampsia;
- e. Negligently and carelessly caused the delay in the diagnosing and treating of impending preeclampsia;
- f. Negligently and carelessly failed to refer Plaintiff and Kristy to other consultants or specialists for further evaluation and treatment;
- g. Negligently and carelessly failed to supervise medical personnel, nurses and other healthcare providers in the care and treatment of the Plaintiff; and
- h. Other acts of omission or commission that will be learned through discovery and may be shown at trial.

27) Upon information and belief, as a direct and proximate result of the acts of omission or commission of the Defendants and the negligence of the Defendants, the Plaintiff has suffered severe, debilitating, and permanent neurological deficits and the Plaintiff brings this action individually and in his various capacities as stated above.

FOR A FIRST CAUSE OF ACTION MEDICAL NEGLIGENCE

28) The Plaintiff Orłowski Individually and in his capacity as court appointed guardian for Kristy Wood, adopts and re-alleges paragraphs 1 through 27 herein, as fully as if set forth verbatim and would further allege as follows:

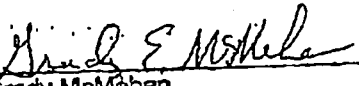
29) As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standard of care by

Defendants, as set forth in paragraph # 28 above, Kristy suffered the following injuries and damages in that she has experienced and will continue to experience:

- a. chronic pain and suffering,
- b. substantial medical expenses,
- c. disfigurement,
- d. mental anguish,
- e. loss of enjoyment of life,
- f. loss of income and related benefits,
- g. need for full time medical and nursing care to assist her with her activities of daily living,
- h. permanent restrictions and impairments that make it impractical for her to care for even her most basic of personal needs, and
- i. for such other damages as may be identified during the course of this litigation as maybe provided for by the laws of the State of South Carolina.

30) WHEREFORE, Plaintiff is therefor informed and believes that Plaintiff, as court appointed Guardian for Kristy, is entitled to judgment for actual damages, consequential damages, and special damages in amounts to be determined by the jury in the trial of this matter, for costs, and for such further relief as the court deems appropriate. Plaintiff avers the amount in controversy exceeds \$100,000.00, said amount being made for the purposes of defining the scope of discovery to be allowed pursuant to the laws of the State of South Carolina.

By


Grady McMeahan
LEWIS LAW FIRM, LLC
P. O. Drawer 11583
Rock Hill, SC 29731
(803) 324-2086

ATTORNEYS FOR PLAINTIFF

Rock Hill, South Carolina
August 23, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
GLADYS SIMS, AS THE DULY)
APPOINTED GUARDIAN AND)
CONSERVATOR OF KRISTY L.)
ORLOWSKI (A/K/A KRISTY WOOD),)
Plaintiff,)
vs.)
AMISUB OF SOUTH CAROLINA,)
INC., d/b/a PIEDMONT MEDICAL)
CENTER; WILLIAM ALLEYNE, M.D.;)
and C. EDWARD CREAGH, M.D.,)
Defendants.)

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No.: 09-CP-46-5178

COMPLAINT
(Jury Trial Demanded)

FILED-RECEIVED
2009 NOV 24 PM 4:02
DANIEL HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

The Plaintiff, GLADYS SIMS, by and through her undersigned counsel, and for her Complaint against the above-named Defendants, does hereby allege as follows:

PARTIES

1. Plaintiff, Gladys Sims, is a citizen and resident of York County, South Carolina.
2. Plaintiff, Gladys Sims is the duly appointed Guardian and Conservator of Kristy L. Orlowski (a/k/a Kristy Wood hereinafter "Kristy Orlowski") pursuant to a Consent Order from the Probate Court Judge, in Chester County, South Carolina, dated September 3, 2008
3. Plaintiff, Gladys Sims, has been appointed as the Guardian and Conservator of Kristy L. Orlowski due to the fact that Kristy L. Orlowski is mentally incompetent as a result of the medical negligence alleged herein, and has been mentally incompetent, as a matter of law, at all times material to this Complaint.

4. Upon information and belief, Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center (hereinafter "Piedmont") is a South Carolina corporation, having its principal place of business in the County of York, State of South Carolina where it does business as Piedmont Healthcare System.

5. Upon information and belief, Defendant, William Alleyne, M.D. is a licensed physician specializing in the field of pulmonology medicine and internal medicine and has his principal place of business located in the County of York, State of South Carolina. At all times mentioned herein, Defendant William Alleyne was acting individually and/or within the course and scope of his employment or agency with Defendant Piedmont when undertaking the treatment of Kristy Orlowski.

6. Upon information and belief, Defendant, C. Edward Creagh, M.D., is a licensed physician specializing in the field of pulmonary and internal medicine and has his principal place of business located in the County of York, State of South Carolina. At all times mentioned herein, the Defendant C. Edward Creagh, M.D. was acting individually and/or within the course and scope of his employment or agency with Defendant Piedmont when undertaking the treatment of Kristy Orlowski.

7. Piedmont has the right or power to direct and control the manner in which its employees and/or agents provide medical care and operate the business of delivering health care for a fee through their Hospital.

8. Piedmont has a non-delegable duty to provide physicians and staff adequately trained and able to provide any necessary and reasonable medical care to patients at their respective Hospital, including the care provided to Kristy Orlowski at the times referenced in this Complaint.

9. Upon information and belief, Defendant Piedmont has attending physicians, nurses and other staff who are its agents, servants, and employees, and all acts or omissions complained of herein, performed by said agents, servants, and employees occurred during the course and scope of such agency and/or employment and is therefore imputed to Defendant Piedmont.

JOINT AND SEVERAL LIABILITY

10. The above-named Defendants are jointly and severally liable as to all damages alleged herein since their negligent, grossly negligent, reckless and wanton acts and omissions, singularly or in combination, are the direct and proximate cause of Kristy Orlowski's damages, injuries and losses.

GENERAL FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS

11. Upon information and belief, on November 24, 2003, Kristy Orlowski was a patient at Piedmont Medical Center and was discharged by Defendant, William Alleyne, M.D. She was discharged with only the oral medications of "Zolof" and "Vioxx".

12. Upon information and belief, Kristy Orlowski was brought back to the emergency room the next day complaining of shortness of breath, and severe chest pain. She was admitted by Defendant C. Edward Creagh, M.D., with a diagnosis of left pleural effusion. He placed her on Zosyn IV and performed a thoracentesis on November 26, 2003, reportedly due to a concern for early stage empyema.

13. Upon information and belief, Defendant C. William Creagh, M.D. discharged Kristy Orlowski on November 27, 2003 with orders for the medication Levaquin, 500 mg. by mouth daily, as her sole medication. His reported plan was to re-evaluate her in 5 days to rule out developing empyema.

14. Upon information and belief, Kristy Orlowski's pain continued to increase and on November 29, 2003, she again presented to Defendant Piedmont Medical Center, with nausea, and vomiting for 3 days. C. Edward Creagh, M.D., again admitted her and on November 30, 2003, a CT Scan identified a hydropneumothorax in the left upper lobe of Kristy Orlowski's lung. IV antibiotics were finally started and a left thoracoscopy with a left lung decortication and wedge resection of Kristy Orlowski's lung were performed.

15. Upon information and belief, it was learned that Kristy Orlowski was infected with MRSA and new pleural effusions continued with bilateral interstitial and airspace disease.

16. Upon information and belief, for the next several days, Kristy Orlowski developed metabolic acidosis and stiff lungs. Pulse oximetry showed progressive desaturation despite the ventilator, and her ventilating pressures continued to increase.

17. Upon information and belief, in the early hours of December 8, 2003, Kristy Orlowski demonstrated increasing problems with ventilation and her oxygen saturation levels dropped to dangerous levels. She became hemodynamically unstable with hypotension and required pressor medication.

18. Upon information and belief, at 12 noon on that same day, Kristy Orlowski was severely bradycardic with hypotension and suffered a cardiopulmonary arrest.

19. Upon information and belief, Kristy Orlowski responded to Epinephrine and was resuscitated, but her ventilatory pressures continued to increase and she remained hemodynamically unstable.

20. As a direct and proximate result of Kristy Orlowski's care and treatment by the Defendants, she suffered injuries, including, but not limited to, the cardiopulmonary arrest. Kristy Orlowski suffered significant hypoxic damages and has been left with permanent hypoxic

encephalopathy and severe mental and physical disabilities to the point that she cannot care for herself in any manner.

FOR A FIRST CAUSE OF ACTION
(Medical Negligence)

As to Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Medical Center

21. The Plaintiff repeats and realleges paragraphs 1-20 as if repeated herein verbatim, and alleges further:

22. Agents and/or employees of Defendant Amisub of South Carolina, Inc. d/b/a Piedmont Health Care System, did undertake the duty to render medical care to Kristy Orlowski in accordance with the prevailing professional standards of care for agents and/or employees of hospitals in the national community.

23. While Kristy Orlowski was under the care of agents and/or employees of the Defendant, Amisub of South Carolina, Inc. d/b/a Piedmont Health Care Systems, said agents and/or employees of the Defendant departed from the prevailing professional standards of care and treatment of Kristy Orlowski and were thereby negligent, careless, grossly negligent, reckless and acted in violation of the duties owed to Kristy Orlowski in that they committed one or more of the following acts of omission, any or all of which were departures from the prevailing professional standards of care:

- a. in failing to ensure that Kristy Orlowski was properly and adequately monitored throughout her stay at Piedmont Medical Center;
- b. in failing to have in place proper and adequate policies, procedures and protocols for management of patients or, if such policies, procedures and protocols were in place, in failing to use due care to enforce them;
- c. in failing to properly have in place and adequate policies, procedures and

protocols for the discharge of sick patients or, if such policies, procedure and protocols were in place, in failing to use due care to enforce them;

- d. in failing to notify proper medical personnel during the declining health of Kristy Orlowski;
- e. in failing to timely recognize, assess, diagnose, and treat Kristy Orlowski's ARDS, pneumonia, and empyema of her left lung. As a direct result of these failures, Kristy Orlowski required decortications of her left lung and the resultant hypotensive episode causing her cardiopulmonary arrest and subsequent hypoxic injuries;
- f. in failing to properly train and educate its nurses and other employees or, if properly trained and educated, in failing to allow its nurses to exercise independent judgment and skill;
- g. in failing to properly monitor and respond to Kristy Orlowski's worsening signs and symptoms;
- h. in failing to make proper and timely notification of Kristy Orlowski's deteriorating condition to the appropriate physicians and its administration personnel;
- i. in failing to properly train and educate their nurses and other employees or, if properly trained and educated, the failure of said nurses and employees to exercise chain of command for the benefit of Kristy Orlowski;
- j. in failing to have appropriate policies, procedures, and protocols to ensure that patients with conditions similar to Kristy Orlowski are treated in an appropriate manner, or if the Defendants had such policies, procedures, and protocols, in

failing to ensure such were carried out and followed;

- k. in failing to insure that proper diagnostic procedures were conducted on Kristy Orlowski, given the totality of the circumstances;
- l. in failing to intervene on behalf of the patient rather than discharging the patient at the above referenced times; and
- m. in such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

24. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by agents and/or defendants of Defendant Piedmont, Kristy Orlowski suffered severe debilitating injuries which have resulted in her incompetent state due to the hypotensive episode and hypoxic condition which has caused physical suffering, severe physical, cognitive and emotional pain and distress, and has ultimately caused Kristy Orlowski's permanent and severely disabled physical and mental state, for which the Plaintiff is entitled to recover on Kristy Orlowski's behalf, actual and punitive damages in an amount to be determined by a jury at the trial of this action.

25. Defendant Piedmont Medical Center owed a duty of care to Kristy Orlowski which they breached by their negligence, carelessness, gross negligence, recklessness, and departure from the professional standards of care, and as a result Kristy Orlowski has suffered the following injuries and damages that she has experienced in the past and will continue to experience in the future:

- a. chronic pain and suffering;
- b. substantial medical expenses;
- c. disfigurement;

- d. mental anguish;
- e. loss of enjoyment of life;
- f. loss of income and related benefits;
- g. need for full time medical and nursing care to assist her with her activities of daily living;
- h. permanent restrictions and impairments that make it impractical for her to care for even her most basic of personal needs; and
- i. for such other damages as may be identified during the course of this litigation as may be provided for by the laws of the State of South Carolina.

FOR A SECOND CAUSE OF ACTION
(Medical Negligence)

As to Defendant William Alleyne, M.D.

26. The Plaintiff repeats and realleges paragraphs 1-20 as if repeated herein verbatim, and alleges further:

27. Defendant, William Alleyne, M.D. and Piedmont Medical Center did undertake the duty to render medical care to Kristy Orlowski in accordance with the prevailing professional standards of care in the national community. William Alleyne, M.D. was additionally an employee and agent of Defendant Piedmont Medical Center and also undertook to provide care within the prevailing professional standards of care in the national community.

28. Notwithstanding said undertaking and while Kristy Orlowski was under the care of Defendant William Alleyne individually and as an agent and/or employee of Piedmont Medical Center, said Defendant and individually and as an agent and/or employee of Piedmont Medical Center departed from prevailing professional standards of care and treatment of Kristy Orlowski and was thereby negligent, careless, grossly negligent, reckless in violation of the

duties owed to Kristy Orlowski, in that he committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. in failing to detect signs of Kristy Orlowski's deteriorating condition and to take proper precautions in treating her deteriorating condition;
- b. in failing to appreciate, diagnose, ascertain and treat the patient for her pulmonary deterioration;
- c. in failing to properly diagnose and treat the patient for ARDS;
- d. in failing to transfer care of patient to other, more qualified, physicians;
- e. in failing to order, review, or evaluate testing during his course and treatment of Kristy Orlowski;
- f. in failing to properly order the correct treatment and medication for the patient;
- g. in failing to properly order and perform timely tests on Kristy Orlowski to determine the most efficacious treatment for her;
- h. in failing to order proper tests to determine the course of Plaintiff's deteriorating condition and treat it appropriately; and
- i. in such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

29. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendant William Alleyne, M.D., Kristy Orlowski suffered from severe debilitating injuries which have resulted in her incompetent state due to the hypotensive episode and hypoxic condition which has caused physical suffering, severe physical, cognitive and emotional pain and distress, and has ultimately

caused Kristy Orlowski's permanent and severely disabled physical and mental state, for which the Plaintiff is entitled to recover on Kristy Orlowski's behalf, actual, consequential, special and punitive damages in an amount to be determined by a jury at the trial of this action.

30. Defendant William Alleyne, M.D. owed a duty of care to Kristy Orlowski which he breached by his negligence, carelessness, gross negligence, recklessness, and departure from the professional standards of care, and as a result Kristy Orlowski has suffered the following injuries and damages that she has experienced in the past and will continue to experience in the future:

- a. chronic pain and suffering;
- b. substantial medical expenses;
- c. disfigurement;
- d. mental anguish;
- e. loss of enjoyment of life;
- f. loss of income and related benefits;
- g. need for full time medical and nursing care to assist her with her activities of daily living;
- h. permanent restrictions and impairments that make it impractical for her to care for even her most basic of personal needs; and
- i. for such other damages as may be identified during the course of this litigation as may be provided for by the laws of the State of South Carolina.

FOR A THIRD CAUSE OF ACTION
(Medical Negligence)

As to Defendant C. Edward Creagh, M.D.

31. The Plaintiff repeats and realleges paragraphs 1-20 as if repeated herein verbatim,

and alleges further:

32. Defendant, C. Edward Creagh, M.D. and Piedmont Medical Center did undertake the duty to render medical care to Kristy Orlowski in accordance with the prevailing professional standards of care in the national community. C. Edward Creagh, M.D. was additionally an employee and agent of Defendant Piedmont Medical Center and also undertook to provide care within the prevailing professional standards of care in the national community.

33. Notwithstanding said undertaking and while Kristy Orlowski was under the care of Defendant C. Edward Creagh individually and as an agent and/or employee of Piedmont Medical Center, said Defendant and individually and as an agent and/or employee of Piedmont Medical Center departed from prevailing professional standards of care and treatment of Kristy Orlowski and was thereby negligent, careless, grossly negligent, reckless in violation of the duties owed to Kristy Orlowski, in that he committed one or more of the following acts of omission or commission, any or all of which were departures from the prevailing professional standards of care:

- a. in failing to detect signs of Kristy Orlowski's deteriorating condition and to take proper precautions in treating her deteriorating condition;
- b. in failing to appreciate, diagnose, ascertain and treat the patient for her pulmonary deterioration;
- c. in failing to properly diagnose and treat the patient for ARDS;
- d. in failing to transfer care of patient to other, more qualified, physicians;
- e. in failing to order, review, or evaluate testing during his course and treatment of Kristy Orlowski;
- f. in failing to properly order the correct treatment and medication for the patient;

- g. in failing to properly order and perform timely tests on Kristy Orlowski to determine the most efficacious treatment for her;
- h. in failing to order proper tests to determine the course of Plaintiff's deteriorating condition and treat it appropriately; and
- i. in such other particulars as may be ascertained through discovery procedures undertaken pursuant to South Carolina Rules of Civil Procedure.

34. As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standards of care by Defendant C. Edward Creagh, M.D., Kristy Orlowski suffered from severe debilitating injuries which have resulted in her incompetent state due to the hypotensive episode and hypoxic condition which has caused physical suffering, severe physical, cognitive and emotional pain and distress, and has ultimately caused Kristy Orlowski's permanent and severely disabled physical and mental state, for which the Plaintiff is entitled to recover on Kristy Orlowski's behalf, actual, consequential, special and punitive damages in an amount to be determined by a jury at the trial of this action.

35. Defendant C. Edward Creagh, M.D. owed a duty of care to Kristy Orlowski which he breached by his negligence, carelessness, gross negligence, recklessness, and departure from the professional standards of care; and as a result Kristy Orlowski has suffered the following injuries and damages that she has experienced in the past and will continue to experience in the future:

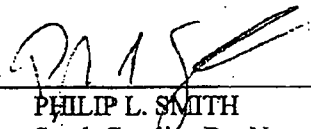
- a. chronic pain and suffering;
- b. substantial medical expenses;
- c. disfigurement;
- d. mental anguish;

- e. loss of enjoyment of life;
- f. loss of income and related benefits;
- g. need for full time medical and nursing care to assist her with her activities of daily living;
- h. permanent restrictions and impairments that make it impractical for her to care for even her most basic of personal needs; and
- i. for such other damages as may be identified during the course of this litigation as may be provided for by the laws of the State of South Carolina.

WHEREFORE, the Plaintiff, as Court appointed Guardian for Kristy Orlowski, is entitled to judgment against all Defendants, jointly and severally, for actual damages, consequential damages, special damages, and punitive damages in amounts to be determined by a jury in the trial of this matter, and for costs, and for such further relief as the Court deems appropriate. Plaintiff avers the amount in controversy exceeds \$100,000, said amount being made for the purpose of defining the scope of discovery to be allowed pursuant to the laws of the State of South Carolina.

Respectfully submitted,

SMITH LAW OFFICE, LLC
Attorneys for Plaintiff
1922 India Hook Road
Rock Hill, South Carolina 29732
Telephone: (803) 980-6565
Facsimile: (803) 980-7575

By: 

PHILIP L. SMITH
South Carolina Bar No.

Rock Hill, South Carolina
November 24, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Gladys Sims, as the Duly Appointed	)	
Guardian and Conservator of Kristy L.	)	Civil Action No.: 2009-CP-46-5178
Orlowski (a/k/a Kristy Wood),	)	
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER TO COMPLAINT
	)	
AMISUB of South Carolina, Inc., d/b/a	)	
Piedmont Medical Center; William	)	
Alleyne, MD; and C. Edward Creagh, MD,	)	
	)	
Defendants.	)	

Defendants William Alleyne, MD and C. Edward Creagh, MD answering the
Complaint of the Plaintiff would show the Court:

FOR A FIRST DEFENSE
Rule 12(b)(6)

1. The Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for which relief can be granted, and therefore, the Defendants move for dismissal pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure

FOR A SECOND DEFENSE
(General Denial)

2. The allegations of the First Defense are incorporated herein by reference.

3. Admits the allegations of Paragraphs 1 and 2 of the Complaint.

4. Admits the allegations of Paragraph 3, that Gladys Sims is the guardian and conservator of Kristy L. Wood Orlowski. It is further admitted that Kristy L. Wood Orlowski has

been adjudicated to be mentally incompetent, but denies that the incompetency is related to the events complained of in this Complaint.

5. Admits, upon information and belief, the allegations of Paragraph 4.

6. Admits the allegations of Paragraphs 5 and 6 of the Complaint.

7. The allegations of Paragraphs 7, 8, and 9 are not allegations relative to these Defendants, but are denied.

8. The allegations of Paragraph 10 are denied.

9. With respect to the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, said allegations are denied as being inconsistent with the facts of the case. Kristy L. Orlowski, a/k/a Kristy Wood, presented to Piedmont Medical Center on or about September 12, 2003 with a seizure, aspiration, and in respiratory distress following eclampsia. She went into respiratory failure, underwent an emergent C-section, became septic, suffered Acute Respiratory Distress Syndrome secondary to aspiration pneumonia. She required the use of a ventilator and numerous medications, intensive care hospitalization. She developed a tension pneumothorax and pleural effusion and remained hospitalized at Piedmont Medical Center, other than two (2) short discharges, through December 11, 2003. She developed methicillin-resistant staphalococcus aureus. On or about December 8, 2003, she arrested, suffered severe bradycardia, hypotension, acidosis, cardio-pulmonary collapse, septic shock, and was resuscitated through efforts directed by Defendant Creagh, and was subsequently transferred to Carolinas Medical Center for further treatment utilizing a jet ventilator. Upon information and belief, Kristy has been diagnosed with occipital and cerebral infarction secondary to hypotensive episode, superimposed critical illness, polyneuropathy secondary to sepsis, encephalopathy secondary to a

combination of Versed and morphine, as well as prior cerebral hypoperfusion secondary to sepsis. That at all times Kristy was gravely ill, not caused by any acts of medical negligence of these defendants.

10. With respect to the First Cause of Action, Paragraphs 21, 22, 23, 24, and 25, said allegations are not relevant to these Defendants, and are denied.

11. With respect to the allegations of the Second Cause of Action, Paragraphs 26, 27, 28, 29, and 30, said allegations are specifically denied.

12. With respect to the Third Cause of Action, Paragraphs 31, 32, 33, 34 and 35, said allegations are denied.

13. All prayers for relief are denied.

14. Each and every allegation not herein above admitted is denied and strict proof thereof is demanded.

FOR A THIRD DEFENSE
(Standard of Care)

15. The allegations of the First and Second Defenses are incorporated herein by reference.

16. At all times relevant to the matter set forth in the Complaint herein, this Defendant complied with generally accepted standards of medical care applicable to physicians rendering care to patients of the same or similar circumstances, and as a result thereof, these Defendants are in no way liable to the Plaintiff for the matter set forth in the Complaint.

FOR A FOURTH DEFENSE

(Estoppel)

17. The allegations of the First, Second, and Third Defenses are incorporated herein by reference.

18. The allegations of the Complaint are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE

(Release)

19. The allegations of the First, Second, Third, and Fourth Defenses are incorporated herein by reference.

20. The allegations of the Complaint are barred by the doctrine of release.

FOR A SIXTH DEFENSE

(Consent)

21. The allegations of the First, Second, Third, Fourth, and Fifth Defenses are incorporated herein by reference.

22. The allegations of the Complaint are barred by the doctrine of consent.

FOR A SEVENTH DEFENSE

(Waiver)

23. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are incorporated herein by reference.

24. The allegations of the Complaint are barred by the doctrine of waiver.

FOR AN EIGHTH DEFENSE

(OFFSET)

25. The allegations of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Defenses are incorporated herein by reference.

26. The Plaintiffs have recovered monies from other medical providers for the same injuries and damages to which they complain, and in that connection. Defendants assert offset, while denying any negligence, causation and damages, any recovery from the Defendants herein must be offset by monies recovered from other medical providers.

FOR A NINTH DEFENSE
(STATUTE OF LIMITATIONS)

27. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are incorporated herein by reference.

28. Any cause of action against these Defendants accrued more than three (3) years before the filing of the Complaint herein, and in that connection Defendants Alleyene and Creagh plead the provision of §15-3-545 South Carolina Code of Laws. This claim was not commenced within three (3) years after the events described in the Complaint. Moreover, at the time of the accrual of the claims in this action, Kristy L. Wood Orłowski was not a person under disability as defined by South Carolina Law and Defendants plead §15-3-50 South Carolina Code of Laws.

FOR A TENTH DEFENSE
(APPORTIONMENT)

29. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are incorporated herein by reference.

30. Should a verdict be brought back in favor of Plaintiff, these Defendants are entitled to a special verdict from apportioning liability and damages among the Defendants, pursuant to S.C. Code Ann. §15-38-15.

FOR AN ELEVENTH DEFENSE
(Due Process)

31. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are incorporated herein by reference.

32. The Plaintiff is not entitled to an award for punitive damages as an award of punitive damages violates the Commerce Clause and Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3, of the South Carolina constitution in that:

- (a) the judiciary's ability to correct a punitive damage award at the appellate level upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- (b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- (c) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- (d) even if it could be argued that a standard governing imposition of punitive damage exists, the standard is void for vagueness; and
- (e) the Plaintiff's claim for punitive damages violates the Commerce Clause and Due Process of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the Defendants.

WHEREFORE, having fully answered, Defendants William Alleyne, MD and C. Edward Creagh, MD pray that the Complaint be dismissed, for the costs of this action and for such other and further relief as the Court deems just and proper.

<SIGNATURE ON NEXT PAGE (7)>



H. Spencer King
The Ward Law Firm, P.A.
Attorneys for Defendants
William Alleyne, MD and
C. Edward Creagh, MD
233 South Pine Street
Spartanburg, SC 29302
(864) 591-2364

March 29th, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Gladys Sims, as the Duly Appointed	)	
Guardian and Conservator of Kristy L.	)	Civil Action No.: 2009-CP-46-5178
Orlowski (a/k/a Kristy Wood),	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED ANSWER TO COMPLAINT
	)	
AMISUB of South Carolina, Inc., d/b/a	)	
Piedmont Medical Center; and C. Edward	)	
Creagh, MD,	)	
	)	
Defendants.	)	
	)	

Defendant C. Edward Creagh, MD answering the Complaint of the Plaintiff would show the Court:

FOR A FIRST DEFENSE
Rule 12(b)(6)

1. The Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for which relief can be granted, and therefore, the Defendants move for dismissal pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure

FOR A SECOND DEFENSE
(General Denial)

2. The allegations of the First Defense are incorporated herein by reference.
3. Admits the allegations of Paragraphs 1 and 2 of the Complaint.

4. Admits the allegations of Paragraph 3, that Gladys Sims is the guardian and conservator of Kristy L. Wood Orlowski. It is further admitted that Kristy L. Wood Orlowski has been adjudicated to be mentally incompetent, but denies that the incompetency is related to the events complained of in this Complaint.

5. Admits, upon information and belief, the allegations of Paragraph 4.

6. Admits the allegations of Paragraphs 5 and 6 of the Complaint.

7. The allegations of Paragraphs 7, 8, and 9 are not allegations relative to these Defendants, but are denied.

8. The allegations of Paragraph 10 are denied.

9. With respect to the allegations of Paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21, said allegations are denied as being inconsistent with the facts of the case. Kristy L. Orlowski, a/k/a Kristy Wood, presented to Piedmont Medical Center on or about September 12, 2003 with a seizure, aspiration, and in respiratory distress following eclampsia. She went into respiratory failure, underwent an emergent C-section, became septic, suffered Acute Respiratory Distress Syndrome secondary to aspiration pneumonia. She required the use of a ventilator and numerous medications, intensive care hospitalization. She developed a tension pneumothorax and pleural effusion and remained hospitalized at Piedmont Medical Center, other than two (2) short discharges, through December 11, 2003. She developed methicillin-resistant staphalococcus aureus. On or about December 8, 2003, she arrested, suffered severe bradycardia, hypotension, acidosis, cardio-pulmonary collapse, septic shock,

and was resuscitated through efforts directed by Defendant Creagh, and was subsequently was transferred to Carolinas Medical Center for further treatment utilizing a jet ventilator. Upon information and belief, Kristy has been diagnosed with occipital and cerebral infarction secondary to hypotensive episode, superimposed critical illness, polyneuropathy secondary to sepsis, encephalopathy secondary to a combination of Versed and morphine, as well as prior cerebral hypoeffusion secondary to bradycardia. That at all times Kristy was gravely ill, not caused by any acts of medical negligence of these defendants.

10. With respect to the First Cause of Action, Paragraphs 21, 22, 23, 24, and 25, said allegations are not relevant to these Defendants, and are denied.

11. With respect to the allegations of the Second Cause of Action, Paragraphs 26, 27, 28, 29, and 30, said allegations are specifically denied.

12. With respect to the Third Cause of Action, Paragraphs 31, 32, 33, 34 and 35, said allegations are denied.

13. All prayers for relief are denied.

14. Each and every allegation not herein above admitted is denied and strict proof thereof is demanded.

FOR A THIRD DEFENSE
(Standard of Care)

15. The allegations of the First and Second Defenses are incorporated herein by reference.

16. At all times relevant to the matter set forth in the Complaint herein, this Defendant complied with generally accepted standards of medical care applicable to physicians rendering care to patients of the same or similar circumstances, and as a result thereof, these Defendants are in no way liable to the Plaintiff for the matter set forth in the Complaint.

FOR A FOURTH DEFENSE
(Estoppel)

17. The allegations of the First, Second, and Third Defenses are incorporated herein by reference.

18. The allegations of the Complaint are barred by the doctrine of estoppel.

FOR A FIFTH DEFENSE
(Release)

19. The allegations of the First, Second, Third, and Fourth Defenses are Incorporated herein by reference.

20. The allegations of the Complaint are barred by the doctrine of release.

FOR A SIXTH DEFENSE
(Consent)

21. The allegations of the First, Second, Third, Fourth, and Fifth Defenses are incorporated herein by reference.

22. The allegations of the Complaint are barred by the doctrine of consent.

FOR A SEVENTH DEFENSE
(Waiver)

23. The allegations of the First, Second, Third, Fourth, Fifth, and Sixth

Defenses are incorporated herein by reference.

24. The allegations of the Complaint are barred by the doctrine of waiver.

FOR AN EIGHTH DEFENSE
(OFFSET)

25. The allegations of the First, Second, Third, Fourth, Fifth, Sixth and Seventh Defenses are incorporated herein by reference.

26. The Plaintiffs have recovered monies from other medical providers for the same injuries and damages to which they complain, and in that connection. Defendants assert offset, while denying any negligence, causation and damages, any recovery from the Defendants herein must be offset by monies recovered from other medical providers.

FOR A NINTH DEFENSE
(STATUTE OF LIMITATIONS)

27. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are incorporated herein by reference.

28. Any cause of action against these Defendants accrued more than three (3) years before the filing of the Complaint herein, and in that connection Defendant Creagh plead the provision of §15-3-545 South Carolina Code of Laws. This claim was not commenced within three (3) years after the events described in the Complaint. Moreover, at the time of the accrual of the claims in this action, Kristy L. Wood Orłowski was not a person under disability as defined by South Carolina Law and Defendants plead

§15-3-50 South Carolina Code of Laws.

FOR A TENTH DEFENSE
(APPORTIONMENT)

29. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are incorporated herein by reference.

30. Should a verdict be brought back in favor of Plaintiff, these Defendants are entitled to a special verdict from apportioning liability and damages among the Defendants, pursuant to S.C. Code Ann. §15-38-15.

FOR AN ELEVENTH DEFENSE
(Due Process)

31. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are incorporated herein by reference.

32. The Plaintiff is not entitled to an award for punitive damages as an award of punitive damages violates the Commerce Clause and Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 3, of the South Carolina constitution in that:

- (a) the judiciary's ability to correct a punitive damage award at the appellate level upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;
- (b) any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- (c) the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;

- (d) even if it could be argued that a standard governing imposition of punitive damage exists, the standard is void for vagueness; and
- (e) the Plaintiff's claim for punitive damages violates the Commerce Clause and Due Process of the Fourteenth Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth and status of the Defendants.

FOR A TWELFTH DEFENSE
(Collateral Estoppel/Issue Preclusion)

33. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Defenses are incorporated herein by reference.

34. Plaintiff, in a previous case filed and tried before a jury in South Carolina, asserted medical negligence concerning the same events and damages at issue in Plaintiff's Complaint. A jury verdict was rendered in the previous case.

35. The Plaintiff has had her day in court; therefore, the allegations of this claim are barred by the doctrine of Collateral Estoppel.

FOR A THIRTEENTH DEFENSE
(Res Judicata/Claim Preclusion)

36. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Defenses are incorporated herein by reference.

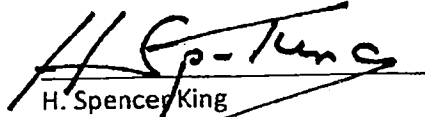
37. The allegations of the claim are barred by the doctrine of Res Judicata.

FOR A FOURTEENTH DEFENSE
(Splitting Causes of Action)

38. The allegations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Defenses are incorporated herein by reference.

39. The allegations of the Complaint are barred as Plaintiff's claims were previously tried before a jury; therefore, Plaintiff had her day in court and is barred from splitting the causes of action into two separate suits.

WHEREFORE, having fully answered, Defendant C. Edward Creagh, MD pray that the Complaint be dismissed, for the costs of this action and for such other and further relief as the Court deems just and proper.


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December GTU 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Gladys Sims, as the Duly Appointed	)	
Guardian and Conservator of Kristy L.	)	Civil Action No.: 2009-CP-46-5178
Orlowski (a/k/a Kristy Wood),	)	
	)	
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND
	)	MOTION PURSUANT TO RULE 12(C)
AMISUB of South Carolina, Inc., d/b/a	)	OR IN THE ALTERNATIVE TO RULE 56
Piedmont Medical Center; William	)	SOUTH CAROLINA RULES OF CIVIL
Alleyne, MD; and C. Edward Creagh, MD,	)	PROCEDURE
	)	
Defendants.	)	
	)	

To the Plaintiff herein and her attorneys:

You will please take notice that Defendants William Alleyne, MD and C. Edward Creagh, MD will move for dismissal of the Summons and Complaint herein and for judgment for these Defendants pursuant to Rule 12(c) for Judgment on the Pleadings or in the alternative Rule 56 for Summary Judgment, South Carolina Rules of Civil Procedure, no earlier than ten (10) days hence.

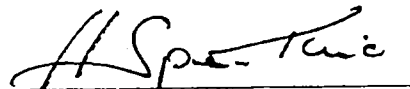
The basis of this Motion is the contentions of these Defendants that any cause of action Plaintiff has against these Defendants accrued on and after November 25, 2003, and no later than December 11, 2003.

That the foregoing action filed November 24, 2009 at the office of the York County Clerk of Court and served on the Defendants on or about March 4, 2010. The statute of limitations for causes of action as set forth in the Complaint herein is governed by §15-3-545 South Carolina Code of Laws, such action must be commenced within three (3) years, and cannot be extended for more than five (5) years §15-3-40, South Carolina Code of Laws. Plaintiff has not met the requisite filing and the Complaint and Summons should be dismissed.

Defendants further assert that while it is admitted that Kristy L. Wood Orlowski is a person under disability at the current time and has been so since on or about March 5, 2004, when adjudicated as such by the Probate Court for Chester County and subsequently reconfirmed by the Probate Court for York County on September 3, 2008. That Kristy L. Wood Orlowski was at the relevant times of November 24, 2003, through December 11, 2007, not a person under disability, that pursuant to §15-3-50 the statute of limitations would not be tolled.

Moreover, Defendants call attention to an action for the same damages filed by Christopher T. Orlowski, duly appointed guardian and conservator of Kristy L. Orlowski a/k/a Kristy Wood against Rock Hill Gynecology and Obstetrical Associates, P.A. and R. Normal Taylor, III, MD, filed August 24, 2006, C.A. No.: 06-CP-46-2213.

Said Motion will be supported by the allegations herein mentioned, such affidavits, evidence and other matters as may be hereinafter submitted by law and memorandum.



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April 13th, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Gladys Sims, as the Duly Appointed)
Guardian and Conservator of Kristy L.)
Orlowski (a/k/a Kristy Wood),)
Plaintiff,)
v.)
AMISUB of South Carolina, Inc., d/b/a)
Piedmont Medical Center; William)
Alleyne, MD; and C. Edward Creagh, MD,)
Defendants.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-46-5178

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION PURSUANT TO SCRPC 12(c)
OR IN THE ALTERNATIVE SCRPC 56**

- 1. The statute of limitations for Plaintiff's medical malpractice causes of action were tolled by her disability as provided by S.C. Code Ann. § 15-3-40.**

Gladys Sims, as Kristy Orlowski's Guardian and Conservator, filed a suit on November 24, 2009, alleging that Defendants provided negligent medical treatment in November and December 2003. South Carolina has a three year statute of limitations applicable to medical malpractice claims. S.C. Code Ann. § 15-3-545(A). However, the statute of limitations may be tolled for up to five years if a claimant is a minor or "insane." S.C. Code Ann. § 15-3-40. The five year tolling period under the disability statute does not simply state a five year limit on filing an action. Instead, the tolling provision extends the period in which a claimant may file a claim by five years. Harrison v. Bevilacqua, 354 S.C. 129, 140, 580 S.E.2d 109, 115 n. 5 (2003). Therefore, for a medical malpractice cause of action, the three year statute of limitations may be extended by five years for a qualifying disability and a claimant may be permitted to file up to eight years after the date when the cause of action accrued.

Kristy Orlowski was left in an “insane” condition by Defendant’s medical treatment.

For purposes of the tolling statute, “insane” refers to “a mental condition which precludes understanding the nature or effects of one’s acts, an incapacity to manage one’s affairs, an inability to understand or protect one’s rights, because of an over-all inability to function in society.” Wiggins v. Edwards, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Kristy Orlowski was admitted to Piedmont Medical Center multiple times in November-December 2003. (Comp. ¶ 11-14). On December 8, 2003, while in Defendants’ care, Kristy Orlowski’s condition continued to deteriorate to the point that Kristy suffered cardiopulmonary arrest. (Comp. ¶ 18). As a result of her worsening condition, Kristy suffered permanent hypoxic encephalopathy and other mental disabilities that prevented her from caring for herself. (Comp. ¶ 19-20). Kristy’s condition continues to this day and has left her incapable of managing her own affairs.

Indeed, based on the affidavit of Gladys Sims, attached hereto as Exhibit A, Kristy met the legal definition of insanity as early as September 12, 2003, the date of Kristy’s first seizure that led her into Piedmont to begin with.

While Defendants claim that Plaintiff’s insanity did not arise until a formal adjudication on March 5, 2004, nothing in the Wiggins “insanity” definition requires an adjudication of incompetency. Instead, the definition focuses on whether the person in question is able to function in society. Wiggins, 314 S.C. at 129, 442 S.E.2d at 170. Clearly, based on the allegations of the complaint as well as the Sims Affidavit, Kristy could not function in society as of September 12, 2003.

Additionally, in defining “insanity,” the Wiggins court referred to a treatise citation entitled, “Proof of unadjudged incompetency which prevent running of statute of limitations.” 314 S.C. at 129, 442 S.E.2d at 170-71. Other states interpreting disability tolling statutes have

not required an adjudication of incompetency. E.g. Freeman v. American Motorists Ins. Co., 53 S.W.3d 710, 713 (Tex. App. 2001); Rockwell v. Preferred Risk Mut. Ins. Co., 710 So.2d 388, 390 (Miss. 1988).

Plaintiff's "insanity" for purposes of the disability tolling statute began at the point where Defendant's medical treatment left Plaintiff in a mental state where she was unable to manage her own affairs. This point in time occurred shortly after the September 12, 2010e when Kristy suffered her first seizure and wax wand waned until her massive problem in December, 2003. . Therefore, there was not, as Defendants suggest, a three month period between accrual of Plaintiff's claims and the onset of her disability. Plaintiff's permanent disability arose immediately after and as a direct result of negligent medical treatment by Defendants. Plaintiff was entitled to up to five years of tolling under § 15-3-40 starting from that point. Since the statute of limitations did not begin to run until late 2008, Plaintiff's November 2009 complaint was not filed out of time and Defendant's motion on this ground must fail.

2. A literal interpretation of S.C. Code Ann. § 15-3-50 is inequitable since Plaintiff's disability was caused by Defendants' tortious behavior.

As an alternative, and based on the allegations in the Complaint, Plaintiff contends her disability began at the point of accrual for her malpractice claims as Plaintiff was rendered disabled during her treatment by Defendants. However, even if the court determines that Plaintiff's disability arose simultaneously when her claims accrued, Plaintiff is still entitled to disability tolling. S.C. Code Ann. § 15-4-50 limits application of the disability tolling statute to instances where the disability "existed when [the claimant's] right of action accrued." It does not appear that South Carolina courts have addressed the applicability of this simultaneous disability requirement to situations like Kristy Orlowski's where the plaintiff's disability was caused by the

defendant's actions that serve as the basis for the cause of action and where the disability arose very shortly after the point of accrual. However, courts from state and federal jurisdictions around the country have held that refusal to permit disability tolling in situations like Kristy Orlowski's is inequitable and contrary to the legislative purpose for the simultaneous disability requirement.

Many courts have concluded that a plaintiff is entitled to disability tolling even though the qualifying disability arose shortly after the point of accrual. In fact, an Illinois federal court surveying the landscape of the law in this area concluded, "A majority of the state courts that have addressed the issue have adopted the principle that the tolling statute applies to mental incompetency resulting from and closely following the tortious conduct." Prady v. US, 548 F. Supp. 682, 683 (S.D. Ill. 1982) (collecting cases). In other words, disability tolling should apply to "plaintiffs rendered insane by the occurrence which is the basis for the suit." Graboi v. Kibel, 432 F. Supp. 572, 578 (S.D.N.Y. 1977).

It is inequitable to permit Defendants to assert the statute of limitations as a defense when Defendants' actions were the reason Plaintiff was rendered unable to pursue a claim within the statutory period. The New Jersey Supreme Court has held that a defendant who causes a plaintiff to become "insane" for purposes of the disability tolling purposes "should not be permitted to cloak himself with the protective garb of the statute of limitations." Kyle v. Green Acres at Verona, Inc., 207 A.2d 513 (N.J. 1965). In Klamm Shell v. Berg, 441 P.2d 10 (Colo. 1968), the court refused to apply the simultaneous disability requirement even though the plaintiff's mental incompetency did not arise until several months after the defendant's assault. The court found the defendant's assertion of the statute of limitations to be "unconscionable" considering his own actions and held that, under these and similar circumstances, "courts properly may turn to

estoppel or fashion an equitable exception to the statutory limitations period.” Klamm Shell, 441 P.2d at 13. A consideration of the equities in this type of case is similar to cases where the defendant conceals information from the plaintiff or otherwise intentionally prevents the plaintiff from pursuing a claim. See Corsey v. State, 375 So.2d 1319, 1323 (La. 1979).

Additionally, the simultaneous disability requirement was not intended apply to claims like Kristy Orlowski's. In Nagell v. US, 1982 U.S. Ct. Cl. LEXIS 2377, the court noted that the legislative purpose for the simultaneous disability provision of a federal disability tolling statute (28 U.S.C. § 2501) was to prevent a plaintiff from gaining extra time “by virtue of a disability which sets in after the events giving rise to the cause of action.” The Nagell court noted that “mental conditions which are related to the cause of action” have been treated differently for purposes of the disability tolling statute. Nagell, 1982 U.S. Ct. Cl. LEXIS 2377, at *74; see also Corsey, 375 So.2d at 1323 (distinguishing between later arising mental disabilities connected to the underlying cause of action from disabilities that are not). For later arising disabilities related to the cause of action, the defendant's actions causing the disability justifies any advantage gained by the plaintiff in the form of additional time to file. Additionally, after examining the New Jersey counterpart to South Carolina's disability tolling statute, the Kyle concluded that no rational legislature could condone an interpretation that denied tolling when the later arising disability was caused by defendant's tortious conduct. 207 A.2d at 519 n. 4.

A strict interpretation of § 15-3-50 creates harsh and inequitable results for litigants like Kristy Orlowski. Several courts have refused to apply the simultaneous disability rule when the disability arose and the claim accrued on the same day. Pannell v. Glidewell, 111 So. 571 (Miss. 1927); Nebola v. Minnesota Iron Co., 112 N.W. 880 (Minn. 1907). Other courts have permitted tolling when the disability arose days or even months after the plaintiff's cause of action accrued.

Klamm Shell, 441 P.2d at 13 (several months); Kyle, 207 A.2d at 514 (signs of mental illness progressed in months following accrual). For these courts, the most important factor was that the plaintiff was not able to exercise his right to sue and that the plaintiff “was led not to do so by defendant’s act.” Kyle, 207 A.2d at 519.

Recently, the West Virginia Supreme Court examined this issue. Citing many of the cases discussed above as persuasive authority, the court refused to apply the statute of limitations when the plaintiff’s disability arose several days after the cause of action accrued. Worley v. Beckley Mech., Inc., 648 S.E.2d 620 (W.Va. 2007). The court was concerned that a “strained literal interpretation” of the disability tolling statute could exclude suits by litigants that the statute was intended to protect. Id. at 625. Specifically, the court found that insanity tolls the statute of limitations when “the interval between the tortious act and the resulting mental illness was so brief that the plaintiff, acting with diligence, could not reasonably have taken steps to enforce his or her legal rights during such an interval.” Id. at 626.

In the present case, Kristy Orlowski’s “insanity” arose very shortly after Defendants’ negligent medical treatment. Additionally, Defendants’ negligent medical care was the direct cause of Kristy’s “insanity.” This is not an instance where the plaintiff is seeking an extension of time based on a health problem completely unrelated to the cause of action. If Defendants had provided Kristy Orlowski treatment that met the standard of care, then Kristy would not have to face her current medical condition. As it stands, however, Defendants provided sub-standard care and, as a direct result, Kristy was rendered completely incapacitated shortly thereafter. To permit a statute of limitations defense in this case would raise the same equity and legislative intent problems discussed by the courts in the cases mentioned above. Based on the discussion above,

the court should permit tolling for Kristy Orlowski's medical malpractice claim pursuant to S.C. Code Ann. § 15-3-40.

3. Plaintiff is entitled to equitable tolling because of extraordinary circumstances that prevented filing suit within the statutory period.

Equitable tolling is a judicially created doctrine to suspend a limitations period to "ensure fundamental practicality and fairness." Hooper v. Ebenezer Senior Serv. & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009). Different courts have attempted to enumerate the instances where equitable tolling is appropriate. For example, some courts permit equitable tolling when the plaintiff has faced "extraordinary circumstances outside of the plaintiff's control mak[ing] it impossible for the plaintiff to timely assert his or her claim." Id. at 116, 687 S.E.2d at 33 (citing Kaplan v. Morgan Stanley & Co., 987 A.2d 258 (Vt. 2009)). South Carolina courts, however, are not bound to a set list of instances where equitable estoppel is appropriate. Instead, South Carolina courts may apply the doctrine when "to deny it would permit one party to suffer a gross wrong at the hands of the other." Hooper, 386 S.C. at 117, 687 S.E.2d at 33.

In this case, Kristy Orlowski faced extraordinary circumstances that prohibited her from filing her claims within the statutory period. Specifically, the serious mental and physical injuries she faces as a result of Defendants' negligent care prevented Kristy from pursuing her claim the way a litigant would be expected to do under normal circumstances. Should the court refuse to toll the statute of limitations and grant Defendants' motion to dismiss, Kristy Orlowski would suffer a gross wrong. Kristy, through her legal representative, would be precluded from pursuing a meritorious claim against the parties that caused her severe and permanent injury. Additionally, that "gross wrong" would occur at the hands of the defendant as Defendants' actions are the

cause in fact of the condition that prevented Kristy from pursuing her claim. Under the standard articulated in Hooper, the court should grant equitable tolling for Plaintiff's claim.



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Attorney for Plaintiff

June 11, 2010
Rock Hill, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Gladys Sims, as the Duly Appointed	)	
Guardian and Conservator of Kristy L.	)	Civil Action No.: 2009-CP-46-5178
Orlowski (a/k/a Kristy Wood),	)	
	)	
Plaintiff,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO DISMISS PURSUANT
v.	)	TO RULE 12(C) OR IN THE ALTERNATIVE
	)	RULE 56 SOUTH CAROLINA RULES OF
AMISUB of South Carolina, Inc., d/b/a	)	CIVIL PROCEDURE
Piedmont Medical Center; William	)	
Alleyne, MD; and C. Edward Creagh, MD,	)	
	)	
Defendants.	)	

William Alleyne, M.D. and C. Edward Creagh, M.D., are partners in the field of Pulmonology and Critical Care. They are defendants in a civil action filed by Gladys Sims, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski (a/k/a Kristy Woods). Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center is also a Defendant. The action was commenced first by Phillip Smith, a Rock Hill attorney, and then transferred to McGowan and Hood, Attorneys in Rock Hill. The action was which was filed November 24, 2009 and served on March 2, 2010. These Defendants move to dismiss for failure to file within the three-year time allowed pursuant to South Carolina Statute of Limitations §15-3-545 South Carolina Code of Laws.

Kristy Wood Orlowski had filed an earlier case in August of 2006, against Rock Hill Gynecology and Obstetrics Associates and R. Norman Taylor, M. D., CA 2006-CP-46-2213. The case went to trial and resulted in a Defendants' verdict, but a high/low was in place and the Plaintiff recovered \$300,000.00. In the earlier case, Kristy, was seen by Rock Hill Gynecology and Obstetrics Associates during her pregnancy. She had various problems and on the morning of September 12, 2003 was found unresponsive and taken to Piedmont Hospital. She suffered a seizure, aspiration, and hypoxia. According to that complaint she suffered severe and permanent neurological deficits.

In this complaint, Kristy Wood Orlowski alleges that she was discharged by Dr. Alleyne on November 24, 2003, from Piedmont Medical Center and returned the following day for shortness of breath, severe chest pain and was admitted by Dr. Creagh, with a diagnosis of left pleural effusion. She was treated and discharged and readmitted on November 30, 2003 with hydropneumothorax in the left upper lobe and a thoracoscopy in the left lung decortication with wedge resection of the lung performed. She was infected with MRSA and was hemodynamically unstable. She suffered with hypotension and required pressors on December 8, 2003. She then

suffered cardio-pulmonary arrest. She was transferred to Carolinas Medical Center in Charlotte, North Carolina on orders by Dr. Creagh on December 11, 2003. Despite multiple medical problems, she was not "insane."

Kristy first came before the Probate Court in Chester County. Her then husband ,Christopher T. Orłowski, petitioned for conservator claiming that she was incapacitated. He was appointed as conservator on March 5, 2004. After a divorce, the Conservatorship was transferred to York County, and York did a reappointment of Gladys Sims, Kristy's mother.

We contend that the Statute of Limitations §15-3-545 South Carolina Code of Laws is applicable and that the action would have to have been commenced before November 24, 2006. The Complaint was clocked November 24, 2009, and served upon these defendants March 4, 2010.

§15-3-40 South Carolina Code of Laws provides a tolling of the statute to persons under disability, with disability being limited to infants and persons insane. We argue Kristy was neither.

§15-3-50 South Carolina Code of Laws provide no person shall avail himself of a disability unless it existed when the cause of action occurred.

The Courts have held that a physical disability or confusion or disorientation are not insanity or such disability as to toll the statute (Wiggins v Edwards 314 SC 126, 442 SE 2d 169 (1994)).

Moreover, insanity or mental incompetency that tolls the statute limitations consist of a mental condition which precludes understanding the nature or affects of one's acts, incapacity to manage one's affairs, an inability to understand or protect one's rights because of an overall inability to function to in society, or the mental condition as such to require care in a hospital. (Wiggins, supra). Kristy's treatment by Defendants in November-December 2003 does not qualify as a "person under disability" but does create the date the cause of action accrued.

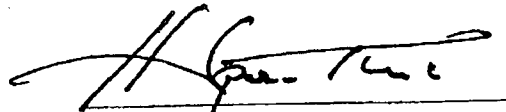
Thus, the earliest time that Kristy could have been considered to be "insane" would be March 5, 2004, the date of the appointment of a conservator by Chester County. §15-3-50 South Carolina Code of Laws provides that no person should avail themselves of a disability unless it existed when the right of action accrued. Moreover, the Plaintiff had earlier commenced the first action (2006-CP-46-2213) by her Conservator in August 2006. The logic for protecting a disabled or insane person fails once a Conservator is appointed.

Even assuming the time the cause of action accrued, Kristy was deemed to be a person under disability or "insane" and the Statute of Limitations would have begun to run on March 5, 2004, with the appointment of Christopher T. Orłowski, by the Probate Court for Chester County, The Honorable Lois H. Roddy, Probate Court Judge.

The South Carolina Probate Code specifically provides that a conservator as set forth in §62-5-424 South Carolina Code of Laws, including Paragraph 17.

"Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties." Specifically, the authority to settle claims in favor of the minor or the incapacitated party requires the conservator as petitioner seek approval of any settlement with the Probate Court (§62-5-433 South Carolina Code of Laws).

RESPECTFULLY SUBMITTED:



H. Spencer King
The Ward Law Firm, P.A.
Attorneys for Defendants
William Alleyne, MD and
C. Edward Creagh, MD
233 South Pine Street
Spartanburg, SC 29302
(864) 591-2364

Date: June 14, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Gladys Sims, as the Duly Appointed)
Guardian and Conservator of Kristy)
L. Orlowski (a/k/a Kristy Wood),)
)
Plaintiff,)

vs.)

Amisub of South Carolina, Inc., d/b/a)
Piedmont Medical Center; William)
Alleyne, MD; and C. Edward Creagh,)
MD,)
)
Defendants.)

NOTICE OF MOTION OF AMISUB OF
SOUTH CAROLINA, INC., d/b/a
PIEDMONT MEDICAL CENTER TO
DETERMINE THE SUFFICIENCY OF
OR STRIKE A PORTION OF
PLAINTIFF'S RESPONSES TO
REQUESTS TO ADMIT

C. A. No. 2009-CP-46-5178

TO: JOHN EVERSOLE, III and CHAD McGOWAN, Attorneys for Plaintiff

PLEASE TAKE NOTICE that Defendants Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, William Alleyne, MD, and C. Edward Creagh, MD (collectively "Defendants"), through their undersigned attorneys, will jointly move, on the tenth (10th) day after service hereof, at 10:00 a.m., or as soon thereafter as counsel can be heard, before the presiding Judge of the Court of Common Pleas for York County, at such place as shall be designated by the Court, for an Order determining the sufficiency of Plaintiff's responses to Defendants' Requests to Admit or, in the alternative, striking a portion of Plaintiff's responses thereto.

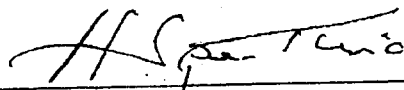
More particularly, this Motion shall be made on the following grounds:

- (1) On September 19, 2011, Defendants jointly served upon Plaintiff's counsel a set of Requests to Admit. See Exhibit A (excluding the exhibit(s) attached to the Requests to Admit when sent to Plaintiff).

- (2) On November 3, 2011, Plaintiff's counsel served upon Defendants Responses to said Requests to Admit. See Exhibit B. Within each Response submitted by Plaintiff, Plaintiff includes the following sentence: "Plaintiff denies this testimony has any relevance to the issue in the case at bar" (hereinafter, the "Statement").
- (3) In no way do any of the Requests to Admit propounded by Defendants set forth a request to admit or deny the relevancy of any issue. Additionally, the question of relevancy is not an issue to be determined by a party to litigation. Instead, "It is well settled in this state that the question of relevancy is largely within the trial judge's discretion...." Merrill v. Barton, 250 S.C. 193, 195, 156 S.E.2d 862, 864 (1967).
- (4) Whether Plaintiff's Statement is to be considered an answer, objection, or denial, Defendants are entitled to have the sufficiency of this response determined in accordance with the respective requirements of an answer, objection, or denial as set forth in Rule 36(a), South Carolina Rules of Civil Procedure. Alternatively, Defendants are entitled to have the Statement stricken from each and every response as insufficient or non-responsive.

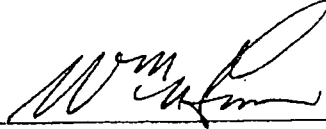
The said motion will be made pursuant to Rules 36 and 37 of the South Carolina Rules of Civil Procedure and, in addition to the above-requested relief, moving Defendants will seek an Order of the court awarding all costs, attorneys' fees and expenses associated with the preparation, service, filing, and argument of this motion pursuant to Rules 36(a) and 37(a)(4) of the South Carolina rules of Civil Procedure.

THE WARD LAW FIRM, P.A.

By: 
H. Spencer King
233 South Pine Street
Spartanburg, SC 29302

Attorney for Defendants William Alleyne, MD and
C. Edward Creagh, M.D.

HOLCOMBE BOMAR, P.A.

By: 

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Carolina, Inc., d/b/a Piedmont Medical Center

Spartanburg, SC

November 17, 2011

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

SIXTEENTH JUDICIAL CIRCUIT

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy L.
Orlowski (a/k/a Kristy Wood),)

Civil Action No.: 2009-CP-46-5178

Plaintiff,)

DEFENDANTS' REQUESTS TO ADMIT

v.)

AMISUB of South Carolina, Inc., d/b/a
Piedmont Medical Center; William
Alleyne, MD; and C. Edward Creagh, MD,)

Defendants.)

TO: JOHN EVERSOLE AND CHAD MCGOWAN, ATTORNEYS FOR

PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendants, AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center; William Alleyne, MD; and C. Edward Creagh, MD request that Plaintiff admit or deny the following matters of fact, in writing and under oath, within 30 days from the date of service, to the office of The Ward Law Firm, P.A., 233 South Pine Street, P. O. Box 3188, Spartanburg, South Carolina 29304, or if the party refuses to admit the truth of the same, Defendants will apply to the Court for the costs incurred in proving the truth of the same at the trial of this matter.

1. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: Is anything inconsistent in that of how she is today actually and what happened to Breanna with her having eclampsia on the 12th?"

Answer: "No, I believe that she eclampsia and I think that is essentially the consensus of the opinion that that is in fact what she had. She had eclampsia which is really preeclampsia in which you have essentially seizures or convulsions as a result and that is called eclampsia. And the problems associated with that can be horrific as in fact I believe what happened here."

2. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: Did you review any CT Scan reports that indicate there would be any other reason for a seizures other than eclampsia?

Answer: No, I think it is the general consensus is my understanding of the accumulated records and depositions that the ultimate diagnoses caused her the seizures, the neurologic injury and the other consequences including the oxygen deprivation to herself and the baby are all related to eclampsia."

Question: And is your opinion within a reasonable degree of medical certainty that the eclampsia that Kristy Wood suffered the next day related to the signs and symptoms that Doctor Taylor saw in his office on September 11th 2003?"

Answer: Do I have an opinion?

Question: Yes, sir.

Answer: I have an opinion.

Question: And what is your opinion?

Answer: And I believe they are directly related to that and yes they require different care."

3. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff.

"Question: Just a few more questions, actually three more. Within a reasonable degree of medical certainty, Doctor, just so that I'm clear, would the care and treatment that you have given us an opinion of that is required by Kristy Wood, was required by Doctor Taylor when he was treating Kristy Wood would that have prevented the preeclamptic episode she suffered on the 12th?

Answer: Do I have an opinion? Yes I have an opinion.

Question: Within a reasonable degree of medical certainty what is that opinion?

Answer: I believe it would have; I believe it would have prevented the seizure and reasonably I think it would have prevented the seizure."

4. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: And, Doctor Schiffrin, had Doctor Taylor met the standard of care do you have an opinion within a reasonable degree of medical certainty whether Kristy Wood would be well today; whether Breanna would be well today and be a little girl growing up?

Answer: I believe that it is most probably that both of them would have been; would have survived intact."

5. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Stephen Pliskow, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: "Okay, Can you tell the jury a little bit from your stand point as a board certified obstetrician what happened to her on the 12th the next day?

Answer: Starting at mid night or where do you want me to start?

Question: Start from like what we know from the record.

Answer: From the Piedmont record?

Question: Start from when the EMT's arrived. Put it that way for right now.

Answer: Well when the EMTs arrive the blood pressure was very high. It's in the 180's, 190's over 140's very high. She had seized, she had become eclamptic, she had aspirated. It looks like she probably had aspirated there was vomit where she was laying on the floor and into the garbage pail next to her. The EMT took her to the hospital, there sh had suffered a hypoxic injury.

Question: What does that mean hypoxic injury?

Answer: Low Oxygen. She had low oxygen in her blood because of the seizure, because of the aspiration she wasn't getting enough oxygen into her blood stream. The baby was in - - we don't use the term fetal distress any more but the baby was in trouble had non-reassuring fetal heart tracings and bradycardia."

6. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Stephen Pliskow, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: Within a reasonable degree of medical certainty were all of Kristy's problems; medical problems, were they caused by the eclamptic episode on September 12th?

Answer: Yes they were. Kristy eventually went home after her recovery from the seizure at Piedmont but was never really well. She was having chest pains and difficulty breathing, panic attacks. Went back to the hospital for a two day stay only one or two days after she had gone home. She really wanted to go back home. They sent her home and subsequently two days later was put right back in the hospital. She was diagnosed with an empiema which is an abscess or an infection on the outside of the lungs and that was from the tube, the breathing tube that she had because - - Well the chest tubes that she had because when she was admitted with the eclampsia and had the aspiration of pneumonia she wound up developing pneumothorax. Pneumothorax is basically when the lungs collapse. And the way they treat that is they put chest tubes in they suck the air out of the chest wall and allows the walls of the lungs to re-expand. So those cites from the foreign bodies that were in her chest cavity wound up getting infected and those got infected with MRSA so that was defiantly related to the hospitalization. Also she wound up with pseudopneumonia. Pseudopneumonia is not a normal pneumonia that you would get community acquired. It's something that you definitely see hospital acquired and that's from her being incubated for a long time. Having had

aspiration pneumonia so the answer is yes her readmission to Piedmont, her subsequent cardiac arrest during that admission and then her transfer to CMC the Carolina's Medical Center was all related back to her eclamptic seizure.

Question: Doctor, within a reasonable degree of medical certainty were Breanna's problems leading up to her passing away caused by the eclamptic episode on September 12th that we discussed?

Answer: Yes they were.

Question: Within a reasonable degree of medical certainty could all of that in your opinion Breanna's death, all of Kristy's problems that she has today been prevented by hospitalization of Kristy Wood on September 11, 2003?

Answer: Yes, I believe that if she was admitted on the 11th within a reasonable degree of medical certainty she would have been delivered before the seizure. But even if we say that she would have seized in the hospital she would have been fine. Most patients more likely than not patients that seize in the hospital with the medical care that we have for them there they do much better and she would be fine."

7. Admit that Oliver Wood, was Plaintiff's Expert Witness on Economics, called in the evaluation of economic loss allegedly resulting from the medical negligence of Defendant Taylor, and in questioning by John Eric Fulda, Esquire, Attorney for Plaintiff, answered as follows:

"Question: Dr. Wood, if I could just to get you to continue on and started telling us what you relied upon at that point in getting here today?

Answer: Okay. According to Mr. Hinson at the time of the incident Ms. Orlowski worked as an administrative assistant and there was a reasonable degree of certainty that she would continue as an administrative assistant. According to Mr. Hinson it is reasonably believe upon research and review of the national and state data that her annual income would approach Twenty-eight Thousand, Three Hundred Dollars about Thirteen Dollars an hour per wages for secretaries excluding legal, medical and executive secretaries. According to Mr. Hinson she had been unable to work since September -03. Its assumed that had she not be injured she would have returned to work at approximately January '04 and that leaves a period of time for maternity leave. I'm assuming it would take her about three years to approach the income level opined by Mr. Hinson. I'm assuming she's unemployed with the weather market. With respect to extraordinary care in this case I interviewed Ms. Sims her mother from approximately '04 to

July of '06 she provided an average of fourteen hours a day of extraordinary care. Extraordinary care is defined as care above and beyond ordinary care but in this case it's not a husband and wife relationship so it's all extraordinary care. I value that at Sixteen Dollars and Seventy-three cents and that's the mean hourly wage for licensed practical nurses in South Carolina. Also I reviewed the life care plan prepared by Ms. Hollenbeck, she is a life care planner, Master's Degree, Certified Life Care Planner, Certified Case Manager. Those are the facts that I took into account.

Question: Based on these facts, Doctor Wood, do you have an opinion to a reasonable degree of economic certainty as to the past and future economic loss of Kristy Wood?

Answer: Yes.

Question: And have you prepared any charts to show the jury today?

Answer: Yes."

Mr. Fulda continued and Dr. Wood responded:

Answer:: The first chart looks at the economic loss from September of '03 through April 20th of '09. It's been a period of 5.60 years. The first element is earning capacity. Earning capacity is what a person is capable of earning in the highest achievement. She was evaluated as being an administrative assistant. There is no economic loss for the rest of that year. It's assumed she had been out on maternity leave. Beginning in '04 at Ten Dollars an hour Twenty Thousand Dollars in that year assuming she works fifty weeks a year at forty hours a week. I then advanced her to the level in three years which was a medium for administrative assistants. The loss per year as you can see Twenty-Two Thousand, Four Fifty-six; Twenty-five, Two Fourteen; Twenty-eight, Three Hundred; Twenty-eight, Three Hundred; Eight-four, Ninety so far for a total of a Hundred and Thirty-two, Seven sixty.

The second element looks at extraordinary care provided by Ms. Sims. What was the value of that? It was a period of time before she was out and that wouldn't be until the beginning of the year of '04 so I assume no loss for that time she was involved in other care facilities. The using what Ms. Sims told me was fourteen hours a day the cost of replacing that care the balance of '04 Forty-two Thousand, Eight-five the next year; Forty-two. And then she said it dropped to ten hours a day. So many hours a week it dropped down to Sixty-Thousand for two years. That total is

Three Hundred and Forty-one Thousand, 0-2-4. And the sum of these two you get Four Seventy-three, 7-8-4.

The second chart looks at Kristy's earning capacity from now to the future. I assume that Kristy would receive only a cost of living increase of 2.7 per cent a year. That's what the CPI increase is per year over the last sixteen years. I've given her no promotions, no merit increases, no productivity increases, only a cost of living; so if you gave a person just cost of living increases they stay flat in terms of real income. Over this period of time from now until her normal social security retirement age she would have been expected to earn Two Million Dollars. However our court system requires that if we have to look at money and closing in the future we have to be evaluated now, money and closing in the future we have to be evaluated now. They have to be discounted to what is known as the present cash value. I've discounted these at the rate of Five Percent compounded annually. So that means as we stand here today the present value of her future earning capacity is Seven Hundred and Twenty-seven Thousand, Nine Fifty-two. That plus interest would replace that income over the next forty years.

Chart Number Three looks at medical expenses. We have a life care plan in this case. Looking at historical medicare cost go back to 1960 this data is collected by the Federal Bureau of Vital Statistics that index was Twenty-two point three. In order to give it meaning I set that at an even hundred and then tracked that index over the last forty-eight years. So what cost a hundred dollars in the medical area in 1960 by the year 2000 cost One Thousand, One Hundred and Eight-nine Dollars. By the year 2008 it cost Sixteen hundred and Thirty-two Dollars. So that means within a sixteen fold increase of medical care cost and we've all witnessed that in terms of prescription drugs, hospitalization cost, doctor charges and so forth.

Within the Bureau of Labor and Statistics the General Medical Care Index there are certain subgroups in that; Subgroups dealing with physician services. Over the last sixteen years that's increased to three point six three percent over the year compounded. Physician's services meaning the test that they charge you in their office and that's increased to three point four four percent. I'm always said doctors are pretty good economist; they mark up their test. Now the way they mark up their fees not in line by prescription drugs and medical supplies one point one eight percent. The only way I can explain why this is so much low is I think imports keep the lid on these kinds of things here. Services of other medical professionals two point eight two. Prescription medications three point six. Nonprescription medical equipment one point three. And then medical

care services down here four point four nine. This is professional medical services, hospital services, nursing home services and health insurance and so forth four point four nine which is a little bit above the General Index. The General Index is pulled down because we do have a couple of items in there that are fairly low.

In as case involving catastrophic injury you have what is know as a life care plan. Ms Hollenbeck prepared a life care plan. What the life care planner does is to get all the medical records; interview the physicians and based on their education and training create a plan to care for the person over the rest of their life called a Life Care Plan. I've taken a long document and reduced it to a couple of pages. Now here are the different dimensions of a life care plan. You have the element. Frequency, that means how often you need it. Periodic Cost and Duration, how long you will need it. I's not going over every element because you can read. The first one is a Home Accessibility Evaluation..That's a one timer because you only need to look at that one time. It cost a Hundred and Twenty-five Dollars and it takes place this year.

Occupational Care Evaluation: That's an annual deal again One Twenty-five. Physical Therapy Evaluation: Annual deal One Twenty-five. Now here in Category B Projected Therapeutic Modalities: OT, PT. Occupational, Physical Therapy per year cost as you can see Two Thousand, Twenty-eight Hundred. That's a life time deal.

Wheelchair Mobility: Here you have the reclining manual wheelchair. That's replaced every five years at a cost of Two Thousand Dollars current value. The Roll-in Shower Chair replaced every five years. And then the next item is the Wheelchair and Shower Chair Maintenance so much per year.

And then you have various wheelchair accessories that are replaced every one to two, five to seven, so forth and so on. Again that's a life time deal.

Orthotics/Prosthetics once every two years.

Durable Medical Items. As you can see Rolling Hydraulic/Electric Patient Lift replace ever seven years Three Thousand. And you can read down through there those other items.

G is Aids for Independent Function. That would be such things as a chair, commode chair, door jam."

Interruption by Jury Foreman.

Testimony resumes.

"And you see there are five items there. They are replaced generally - - Here there are several a one timer and then these others are every five years.

All right supplies. Depend Underwear and underwear is an annual deal of Eleven Sixty-nine. Miscellaneous Supplies, Washable Bed Pads, those as you can see are life time deals.

Medications. She needs a variety of medications. There are eleven items here. The first one is Amantadine for four years. The rest for life or nine years or four years.

Home Care. She's go an architectural modification one timer, Twenty-one Thousand, Two Fifty.

Facility Care. Adult Daycare Twelve Thousand, Seven Hundred. Adult care Transportation.

Future medical Care. Follow up visits with her physiatrist Seven Thirty-four a year.

Transportation. Wheelchair accessible van. The way I treated the van was I took the cost of the van and then I subtracted the cost of a normal car in order to force out what was the extra cost of having the van above and beyond a normal car someone would drive. And then you have various maintenance fees and so forth.

Acute Medical Intervention. You can see as an annual one here for the monthly Baclofen pump refills Fourteen Thousand Dollars. And then other various things.

And here is the most expensive thing in the plan and that is Attendant Care. Attendant care annual cost is Fifty-seven Thousand Dollars and that's a life deal.

Lastly is Case Management. When you have a plan like this that is so complicated you need a medical care coordinator to follow the patient and be the manager of this whole set of medical care items. Its called a Case Manager. Case Manager the first year is a hundred hours and Nine Thousand Dollars. After that Four Thousand Dollars a year to manage this life care plan. Now here are all the different elements as spelled out by Ms. Hollenbeck. I then take those elements and determine what is the cost

of providing that particular item of care. The evaluation is One Twenty-five. We know that's a one timer. You can see here Thirty-nine Eighteen for these two. These are all reduced to their present cash value. So that's the cost today of providing that for the rest of her life.

I won't go over all of these but you can see the evaluations are Seven Thousand; Modalities are Hundred and Fifty; Twenty-one for the wheelchair; Eight for the Accessories, Twelve for the Orthotics; Thirty-nine for the Medical Care Item; Two Thousand for the Aids; Thirty-two Thousand for Supplies. The Medications is Ninety-four. Home care Twenty-one. That's a one time architectural deal to make it accessible for Kristy The largest item in here is the Facility Care, the Day Care and the transportation that's Six Forty-three; Future Medical Care Routine Twenty-seven Hundred. One Fifty-two for the Transportation. And then the Attendant Care down here is a Million Dollars for all of these items right here. The Baclofen pump is Five Hundred Thousand Dollars. And this Attendant care here is a Million, Eight. The total present value is Four Million, Two Hundred and Seventy-one Thousand, Seven Fourteen.

Now I expressed no opinion about whether she needs this because that's a life care plan to say she needs this. By having all these items set up in a line by line basis if you feel that something should have been taken out all you have to do is to go to the plan and cross out whatever item that is by this evaluation. If you feel like more is needed you can add to it. But having this in different compartment allows you to make adjustment if you see some reason that the life care should be tinkered with.

And the after trial period for Kristy the two elements are loss and earning capacity Seven twenty-seven. Cost of funding her future medicine too for a total of Four Million, Nine-Nine-Nine, Six Sixty-six. Her total economic loss is the sum of before trial loss of Four Point nine or Five Million for a total of Five Million, Four Seventy-Three, Four Fifty. That's the estimated cost of replacing her earning capacity and funding a life care plan for her for the rest of her life.

Question: Doctor Wood, does that include anything for past medical care?

Answer: No. I have not compiled that. Its present on going I assume we compiled this by your office.

Question: What about loss, her loss of enjoyment and quality of life?

Answer: I haven't valued it. That's a non-economic loss that I haven't considered.

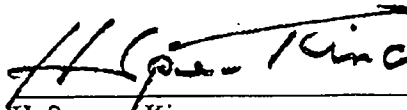
Question: Or any pain and suffering?

Answer: Same answer. I have not evaluated that.

Question: Are all of your opinions here today to a reasonable degree of economic certainty?

Answer: Yes."

8. Admit that Leanna Hollenbeck, was Plaintiff's Expert Witness on Life Care Planning, who compiled and submitted the attached Life Care Plan.



H. Spencer King
The Ward Law Firm, P.A.
Attorneys for Defendants William Alleyne, MD and
C. Edward Creagh, M.D.
233 South Pine Street
Spartanburg, SC 29302

September 19TH, 2011

EXHIBIT B

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Gladys Sims, as the Duly Appointed)
Guardian and Conservator of Kristy)
L. Orlowski(a/k/a Kristy Wood),)
))
Plaintiff,)
))
vs.)
))
AMISUB of South Carolina, Inc.,)
d/b/a Piedmont Medical Center;)
William Alleyne, MD; and)
C. Edward Creagh, MD)
))
Defendant.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-46-5178

PLAINTIFF'S RESPONSE TO DEFENDANT,
AMISUB OF SOUTH CAROLINA, INC., d/b/a
PIEDMONT MEDICAL CENTER, WILLIAM
ALLEYNE, MD, AND C. EDWARD CREAGH'S,
MD, REQUESTS TO ADMIT DATED
SEPTEMBER 19, 2011

Plaintiff GLADYS SIMS, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski (a/k/a Kristy Wood), by and through undersigned counsel, hereby serves responses to Defendant, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, William Alleyne, MD, and C. Edward Creagh's, Requests To Admit dated September, 19, 2011.

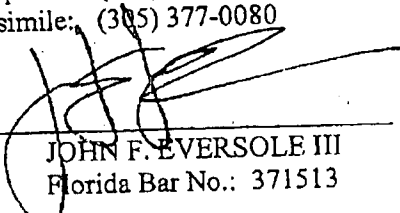
1. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
2. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
3. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
4. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.

MASE LARA EVERSOLE.

5. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
6. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
7. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
8. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.

Respectfully submitted,

MASE, LARA, EVERSOLE, P.A.
Attorneys for Plaintiff
2601 South Bayshore Drive, Suite 800
Miami, Florida 33133
Telephone: (305) 377-3770
Facsimile: (305) 377-0080

By: 

JOHN F. EVERSOLE III
Florida Bar No.: 371513

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Gladys Sims, as the Duly Appointed	)	
Guardian and Conservator of Kristy L.	)	Civil Action No.: 2009-CP-46-5178
Orlowski (a/k/a Kristy Wood),	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SUMMARY
AMISUB of South Carolina, Inc., d/b/a	)	JUDGMENT
Piedmont Medical Center;	)	
and C. Edward Creagh, MD,	)	
	)	
Defendants.	)	

To : Plaintiff herein and John Eversole, Esquire and Chad McGowan, Esquire attorneys for Plaintiff.

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the Defendant C. Edward Creagh, MD moves for Summary Judgement in his favor for dismissal of the complaint herein on the basis there is no genuine dispute of any material fact and that Defendant Creagh is entitled to judgement as a matter of law based upon the attachments hereto described and to be submitted. This action was commenced against William Alleyne, MD and C. Edward Creagh, MD partners in the field of pulmonology. That action was filed November 24, 2009.

In the complaint, the principal Kristy L. Orlowski (Kristy Wood) who is mentally incompetent alleges she was a patient at Piedmont Hospital, Rock Hill, South Carolina from September 12, 2003 until discharged by Dr. Alleyne on November 24, 2003. The hospitalization resulted from an eclamptic seizure occurring on the morning of September 12, 2003 when she was found unresponsive having suffered a seizure, aspiration and apoxia. She suffered severe and permanent neurological deficits. She was re-admitted by Dr. Creagh on November 30, 2003 according to the complaint with hydropneumothorax in the left upper lobe; she underwent a thoracoscopy in the left lung and decortification with wedge resection of the lung. She was infected with MRSA and was hemodynamically unstable. She suffered with hypotension and required pressors on December 8, 2003. She suffered cardio-pulmonary arrest and was transferred to Carolinas Medical Center in Charlotte, North Carolina under the orders of Dr. Creagh on December 11, 2003.

Prior to the within action, an earlier action was filed on the behalf of Kristy by her guardian and conservator against R. Norman Taylor, MD Civil Action 2006-CP-46-2213. That case went to trial and resulted in Defendant's verdict but a high/low was in place and the Plaintiff received \$300,000.

Defendant Creagh asserts that the current action is barred and he is entitled to Summary Judgement for the following reasons:

I. Statute of Limitations. §15-3-545 *South Carolina Code of Laws* which provides that an action for medical malpractice must be commenced within 3 years after the injured party knew or should have known the cause of action and accrued which would have been somewhere in the November/December 2003 time frame. This action was not commenced until November 24, 2009 or greater than 3 years after the running of the Statute.

Defendants acknowledge that §15-3-40 *South Carolina Code of Laws* provide a tolling of the statute of limitations to persons under disability.

Kristy's husband Christopher T. Orlowski was her first conservator being appointed by the Probate Court in Chester County on March 5, 2004. Subsequently the conservatorship was transferred to York County and Gladys Sims, Kristy's mother was appointed conservator on July 22, 2008. The first action against Dr. Taylor was commenced by conservator husband Christopher. The duties of the conservator are "prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties. Specifically the authority to settle claims in favor of the minor or the incapacitated person requires the conservator appointment seek approval of any settlement with the probate court." Thus the appointment of the conservator even if Kristy was disabled the appointment of the conservator on March 5, 2004 would have started the running of the Statute, which would have run no later than March, 2007. The action against Dr. Taylor was commenced in 2006 by the conservator.

II. Collateral Estoppel or Issue Preclusion. . The doctrine of Collateral Estoppel precludes a party or his privity from re-litigating an action which outcome was determined in previous litigation. *Erby v Richardson* 278 SC 484, 298 S. E. 2d 452 (1982). Our Supreme Court stated "We have recently held that a Defendant could assert a plea of Collateral Estoppel against a Plaintiff who has previously had a full and fair opportunity to litigate the issues effectively in prior action citing *Graham v. State Farm Casualty and Insurance Company* 277 SC 389, 287 S.E. 2nd 496 (1982) noting further that privity between the Defendants is not required. In the Taylor action, Plaintiff introduced evidence through expert testimony that all of the hospitalizations, injury, disability and need for a life care were causely related to the eclamptic seizure resulting from the alleged deficient care of Dr. Taylor.

In summary, Plaintiff could have elected to include Dr. Creagh in the first action along with Dr. Taylor; could have sued only Dr. Taylor seeking damages from the date of the eclamptic seizure ending with the date the damages ceased to be causely related if as now they are asserting damages began accruing by Creagh's negligence or about late November of 2006 and there after. Having placed into evidence all damages through including the life care plan, this action is not appropriate.

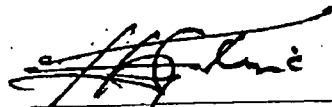
III. Exhibits:

Probate Court records for appointment of conservator from York County and Chester County

Settlement agreement Taylor action

Defendant's First Request For Admit dated Sept 20, 2011 along with Plaintiff's response undated

Defendant's Second Joint Request to Admit dated October 18, 2011 with Plaintiff's Response dated November 22, 2011



H. Spencer King
The Ward Law Firm, P.A.
Attorneys for Defendants
233 South Pine Street
Spartanburg, SC 29302
(864) 591-2364

April 5, 2012

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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)
IN THE COURT OF
COMMON PLEAS

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood),

Plaintiff,

vs.

Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center; William
Alleyne, MD; and C. Edward Creagh, MD,

Defendants

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NOTICE OF MOTION FOR
SUMMARY JUDGMENT OF
DEFENDANT AMISUB OF
SOUTH CAROLINA, INC.,
d/b/a PIEDMONT MEDICAL
CENTER

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C: A. No. 2009-CP-46-5178

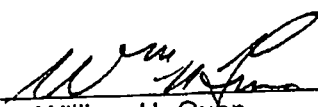
TO: JOHN EVERSOLE of Mase, Lara, Eversole and CHAD A. MCGOWAN of
McGowan, Hood and Felder, LLC, Attorneys for Plaintiff

YOU WILL PLEASE TAKE NOTICE that Defendant Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center ("Amisub") will move, on the tenth (10th) day after service
hereof, at 10:00 a.m., or as soon thereafter as counsel can be heard, before the presiding
Judge of the Court of Common Pleas for York County for an Order granting summary
judgment to this Defendant. The said motion will be made pursuant to Rule 56 of the
South Carolina Rules of Civil Procedure and on the grounds there is no genuine issue as
to any material fact. The motion will be supported by the entire record herein, including
such affidavits as shall be served and filed, together with the entire record in civil action
number 2006-CP-46-2213, a case previously tried in the Court of Common Pleas for York
County.

More particularly, the Motion for Summary Judgment will be based on the following
grounds:

- (1) This action is barred by the statute of limitations found in §15-3-545 of the Code of Laws of South Carolina (1976 as amended); and
- (2) Plaintiff's claim is barred by the doctrines of collateral estoppel or issue preclusion.

HOLCOMBE BOMAR, P.A.

By: 

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Attorneys for Amisub of South Carolina, Inc.,
d/b/a Piedmont Medical Center

Spartanburg, SC

June 26, 2012

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy L.
Orlowski (a/k/a Kristy Wood),

Plaintiff,

v.

AMISUB of South Carolina, Inc., d/b/a
Piedmont Medical Center; William
Alleyne, MD; and C. Edward Creagh, MD,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-46-5178

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

FILED - RECEIVED
2012 JUL 17 PM 12:00
CLERK OF COURT
C.C.P. & GS
YORK COUNTY, SC

Plaintiff Gladys Sims, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski, submits this Memorandum in Opposition to Defendants' Motion for Summary Judgment because the motion is barred by Rule 43(l) of the South Carolina Rules of Civil Procedure and because the doctrine of collateral estoppel or issue preclusion is inapplicable.

FACTUAL BACKGROUND

In 2006 Kristy Orlowski filed a complaint against Rock Hill Gynecology and Obstetrics Associates and R. Norman Taylor, M.D., 2006-CP-46-2213, alleging medical negligence relating to prenatal care she received during pregnancy. See August 24, 2006 Complaint, *Christopher Orlowski v. Rock Hill Gynecological & Obstetrical Assoc., P.A. and R. Norman Taylor, III, M.D.*, attached as **Exhibit A**. That case alleged negligence in the pre-natal care of Ms. Orlowski, was tried, and a verdict rendered for the Defendant. No conduct of the present Defendants arising from a November 25, 2003 admission was at issue in that case.

On November 24, 2009, Gladys Sims, as Kristy Orlowski's Guardian and Conservator, filed the present suit against Dr. Creagh, Dr. Alleyne, and AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center ("Piedmont"), alleging that Defendants Dr. Creagh and Dr. Alleyne provided negligent medical treatment in November and December 2003 at Piedmont Medical Center. None of the Defendants in the present action were parties to the 2006 action, as the previous action focused on treatment provided by a different physician, at a different time, and at a different facility.

South Carolina has a three year statute of limitations applicable to medical malpractice claims. S.C. Code Ann. § 15-3-545(A). However, the statute of limitations may be tolled for up to five years if a claimant is a minor or "insane." S.C. Code Ann. § 15-3-40. The five year tolling period under the disability statute does not simply state a five year limit on filing an action. Instead, the tolling provision extends the period in which a claimant may file a claim by five years. *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 n. 5 (2003). Therefore, for a medical malpractice cause of action, the three year statute of limitations may be extended by five years for a qualifying disability and a claimant may be permitted to file up to eight years after the date when the cause of action accrued.

For purposes of the tolling statute, "insane" refers to "a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society." *Wiggins v. Edwards*, 314 S.C. 126, 128, 442 S.E.2d 169, 170 (1994). Kristy Orlowski was admitted to Piedmont Medical Center multiple times in November-December 2003. (Comp. ¶ 11-14). On December 8, 2003, while in Defendants' care, Kristy Orlowski's condition continued to deteriorate to the point that Kristy suffered cardiopulmonary arrest. (Comp. ¶ 18).

As a result of her worsening condition, Kristy suffered permanent hypoxic encephalopathy and other mental disabilities that prevented her from caring for herself. (Comp. ¶ 19-20). Kristy's condition continues to this day and has left her incapable of managing her own affairs. According, the present action is timely under S.C. Code Ann. § 15-3-545 and the tolling provisions of S.C. Code Ann. § 15-3-40.

On June 14, 2009, Counsel for Drs. Alleyne and Creagh filed a Motion for Judgment on the Pleadings, or in the Alternative Rule 56 of the South Carolina Rules of Civil Procedure arguing, as they do in the present motion, that S.C. Code Ann. § 15-3-545(A) barred Ms. Orlowski's claim. *See* June 14, 2009 Memorandum in Support of Motion to Dismiss Pursuant to Rule 12(c) or In the Alternative Rule 56 of the South Carolina Rules of Civil Procedure, attached as **Exhibit B**. The Honorable S. Jackson Kimball heard the motion as one for Summary Judgment, and found as follows:

[T]he appointment of a guardian or conservator for a person under disability does not operate to remove the disability for the purposes of the time period for commencing an action. I further find and conclude that this action was commenced within the time permitted by S.C. Code Ann. § 15-3-546 (1976, as amended). . . Therefore it is ordered that the Defendants' motion for summary judgment be denied.

June 25, 2010 Order, attached as **Exhibit C**. Despite Judge Kimball's ruling that the present action is timely, Defendants now make an identical motion seeking a different ruling on the same grounds.

Additionally, Defendants seek to impose collateral estoppel on Ms. Orlowski even though the present Defendants and their conduct were never litigated or questioned in any prior case.

ARGUMENT

Summary Judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56. In determining whether an issue of material fact exists, the courts must consider all facts and inferences in the light most favorable to the non-moving party. *David v. McLeod Regional Medical Center*, 367 S.C. 242, 626 S.E.2d 1 (2006). When applied to the present case, the standard demonstrates that the Defendants' motion should be denied.

A. Defendants' Motion Based on the Statute of Limitations is Barred by Rule 43(l) of the South Carolina Rules of Civil Procedure.

Rule 43(l) of the South Carolina Rules of Civil Procedure provides that "If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." In the present case, Defendants are making the motion on the same legal and factual grounds as the 2009 motion made by Drs. Alleyne and Creagh. Essentially, Defendants argue that the statute of limitations began to run with the appointment of Christopher T. Orlowski as conservator for Ms. Orlowski on March 5, 2004. See Ex. B, at 2; April 11, 2012 Motion for Summary Judgment, at 2. Judge Kimball clearly decided this issue when he denied Defendants' first Motion for Summary Judgment clearly finding Plaintiff's action timely and properly before the court. Defendants have presented no new facts or law to suggest a different conclusion.¹ Accordingly, the Court should deny the Defendants' motion for summary judgment on statute of limitations grounds.

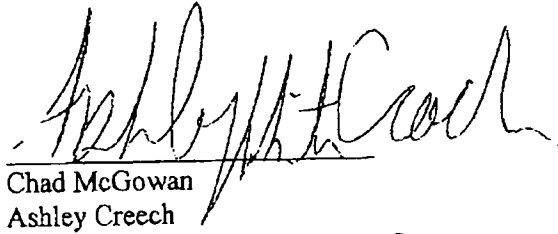
¹ To the extent that the Court finds that Defendants' Motion is not barred by Rule 43 and is properly before the court, Plaintiff incorporates the arguments made in her Memorandum in Opposition to Defendants June 2009 Motion for Judgment on the Pleadings or in The Alternative Rule 56 of the South Carolina Rules of Civil Procedure, which is attached as Exhibit D.

B. The Doctrine of Collateral Estoppel or Issue Preclusion is Inapplicable to the Present Case

Similarly, summary judgment is inappropriate on collateral estoppel or issue preclusion grounds. "Collateral estoppel prevents a party from re-litigating an issue in a subsequent suit which was actually and necessarily litigated and determined in a prior action." *Aaron v. Maul*, 381 S.C. 585, 592, 674 S.E.2d 482, 486 (2009). See *In re Crews*, 389 S.C. 322, 340, 698 S.E.2d 785, 794 (2010) (equating issue preclusion and collateral estoppel). A party claiming a preclusive effect under collateral estoppel must demonstrate that a particular issue was "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684, S.E.2d 779, 782 (Ct. App. 2009). Defendants have not, and cannot meet any of these elements. Whether these Defendants were negligent in providing medical care to Ms. Orlowski at Piedmont in November and December 2003 was not "actually litigated" in the 2006 action, and their negligence was not "directly determined" as their actions were not before the jury. Similarly, the issue of whether or not Dr. Alleyne, Dr. Creagh, or Piedmont was negligent was certainly not necessary to determine whether Rock Hill Gynecological & Obstetrical Associates, P.A. and Dr. Norman Taylor, III, M.D. were negligent in providing prenatal care to Ms. Orlowski. Because Defendants cannot meet even one of the elements of collateral estoppel, summary judgment in their favor is inappropriate.

CONCLUSION

For the reasons stated above, Plaintiff requests that the court deny Defendants' Motion for Summary Judgment.

A handwritten signature in black ink, appearing to read 'Ashley Creech', is written over a horizontal line.

Chad McGowan
Ashley Creech
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Attorney for Plaintiff

July 16, 2012
Rock Hill, SC

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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IN THE COURT OF
COMMON PLEAS

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood),

Plaintiff,

vs.

Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center and C. Edward
Creagh, MD,

Defendants.

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DEFENDANT AMISUB OF
SOUTH CAROLINA, INC., D/B/A
PIEDMONT MEDICAL CENTER'S
MEMORANDUM IN SUPPORT
SUMMARY JUDGMENT

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C. A. No. 2009-CP-46-5178

Defendant Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center ("Piedmont Medical Center") offers this Memorandum in Support of their Motion for Summary Judgment.

STATEMENT OF THE FACTS

On September 12, 2003, Kristy Orlowski ("Kristy"), while in late term pregnancy, suffered an eclamptic seizure. She was admitted to Piedmont Medical Center where she received an emergency cesarean section performed by R. Norman Taylor, III, M.D. During this time, Kristy was treated at Piedmont Medical Center by doctors Edward Creagh and his partner William Alleyne. Dr. Creagh is a Defendant in this action. Kristy was discharged by Dr. Alleyne on November 24, 2003 and readmitted the following day. Kristy was again treated and discharged the following day, November 27, 2003. Finally, Kristy was readmitted on November 29, 2003 with persistent vomiting and diagnosed with

empyema, she was ultimately transferred to Carolina Medical Center on December 11, 2003.

On March 5, 2004, Kristy's husband, Christopher Orlowski ("Christopher"), was appointed as Kristy's Guardian and Conservator. In 2006, Christopher filed a medical malpractice action against Dr. Taylor and his practice group alleging that their medical care and treatment caused Kristy to suffer physical and mental deficits. Kristy and Christopher divorced and in December of 2007, Christopher executed his termination of Guardianship and Conservatorship. The medical malpractice suit filed by Christopher on Kristy's behalf was tried in April of 2009; the jury returned a defense verdict and Plaintiff collected \$300,000 per a high-low agreement. On November 24, 2009, Plaintiff filed the current lawsuit against Defendants.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003); Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003); Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003). Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits,

if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003); Hedgepath v. American Tel. & Tel. Co., 348 S.C. 340, 559 S.E.2d 327 (Ct. App.2001); Rule 56©, SCRCP.

The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Regions Bank v. Schmauch, 354 S.C. 648, 659, 582 S.E.2d 432, 438; Trivelas v. South Carolina Dep't of Transp., 348 S.C. 125, 558 S.E.2d 271 (Ct. App.2001). Once the moving party meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct.App.1999); Rule 56©, SCRCP. If triable issues exist, those issues must go to the jury. Baril v. Aiken Reg'l Med. Ctrs., 352 S.C. 271, 573 S.E.2d 830 (Ct.App. 2002); Young v. S.C. Dep't of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct.App. 1999).

ARGUMENT

I. Plaintiff's Claims Are Barred By The Statute of Limitations.

Plaintiff failed to file their lawsuit within the time period required by law, thus, Plaintiff's claims are barred by the applicable statute of limitations. Under South Carolina law, actions for medical malpractice "must be commenced within three years from the date

of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.” S.C. Code Ann. § 15-3-545(A).

On November 24, 2009, Plaintiff filed a Complaint alleging that Defendants provided negligent medical care to Kristy during her initial admission on September 12, 2003 until her transfer to Carolina Medical Center on December 11, 2003. (Exhibit C; Plaintiff’s Complaint, ¶ 20). Thus, Plaintiff’s Complaint was filed more than six years after the initial “treatment . . . giving rise to the cause of action” occurred. S.C. Code Ann. § 15-3-545(A).

The foregoing statute references equitable tolling of the statute of limitations in circumstances where a plaintiff is either a minor or insane. Specifically, if plaintiff is insane at the time the cause of action arises “the time of the disability is not a part of the time limited for the commencement of the action.” S.C. Code Ann. §15-3-40. The statute further states that “the period within which the action must be brought cannot be extended more than five years . . . nor in any case longer than one year after the disability ceases.” S.C. Code Ann. §15-3-40. Even if the statute of limitations was extended by five years, the maximum extension provided under law, Plaintiff still failed to file their Complaint in a timely manner.

In Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994), the Supreme Court of South Carolina considered the breadth of the foregoing statutes and the limits of equitable tolling. In that case, plaintiff was injured in an automobile accident and subsequently hospitalized for four days. Id. at 127, 442 S.E.2d 169. Plaintiff filed a Complaint three years and four days from the date of the accident and defendant filed a

Motion for Summary Judgment on the basis that the statute of limitations expired. Id. The trial court granted defendant's motion. Id.

Appellant argued that the statute of limitations begins to run at the time a plaintiff is able to investigate the case and discover an appropriate cause of action. Id. The court disagreed and held that a plaintiff "must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist." Id. at 128, 442 S.E.2d at 170. The court further stated that this is an objective determination and that "[i]f on the date of injury, a plaintiff knows or should know that she had some claim against someone else, the statute of limitations begins to run for all claims based on that injury." Id.

Plaintiff further argued that the accident rendered her "insane" during her four days of hospitalization and thus, the statute of limitations should have been tolled for that four day period pursuant S.C. Code Ann. §15-3-40. Id. at 129, 442 S.E.2d at 170. The court held that, although the plaintiff was hospitalized, she was not "insane" according to S.C. Code Ann. §15-3-40. Id.

Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the mental condition is such as to require care in a hospital.

Id. In the case at hand, the medical records from Kristy's admission on September 12, 2003 until her transfer on December 11, 2003, show that Kristy consented to several medical procedures. (Exhibit D; Consent Forms). Kristy's ability to appreciate the gravity

of a medical procedure, provide informed consent, and sign her name indicates that she was not "insane" for purposes of tolling during this time. Thus, the statute of limitations period should not be tolled during the time of her hospitalization at Defendant Piedmont Medical Center.

Furthermore, Kristy's husband, Christopher, was appointed Guardian and Conservator on March 5, 2004. (Exhibit E; Fiduciary Letters). Conservators have the duty to "prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties." S.C. Code Ann. § 62-5-424(17). Furthermore, a "guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child." S.C. Code Ann. § 62-5-312(a). Such rights include the power to "institute proceedings to compel any person . . . to pay sums for the welfare of the ward." S.C. Code Ann. § 62-5-312(a)(4)(I).

As Kristy's Guardian and Conservator, Christopher had the duty to prosecute claims on her behalf. Christopher executed this duty when he filed a medical malpractice lawsuit, Civil Action No. 2006-CP-46-2213, for Kristy's "severe, debilitating, and permanent neurological deficits" which allegedly occurred as a result of her medical care and treatment. (Exhibit F; Plaintiff's First Complaint, ¶ 27).

Accordingly, Christopher not only had the authority and duty to act on Kristy's behalf but he also had notice as to potential claims against all of Kristy's medical care providers. Thus, the statute of limitations period was triggered and Plaintiff failed to promptly act "where the facts and circumstances of an injury would put a person of common knowledge and experience on notice." Wiggins, at 128, 442 S.E.2d at 170.

Whether the statute of limitations period began running in October and November of 2003 when Kristy was executing medical consent forms or on March 5, 2004, when a Guardian and Conservator was appointed, Plaintiff failed to file their Complaint in a timely manner. Accordingly, Plaintiff's claims are barred by the statute of limitations.

II. Plaintiff's Claims Are Barred By the Doctrine of Collateral Estoppel/Issue Preclusion.

Plaintiff has already had a full and fair chance to litigate these claims in a previous action in which a judgment has been reached; thus, Plaintiff's claims are barred by the doctrine of collateral estoppel. The doctrine of collateral estoppel is "rested upon the wholesome principle which allows every litigant one opportunity to try his case on the merits, but limits him, in the interest of the public, to one such opportunity." Graham v. State Farm Fire and Cas. Ins. Co., 277 S.C. 389, 287 S.E.2d 495 (1982) (quoting Jenkins v. Atlantic Coast Line R. Co., 89 S.C. 408, 421, 71 S.E. 1010 (1911)). "Where the plaintiff has had a full and fair opportunity to litigate the question of [professional] negligence or effectiveness in a particular case, he should be collaterally estopped to adjudicate the same issue in a subsequent ... malpractice action." Irby v. Richardson, 278 S.C. 484, 486, 298 S.E.2d 452, 454 (1982).

As noted, Plaintiff previously filed a Complaint on August 24, 2006 alleging that Rock Hill Gynecological & Obstetrical Associates, P.A. and R. Norman Taylor, III, M.D. caused Kristy to suffer "severe and permanent neurological deficits." (Exhibit F; Plaintiff's First Complaint, ¶ 27). This case was tried and the jury returned a defense verdict.

In Graham, the Supreme Court of South Carolina examined the applicability of collateral estoppel in circumstances where defendants lack privity. In that case, plaintiff's vehicle was destroyed by a fire which occurred in plaintiff's home. Graham, 277 S.C. at 390, 287 S.E.2d 495. Plaintiff sued defendant auto insurer when they refused to provide coverage for the damaged vehicle. Id. The case was tried and the jury returned a defense verdict. Id. at 390, 287 S.E.2d at 496. Plaintiff then sued their home insurer when they refused to provide coverage for the damaged vehicle. Id. The trial court granted defendant home insurer's Motion for Summary Judgment on the grounds that plaintiff was collaterally estopped by the prior judgment. Id.

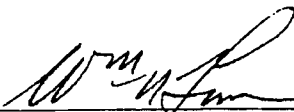
Appellant argued that defendant auto insurer and defendant home insurer lacked privity and thus, plaintiff could not be collaterally estopped from filing their second lawsuit. Id. The Supreme Court of South Carolina disagreed with plaintiff and held, "[t]his matter having been fully and fairly adjudicated, the appellant is collaterally estopped by prior judgment from bringing this action to adjudicate the same issue, notwithstanding a lack of privity between the insurance companies." Id. at 391, 287 S.E.2d at 496.

The facts of Graham are on point with those of the case at hand. Just as in Graham, Plaintiff has previously filed a lawsuit for the same damages alleged in the current lawsuit. Plaintiff's case was tried previously and resulted in an unfavorable outcome for Plaintiff. Plaintiff is now attempting to recover identical damages from Defendants on claims which have already been tried. This matter has been fully and fairly adjudicated to a verdict; thus, Plaintiff is collaterally estopped by the prior judgment and barred from bringing this action on the same damages.

CONCLUSION

For the reasons set forth above, Defendant Piedmont Medical Center respectfully request that this Court grant their Motion for Summary Judgment in its favor on each and every cause of action raised in the Plaintiff's Complaint.

HOLCOMBE BOMAR, P.A.

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July 17, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
Gladys Sims, as the Duly Appointed	)	
Guardian and Conservator of Kristy L.	)	Civil Action No.: 2009-CP-46-5178
Orlowski (a/k/a Kristy Wood),	)	
	)	
Plaintiffs,	)	
	)	DEFENDANT C. EDWARD CREAGH,
v.	)	MD'S MEMORANDUM IN SUPPORT
	)	OF SUMMARY JUDGMENT
AMISUB of South Carolina, Inc., d/b/a	)	
Piedmont Medical Center; William	)	
Alleyne, MD; and C. Edward Creagh, MD,	)	
	)	
Defendants.	)	
	)	

Defendant C. Edward Creagh, MD, submits to the Court this Memorandum in Support of Defendant's Motion for Summary Judgment and states that as a matter of law there is no genuine issue of material fact, thus summary judgment is appropriate by reason of the running of the Statute of Limitations and Collateral Estoppel.

Background

This action was filed against Defendants, AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center (hereinafter "Piedmont Hospital"), William Alleyne, MD (hereinafter "Dr. Alleyne") and C. Edwards Creagh, MD (hereinafter "Dr. Creagh"), on November 24, 2009. Dr. Alleyne and Dr. Creagh are medical partners in the field of pulmonology.

Plaintiff alleges that principal Kristy L. Orlowski a/k/a Kristy Wood (hereinafter "Kristy") was a patient at Piedmont Hospital, Rock Hill, South Carolina, from September 12, 2003 until discharged by Dr. Alleyne on November 24, 2003. The hospitalization resulted from an eclamptic seizure occurring on the morning of September 12, 2003, when Kristy, then age 21,

was found unresponsive having suffered a seizure with aspiration and apoxia. It was alleged that she suffered severe and permanent neurological deficits. She was re-admitted to Piedmont Hospital by Dr. Creagh on November 25, 2003; was examined and found not to have empyema. She was discharged; readmitted on November 29, 2003; empyema diagnosed and treated; her condition continued to decline and she was transferred to Carolinas Medical Center in Charlotte, North Carolina on December 11, 2003.

Prior to the current action, Plaintiff filed a previous suit on behalf of Kristy by her guardian and Conservator against R. Norman Taylor, MD, Civil Action 2006-CP-46-2213. That action was commenced August 24, 2006. The case was tried, resulted in a Defendant's verdict; however, a high/low was in place and the Plaintiff received \$300,000. The damages sought in the 2006 action against Dr. Taylor included the same damages that are currently sought against Dr. Creagh. The Plaintiff has already litigated these issues currently before the Court and opted not to include Dr. Creagh in the prior action.

STANDARD OF REVIEW

Summary Judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." S.C. R. Civ. P. 56(c). In determining whether any triable issues of material fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 860 (2002).

LAW & ANALYSIS

Plaintiff cannot establish a genuine issue of material fact for the following reasons: (1) Plaintiff's claims are barred by the applicable statute of limitations, S.C. Code Ann. § 15-3-545; and (2) Collateral Estoppel or Issue Preclusion.

(1) Plaintiff's claims are barred by S.C. Code Ann. § 15-3-545

Plaintiff's claims are barred by S.C. Code Ann. § 15-3-545 (A), the applicable statute of limitations.

SECTION 15-3-545. Actions for medical malpractice.

(A) In any action, other than actions controlled by subsection (B), to recover damages for injury to the person arising out of any medical, surgical, or dental treatment, omission, or operation by any licensed health care provider as defined in Article 5, Chapter 79, Title 38 acting within the scope of his profession must be commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, not to exceed six years from date of occurrence, or as tolled by this section.

The Supreme Court upheld the Statute and opined that, once the cause of action is discovered, a party has three years to bring the action with an absolute bar of six years from the date of the occurrence. *Hoffman v. Powell*, 298 S.C. 338, 339-40, 380 S.E.2d 821, 821 (1989).

In this case, the alleged negligent treatment by Dr. Creagh occurred somewhere around the November/December 2003 time frame. However, this action was not commenced against Dr. Creagh until November 24, 2009; nearly three years after the running of the statute of limitations. Thus, based on S.C. Code Ann. § 15-3-545, Plaintiff's actions are time barred because the action was not commenced within three years of discovery of the action.

Defendant acknowledges that S.C. Code Ann. § 15-3-40 provides a tolling of the statute of limitations to persons under disability, with disability being limited to infants and persons insane. We argue that Kristy was not insane for purposes of the statute. S.C. Code Ann. § 15-3-

50 provides that no person shall avail herself of a disability unless it existed when the cause of action occurred. Kristy was not disabled when the alleged negligent conduct of Dr. Creagh occurred. The South Carolina Supreme Court in *Wiggins v. Edwards*, 314 S.C. 126, 442 S.E.2d 169 (1994), held that a physical disability or confusion or disorientation are not insanity or such disability to toll the statute. "Insanity or mental incompetency that tolls the statute of limitations consists of a mental condition which precludes understanding the nature or effects of one's acts, an incapacity to manage one's affairs, an inability to understand or protect one's rights, because of an over-all inability to function in society, or the mental condition is such as to require care in a hospital." *Id.* at 129. Kristy's treatment by Defendant in November-December 2003 does not qualify as a "person under disability" but does create the date the cause of action accrued.

Thus, the earliest time that Kristy could have been considered to be "insane" would be March 5, 2004, the date of the appointment of a Conservator by Chester County. Kristy's husband Christopher T. Orlowski (hereinafter "Christopher") was her first Conservator being appointed by the Probate Court in Chester County on March 5, 2004. Thus, even if Kristy was deemed disabled for terms of the Statute, Christopher was appointed to represent her interests. As set forth in S.C. Code Ann. § 62-5-424, one of the duties of the Conservator is to "prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties." Christopher, acting as Conservator, filed an action against R. Norman Taylor, MD, Civil Action 2006-CP-46-2213, whereby the case went to trial and resulted in a Defendant's verdict; however, a high/low was in place and the Plaintiff received \$300,000. Therefore, even if the statute of limitations did not begin to run until Christopher's appointment as Conservator on March 5, 2004, the filing of the action presently before the Court in 2009 is time barred because the time to file would have elapsed in

March, 2007. The logic for protecting a disabled or insane person fails once a Conservator is appointed.

Subsequent to Christopher's service as Conservator, on July 22, 2008, the Conservatorship was transferred to Kristy's mother Gladys Sims in York County, South Carolina. However, the case filed against Dr. Taylor, in 2006, by the previous Conservatorship proves that Kristy was on notice of the causes of action alleged against Dr. Creagh in 2004, as the case against Dr. Taylor involved the same injuries and damages currently claimed against Dr. Creagh. Based on the lack of disability at the time the alleged negligence occurred and the appointment of a Conservator to represent Kristy's interest, the statute of limitations barred the claim.

(2) Collateral Estoppel / Issue Preclusion

Plaintiff has failed to present a genuine issue of material fact because the issues and damages have already been litigated and adjudicated in a previous case; thus, the current claims are barred by the doctrine of estoppel.

"The doctrine of collateral estoppel precludes a party or his privy from relitigating an issue which was outcome determinative in previous litigation." *Irby v. Richardson*, 278 S.C. 484, 485, 298 S.E.2d 452, 453 (1982). "Many courts have discarded the traditional privity or mutuality rule, either partially or totally. We recently held that a defendant could assert a plea of collateral estoppel against a plaintiff who had previously had a full and fair opportunity to litigate the relevant issue effectively in a prior action." *Id.* (citing *Graham v. State Farm Casualty and Insurance Company*, 277 S.C. 389, 287 S.E.2d 495 (1982)). Additionally, privity between the defendants in case one and case two is not required. *Id.* Collateral Estoppel is appropriate defense when medical malpractice claim was properly adjudicate in a preceding case

against a different doctor. *Nelson v. QHG of South Carolina, Inc.*, 362 S.C. 421, 425, 608 S.E.2d 855, 857 (2005) ("Grandfather's claims against the Doctors are collaterally estopped because there was a fair and full opportunity to litigate those claims in the earlier suit.")

In the previously filed action against R. Norman Taylor, MD, Civil Action 2006-CP-46-2213, the case went to trial and resulted in a Defendant's verdict; however, a high/low was in place and the Plaintiff received \$300,000. In the case against Dr. Taylor, Plaintiff introduced evidence through expert testimony that all of the hospitalizations, injuries, disability and need for a life care were causally related to the eclamptic seizure resulting from the alleged deficient care of Dr. Taylor. Basically, Plaintiff did not receive the anticipated verdict in the case against Dr. Taylor (having failed to include Dr. Creagh), and now wishes to seek further relief from these Defendants for the exact same injuries. Review of the Request to Admit clearly shows that the damages that have been put before the jury in the Taylor action are the exact same damages that the Plaintiff now claims to result from Dr. Creagh's alleged negligence. A Day in the Life video was shown to the Taylor jury which again demonstrate neurological deficits and an inability to care for activities of daily living. We call the court's attention to the Request to Admit of September 19, 2011 which were admitted which show that her disabled condition was tried as related to eclamptic episode.

In *Graham v. State Farm Casualty and ins. Co.*, 277 S.C. 389, 287 S.E.2d 495 (1982), the Court granted summary judgment in favor of State Farm on the basis of collateral estoppel. In *Graham*, the Plaintiff's car was parked in the garage of his home and destroyed by fire while parked in the garage. Plaintiff sued the car insurance company for insurance proceeds and the jury found in favor of the insurance company. Following final judgment in that case, Plaintiff brought a subsequent suit under his homeowner's policy for breach of contract because the

casualty company would not cover the car. The Court granted summary judgment in favor of State Farm on the basis of Collateral Estoppel, holding that the origin of the fire that destroyed the car was litigated in the first case against the automobile insurance carrier; therefore, the issue had been litigated properly in the original action and Plaintiff was estopped from pursuing that issue against a different defendant. The Court held as follows:

It appears from the transcript of record that the appellant has had his day in court. He was also the plaintiff in the prior action which was vigorously pursued by his attorney and resulted in adjudication as to the origin of the fire, the sole issue in both actions. This matter having been fully and fairly adjudicated, the appellant is collaterally estopped by prior judgment from bringing this action to adjudicate the same issue, notwithstanding a lack of privity between the insurance companies.

Graham, 287 S.E.2d at 496.

The issues presented and decided by the Court in *Graham* are almost identical to the procedural/factual issues before this Court. Plaintiff filed an action against Dr. Taylor alleging that his medical negligence caused her injuries. Once the jury found in favor of Dr. Taylor, Plaintiff then looked for some other party to sue; those parties being the Defendants to this action. However, based on The South Carolina Supreme Court's holding in *Graham*, Plaintiff cannot assert the same issues in a subsequent action. *Id.* This matter having been fully and fairly adjudicated in the action against Dr. Taylor, Plaintiff should be collaterally estopped by the prior judgment and barred from bringing this action to adjudicate the same issues. *Id.*; *Nelson*, 362 S.C. at 425, 608 S.E.2d at 857.

CONCLUSION

For the reasons stated hereinabove, Plaintiff has failed to establish a genuine issue of material fact; thus, Defendant Dr. Creagh's Motion for Summary Judgment should be granted in full.

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ATTORNEYS FOR DEFENDANT
C. EDWARD CREAGH, MD

July ____, 2012

Exhibits

- A. Memorandum in Support of Summary Judgment
- B. Motion for Summary Judgment
- C. Defendant's Request to Admit
- D. Plaintiff's Response to Defendant's Request to Admit
- E. Defendant's 2nd Request to Admit
- F. Plaintiff's Response to Defendant's 2nd Request to Admit
- G. Plaintiff's Response to Defendant's 1st Interrogatories
- H. Summons and Complaint Civil Action 2009-CP-46-5178
- I. A Day In the Life
 - a. Day In the Life, produced July 14-15, 2008
 - b. Economist Reports, Oliver Wood, May 16, 2008 and March 5, 2009
 - c. Life Care Plan (updated), February 27, 2009

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy L.
Orlowski (a/k/a Kristy Wood),

Plaintiff,

v.

AMISUB of South Carolina, Inc., d/b/a
Piedmont Medical Center; William
Alleyne, MD; and C. Edward Creagh, MD,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-46-5178

DEFENDANTS' REQUESTS TO ADMIT

TO: JOHN EVERSOLE AND CHAD MCGOWAN, ATTORNEYS FOR

PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendants, AMISUB of South Carolina, Inc., d/b/a Piedmont Medical Center; William Alleyne, MD; and C. Edward Creagh, MD request that Plaintiff admit or deny the following matters of fact, in writing and under oath, within 30 days from the date of service, to the office of The Ward Law Firm, P.A., 233 South Pine Street, P. O. Box 3188, Spartanburg, South Carolina 29304, or if the party refuses to admit the truth of the same, Defendants will apply to the Court for the costs incurred in proving the truth of the same at the trial of this matter.

1. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: Is anything inconsistent in that of how she is today actually and what happened to Breanna with her having eclampsia on the 12th?"

Answer: "No, I believe that she eclampsia and I think that is essentially the consensus of the opinion that that is in fact what she had. She had eclampsia which is really preeclampsia in which you have essentially seizures or convulsions as a result and that is called eclampsia. And the problems associated with that can be horrific as in fact I believe what happened here."

2. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: Did you review any CT Scan reports that indicate there would be any other reason for a seizures other than eclampsia?"

Answer: No, I think it is the general consensus is my understanding of the accumulated records and depositions that the ultimate diagnoses caused her the seizures, the neurologic injury and the other consequences including the oxygen deprivation to herself and the baby are all related to eclampsia."

Question: And is your opinion within a reasonable degree of medical certainty that the eclampsia that Kristy Wood suffered the next day related to the signs and symptoms that Doctor Taylor saw in his office on September 11th 2003?"

Answer: Do I have an opinion?

Question: Yes, sir.

Answer: I have an opinion.

Question: And what is your opinion?

Answer: And I believe they are directly related to that and yes they require different care."

3. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff.

"Question: Just a few more questions, actually three more. Within a reasonable degree of medical certainty, Doctor, just so that I'm clear, would the care and treatment that you have given us an opinion of that is required by Kristy Wood, was required by Doctor Taylor when he was treating Kristy Wood would that have prevented the preeclamptic episode she suffered on the 12th?

Answer: Do I have an opinion? Yes I have an opinion.

Question: Within a reasonable degree of medical certainty what is that opinion?

Answer: I believe it would have; I believe it would have prevented the seizure and reasonably I think it would have prevented the seizure."

4. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Barry S. Schiffrin, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: And, Doctor Schiffrin, had Doctor Taylor met the standard of care do you have an opinion within a reasonable degree of medical certainty whether Kristy Wood would be well today; whether Breanna would be well today and be a little girl growing up?

Answer: I believe that it is most probably that both of them would have been; would have survived intact."

5. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Stephen Pliskow, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: "Okay, Can you tell the jury a little bit from your stand point as a board certified obstetrician what happened to her on the 12th the next day?

Answer: Starting at mid night or where do you want me to start?

Question: Start from like what we know from the record.

Answer: From the Piedmont record?

Question: Start from when the EMT's arrived. Put it that way for right now.

Answer: Well when the EMTs arrive the blood pressure was very high. It's in the 180's, 190's over 140's very high. She had seized, she had become eclamptic, she had aspirated. It looks like she probably had aspirated there was vomit where she was laying on the floor and into the garbage pail next to her. The EMT took her to the hospital, there sh had suffered a hypoxic injury.

Question: What does that mean hypoxic injury?

Answer: Low Oxygen. She had low oxygen in her blood because of the seizure, because of the aspiration she wasn't getting enough oxygen into her blood stream. The baby was in - - we don't use the term fetal distress any more but the baby was in trouble had non-reassuring fetal heart tracings and bradycardia."

6. Admit that in the trial of Christopher T. Orlowski, et al v Rock Hill Gynecological & Obstetrical Associates, P.A., et al, Civil Action No.: 2006-CP-46-2213, tried before judge and jury in York County, South Carolina April 24, 2009, Stephen Pliskow, M.D., Expert for the Plaintiff, testified in response to the question by John Eversole, Esquire, Attorney for Plaintiff:

"Question: Within a reasonable degree of medical certainty were all of Kristy's problems; medical problems, were they caused by the eclamptic episode on September 12th?

Answer: Yes they were. Kristy eventually went home after her recovery from the seizure at Piedmont but was never really well. She was having chest pains and difficulty breathing, panic attacks. Went back to the hospital for a two day stay only one or two days after she had gone home. She really wanted to go back home. They sent her home and subsequently two days later was put right back in the hospital. She was diagnosed with an empiema which is an abscess or an infection on the outside of the lungs and that was from the tube, the breathing tube that she had because - - Well the chest tubes that she had because when she was admitted with the eclampsia and had the aspiration of pneumonia she wound up developing pneumothorax. Pneumothorax is basically when the lungs collapse. And the way they treat that is they put chest tubes in they suck the air out of the chest wall and allows the walls of the lungs to re-expand. So those cites from the foreign bodies that were in her chest cavity wound up getting infected and those got infected with MRSA so that was defiantly related to the hospitalization. Also she wound up with pseudopneumonia. Pseudopneumonia is not a normal pneumonia that you would get community acquired. It's something that you definitely see hospital acquired and that's from her being incubated for a long time. Having had

aspiration pneumonia so the answer is yes her readmission to Piedmont, her subsequent cardiac arrest during that admission and then her transfer to CMC the Carolina's Medical Center was all related back to her eclamptic seizure.

Question: Doctor, within a reasonable degree of medical certainty were Breanna's problems leading up to her passing away caused by the eclamptic episode on September 12th that we discussed?

Answer: Yes they were.

Question: Within a reasonable degree of medical certainty could all of that in your opinion Breanna's death, all of Kristy's problems that she has today been prevented by hospitalization of Kristy Wood on September 11, 2003?

Answer: Yes, I believe that if she was admitted on the 11th within a reasonable degree of medical certainty she would have been delivered before the seizure. But even if we say that she would have seized in the hospital she would have been fine. Most patients more likely than not patients that seize in the hospital with the medical care that we have for them there they do much better and she would be fine."

7. Admit that Oliver Wood, was Plaintiff's Expert Witness on Economics, called in the evaluation of economic loss allegedly resulting from the medical negligence of Defendant Taylor, and in questioning by John Eric Fulda, Esquire, Attorney for Plaintiff, answered as follows:

"Question: Dr. Wood, if I could just to get you to continue on and started telling us what you relied upon at that point in getting here today?

Answer: Okay. According to Mr. Hinson at the time of the incident Ms. Orłowski worked as an administrative assistant and there was a reasonable degree of certainty that she would continue as an administrative assistant. According to Mr. Hinson it is reasonably believe upon research and review of the national and state data that her annual income would approach Twenty-eight Thousand, Three Hundred Dollars about Thirteen Dollars an hour per wages for secretaries excluding legal, medical and executive secretaries. According to Mr. Hinson she had been unable to work since September -03. Its assumed that had she not be injured she would have returned to work at approximately January '04 and that leaves a period of time for maternity leave. I'm assuming it would take her about three years to approach the income level opined by Mr. Hinson. I'm assuming she's unemployed with the weather market. With respect to extraordinary care in this case I interviewed Ms. Sims her mother from approximately '04 to

July of '06 she provided an average of fourteen hours a day of extraordinary care. Extraordinary care is defined as care above and beyond ordinary care but in this case it's not a husband and wife relationship so it's all extraordinary care. I value that at Sixteen Dollars and Seventy-three cents and that's the mean hourly wage for licensed practical nurses in South Carolina. Also I reviewed the life care plan prepared by Ms. Hollenbeck, she is a life care planner, Master's Degree, Certified Life Care Planner, Certified Case Manager. Those are the facts that I took into account.

Question: Based on these facts, Doctor Wood, do you have an opinion to a reasonable degree of economic certainty as to the past and future economic loss of Kristy Wood?

Answer: Yes.

Question: And have you prepared any charts to show the jury today?

Answer: Yes."

Mr. Fulda continued and Dr. Wood responded:

Answer:: The first chart looks at the economic loss from September of '03 through April 20th of '09. It's been a period of 5.60 years. The first element is earning capacity. Earning capacity is what a person is capable of earning in the highest achievement. She was evaluated as being an administrative assistant. There is no economic loss for the rest of that year. It's assumed she had been out on maternity leave. Beginning in '04 at Ten Dollars an hour Twenty Thousand Dollars in that year assuming she works fifty weeks a year at forty hours a week. I then advanced her to the level in three years which was a medium for administrative assistants. The loss per year as you can see Twenty-Two Thousand, Four Fifty-six; Twenty-five, Two Fourteen; Twenty-eight, Three Hundred; Twenty-eight, Three Hundred; Eight-four, Ninety so far for a total of a Hundred and Thirty-two, Seven sixty.

The second element looks at extraordinary care provided by Ms. Sims. What was the value of that? It was a period of time before she was out and that wouldn't be until the beginning of the year of '04 so I assume no loss for that time she was involved in other care facilities. The using what Ms. Sims told me was fourteen hours a day the cost of replacing that care the balance of '04 Forty-two Thousand, Eight-five the next year; Forty-two. And then she said it dropped to ten hours a day. So many hours a week it dropped down to Sixty-Thousand for two years. That total is

Three Hundred and Forty-one Thousand, 0-2-4. And the sum of these two you get Four Seventy-three, 7-8-4.

The second chart looks at Kristy's earning capacity from now to the future. I assume that Kristy would receive only a cost of living increase of 2.7 per cent a year. That's what the CPI increase is per year over the last sixteen years. I've given her no promotions, no merit increases, no productivity increases, only a cost of living; so if you gave a person just cost of living increases they stay flat in terms of real income. Over this period of time from now until her normal social security retirement age she would have been expected to earn Two Million Dollars. However our court system requires that if we have to look at money and closing in the future we have to be evaluated now, money and closing in the future we have to be evaluated now. They have to be discounted to what is known as the present cash value. I've discounted these at the rate of Five Percent compounded annually. So that means as we stand here today the present value of her future earning capacity is Seven Hundred and Twenty-seven Thousand, Nine Fifty-two. That plus interest would replace that income over the next forty years.

Chart Number Three looks at medical expenses. We have a life care plan in this case. Looking at historical medicare cost go back to 1960 this data is collected by the Federal Bureau of Vital Statistics that index was Twenty-two point three. In order to give it meaning I set that at an even hundred and then tracked that index over the last forty-eight years. So what cost a hundred dollars in the medical area in 1960 by the year 2000 cost One Thousand, One Hundred and Eight-nine Dollars. By the year 2008 it cost Sixteen hundred and Thirty-two Dollars. So that means within a sixteen fold increase of medical care cost and we've all witnessed that in terms of prescription drugs, hospitalization cost, doctor charges and so forth.

Within the Bureau of Labor and Statistics the General Medical Care Index there are certain subgroups in that; Subgroups dealing with physician services. Over the last sixteen years that's increased to three point six three percent over the year compounded. Physician's services meaning the test that they charge you in their office and that's increased to three point four four percent. I'm always said doctors are pretty good economists; they mark up their test. Now the way they mark up their fees not in line by prescription drugs and medical supplies one point one eight percent. The only way I can explain why this is so much low is I think imports keep the lid on these kinds of things here. Services of other medical professionals two point eight six. Prescription medications three point six. Nonprescription medical equipment one point three. And then medical

care services down here four point four nine. This is professional medical services, hospital services, nursing home services and health insurance and so forth four point four nine which is a little bit above the General Index. The General Index is pulled down because we do have a couple of items in there that are fairly low.

In a case involving catastrophic injury you have what is known as a life care plan. Ms Hollenbeck prepared a life care plan. What the life care planner does is to get all the medical records; interview the physicians and based on their education and training create a plan to care for the person over the rest of their life called a Life Care Plan. I've taken a long document and reduced it to a couple of pages. Now here are the different dimensions of a life care plan. You have the element. Frequency, that means how often you need it. Periodic Cost and Duration, how long you will need it. I'm not going over every element because you can read. The first one is a Home Accessibility Evaluation. That's a one timer because you only need to look at that one time. It cost a Hundred and Twenty-five Dollars and it takes place this year.

Occupational Care Evaluation: That's an annual deal again One Twenty-five. Physical Therapy Evaluation: Annual deal One Twenty-five. Now here in Category B Projected Therapeutic Modalities: OT, PT. Occupational, Physical Therapy per year cost as you can see Two Thousand, Twenty-eight Hundred. That's a life time deal.

Wheelchair Mobility: Here you have the reclining manual wheelchair. That's replaced every five years at a cost of Two Thousand Dollars current value. The Roll-in Shower Chair replaced every five years. And then the next item is the Wheelchair and Shower Chair Maintenance so much per year.

And then you have various wheelchair accessories that are replaced every one to two, five to seven, so forth and so on. Again that's a life time deal.

Orthotics/Prosthetics once every two years.

Durable Medical Items. As you can see Rolling Hydraulic/Electric Patient Lift replace ever seven years Three Thousand. And you can read down through there those other items.

G is Aids for Independent Function. That would be such things as a chair, commode chair, door jam."

Interruption by Jury Foreman.

Testimony resumes.

"And you see there are five items there. They are replaced generally - - Here there are several a one timer and then these others are every five years.

All right supplies. Depend Underwear and underwear is an annual deal of Eleven Sixty-nine. Miscellaneous Supplies, Washable Bed Pads, those as you can see are life time deals.

Medications. She needs a variety of medications. There are eleven items here. The first one is Amantadine for four years. The rest for life or nine years or four years.

Home Care. She's got an architectural modification one timer, Twenty-one Thousand, Two Fifty.

Facility Care. Adult Daycare Twelve Thousand, Seven Hundred. Adult care Transportation.

Future medical Care. Follow up visits with her psychiatrist Seven Thirty-four a year.

Transportation. Wheelchair accessible van. The way I treated the van was I took the cost of the van and then I subtracted the cost of a normal car in order to force out what was the extra cost of having the van above and beyond a normal car someone would drive. And then you have various maintenance fees and so forth.

Acute Medical Intervention. You can see as an annual one here for the monthly Baclofen pump refills Fourteen Thousand Dollars. And then other various things.

And here is the most expensive thing in the plan and that is Attendant Care. Attendant care annual cost is Fifty-seven Thousand Dollars and that's a life deal.

Lastly is Case Management. When you have a plan like this that is so complicated you need a medical care coordinator to follow the patient and be the manager of this whole set of medical care items. Its called a Case Manager. Case Manager the first year is a hundred hours and Nine Thousand Dollars. After that Four Thousand Dollars a year to manage this life care plan. Now here are all the different elements as spelled out by Ms. Hollenbeck. I then take those elements and determine what is the cost

of providing that particular item of care. The evaluation is One Twenty-five. We know that's a one timer. You can see here Thirty-nine Eighteen for these two. These are all reduced to their present cash value. So that's the cost today of providing that for the rest of her life.

I won't go over all of these but you can see the evaluations are Seven Thousand; Modalities are Hundred and Fifty; Twenty-one for the wheelchair; Eight for the Accessories, Twelve for the Orthotics; Thirty-nine for the Medical Care Item; Two Thousand for the Aids; Thirty-two Thousand for Supplies. The Medications is Ninety-four. Home care Twenty-one. That's a one time architectural deal to make it accessible for Kristy The largest item in here is the Facility Care, the Day Care and the transportation that's Six Forty-three; Future Medical Care Routine Twenty-seven Hundred. One Fifty-two for the Transportation. And then the Attendant Care down here is a Million Dollars for all of these items right here. The Baclofen pump is Five Hundred Thousand Dollars. And this Attendant care here is a Million, Eight. The total present value is Four Million, Two Hundred and Seventy-one Thousand, Seven Fourteen.

Now I expressed no opinion about whether she needs this because that's a life care plan to say she needs this. By having all these items set up in a line by line basis if you feel that something should have been taken out all you have to do is to go to the plan and cross out whatever item that is by this evaluation. If you feel like more is needed you can add to it. But having this in different compartment allows you to make adjustment if you see some reason that the life care should be tinkered with.

And the after trial period for Kristy the two elements are loss and earning capacity Seven twenty-seven. Cost of funding her future medicine too for a total of Four Million, Nine-Nine-Nine, Six Sixty-six. Her total economic loss is the sum of before trial loss of Four Point nine or Five Million for a total of Five Million, Four Seventy-Three, Four Fifty. That's the estimated cost of replacing her earning capacity and funding a life care plan for her for the rest of her life.

Question: Doctor Wood, does that include anything for past medical care?

Answer: No. I have not compiled that. Its present on going I assume we compiled this by your office.

Question: What about loss, her loss of enjoyment and quality of life?

Answer: I haven't valued it. That's a non-economic loss that I haven't considered.

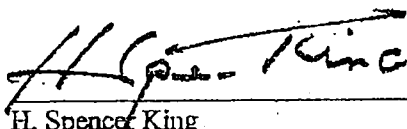
Question: Or any pain and suffering?

Answer: Same answer. I have not evaluated that.

Question: Are all of your opinions here today to a reasonable degree of economic certainty?

Answer: Yes."

8. Admit that Leanna Hollenbeck, was Plaintiff's Expert Witness on Life Care Planning, who compiled and submitted the attached Life Care Plan.



H. Spencer King
The Ward Law Firm, P.A.
Attorneys for Defendants William Alleyne, MD and
C. Edward Creagh, M.D.
233 South Pine Street
Spartanburg, SC 29302

September 18TH, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Gladys Sims, as the Duly Appointed)
Guardian and Conservator of Kristy)
L. Orłowski(a/k/a Kristy Wood),)

Plaintiff,)

vs.)

AMISUB of South Carolina, Inc.,)
d/b/a Piedmont Medical Center;)
William Alleyne, MD; and)
C. Edward Creagh, MD)

Defendant.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-46-5178

PLAINTIFF'S RESPONSE TO DEFENDANT,
AMISUB OF SOUTH CAROLINA, INC., d/b/a
PIEDMONT MEDICAL CENTER, WILLIAM
ALLEYNE, MD, AND C. EDWARD CREAGH'S,
MD, REQUESTS TO ADMIT DATED
SEPTEMBER 19, 2011

Plaintiff GLADYS SIMS, as the Duly Appointed Guardian and Conservator of Kristy L. Orłowski (a/k/a Kristy Wood), by and through undersigned counsel, hereby serves responses to Defendant, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, William Alleyne, MD, and C. Edward Creagh's, Requests To Admit dated September, 19, 2011.

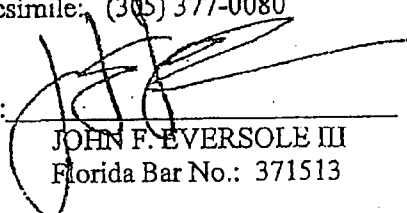
1. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
2. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
3. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
4. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.

MASE LARA EVERSOLE.

5. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
6. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
7. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.
8. Plaintiff admits that this request is an accurate rendition of the testimony in Case Number: 2006-CP-46-2213. Plaintiff denies this testimony has any relevance to the issue in the case at bar.

Respectfully submitted,

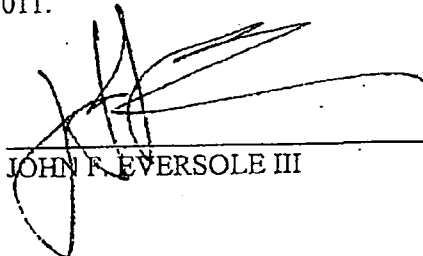
MASE, LARA, EVERSOLE, P.A.
Attorneys for Plaintiff
2601 South Bayshore Drive, Suite 800
Miami, Florida 33133
Telephone: (305) 377-3770
Facsimile: (305) 377-0080

By: 

JOHN F. EVERSOLE III
Florida Bar No.: 371513

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail and facsimile to: H. Spencer King, The Ward Law Firm, P.A., *Attorneys for Defendants William Alleyne, MD and C. Edward Creagh, M.D.*, 233 South Pine Street, P.O. Box 3188, Spartanburg, SC 29304-3188; William U. Gunn, Esquire, Holcombe Bomar, P.A., P.O. Drawer 1897, Spartanburg, South Carolina 29304; and Chad McGowan, Esq., 1539 Healthcare Drive, Rock Hill, SC 29172; this 3rd day of November, 2011.


JOHN F. EVERSOLE III

18018/284

STATE OF SOUTH CAROLINA
COUNTY OF YORK

)
)
)
IN THE COURT OF
COMMON PLEAS

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy
L. Orlowski (a/k/a Kristy Wood),

Plaintiff,

vs.

Amisub of South Carolina, Inc., d/b/a
Piedmont Medical Center; William
Alleyne, MD; and C. Edward Creagh, MD,

Defendants

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SECOND JOINT REQUESTS
TO ADMIT OF DEFENDANTS
TO PLAINTIFF

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)
)
)
C. A. No. 2009-CP-46-5178

TO: CHAD A. MCGOWAN of McGowan Hood & Felder, LLC, and JOHN EVERSOLE
of MASE, LARA, EVERSOLE, Attorneys for Plaintiff

Defendants above-named, pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, request that Plaintiff admit or deny the following matters of fact, in writing and under oath, within thirty (30) days after the date of service hereof, to the office of the undersigned at P.O. Box 1897, Spartanburg, South Carolina 29304. If Plaintiff refuses to admit the truth of the matters of fact, Defendants will apply to the court for all costs incurred in proving the truth of facts upon the trial of this case.

1. Heretofore, in 2006, Kristy Orlowski, through her guardian ad litem Christopher Orlowski, filed suit in the Court of Common Pleas of York County seeking actual and punitive damages against Rock Hill Gynecological and Obstetrical Associates, P.A. and R. Norman Taylor, III, M.D. In the Complaint in that action, known as civil action number 06-CP-46-2213, Kristy Orlowski alleged that she had prenatal care by Dr. Taylor

and that on September 12, 2003 Kristy Orlowski had an emergency Caesarian section delivering an infant and that as a result of negligence of Dr. Taylor and Rock Hill GYN-OB on September 12, 2003 and prior thereto during the prenatal care of Kristy Orlowski, Kristy Orlowski suffered irreversible hypoxic brain injury as a direct and proximate result of such negligence.

2. That the Complaint detailing the allegations of negligence and damages on behalf of Kristy Orlowski is attached hereto as Exhibit A.

3. In assessing the damages claimed to be a direct and proximate result of the negligence of Dr. Taylor and Rock Hill GYN-OB, Kristy Orlowski's attorneys engaged Leanna Hollenbeck, MS, CRC, CCM, a certified life care planner. Further, Ms. Hollenbeck, in her report prepared March 4, 2008 set forth the plan of care for the life of Kristy Orlowski which she felt was the direct and proximate result of the injuries and damages sustained by Kristy Orlowski as a direct and proximate result of the negligence of Dr. Taylor and Rock Hill GYN-OB.

4. Attached hereto as Exhibit B is a true and correct copy of the Life Care Plan Update of Leanna Hollenbeck, showing her opinions regarding life care for Kristy Orlowski necessitated by the negligence of Dr. Taylor and Rock Hill GYN-OB.

5. At the trial of the lawsuit brought by Kristy Orlowski against Dr. Taylor and Rock Hill GYN-OB, Kristy Orlowski testified in a manner consistent with Exhibit B.

6. Additionally, in assessing the damages of Kristy Orlowski in the lawsuit against Dr. Taylor and Rock Hill GYN-OB, the attorneys for Kristy Orlowski engaged the services of Gerald N. Hinson, M.Ed., a vocational expert.

7. Mr. Hinson, in assessing the evaluation of monetary losses because of lack

of employment of Kristy Orlowski as a result of the negligence of Dr. Taylor and Rock Hill GYN-OB, rendered his written report dated February 28, 2009, which is attached hereto as Exhibit C.

8. At the trial of the action of Kristy Orlowski against Dr. Taylor and Rock Hill GYN-OB, Mr. Hinson testified in a manner consistent with his report.

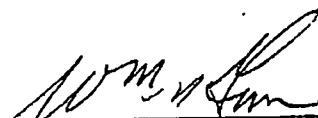
9. Attached hereto as Exhibit D is a two-page summary of medical bills Kristy Orlowski contended in the action against Dr. Taylor and Rock Hill GYN-OB were recoverable, as a direct and proximate result of the negligence of the said Defendants. The total of all those medical expenses is the sum of \$753,854.83.

10. Additionally, in proving her damages alleged to be the result of the negligence of Dr. Taylor and Rock Hill GYN-OB, Kristy Orlowski, through her attorneys, employed Oliver G. Wood, Jr., Ph.D. to prepare a preliminary appraisal of financial loss due to her injuries. Dr. Wood then prepared his written revised Preliminary Appraisal of Financial Loss due to injury dated March 5, 2009, a copy of which is attached hereto as Exhibit E. In that connection, Dr. Wood expressed the opinion that Kristy Orlowski's pretrial economic losses were \$470,216, and her after trial loss was \$4,975,023, for a total financial loss of \$5,445,239. At trial, Dr. Wood testified in a manner consistent with that report.

11. The case of Kristy Orlowski, through her guardian ad litem, against Rock Hill GYN-OB and R. Norman Taylor, III, M.D. was tried before the Honorable Lee S. Alford, Circuit Court Judge, and a jury in York, South Carolina on April 20-24, 2009. During the trial of that case, Kristy Orlowski, through her attorneys, alleged, took the position, and argued that all damages referred to in request numbers 1 through 10 above were a direct

and proximate result of the negligence of Dr. Taylor and Rock Hill GYN-OB, occurring on or before September 12, 2003.

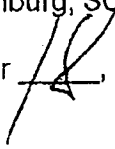
HOLCOMBE BOMAR, P.A.

By: 

William U. Gunn
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com

Attorney for Defendant Amisub
of South Carolina, Inc., d/b/a
Piedmont Medical Center

Spartanburg, SC

October , 2011

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Gladys Sims, as the Duly Appointed)
Guardian and Conservator of Kristy)
L. Orlowski(a/k/a Kristy Wood),)

Plaintiff,)

vs.)

AMISUB of South Carolina, Inc.,)
d/b/a Piedmont Medical Center,)
William Alleyne, MD; and)
C. Edward Creagh, MD)

Defendant.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2009-CP-46-5178

PLAINTIFF'S RESPONSE TO DEFENDANT,
AMISUB OF SOUTH CAROLINA, INC., d/b/a
PIEDMONT MEDICAL CENTER, WILLIAM
ALLEYNE, MD, AND C. EDWARD CREAGH'S,
MD, SECOND JOINT REQUESTS TO ADMIT

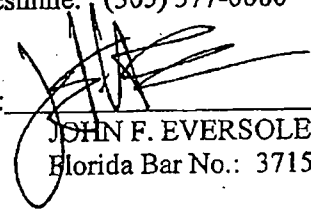
Plaintiff GLADYS SIMS, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski (a/k/a Kristy Wood), by and through undersigned counsel, hereby serves responses to Defendants, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center, William Alleyne, MD, and C. Edward Creagh's, Second Joint Requests To Admit dated October, 18, 2011.

1. Admitted that such a suit was filed but such is not calculated to lead to relevant evidence in this matter.
2. Admitted that the complaint is attached as Exhibit A.
3. Although this request is not calculated to lead to relevant evidence in the instant case, but Ms. Hollenbeck did submit a report in the prior matter.
4. It is assumed that counsel has attached a true and correct copy of the Life Care Plan as Exhibit B.
5. Object as being somewhat vague and unknown as exactly which parts of Exhibit B is being referred to. Therefore object to this request as being vague and not calculated to lead to relevant evidence in the instant matter.

6. Admitted.
7. Although this request is not calculated to lead to any relevant evidence in the instant matter, Mr. Hinson did submit a written report and we assume counsel attached a true and accurate copy of said report.
8. Object as being vague as to the phrase "consistent with his report". Further, the information in this request is not calculated to lead to relevant evidence in the instant matter.
9. Admitted that Exhibit D appears to be the medical expenses submitted in that case however the information herein is not calculated to lead to relevant evidence in the instant matter.
10. Object as a compound request and not calculated to lead to relevant evidence in the instant matter. However, Dr. Wood did prepare a report in the previous case and Exhibit E appears to be a true and accurate copy of that report. However, since that time Ms. Orłowski economic losses have significantly increased so that report is no longer true and correct. Further, the phrase "consistent with that report" is vague and ambiguous with regard to exactly what testimony is being referred to in this request.
11. This information is not calculated to lead to relevant evidence in the instant matter. However, such a trial was held so those facts are admitted.

Respectfully submitted,

MASE, LARA, EVERSOLE, P.A.
Attorneys for Plaintiff
2601 South Bayshore Drive, Suite 800
Miami, Florida 33133
Telephone: (305) 377-3770
Facsimile: (305) 377-0080

By: 

JOHN F. EVERSOLE III
Florida Bar No.: 371513

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy
L. Orlowski(a/k/a Kristy Wood),)

Plaintiff,)

Vs.)

AMISUB of South Carolina, Inc.,)
d/b/a Piedmont Medical Center;)
William Alleyne, MD; and)
C. Edward Creagh, MD)

Defendant.)

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

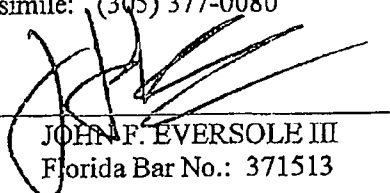
Civil Action No.: 2009-CP-46-5178

PLAINTIFF'S RESPONSE TO
DEFENDANTS' FIRST SET OF
INTERROGATORIES

Plaintiff GLADYS SIMS, as the Duly Appointed Guardian and Conservator of Kristy L. Orlowski (a/k/a Kristy Wood), by and through undersigned counsel, hereby serves responses to Defendant, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center's, First Set of Interrogatories.

Respectfully submitted,

MASE, LARA, EVERSOLE, P.A.
Attorneys for Plaintiff
2601 South Bayshore Drive, Suite 800
Miami, Florida 33133
Telephone: (305) 377-3770
Facsimile: (305) 377-0080

By: 

JOHN F. EVERSOLE III
Florida Bar No.: 371513

MASE, LARA, EVERSOLE

**PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF
INTERROGATORIES DATED APRIL 29, 2010**

1) Give the names and addresses of persons known to the parties or 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 indicate who has possession of such statements.

ANSWER:

Mrs. Gladys Sims
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

Mrs. Sims is Kristy L. Wood's mother who can testify as to Kristy's health after Brianna's birth and before the negligence of the defendants.

Mr. Larry Don Sims
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

Mr. Sims is Kristy L. Wood's step-father who can testify as to Kristy's health after Brianna's birth and before the negligence of the defendants.

Mr. Steve Wood, Jr.
[REDACTED]
[REDACTED]

Mr. Wood is Kristy L. Wood's brother who can testify as to Kristy's health after Brianna's birth and before the negligence of the defendants.

Ms. Jamie Jolly
[REDACTED]
[REDACTED]

Ms. Jolly is Kristy L. Wood's brother's girlfriend who can testify as to Kristy's health after Brianna's birth and before the negligence of the defendants.

Ms. Michelle Hinson
[REDACTED]
[REDACTED]

Ms. Hinson is Kristy L. Wood's family friend who can testify as to Kristy's health condition through the years.

Ms. Emily Messer
[REDACTED]
[REDACTED]

Ms. Messer is Kristy L. Wood's family friend who can testify as to Kristy's health condition through the years.

Ms. Angel Rizzo
[REDACTED]
[REDACTED]

Ms. Rizzo is Kristy L. Wood's family friend who can testify as to Kristy's health condition through the years.

Pastor Bruce Kiser
[REDACTED]
[REDACTED]

Pastor Kiser is Kristy L. Wood's family pastor who can testify as to Kristy's health condition through the years.

Mrs. Alice Kiser
[REDACTED]
[REDACTED]

Ms. Kiser is Kristy L. Wood's family friend who can testify as to Kristy's health condition through the years.

Ms. Rachel Kiser
[REDACTED]
[REDACTED]

Ms. Kiser is Kristy L. Wood's family friend who can testify as to Kristy's health condition through the years.

Mr. William (Bob) Sexton
[REDACTED]

Mr. Sexton is Kristy L. Wood's uncle who can testify as to Kristy's health condition through the years.

Mrs. Diane Thomas
[REDACTED]

Mrs. Thomas is Kristy L. Wood's aunt who can testify as to Kristy's health condition through the years.

Mrs. Mary Peterson
[REDACTED]

Mrs. Peterson is Kristy L. Wood's aunt who can testify as to Kristy's health condition through the years.

Mr. Louise Breakfield
[REDACTED]

Mrs. Breakfield is Kristy L. Wood's aunt who can testify as to Kristy's health condition through the years.

Ms. Teresa Maddox, Social Worker
York County Board of Disability
7900 Park Place Road
York, South Carolina 29745

Ms. Maddox is Kristy L. Wood's social worker who can testify as to Kristy's health condition through the years.

Charles McInahan, M.D.
Carolina Neurosurgery & Spine Assoc.
225 Baldwin Avenue
Charlotte, NC 28204

Dr. McInahan is Kristy L. Wood's physician who can testify as to Kristy's health condition through the years.

David Wiercisewski, M.D.
Carolina Neurosurgery & Spine Assoc.
225 Baldwin Avenue
Charlotte, NC 28204

Dr. Wiercisewski is Kristy L. Wood's physician who can testify as to Kristy's health condition through the years.

Steven Lee Frick, M.D.
York, South Carolina

Dr. Frick is Kristy L. Wood's physician who can testify as to Kristy's health condition through the years.

Dr. Countryman
York, South Carolina

Dr. Countryman is Kristy L. Wood's physician who can testify as to Kristy's health condition through the years.

Shannon (Physical Therapist)
NHC Home Care Piedmont
1668 Herlong Court
Rock Hill, South Carolina 29732

Shannon is Kristy L. Wood's physical therapist who can testify as to Kristy's health condition through the years.

Any and all doctor and nurses whose names appear in the records at all times material to the Complaint.

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

ANSWER:

Please see records responsive to Amisub's Initial Request for Production. However, at this time discovery is continuing.

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

ANSWER:

This is not a personal injury case.

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

ANSWER:

See economist reports. When these reports are updated they will be produced.

5) List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER:

Unknown at this time as to which experts will be called at the trial of this case.

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

ANSWER:

See Answer to Interrogatory No. 1

7) Set forth the names and addresses of all physicians, chiropractors, psychologists, hospitals, clinics and medical offices (not already named in response to interrogatory no. 1) from whom or which the Plaintiff has been treated for any problem (physical or mental) in the past fifteen (15) years, including but not limited to, the name or names of the party's family physician or physicians.

ANSWER:

Object overbroad.

David Layne, M.D.
Riverwood Family Practice
Gastonia, South Carolina

William Franklyn Alleyne, M.D.
124 Glenwood Drive
Rock Hill, South Carolina 29732

Charles Edward Creagh, M.D.
124 Glenwood Drive
Rock Hill, South Carolina 29732

Charles McInahan, M.D.
Carolina Neurosurgery & Spine Assoc.
225 Baldwin Avenue
Charlotte, NC 28204

David Wiercisewski, M.D.
Carolina Neurosurgery & Spine Assoc.
225 Baldwin Avenue
Charlotte, NC 28204

R. Norman Taylor, M.D.
1721 Ebenezer Road, No. 145
Rock Hill, South Carolina 29732

Steven Lee Frick, M.D.
York, South Carolina

Dr. Countryman
York, South Carolina

Amisub of South Carolina, Inc. d/b/a
Piedmont Medical Center
Rock Hill, South Carolina

Rock Hill Gynecological & Obstetrical Associates, P.A.
Rock Hill, South Carolina

Carolinas Medical Center
Charlotte, North Carolina

Any and all doctor and nurses whose names appear in the records at all times material to the Complaint.

- 8) Identify all exhibits that you plan to use at the trial.

ANSWER:

Unknown at this time.

- 9) With regard to all experts identified in answers to written interrogatories, please state the following:

- (a) all facts known by the purported expert;
- (b) all opinions held by such purported expert;
- (c) the basis for all such opinions held by the purported expert;
- (d) all materials furnished to the purported expert;
- (e) all books, treatises, or other learned materials of any nature and type relied upon by the purported expert in formulating his or her opinions;
- (f) state the professional occupation of the purported expert;
- (g) state the educational background of the purported expert;
- (h) state the work background of the purported expert;
- (i) list every publication, seminar, or presentation made by the purported expert in his or her field of purported expertise;
- (j) list every lawsuit in which the purported expert has testified at trial, by giving the following information:
 - (1) the caption or style of the case;

- (2) the case number and court in which the case was pending;
 - (3) the party on whose behalf the purported expert testified;
 - (4) identify the attorney for each party.
- (k) list every lawsuit in which the purported expert has testified by way of deposition, by giving the following information:
- (1) the caption or style of the case;
 - (2) the case number and court in which the case was pending;
 - (3) the party on whose behalf the purported expert testified;
 - (4) identify the attorney for each party.
- (l) list every occasion on which the purported expert has been consulted, either formally or informally by a party involved in the litigation or contemplating litigation, by stating and giving the following information:
- (1) identify the party, attorney, insurer, or other representative who consulted with the purported expert;
 - (2) the subject matter on which the consultation was made;
 - (3) state whether or not a written report was generated by the purported expert.

ANSWER:

Unknown at this time as to which experts will be called at the trial of this case. At the time when experts are named discovery will be responded to.

10. Please list each relative of the Plaintiff, either by blood or marriage, who is eighteen (18) years or older and who resides in the county in which this action was brought, to the sixth degree of kinship (spouses, ex-spouses, brothers, sisters, mother, father, aunts, uncles, cousins, grandparents, etc.), and state their occupation and place of employment.

ANSWER:

Mrs. Gladys Sims' kin:

Kristy Wood Orlowski (Daughter)
Clover, South Carolina
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

Mr. Larry Don Sims (Husband)
Clover, South Carolina
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

Mr. Steve Wood, Jr. (Son)
[REDACTED]
[REDACTED]

Ms. Jamie Jolly (Sister in Law)
2195 Southbend Road
Clover, South Carolina 29710

Mr. William (Bob) Sexton (Brother)
Clover, South Carolina

Mr. Johnny Sexton (Brother)
Clover, South Carolina

Mr. Thomas Drawdy (Brother)
Clover, South Carolina

Mrs. Diane Thomas (Sister)
Rock Hill, South Carolina

Mrs. Mary Peterson (Sister)
Blacksburg, South Carolina

Mr. Louise Breakfield (Sister)
Greenville, South Carolina

Ms. Kristy Orlewoski's kin:

Mrs. Gladys Sims (Mother)
Clover, South Carolina
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

Mr. Larry Don Sims (Step-Father)
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

Mr. Steve Wood, Jr. (Brother)

[REDACTED]
[REDACTED]

Ms. Jamie Jolly (Sister-in-Law)

[REDACTED]
[REDACTED]

Mr. Ed and Mrs. May Joye (Paternal Grandparents)
Clover, South Carolina

Ms. Elaine Wood (Aunt)
Clover, South Carolina

Mr. Samuel Wood (Uncle)
Clover, South Carolina

11. Give the full legal names, address, date of birth, social security number and drivers license number of the Plaintiff.

ANSWER:

Mrs. Gladys Sims
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

DOB: [REDACTED]
Driver's License No.: [REDACTED]
Social Security No.: [REDACTED]

Miss. Kristy Louise Wood
c/o McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, South Carolina 29732

DOB: [REDACTED]
[REDACTED]

12. Have you ever been involved in a lawsuit, including a workers' compensation claim? If yes, please specify:

- (a) Were you a plaintiff or a defendant?
- (b) What type of case was it?
- (c) Who was your lawyer?
- (d) What were the damages claimed?
- (e) What was the date on which the claim arose?
- (f) What was the result of said lawsuit or claim?

ANSWER:

No, Mrs. Sims and/or Miss Wood have not been Plaintiff's in any lawsuit other than:

C. Orlowski, et al., vs. Rock Hill Gynecological &
Obstetrical Associates, et al., Civil Action No. 06-CP-46-2213
South Carolina, York County, Court of Common Pleas
Sixteenth Judicial Circuit

13. Have you been convicted of or pled guilty to a crime involving moral turpitude? If the answer to this Interrogatory is in the affirmative, please state the crime involved as well as the state, county and court and the date of such guilty plea or conviction.

ANSWER:

No, Mrs. Sims and/or Miss Wood have not been convicted of or pled guilty to any crime involving moral turpitude.

14. What is the extent of your education, i.e., grade school, high school, college or graduate school, that you have attained, and identify any school or other educational institution from which you have obtained a degree, i.e., high school, college or graduate school.

ANSWER:

Mrs. Sims went to school through grade 10th grade.

Miss Wood graduated from High School.

15. Specify the jobs that you have held within the last twenty-five (25) years, providing the names of the organizations that you have worked for, their addresses and your positions with those organizations.

ANSWER:

Mrs. Gladys Sims employers:

Peltone & Crane Dental Components
Charlotte, South Carolina

Wilton & Conner Packaging
Charlotte, South Carolina

Parts Incorporated
Clover, South Carolina

Filtration Group
York, South Carolina

Incredible Clean
York, South Carolina
*Present Employer

Ms. Kristy Orlowski's employers:

Cigarettes Cheaper
Charlotte, South Carolina

Ross
Charlotte, South Carolina

York County Board of Disabilities
York, South Carolina

Army Reserve
Columbia, South Carolina

16. If you are claiming any lost wages in connection with this action, specify the annual wages earned with each employer identified in answer to Interrogatory number 15.

ANSWER:

No past lost wages have been claimed.

17. What social, political, civic and church organizations do you belong to or are you associated with?

ANSWER:

Church member of:

Morning Star Freewill Baptist Church
Clover, South Carolina

18. Describe the condition of your health at this time and any limitations or physical impairments that you have might have.

ANSWER:

Kristy's condition requires personal assistance with every aspect of her life. For the rest of her life Kristy will be unable to walk on her own or get around in her own home without assistance. Kristy will require assistance when eating, bathing, dressing and taking her medications. While eating Kristy requires supervision to prevent choking from liquids. Kristy cannot get out of bed or use the bathroom on her own. Kristy uses adult diapers for sleeping. Kristy wears a leg and hand brace, including when she sleeps. Kristy sleeps on a special gel mattress to prevent bed sores her bed requires special railing to prevent her from falling out.

Kristy will be unable to drive or play sports. Kristy will never be able to socialize like a twenty-five year old young woman. Kristy cannot go shopping or to a restaurant on her own. Kristy will have to take numerous medications daily for the rest of her life due to her health condition.

19. Please identify the name, from the medical chart, of each employee of Defendant whom you contend was negligent. For each of such persons, please state what that person should have done which he or she failed to do and state what he or she did which they should not have done.

ANSWER:

Object this question is overbroad. However, depositions have yet to commence as to this Defendant's personnel, however Drs. Creagh and Alleyne were agents, actual or apparent of this Defendant's discharging this Defendants's non-delegable duty to this patient.

I have read the foregoing Answers to Defendant, Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center's, First Set of Interrogatories First Set of Interrogatories dated April 29, 2010, and do swear that they are true and correct to the best of my knowledge and belief.

GLADYS SIMS, Affiant, As duly appointed
Guardian and Conservator of Kristy L.
Orlowski (a/k/a Kristy Wood)

STATE OF _____)
) SS
COUNTY OF _____)

BEFORE ME, the undersigned authority, personally appeared Gladys Sims, who is (personally known to me) (or has produced _____), as identification, and who after first being duly sworn by me deposes and says that she executed the foregoing answers to interrogatories and that the answers contained therein are true and correct to the best of her knowledge and belief.

SWORN to and SUBSCRIBED before me this _____ day of _____, 2011.

NOTARY PUBLIC, State of

My commission expires:

18018/#195

original Plan
Life Care
from
Hollenbeck &
Associates

Life Care Plan

CLIENT: Kristy Orlowski

MEDICAL SUMMARY FORM

Provider	Date/Serv.	Acct. #	Total
Carolina Neurosurgery & Spine	11/15/04-11/27/07	2135	42,372.00
Prescriptions	01/02/07-11/29/07		2,300.04
Carolinas Medical Center	12/11/03	C03347-00071	4,813.00
	12/11/03-03/30/04	C0334502593	605,428.80
	04/05/04-04/09/04	C9100580767	15,450.57
	04/09/04	C0410000862	292.50
	04/13/04	C0410500262	292.50
	04/13/04	C9100584775	329.75
	05/04/04	C0412502910	617.50
	05/04/04	C0412101167	785.50
	05/12/04	C0413303249	283.50
	08/13/04	C0422401454	529.50
	03/23/05-03/24/05	C0506801538	14,697.89
	04/15/05	C0510400597	900.00
	06/10/05	C0515900643	148.25
Piedmont Medical Center	07/13/05-07/28/05	013509154 (?)	1,076.50
	07/22/05		2,452.50
	07/22/05-07/23/05		926.00
	03/24/06		408.00
	11/16/07	016500308	800.00
Healthsouth Rehabilitation Hospital	06/19/07-10/30/07	202279	2,005.00
Health Services Foundation	12/12/03-09/07/04		37,408.00
CMC Faculty Physicians	04/28/04-08/25/05		8,939.00
CVS Pharmacy	07/12/04-11/29/07		10,598.53

			753854.83

CLIENT: Brianna Orlowski

MEDICAL SUMMARY FORM

Provider	Date/Serv.	Acct. #	Total
Carolinas Medical Center	09/12/03	C0325502503	1,374.50
	09/12/03-10/29/03	C0325502104	179,664.54
	11/20/03	C0332401368	18.00
	11/29/03	C9100545103	599.00
	12/06/03	C9100559316	769.75
	12/18/03	C0335200507	18.00
	01/08/04	C0336302159	439.25
	02/05/04	C0403602585	3,498.40
	02/06/06	C0603003301	490.50
TOTAL CMC BILLS:			186,871.94
Rock Hill Radiology	09/12/03	357882	146.00
TOTAL RH RADIOLOGY			146.00
Hanger Prosthetics & Orthotics	04/30/04	477600	703.04
	06/18/04	477600	124.72
	09/29/04	477600	703.03
TOTAL HANGER			1,530.79
Midlands Orthopaedic, PA	04/06/04-10/25/05		299.45
TOTAL MIDLANDS ORTOH			299.45

Piedmont Medical Center	09/12/03	1409744	14,650.95
	12/06/03	1452328	229.25
TOTAL PIEDMONT MEDICAL			14,880.20
Rock Hill Pediatrics	10/31/03-04/22/05	36464	23,697.00
TOTAL RH PEDIATRICS			23,697.00
Carolina Neurological Clinic	02/05/04	933759	800.00
TOTAL FOR CAR NEURO			800.00
Palmetto Pediatric Gastroenterology & Nutrition	04/05/04 -12/28/05	13125	680.90
TOTAL FOR PAL PED GASTRO			680.90
Central Carolina ENT & Audiology Center	11/26/03 - 04/14/05	48364-1	739.00
TOTAL FOR CEN. CAR. ENT			739.00
Horizon Eye Care, PA	10/15/03	162916008623	219.00
	05/14/04	162916008624	174.00
	01/28/05	162916008625	76.00
Total for Horizon Eye Care, PA			469.00
Charlotte Radiology	09/12/03 - 02/06/06	195474	1,021.00
Total for Charlotte Radiology			1,021.00

Chester County EMS	11/02/04	64/593211	130.00
	10/27/05	64/593211	673.50
	11/17/05	64/644849	721.00
Total for Chester County EMS			1,524.50
Children's Rehabilitative Services	11/14/03 - 03/20/06		35,546.90
Total for Children's Rehab Serv.			35,546.90
Charlotte EENT Assoc	08/23/04-02/09/06	497891	2,258.00
Total for Char. EENT Assoc			2,258.00
Palmetto Richland Memorial	04/06/04	0490700320	1,019.00
	04/08/04	0409900258	4,271.47
	04/08/04-04/09/04	0409900975	3,626.89
	06/10/04	0416200431	733.00
	06/27/04-07/02/04	0417800335	16,711.00
	08/16/04	0422900727	2,180.00
	09/20/04	0426401240	464.00
	11/23/04-11/24/04	0432701170	12,562.00
	12/22/04	0435700156	661.00
	02/02/05	0503300200	795.00
	03/08/05-03/09/05	0506701193	4,863.00
	05/13/05-05/14/05	0513300207	2,549.25
	11/11/05	0531501060	577.00

	10/21/05	0529400537	401.00
	11/17/05-11/20/05	0532102276	10,815.25
Total for Palmetto Richland Hosp.			62,228.86
Pediatric Neurology <i>University Pediatrics</i>	04/14/04-03/17/06	82761	16,706.00
Total for Pediatric Neurology			16,706.00

Total \$349,394.54

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED PURCHASE AGREEMENT

03-482-6212

ax: 803-482-2240

late of Death: 3/21/2006

lar - of Deceased: Brianna Miranda Oriowski

ed's Last Address:

harge to (Buyer) Name: Linda L. Oriowski

uyer's Address:

SSN:

In this Agreement the words you and your refer to the Buyer and Co-Buyer, if any, signing this Agreement. The words we, us and our refer to the Funeral Provider or Seller whose name and address appear above. For good and valuable consideration, which each party acknowledges receiving, you agree to buy the goods and services described below. You authorize us to prepare and care for the body of the decedent named in this Agreement and to conduct the funeral and services and incurred the charges listed in said agreement. We have the right to collect the total amounts due under this Agreement from any person who signs this agreement as buyer or Co-buyer.

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below. If you selected a funeral that may require embalming, such as funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as direct cremation or immediate burial. If we charged for embalming we will explain why below.

SECTION I SERVICES AND MERCHANDISE

Funeral Director and Staff Services

Minimum Profession Service Fee	\$0.00
Direct Cremation	\$0.00
Immediate Burial	\$0.00
Forwarding Remains	\$0.00
Receiving Remains	\$0.00
Care and Preparation of Remains	
Embalming	\$0.00
Refrigeration	\$0.00
Other Preparation	\$0.00

Use of Facilities and Related Staff Charges

Visitation	\$0.00
Funeral Ceremony	\$0.00
Memorial Service	\$0.00
Graveside Service	\$0.00
Use of Facilities and Staff	\$0.00

Transportation

Transfer remains to Funeral Home	\$0.00
Funeral Vehicle	\$0.00
Family Vehicle	\$0.00
Flower Car	\$0.00
Service Vehicle	\$0.00
Additional Transportation	\$0.00
Lead Car	\$0.00

Other Non-Taxable Items

Open/Close Grave	\$250.00
	\$0.00
	\$0.00

Other Goods and Services

Memorial Booklet	\$0.00
Service Folders/cards	\$0.00
Acknowledgment Cards	\$0.00
Memorial Package	\$0.00
Flowers	\$0.00
Shipping Container	\$0.00
Cemetery	\$0.00
Crematory	\$0.00
Monuments, etc.	\$0.00

Other Taxable Items

	\$0.00
	\$0.00

Merchandise

Casket/Ceremonial Casket	\$1,130.00
Alternative Container	\$0.00
Outside Enclosure	\$0.00
Urns and Vases	\$0.00
Clothing	\$0.00
Ceremonial Casket	\$0.00
TOTAL SECTION I	\$1,380.00

SECTION II CHARGES TO BE INCURRED BY US ON YOUR BEHALF

(Certain charges may be estimated - "e" means estimated)

Crematory	\$0.00
Cemetery	\$0.00
	\$0.00
	\$0.00
Flowers	\$0.00
Escorts	\$0.00
Certified Copies	\$21.00
Public Transportation	\$0.00
Outside Funeral Director's Expense	\$0.00
Musicians or Singers	\$0.00
Vault Installation	\$0.00
	\$0.00
	\$0.00
Hairdressing	\$0.00
Permits	\$0.00
Other	\$21.00

TOTAL SECTION II

We may charge you for our services in obtaining these items.

SECTION III TAX

Local Tax	\$33.90
State Tax	\$33.90

TOTAL SECTION III

Plus shipping: 11537 = \$

TOTAL FUNERAL CHARGES

DISCOUNT AMOUNT

TOTAL FUNERAL CHARGES

1584.17
\$1,468.80
-\$0.00
\$1,468.80



DANTZLER-BAKER FUNERAL HOME

26 UNDERWOOD AVENUE - P. O. BOX 462
GREAT FALLS, SOUTH CAROLINA 29055
PHONE: (803) 482-5212

1152

DATE Aug. 11, 2006

Received from

Linda Orlovski

Dollars \$ 27.00

Surety - 2006 + 00/100

For: Additional Death certificate, Bianca Orlovski

AMOUNT OF ACCT \$

AMOUNT PAID \$ 27.00

BALANCE DUE \$

CASH () CHECK (X) OTHER

DANTZLER-BAKER FUNERAL HOME

THANK
YOU!

By Cheryl J. Carter

Life Care Plan Update

For

Kristi Orlowski

Prepared March 4, 2008

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Leanna Hollenbeck, MS, CRC, CCM
Certified Life Care Planner
P.O. Box 2005
Fort Mill, SC 29716
803-547-7826

HOLLENBECK & ASSOCIATES, LLC
Life Care Planning
Rehabilitation Consulting

P.O. Box 2005 ♦ Fort Mill, SC 29716 ♦ Office 803-547-7828 ♦ Fax 803-547-7860

Confidential – For Professional Use Only

RE: Kristy L. Orlowski a/k/a/ Kristy Wood
Date of Injury: September 12, 2003
Date of Birth: August 14, 1982
Date of Interview: January 25, 2008
Place of Interview: The parents' home
Date of Report:

Attorney Grady McMehan has requested that I interview Kristy Orlowski and her parents, review all medical and rehabilitation reports regarding Ms. Orlowski and prepare a Life Care Plan, including an analysis of present and future needs.

A Life Care Plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis and research. The Plan provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.

The cost reduction to present value is not calculated and would require analysis by a qualified economist.

The methodology used to prepare the attached Life Care Plan requires an "end date" or life expectancy. While this figure might be represented as an individual's statistical life expectancy based on current age and gender, I personally am offering no opinion regarding Ms. Orlowski's life expectancy.

MEDICAL RECORDS REVIEWED

Carolinas Healthcare System
Charlotte Institute of Rehabilitation
Scott McLanahan, MD
CMC Orthopaedics – Dr. Frick
Carolina Neurosurgery and Spine Baclofen Clinic
Dr. Steven Frick
HealthSouth Rehabilitation
CMC Radiology
Home Health, Inc. Piedmont
Piedmont Medical Center

03/23/04 – 04/05/04
05/12/04 – 10/27/04
09/08/05
02/18/05 – 06/10/05
11/15/04 – 11/15/07
02/18/05 – 06/13/05
06/19/07 – 10/30/07
06/10/05
10/03/06 – 03/23/07
03/24/06 – 11/16/07

IDENTIFYING INFORMATION

Ms. Orlowski is a 25-year-old woman who suffered Eclampsia and seizures in September 2003 when she was 36 weeks pregnant. She was diagnosed with anoxic encephalopathy with spastic tetraplegia. She lives with her parents in Clover, SC. Her mother and father both work full time. Ms. Orlowski has attended York Adult Daycare for the past two years where she receives physical therapy, occupational therapy, attendant care and lunch. On most weekdays her mother takes her to her brother's house in the morning on the way to work. She stays with her brother for 30 minutes, then the Daycare van picks her up and transports her to the facility. She leaves daycare in the afternoon and she is home by 2:30 or 3:00 PM. Two weeks per month a relative sits with her for two hours in the morning before the van picks her up and takes her to daycare. Her parents provide all other attendant care, including bathing, toileting, dressing, feeding, administering medications and transporting her to medical appointments.

Ms. Orlowski is able to eat finger food but her mother feeds her at other times. She is able to walk with total assistance. She sits in a shower chair when being bathed.

MEDICAL SUMMARY

Ms. Orlowski was treated for a number of serious medical complications after the 09/12/03 event and she was discharged home in November 2003. She was readmitted to the hospital with thoracotomy and decortication of the left lung and she was treated for multiple infections. She also suffered a basal ganglial injury with a hypertensive encephalopathy and urosepsis. She was diagnosed on 03/23/04 with post anoxic encephalopathy with spastic quadriplegia. A Baclofen pump was placed on 03/26/04. She was discharged to Sardis Nursing Home on 03/29/04 but she was readmitted to the hospital secondary to an infection. She was treated and discharged to the nursing home on 04/09/04. She was evaluated and felt to be a good candidate for rehabilitation at Charlotte Institute of Rehabilitation (CIR).

Her admission diagnoses were:

- Anoxic encephalopathy with spastic tetraplegia.
- Eclampsia with seizures.
- Adult respiratory distress syndrome.
- History of resistant pseudomonas infections.
- Methicillin sensitive Staphylococcus aureus blood cultures.
- Emphysema status post left lung decortication, December 2003.
- Multiple pneumothoraces.
- History of urosepsis.
- Status post percutaneous endoscopic gastrostomy tube placement.
- Drug induced hepatitis secondary to Zanaflex.

She remained at CIR for about five weeks. During that time she was administered botulinum injections to decreased spasticity and upper and lower limb contractures. She was casted and placed in bilateral lower limb knee braces to help increase range of motion. She was placed on Ritalin to improve cognition and she responded well. A recent CT revealed mild hydrocephalus and Dr. McLanahan advised that she was a ventriculoperitoneal shunt candidate.

She was obtaining the majority of her nutrition through tube feeding. She had myoclonic movements of her arms when pointing or attempting to grasp. Medication resulted in some improvement. She was experiencing neuropathic pain which was treated with medication. Knee bracing and range of motion exercises were performed to reduce lower extremity contractures.

At time of discharge from CIR:

She was breathing well.

Blood pressure was stabilized.

Her overall outlook and motivation improved during therapies.

She needed maximal assist with bed mobility and wheelchair propulsion. She was otherwise dependent with mobility issues.

She needed maximal assistance with grooming and she was dependent with all other activities of daily living.

With regard to cognition she needed supervision with receptive auditory, moderate to minimal assist with orientation and moderate assistance with memory and attention.

She was dependent with regard to bowel and bladder care.

The following equipment was recommended:

30" transfer board

Rental wheelchair for six months

Hospital bed and mattress

Shower tub

Bilateral knee braces

Hydrocolloid dressing with a dry sterile dressing for pressure sores.

Ms. Orlowski needed to continue tube feedings and wearing knee braces. Her skin needed to be checked daily, wounds were to be dressed and Ms. Orlowski was to be turned in bed every three hours.

Her diagnoses at discharge also included the following:

Severe dysphagia with continuous tube feeds.

Alteration of doses of Baclofen pump, which was placed prior to admission.

New Stage I to II popliteal pressure sores bilaterally, left worse than right, improving prior to discharge.

Action myoclonus.

Oral candidiasis treated and resolved.

Spasticity status post Botulinum toxin injections to bilateral upper limbs.

Adjustment disorder

Depression

On 09/08/05 Dr. McClanahan reported that Ms. Orlowski continued to use a Medtronic SyncroMed Baclofen pump to reduce her intractable spasticity. She continued to have some spasms in her lower extremities. She was dependent in all activities of daily living. She was eating orally and she could assist with feedings. Her primary mobility was a manual wheelchair. She could take some steps with a walker. She continued to participate in physical and occupational therapy three times a week.

On 06/05/06 she was reported to be doing remarkably well. She had gained weight and her affect was bright. She was walking with handheld assistance. Her range of motion in her upper and lower extremities was normal. She had poor posture with standing and she would go from sitting to standing with minimum assistance. She was still dysarthric.

On 03/22/07 Ms. Orlowski was continuing to use the Medtronic SyncroMed pump for spasticity. She was dependent for all activities of daily living. Her primary means of mobility was a manual wheelchair. She would take a few steps with one assist and she needed total assistance for transfers. She was attending an adult day care during the day and she was continuing to receive physical therapy three times per week.

Ms. Orlowski fell from her wheelchair on 11/14/07, striking the right temple and causing a laceration on the scalp as well as a bloody nose. The following day she appeared dazed and confused and reported an increasing headache and sluggishness.

CURRENT TREATING PHYSICIANS

Ms. Orlowski underwent operative procedures in 2004 including Baclofen placement and lumbar puncture. She currently goes to the Baclofen Clinic monthly for pump refills. The Baclofen pump is projected to need replacement in 2009. In addition to seeing Dr. Wiercisiewski during these visits, she also sees him every three months for a complete assessment. Ms. Orlowski also sees her family physician at Clover Family Medicine as needed.

CHIEF COMPLAINTS

Mr. & Mrs. Sims reported the following concerns regarding Kristy's current status:

- Forgetfulness.
- Attention problems.
- Confusion.
- Frequent headaches, especially during her monthly period.
- Communication problems – Kristy's speech is slurred and very slow.

- Poor coordination.
- Muscle spasms.
- Stomach pain and pain in the area of the Baclofen pump.
- Chronic fatigue.
- Her parents have noticed possible vision problems.

- Depression, especially when seeing babies.
- Frequent crying spells, especially when seeing babies, during celebrations, during her monthly period.
- Inability to independently propel her manual and power wheelchairs.
- Inability to sit longer than two hours in her wheelchair – she sits in a recliner at daycare.
- Occasional rashes.

- Discomfort in cold weather.
- Inadequate housing for Kristy (See Home Assessment section for details).

- No accessible vehicle available to transport Kristy and her wheelchair. Mrs. Sims drives a 2005 Trailblazer and Mr. Sims drives a 1991 pickup truck.
- No funds for attendant care.
- Concern about future care if parents are ill or unavailable.

MEDICATIONS

Ms. Orlowski takes the following prescribed medications and supplies, which are purchased at CVS Pharmacy:

MEDICATION/DOSAGE	TIMES PER DAY	FOR	PRESCRIBED BY
Bactroban Nasal 2% Ointment	As needed	Prevent MRSA infections	Dr. Wiercisiewski
Methylphenidate 10 mg.(Ritalin)	2 daily	Improve attention	" "
Amantadine 100 mg.	2 daily	Treat tremors	" "
Venlafaxine HCL 75 mg.	2 daily	Depression	" "
Clonazepam 1 mg.	3 daily	Control seizures	" "
Trazodone 50 mg.	1-2 @ night	Depression/insomnia	" "
Gabapentin 300 mg. (Neurontin)	1-2 daily 3 @ night	Control seizures	" "
Nystatin 100,000 U/GM PWD ETH	As needed	Treat infections	" "
Beconase AQ 0.42% spray GSK	As needed	Reduce congestion	" "
Antifungal extra thick secura 3.25 oz	"	Treat fungal infections	" "

Also:

Over the counter laxative and stool softener, used daily

SUPPLIES & EQUIPMENT CURRENTLY USED

Depends (Medium) 5 daily
Washable Bedpads 2 dozen
Sippy Cup
Pillows for support in bed (4)

Reclining manual wheelchair, purchased 5 years ago
Transfer board
Platform walker, purchased 2 years ago
Hospital bed
Commode chair
Gel mattress
Wheelchair air cushion
Leg braces, purchased 2-3 years ago

FAMILY HISTORY

Ms. Orlowski is divorced. Her former husband has remarried. Ms. Orlowski lives with her parents Larry "Don" Sims, 45, and Gladys Sims, 46. Mr. Sims has been hospitalized with heart blockage and he has been treated for gout. He is a First Responder Ambulance Driver. Mrs. Sims is in good health but unable to lift and carry her daughter.

HOME ASSESSMENT

Ms. Orlowski and her parents currently live in an older two bedroom, one bathroom mobile home. Her wheelchair will not go through the bedroom door. The bedroom is very small, with a twin hospital bed and a commode chair. The bathroom is at the other end of the mobile home. Ms. Orlowski's equipment and supplies are kept in the living room. There is damage to the walls and corners of the rooms because of the small space in which to push the wheelchair. The bathroom is very small, with no room for the wheelchair and no room to access the sink. There is one ramp, in the front of the mobile home. The parents purchased an above ground swimming pool when pool exercise was recommended for Ms. Orlowski. Unfortunately there is no way for her to get into the pool. Clover, SC does not have a community swimming pool.

EDUCATION AND TRAINING/WORK HISTORY

Ms. Orlowski graduated from high school and attended Brookstone College, taking courses in Business Administration. She was in the Army Reserve and scheduled to be deployed to Iraq prior to her hospitalization.

VOCATIONAL STATUS

She is totally disabled from working due to her physical and cognitive deficits.

LIFE CARE PLAN

Life Expectancy

According to the South Carolina mortality tables, Ms. Orlowski has 56.40 more years of life, as she will complete her 25th year in August 2008. A life expectancy of 56 years is used for the purposes of this report.

Items and supplies are listed in the following categories:

Projected Evaluations

An occupational therapy evaluation will be needed to assess activities of daily living, wheelchair activities and safety in the home. Annual evaluations will be needed to reevaluate Ms. Orlowski and her caretaker's needs as she ages and/or when her functional abilities change.

Projected Therapeutic Modalities

An allowance of 50-75 hours of physical therapy and 50-75 hours of occupational therapy per year is included in the life care plan. She currently receives 1-3 hours of each therapy per week at the daycare center. Therapy allows her to maintain her gains in physical function and activities of daily living.

Wheelchair(s)/Mobility/Maintenance & Wheelchair Accessories

Ms. Orlowski uses a reclining manual wheelchair for mobility. Her parents will assist her from the

wheelchair to the sofa or a chair. She occasionally uses her platform walker but assistance is needed to ensure that she does not fall. She cannot maneuver the wheelchair independently. She would also benefit from using a shower chair once she moves to a more accessible home. An allowance is provided for wheelchair and shower chair maintenance.

Wheelchair Accessories

Ms. Orlowski needs the following equipment for comfort, skin protection and function: back cushion for the wheelchair, a flip-away padded armrest, a plastic molded laptray that fits onto the wheelchair arms, two transfer boards, two wheelchair air cushions and a wheelchair backpack.

Orthotics/Prosthetics

She will continue to need braces and/or splints on her upper and lower extremities. An allowance is included for the cost of these items as well as for appropriate shoes that will accommodate the leg braces.

Durable Medical Items

Items in this category include a hydraulic or electric lift to be used for transfers, a fully adjustable electric bed with mattress to replace the current bed in 2014, a gel overlay for the mattress, and a lift for the swimming pool to permit aquatic exercise at home.

Aids for Independent Function

Several assistive devices and aids are included to reduce Ms. Orlowski's dependence on others and to reduce the chance of further injury: commode chair, door jam ramps, eating and feeding products, hand held shower sprayer and platform walker.

Supplies

Ms. Orlowski is incontinent and needs disposable underwear and washable bed pads. An allowance is also included for miscellaneous supplies such as replacement Sippy cup, pillows for support in bed, latex gloves for the caregiver, creams and lotions to maintain skin health, etc.

Medications

Medications currently prescribed are included in the Life Care Plan. Although current medications may change over time, it is assumed for the purposes of this report that an equivalent number and type of medications will be taken during her lifetime.

Home Care

An allowance is included for purchase of an accessible home in the York County, SC area that will provide adequate room, storage and safe living quarters for the client and her caregivers.

Facility Care

Ms. Orlowski attends York Adult Daycare on weekdays. The facility provides custodial care with socialization, transportation, activities and meals. Therapy is not included but space is provided for

therapists. Ms. Orlowski enjoys her time at the facility. The cost is included to provide daycare throughout her life expectancy.

Future Medical Care Routine

Dr. Wiercisiewski will continue to monitor Ms. Orlowski's health, rehabilitation needs and medication needs every three months. The cost for 4 visits per year is included in the Life Care Plan.

Transportation

Ms. Orlowski's parents do not have vehicles that are appropriate for modification for a wheelchair lift. Her mother has difficulty transporting the wheelchair in her car and placing Ms. Orlowski in the passenger seat. A full accessible van with tie downs, high top and wheelchair lift is included in the Life Care Plan. The full cost is subtracted from the average cost of an unmodified van. Mileage reimbursement is included to reimburse travel expenses for medical visits to Charlotte, NC for follow-up and Baclofen Pump refills. An AAA membership will ensure that roadside assistance is available in an emergency.

Maintenance for the lift will be needed when the warranty expires. A portable ramp will be needed when Ms. Orlowski visits a facility or residence that does not have a ramp in place.

Baclofen Pump

Ms. Orlowski has experienced significant benefits from the Baclofen Pump that was implanted in 2004. Costs involved in Baclofen Pump refills, reprogramming and replacement are included in the Life Care Plan. Dr. Wiercisiewski's office advises that Ms. Orlowski will require the use of a Baclofen Pump throughout her life expectancy.

Attendant Care

Attendant care is needed for personal and home care assistance. Both parents work full time and Ms. Orlowski is at daycare for approximately six hours. It is recommended that attendant care be provided for two hours in the morning and four hours in the evening for 50 weeks per year. An allowance is also provided for full time attendant care for 14 days per year. These days can be consecutive or spaced out through the year. The attendant will perform the following tasks:

Assisting with dressing

Assisting with bathing.

Providing transportation to Ms. Orlowski's medical appointments.

Assisting with shopping, cooking, cleaning and doing the laundry.

Helping her move from her wheelchair to bed, other seating, commode and shower chair.

Helping her up when she falls

Helping her negotiate curbs and steps.

Pushing her wheelchair.

Helping her get out of bed.

An allowance of \$17.25 per hour for attendant care is included in the life care plan. Although attendant care can be procured privately and at lower cost, it is commonly accepted that agency care is advisable because of the need for reliable, trained, bonded and insured personnel. An allowance for one week of 24-hour care per year is included for emergency situations in which the parents are unable to be present.

Case Management

Ms. Orlowski will need a Case Manager to help coordinate purchases and building quotes and treatment needs as well as attendant care. Additional case management time will be required during the first year, with time reduced to 30-60 hours per year thereafter.

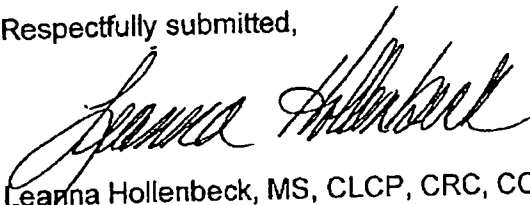
Potential Complications

The cost of potential complications is not included in the Life Care Plan since the incidence and severity is unpredictable:

1. The Baclofen Pump can cause infection and can move out of place, requiring additional inpatient treatment.
2. There can be an adverse reaction to anesthesia.
3. If the pump malfunctions, it may deliver too much medicine at once, causing drowsiness, dizziness, weakness, insomnia, light headedness, nausea, vomiting, looseness of the muscles, trouble with vision, coma, respiratory depression, seizures, dry mouth, diarrhea or delayed responsiveness.
4. If Ms. Orlowski's parents are unable to care for her she will need 24 hour attendant care, which will cost \$200 - \$480 per 24-hour day.
5. Ms. Orlowski may need to move to a facility providing assisted care or full nursing care if family and/or attendant care is not available in the home. Walton Rehabilitation Health system in Augusta, GA has an Assisted Living facility specifically designed for younger individuals with severe disabilities. The monthly cost is \$3700 and includes room and board, nursing supervision and leisure activities. This fee does not include medication costs, physical therapy and other attendant care not provided by the facility.

Thank you for giving me the opportunity to work with Ms. Orlowski. Please call if you have any questions or need further clarification of any information in this report.

Respectfully submitted,



Leanna Hollenbeck, MS, CLCP, CRC, CCM
Life Care Planner & Rehabilitation Consultant

Enclosures: Life Care Plan
Summary of costs
Total cost as range of costs
Total cost as average

LIFE CARE PLAN

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Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Mar 4, 2008
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Projected Evaluations

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Home accessibility evaluation, typically performed by an Occupational Therapist	Beginning		One time	Evaluate home plans; make recommendatio ns for assistive technology devices	Per Unit \$125.00	Unit cost = One visit
	26	2008			Per Year \$125.00	
	Ending *					
	26	2008				1
Occupational therapy evaluation in the home	Beginning		Yearly allowance	Assess therapy needs, develop therapy program for caregivers, address activities of daily living	Per Unit \$125.00	Unit cost = One visit
	26	2008			Per Year \$125.00	
	Ending *					
	81	2063				2

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Projected Therapeutic Modalities

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Occupational therapy	Beginning	2008	She currently receives 1-3 sessions per week.	Maintain flexibility and function	Per Unit \$125.00	Unit cost = One visit by therapist from Interim Health Care. Allowance for 50-75 visits per year. 3
	Ending *	2063			Per Year \$6,260.00 to \$9,375.00	
Physical therapy	Beginning	2008	She currently receives 1-3 sessions per week.	Maintain flexibility and function	Per Unit \$125.00	Unit cost = One visit by therapist from Interim Health Care. Allowance for 50-75 visits per year. 4
	Ending *	2063			Per Year \$6,260.00 to \$9,375.00	

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Wheelchair(s) / Mobility / Maintenance

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Reclining manual wheelchair	Beginning		Replace every 5 years	Provide comfort and mobility	Per Unit \$1,500.00 to \$1,800.00	Unit cost = Cost for one wheelchair obtained from Charlotte Chair & Equipment 704-333-8431
	26	2008			Per Year \$300.00 to \$360.00	
	Ending *					
	81	2063				5
Roll-in shower chair	Beginning		Every 5 years	Safety while bathing.	Per Unit \$800.00 to \$1,200.00	Unit cost = One roll-in shower chair
	26	2008			Per Year \$160.00 to \$240.00	
	Ending *					
	26	2008				6
Wheelchair and shower chair maintenance	Beginning		Yearly allowance	Maintain wheelchair	Per Unit \$230.00 to \$300.00	Unit cost = Yearly maintenance cost is typically figured to be 10% of cost of wheelchair.
	26	2008			Per Year \$230.00 to \$300.00	
	Ending *					
	81	2063				7

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Wheelchair Accessories

D/E: Sep 12, 2003

Primary Disability: Anoxic encephalopathy; spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Back cushion for wheelchair	Beginning		Every 2-3 years	Support back, reduce back discomfort; increase ability to sit upright in wheelchair	Per Unit \$300.00 to \$400.00	Unit cost = One back cushion
	Ending *				Per Year \$116.67 to \$175.00	
	26	2008				8
	81	2063				
Flip Away padded armrest	Beginning		Every 5-7 years	Transport small items while in wheelchair	Per Unit \$180.00	Unit cost = One armrest
	Ending *				Per Year \$25.71 to \$36.00	
	26	2008				9
	81	2063				
Plastic molded Lap Tray	Beginning		Every 3-5 years	Wheelchair activities needing flat surfaces such as eating	Per Unit \$50.00	Unit cost = One Lap Tray
	Ending *				Per Year \$10.00 to \$16.67	
	26	2008				10
	81	2063				
Transfer board (2)	Beginning		Replace one every 5 years	Safe transfer from wheelchair to other seating or bed	Per Unit \$45.00 to \$50.00	Unit cost = One transfer board. Cost obtained from Charlotte Chair & Equipment (704-333-8431) and Sammons Preston Catalog (800-323-5547)
	Ending *				Per Year \$9.00 to \$10.00	
	26	2008				11
	81	2063				
Wheelchair air cushions (2)	Beginning		Replace 1 every 3-5 years	Prevent pressure sores; increase comfort when seated	Per Unit \$250.00 to \$400.00	Unit cost = One wheelchair air cushion
	Ending *				Per Year \$125.00 to \$208.00	
	26	2008				12
	81	2063				

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Wheelchair Accessories

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Wheelchair backpack	Beginning		Every 3-5 years	Carry items	Per Unit \$35.00	Unit cost = One backpack
	26	2008				
	Ending *				Per Year \$7.00	
	81	2063			to \$11.67	13

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Orthotics/Prosthetics

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Orthopedic shoes to fit with braces	Beginning		Every 2 years	Safe ambulation	Per Unit \$150.00	Unit cost = Two pair of shoes. Shoes will not sustain a great deal of wear and should be replaced every two years.
	26	2008			to \$200.00	
	Ending *				Per Year \$75.00	
	81	2063			to \$100.00	14
Wrist cock up splint, elbow orthosis & bilateral leg braces	Beginning		Every 3-5 years	Safe ambulation	Per Unit \$1,728.00	Unit cost = Charge for current leg brace fitted and purchased from Hanger Prosthetics on 11/23/04. 803-328-2625
	26	2008				
	Ending *				Per Year \$345.60	
	81	2063			to \$576.00	15

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Durable Medical Items

Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Rolling hydraulic/electric patient lift	Beginning		Every 10 years	Transfers from bed to wheelchair, shower chair	Per Unit \$2,500.00	Unit cost = One lift
	26	2008			to \$3,500.00	
	Ending *				Per Year \$250.00	
	81	2063			to \$350.00	16
Replacement patient sling for hydraulic lift	Beginning		Replace yearly	Transfers from bed to wheelchair, shower chair	Per Unit \$200.00	Unit cost = One sling
	26	2008				
	Ending *				Per Year \$200.00	
	81	2063				17
Fully adjustable electric bed with mattress	Beginning		Every 10 years	Easy in and out of bed; comfort	Per Unit \$1,500.00	Unit cost = One adjustable twin bed. Average cost for well made bed and mattress.
	32	2014				
	Ending *				Per Year \$150.00	
	81	2063				18
Gel overlay for mattress	Beginning		Every 5 years	Prevent pressure sores	Per Unit \$350.00	Unit cost = One gel overlay
	32	2014			to \$400.00	
	Ending *				Per Year \$70.00	
	81	2063			to \$80.00	19
Lift for swimming pool	Beginning		Original purchase and 4 replacements (5 year warranty on lift)	Access to pool for exercise	Per Unit \$10,439.00	Unit cost = One lift. Original purchase and 4 replacements. Additional \$200 added to cover installation fee.
	26	2008				
	Ending *				Per Year \$746.00	
	81	2063				20

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Aids for Independent Function

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Platform walker	Beginning		Every 5 years	Safe ambulation when not in the wheelchair	Per Unit \$175.00	Unit cost = One walker. Cost obtained from Charlotte Chair & Equipment 704-333-8431
	26	2008			Per Year \$35.00	
	Ending *					21
	81	2063				
Commode chair	Beginning		Every 5 years	Toileting	Per Unit \$100.00 to \$125.00	Unit cost = One commode chair
	26	2008			Per Year \$20.00 to \$25.00	
	Ending *					22
	81	2063				
Door jam ramps (2)	Beginning		One time	Easy access through all doors	Per Unit \$150.00	Unit cost = Two door jam ramps
	26	2008			Per Year \$150.00	
	Ending *					23
	26	2008				
Eating and feeding products	Beginning		One time allowance	Allow client to become more independent with feeding; provide caregiver assistance	Per Unit \$200.00	Unit cost = Allowance for purchase of ergonomic utensils, non-slip plates, bibs, etc.
	26	2008			Per Year \$200.00	
	Ending *					24
	26	2008				
Hand held shower sprayer	Beginning		Every 5 years	Bathe while seated	Per Unit \$20.00 to \$40.00	Unit cost = One shower sprayer
	26	2008			Per Year \$4.00 to \$8.00	
	Ending *					25
	26	2008				

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Supplies

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Depend underwear	Beginning		Five daily	Prevent urine leaks due to incontinence	Per Unit \$1,186.25	Unit cost = 65 cents each (when purchased in pack of 40) x 5 x 365 days = \$1186.25/year
	26	2008			Per Year \$1,186.25	
	Ending *					
	81	2063				26
Miscellaneous supplies	Beginning		Yearly allowance	Increase function, provide caretaker relief	Per Unit \$100.00	Unit cost = Allowance for items such as Sippy cup, pillows for support in bed (4), latex gloves for caregiver, creams & lotions to maintain skin health, etc.
	26	2008			Per Year \$100.00	
	Ending *					
	81	2063				27
Washable bed pads	Beginning		Allowance for 1 dozen per year	Prevent urine leaks due to incontinence	Per Unit \$150.00	Unit cost = One dozen reusable underpads
	26	2008			to \$175.00	
	Ending *				Per Year \$150.00	
	81	2063			to \$175.00	28

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Amantadine 100 mg. or equivalent	Beginning		2 daily	Treat tremors	Per Unit \$32.99	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$40.54	
	Ending *				Per Year \$395.88	29
	81	2063			to \$486.48	
Antifungal extra thick Secura 3.25 oz. or equivalent	Beginning		One tube per month	Treat fungal infections	Per Unit \$12.50	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$15.00	
	Ending *				Per Year \$150.00	30
	81	2063			to \$180.00	
Bactroban Nasal 2% Ointment or equivalent	Beginning		As needed to prevent MRSA infection	Prevent MRSA infection	Per Unit \$84.54	Unit cost = One tube. Allowance for 2 tubes per year. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$100.99	
	Ending *				Per Year \$169.08	31
	81	2063			to \$201.98	
Beconase AQ 0.42% GSK spray or equivalent	Beginning		1 container every 2-3 months	Reduce congestion	Per Unit \$153.54	Unit cost = One container. An average of 4.8 containers used yearly. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$172.99	
	Ending *				Per Year \$736.99	32
	81	2063			to \$830.35	
Clonazepam 1 mg. or equivalent	Beginning		3 daily	Control seizures	Per Unit \$27.78	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$44.19	
	Ending *				Per Year \$333.36	33
	81	2063			to \$530.28	

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spastic tetraplegia

Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Gabapentin 300 mg. (Neurontin) or equivalent	Beginning		1-2 daily, 3 at night	Control seizures	Per Unit \$136.55	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC. Allowance for an average of 135 tablets per month.
	26	2008			to \$152.98	
	Ending *				Per Year \$1,638.60	34
	81	2063			to \$1,835.78	
Methylphenidate 10 mg. (Ritalin) or equivalent	Beginning		2 daily	Improve attention	Per Unit \$30.09	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$55.62	
	Ending *				Per Year \$361.08	36
	81	2063			to \$667.44	
Nystatin 100,000 U/GM or equivalent	Beginning		As needed (allowance for 3 refills per year)	Treat infections	Per Unit \$11.39	Unit cost = One container. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$18.84	
	Ending *				Per Year \$34.17	36
	81	2063			to \$56.52	
Over the counter laxatives and stool softeners	Beginning		2 each daily	Treat constipation caused by medication	Per Unit \$20.00	Unit cost = Monthly allowance for laxatives and stool softeners such as Colace and Miralax
	26	2008			to \$30.00	
	Ending *				Per Year \$240.00	37
	81	2063			to \$360.00	
Trazadone 50 mg. or equivalent	Beginning		1-2 at night	Treat depression and insomnia	Per Unit \$8.00	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			to \$18.49	
	Ending *				Per Year \$96.00	38
	81	2063			to \$221.88	

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Venafaxine HCL 75 mg. or equivalent	Beginning		2 daily	Treat depression	Per Unit	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	26	2008			\$114.32	
	Ending *				to \$116.99	
	81	2083			Per Year	
					\$1,371.84	
					to \$1,403.88	

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Facility Care

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
York Adult Daycare	Beginning		Monday through Friday. Allowance for 51 weeks per year	Custodial care with socialization and therapy provided	Per Unit \$50.00	Unit cost = Private pay cost per day. Daily cost includes lunch, snacks, activities and van transportation to and from facility. Therapy charges are separate costs.
	Ending *				Per Year \$12,750.00	
	26	2008				
	81	2063				

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Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Mar 4, 2008
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Future Medical Care Routine

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Follow-up visits with Physiatrist	Beginning		Every 3 months in addition to assessments at the Backofen clinic	Monitor medical status, medication needs	Per Unit	Unit cost = One office visit with Dr. Wlarcisiewski 704-376-1605. Cost depends on length and complexity of examination
	26	2008			\$90.00 to \$277.00	
	Ending *				Per Year	
	81	2063			\$360.00 to \$1,108.00	42

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Transportation

D/E: Sep 12, 2003

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Life Care Plan

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Transportation

DOB: Aug 14, 1982
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encephalopathy;
spastic tetraplegia

Transportation						
Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Portable ramp	Beginning		Every 5 years	Accessibility at locations without ramps	Per Unit	Unit cost = One portable ramp
	26	2008			\$300.00	
					to \$400.00	
					Per Year	
Ending *		\$60.00				
81	2063	to \$80.00				

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Life Care Plan

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spastic tetraplegia

Acute Medical Intervention

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Monthly Baclofen pump refills	Beginning	2008	Monthly throughout life expectancy according to Dr. Wiercisiewski	Reduce spasticity	Per Unit \$720.00 to \$1,220.00	Unit cost = Cost for refilling pump (\$220) plus cost of medication at \$250 per 10 mg. (1 unit) At Ms. Orlowski's last visit she received 4 units). Allowance provided for 2 - 4 units per month.
	Ending *	2063			Per Year \$8,640.00 to \$14,640.00	
Physician's fee for monthly Baclofen pump refills	Beginning	2008	Monthly throughout life expectancy according to Dr. Wiercisiewski	Reduce spasticity	Per Unit \$90.00 to \$277.00	Unit cost = Dr. Wiercisiewski's fee. Cost dependent on length and complexity of services
	Ending *	2063			Per Year \$1,080.00 to \$3,324.00	
Reprogram pump	Beginning	2008	Allowance for reprogramming 3-4 times per year	Maintain pump efficiency	Per Unit \$200.00	Unit cost = Cost reprogramming pump
	Ending *	2063			Per Year \$600.00 to \$800.00	
Replace catheter (CPT code 62350)	Beginning	2008	Allowance for one replacement every 2 years	Maintenance, or replacement if catheter becomes kinked	Per Unit \$1,713.00	Unit cost = Cost catheter replacement
	Ending *	2063			Per Year \$857.00	
Replace Baclofen pump	Beginning	2009	Every 3-5 years	Replacement of pump	Per Unit \$33,500.00	Unit cost = Cost for pump replacement (included in hospital fee). Cost obtained from Carolinas Medical Center
	Ending *	2063			Per Year \$6,700.00 to \$11,167.00	

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Acute Medical Intervention

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Surgeon's fee to replace Baclofen pump CPT code 62362	Beginning		Every 3-5 years	Replacement of pump	Per Unit \$1,830.00	Unit cost = Surgeon's fee
	28	2008				
	Ending *				Per Year \$366.00	53
	81	2063			to \$610.00	
Anesthesia fee to replace Baclofen pump CPT code 62362	Beginning		Every 3-5 years	Replacement of pump	Per Unit \$936.00	Unit cost = Anesthesia fee obtained from Southeast Anesthesia
	26	2008				
	Ending *				Per Year \$187.00	54
	81	2063			to \$312.00	

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Life Care Plan

Kristy Orlowski

Attendant Care

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Mar 4, 2008
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
24-hour Attendant care	Beginning		Allowance for one week per year (7 days)	Provide care, assistance and safe environment	Per Unit	Unit cost = One week of 24-hour attendant care. Interim Home Health Care 24-hour rate is \$480. All Home Total Care rate is \$200.
	26	2008			\$200.00 to \$480.00	
	Ending *				Per Year	
	81	2063			\$1,400.00 to \$3,360.00	55

Ms. Orlowski currently receives care from her parents and extended family. Family members are aging and beginning to have health problems that may prevent them from providing full care in the future. Care is needed in the morning for 2-3 hours before the Adult Daycare van picks her up at 8:30-9:00 AM. Care is then needed in the afternoon when she arrives home at 2:30-3:00 PM until her bedtime - about 7 hours. A total of 9-10 hours per day during the week and 6-8 hours on weekends. As her parents become less able to help her or if they are no longer alive, she will need 24 hour attendant care.

Attendant care	Beginning		Allowance for 9-10 hours per day during the week and 6-8 hours per day on weekends.	Provide care, assistance and safe environment	Per Unit	Unit cost = One week of attendant care. Attendant care for 51 weeks per year at Interim Home Health Care hourly rate for CNA's @\$17.25 per hour on weekdays and \$19.25 per hour on weekends.
	26	2008			\$1,007.25 to \$1,170.00	
	Ending *				Per Year	
	81	2063			\$51,369.75 to \$59,670.00	58

Ms. Orlowski currently receives care from her parents and extended family. Family members are aging and beginning to have health problems that may prevent them from providing full care in the future. Care is needed in the morning for 2-3 hours before the Adult Daycare van picks her up at 8:30-9:00 AM. Care is then needed in the afternoon when she arrives home at 2:30-3:00 PM until her bedtime - about 7 hours. A total of 9-10 hours per day during the week and 6-8 hours on weekends. As her parents become less able to help her or if they are no longer alive, she will need 24 hour attendant care.

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Case Management

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Care coordination first year	Beginning		100 hours	Coordinate purchases, building quotes, attendant care, etc.	Per Unit \$80.00	Unit cost = Hourly rate for Case Manager. More time will be needed the first year to coordinate accessibility, medical and home care needs. 57
	26	2008			Per Year \$8,000.00	
	Ending *					
	26	2008				
Care coordination 2009 through life expectancy	Beginning		30-60 hours per year	Coordinate purchases and care needs	Per Unit \$80.00	Unit cost = Hourly rate charged by Case Manager. 68
	27	2009			Per Year \$2,400.00	
	Ending *				to \$4,800.00	
	81	2063				

SUMMARY COST **averaged**

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Life Care Plan

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encephalopathy;
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Summary Cost

Item/Service	Beginning Date	Ending Date	Cost Per Year Avg.**	Number Of Years	Total**
Projected Evaluations					
1 Home accessibility evaluation, typically performed by an Occupational Therapist	2008	2008	\$125.00	*1	\$125.00
2 Occupational therapy evaluation in the home	2008	2063	\$125.00	*56	\$7,000.00
Sub Total					\$7,125.00
Projected Therapeutic Modalities					
3 Occupational therapy	2008	2063	\$7,817.50	*56	\$437,780.00
4 Physical therapy	2008	2063	\$7,817.50	*56	\$437,780.00
Sub Total					\$875,560.00
Wheelchair(s) / Mobility / Maintenance					
5 Reclining manual wheelchair	2008	2063	\$330.00	*56	\$18,480.00
6 Roll-in shower chair	2008	2008	\$200.00	*1	\$200.00
7 Wheelchair and shower chair maintenance	2008	2063	\$265.00	*56	\$14,840.00
Sub Total					\$33,520.00
Wheelchair Accessories					
8 Back cushion for wheelchair	2008	2063	\$145.84	*56	\$8,166.76
9 Flip Away padded armrest	2008	2063	\$30.86	*56	\$1,727.88
10 Plastic molded Lap Tray	2008	2063	\$13.34	*56	\$748.76
11 Transfer board (2)	2008	2063	\$9.50	*56	\$532.00

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Life Care Plan

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Summary Cost

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spastic tetraplegia

Item/Service	Beginning Date	Ending Date	Cost Per Year Avg.**	Number Of Years	Total**
12 Wheelchair air cushions (2)	2008	2063	\$166.50	*56	\$9,324.00
13 Wheelchair backpack	2008	2063	\$9.34	*56	\$522.76
Sub Total					\$21,020.16
Orthotics/Prosthetics					
14 Orthopedic shoes to fit with braces	2008	2063	\$87.50	*56	\$4,900.00
15 Wrist cock up splint, elbow orthosis & bilateral leg braces	2008	2063	\$460.80	*56	\$25,804.80
Sub Total					\$30,704.80
Durable Medical Items					
16 Rolling hydraulic/electric patient lift	2008	2063	\$300.00	*56	\$16,800.00
17 Replacement patient sling for hydraulic lift	2008	2063	\$200.00	*56	\$11,200.00
18 Fully adjustable electric bed with mattress	2014	2063	\$150.00	*50	\$7,500.00
19 Gel overlay for mattress	2014	2063	\$75.00	*50	\$3,750.00
20 Lift for swimming pool	2008	2063	\$746.00	*56	\$41,776.00
Sub Total					\$81,026.00
Aids for Independent Function					
21 Platform walker	2008	2063	\$35.00	*56	\$1,960.00
22 Commode chair	2008	2063	\$22.50	*56	\$1,260.00

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Summary Cost

	Item/Service	Beginning Date	Ending Date	Cost Per Year Avg.**	Number Of Years	Total**
23	Door jam ramps (2)	2008	2008	\$150.00	*1	\$150.00
24	Eating and feeding products	2008	2008	\$200.00	*1	\$200.00
25	Hand held shower sprayer	2008	2008	\$6.00	*1	\$6.00
Sub Total						\$3,576.00
Supplies						
26	Depend underwear	2008	2063	\$1,186.25	*56	\$66,430.00
27	Miscellaneous supplies	2008	2063	\$100.00	*56	\$5,600.00
28	Washable bed pads	2008	2063	\$162.50	*56	\$9,100.00
Sub Total						\$81,130.00
Medication(s)						
29	Amantadine 100 mg. or equivalent	2008	2063	\$441.18	*56	\$24,706.08
30	Antifungal extra thick Secura 3.25 oz. or equivalent	2008	2063	\$165.00	*56	\$9,240.00
31	Bactroban Nasal 2% Ointment or equivalent	2008	2063	\$185.53	*56	\$10,389.68
32	Beconase AQ 0.42% GSK spray or equivalent	2008	2063	\$783.67	*56	\$43,885.52
33	Clonazepam 1 mg. or equivalent	2008	2063	\$431.82	*56	\$24,181.92
34	Gabapentin 300 mg. (Neurontin) or equivalent	2008	2063	\$1,737.18	*56	\$97,282.08
35	Methylphenidate 10 mg. (Ritalin) or equivalent	2008	2063	\$514.26	*56	\$28,798.56

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Summary Cost

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encephalopathy;
spastic tetraplegia

Item/Service	Beginning Date	Ending Date	Cost Per Year Avg.**	Number Of Years	Total**
36 Nystatin 100,000 U/GM or equivalent	2008	2063	\$45.35	*56	\$2,539.32
37 Over the counter laxatives and stool softeners	2008	2063	\$300.00	*56	\$16,800.00
38 Trazadone 50 mg. or equivalent	2008	2063	\$158.94	*56	\$8,900.64
39 Venafaxine HCL 75 mg. or equivalent	2008	2063	\$1,387.86	*56	\$77,720.16
Sub Total					\$344,443.96
Home Care					
40 Build new accessible home	2008	2008	\$212,500.00	*1	\$212,500.00
Sub Total					\$212,500.00
Facility Care					
41 York Adult Daycare	2008	2063	\$12,750.00	*56	\$714,000.00
Sub Total					\$714,000.00
Future Medical Care Routine					
42 Follow-up visits with Physiatrist	2008	2063	\$734.00	*56	\$41,104.00
Sub Total					\$41,104.00
Transportation					
43 Wheelchair accessible van with tie downs, high top, wheelchair lift, etc.	2008	2063	\$3,000.00	*56	\$168,000.00
44 Maintenance of hydraulic lift	2008	2063	\$102.86	*56	\$5,759.88
45 American Automobile Association membership	2008	2063	\$75.00	*56	\$4,200.00

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Summary Cost

Item/Service	Beginning Date	Ending Date	Cost Per Year Avg.**	Number Of Years	Total**
46 Mileage allowance for medically related travel	2008	2063	\$143.64	55	\$7,900.20
47 Portable ramp	2008	2063	\$70.00	*56	\$3,920.00
Sub Total					\$189,780.08
Acute Medical Intervention					
48 Monthly Baclofen pump refills	2008	2063	\$11,640.00	*56	\$651,840.00
49 Physician's fee for monthly Baclofen pump refills	2008	2063	\$2,202.00	*56	\$123,312.00
50 Reprogram pump	2008	2063	\$700.00	*56	\$39,200.00
51 Replace catheter (CPT code 62350)	2008	2063	\$857.00	*56	\$47,992.00
52 Replace Baclofen pump	2009	2063	\$8,933.50	*55	\$491,342.50
53 Surgeon's fee to replace Baclofen pump CPT code 62362	2008	2063	\$488.00	*56	\$27,328.00
54 Anesthesia fee to replace Baclofen pump CPT code 62362	2008	2063	\$249.50	*56	\$13,972.00
Sub Total					\$1,394,986.50
Attendant Care					
55 24-hour Attendant care	2008	2063	\$2,380.00	*56	\$133,280.00
56 Attendant care	2008	2063	\$55,519.88	*56	\$3,109,113.00
Sub Total					\$3,242,393.00

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Summary Cost

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Item/Service		Beginning Date	Ending Date	Cost Per Year Avg.**	Number Of Years	Total**
Case Management						
57	Care coordination first year	2008	2008	\$8,000.00	*1	\$8,000.00
58	Care coordination 2009 through life expectancy	2009	2063	\$3,600.00	*55	\$198,000.00
Sub Total						\$206,000.00

Grand Total \$7,478,869.50

If any item has periodic replacement, "Grand Total" Cost is annualized.

SUMMARY COST with RANGE

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Summary Cost with Range

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spastic tetraplegia

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range
Projected Evaluations					
1 Home accessibility evaluation, typically performed by an Occupational Therapist	2008	2008	\$125.00	*1	\$125.00
2 Occupational therapy evaluation in the home	2008	2063	\$125.00	*56	\$7,000.00
Sub Total					\$7,125.00 \$7,125.00
Projected Therapeutic Modalities					
3 Occupational therapy	2008	2063	\$6,260.00 to \$9,375.00	*56	\$350,560.00 to \$525,000.00
4 Physical therapy	2008	2063	\$6,260.00 to \$9,375.00	*56	\$350,560.00 to \$525,000.00
Sub Total					\$701,120.00 to \$1,050,000.00
Wheelchair(s) / Mobility / Maintenance					
6 Reclining manual wheelchair	2008	2063	\$300.00 to \$360.00	*56	\$18,800.00 to \$20,160.00
6 Roll-in shower chair	2008	2008	\$160.00 to \$240.00	*1	\$160.00 to \$240.00
7 Wheelchair and shower chair maintenance	2008	2063	\$230.00 to \$300.00	*56	\$12,880.00 to \$16,800.00
Sub Total					\$29,840.00 to \$37,200.00
Wheelchair Accessories					
8 Back cushion for wheelchair	2008	2063	\$116.67 to \$175.00	*56	\$6,533.52 to \$9,800.00

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Summary Cost with Range

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range
9 Flip Away padded armrest	2008	2063	\$25.71 to	\$36.00 *56	\$1,439.76 to \$2,016.00
10 Plastic molded Lap Tray	2008	2063	\$10.00 to	\$16.67 *56	\$560.00 to \$933.52
11 Transfer board (2)	2008	2063	\$9.00 to	\$10.00 *56	\$504.00 to \$560.00
12 Wheelchair air cushions (2)	2008	2063	\$125.00 to	\$208.00 *56	\$7,000.00 to \$11,648.00
13 Wheelchair backpack	2008	2063	\$7.00 to	\$11.67 *56	\$392.00 to \$653.52
Sub Total					\$16,429.28 to \$25,611.04
Orthotics/Prosthetics					
14 Orthopedic shoes to fit with braces	2008	2063	\$75.00 to	\$100.00 *56	\$4,200.00 to \$5,600.00
15 Wrist cock up splint, elbow orthosis & bilateral leg braces	2008	2063	\$345.60 to	\$576.00 *56	\$19,353.60 to \$32,256.00
Sub Total					\$23,553.60 to \$37,856.00
Durable Medical Items					
16 Rolling hydraulic/electric patient lift	2008	2063	\$250.00 to	\$350.00 *56	\$14,000.00 to \$19,600.00
17 Replacement patient sling for hydraulic lift	2008	2063	\$200.00	*56	\$11,200.00
18 Fully adjustable electric bed with mattress	2014	2063	\$150.00	*50	\$7,500.00

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spastic tetraplegia

Summary Cost with Range

	Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range
19	Gel overlay for mattress	2014	2063	\$70.00 to	\$80.00 *50	\$3,500.00 to \$4,000.00
20	Lift for swimming pool	2008	2063	\$746.00	*56	\$41,776.00
Sub Total						\$77,976.00 \$84,076.00
Aids for Independent Function						
21	Platform walker	2008	2063	\$35.00	*56	\$1,960.00
22	Commode chair	2008	2063	\$20.00 to	\$25.00 *56	\$1,120.00 to \$1,400.00
23	Door jam ramps (2)	2008	2008	\$150.00	*1	\$150.00
24	Eating and feeding products	2008	2008	\$200.00	*1	\$200.00
25	Hand held shower sprayer	2008	2008	\$4.00 to	\$8.00 *1	\$4.00 to \$8.00
Sub Total						\$3,434.00 to \$3,718.00
Supplies						
26	Depend underwear	2008	2063	\$1,186.25	*56	\$66,430.00
27	Miscellaneous supplies	2008	2063	\$100.00	*56	\$5,600.00
28	Washable bed pads	2008	2063	\$150.00 to	\$175.00 *56	\$8,400.00 to \$9,800.00
Sub Total						\$80,430.00 to \$81,830.00

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Summary Cost with Range

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range
Medication(s)					
29 Amantadine 100 mg. or equivalent	2008	2063	\$395.88 to \$486.48	*56	\$22,169.28 to \$27,242.88
30 Antifungal extra thick Secura 3.25 oz. or equivalent	2008	2063	\$150.00 to \$180.00	*56	\$8,400.00 to \$10,080.00
31 Bactroban Nasal 2% Ointment or equivalent	2008	2063	\$169.08 to \$201.98	*56	\$9,468.48 to \$11,310.88
32 Beconase AQ 0.42% GSK spray or equivalent	2008	2063	\$736.99 to \$830.35	*56	\$41,271.44 to \$46,499.60
33 Clonazepam 1 mg. or equivalent	2008	2063	\$333.36 to \$530.28	*56	\$18,668.16 to \$29,695.68
34 Gabapentin 300 mg. (Neurontin) or equivalent	2008	2063	\$1,638.60 to \$1,835.76	*56	\$91,761.60 to \$102,802.56
35 Methylphenidate 10 mg. (Ritalin) or equivalent	2008	2063	\$361.08 to \$667.44	*56	\$20,220.48 to \$37,376.64
36 Nystatin 100,000 U/GM or equivalent	2008	2063	\$34.17 to \$56.52	*56	\$1,913.52 to \$3,165.12
37 Over the counter laxatives and stool softeners	2008	2063	\$240.00 to \$360.00	*56	\$13,440.00 to \$20,160.00
38 Trazadone 50 mg. or equivalent	2008	2063	\$96.00 to \$221.88	*56	\$5,376.00 to \$12,425.28

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D/E: Sep 12, 2003

Date Prepared: Mar 4, 2008

Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Summary Cost with Range

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)		Number Of Years	Totals** with Range	
39 Venafaxine HCL 75 mg. or equivalent	2008	2063	\$1,371.84 to	\$1,403.88	*56	\$76,823.04 to	\$78,617.28
Sub Total						\$309,512.00 to	\$379,375.92
Home Care							
40 Build new accessible home	2008	2008	\$175,000.00 to	\$250,000.00	*1	\$175,000.00 to	\$250,000.00
Sub Total						\$175,000.00 to	\$250,000.00
Facility Care							
41 York Adult Daycare	2008	2063	\$12,750.00		*56	\$714,000.00	
Sub Total						\$714,000.00	\$714,000.00
Future Medical Care Routine							
42 Follow-up visits with Physiatrist	2008	2063	\$360.00 to	\$1,108.00	*56	\$20,160.00 to	\$62,048.00
Sub Total						\$20,160.00 to	\$62,048.00
Transportation							
43 Wheelchair accessible van with tie downs, high top, wheelchair lift, etc.	2008	2063	\$2,429.00 to	\$3,571.00	*56	\$136,024.00 to	\$199,976.00
44 Maintenance of hydraulic lift	2008	2063	\$85.71 to	\$120.00	*56	\$4,799.76 to	\$6,720.00
45 American Automobile Association membership	2008	2063	\$60.00 to	\$90.00	*56	\$3,360.00 to	\$5,040.00

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Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Mar 4, 2008
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Summary Cost with Range

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range
46 Mileage allowance for medically related travel	2008	2063	\$143.64	55	\$7,900.20
47 Portable ramp	2008	2063	\$60.00 to	\$80.00 *56	\$3,360.00 to \$4,480.00
Sub Total					\$155,443.96 to \$224,116.20
Acute Medical Intervention					
48 Monthly Baclofen pump refills	2008	2063	\$8,640.00 to	\$14,640.00 *56	\$483,840.00 to \$819,840.00
49 Physician's fee for monthly Baclofen pump refills	2008	2063	\$1,080.00 to	\$3,324.00 *56	\$60,480.00 to \$186,144.00
50 Reprogram pump	2008	2063	\$600.00 to	\$800.00 *56	\$33,600.00 to \$44,800.00
51 Replace catheter (CPT code 62350)	2008	2063	\$857.00	*56	\$47,992.00
52 Replace Baclofen pump	2009	2063	\$6,700.00 to	\$11,167.00 *55	\$388,500.00 to \$614,185.00
53 Surgeon's fee to replace Baclofen pump CPT code 62362	2008	2063	\$366.00 to	\$610.00 *56	\$20,496.00 to \$34,160.00
54 Anesthesia fee to replace Baclofen pump CPT code 62362	2008	2063	\$187.00 to	\$312.00 *56	\$10,472.00 to \$17,472.00
Sub Total					\$1,025,380.00 to \$1,764,593.00
Attendant Care					
55 24-hour Attendant care	2008	2063	\$1,400.00 to	\$3,360.00 *56	\$78,400.00 to \$188,160.00

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Summary Cost with Range

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range
56 Attendant care	2008	2063	\$51,369.75 to \$59,670.00	*56	\$2,876,706.00 to \$3,341,520.00
Sub Total					\$2,955,106.00 to \$3,529,680.00
Case Management					
57 Care coordination first year	2008	2008	\$8,000.00	*1	\$8,000.00
58 Care coordination 2009 through life expectancy	2009	2063	\$2,400.00 to \$4,800.00	*55	\$132,000.00 to \$264,000.00
Sub Total					\$140,000.00 to \$272,000.00

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Summary Cost with Range

Item/Service	Beginning Date	Ending Date	Cost Per Year** (Range)	Number Of Years	Totals** with Range

to

Grand Total \$6,434,509.84 to \$8,523,229.16

If any item has periodic replacement, "Grand Total" Cost is annualized.

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(3)

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Life Care Planning
Rehabilitation Consulting

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UPDATED NARRATIVE REPORT

Confidential – For Professional Use Only

RE: Kristy L. Orlowski a/k/a/ Kristy Wood
Date of Injury: September 12, 2003
Date of Birth: August 14, 1982
Date of Interview: January 25, 2008
Place of Interview: The parents' home
Date of Report: March 4, 2008
Date of Update: February 27, 2009

Attorney Grady McMahan has requested that I interview Kristy Orlowski and her parents, review all medical and rehabilitation reports regarding Ms. Orlowski and prepare a Life Care Plan, including an analysis of present and future needs.

A Life Care Plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis and research. The Plan provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.

The cost reduction to present value is not calculated and would require analysis by a qualified economist.

The methodology used to prepare the attached Life Care Plan requires an "end date" or life expectancy. While this figure might be represented as an individual's statistical life expectancy based on current age and gender, I personally am offering no opinion regarding Ms. Orlowski's life expectancy.

MEDICAL RECORDS REVIEWED

Carolinas Healthcare System
Charlotte Institute of Rehabilitation
Scott McLanahan, MD
CMC Orthopaedics – Dr. Frick
Carolina Neurosurgery and Spine Baclofen Clinic
Dr. Steven Frick
HealthSouth Rehabilitation
CMC Radiology
Home Health, Inc. Piedmont
Piedmont Medical Center

03/23/04 – 04/05/04
05/12/04 – 10/27/04
09/08/05
02/18/05 – 06/10/05
11/15/04 – 11/15/07
02/18/05 – 06/13/05
06/19/07 – 10/30/07
06/10/05
10/03/06 – 03/23/07
03/24/06 – 11/16/07

IDENTIFYING INFORMATION

Ms. Orlowski is a 26-year-old woman who suffered eclampsia and seizures in September 2003 when she was 36 weeks pregnant. She was diagnosed with anoxic encephalopathy with spastic tetraplegia. She lives with her parents in Clover, SC. Her mother and father both work full time. Ms. Orlowski has attended York Adult Daycare for the past two years where she receives physical therapy, occupational therapy, attendant care and lunch. On most weekdays daycare van picks her up and transports her to the facility. She leaves daycare in the afternoon and she is home by 2:30. Her parents provide all other attendant care, including bathing, toileting, dressing, feeding, administering medications and transporting her to medical appointments.

Ms. Orlowski is able to eat finger food but her mother feeds her at other times. She is able to walk with total assistance. She sits in a shower chair when being bathed.

MEDICAL SUMMARY

Ms. Orlowski was treated for a number of serious medical complications after the 09/12/03 event and she was discharged home in November 2003. She was readmitted to the hospital with thoracotomy and decortication of the left lung and she was treated for multiple infections. She also suffered a basal ganglia injury with a hypertensive encephalopathy and urosepsis. She was diagnosed on 03/23/04 with post anoxic encephalopathy with spastic quadriplegia. A Baclofen pump was placed on 03/26/04. She was discharged to Sardis Nursing Home on 03/29/04 but she was readmitted to the hospital secondary to an infection. She was treated and discharged to the nursing home on 04/09/04. She was evaluated and felt to be a good candidate for rehabilitation at Charlotte Institute of Rehabilitation (CIR).

Her admission diagnoses were:

- Anoxic encephalopathy with spastic tetraplegia.
- Eclampsia with seizures.
- Adult respiratory distress syndrome.
- History of resistant pseudomonas infections.
- Methicillin sensitive Staphylococcus aureus blood cultures.
- Emphysema status post left lung decortication, December 2003.
- Multiple pneumothoraces.
- History of urosepsis.
- Status post percutaneous endoscopic gastrostomy tube placement.
- Drug induced hepatitis secondary to Zanaflex.

She remained at CIR for about five weeks. During that time she was administered botulinum injections to decreased spasticity and upper and lower limb contractures. She was casted and placed in bilateral lower limb knee braces to help increase range of motion. She was placed on Ritalin to improve cognition and she responded well. A recent CT revealed mild hydrocephalus and Dr. McLanahan advised that she was a ventriculoperitoneal shunt candidate.

She was obtaining the majority of her nutrition through tube feeding. She had myoclonic movements of her arms when pointing or attempting to grasp. Medication resulted in some improvement. She was experiencing neuropathic pain which was treated with medication. Knee bracing and range of motion exercises were performed to reduce lower extremity contractures.

At time of discharge from CIR:

She was breathing well.

Blood pressure was stabilized.

Her overall outlook and motivation improved during therapies.

She needed maximal assist with bed mobility and wheelchair propulsion. She was otherwise dependent with mobility issues.

She needed maximal assistance with grooming and she was dependent with all other activities of daily living.

With regard to cognition she needed supervision with receptive auditory, moderate to minimal assist with orientation and moderate assistance with memory and attention.

She was dependent with regard to bowel and bladder care.

The following equipment was recommended:

30" transfer board

Rental wheelchair for six months

Hospital bed and mattress

Shower tub

Bilateral knee braces

Hydrocolloid dressing with a dry sterile dressing for pressure sores.

Ms. Orlowski needed to continue tube feedings and wearing knee braces. Her skin needed to be checked daily, wounds were to be dressed and Ms. Orlowski was to be turned in bed every three hours.

Her diagnoses at discharge also included the following:

Severe dysphagia with continuous tube feeds.

Alteration of doses of Baclofen pump, which was placed prior to admission.

New Stage I to II popliteal pressure sores bilaterally, left worse than right, improving prior to discharge.

Action myoclonus.

Oral candidiasis treated and resolved.

Spasticity status post Botulinum toxin injections to bilateral upper limbs.

Adjustment disorder

Depression

On 09/08/05 Dr. McClanahan reported that Ms. Orlowski continued to use a Medtronic SyncroMed Baclofen pump to reduce her intractable spasticity. She continued to have some spasms in her lower extremities. She was dependent in all activities of daily living. She was eating orally and she could assist with feedings. Her primary mobility was a manual wheelchair. She could take some steps with a walker. She continued to participate in physical and occupational therapy three times a week.

On 06/05/06 she was reported to be doing remarkably well. She had gained weight and her affect was bright. She was walking with handheld assistance. Her range of motion in her upper and lower extremities was normal. She had poor posture with standing and she would go from sitting to standing with minimum assistance. She was still dysarthric.

On 03/22/07 Ms. Orlowski was continuing to use the Medtronic SyncroMed pump for spasticity. She was dependent for all activities of daily living. Her primary means of mobility was a manual

wheelchair. She would take a few steps with one assist and she needed total assistance for transfers. She was attending an adult day care during the day and she was continuing to receive physical therapy three times per week.

Ms. Orlowski fell from her wheelchair on 11/14/07, striking the right temple and causing a laceration on the scalp as well as a bloody nose. The following day she appeared dazed and confused and reported an increasing headache and sluggishness.

CURRENT TREATING PHYSICIANS

Ms. Orlowski underwent operative procedures in 2004 including Baclofen placement and lumbar puncture. She currently goes to the Baclofen Clinic monthly for pump refills. The Baclofen pump is projected to need replacement in 2009. In addition to seeing a physician during these visits, she currently sees Dr. Wierciszewski every three months for a complete assessment. Ms. Orlowski also sees her family physician at Clover Family Medicine as needed. Dr. Wierciszewski stated in his deposition that he will need to see Ms. Orlowski every six months in the future, but there may be times when he will need to see her with greater frequency.

CHIEF COMPLAINTS

Mr. & Mrs. Sims reported the following concerns regarding Kristy's current status:

- Forgetfulness.
- Attention problems.
- Confusion.
- Frequent headaches, especially during her monthly period.
- Communication problems – Kristy's speech is slurred and very slow.
- Poor coordination.
- Muscle spasms.
- Stomach pain and pain in the area of the Baclofen pump.
- Chronic fatigue.
- Her parents have noticed possible vision problems.
- Depression, especially when seeing babies.
- Frequent crying spells, especially when seeing babies, during celebrations, during her monthly period.
- Inability to independently propel her manual and power wheelchairs.
- Inability to sit longer than two hours in her wheelchair – she sits in a recliner at daycare.
- Occasional rashes.
- Discomfort in cold weather.
- Inadequate housing for Kristy (See Home Assessment section for details).
- No accessible vehicle available to transport Kristy and her wheelchair. Mrs. Sims drives a 2005 Trailblazer and Mr. Sims drives a 1991 pickup truck.
- No funds for attendant care.
- Concern about future care if parents are ill or unavailable.

MEDICATIONS

Ms. Orłowski takes the following prescribed medications and supplies, which are purchased at CVS Pharmacy:

MEDICATION/DOSAGE	TIMES PER DAY	FOR	PRESCRIBED BY	
Bactroban Nasal 2% Ointment	As needed	Prevent MRSA infections	Dr. Wiercisiwski	
Methylphenidate 10 mg. (Ritalin)	2 daily	Improve attention	"	"
Amantadine 100 mg.	2 daily	Treat tremors	"	"
Venlafaxine HCL 75 mg.	2 daily	Depression	"	"
Clonazepam 1 mg.	3 daily	Control seizures	"	"
Trazodone 50 mg.	1-2 @ night	Depression/Insomnia	"	"
Gabapentin 300 mg. (Neurontin)	1-2 daily 3 @ night	Control seizures	"	"
Nystatin 100,000 U/GM PWD ETH	As needed	Treat infections	"	"
Beconase AQ 0.42% spray GSK	As needed	Reduce congestion	"	"
Antifungal extra thick secura	3.25 oz	Treat fungal infections	"	"

Also:

Over the counter laxative and stool softener, used daily

SUPPLIES & EQUIPMENT CURRENTLY USED

Depends (Medium) 5 daily
Washable Bedpads 2 dozen
Sippy Cup
Pillows for support in bed (4)
Reclining manual wheelchair, purchased 5 years ago
Transfer board
Platform walker, purchased 2 years ago
Hospital bed
Commode chair
Gel mattress
Wheelchair air cushion
Leg braces, purchased 2-3 years ago
Wrist splints

FAMILY HISTORY

Ms. Orłowski is divorced. Her former husband has remarried. Ms. Orłowski lives with her parents Larry "Don" Sims, 45, and Gladys Sims, 46. Mr. Sims has been hospitalized with heart blockage and he has been treated for gout. He is a First Responder Ambulance Driver. Mrs. Sims is in good health but unable to lift and carry her daughter.

HOME ASSESSMENT

Ms. Orłowski and her parents currently live in an older two bedroom, one bathroom mobile home.

Her wheelchair will not go through the bedroom door. The bedroom is very small, with room for a twin hospital bed and a commode chair. The remote control for the bed is damaged and difficult to use at times. The bathroom is at the other end of the mobile home. Ms. Orlowski's equipment and supplies are kept in the living room. There is damage to the walls and corners of the rooms because of the small space in which to push the wheelchair. The bathroom is very small, with no room for the wheelchair and no room to access the sink. There is one ramp, in the front of the mobile home. The parents purchased an above ground swimming pool when pool exercise was recommended for Ms. Orlowski. Unfortunately there is no way for her to get into the pool. Clover, SC does not have a community swimming pool.

EDUCATION AND TRAINING/WORK HISTORY

Ms. Orlowski graduated from high school and attended Brookstone College, taking courses in Business Administration. She was in the Army Reserve and scheduled to be deployed to Iraq prior to her hospitalization.

VOCATIONAL STATUS

She is totally disabled from working due to her physical and cognitive deficits.

LIFE CARE PLAN

Life Expectancy

According to the South Carolina mortality tables, Ms. Orlowski has 55.43 more years of life, as she will complete her 27th year in August 2009. A life expectancy of 55 years is used for the purposes of this report.

Items and supplies are listed in the following categories:

Projected Evaluations

A one-time occupational therapy evaluation will be needed to assess activities of daily living, wheelchair activities, safety in the home and the need for home modifications. Annual evaluations will be needed to reevaluate Ms. Orlowski and her caretaker's needs as she ages and/or when her functional abilities change.

Projected Therapeutic Modalities

An allowance of 15-30 hours of physical therapy and 12-20 hours of occupational therapy per year is included in the life care plan. This frequency is included to reflect information provided by Dr. Wiercislowski in his deposition although Ms. Orlowski currently receives 1-3 hours of each therapy per week at the daycare center. Her mother reports that the therapy allows her to maintain her gains in physical function and activities of daily living.

Wheelchair(s)/Mobility/Maintenance & Wheelchair Accessories

Ms. Orlowski uses a reclining manual wheelchair for mobility. Her parents will assist her from the

wheelchair to the sofa or a chair. She occasionally uses her platform walker but assistance is needed to ensure that she does not fall. She cannot maneuver the wheelchair independently. She would also benefit from using a shower chair once she moves to a more accessible home. An allowance is provided for wheelchair and shower chair maintenance.

Wheelchair Accessories

Ms. Orlowski needs the following equipment for comfort, skin protection and function: back cushion for the wheelchair, a flip-away padded armrest, a plastic molded laptray that fits onto the wheelchair arms, two transfer boards, two wheelchair air cushions, cushion covers and a wheelchair backpack.

Orthotics/Prosthetics

She will continue to need braces and/or splints on her upper and lower extremities. An allowance is included for the cost of these items as well as for appropriate shoes that will accommodate the leg braces. Dr. Wiercislowski has prescribed an ankle knee orthosis for one leg. The purchase price for this custom designed brace will approximate or exceed the cost of Ms. Orlowski's current braces. Ms. Orlowski's mother reports that Kristy had two wrist splints that were misplaced during a transition to the daycare center. The therapist at the daycare center ordered new wrist splints which they use daily in therapy.

Durable Medical Items

Items in this category include a hydraulic or electric lift to be used for transfers, replacement slings for the lift, a fully adjustable electric bed and mattress to replace the current bed in 2011, a gel overlay for the mattress, and a lift for the swimming pool to permit aquatic exercise at home.

Aids for Independent Function

Several assistive devices and aids are included to reduce Ms. Orlowski's dependence on others and to reduce the chance of further injury: commode chair, door jam ramps, eating and feeding aids, hand held shower sprayer and platform walker.

Supplies

Ms. Orlowski is incontinent and needs disposable underwear and washable bed pads. An allowance is also included for miscellaneous supplies such as replacement Sippy cup, pillows for support in bed, latex gloves for the caregiver, creams and lotions to maintain skin health, etc.

Medications

Medications currently prescribed are included in the Life Care Plan. Dr. Wiercislowski indicated in his deposition that he would like to wean Ms. Orlowski off some of her medications. The actual date of the beginning of the weaning process was not discussed. Duration of medications in the life care plan was changed to reflect five additional years for those medications that may be the easiest to discontinue. An additional ten years was provided for those medications that will take longer to discontinue. All other medications, creams and ointments remain as lifetime needs.

Home Care

An allowance is included for purchase of an accessible home in the York County, SC area that will provide adequate room, storage and safe living quarters for the client and her caregivers. Over the years various contractors have advised me that they add an additional 10% to the building cost for custom handicap accessible features.

Facility Care

Ms. Orlowski attends York Adult Daycare on weekdays. The facility provides custodial care with socialization, transportation, activities and meals. There is now a charge for transportation to and from the client's home. Therapy is not included but space is provided for therapists. Ms. Orlowski enjoys her time at the facility. The cost is included to provide daycare throughout her life expectancy.

Future Medical Care Routine

Dr. Wiercislowski will continue to monitor Ms. Orlowski's health, rehabilitation needs and medication needs. He indicated in his deposition that he currently sees her every three months and he will need to see Ms. Orlowski every six months in the future. The cost for 2-4 visits per year is included in the Life Care Plan.

Transportation

Ms. Orlowski's parents do not have vehicles that are appropriate for modification for a wheelchair lift. Her mother has difficulty transporting the wheelchair in her car and placing Ms. Orlowski in the passenger seat. A full accessible van with tie downs, high top and wheelchair lift is included in the Life Care Plan. The full cost of a 2007 vehicle (\$28,800 according to the last NADA information available) is subtracted from the cost of a modified van. Mileage reimbursement is included to reimburse travel expenses for medical visits to Charlotte, NC for follow-up and Baclofen Pump refills. Dr. Wiercislowski no longer has an office in Rock Hill, SC. An AAA membership will ensure that roadside assistance is available in an emergency.

Maintenance for the lift will be needed when the warranty expires. A portable ramp will be needed when Ms. Orlowski visits a facility or residence that does not have a ramp in place.

Acute Medical Intervention - Baclofen Pump

Ms. Orlowski has experienced significant benefits from the Baclofen Pump that was implanted in 2004. Costs involved in Baclofen Pump refills, reprogramming and replacement are included in the Life Care Plan. Information was obtained from a nurse at Carolina Neurosurgery & Spine. Dr. Wiercislowski's office advises that Ms. Orlowski will require the use of a Baclofen Pump throughout her life expectancy.

Attendant Care

Attendant care is needed for personal and home care assistance. Both parents work full time and Ms. Orlowski is at daycare for approximately six hours. It is recommended that attendant care be provided for two hours in the morning and 7-8 hours in the afternoon and evening for 51 weeks per year. On weekends she will need approximately 6-8 hours of attendant care. An allowance is also provided for full time attendant care for 7 days per year. Ms. Orlowski skips daycare all day when she

has medical appointments in Charlotte. On those days she needs additional attendant care. The attendant will perform the following tasks:

- Assisting with dressing
- Assisting with bathing.
- Providing transportation to Ms. Orlowski's medical appointments.
- Assisting with shopping, cooking, cleaning and doing the laundry.
- Helping her move from her wheelchair to bed, other seating, commode and shower chair.
- Helping her up when she falls
- Helping her negotiate curbs and steps.
- Pushing her wheelchair.
- Helping her get out of bed.

Although attendant care can be procured privately and at lower cost, it is commonly accepted that agency care is advisable because of the need for reliable, trained, bonded and insured personnel.

Case Management

Ms. Orlowski will need a Case Manager to help coordinate purchases and building quotes and treatment needs as well as attendant care. Additional case management time will be required during the first year, with time reduced to 30-60 hours per year thereafter.

Potential Complications

The cost of potential complications is not included in the Life Care Plan since the incidence and severity is unpredictable:

1. The Baclofen Pump can cause infection and can move out of place, requiring additional inpatient treatment.
2. There can be an adverse reaction to anesthesia.
3. If the pump malfunctions, it may deliver too much medicine at once, causing drowsiness, dizziness, weakness, insomnia, light headedness, nausea, vomiting, looseness of the muscles, trouble with vision, coma, respiratory depression, seizures, dry mouth, diarrhea or delayed responsiveness.
4. If Ms. Orlowski's parents are unable to care for her she will need 24 hour attendant care, which will cost \$250 - \$456 per 24-hour day.
5. Ms. Orlowski may need to move to a facility providing assisted care or full nursing care if family and/or attendant care is not available in the home. Walton Rehabilitation Health system in Augusta, GA has an Assisted Living facility specifically designed for younger individuals with severe disabilities. The monthly cost is \$4,000 and includes room and board, nursing supervision and leisure activities. This fee does not include medication costs, physical therapy and other attendant care not provided by the facility. Local skilled nursing facilities charge \$180-200 per day.
6. Dr. Wiercisiwski advised in his deposition that there are higher incidences of kidney stones in patients that are immobilized. He also stated that there is a risk of osteoporosis due to her inability to ambulate independently and maintain her bone density. There is probably some respiratory risk like bronchitis or perhaps aspiration from feeding (due to difficulty swallowing liquids.)

Thank you for giving me the opportunity to work with Ms. Orlowski. Please call if you have any questions or need further clarification of any information in this report.

Respectfully submitted,

Leanna Hollenbeck, MS, CLCP, CRC, CCM
Life Care Planner & Rehabilitation Consultant

Enclosures: Life Care Plan
Summary of costs
Journal article
List of changes made to the original life care plan

**AMENDMENTS TO KRISTY ORLOWSKI'S LIFE CARE PLAN AND NARRATIVE REPORT
FEBRUARY 27, 2009**

1. Life expectancy has been changed to 55.43 years to reflect Ms. Orłowski's current age. A life expectancy of 55 years is used for the purposes of the Life Care Plan.
2. Ms. Orłowski will be scheduled for shunt placement in the near future. Costs for the surgery are not available and have not been included in the life care plan.
3. Yearly physical therapy evaluations were included.
4. End date for medication has been changed to reflect Dr. Wierciszewski's deposition testimony that he would like to wean Ms. Orłowski off her medication. Actual end dates are not available, so a range of 5-10 years is included for each medication discussed.
5. Frequency of physical therapy and occupational therapy sessions is reduced to reflect Dr. Wierciszewski's deposition testimony regarding therapy, although Ms. Orłowski receives 1-3 hours of therapy per week at the daycare center.
6. Frequency of treatment visits with Dr. Wierciszewski is changed from 4 visits per year to 2-3 visits per year. Dr. Wierciszewski currently sees Ms. Orłowski every 3 months but he advises that he will see her every six months in the future. If medical issues arise he will revert back to visits every 3 months.
7. Frequency of replacement of power lift sling was changed to every two years.
8. Cost of handicap accessible van and average cost of a vehicle is changed to reflect current prices.
9. The following costs have been updated:
 - Medication
 - Modified van
 - Hospital cost for replacement of Baclofen Infusion Pump
 - Orthosis and wrist cock-up splint prescribed by Dr. Wierciszewski
 - Wheelchair
 - Transfer board
 - Platform walker
 - Baclofen pump refills, medication, reprogramming
 - Replacement catheter, anesthesia, pump replacement, hospital facility charge, physician's fee
 - York Adult Daycare
 - Home health care
 - Case management hourly rate
10. A journal article is enclosed that has researched the replacement frequency of medical equipment:
 - Marini, I. & Harper, Dana. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. *Journal of Life Care Planning*. Vol 4, No. 4, (173-182) November 2005.

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Updated Life Care Plan

Kristy Orlowski

Projected Evaluations

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Home accessibility evaluation, typically performed by an Occupational Therapist	Beginning	2009	One time	Evaluate home plans; make recommendatio ns for assistive technology devices	Per Unit \$125.00	Unit cost = One visit 1
	Ending *	2009			Per Year \$125.00	
Occupational therapy evaluation in the home	Beginning	2009	Yearly allowance	Assess therapy needs, develop therapy program for caregivers, address activities of daily	Per Unit \$125.00	Unit cost = One visit 2
	Ending *	2063			Per Year \$125.00	
Physical therapy evaluation	Beginning	2009	Yearly	Assess therapy needs, develop therapy program, adjust home exercise program.	Per Unit \$125.00	Unit cost = One visit 3
	Ending *	2063			Per Year \$125.00	

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Projected Therapeutic Modalities

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Occupational therapy	Beginning	2009	She currently receives 1-3 sessions per week.	Maintain flexibility and function	Per Unit \$125.00	Unit cost = One visit by therapist from Interim Health Care. Allowance for 12-20 visits per year.
	Ending *	2063			Per Year \$1,500.00 to \$2,500.00	
Physical therapy	Beginning	2009	She currently receives 1-3 sessions per week.	Maintain flexibility and function	Per Unit \$125.00	Unit cost = One visit by therapist from Interim Health Care. Allowance for 15-30 visits per year.
	Ending *	2063			Per Year \$1,875.00 to \$3,750.00	

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Updated Life Care Plan

Kristy Orlowski

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encephalopathy;
spastic tetraplegia

Wheelchair(s) / Mobility / Maintenance

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Reclining manual wheelchair	Beginning	2009	Replace every 5 years	Provide comfort and mobility	Per Unit \$1,800.00 to \$2,200.00	Unit cost = Cost for one wheelchair obtained from Charlotte Chair & Equipment 704-333-8431 6
	Ending *	2063			Per Year \$360.00 to \$440.00	
Roll-in shower chair	Beginning	2009	Every 5 years	Safety while bathing.	Per Unit \$800.00 to \$1,200.00	Unit cost = One roll-in shower chair 7
	Ending *	2063			Per Year \$160.00 to \$240.00	
Wheelchair and shower chair maintenance	Beginning	2009	Yearly allowance	Maintain wheelchair	Per Unit \$230.00 to \$300.00	Unit cost = Yearly maintenance cost is typically figured to be 10% of cost of wheelchair. 8
	Ending *	2063			Per Year \$230.00 to \$300.00	

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Wheelchair Accessories

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Back cushion for wheelchair	Beginning	2009	Every 2-3 years	Support back, reduce back discomfort; increase ability to sit upright in wheelchair	Per Unit \$300.00 to \$400.00	Unit cost = One back cushion 9
	Ending *	2063			Per Year \$118.67 to \$175.00	
Flip Away padded armrest	Beginning	2009	Every 5-7 years	Transport small items while in wheelchair	Per Unit \$180.00	Unit cost = One armrest 10
	Ending *	2063			Per Year \$25.71 to \$36.00	
Plastic molded Lap Tray	Beginning	2009	Every 3-5 years	Wheelchair activities needing flat surfaces such as eating	Per Unit \$50.00	Unit cost = One Lap Tray 11
	Ending *	2063			Per Year \$10.00 to \$16.67	
Transfer board (2)	Beginning	2009	Replace one every 5 years	Safe transfer from wheelchair to other seating or bed	Per Unit \$45.00 to \$50.00	Unit cost = One transfer board. Cost obtained from Charlotte Chair & Equipment (704-333-8431) and Sammons Preston Catalog (800-323-5547) 12
	Ending *	2063			Per Year \$9.00 to \$10.00	
Wheelchair air cushions (2)	Beginning	2009	Replace 1 every 3-5 years	Prevent pressure sores; increase comfort when seated	Per Unit \$250.00 to \$400.00	Unit cost = One wheelchair air cushion 13
	Ending *	2063			Per Year \$62.50 to \$104.17	

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Wheelchair Accessories

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Wheelchair backpack	Beginning	27	Every 3-5 years	Carry items	Per Unit \$35.00	Unit cost = One backpack
		2009			Per Year \$7.00	
	Ending *	81			to \$11.67	
Wheelchair cushion covers (2)	Beginning	27	Replace yearly	Protect wheelchair cushion	Per Unit \$40.00	Unit cost = One wheelchair cushion cover
		2009			to \$60.00	
	Ending *	81			Per Year \$40.00 to \$60.00	

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Orthotics/Prosthetics

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Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Orthopedic shoes to fit with braces	Beginning		Every 2 years	Safe ambulation	Per Unit \$150.00	Unit cost = Two pair of shoes. Shoes will not sustain a great deal of wear and should be replaced every two years.
	27	2009			to \$200.00	
	Ending *				Per Year \$75.00	
	81	2063			to \$100.00	16
Wrist cock up splint, elbow orthosis & bilateral leg braces	Beginning		Every 3-5 years	Safe ambulation	Per Unit \$1,728.00	Unit cost = Charge for current leg brace fitted and purchased from Hanger Prosthetics on 11/23/04. 803-328-2625. The leg braces, elbow orthosis and wrist cock up splint were prescribed by Dr. Wierciszewski.
	27	2009			Per Year \$345.80	
	Ending *				to \$576.00	17
	81	2063				

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Durable Medical Items

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment	
Rolling hydraulic/electric patient lift	Beginning		Every 7 years	Transfers from bed to wheelchair, shower chair	Per Unit \$2,500.00 to \$3,500.00	Unit cost = One lift	18
	Ending				Per Year \$357.00 to \$500.00		
Replacement patient sling for hydraulic lift	Beginning		Replace every 2 years	Transfers from bed to wheelchair, shower chair	Per Unit \$200.00	Unit cost = One sling	19
	Ending				Per Year \$100.00		
Mattress for hospital bed	Beginning		Every 3 years	Comfort in bed	Per Unit \$500.00	Unit cost = One adjustable twin bed. Average cost for durable mattress.	20
	Ending				Per Year \$167.00		
Lift for swimming pool	Beginning		Original purchase and 4 replacements (5 year warranty on lift)	Access to pool for exercise	Per Unit \$4,223.00 to \$8,555.00	Unit cost = One lift. Original purchase and 4 replacements. Additional \$200 added to cover installation fee. Costs obtained for Planet Mobility and Recreonics lifts	21
	Ending				Per Year \$384.00 to \$778.00		
Fully adjustable electric bed	Beginning		Every 7 years	Easy in and out of bed; comfort	Per Unit \$1,000.00	Unit cost = One adjustable twin bed. Average cost for durable bed.	22
	Ending				Per Year \$143.00		

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Durable Medical Items

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Gel overlay for mattress	Beginning	2011	Every 3 years	Prevent pressure sores	Per Unit \$350.00	Unit cost = One gel overlay
	29				to \$400.00	
	Ending *				Per Year \$117.00	
	81	2063			to \$133.00	23

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Aids for Independent Function

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Platform walker	Beginning	2009	Every 5 years	Safe ambulation when not in the wheelchair	Per Unit \$200.00	Unit cost = One walker. Cost obtained from Charlotte Chair & Equipment 704-333-8431
	Ending *	2063			Per Year \$40.00	
Commode chair	Beginning	2009	Every 5 years	Toileting	Per Unit \$100.00 to \$125.00	Unit cost = One commode chair
	Ending *	2063			Per Year \$20.00 to \$25.00	
Door jam ramps (2)	Beginning	2009	One time	Easy access through all doors	Per Unit \$150.00	Unit cost = Two door jam ramps
	Ending *	2009			Per Year \$150.00	
Eating and feeding products	Beginning	2009	One time allowance	Allow client to become more independent with feeding; provide caregiver assistance	Per Unit \$200.00	Unit cost = Allowance for purchase of ergonomic utensils, non-slip plates, bibs, etc.
	Ending *	2009			Per Year \$200.00	
Hand held shower sprayer	Beginning	2009	Every 5 years	Bathe while seated	Per Unit \$20.00 to \$40.00	Unit cost = One shower sprayer
	Ending *	2009			Per Year \$4.00 to \$8.00	

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Supplies

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Depend underwear	Beginning	2009	Five daily	Prevent urine leaks due to incontinence	Per Unit \$1,186.25	Unit cost = 65 cents each (when purchased in pack of 40) x 5 x 365 days = \$1186.25/year 29
	Ending	2063			Per Year \$1,186.25	
Miscellaneous supplies	Beginning	2009	Yearly allowance	Increase function, provide caretaker relief	Per Unit \$100.00	Unit cost = Allowance for items such as Sippy cup, pillows for support in bed (4), latex gloves for caregiver, creams & lotions to maintain skin health, etc. 30
	Ending	2063			Per Year \$100.00	
Washable bed pads	Beginning	2009	Allowance for 1 dozen per year	Prevent urine leaks due to incontinence	Per Unit \$150.00 to \$175.00	Unit cost = One dozen reusable underpads 31
	Ending	2063			Per Year \$150.00 to \$175.00	

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Medication(s)

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Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Amantadine 100 mg. or equivalent	Beginning	2009	2 daily	Treat tremors	Per Unit \$32.99 to \$47.69	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 32
	Ending *	2013			Per Year \$395.88 to \$572.28	
Antifungal extra thick Secura 3.25 oz. or equivalent	Beginning	2009	One tube per month	Treat fungal infections	Per Unit \$10.00 to \$15.00	Unit cost = Monthly cost 33
	Ending *	2063			Per Year \$120.00 to \$180.00	
Bactroban Nasal 2% Ointment or equivalent	Beginning	2009	As needed to prevent MRSA infection	Prevent MRSA infection	Per Unit \$55.72 to \$90.59	Unit cost = One tube. Allowance for 2 tubes per year. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 34
	Ending *	2063			Per Year \$111.44 to \$181.18	
Beconase AQ 0.42% GSK spray or equivalent	Beginning	2009	1 container every 2-3 months	Reduce congestion	Per Unit \$153.99 to \$160.88	Unit cost = One container. An average of 4.8 containers used yearly. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 35
	Ending *	2063			Per Year \$769.95 to \$804.40	
Clonazepam 1 mg. or equivalent	Beginning	2009	3 daily	Control seizures	Per Unit \$29.54 to \$44.19	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 36
	Ending *	2063			Per Year \$354.48 to \$530.28	

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Gabapentin 300 mg. (Neurontin) or equivalent	Beginning	2009	1-2 daily, 3 at night	Control seizures	Per Unit \$96.99 to \$152.68	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC. Allowance for an average of 135 tablets per month. 37
	Ending *	2018			Per Year \$1,163.88 to \$1,832.16	
Methylphenidate 10 mg. (Ritalin) or equivalent	Beginning	2009	2 daily	Improve attention	Per Unit \$8.00 to \$30.49	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 38
	Ending *	2018			Per Year \$96.00 to \$365.88	
Nystatin 100,000 U/GM or equivalent	Beginning	2009	As needed (allowance for 3 refills per year)	Treat infections	Per Unit \$20.68 to \$35.49	Unit cost = One container. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 39
	Ending *	2063			Per Year \$62.04 to \$106.47	
Over the counter laxatives and stool softeners	Beginning	2009	2 each daily	Treat constipation caused by medication	Per Unit \$20.00 to \$30.00	Unit cost = Monthly allowance for laxatives and stool softeners such as Colace and Miralax 40
	Ending *	2063			Per Year \$240.00 to \$360.00	
Trazadone 50 mg. or equivalent	Beginning	2009	1-2 at night	Treat depression and insomnia	Per Unit \$8.00 to \$18.49	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 41
	Ending *	2013			Per Year \$96.00 to \$221.88	

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost		Comment
					Per Unit		
Venlafaxine HCL 75 mg. or equivalent	27	Beginning 2009	2 daily	Treat depression	\$114.32	to \$116.99	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
		Ending * 36 2018			Per Year \$1,371.64	to \$1,403.88	

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Home Care

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Build new accessible home	Beginning	2009	One time	Provide accessibility to client and ease of care for caregivers	Per Unit \$175,000.00 to \$250,000.00	Unit cost = Estimated cost of fully accessible home in the York County, SC area. The average cost of a house in York County, SC in 2007 was \$215,777. It is estimated that building handicap accessible features into a new house increases the cost by 10%: wider doors, custom ramps, larger bathroom, roll under counters, wider hallways, etc.
	Ending *	2009			Per Year \$175,000.00 to \$250,000.00	

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Facility Care

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
York Adult Daycare	Beginning	2009	Monday through Friday. Allowance for 51 weeks per year	Custodial care with socialization and therapy provided	Per Unit \$50.00	Unit cost = Private pay cost per day. Daily cost includes lunch, snacks, activities and van transportation to and from facility. Therapy charges are separate costs. 44
	Ending *	2063			Per Year \$12,750.00	
York Adult Daycare transportation	Beginning	2009	Monday through Friday. Allowance for 51 weeks per year	Custodial care with socialization and therapy provided	Per Unit \$7.50	Unit cost = The daycare center now charges \$7.50 per day for transportation to and from the client's home. 45
	Ending *	2063			Per Year \$1,912.50	

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Future Medical Care Routine

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Follow-up visits with Physiatrist	Beginning	2009	Every 3-6 months in addition to assessments at the Baclofen clinic	Monitor medical status, medication needs	Per Unit \$90.00 to \$277.00	Unit cost = One office visit with Dr. Wierdsiewski 704-376-1605. Cost depends on length and complexity of examination
	Ending *	2063			Per Year \$360.00 to \$1,108.00	

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Transportation

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Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Wheelchair accessible van with tie downs, high top, wheelchair lift, etc.	Beginning		Every 7 years	Accessible transportation	Per Unit \$43,837.00	Unit cost = See below. One purchase in 2008 and replacement every 7 years.
	27	2009			Per Year \$6,262.00	
	Ending *					
	81	2063				47
Cost for 2009 Mini Van or Ford E150 Van Chassis with high top conversion package: \$55,345 + \$17,292 (wheelchair lift, raised side door frame, automatic side door operators, remote entry system, EZ lock wheelchair tiedown, seat belt system, wheelchair flooring) = \$72,637, minus cost of unmodified van (\$28,800 average) = \$43,837. Average replacement frequency of 7 years for calculating yearly cost. Cost estimate obtained from Carolina Mobility Sales, Charlotte, NC 704-399-0800						
Maintenance of hydraulic lift	Beginning		Every 5-7 years	Accessible transportation	Per Unit \$500.00 to \$700.00	Unit cost = Estimated cost of maintenance every 5-7 years. Allowance for repairs after 5 year warranty expires
	27	2009			Per Year \$85.71 to \$120.00	
	Ending *					
	81	2063				48
American Automobile Association membership	Beginning		Yearly fee	Emergency roadside assistance	Per Unit \$60.00 to \$90.00	Unit cost = Annual subscription fee
	27	2009			Per Year \$60.00 to \$90.00	
	Ending *					
	81	2063				49
Mileage allowance for medically related travel	Beginning		Yearly allowance @ 24 cents per mile (IRS 2009 allowable rate for medically related travel)	Defer cost of medically related travel	Per Unit \$201.60	Unit cost = Monthly travel to physician appointments, Baclofen Clinic (70 miles round trip) x .24 x 12 months = \$201.60/year. Occasionally Ms. Orlowski must go to Charlotte more than one time in a month when her appointment at the Baclofen Clinic and her appointments with Dr. Wiercisiewski cannot be coordinated for the same day.
	27	2009			Per Year \$201.60	
	Ending *					
	81	2063				50

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Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Portable ramp	Beginning		Every 5 years	Accessibility at locations without ramps	Per Unit	Unit cost = One portable ramp
	27	2009			\$300.00 to \$400.00	
	Ending *				Per Year	
	81	2063			\$60.00 to \$80.00	51

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Acute Medical Intervention

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Monthly Baclofen pump refills	Beginning	2009	Monthly throughout life expectancy according to Dr. Wiercisiewski	Reduce spasticity	Per Unit \$1,220.00	Unit cost = Cost for refilling pump (\$220) plus cost of medication at \$250 per 10 mg. (1 unit) At Ms. Orlowski's last visit she received 4 units). Allowance provided for 2 - 4 units per month. 52
	Ending	2063			Per Year \$14,640.00	
Physician's fee for monthly Baclofen pump refills	Beginning	2009	Monthly throughout life expectancy according to Dr. Wiercisiewski	Reduce spasticity.	Per Unit \$90.00 to \$277.00	Unit cost = Dr. Wiercisiewski's fee. Cost dependent on length and complexity of services 53
	Ending	2063			Per Year \$1,080.00 to \$3,324.00	
Reprogram pump	Beginning	2009	Allowance for reprogramming 3-4 times per year	Maintain pump efficiency	Per Unit \$200.00	Unit cost = Cost reprogramming pump 54
	Ending	2063			Per Year \$600.00 to \$800.00	
Replace catheter (CPT code 62350)	Beginning	2009	Allowance for one replacement every 2 years	Maintenance, or replacement if catheter becomes kinked	Per Unit \$1,713.00	Unit cost = Cost catheter replacement 55
	Ending	2063			Per Year \$857.00	
Replace Baclofen pump	Beginning	2009	Every 3-5 years	Replacement of pump	Per Unit \$33,500.00	Unit cost = Cost for pump replacement (Included in hospital fee). Cost obtained from Carolinas Medical Center 56
	Ending	2063			Per Year \$6,700.00 to \$11,167.00	

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Acute Medical Intervention

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Attendant Care

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
24-hour Attendant care	Beginning		Allowance for one week per year (7 days)	Provide care, assistance and safe environment	Per Unit \$250.00	Unit cost = One week of 24-hour attendant care. Interim Home Health Care 24-hour rate is \$456. At Home Total Care rate is \$250.
	27	2009			to \$456.00	
	Ending *				Per Year \$1,750.00	59
	81	2063			to \$3,192.00	

Ms. Orlowski currently receives care from her parents and extended family. Family members are aging and beginning to have health problems that may prevent them from providing full care in the future. Care is needed in the morning for 2-3 hours before the Adult Daycare van picks her up at 8:30-9:00 AM. Care is then needed in the afternoon when she arrives home at 2:30-3:00 PM until her bedtime - about 7 hours. A total of 9-10 hours per day during the week and 6-8 hours on weekends. As her parents become less able to help her or if they are no longer alive, she will need 24 hour attendant care.

Attendant care	Beginning		Allowance for 9-10 hours per day during the week and 6-8 hours per day on weekends.	Provide care, assistance and safe environment	Per Unit \$1,107.00	Unit cost = One week of attendant care. Attendant care for 51 weeks per year at Interim Home Health Care hourly rate for CNA's @\$18.50 per hour on weekdays and \$19.50 per hour on weekends. At Home Total Care charges \$18.00 per hour any day of the week
	27	2009			to \$1,151.75	
	Ending *				Per Year \$56,457.00	60
	81	2063			to \$58,739.25	

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Case Management

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Care coordination first year	Beginning	2009	100 hours	Coordinate purchases, building quotes, attendant care, etc.	Per Unit \$85.00 to \$95.00	Unit cost = Hourly rate for Case Manager. More time will be needed the first year to coordinate accessibility, medical and home care needs. 61
	Ending	2009			Per Year \$8,500.00 to \$9,500.00	
Care coordination 2009 through life expectancy	Beginning	2010	30-60 hours per year	Coordinate purchases and care needs	Per Unit \$85.00 to \$95.00	Unit cost = Hourly rate charged by Case Manager. 62
	Ending	2063			Per Year \$2,700.00 to \$5,400.00	

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) C.A. No. 2009-CP-46-5178

Gladys Sims, as the Duly Appointed
Guardian and Conservator of Kristy L.
Orlowski (a/k/a Kristy Wood),

Plaintiff,

vs.

AMISUB of South Carolina, Inc.,
d/b/a Piedmont Medical Center; and
C. Edward Creagh, MD,

Defendants.

TRANSCRIPT OF PROCEEDINGS

YORK, SOUTH CAROLINA

JULY 18, 2012

COPY

REPORTER: Robbie E. Moskau, CCR

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P R O C E E D I N G S

BEFORE: THE HONORABLE S. JACKSON KIMBALL

(11:00 A.M.)

THE COURT: This is Case No. 2009-CP-46-5178,
Gladys Sims, Guardian, against AMISUB of SC, and
others.

Mr. King, I guess your Motion was first in time
this time.

MR. KING: It is, Your Honor. But, Mr. Gunn --
I'm going to defer to Mr. Gunn and let him go first.

THE COURT: So he will get a speaking part
today.

MR. KING: He is going to get a speaking part.

THE COURT: All right. Mr. Gunn?

MR. GUNN: I'm first on the Pleadings, too, in
that the motions are very similar.

Your Honor, this is a Motion for Summary
Judgment in this case, made on the usual grounds,
Rule 56, that there is no genuine issue that's any
material fact in that Defendant is entitled to
judgment as a matter of law, and it's supported by
the entire record. There are various requests for
admissions that are part of the record in the case.

The action is a medical malpractice case arising

1 out of treatment and care in the year 2003 --

2 THE COURT: Let me say this. Having heard a
3 couple of things in this, I'm familiar with the facts.
4 One of them, in going through it again, was the
5 Plaintiff was compelled to specify particulars of
6 negligence against Creagh and Alleyne. And I couldn't
7 find in the file how that was done, for some reason.

8 MR. GUNN: They've amended the Affidavits of
9 experts --

10 THE COURT: All right.

11 MR. GUNN: -- and we agreed that was
12 sufficient -- as sufficient as a complaint would be.

13 THE COURT: Okay.

14 MR. GUNN: So, we know what they're -- We
15 know, as well as is usually known, what they are
16 contending.

17 MR. KING: Yes. Let me just kind of -- I
18 represent Dr. Creagh.

19 THE COURT: Right.

20 MR. KING: Let me respond to that.

21 After we filed a Motion to Compel Discovery, as
22 Mr. Gunn said, they filed, then, Affidavits of their
23 experts. They then contend that they dropped Dr.
24 Alleyne, so he is no longer a defendant.

25 THE COURT: All right.

1 MR. KING: Now, it's with respect to Dr. Creagh.
2 I'll let Billy address this for the hospital. They are
3 focusing on Dr. Creagh that the -- Kristy was
4 admitted -- She had epileptic -- I mean -- excuse
5 me -- the eclamptic seizure September 12, 2003.
6 She was hospitalized by Dr. Taylor, with Dr. Alleyne
7 managing the pulmonary aspects of her care. She
8 was discharged November 24, 2003. She comes
9 back on November 25th, 2003, and is seen by Dr.
10 Creagh.

11 THE COURT: Right.

12 MR. KING: And he discharges her. She comes
13 back on November 29th, and he admits her again.
14 And that is an issue of whether or not he should
15 have discharged her four days before. That's the
16 focus of the negligence as against Dr. Creagh. So,
17 that was -- that focused where we were, --

18 THE COURT: Okay.

19 MR. KING: --because we didn't know how --
20 whether or not we were going back to September or
21 whether we -- So, now, the Creagh negligence
22 focuses on starting in November of 2003.

23 THE COURT: All right. Now, what was -- It
24 wasn't clear to me -- and I didn't remember from
25 the prior time -- what was the Plaintiff's -- Mrs.

1 Orlowski's condition at the time she was treated by
2 Creagh? I know there's argument in your -- in the --
3 back and forth about when she became incompetent,
4 and all that.

5 MR. KING: That will be an issue.

6 THE COURT: To her mental status at the time
7 she was treated by Dr. Creagh?

8 MR. KING: Yes, sir.

9 THE COURT: So, she was not -- I'm not sure --
10 What is her condition today, as far as being
11 responsive?

12 MR. KING: Clearly, she is disabled. She is not
13 capable of activities of daily living and she needs
14 round-the-clock care.

15 THE COURT: Right. All right. Ms. Creech, what
16 was her condition after the treatment by Dr. Taylor,
17 after all of that business, when she had the -- when
18 all this sort of started toppling, I guess?

19 MS. CREECH: Your Honor, our position is that,
20 as of September, 2003, she was insane, for purposes
21 of the statute issue. And then --

22 THE COURT: Why?

23 MS. CREECH: Because she had already had
24 seizures and was unable to care for herself. That --

25 THE COURT: This was immediately after the

1 events dealing with Dr. Taylor's treatment.

2 MS. CREECH: Correct, Your Honor. And then --
3 Now, I'll certainly continue, with the Defendants in
4 this action, her condition worsened in November and
5 December of 2003, as a result of their treatment.
6 But, when the cause of action accrued, she was
7 already insane, for purpose of the statute.

8 THE COURT: And that's a factual issue?

9 MR. KING: We will concede that her condition
10 continued to worsen from September --

11 THE COURT: Right.

12 MR. KING: -- into 2004; --

13 THE COURT: Right.

14 MR. KING: -- and maybe perhaps after that.
15 But, when I get to my argument --

16 THE COURT: I'm sorry. I'm keeping you from
17 that.

18 MR. KING: But, it is a -- Our position is -- and
19 I'm going to quote your testimony out of the first
20 trial -- they put on, in the first trial, that this was a
21 cascade. That once she --

22 THE COURT: "Cascade" is the word.

23 MR. KING: -- that once she had the eclamptic
24 seizure, became unresponsive, apoxia, had to be put
25 on a ventilator, that everything flowed from that.

1 And I will go into that at length with you. So, that's
2 our position.

3 THE COURT: When -- I'm sort of getting ahead.
4 What I was trying to find out is I know, when we get
5 to the collateral estoppel business, that there's
6 going to be, I'm sure, a difference of opinion on the
7 facts; and I'm just trying to sort out what happened
8 after I ruled about the discovery and specifications
9 of negligence with Creagh. And that's all I really
10 meant to do. Go ahead. All right. Mr. Gunn?

11 MR. GUNN: If Your Honor please, the timeline,
12 I think, is important. And, as Your Honor knows,
13 from reading the materials, there are two grounds
14 for the Motion for Summary Judgment of the
15 hospital. And Mr. King's is very similar.

16 Round number one, being the statute of
17 limitations as found in Section 15-3-545, the three-
18 year statute. Round number two, being collateral
19 estoppel or issue preclusion arising out of the April,
20 2009, trial as against Dr. Taylor.

21 THE COURT: Okay.

22 MR. GUNN: Now, the timeline, as I say, Your
23 Honor, is important. Originally, Mrs. Orlowski -- and
24 I'm going to call her Kristy -- was admitted -- or she
25 had her first event on September the 12th, 2003.

1 That was the eclamptic seizure that was the subject
2 of the lawsuit against Dr. Taylor.

3 THE COURT: And that seizure was alleged to
4 have produced a certain -- had had a certain effect
5 on her.

6 MR. GUNN: Yes, sir, she was quite ill after that
7 seizure. As a matter of fact, the record -- the
8 medical record showed that she had a tracheostomy,
9 she had a couple of thoracotomies, she had chest
10 tubes. The Plaintiff contends she was disabled from
11 the standpoint of mental competency. She signed
12 some --

13 THE COURT: This was all in September.

14 MR. GUNN: Yes, sir, September, October --

15 THE COURT: Leading up to the November, --

16 MR. GUNN: Right.

17 THE COURT: -- of course.

18 MR. GUNN: She was discharged -- she remained
19 hospitalized, as a result of the pre-eclamptic -- or
20 eclamptic seizure from September 12, 2003, until
21 November 24th, 2003.

22 THE COURT: All right.

23 MR. GUNN: She was in the hospital for two
24 months.

25 THE COURT: All right.

1 MR. GUNN: She was in pulmonary distress. She
2 had a horrible time, multiple procedures. She was
3 discharged on November 24th, 2003. She returned
4 by ambulance the next day for pleural effusion,
5 moisture in the lungs. She was readmitted, and
6 then she remained until November 27th, two days
7 later. It's that treatment and care that is now the
8 subject of the Plaintiff's Complaint against the
9 hospital and Dr. Creagh, the claim being that, on
10 November 27th, the patient ought not have been
11 discharged.

12 And as best I can tell, the claim against the
13 hospital, that she should've somehow warned her
14 that she was only on oral antibiotics and she should
15 have -- in her discharge instructions, she should've
16 let us know if she threw up. Because, the claim is
17 apparently that she threw up her oral antibiotics
18 and, as a result, suffered empyema, and had to be
19 brought back, and her condition worsened.

20 November the 29th, 2003, she was admitted
21 for persistent vomiting, empyema, et cetera. That's
22 the --

23 THE COURT: What is empyema? I don't know
24 what that is.

25 MR. GUNN: Empyema is -- It's an illness that --

1 It's pus in the pleural space.

2 THE COURT: All right.

3 MR. GUNN: It's infection between the chest wall
4 and the lung.

5 THE COURT: All right.

6 MR. GUNN: But, after she was brought back to
7 the hospital on November 29th, Plaintiff contends
8 that she suffered a cardiopulmonary arrest on
9 December the 8th, 2003, and her condition
10 worsened. She was then transferred to CMC on
11 December the 11th. She remained there until March
12 of 2004, when she was discharged.

13 Now, in the interim, Your Honor, on March the
14 5th, 2004, her husband, Christopher Orlowski, was
15 appointed as her guardian and conservator. So, at
16 that point, she had a guardian and conservator.

17 In 2006, in April of -- excuse me -- August of
18 2006, the lawsuit against Dr. Taylor was filed,
19 some, you know, two-and-a-half years after the
20 claim in the present case had accrued, that lawsuit
21 was filed. That case was tried to a jury in April of
22 2009.

23 I might add that, in the interim in 2007, Mrs.
24 Orlowski -- Kristy and her husband Christopher
25 apparently experienced difficulty and -- marital

1 difficulty -- they were divorced; and her mother,
2 Mrs. Sims, was appointed as her conservator.

3 THE COURT: Okay.

4 MR. GUNN: In April of 2009, the case against
5 Dr. Taylor was tried. There was a high-low agree-
6 ment of \$300,000 in place. Verdict was rendered
7 for the Defendant. Then nothing further happened
8 until this lawsuit was filed, which was in November
9 of 2009, November 24th, 2009.

10 First of all, insofar as the statute of limitations
11 in, I guess, both prongs of the hospital's motion,
12 the Plaintiff contends that it's barred by Rule 43,
13 which permits another judge hearing the motion
14 after it's already been decided one time by one
15 judge. I don't think that applies to the hospital.
16 This is the first dispositive motion --

17 THE COURT: Right.

18 MR. GUNN: -- in a case filed about a hospital.

19 THE COURT: Right.

20 MR. GUNN: The case, Your Honor, is governed
21 by the three-year statute of limitations. The cause
22 of action accrued in November or December, 2003. I
23 don't think there's any question about that.

24 Now, for purposes of the hospital's position --

25 THE COURT: Well, certainly, by the time a

1 conservator was appointed, --

2 MR. GUNN: Yes, sir.

3 THE COURT: -- which was in '04. Right?

4 MR. GUNN: Now, for purposes of the hospital's
5 position, it doesn't even matter whether she was
6 competent or not, immediately after the September
7 the 12th, 2003, occurrence.

8 THE COURT: All right.

9 MR. GUNN: -- or that portion of the occurrence.
10 I mean, I don't need -- we don't even need -- That
11 fact is not even at issue. The important point here,
12 from the standpoint of the hospital, Your Honor, is
13 this: Under all of the probate code provisions that
14 we recited, the conservator has the right, the duty
15 and the obligation to bring a claim for his or her
16 ward, when a claim exists.

17 THE COURT: Right.

18 MR. GUNN: That's the law. The case could've
19 been brought. Now, more importantly, under Rule
20 17 of the South Carolina Rules of Civil Procedure --
21 and I'll hand this up to the Court -- the real party in
22 interest in a lawsuit, under Subdivision A, every
23 action -- not "may," but "shall" be prosecuted in
24 the name of the real party in interest and executor,
25 administrator, guardian, et cetera -- Well, I think,

1 under this provision, the action must be brought by
2 the fiduciary, the party appointed to represent
3 someone --

4 THE COURT: Or, to say it another way, she had
5 to have a fiduciary to bring the action.

6 MR. GUNN: That's right. And, if you look down
7 under "incompetent persons," it says that's the
8 person to act. So, the only way the action could be
9 brought and the person who had the right, the duty,
10 the obligation to bring the lawsuit was Christopher
11 Orlowski. He was appointed in March, 2004. The
12 action had not been brought by March, 2007, and
13 our contention is, though there's no South Carolina
14 case supporting that, there is none to the contrary.

15 THE COURT: All right, now, let me say
16 something. Standing alone -- Leaving out 15-3-545
17 for a minute, --

18 MR. GUNN: Yes, sir.

19 THE COURT: -- standing alone, what would your
20 position be about the running of the statute as it
21 pertains to 15-3-40; 15-3-40 alone, how would that
22 fit into what we're going to argue?

23 MR. GUNN: Your Honor, we didn't bring a copy
24 of that. I looked at that this morning, but I wasn't
25 in my office, and I --

1 THE COURT: I'll use the book and you can use
2 that. I don't have the book.

3 MS. CREECH: I have it --

4 THE COURT: You've got an extra copy? Thank
5 you.

6 MR. GUNN: Oh this is the five-year --

7 THE COURT: Yes, sir, the disability statute.

8 MR. GUNN: Right.

9 THE COURT: Thank you.

10 MR. GUNN: I don't think this affects it,
11 because --

12 THE COURT: Well, let me --

13 MR. GUNN: Okay.

14 THE COURT: I guess what I'm trying to -- You
15 know, I've been through this once, and I'm trying to
16 resort it out and figure out how I ruled the first time.
17 If this were not a medical malpractice case, 15-545
18 wouldn't apply --

19 MR. GUNN: That's correct.

20 THE COURT: -- a wreck case. Would she be, in
21 your judgment -- Would the statute of limitations
22 have run on her claim, in your judgment, under
23 15-3-40, if this was not a medical malpractice case?

24 MR. GUNN: Yes, sir, because there would be no
25 reason to extend it at all, inasmuch as a properly

1 appointed conservator was in place. And it runs
2 against the incompetent, by virtue of a person being
3 appointed to represent his or her interest, clearly.

4 I think the point of this is to put -- The point of
5 15-3-40 is to put an outside time limitation on it to
6 say it may not be extended more than five years.
7 And let me say this --

8 THE COURT: I don't disagree with that.

9 MR. GUNN: -- in our memorandum of law, we
10 may've suggested that she was barred by the five-
11 year -- five years' period. That's incorrect. That
12 ought not have been suggested. The fact of the
13 matter is it may be -- the language there is
14 "extended by five years."

15 So, the Harrison against Bellalacqua case, if --
16 I'll suggest any suggestion along those lines is
17 improper. -- or, let me say inaccurate. I don't want
18 to accuse myself of impropriety, but -- is not to be
19 the case. The fact of the matter is, very simply
20 stated here, Your Honor, a guardian -- or, excuse
21 me -- a conservator was appointed and in place; a
22 conservator who had the right, the duty and the
23 obligation to bring the action, who was the only one
24 to bring the action, and it had to be brought in the
25 name of the conservator; and, as such, though

1 there's no case law to the contrary, the statute will
2 run.

3 If the Probate Code and Rule 17 are to be given
4 any Importance whatsoever in the very use of
5 conservatorship proceedings, then our position, if
6 Your Honor please, with all due respect, is that the
7 Motion should be granted on that basis.

8 THE COURT: So, what you're saying is that the
9 period of disability -- in effect, under 15-3-40, the
10 period of disability ceases when a conservator is
11 appointed.

12 MR. GUNN: Yes, sir. Yes, sir. By virtue of
13 these real party and interest statutes, the rights,
14 duties and obligations, under the Probate Code --
15 that's why probate courts are vested with the
16 burden of making proper appointments.

17 And, if Your Honor -- I noticed that in the prior
18 brief, back when this came up previously -- and we
19 were not a party to that motion -- that equitable
20 principles were argued. If we slide over into equity,
21 we got a situation where --

22 THE COURT: Well, that deals with the equitable
23 estoppel -- the broad scope of equitable estoppel.

24 MR. GUNN: Right. I mean, all the equities
25 weigh in favor of Defendant here. A proper

1 conservator was appointed, able counsel was
2 involved, the cause of action had accrued long
3 before counsel were involved. They had medical
4 records. You know, they filed the Taylor lawsuit. I
5 mean, all of the equities come down on the side of
6 the Defendant. There's no reason for this period of
7 time to have elapsed. And I know --

8 THE COURT: Well, let's deal with them one at a
9 time. Is that all -- Is that it, about the statute?
10 Anything else to say about the statute of limita-
11 tions?

12 MR. GUNN: No, sir.

13 THE COURT: Okay. Mr. King, is that a ditto, or
14 do you want to add to that?

15 MR. KING: Are you asking with respect to
16 Creagh, on the statute of limitations?

17 THE COURT: Yes, sir.

18 MR. KING: I did file a motion. The judgment on
19 the Pleadings, which, of course, converts also to a
20 Summary Judgment Motion, and you denied my
21 Motion.

22 THE COURT: Right.

23 MR. KING: Now, the Plaintiff takes the position
24 that I am barred from raising that again before you.
25 That rule actually says "a different judge." You are

1 the same judge, but the -- I'm going to pass up a
2 case called "Smith versus Breedlove," 661
3 Southeastern 2nd, 67, which I've given you, and it
4 says "the fact that a different trial judge previously
5 denied a Motion for Summary Judgment does not
6 preclude the moving party from renewing his Motion,
7 once new evidence is gathered."

8 THE COURT: Well, I was confused by that,
9 because Rule 43 has to do with conduct at a trial.

10 MR. KING: I was going to say -- I was going to
11 go to that point. But, all right. The -- Clearly, I
12 think we can renew our Summary Judgment Motion --
13 We made a Motion for Judgment on the Pleadings.
14 Now, we're -- because some discovery has been
15 done, we did not know, when we had -- and it would
16 not have been relevant, when we argued the
17 judgment on the pleadings, the fact that the action
18 had been commenced by -- when the guardian and
19 conservator husband was appointed in 2004, they,
20 within a matter of months, sued Dr. Taylor. Now,
21 it's inconsistent -- and I don't think the Court would
22 recognize that if you've got a conservator in place,
23 and the conservator does what he is empowered to
24 do and sues a physician, to contend that the statute
25 is tolled as against another physician, that is treated

1 roughly contemporaneously.

2 So, we submit that the statute of limitation, as
3 against Dr. Creagh, whose care was in the late
4 November through mid December of 2003 timeframe,
5 ran no later than mid December of 2006. And, of
6 course, that action was not commenced, at that
7 point in time, until 2009.

8 So, I agree with everything Mr. Gunn said, but
9 those additional facts is why I think I am entitled to
10 have a decision made on the statute of limitations
11 today.

12 THE COURT: Ms. Creech, let me hear from you
13 about the statute of limitations.

14 MS. CREECH: Sure. First, Your Honor, Rule 43
15 is not limited to a different judge. It just says if
16 any motion be made to any judge and denied,
17 generally, that that court --

18 THE COURT: On the same -- It says it's to end
19 on the same facts.

20 MS. CREECH: The same facts. And I read the
21 briefs. I don't see any new evidence with regard to
22 the statute of limitations.

23 THE COURT: Well, are you not hoisted by your
24 own petard when you say that? If you say it's all
25 the same facts, then are we --

1 MS. CREECH: I'm saying it's just --

2 THE COURT: What's the situation?

3 MS. CREECH: I'm going to let you finish first.

4 THE COURT: Well, I -- What same facts?

5 MS. CREECH: The same facts that were argued
6 the first time you heard the statute of limitations.

7 THE COURT: I don't remember the new facts
8 regarding Dr. Creagh's liability being raised, at that
9 time.

10 MS. CREECH: Okay. Well, if the Court's
11 considering those new facts, then it is within --
12 since you heard the first, then they can certainly
13 renew a Motion for Summary Judgment.

14 THE COURT: Well, what I would -- I don't
15 remember the order of things, but I know that I
16 required the Plaintiff to specify the particulars of
17 negligence that pertain to Alleyne and Creagh, and
18 Alleyne's been dismissed. And I do not recall
19 considering those new facts in -- the first time I
20 heard and ruled on the 15-3-545 issue.

21 MS. CREECH: Well then I can certainly go
22 ahead and just jump right into addressing that
23 substantively.

24 THE COURT: Well, let's do that. Because, I
25 think that, at the very least, there are new facts.

1 MS. CREECH: Okay. First, just based on
2 15-3-40 and that Harrison case, footnote five, which
3 our supreme court essentially -- I think you have a
4 copy of that, too -- notes their reading of that
5 statute is that, basically, if someone is insane, for
6 purposes of the statute, it extends the statute of
7 limitations by five years. So, you have an eight-
8 years' statute of limitations.

9 Under Mr. Gunn's logic, anytime -- if you're
10 dealing with a three-year statute of limitation for a
11 deceased person, once a conservator is appointed,
12 they would have to file right then. We have eight
13 years. We filed within eight years. It doesn't
14 matter -- Her insanity didn't end in that period.
15 The statute was extended to an eight-year period.
16 What's important is that we filed before that eight-
17 year period expired.

18 THE COURT: So, your position, simply stated,
19 is that the appointment of a conservator does not
20 affect the running of five years, under 15-3-40.

21 MS. CREECH: That's correct, Your Honor.

22 THE COURT: Does the conservator not have a
23 duty to discover -- since he is the person,
24 effectively, does the conservator not have the duty
25 to discover grounds -- Let me say it this way. Would

1 a conservator -- Why would a conservator not be
2 bound by the discovery rule?

3 MS. CREECH: Well, we're not talking about the
4 discovery rule here. But, the discovery rule would
5 say, under that, let's say they found out -- They
6 would have -- Certainly, they would have a duty to
7 inquire into facts that might present a cause of
8 action. But here, we filed within the applicable
9 statute of limitations. They're not -- The conserva-
10 tor is not under a duty to file as soon as they are
11 aware, or should be aware, they might have a
12 potential cause of action. They have a duty to file
13 within the applicable statute of limitations. The
14 appointment of the conservator --

15 THE COURT: Right.

16 MS. CREECH: -- did not mean Mrs. Orlowski's
17 insanity. So, the applicable statute of limitations is
18 eight years from the time the cause of action
19 accrued.

20 THE COURT: All right.

21 MS. CREECH: And Plaintiff filed a Complaint
22 within that time period. There is no South Carolina
23 case law directly on point. But, Harrison does the
24 support the reading that it is -- it does essentially
25 toll the statute of limitations for that time period,

1 the practical effect being to have an eight-year
2 statute of limitations.

3 THE COURT: Well, Mr. Gunn, you -- I think you
4 also said you found no case --

5 MR. GUNN: No, no case, --

6 THE COURT: -- Isn't this right?

7 MR. GUNN: -- no, sir. And, Your Honor, for
8 purposes of today's argument, --

9 THE COURT: Well, hold on one second. Any-
10 thing else from the Plaintiff?

11 MS. CREECH: No, Your Honor. Well, --

12 THE COURT: Okay.

13 MS. CREECH: -- just very briefly, I mean, I
14 believe we are here on a Motion for Summary
15 Judgment and, in terms of the fact that there is no
16 case law on point, generally, in South Carolina, the
17 courts hold that, if it's a novelty legal issue and
18 discovery is going to help resolve that issue, that
19 the Motion for Summary Judgment should be denied.

20 THE COURT: All right. Yes, sir.

21 MR. GUNN: Your Honor, all I was going to say
22 is, insofar as the hospital -- and this is sort of a
23 response to a question Your Honor asked Counsel --
24 I'm willing to concede that the statute was
25 suspended or tolled, until a conservator was

1 appointed.

2 THE COURT: I understand.

3 MR. GUNN: And if that had been a two-year
4 period, the conservator wasn't appointed until 2005,
5 opposition would be the same. The point is that
6 once that conservator was properly appointed and
7 acting under the auspices of the -- and authority
8 granted by the probate court, the time period began
9 to run. And somebody must've recognized that,
10 because a lawsuit was brought against Dr. Taylor.

11 THE COURT: Okay. Just to be sure we've got
12 all the record straight here, I think I sort of
13 directed you away from talking about 15-3-545
14 awhile ago. But, your position on that is that
15 15-3-40 doesn't have any effect -- that it stands
16 alone, in medical malpractice cases.

17 MR. GUNN: Yes, sir. I think --

18 THE COURT: With an outside limit, --

19 MR. GUNN: Right.

20 THE COURT: -- regardless of 15-3-40.

21 MR. GUNN: No, I think that if -- I think that if
22 a -- for purpose of the statute of limitations, if a
23 conservator had never been appointed, the Plaintiff
24 might well have -- even though the three-year
25 statute is pursuant to Section 15-3-545, applies to a

1 three-year statute from the date of discovery,
2 15-3-40, in the absence of a conservator might well
3 give the Plaintiff eight years, no question.

4 THE COURT: Okay. All right.

5 MR. GUNN: I'm trying to give the Court a
6 narrow --

7 THE COURT: I understand.

8 MR. GUNN: So, it does come into play -- Or,
9 conceivably, arguably, it could hypothetically come
10 into play that way.

11 THE COURT: Okay. Mr. King, anything to add
12 to that?

13 MR. KING: The only thing I would ask, Your
14 Honor, I filed a -- with my memo, I filed a number
15 of exhibits.

16 THE COURT: Okay.

17 MR. KING: Do you have those?

18 THE COURT: I'm sure I do. I didn't look at all
19 the exhibits, though. I pulled some of them out.
20 Which one you want me to look at?

21 MR. KING: None, in particular. I just want to
22 make sure the Court does have these.

23 THE COURT: Yes, sir.

24 MR. KING: Okay. Thank you.

25 THE COURT: Here's what I think about the

1 statute -- and it's sort of perplexing -- 15-3-545
2 obviously acknowledges an interaction with 15-3-40,
3 as you said; Mr. Gunn, because it talks, in subpara-
4 graph D -- or subsection D, I guess -- Section D of
5 15-3-545, about -- Let me say it this way. Sub-
6 section D of 15-3-545 addresses the result of the
7 effect of minority, beyond the limitations specified in
8 15-3-545, if I said that right. So, I think -- But, it
9 does not address anything to do with insanity. So, I
10 think that, to the extent 15-3-545 conflicts with --
11 the time periods in 15-3-545 conflict with 15-3-40
12 that 15-3-40 is the -- trumps 15-3-545.

13 I went back and looked through all this again,
14 having ruled on it once before, to try to reconstruct
15 my thought process, and I'm -- The basis of my
16 ruling is that, by its plain language, 15-3-40 does
17 not deal with, either expressly or by implication,
18 with the appointment of conservator. It's only
19 reference -- The only sort of tolling event is the
20 status of the disability. And the disability doesn't
21 cease when the conservator is appointed. The
22 result of all that is that I believe that, at least in
23 my -- there being no cases to go by, my interpreta-
24 tion of it is that the statute had not run, based on
25 15-3-40. So, I deny that part of the requested

1 relief.

2 Now, let's talk about equitable estoppel.

3 MR. GUNN: If Your Honor please, the case
4 against Dr. Taylor was tried in 2009. In the present
5 action, the Plaintiff has identified the same medical
6 expenses that were submitted in that case, the same
7 life care plan by Leona Hollenbeck. It is noteworthy,
8 in that case -- and this is in the Request for
9 Admissions that Mr. King served --

10 THE COURT: Now, I did not read through all of
11 those, so anything you want to tell me about those,
12 do that.

13 MR. GUNN: Well, let me quote what I think is
14 important. The question was put to an expert of the
15 Plaintiff, Dr. Pliskow, by Mr. Ebersol, "Within a
16 reasonable degree of medical certainty, were all of
17 Kristy's problems, medical problems" -- and this is in
18 2009 --

19 THE COURT: And this is which expert? I'm sorry.

20 MR. GUNN: Dr. Pliskow, an expert of the
21 Plaintiff.

22 THE COURT: A medical expert. Okay.

23 MR. GUNN: Yes, sir.

24 THE COURT: All right.

25 MR. GUNN: "Within a reasonable degree of

1 medical certainty, were all of Kristy's problems,
2 medical problems, were they caused by the
3 eclamptic episode on September 12?" "Yes, they
4 were." And he goes on to explain that, and explains
5 how her lungs -- and Your Honor will have that
6 available to read -- how her lungs collapsed and
7 never were able to be restored; and we know she
8 had all those thorocotomy and thorocostomy, and all
9 that sort of stuff.

10 And then he goes on to say that, "She had
11 aspiration pneumonia?" "So, the answer is yes. Her
12 readmission to Piedmont for subsequent cardiac
13 arrest during the admission," -- which is what
14 they're complaining about now -- "during that
15 admission and then her transfer to CMC," -- to
16 Carolinas Medical Center -- "was all related back to
17 the eclamptic seizure." And then the same question
18 regarding the child. So, that was the position they
19 took.

20 THE COURT: Does he talk about a cascade
21 effect in any of this?

22 MR. GUNN: I don't think he -- I don't know
23 that he -- someplace in there, that that word
24 may've been used, --

25 THE COURT: All right.

1 MR. GUNN: -- but I think that's -- within
2 medical parlance, that means --

3 THE COURT: All right.

4 MR. GUNN: -- it set up this condition that all
5 went down.

6 So, they're claiming the same damages now
7 that were claimed in the lawsuit against Dr. Taylor.
8 And, in the prior lawsuit against Dr. Taylor, they
9 took the position that that was caused by Dr.
10 Taylor's negligence in the eclamptic seizure.

11 THE COURT: Or produced by what resulted from
12 what they say was his negligence.

13 MR. GUNN: That's correct, if Your Honor please.
14 There was absolutely no prohibition on their naming
15 Dr. Creagh or the hospital in that prior action, none
16 whatsoever. They could've done that. They had
17 very, very able lawyers. There was a conservator
18 appointed, everything else --

19 THE COURT: Let me stop you a second. In the --
20 AMISUB was not in the first action.

21 MR. GUNN: No, sir.

22 THE COURT: Okay. Having been named in this
23 action, what are the -- I only found one complaint.
24 What are the causes -- the specifications, particulars
25 of negligence alleged against AMISUB in this action?

1 MR. GUNN: Well, they're very broad, at the
2 outset. But, when they get down to -- when it gets
3 down to the --

4 THE COURT: To discovery, and all that.

5 MR. GUNN: I think what they're claiming is that
6 when Mrs. Orlowski -- Kristy was discharged from
7 the hospital in late November, 2003, we should have
8 told her on the Discharge Instructions; that she was
9 liable to throw up, and that if she had any nausea,
10 she should come back.

11 THE COURT: Okay.

12 MR. GUNN: That's what I understand it to be, --

13 THE COURT: Okay.

14 MR. GUNN: -- best I can tell. We've not
15 deposed the experts, but the tone of the questions
16 to Dr. Creagh, I think they're claiming or Discharge
17 Instructions were not appropriate.

18 Now, I realize that's a couple of months after
19 September the 12th, which the September 12th,
20 2003, treatment indeed was the subject of the prior
21 lawsuit; but, there's no reason in the world --

22 THE COURT: But no allegation of -- no specific
23 allegation, in this case, of anything that relates to
24 treatment rendered or provided by -- in connection
25 with Dr. Taylor's care.

1 MR. GUNN: No, sir. No, sir.

2 THE COURT: All right.

3 MR. GUNN: But I can guarantee that had
4 Piedmont been named in the prior lawsuit, as a
5 result of the Discharge Instruction -- their claim
6 that the Discharge Instructions were inappropriate,
7 that there would've been a claim by the Plaintiff
8 that, well, this is all -- it's a clear case of joint and
9 several liability in that these two acts of negligence
10 came together to produce the same result, one
11 result; and that, you know, without which both acts,
12 at the very least, contributed to the final result. So,
13 they could've named Piedmont.

14 THE COURT: Certainly, they could.

15 MR. GUNN: Yes, sir, no question about it.

16 The two cases -- The two noteworthy cases,
17 the ones we've cited, are the Graham against State
18 Farm case and the Irby against Richardson case.
19 Graham, we would submit, Your Honor, and I think
20 Irby, too, are on all fours.

21 THE COURT: Tell me about Irby. I read the
22 Graham case.

23 MR. GUNN: Irby is one where our friend David
24 White brought a lawsuit, a medical negligence
25 lawsuit -- excuse me -- a legal malpractice case

1 against a Greenville lawyer on behalf of a fellow
2 who had been litigated for a long, long time in
3 family court and claimed that the -- that Chuck
4 Richardson, a lawyer in Greenville, was negligent in
5 the manner in which he handled the man's custody
6 and child support, et cetera.

7 The court -- The supreme court -- This is a
8 1982 case -- The supreme court held that, even
9 though Richardson -- Defendant Richardson had not
10 been a party, because Irby had previously consented
11 to the relief sought and because the State Board of
12 Grievances had found no malfeasance on the part of
13 Richardson, that Irby was now stopped from bringing
14 a lawsuit claiming negligence.

15 THE COURT: All right.

16 MR. GUNN: That was the essential facts of that
17 case. Graham -- You know the facts of Graham, I
18 think, Your Honor, where it was a --

19 THE COURT: The car insurance and then the
20 house insurance?

21 MR. GUNN: Yes, sir, the first suit against the
22 auto carrier, second suit against the homeowners.

23 THE COURT: Right.

24 MR. GUNN: And the question -- the issue was
25 incendiary origin. In this case -- And what the

1 court has said -- the factors that are important,
2 insofar as the court's decision on whether or not to
3 utilize collateral estoppel or issue preclusion is,
4 number one, is it used offensively or defensively.
5 Here it's used defensively.

6 Number two, the extent to which the party
7 adversely affected -- that is the Plaintiff -- the
8 extent to which they had the opportunity to litigate
9 the issue in question in the prior lawsuit. They had
10 every opportunity in the world to name Piedmont
11 Medical Center in their prior lawsuit. They waited
12 until they got an adverse result. That case was
13 tried, waited about six months after that case was
14 tried and filed a new lawsuit now claiming the same
15 damages.

16 I think, frankly, on the record, in that prior
17 action, we could probably claim not collateral
18 estoppel, but direct estoppel. You know, I've always
19 understood estoppel to mean preclusion of a party
20 from taking a position because they previously took
21 some other position. They took the position that all
22 these injuries and damages were caused by Norman
23 Taylor's negligence.

24 So, if Your Honor please, we would strongly
25 submit that the hospital is entitled to issue

1 preclusion or collateral estoppel or res judicata and
2 ought to be dismissed from this case.

3 THE COURT: Now, what -- Let me ask you this.
4 What was the condition of Kristy in terms of her
5 state of dependency -- or what the record has
6 showed, I guess, as her projected state of perma-
7 nent dependency, at the time of the Taylor trial? --
8 I'm sorry -- at the time of -- After the seizure and
9 prior to November 29th?

10 MR. GUNN: Well, from the standpoint of the
11 record of the case, she was totally and permanently
12 disabled. She -- Again, when Dr. Creagh gets her,
13 she's only been out of the hospital a day.

14 THE COURT: Right.

15 MR. GUNN: So, she had been in the hospital
16 two-and-a-half months.

17 THE COURT: Yes.

18 MR. GUNN: So, she was disabled, and I don't
19 disagree she was insane. And they proved the
20 damage -- I mean, they proved that she -- They had
21 a five million dollar life care plan, plus all the
22 medical, and they proved all that; and they claimed
23 that all of that -- Your Honor, liability of Dr. Taylor
24 was an issue. Liability of the hospital was not in
25 issue, simply because they elected not to sue.

1 Causation was an issue and damages were an
2 issue.

3 THE COURT: All right. Well, what I'm really
4 thinking in my mind is what additional damage they
5 could claim, even if Dr. Creagh were found by a jury
6 to be negligent, if she was already in a state of total
7 and permanent disability by the time he saw her --
8 or dismissed her, I should say -- on November the
9 27th or 25th, whatever it was.

10 MR. GUNN: Well, you know, they might be able
11 to come up with something; but, the fact is, as far
12 as money damages, I don't see that they can. And
13 the important point is that, in that prior action, they
14 took the position that her present condition --
15 everything about her present condition, at the time
16 of the trial in 2009, related to the pre-eclamptic
17 seizure. That was a conscious decision that they
18 made, a tactical decision, to lay in the bushes and
19 wait and see what happened.

20 THE COURT: Mr. King?

21 MR. GUNN: Your Honor, I want to completely
22 parrot everything Mr. Gunn says. I think the rule,
23 as far as collateral estoppel, is that the party has a
24 full and fair opportunity to litigate the issues. They
25 cannot re-litigate again. You cannot have two bites

1 at the apple.

2 Now, you asked the question what damages can
3 they now claim. I don't think they can claim any,
4 because they've already claimed them all against
5 Dr. Taylor. And I will go into it with you.

6 There are, I think, three cases that are relevant
7 to this. One is the Graham case, the other one is
8 the Irby case, and the other one was called "Nelson
9 versus QHG." I'm going to pass -- I've given those
10 to the Plaintiff's attorney. These are all copies I'll
11 pass up to the Court, which I think are relevant.

12 Clearly, the Plaintiff, if they wanted to pursue
13 Dr. Creagh and pursue the hospital, then they had
14 two options. They could -- and, at the point in time
15 that they filed the 2006 action, they could've
16 included Dr. Creagh and the hospital as defendants
17 in that action, and they could've put in all of their
18 damages; or, they could have put up the damages
19 that they say came from Dr. Creagh's negligence and
20 ended, before Dr. Creagh takes over her care and
21 treatment. If they believe that there are separate
22 damages that accrue because of Dr. Creagh's care
23 and treatment, then it's inconsistent with the
24 evidence and testimony they put in the trial in the
25 Taylor case.

1 Now, I served the Request to Admit that Mr.
2 Gunn has alluded to -- The one that he read a little
3 bit from is Request to Admit, No. 6; and that again,
4 that was a question by Mr. Ebersol to Steven Pulaski,
5 MD, in his -- Well, he starts off by asking, "With a
6 reasonable degree of medical certainty, were all of
7 Kristy's problems -- medical problems, were they
8 caused by the eclamptic episode of September 12?"
9 He says, "Yes, they were." And I won't read -- It's
10 in my memo. I won't read that to you totally --

11 THE COURT: What was the request? That was
12 the testimony at trial, right?

13 MR. KING: Yes, sir.

14 THE COURT: All right. What was the request?

15 MR. KING: The request was --

16 THE COURT: To admit that that was the
17 testimony at trial?

18 MR. KING: Yes, sir.

19 THE COURT: All right.

20 MR. KING: They challenged that it was material,
21 but they admitted that that was the testimony, and
22 this is --

23 THE COURT: All right.

24 MR. KING: -- this is, my Request to Admit
25 No. 6. If you'd like me to read it in total, I'd be

1 happy to, --

2 THE COURT: No.

3 MR. KING: -- but you've got it. The other one
4 is they -- that is, Request No. 7, and it has to do
5 with Oliver Wood's testimony; Request No. 8 has to
6 do with Leona Hollenbeck --

7 THE COURT: Go ahead and tell me about Dr.
8 Wood's.

9 MR. KING: As far as Lena Hollenbeck, on which
10 part of Dr. Wood's testimony is based, Ms. Hollen-
11 beck puts up a life care plan that was done February
12 27, 2009, you know, five-and-a-half years after Dr.
13 Creagh's treatment, which shows her needs -- her
14 lifetime needs. She testifies that she is totally
15 disabled. She has a life expectancy of 56 years.
16 She goes into her medical history, which includes
17 the episodes that follow after Dr. Creagh became
18 involved. So, Dr. Creagh's care and treatment was
19 clearly -- and the consequences that came later on,
20 were clearly put into the life care plan.

21 And then, Dr. Wood, who then was questioned --
22 and this is seven -- he goes into his calculations --
23 and it's about four or five pages -- as how he arrives
24 at \$5,434,450. He does that by first taking total
25 economic loss over life expectancy. And then he

1 takes the value of the life care plan from Ms.
2 Hollenbeck to arrive at his numbers. So, calcula-
3 tions based on total disability -- and again, if you go
4 read the Request that has to do -- by their expert --
5 that says that this all came about as a result of the
6 eclamptic seizure.

7 So, the Plaintiff can't have it both ways. I
8 mean, they have blamed all this to a trial jury,
9 sworn testimony that all of her damages as a totally
10 disabled person came about as a result of the
11 eclamptic seizure; and now cannot say, well, part of
12 it did with Taylor and part of it did with Dr. Creagh.
13 So, we submit that collateral estoppel applies in this
14 case, and this case has got to be -- summary
15 judgment must be granted.

16 THE COURT: All right. Ms. Creech?

17 MS. CREECH: Your Honor, first, just addressing
18 Dr. Taylor's negligence in his role. If I'm in a car
19 accident and there is a driver who is negligent, and
20 I'm taken to the hospital, the driver of the car is
21 responsible, under South Carolina Law, for the
22 foreseeable negligence of the doctor who treats me.
23 That's the principle well established in South
24 Carolina. Here, when Dr. Taylor negligently treats
25 Mrs. Orlowski, following through to the care she

1 received in November and December, 2003, he's still
2 on the hook for the treatment -- negligent treatment
3 of Mrs. Orlowski by Dr. Creagh. It's not inconsistent
4 to sue Dr. Creagh and say he was also negligent.
5 Dr. Taylor certainly can still be on the hook for that.

6 THE COURT: Yes, but what if -- That wasn't the
7 testimony. The testimony was that, to a reasonable
8 degree of medical certainty, all of her -- I'm
9 paraphrasing -- condition, at the time of the trial,
10 was directly the result of the pre-eclamptic seizure,
11 which was Dr. Taylor's treatment.

12 MS. CREECH: Correct. And then that -- that
13 has to incorporate the subsequent treatment that
14 she says now, that --

15 THE COURT: That's not what he said, though.

16 MS. CREECH: -- she pleads now.

17 THE COURT: That isn't what he said.

18 MS. CREECH: Okay. And I apologize, I don't
19 have the transcript in front of me today.

20 THE COURT: Well, whatever it was, -- It's in
21 Request to Admit, No. 6.

22 MR. KING: I've got the entire transcript, if
23 anybody wants to look at it.

24 THE COURT: In looking at these cases, there's a
25 Watson case cited in the Graham case. And, if you'd

1 read that, there's -- at the end of the case, there's a
2 discussion of what -- sort of what Mr. Gunn said, but
3 what I've always thought, called judicial estoppel.
4 That is, you can't take a position in one case that is
5 inconsistent, even though the parties are not
6 identical. We're not talking about identity of parties.
7 We're talking about the equitable principle of
8 estoppel. Even though the parties aren't identical, if
9 you take a position in one case that's inconsistent
10 with a position you take against another party at a
11 later time, you can't do that.

12 MS. CREECH: My reading of the trial testimony
13 is that he is -- he says here that, yes, it is. She
14 went back to the hospital. She was at the hospital
15 again. And --

16 THE COURT: I'm sorry, what testimony, now?

17 MS. CREECH: With Dr. Wood's testimony.

18 THE COURT: Dr. Wood's? Peloski, or something
19 like that?

20 MS. CREECH: Sorry. I'm a little slow today.

21 He references she went back to the hospital for
22 a two-day stay, only for one or two days; she
23 wanted to go back home, they sent her home; subse-
24 quently, two days later, was put right back down --
25 or, right back in the hospital. The issue here is

1 focusing solely on Dr. Taylor. He's not addressing
2 whether or not, you know, the hospital stay -- or, he
3 didn't talk about Dr. Creagh. He doesn't address
4 that.

5 THE COURT: Okay.

6 MS. CREECH: Nothing in here says Dr. Creagh
7 wasn't negligent, or his actions didn't make her
8 condition worse, or exacerbate her condition. That
9 wasn't addressed. Dr. Creagh wasn't addressed, his
10 negligence wasn't addressed.

11 THE COURT: Let me ask you this: Let's assume
12 for the moment, that the Plaintiff had recovered
13 against -- a jury verdict, not the high-low thing --

14 MS. CREECH: Sure.

15 THE COURT: -- but recovered a jury verdict
16 against Dr. Taylor for all those damages, would the
17 Plaintiffs be entitled to go back against Dr. Creagh
18 for the same damages?

19 MS. CREECH: The Plaintiff would be entitled to
20 go back to Dr. Creagh for the same damages -- I
21 mean, certainly, that she might be entitled -- Dr.
22 Creagh would be entitled to a set-off of that -- of
23 the award, just, I think, similar to -- if you sue
24 multiple defendants in one action and one action
25 and one defendant, you know, settles the case,

1 that's held kind of in a different -- I guess that's not
2 the issue right here. She might get a set-off of that
3 award, but can she sue, if the issue is has Dr.
4 Creagh --

5 THE COURT: I said "recover."

6 MS. CREECH: Excuse me?

7 THE COURT: Could she recover, from Dr.
8 Creagh, the same damages?

9 MS. CREECH: I don't think so. I haven't looked
10 into that issue. But, she could certainly still sue Dr.
11 Creagh for negligence. And we're looking at a
12 separate event; again, it's the treatment in Novem-
13 ber of 2003.

14 And the cases that Mr. Gunn and Mr. King have
15 cited --

16 THE COURT: Let me say this: I don't disagree
17 with the fact that -- and I think you're telling me
18 that the Plaintiff is relying entirely on occurrences
19 that happened between her discharge on November
20 25th or 27th, whatever it was, and a readmission on
21 November the 29th. Right?

22 MS. CREECH: Yes.

23 THE COURT: Is that right?

24 MS. CREECH: Yes, correct.

25 THE COURT: I don't disagree with that. The

1 question is has the Plaintiff taken a different
2 position inconsistent with that?

3 MS. CREECH: No. I don't -- It's not inconsis-
4 tent for the Plaintiff to say that Dr. Taylor's conduct
5 started a chain which caused her to be permanently
6 injured. That course of contact included hospital --
7 subsequent hospitalization which exacerbated her
8 condition. Dr. Creagh and Piedmont can be on the
9 hook for that subsequent hospitalization. The
10 Plaintiff has a right to sue them for this subsequent
11 hospitalization. I'm sure, if this goes to trial, that
12 Mr. King and Mr. Gunn can ask questions about Dr.
13 Taylor's negligence --

14 THE COURT: Absence of negligence.

15 MS. CREECH: -- absence of negligence, and talk
16 to the Plaintiff about that. But, in terms of looking
17 at it from a collateral estoppel or issue proficient
18 issue, all of the cases they cited -- So, in Graham,
19 the issue was, was this fire of an incendiary origin.

20 THE COURT: All right.

21 MS. CREECH: That's what the issue -- the
22 exact that the Plaintiff wanted to litigate in both
23 cases. And the court said no, that's already been
24 determined.

25 In Irby, it was did he consent to his wife having

1 custody, and they said -- and that was the issue
2 at the heart of the malpractice case -- did he consent
3 to his wife having the custody of the children. And
4 the Court look at it and said, yes, he's done that
5 over and over and over again.

6 Similarly, In the Nelson case, the issue was,
7 was an obstetrician negligent. That was the exact
8 issue. Here we're talking about Dr. Creagh's
9 negligence and Piedmont's negligence. That was not
10 brought up in the first trial and It's not on the table
11 here.

12 THE COURT: I don't disagree with that. The
13 facts -- Maybe I can -- Maybe it's like this. Does
14 the fact that it was not brought up in the first trial
15 and, by implication, was all laid at the feet of Dr.
16 Taylor, preclude now laying it at the feet of Dr.
17 Creagh. You've dismissed Dr. Alleyne.

18 MS. CREECH: No, Your Honor, simply because --
19 I mean, if it -- Again, the Plaintiffs could put up
20 their case in chief against Dr. Taylor and, I mean,
21 Dr. Taylor was -- I mean, he started a chain of
22 conduct that permanently injured our client. That
23 does not mean -- I mean, we can't sue Dr. Creagh
24 for other negligence.

25 THE COURT: Well, you can't sue Dr. Creagh at

1 all for anything, according to what I understand
2 the facts of the case to be, for any damages that were
3 incurred prior to the dismissal in late November of
4 2003.

5 MS. CREECH: And we're not, Your Honor. We're
6 focusing on --

7 THE COURT: Well, what is that? What is it? I
8 mean, if we have this elaborate plan proffered by
9 the Plaintiff in a prior case, that all of her damages
10 were incurred as a result of the eclampsia -- pre-
11 eclamptic seizure, or whatever it was -- and that
12 she was in that state when she was dismissed from
13 the hospital on November 25th, 27th, whatever,
14 then what additional damages are there?

15 MS. CREECH: That her condition --

16 THE COURT: That there was another care plan?
17 But, this care plan assumed that -- The care plan
18 presented assumed her condition as of the date of
19 trial, which included anything that was the
20 responsibility, if anything, of Dr. Creagh. So, -- But
21 clearly, that care --

22 MS. CREECH: And I guess -- I guess the issue
23 is, yes, that care plan incorporated those damages;
24 but, it did not go to recovery. She has not -- There
25 was a jury verdict in favor of Dr. Taylor.

1 THE COURT: Right. Right. Right.

2 MS. CREECH: So, that's not the scenario. I
3 mean, I guess that's more of a hypothetical situation
4 here. Dr. Creagh's negligence has not been
5 determined by a jury. Mrs. Orlowski has not been
6 compensated for the extent of that care plan. She
7 did not make a full recovery for the damages, I
8 guess, that she claimed against Dr. Taylor. She's
9 suing Dr. Creagh and Piedmont for a separate
10 negligence which contributed to the worsening of
11 her condition.

12 Now, discovery's still ongoing in this case, so
13 there's still issues that need to be fleshed out. But,
14 at this point, Dr. Creagh's negligence has not be
15 actually litigated or determined; and it wasn't
16 necessary to support the judgment against Dr.
17 Taylor, which are the typical elements of collateral
18 estoppel. Similarly, there's no rule requiring
19 plaintiffs to sue every potential defendant in a case.

20 THE COURT: But if the Plaintiff points to one
21 person and says "it's all his fault," in one case, "it's
22 all his fault, every damage is his fault," can you say,
23 "Well, I think I've found somebody else who might
24 be at fault later." No, it wasn't all his fault. It's --
25 When you knew everything that you know now then,

1 can you go back and -- and that's what seems to me
2 is happening here -- can you go back and say, "oh,
3 well, no, it wasn't just his fault; now it's her fault"?

4 MS. CREECH: Well, -- And my understanding of
5 the testimony is that Dr. Taylor started a chain that
6 caused her hospitalization.

7 THE COURT: I understand that argument.

8 MS. CREECH: To say -- I guess that's what
9 we're basing it on -- insane -- sort of made the
10 Plaintiff still contend that Dr. Taylor is at fault for
11 her injury; but, there can be more than one person --

12 THE COURT: Certainly.

13 MS. CREECH: -- whose negligence combines to
14 cause injury. And here, we're talking about a
15 separate negligent act for the treatment of her.

16 THE COURT: Is there anything that wasn't
17 known by the Plaintiff then that is known now?

18 MS. CREECH: I'm not sure, Your Honor, how to
19 they base that. I apologize.

20 THE COURT: All right.

21 MS. CREECH: But, I'm not familiar enough with
22 what we're going to testify to at trial.

23 THE COURT: Thank you. I had a thought, here
24 a minute. Mr. Gunn or Mr. King, either one, --

25 MR. KING: Your Honor, again, I want to hand

1 up this admitted testimony by their expert, Dr.
2 Pulaski, which again I --

3 THE COURT: This is the same testimony --

4 MR. KING: It's the same testimony. And he
5 goes back -- and again, I use the term "cascade" --
6 but he, in essence, is saying the conditions that Dr.
7 Creagh -- He doesn't use Dr. Creagh's name, but he
8 describes the procedures that Creagh does, he
9 relates those all back to the hospitalization. And
10 the hospitalization is that two-and-a-half-month
11 period. So, when I used the term early on today
12 about a cascade, from the time that she starts off
13 with the eclamptic seizure, this is all just a slippery
14 slope.

15 THE COURT: I assume this expert is not the
16 expert proposed in this case?

17 MR. GUNN: No, sir, I don't think so.

18 THE COURT: Excuse me just a minute. I think
19 you've actually referred back to Request No. 5, I
20 think. I think this testimony has to do when the
21 EMTs arrived. That was -- When did that occur?

22 MR. KING: That's when she had the eclamptic
23 seizure.

24 THE COURT: That was long before the November
25 the 27th.

1 MR. KING: Yes, sir.

2 THE COURT: Mr. Gunn? Anything else, Mr.
3 King?

4 MR. GUNN: Well, Your Honor, here's what --
5 and I think, you know, Ms. Creech said you're not
6 required to sue everybody that might have some-
7 thing to do with something. The fact of the matter
8 is, Your Honor, if I claim that I am injured by "A" --

9 THE COURT: Let's take -- Let's make it easy.
10 Let's say you're a passenger in an automobile and
11 there's a red light and your driver hits another
12 driver and you sue the other driver, but not your
13 driver; and you claim the other driver is negligent.

14 MR. GUNN: Well, I go through an intersection,
15 and I'm struck by "A" and injured. As I'm spinning
16 about, somebody else runs it and then "B" hits me.

17 THE COURT: All right.

18 MR. KING: I can't sue "A" and see how I do and
19 then, having had all those facts and having sued "A"
20 while I knew about "B," too, can't go back and then
21 sue "B" and see how --

22 THE COURT: Well, that has to be premised on
23 the fact that you presented evidence at a trial that it
24 was only "A" who impacted you.

25 MR. GUNN: That it was only "A," yes, sir,

1 clearly. I mean, that's exactly what we got here.
2 We got -- They proved everything as against Dr.
3 Taylor, when indeed everything had happened then.
4 This wasn't something that hadn't happened. This
5 was not something unknown. They took a big bite at
6 the apple against Dr. Taylor -- just like "A" in my
7 hypothetical -- didn't like the result, and now they've
8 come back against "B," Creagh and the hospital.

9 THE COURT: Okay.

10 MR. GUNN: I mean, I think that's exactly what
11 issue preclusion, the prohibition against splitting the
12 cause of action, whatever we call it, that's what it is.

13 THE COURT: Okay. Ms. Creech, what about the
14 example of the automobile accident?

15 MS. CREECH: Well, --

16 THE COURT: If you say you sue "A" and you say
17 It's all "A's" fault, can you then turn around and sue
18 "B"?

19 MS. CREECH: Yes, Your Honor, if "B's"
20 conduct -- and I guess what we come back to -- he
21 used the word "cascade." That's my understanding
22 of that trial testimony. It started a course of
23 hospitalizations.

24 THE COURT: But, you're not taking the
25 position inconsistent with the one you took in a prior

1 proceeding under oath, when you say, "Well, it
2 wasn't all 'A's' fault. It's also 'B's' fault, too."

3 MS. CREECH: No.

4 THE COURT: Why not?

5 MS. CREECH: Because, it is Dr. Taylor's fault.
6 He started --

7 THE COURT: No, "all" is the term I used.

8 MS. CREECH: Well, and I guess, using that
9 same term, if Dr. Creagh's negligence was a result
10 of a chain that Dr. Taylor's conduct started, he can
11 be at fault, and Dr. Creagh can be completely at
12 fault, as well.

13 THE COURT: I don't disagree with that, --

14 MS. CREECH: Okay.

15 THE COURT: -- as a general principle of law.
16 What I'm saying is, if you say -- to use the
17 automobile example again, if you say it was all "A's"
18 fault, and that's the position you take under oath
19 and the evidence you present at a trial, and you
20 lose, can you then take a different position and say,
21 "Well, it wasn't all 'A's' fault. Part of it was 'B's'
22 fault," which is different from what you proved at
23 one trial?

24 MS. CREECH: Yes, Your Honor. I mean, when
25 you're talking about just generally and how our

1 courts have interpreted it, collateral estoppel and
2 preventing parties from taking inconsistent positions,
3 it has to be the same person. Here we're talking
4 about one expert testifying under oath. We'd have a
5 separate expert here and --

6 THE COURT: It doesn't matter about the
7 witness. It's the party that's important.

8 MS. CREECH: Okay. My understanding is, I
9 guess, here that's not what we're doing, --

10 THE COURT: Okay.

11 MS. CREECH: -- is what it comes down to.
12 We're alleging a separate act of negligence against
13 Dr. Creagh. And Dr. Taylor still -- I mean, just
14 going back, the testimony was that her subsequent
15 hospitalizations did contribute to the worsening of
16 her conditions. Dr. Taylor can be held responsible --
17 and he ultimately was not. And typically, when
18 courts apply, you know, collateral -- bar someone
19 from getting collateral estoppel, the issue -- the
20 party should have received some benefit from that.

21 THE COURT: Okay. All right. I'm going to -- I
22 don't know any more -- I'm not going to know any
23 more now -- later than I know now, having heard
24 this case at least twice. I'm going to grant the
25 Motion, based on -- both Defendants, based on the

1 collateral estoppel -- If that's the right word --
2 argument. I'm going to hearken back to that.

3 Somehow, I slipped into this Watson case
4 that -- Watson versus Goldsmith that's cited in the
5 Graham case, and it talks about this situation as
6 being -- having equitable foundations, I believe is
7 what it says, something like that. And I find that
8 it -- that the Plaintiff is estopped to claim, in one
9 lawsuit, that everything is the fault of Dr. Taylor --
10 or, "A," as in my example; that it's all the result --
11 all caused by "A," cannot then take a different
12 position and say, "Well, some of it was caused by
13 "B."

14 So, Mr. King or Mr. Gunn, or a collaboration of
15 the two of you, if you will submit me an Order to
16 that effect.

17 MR. KING: Yes, sir.

18 MR. GUNN: Would you like it in editable --

19 THE COURT: Please.

20 MR. GUNN: Word or Word Perfect?

21 THE COURT: Either one, doesn't matter.

22 MR. GUNN: Okay.

23 THE COURT: Now, on the statute of limitations,
24 you know, these both might be heard again.

25 Ms. Creech, I want you to -- and I'll put them

1 together. Do me an Order denying your Motion
2 again on the statute of limitations and dealing with
3 what I said; mainly, that I believe that 15-3-40 does
4 not, by its plain language, contemplate that the
5 appointment of a conservator stops the period of
6 disability. I find that it does not. So, that, as the
7 Defendants argued, the appointment of the
8 conservator does not affect the protection afforded
9 by 15-3-40.

10 All right. Does that cover everything?

11 MR. KING: Yes, sir.

12 MR. GUNN: What we may do is we'll do our
13 proposed order and we'll put it in a format, Statute
14 of Limitations, --

15 THE COURT: That's fine.

16 MR. GUNN: -- and then leave it all blank where
17 Ms. Creech's language can be put --

18 THE COURT: That's fine, and submit it to me in
19 an editable form.

20 MR. GUNN: Yes, sir.

21 THE COURT: Because, invariably, I'll tinker with
22 it, --

23 MR. GUNN: Will do so.

24 THE COURT: -- as you all know.

25 MR. KING: Thank you, Your Honor.

1 THE COURT: Thank you.

2 * * * * *

3 (Concluded at 12:50 P.M.)

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CERTIFICATE OF REPORTER

State of South Carolina }
County of York }

I, Robbie Moskau, do hereby certify that the deponent was placed under oath; that I reported the foregoing proceedings at the time and place herein designated; that my tape was thereafter reduced to typewriting under my supervision; and that the foregoing transcript is a true, accurate and correct transcript of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, nor in anyway interested in the event of said cause.

Robbie J. Moskau
Robbie Moskau
Court Reporter

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and that on September 12, 2003 Kristy Orlowski had an emergency Caesarian section delivering an infant and that as a result of negligence of Dr. Taylor and Rock Hill GYN-OB on September 12, 2003 and prior thereto during the prenatal care of Kristy Orlowski, Kristy Orlowski suffered irreversible hypoxic brain injury as a direct and proximate result of such negligence.

2. That the Complaint detailing the allegations of negligence and damages on behalf of Kristy Orlowski is attached hereto as Exhibit A.

3. In assessing the damages claimed to be a direct and proximate result of the negligence of Dr. Taylor and Rock Hill GYN-OB, Kristy Orlowski's attorneys engaged Leanna Hollenbeck, MS, CRC, CCM, a certified life care planner. Further, Ms. Hollenbeck, in her report prepared March 4, 2008 set forth the plan of care for the life of Kristy Orlowski which she felt was the direct and proximate result of the injuries and damages sustained by Kristy Orlowski as a direct and proximate result of the negligence of Dr. Taylor and Rock Hill GYN-OB.

4. Attached hereto as Exhibit B is a true and correct copy of the Life Care Plan Update of Leanna Hollenbeck, showing her opinions regarding life care for Kristy Orlowski necessitated by the negligence of Dr. Taylor and Rock Hill GYN-OB.

5. At the trial of the lawsuit brought by Kristy Orlowski against Dr. Taylor and Rock Hill GYN-OB, Kristy Orlowski testified in a manner consistent with Exhibit B.

6. Additionally, in assessing the damages of Kristy Orlowski in the lawsuit against Dr. Taylor and Rock Hill GYN-OB, the attorneys for Kristy Orlowski engaged the services of Gerald N. Hinson, M.Ed., a vocational expert.

7. Mr. Hinson, in assessing the evaluation of monetary losses because of lack

of employment of Kristy Orlowski as a result of the negligence of Dr. Taylor and Rock Hill GYN-OB, rendered his written report dated February 28, 2009, which is attached hereto as Exhibit C.

8. At the trial of the action of Kristy Orlowski against Dr. Taylor and Rock Hill GYN-OB, Mr. Hinson testified in a manner consistent with his report.

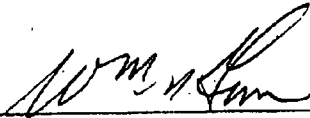
9. Attached hereto as Exhibit D is a two-page summary of medical bills Kristy Orlowski contended in the action against Dr. Taylor and Rock Hill GYN-OB were recoverable, as a direct and proximate result of the negligence of the said Defendants. The total of all those medical expenses is the sum of \$753,854.83.

10. Additionally, in proving her damages alleged to be the result of the negligence of Dr. Taylor and Rock Hill GYN-OB, Kristy Orlowski, through her attorneys, employed Oliver G. Wood, Jr., Ph.D. to prepare a preliminary appraisal of financial loss due to her injuries. Dr. Wood then prepared his written revised Preliminary Appraisal of Financial Loss due to injury dated March 5, 2009, a copy of which is attached hereto as Exhibit E. In that connection, Dr. Wood expressed the opinion that Kristy Orlowski's pretrial economic losses were \$470,216, and her after trial loss was \$4,975,023, for a total financial loss of \$5,445,239. At trial, Dr. Wood testified in a manner consistent with that report.

11. The case of Kristy Orlowski, through her guardian ad litem, against Rock Hill GYN-OB and R. Norman Taylor, III, M.D. was tried before the Honorable Lee S. Alford, Circuit Court Judge, and a jury in York, South Carolina on April 20-24, 2009. During the trial of that case, Kristy Orlowski, through her attorneys, alleged, took the position, and argued that all damages referred to in request numbers 1 through 10 above were a direct

and proximate result of the negligence of Dr. Taylor and Rock Hill GYN-OB, occurring on or before September 12, 2003.

HOLCOMBE BOMAR, P.A.

By: 

William U. Gunn
P.O. Drawer 1897
Spartanburg, SC 29304
(864) 594-5300
bgunn@holcombebomar.com

Attorney for Defendant Amisub
of South Carolina, Inc., d/b/a
Piedmont Medical Center

Spartanburg, SC

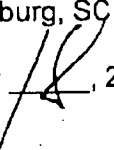
October , 2011

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
FILED-RECEIVED
Civil Action #: 06-CP-46-2213

Christopher T. Orlowski, as the duly appointed
Guardian and Conservator of Kristy L. Orlowski
(a/k/a Kristy Wood)

Plaintiff,

vs.

Rock Hill Gynecological & Obstetrical
Associates, P.A. and R. Norman Taylor, III, M.D.

Defendant.

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

CIVIL ACTION COVER SHEET

Submitted by: Grady E. McMehan
Address: Lewis Law Firm, LLC
Post Office Drawer 11583
Rock Hill, SC 29731

S.C. Bar #: 3898
Telephone #: (803) 324-2086
Fax #: (803) 324-0056
Other: _____
E-mail: grady.mcmehan@stacylewislaw.com

Note: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filed out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint
- ☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached)

NATURE OF ACTION (Check one Box Below)

- Contracts**
- ☐ Constructions (100)
 - ☐ Debt Collection (110)
 - ☐ Employment (120)
 - ☐ General (130)
 - ☐ Breach of Contract (140)
 - ☐ Other (199)

- Torts-Professional Malpractice**
- ☐ Dental Malpractice (200)
 - ☐ Legal Malpractice (210)
 - ☒ Medical Malpractice (220)
 - ☐ Other (299)
 - ☐ Other (299)

- Torts-Personal Injury**
- ☐ Assault/Slander/Libel (300)
 - ☐ Conversion (310)
 - ☐ Motor Vehicle Accident (320)
 - ☐ Premises Liability (330)
 - ☐ Products Liability (340)
 - ☐ Personal Injury (350)
 - ☐ Other (399)

- Real Property**
- ☐ Claim & Delivery (400)
 - ☐ Condemnation (410)
 - ☐ Foreclosure (420)
 - ☐ Mechanic's Lien (430)
 - ☐ Partition (440)
 - ☐ Possession (450)
 - ☐ Building Code Violation (460)
 - ☐ Other (499)

- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Sexual Predator (510)
 - ☐ Mandamus (520)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Foreign Judgment (710)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Penden (750)
 - ☐ Other (799)

- Administrative Law Relief**
- ☐ Reinstate Driver's License (800)
 - ☐ Judicial Review (810)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture (840)
 - ☐ Other (899)

- Appeals**
- ☐ Arbitration (900)
 - ☐ Magistrate-Civil (910)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOT (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Administrative Law Judge (980)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Comm (991)
 - ☐ Other (999)

- Special/Complex/Other**
- ☐ Environmental (660)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Other (699)

Submitting Party Signature: Grady E. McMehan

Date: August 24, 2006

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. Seq.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 06-CP-46 - 2213

CHRISTOPHER T. ORLOWSKI,)
AS THE DULY APPOINTED)
GUARDIAN AND CONSERVATOR)
OF KRISTY L. ORLOWSKI (A/K/A)
KRISTY WOOD)

PLAINTIFF,)

vs.)

ROCK HILL GYNECOLOGICAL &)
OBSTETRICAL ASSOCIATES, P.A.)
and R. NORMAN TAYLOR, III, M.D.,)

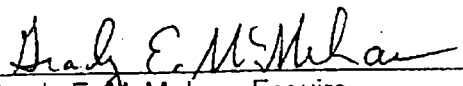
DEFENDANTS.)

SUMMONS
JURY-TRIAL DEMANDED

FILED-RECEIVED
2006 AUG 24 AM 11:48
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this proceeding, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on Grady E. McMehan, 223 East Main Street, Suite 403, Post Office Drawer 11583, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the date of such service, and if you fail to Answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Grady E. McMehan, Esquire
Lewis Law Firm, LLC
223 East Main Street, Suite 403
Post Office Drawer 11583
Rock Hill, SC 29731
803-324-2086
803-324-0056

Rock Hill, South Carolina
August 24, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
CHRISTOPHER T. ORLOWSKI,)
AS THE DULY APPOINTED)
GUARDIAN AND CONSERVATOR)
OF KRISTY L. ORLOWSKI (A/K/A)
KRISTY WOOD)
PLAINTIFF,)
vs.)
ROCK HILL GYNECOLOGICAL &)
OBSTETRICAL ASSOCIATES, P.A.)
and R. NORMAN TAYLOR, III, M.D.,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL
CIRCUIT

CIVIL ACTION NO.
2006 CP 46 - 2213

COMPLAINT

JURY TRIAL DEMANDED

FILED-RECEIVED
2006 AUG 24 AM 11:48
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Plaintiff, complaining of Defendants, alleges as follows:

PARTIES

- 1) Plaintiff, Christopher T. Orlowski, (hereinafter "Orlowski"), resides in York County, South Carolina.
- 2) Plaintiff Orlowski is also the duly appointed guardian and conservator of Kristy L. Orlowski (a/k/a Kristy Wood, hereinafter "Kristy") pursuant to an order of appointment from the Honorable Lois H. Rodday, Probate Court Judge, Chester County, South Carolina, dated March 5, 2004.
- 3) Defendant, Rock Hill Gynecological & Obstetrical Associates, P.A. is, upon information and belief, a Professional Association formed under the laws of the State of South Carolina, and at all times relevant to this action, was doing business in York County, South Carolina.

4) Upon information and belief, at all times relevant to this action, Defendant R. Norman Taylor, III, M.D. (hereinafter "Taylor") was an employee and/or agent of Defendant Rock Hill Gynecological & Obstetrical Associates, P.A. and was employed in York County, South Carolina.

FACTS GIVING RISE TO THESE CAUSES OF ACTION

5) At all times relevant to this action, Defendant R. Norman Taylor, III, M.D. (hereinafter "Taylor") was acting within the course and scope of his employment and/or agency.

6) At all times relevant to this action, Defendant Rock Hill Gynecological & Obstetrics Associates, P.A., undertook to provide to Kristy, gynecological and obstetrical services including, but not limited to diagnostic and medical evaluation.

7) At all times relevant to this action, Defendant Rock Hill Gynecological & Obstetrics Associates, P.A., undertook to provide to Kristy, such physicians and nurses as were needed to perform such services, including, but not limited to supervision of such physicians and nurses.

8) At all times relevant to this action, Defendant Rock Hill Gynecological & Obstetrics Associates, P.A., held itself out to the public in general, and the Plaintiff and Kristy in particular, as an institution qualified to render evaluation and treatment for pre-natal care and any complaints and symptoms which may have been exhibited by the Plaintiff.

9) At all times relevant to this action, Defendant Taylor was a physician licensed in South Carolina who held himself out to the world as a specialist in the field of gynecology and obstetrics.

10) At all times material to this Complaint, Defendant Taylor was a treating physician of Kristy, and was a supervising physician of other employees and servants of Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.

11) During the early stages of her pregnancy, Kristy sought the professional services of the Defendants for her pre-natal care.

12) During the term of her pregnancy, Kristy relied upon the medical care and treatment provided by the Defendants to ensure the safety of her unborn child as well as that of herself.

13) Over the course of approximately seven months, Kristy went to the Defendants for her pre-natal visits and complied with all their instructions and requests.

14) Over the course of approximately seven months, while she was a patient of the Defendant's, Kristy was never received any indication or warning from the Defendants or their agents, servants or employees, that her medical condition was such that it posed any potential health risk, or danger to the unborn child or to Kristy.

15) On September 11, 2003, Kristy was seen at Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.'s office.

16) Beginning in late June, 2003, Kristy began to experience swelling of her hands and her feet.

17) In July, 2003 and later, Kristy began to experience headaches, dizziness, and nausea.

18) Kristy was seen by the Defendants on a regular basis between late June, 2003 and September 11, 2003.

19) Upon information and belief, Kristy communicated to the Defendants, their employees and / or their agents her physical problems and complaints.

20) On September 11, 2003, when Kristy was seen at Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.'s office, she was examined and she was sent home without being given any special instructions or warnings as to her medical condition such as would reasonably cause Kristy to believe that she her medical examination and her lab results were normal.

21) Less than twenty-four hours later, on the morning of September 12, 2003, a family member found Kristy was found in her own home in an unresponsive condition.

22) On September 12, 2003, Kristy was transported to a hospital where she was placed on a ventilator and was sent to the operating room for an immediate cesarean section.

23) The child, Brianna, was born by cesarean section on the above-referenced date.

24) Kristy, as a result of the seizures, aspiration and hypoxia, suffered a very difficult life-threatening course in several hospitals before she was finally discharged with severe and permanent neurological deficits.

25) At the September 11, 2003 visit, Kristy showed several signs and symptoms of preeclampsia which were not noted, not detected, not understood and/or ignored by agents, employees and servants of Defendant Rock Hill Gynecological & Obstetrics Associates, P.A.

26) The Defendants owed a duty of care to Kristy which they breached in one or more of the following acts of omission or commission:

- a. Negligently and carelessly failed to properly diagnose preeclampsia;

- b. Negligently and carelessly failed to timely perform additional diagnostic studies to rule out preeclampsia;
- c. Negligently and carelessly failed to recognize the signs and symptoms and/or to inquire into specific areas which would have shown signs and symptoms of preeclampsia and/or failed to inquire into areas that would have further led to a correct diagnosis of preeclampsia;
- d. Negligently and carelessly failed to continue the diagnostic testing of Kristy to either diagnose preeclampsia or to rule out preeclampsia;
- e. Negligently and carelessly caused the delay in the diagnosing and treating of impending preeclampsia;
- f. Negligently and carelessly failed to refer Plaintiff and Kristy to other consultants or specialists for further evaluation and treatment;
- g. Negligently and carelessly failed to supervise medical personnel, nurses and other healthcare providers in the care and treatment of the Plaintiff; and
- h. Other acts of omission or commission that will be learned through discovery and may be shown at trial.

27) Upon information and belief, as a direct and proximate result of the acts of omission or commission of the Defendants and the negligence of the Defendants, the Kristy has suffered severe, debilitating, and permanent neurological deficits and the Plaintiff brings this action individually and in his various capacities as stated above.

FOR A FIRST CAUSE OF ACTION MEDICAL NEGLIGENCE

28) The Plaintiff Orlowski individually and in his capacity as court appointed guardian for Kristy Wood, adopts and re-alleges paragraphs 1 through 27 herein, as fully as if set forth verbatim and would further allege as follows:

29) As a direct and proximate result of the negligence, carelessness, gross negligence, recklessness and departure from the professional standard of care by

Defendants, as set forth in paragraph # 26 above, Kristy suffered the following injuries and damages in that she has experienced and will continue to experience:

- a. chronic pain and suffering,
- b. substantial medical expenses,
- c. disfigurement,
- d. mental anguish,
- e. loss of enjoyment of life,
- f. loss of income and related benefits,
- g. need for full time medical and nursing care to assist her with her activities of daily living,
- h. permanent restrictions and impairments that make it impractical for her to care for even her most basic of personal needs, and
- i. for such other damages as may be identified during the course of this litigation as maybe provided for by the laws of the State of South Carolina.

30) WHEREFORE, Plaintiff is therefor informed and believes that Plaintiff, as court appointed Guardian for Kristy, is entitled to judgment for actual damages, consequential damages, and special damages in amounts to be determined by the jury in the trial of this matter, for costs, and for such further relief as the court deems appropriate. Plaintiff avers the amount in controversy exceeds \$100,000.00, said amount being made for the purposes of defining the scope of discovery to be allowed pursuant to the laws of the State of South Carolina.

By Grady E. McMahan
Grady McMahan
LEWIS LAW FIRM, LLC
P. O. Drawer 11583
Rock Hill, SC 29731
(803) 324-2086

ATTORNEYS FOR PLAINTIFF

Rock Hill, South Carolina
August 23, 2006

Exhibit B

(3)

HOLLENBECK & ASSOCIATES, LLC
Life Care Planning
Rehabilitation Consulting

P.O. Box 2005 • Fort Mill, SC 29716 • Office 803-547-7826 • Fax 803-547-7860

UPDATED NARRATIVE REPORT

Confidential – For Professional Use Only

RE: Kristy L. Orlowski a/k/a/ Kristy Wood
Date of Injury: September 12, 2003
Date of Birth: August 14, 1982
Date of Interview: January 25, 2008
Place of Interview: The parents' home
Date of Report: March 4, 2008
Date of Update: February 27, 2009

Attorney Grady McMehan has requested that I interview Kristy Orlowski and her parents, review all medical and rehabilitation reports regarding Ms. Orlowski and prepare a Life Care Plan, including an analysis of present and future needs.

A Life Care Plan is a dynamic document based upon published standards of practice, comprehensive assessment, data analysis and research. The Plan provides an organized, concise plan for current and future needs with associated costs for individuals who have experienced catastrophic injury or have chronic health care needs.

The cost reduction to present value is not calculated and would require analysis by a qualified economist.

The methodology used to prepare the attached Life Care Plan requires an "end date" or life expectancy. While this figure might be represented as an individual's statistical life expectancy based on current age and gender, I personally am offering no opinion regarding Ms. Orlowski's life expectancy.

MEDICAL RECORDS REVIEWED

Carolinas Healthcare System
Charlotte Institute of Rehabilitation
Scott McLanahan, MD
CMC Orthopaedics – Dr. Frick
Carolina Neurosurgery and Spine Baclofen Clinic
Dr. Steven Frick
HealthSouth Rehabilitation
CMC Radiology
Home Health, Inc. Piedmont
Piedmont Medical Center

03/23/04 – 04/05/04
05/12/04 – 10/27/04
09/08/05
02/18/05 – 06/10/05
11/15/04 – 11/15/07
02/18/05 – 06/13/05
06/19/07 – 10/30/07
06/10/05
10/03/06 – 03/23/07
03/24/06 – 11/16/07

IDENTIFYING INFORMATION

Ms. Orlowski is a 26-year-old woman who suffered eclampsia and seizures in September 2003 when she was 36 weeks pregnant. She was diagnosed with anoxic encephalopathy with spastic tetraplegia. She lives with her parents in Clover, SC. Her mother and father both work full time. Ms. Orlowski has attended York Adult Daycare for the past two years where she receives physical therapy, occupational therapy, attendant care and lunch. On most weekdays daycare van picks her up and transports her to the facility. She leaves daycare in the afternoon and she is home by 2:30. Her parents provide all other attendant care, including bathing, toileting, dressing, feeding, administering medications and transporting her to medical appointments.

Ms. Orlowski is able to eat finger food but her mother feeds her at other times. She is able to walk with total assistance. She sits in a shower chair when being bathed.

MEDICAL SUMMARY

Ms. Orlowski was treated for a number of serious medical complications after the 09/12/03 event and she was discharged home in November 2003. She was readmitted to the hospital with thoracotomy and decortication of the left lung and she was treated for multiple infections. She also suffered a basal ganglia injury with a hypertensive encephalopathy and urosepsis. She was diagnosed on 03/23/04 with post anoxic encephalopathy with spastic quadriplegia. A Baclofen pump was placed on 03/26/04. She was discharged to Sardis Nursing Home on 03/29/04 but she was readmitted to the hospital secondary to an infection. She was treated and discharged to the nursing home on 04/09/04. She was evaluated and felt to be a good candidate for rehabilitation at Charlotte Institute of Rehabilitation (CIR).

Her admission diagnoses were:

- Anoxic encephalopathy with spastic tetraplegia.
- Eclampsia with seizures.
- Adult respiratory distress syndrome.
- History of resistant pseudomonas infections.
- Methicillin sensitive Staphylococcus aureus blood cultures.
- Emphysema status post left lung decortication, December 2003.
- Multiple pneumothoraces.
- History of urosepsis.
- Status post percutaneous endoscopic gastrostomy tube placement.
- Drug induced hepatitis secondary to Zanaflex.

She remained at CIR for about five weeks. During that time she was administered botulinum injections to decreased spasticity and upper and lower limb contractures. She was casted and placed in bilateral lower limb knee braces to help increase range of motion. She was placed on Ritalin to improve cognition and she responded well. A recent CT revealed mild hydrocephalus and Dr. McLanahan advised that she was a ventriculoperitoneal shunt candidate.

She was obtaining the majority of her nutrition through tube feeding. She had myoclonic movements of her arms when pointing or attempting to grasp. Medication resulted in some improvement. She was experiencing neuropathic pain which was treated with medication. Knee bracing and range of motion exercises were performed to reduce lower extremity contractures.

At time of discharge from CIR:

She was breathing well.

Blood pressure was stabilized.

Her overall outlook and motivation improved during therapies.

She needed maximal assist with bed mobility and wheelchair propulsion. She was otherwise dependent with mobility issues.

She needed maximal assistance with grooming and she was dependent with all other activities of daily living.

With regard to cognition she needed supervision with receptive auditory, moderate to minimal assist with orientation and moderate assistance with memory and attention.

She was dependent with regard to bowel and bladder care.

The following equipment was recommended:

30" transfer board

Rental wheelchair for six months

Hospital bed and mattress

Shower tub

Bilateral knee braces

Hydrocolloid dressing with a dry sterile dressing for pressure sores.

Ms. Orlowski needed to continue tube feedings and wearing knee braces. Her skin needed to be checked daily, wounds were to be dressed and Ms. Orlowski was to be turned in bed every three hours.

Her diagnoses at discharge also included the following:

Severe dysphagia with continuous tube feeds.

Alteration of doses of Baclofen pump, which was placed prior to admission.

New Stage I to II popliteal pressure sores bilaterally, left worse than right, improving prior to discharge.

Action myoclonus.

Oral candidiasis treated and resolved.

Spasticity status post Botulinum toxin injections to bilateral upper limbs.

Adjustment disorder

Depression

On 09/08/05 Dr. McClanahan reported that Ms. Orlowski continued to use a Medtronic SyncroMed Baclofen pump to reduce her intractable spasticity. She continued to have some spasms in her lower extremities. She was dependent in all activities of daily living. She was eating orally and she could assist with feedings. Her primary mobility was a manual wheelchair. She could take some steps with a walker. She continued to participate in physical and occupational therapy three times a week.

On 06/05/06 she was reported to be doing remarkably well. She had gained weight and her affect was bright. She was walking with handheld assistance. Her range of motion in her upper and lower extremities was normal. She had poor posture with standing and she would go from sitting to standing with minimum assistance. She was still dysarthric.

On 03/22/07 Ms. Orlowski was continuing to use the Medtronic SyncroMed pump for spasticity. She was dependent for all activities of daily living. Her primary means of mobility was a manual

wheelchair. She would take a few steps with one assist and she needed total assistance for transfers. She was attending an adult day care during the day and she was continuing to receive physical therapy three times per week.

Ms. Orlowski fell from her wheelchair on 11/14/07, striking the right temple and causing a laceration on the scalp as well as a bloody nose. The following day she appeared dazed and confused and reported an increasing headache and sluggishness.

CURRENT TREATING PHYSICIANS

Ms. Orlowski underwent operative procedures in 2004 including Baclofen placement and lumbar puncture. She currently goes to the Baclofen Clinic monthly for pump refills. The Baclofen pump is projected to need replacement in 2009. In addition to seeing a physician during these visits, she currently sees Dr. Wiercisiwski every three months for a complete assessment. Ms. Orlowski also sees her family physician at Clover Family Medicine as needed. Dr. Wiercisiwski stated in his deposition that he will need to see Ms. Orlowski every six months in the future, but there may be times when he will need to see her with greater frequency.

CHIEF COMPLAINTS

Mr. & Mrs. Sims reported the following concerns regarding Kristy's current status:

- Forgetfulness.
- Attention problems.
- Confusion.
- Frequent headaches, especially during her monthly period.
- Communication problems – Kristy's speech is slurred and very slow.

- Poor coordination.
- Muscle spasms.
- Stomach pain and pain in the area of the Baclofen pump.
- Chronic fatigue.
- Her parents have noticed possible vision problems.

- Depression, especially when seeing babies.
- Frequent crying spells, especially when seeing babies, during celebrations, during her monthly period.
- Inability to independently propel her manual and power wheelchairs.
- Inability to sit longer than two hours in her wheelchair – she sits in a recliner at daycare.
- Occasional rashes.

- Discomfort in cold weather.
- Inadequate housing for Kristy (See Home Assessment section for details).
- No accessible vehicle available to transport Kristy and her wheelchair. Mrs. Sims drives a 2005 Trailblazer and Mr. Sims drives a 1991 pickup truck.
- No funds for attendant care.
- Concern about future care if parents are ill or unavailable.

MEDICATIONS

Ms. Orlowski takes the following prescribed medications and supplies, which are purchased at CVS Pharmacy:

MEDICATION/DOSAGE	TIMES PER DAY	FOR	PRESCRIBED BY	
Bactroban Nasal 2% Ointment	As needed	Prevent MRSA infections	Dr. Wiercisiewski	
Methylphenidate 10 mg. (Ritalin)	2 daily	Improve attention	"	"
Amantadine 100 mg.	2 daily	Treat tremors	"	"
Venlafaxine HCL 75 mg.	2 daily	Depression	"	"
Clonazepam 1 mg.	3 daily	Control seizures	"	"
Trazodone 50 mg.	1-2 @ night	Depression/Insomnia	"	"
Gabapentin 300 mg. (Neurontin)	1-2 daily	Control seizures	"	"
	3 @ night		"	"
Nystatin 100,000 U/GM PWD ETH	As needed	Treat infections	"	"
Beconase AQ 0.42% spray GSK	As needed	Reduce congestion	"	"
Antifungal extra thick secura 3.25 oz	"	Treat fungal infections	"	"

Also:

Over the counter laxative and stool softener, used daily

SUPPLIES & EQUIPMENT CURRENTLY USED

Depends (Medium) 5 daily
Washable Bedpads 2 dozen
Sippy Cup
Pillows for support in bed (4)
Reclining manual wheelchair, purchased 5 years ago
Transfer board
Platform walker, purchased 2 years ago
Hospital bed
Commode chair
Gel mattress
Wheelchair air cushion
Leg braces, purchased 2-3 years ago
Wrist splints

FAMILY HISTORY

Ms. Orlowski is divorced. Her former husband has remarried. Ms. Orlowski lives with her parents Larry "Don" Sims, 45, and Gladys Sims, 46. Mr. Sims has been hospitalized with heart blockage and he has been treated for gout. He is a First Responder Ambulance Driver. Mrs. Sims is in good health but unable to lift and carry her daughter.

HOME ASSESSMENT

Ms. Orlowski and her parents currently live in an older two bedroom, one bathroom mobile home.

Her wheelchair will not go through the bedroom door. The bedroom is very small, with room for a twin hospital bed and a commode chair. The remote control for the bed is damaged and difficult to use at times. The bathroom is at the other end of the mobile home. Ms. Orlowski's equipment and supplies are kept in the living room. There is damage to the walls and corners of the rooms because of the small space in which to push the wheelchair. The bathroom is very small, with no room for the wheelchair and no room to access the sink. There is one ramp, in the front of the mobile home. The parents purchased an above ground swimming pool when pool exercise was recommended for Ms. Orlowski. Unfortunately there is no way for her to get into the pool. Clover, SC does not have a community swimming pool.

EDUCATION AND TRAINING/WORK HISTORY

Ms. Orlowski graduated from high school and attended Brookstone College, taking courses in Business Administration. She was in the Army Reserve and scheduled to be deployed to Iraq prior to her hospitalization.

VOCATIONAL STATUS

She is totally disabled from working due to her physical and cognitive deficits.

LIFE CARE PLAN

Life Expectancy

According to the South Carolina mortality tables, Ms. Orlowski has 55.43 more years of life, as she will complete her 27th year in August 2009. A life expectancy of 55 years is used for the purposes of this report.

Items and supplies are listed in the following categories:

Projected Evaluations

A one-time occupational therapy evaluation will be needed to assess activities of daily living, wheelchair activities, safety in the home and the need for home modifications. Annual evaluations will be needed to reevaluate Ms. Orlowski and her caretaker's needs as she ages and/or when her functional abilities change.

Projected Therapeutic Modalities

An allowance of 15-30 hours of physical therapy and 12-20 hours of occupational therapy per year is included in the life care plan. This frequency is included to reflect information provided by Dr. Wiercisiewski in his deposition although Ms. Orlowski currently receives 1-3 hours of each therapy per week at the daycare center. Her mother reports that the therapy allows her to maintain her gains in physical function and activities of daily living.

Wheelchair(s)/Mobility/Maintenance & Wheelchair Accessories

Ms. Orlowski uses a reclining manual wheelchair for mobility. Her parents will assist her from the

wheelchair to the sofa or a chair. She occasionally uses her platform walker but assistance is needed to ensure that she does not fall. She cannot maneuver the wheelchair independently. She would also benefit from using a shower chair once she moves to a more accessible home. An allowance is provided for wheelchair and shower chair maintenance.

Wheelchair Accessories

Ms. Orlowski needs the following equipment for comfort, skin protection and function: back cushion for the wheelchair, a flip-away padded armrest, a plastic molded laptray that fits onto the wheelchair arms, two transfer boards, two wheelchair air cushions, cushion covers and a wheelchair backpack.

Orthotics/Prosthetics

She will continue to need braces and/or splints on her upper and lower extremities. An allowance is included for the cost of these items as well as for appropriate shoes that will accommodate the leg braces. Dr. Wierciewski has prescribed an ankle knee orthosis for one leg. The purchase price for this custom designed brace will approximate or exceed the cost of Ms. Orlowski's current braces. Ms. Orlowski's mother reports that Kristy had two wrist splints that were misplaced during a transition to the daycare center. The therapist at the daycare center ordered new wrist splints which they use daily in therapy.

Durable Medical Items

Items in this category include a hydraulic or electric lift to be used for transfers, replacement slings for the lift, a fully adjustable electric bed and mattress to replace the current bed in 2011, a gel overlay for the mattress, and a lift for the swimming pool to permit aquatic exercise at home.

Aids for Independent Function

Several assistive devices and aids are included to reduce Ms. Orlowski's dependence on others and to reduce the chance of further injury: commode chair, door jam ramps, eating and feeding aids, hand held shower sprayer and platform walker.

Supplies

Ms. Orlowski is incontinent and needs disposable underwear and washable bed pads. An allowance is also included for miscellaneous supplies such as replacement Sippy cup, pillows for support in bed, latex gloves for the caregiver, creams and lotions to maintain skin health, etc.

Medications

Medications currently prescribed are included in the Life Care Plan. Dr. Wierciewski indicated in his deposition that he would like to wean Ms. Orlowski off some of her medications. The actual date of the beginning of the weaning process was not discussed. Duration of medications in the life care plan was changed to reflect five additional years for those medications that may be the easiest to discontinue. An additional ten years was provided for those medications that will take longer to discontinue. All other medications, creams and ointments remain as lifetime needs.

Home Care

An allowance is included for purchase of an accessible home in the York County, SC area that will provide adequate room, storage and safe living quarters for the client and her caregivers. Over the years various contractors have advised me that they add an additional 10% to the building cost for custom handicap accessible features.

Facility Care

Ms. Orlowski attends York Adult Daycare on weekdays. The facility provides custodial care with socialization, transportation, activities and meals. There is now a charge for transportation to and from the client's home. Therapy is not included but space is provided for therapists. Ms. Orlowski enjoys her time at the facility. The cost is included to provide daycare throughout her life expectancy.

Future Medical Care Routine

Dr. Wiercislewski will continue to monitor Ms. Orlowski's health, rehabilitation needs and medication needs. He indicated in his deposition that he currently sees her every three months and he will need to see Ms. Orlowski every six months in the future. The cost for 2-4 visits per year is included in the Life Care Plan.

Transportation

Ms. Orlowski's parents do not have vehicles that are appropriate for modification for a wheelchair lift. Her mother has difficulty transporting the wheelchair in her car and placing Ms. Orlowski in the passenger seat. A full accessible van with tie downs, high top and wheelchair lift is included in the Life Care Plan. The full cost of a 2007 vehicle (\$28,800 according to the last NADA information available) is subtracted from the cost of a modified van. Mileage reimbursement is included to reimburse travel expenses for medical visits to Charlotte, NC for follow-up and Baclofen Pump refills. Dr. Wiercislewski no longer has an office in Rock Hill, SC. An AAA membership will ensure that roadside assistance is available in an emergency.

Maintenance for the lift will be needed when the warranty expires. A portable ramp will be needed when Ms. Orlowski visits a facility or residence that does not have a ramp in place.

Acute Medical Intervention - Baclofen Pump

Ms. Orlowski has experienced significant benefits from the Baclofen Pump that was implanted in 2004. Costs involved in Baclofen Pump refills, reprogramming and replacement are included in the Life Care Plan. Information was obtained from a nurse at Carolina Neurosurgery & Spine. Dr. Wiercislewski's office advises that Ms. Orlowski will require the use of a Baclofen Pump throughout her life expectancy.

Attendant Care

Attendant care is needed for personal and home care assistance. Both parents work full time and Ms. Orlowski is at daycare for approximately six hours. It is recommended that attendant care be provided for two hours in the morning and 7-8 hours in the afternoon and evening for 51 weeks per year. On weekends she will need approximately 6-8 hours of attendant care. An allowance is also provided for full time attendant care for 7 days per year. Ms. Orlowski skips daycare all day when she

has medical appointments in Charlotte. On those days she needs additional attendant care. The attendant will perform the following tasks:

- Assisting with dressing
- Assisting with bathing.
- Providing transportation to Ms. Orlowski's medical appointments.
- Assisting with shopping, cooking, cleaning and doing the laundry.
- Helping her move from her wheelchair to bed, other seating, commode and shower chair.
- Helping her up when she falls
- Helping her negotiate curbs and steps.
- Pushing her wheelchair.
- Helping her get out of bed.

Although attendant care can be procured privately and at lower cost, it is commonly accepted that agency care is advisable because of the need for reliable, trained, bonded and insured personnel.

Case Management

Ms. Orlowski will need a Case Manager to help coordinate purchases and building quotes and treatment needs as well as attendant care. Additional case management time will be required during the first year, with time reduced to 30-60 hours per year thereafter.

Potential Complications

The cost of potential complications is not included in the Life Care Plan since the incidence and severity is unpredictable:

1. The Baclofen Pump can cause infection and can move out of place, requiring additional inpatient treatment.
2. There can be an adverse reaction to anesthesia.
3. If the pump malfunctions, it may deliver too much medicine at once, causing drowsiness, dizziness, weakness, insomnia, light headedness, nausea, vomiting, looseness of the muscles, trouble with vision, coma, respiratory depression, seizures, dry mouth, diarrhea or delayed responsiveness.
4. If Ms. Orlowski's parents are unable to care for her she will need 24 hour attendant care, which will cost \$250 - \$456 per 24-hour day.
5. Ms. Orlowski may need to move to a facility providing assisted care or full nursing care if family and/or attendant care is not available in the home. Walton Rehabilitation Health system in Augusta, GA has an Assisted Living facility specifically designed for younger individuals with severe disabilities. The monthly cost is \$4,000 and includes room and board, nursing supervision and leisure activities. This fee does not include medication costs, physical therapy and other attendant care not provided by the facility. Local skilled nursing facilities charge \$180-200 per day.
6. Dr. Wiercisiowski advised in his deposition that there are higher incidences of kidney stones in patients that are immobilized. He also stated that there is a risk of osteoporosis due to her inability to ambulate independently and maintain her bone density. There is probably some respiratory risk life bronchitis or perhaps aspiration from feeding (due to difficulty swallowing liquids.)

Thank you for giving me the opportunity to work with Ms. Orlowski. Please call if you have any questions or need further clarification of any information in this report.

Respectfully submitted,

Leanna Hollenbeck, MS, CLCP, CRC, CCM
Life Care Planner & Rehabilitation Consultant

Enclosures: Life Care Plan
Summary of costs
Journal article
List of changes made to the original life care plan

**AMENDMENTS TO KRISTY ORLOWSKI'S LIFE CARE PLAN AND NARRATIVE REPORT
FEBRUARY 27, 2009**

1. Life expectancy has been changed to 55.43 years to reflect Ms. Orłowski's current age. A life expectancy of 55 years is used for the purposes of the Life Care Plan.
2. Ms. Orłowski will be scheduled for shunt placement in the near future. Costs for the surgery are not available and have not been included in the life care plan.
3. Yearly physical therapy evaluations were included.
4. End date for medication has been changed to reflect Dr. Wiercisiewski's deposition testimony that he would like to wean Ms. Orłowski off her medication. Actual end dates are not available, so a range of 5-10 years is included for each medication discussed.
5. Frequency of physical therapy and occupational therapy sessions is reduced to reflect Dr. Wiercisiewski's deposition testimony regarding therapy, although Ms. Orłowski receives 1-3 hours of therapy per week at the daycare center.
6. Frequency of treatment visits with Dr. Wiercisiewski is changed from 4 visits per year to 2-3 visits per year. Dr. Wiercisiewski currently sees Ms. Orłowski every 3 months but he advises that he will see her every six months in the future. If medical issues arise he will revert back to visits every 3 months.
7. Frequency of replacement of power lift sling was changed to every two years.
8. Cost of handicap accessible van and average cost of a vehicle is changed to reflect current prices.
9. The following costs have been updated:
 - Medication
 - Modified van
 - Hospital cost for replacement of Baclofen Infusion Pump
 - Orthosis and wrist cock-up splint prescribed by Dr. Wiercisiewski
 - Wheelchair
 - Transfer board
 - Platform walker
 - Baclofen pump refills, medication, reprogramming
 - Replacement catheter, anesthesia, pump replacement, hospital facility charge, physician's fee
 - York Adult Daycare
 - Home health care
 - Case management hourly rate
10. A journal article is enclosed that has researched the replacement frequency of medical equipment:
 - Marini, I. & Harper, Dana. Empirical Validation of Medical Equipment Replacement Values in Life Care Plans. *Journal of Life Care Planning*. Vol 4, No. 4, (173-182) November 2005.

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Updated Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Projected Therapeutic Modalities

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Occupational therapy	Beginning	2009	She currently receives 1-3 sessions per week.	Maintain flexibility and function	Per Unit \$125.00	Unit cost = One visit by therapist from Interim Health Care. Allowance for 12-20 visits per year.
	Ending	2063			Per Year \$1,500.00 to \$2,500.00	
Physical therapy	Beginning	2009	She currently receives 1-3 sessions per week.	Maintain flexibility and function	Per Unit \$125.00	Unit cost = One visit by therapist from Interim Health Care. Allowance for 15-30 visits per year.
	Ending	2063			Per Year \$1,875.00 to \$3,750.00	

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Kristy Orlowski

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D/E: Sep 12, 2003
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Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Wheelchair(s) / Mobility / Maintenance

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Reclining manual wheelchair	Beginning		Replace every 5 years	Provide comfort and mobility	Per Unit \$1,800.00	Unit cost = Cost for one wheelchair obtained from Charlotte Chair & Equipment 704-333-8431
	27	2009			to \$2,200.00	
	Ending *				Per Year \$360.00	6
	81	2063			to \$440.00	
Roll-in shower chair	Beginning		Every 5 years	Safety while bathing.	Per Unit \$800.00	Unit cost = One roll-in shower chair
	27	2009			to \$1,200.00	
	Ending *				Per Year \$160.00	7
	81	2063			to \$240.00	
Wheelchair and shower chair maintenance	Beginning		Yearly allowance	Maintain wheelchair	Per Unit \$230.00	Unit cost = Yearly maintenance cost is typically figured to be 10% of cost of wheelchair.
	27	2009			to \$300.00	
	Ending *				Per Year \$230.00	8
	81	2063			to \$300.00	

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Updated Life Care Plan

Kristy Crlowski

Wheelchair Accessories

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Back cushion for wheelchair	Beginning		Every 2-3 years	Support back, reduce back discomfort; increase ability to sit upright in wheelchair	Per Unit \$300.00	Unit cost = One back cushion
	27	2009			to \$400.00	
	Ending				Per Year \$116.67	
	81	2063			to \$175.00	9
Flip Away padded armrest	Beginning		Every 5-7 years	Transport small items while in wheelchair	Per Unit \$180.00	Unit cost = One armrest
	27	2009				
	Ending				Per Year \$25.71	
	81	2063			to \$36.00	10
Plastic molded Lap Tray	Beginning		Every 3-5 years	Wheelchair activities needing flat surfaces such as eating	Per Unit \$50.00	Unit cost = One Lap Tray
	27	2009				
	Ending				Per Year \$10.00	
	81	2063			to \$16.67	11
Transfer board (2)	Beginning		Replace one every 5 years	Safe transfer from wheelchair to other seating or bed	Per Unit \$45.00	Unit cost = One transfer board. Cost obtained from Charlotte Chair & Equipment (704-333-8431) and Sammons Preston Catalog (800-323-5547)
	27	2009			to \$50.00	
	Ending				Per Year \$9.00	
	81	2063			to \$10.00	12
Wheelchair air cushions (2)	Beginning		Replace 1 every 3-5 years	Prevent pressure sores; increase comfort when seated	Per Unit \$250.00	Unit cost = One wheelchair air cushion
	27	2009			to \$400.00	
	Ending				Per Year \$62.50	
	81	2063			to \$104.17	13

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Updated Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Wheelchair Accessories

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Wheelchair backpack	Beginning		Every 3-5 years	Carry items	Per Unit \$35.00	Unit cost = One backpack
	27	2009				
	Ending *				Per Year \$7.00	
	81	2063			to \$11.67	14
Wheelchair cushion covers (2)	Beginning		Replace yearly	Protect wheelchair cushion	Per Unit \$40.00	Unit cost = One wheelchair cushion cover
	27	2009			to \$60.00	
	Ending *				Per Year \$40.00	
	81	2063			to \$60.00	15

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Updated Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Orthotics/Prosthetics

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Orthopedic shoes to fit with braces	Beginning		Every 2 years	Safe ambulation	Per Unit \$150.00	Unit cost = Two pair of shoes. Shoes will not sustain a great deal of wear and should be replaced every two years.
	27	2009			to \$200.00	
	Ending				Per Year \$75.00	
	81	2063			to \$100.00	16
Wrist cock up splint, elbow orthosis & bilateral leg braces	Beginning		Every 3-5 years	Safe ambulation	Per Unit \$1,728.00	Unit cost = Charge for current leg brace fitted and purchased from Hanger Prosthetics on 11/23/04. 803-328-2625. The leg braces, elbow orthosis and wrist cock up splint were prescribed by Dr. Wiercisiewski.
	27	2009			Per Year \$345.60	
	Ending				to \$576.00	17
	81	2063				

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Updated Life Care Plan

Kristy Orlowski

DOB: Aug 14, 1982
D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Durable Medical Items

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Rolling hydraulic/electric patient lift	Beginning		Every 7 years	Transfers from bed to wheelchair, shower chair	Per Unit \$2,500.00	Unit cost = One lift
	27	2009			to \$3,500.00	
	Ending *				Per Year \$357.00	18
	81	2063			to \$500.00	
Replacement patient sling for hydraulic lift	Beginning		Replace every 2 years	Transfers from bed to wheelchair, shower chair	Per Unit \$200.00	Unit cost = One sling
	27	2009			Per Year \$100.00	
	Ending *					19
	81	2063				
Mattress for hospital bed	Beginning		Every 3 years	Comfort in bed	Per Unit \$500.00	Unit cost = One adjustable twin bed. Average cost for durable mattress.
	29	2011			Per Year \$167.00	
	Ending *					20
	81	2063				
Lift for swimming pool	Beginning		Original purchase and 4 replacements (5 year warranty on lift)	Access to pool for exercise	Per Unit \$4,223.00	Unit cost = One lift. Original purchase and 4 replacements. Additional \$200 added to cover installation fee. Costs obtained for Planet Mobility and Recreonics lifts
	27	2009			to \$8,555.00	
	Ending *				Per Year \$384.00	21
	81	2063			to \$778.00	
Fully adjustable electric bed	Beginning		Every 7 years	Easy in and out of bed; comfort	Per Unit \$1,000.00	Unit cost = One adjustable twin bed. Average cost for durable bed.
	29	2011			Per Year \$143.00	
	Ending *					22
	81	2063				

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Updated Life Care Plan

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D/E: Sep 12, 2003
Date Prepared: Feb 27, 2009
Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Durable Medical Items

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Gel overlay for mattress	Beginning		Every 3 years	Prevent pressure sores	Per Unit	Unit cost = One gel overlay
	29	2011			\$350.00	
					\$400.00	
	Ending *				Per Year	
	81	2063		\$117.00		
			\$133.00			

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Aids for Independent Function

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Platform walker	Beginning		Every 5 years	Safe ambulation when not in the wheelchair	Per Unit \$200.00	Unit cost = One walker. Cost obtained from Charlotte Chair & Equipment 704-333-8431
	27	2009			Per Year \$40.00	
	Ending *					24
	81	2063				
Commode chair	Beginning		Every 5 years	Toileting	Per Unit \$100.00 to \$125.00	Unit cost = One commode chair
	27	2009			Per Year \$20.00 to \$25.00	
	Ending *					25
	81	2063				
Door jam ramps (2)	Beginning		One time	Easy access through all doors	Per Unit \$150.00	Unit cost = Two door jam ramps
	27	2009			Per Year \$150.00	
	Ending *					26
	27	2009				
Eating and feeding products	Beginning		One time allowance	Allow client to become more independent with feeding; provide caregiver assistance	Per Unit \$200.00	Unit cost = Allowance for purchase of ergonomic utensils, non-slip plates, bibs, etc.
	27	2009			Per Year \$200.00	
	Ending *					27
	27	2009				
Hand held shower sprayer	Beginning		Every 5 years	Bathe while seated	Per Unit \$20.00 to \$40.00	Unit cost = One shower sprayer
	27	2009			Per Year \$4.00 to \$8.00	
	Ending *					28
	27	2009				

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Supplies

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
<i>Depend underwear</i>	Beginning		Five daily	Prevent urine leaks due to incontinence	Per Unit \$1,186.25	Unit cost = 65 cents each (when purchased in pack of 40) x 5 x 365 days = \$1186.25/year
	27	2009			Per Year \$1,186.25	
	Ending *					29
	81	2063				
<i>Miscellaneous supplies</i>	Beginning		Yearly allowance	Increase function, provide caretaker relief	Per Unit \$100.00	Unit cost = Allowance for items such as Sippy cup, pillows for support in bed (4), latex gloves for caregiver, creams & lotions to maintain skin health, etc.
	27	2009			Per Year \$100.00	
	Ending *					30
	81	2063				
<i>Washable bed pads</i>	Beginning		Allowance for 1 dozen per year	Prevent urine leaks due to incontinence	Per Unit \$150.00 to \$175.00	Unit cost = One dozen reusable underpads
	27	2009			Per Year \$150.00 to \$175.00	
	Ending *					31
	81	2063				

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Amantadine 100 mg. or equivalent	Beginning		2 daily	Treat tremors	Per Unit	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	27	2009			to \$32.99	
	Ending				Per Year	
	31	2013			to \$395.88	
					to \$572.28	32
Antifungal extra thick Secura 3.25 oz. or equivalent	Beginning		One tube per month	Treat fungal infections	Per Unit	Unit cost = Monthly cost
	27	2009			to \$10.00	
	Ending				Per Year	
	81	2063			to \$120.00	
					to \$180.00	33
Bactroban Nasal 2% Ointment or equivalent	Beginning		As needed to prevent MRSA infection	Prevent MRSA infection	Per Unit	Unit cost = One tube. Allowance for 2 tubes per year. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	27	2009			to \$55.72	
	Ending				Per Year	
	81	2063			to \$111.44	
					to \$181.18	34
Beconase AQ 0.42% GSK spray or equivalent	Beginning		1 container every 2-3 months	Reduce congestion	Per Unit	Unit cost = One container. An average of 4.8 containers used yearly. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	27	2009			to \$153.99	
	Ending				Per Year	
	81	2063			to \$769.95	
					to \$804.40	35
Clonazepam 1 mg. or equivalent	Beginning		3 daily	Control seizures	Per Unit	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	27	2009			to \$29.54	
	Ending				Per Year	
	81	2063			to \$354.48	
					to \$530.28	36

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Gabapentin 300 mg. (Neurontin) or equivalent	Beginning	27	1-2 daily, 3 at night	Control seizures	Per Unit \$96.99 to \$152.68	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC. Allowance for an average of 135 tablets per month. 37
	Ending *	36			Per Year \$1,163.88 to \$1,832.16	
Methylphenidate 10 mg. (Ritalin) or equivalent	Beginning	27	2 daily	Improve attention	Per Unit \$8.00 to \$30.49	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 38
	Ending *	36			Per Year \$96.00 to \$365.88	
Nystatin 100,000 U/GM or equivalent	Beginning	27	As needed (allowance for 3 refills per year)	Treat infections	Per Unit \$20.68 to \$35.49	Unit cost = One container. Cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 39
	Ending *	81			Per Year \$62.04 to \$106.47	
Over the counter laxatives and stool softeners	Beginning	27	2 each daily	Treat constipation caused by medication	Per Unit \$20.00 to \$30.00	Unit cost = Monthly allowance for laxatives and stool softeners such as Colace and Miralax 40
	Ending *	81			Per Year \$240.00 to \$360.00	
Trazadone 50 mg. or equivalent	Beginning	27	1-2 at night	Treat depression and insomnia	Per Unit \$8.00 to \$18.49	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC 41
	Ending *	31			Per Year \$96.00 to \$221.88	

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Medication(s)

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Venafaxine HCL 75 mg. or equivalent	Beginning		2 daily	Treat depression	Per Unit	Unit cost = Monthly cost obtained from CVS in Clover and Walmart Pharmacy in York, SC
	27	2009			to \$114.32 \$116.99	
	Ending *				Per Year	
	36	2018			to \$1,371.84 \$1,403.88	42

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Updated Life Care Plan

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Home Care

DOB: Aug 14, 1982

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Date Prepared: Feb 27, 2009

Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Build new accessible home	Beginning		One time	Provide accessibility to client and ease of care for caregivers	Per Unit \$175,000.00 to \$250,000.00	Unit cost = Estimated cost of fully accessible home in the York County, SC area. The average cost of a house in York County, SC in 2007 was \$215,777. It is estimated that building handicap accessible features into a new house increases the cost by 10%; wider doors, custom ramps, larger bathroom, roll under counters, wider hallways, etc.
	Ending				Per Year \$175,000.00 to \$250,000.00	
	27	2009				
	27	2009				

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Updated Life Care Plan

Kristy Orlowski

Facility Care

DOB: Aug 14, 1982

D/E: Sep 12, 2003

Date Prepared: Feb 27, 2009

Primary Disability: Anoxic
encephalopathy;
spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
York Adult Daycare	Beginning		Monday through Friday. Allowance for 51 weeks per year	Custodial care with socialization and therapy provided	Per Unit \$50.00	Unit cost = Private pay cost per day. Daily cost includes lunch, snacks, activities and van transportation to and from facility. Therapy charges are separate costs. 44
	Ending *				Per Year \$12,750.00	
York Adult Daycare transportation	Beginning		Monday through Friday. Allowance for 51 weeks per year	Custodial care with socialization and therapy provided	Per Unit \$7.50	Unit cost = The daycare center now charges \$7.50 per day for transportation to and from the client's home. 45
	Ending *				Per Year \$1,912.50	

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Future Medical Care Routine

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Follow-up visits with Physiatrist	Beginning		Every 3-6 months in addition to assessments at the Baclofen clinic	Monitor medical status, medication needs	Per Unit \$90.00	Unit cost = One office visit with Dr. Wiercisiewski 704-376-1605. Cost depends on length and complexity of examination
	27	2009			to \$277.00	
	Ending				Per Year \$360.00	
	81	2063			to \$1,108.00	46

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Transportation

DOB: Aug 14, 1982
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spastic tetraplegia

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Wheelchair accessible van with tie downs, high top, wheelchair lift, etc.	Beginning		Every 7 years	Accessible transportation	Per Unit \$43,837.00	Unit cost = See below. One purchase in 2008 and replacement every 7 years. 47
	27	2009			Per Year \$5,262.00	
	Ending *					
	81	2063				
Cost for 2009 Mini Van or Ford E150 Van Chassis with hightop conversion package: \$55,345 + \$17,292 (wheelchair lift, raised side door frame, automatic side door operators, remote entry system, EZ lock wheelchair tiedown, seat belt system, wheelchair flooring) = \$72,637, minus cost of unmodified van (\$28,800 average) = \$43,837. Average replacement frequency of 7 years for calculating yearly cost. Cost estimate obtained from Carolina Mobility Sales, Charlotte, NC 704-399-0900						
Maintenance of hydraulic lift	Beginning		Every 5-7 years	Accessible transportation	Per Unit \$500.00 to \$700.00	Unit cost = Estimated cost of maintenance every 5-7 years. Allowance for repairs after 5 year warranty expires 48
	27	2009			Per Year \$85.71 to \$120.00	
	Ending *					
	81	2063				
American Automobile Association membership	Beginning		Yearly fee	Emergency roadside assistance	Per Unit \$60.00 to \$90.00	Unit cost = Annual subscription fee 49
	27	2009			Per Year \$60.00 to \$90.00	
	Ending *					
	81	2063				
Mileage allowance for medically related travel	Beginning		Yearly allowance @ 24 cents per mile (IRS 2009 allowable rate for medically related travel)	Deter cost of medically related travel	Per Unit \$201.60	Unit cost = Monthly travel to physician appointments, Baclofen Clinic (70 miles round trip) x .24 x 12 months = \$201.60/year. Occasionally Ms. Orlowski must go to Charlotte more than one time in a month when her appointment at the Baclofen Clinic and her appointments with Dr. Wierciszewski cannot be coordinated for the same day. 50
	27	2009			Per Year \$201.60	
	Ending *					
	81	2063				

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Transportation

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Portable ramp	Beginning		Every 5 years	Accessibility at locations without ramps	Per Unit \$300.00	Unit cost = One portable ramp
	27	2009			to \$400.00	
	Ending				Per Year \$60.00	
	81	2063			to \$80.00	51

Updated Life Care Plan
Kristy Orlowski

Acute Medical Intervention

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Monthly Baclofen pump refills	Beginning	2009	Monthly throughout life expectancy according to Dr. Wiercisiewski	Reduce spasticity	Per Unit \$1,220.00	Unit cost = Cost for refilling pump (\$220) plus cost of medication at \$250 per 10 mg. (1 unit) At Ms. Orłowski's last visit she received 4 units). Allowance provided for 2 - 4 units per month.
	Ending	2063			Per Year \$14,640.00	
Physician's fee for monthly Baclofen pump refills	Beginning	2009	Monthly throughout life expectancy according to Dr. Wiercisiewski	Reduce spasticity	Per Unit \$90.00 to \$277.00	Unit cost = Dr. Wiercisiewski's fee. Cost dependent on length and complexity of services
	Ending	2063			Per Year \$1,050.00 to \$3,324.00	
Reprogram pump	Beginning	2009	Allowance for reprogramming 3-4 times per year	Maintain pump efficiency	Per Unit \$200.00	Unit cost = Cost reprogramming pump
	Ending	2063			Per Year \$600.00 to \$800.00	
Replace catheter (CPT code 62350)	Beginning	2009	Allowance for one replacement every 2 years	Maintenance, or replacement if catheter becomes kinked	Per Unit \$1,713.00	Unit cost = Cost catheter replacement
	Ending	2063			Per Year \$857.00	
Replace Baclofen pump	Beginning	2009	Every 3-5 years	Replacement of pump	Per Unit \$33,500.00	Unit cost = Cost for pump replacement (included in hospital fee). Cost obtained from Carolinas Medical Center.
	Ending	2063			Per Year \$6,700.00 to \$11,167.00	

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Acute Medical Intervention

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Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Surgeon's fee to replace Baclofen pump CPT code 62362	Beginning		Every 3-5 years	Replacement of pump	Per Unit \$1,830.00	Unit cost = Surgeon's fee
	27	2009			Per Year \$368.00	
	Ending				to \$610.00	57
Anesthesia fee to replace Baclofen pump CPT code 62362	Beginning		Every 3-5 years	Replacement of pump	Per Unit \$1,265.00	Unit cost = Anesthesia fee obtained from Southeast Anesthesia
	27	2009			Per Year \$253.00	
	Ending				to \$422.00	58
	81	2063				

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Attendant Care

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
24-hour Attendant care	27	Beginning	Allowance for one week per year (7 days)	Provide care, assistance and safe environment	Per Unit	Unit cost = One week of 24-hour attendant care. Interim Home Health Care 24-hour rate is \$456. At Home Total Care rate is \$250.
		2009			\$250.00	
	81	Ending *			to	
		2063			\$456.00	
					Per Year	
					\$1,750.00	
					to	
					\$3,192.00	59

Ms. Orlowski currently receives care from her parents and extended family. Family members are aging and beginning to have health problems that may prevent them from providing full care in the future. Care is needed in the morning for 2-3 hours before the Adult Daycare van picks her up at 8:30-9:00 AM. Care is then needed in the afternoon when she arrives home at 2:30-3:00 PM until her bedtime - about 7 hours. A total of 9-10 hours per day during the week and 6-8 hours on weekends. As her parents become less able to help her or if they are no longer alive, she will need 24 hour attendant care.

Attendant care	27	Beginning	Allowance for 9-10 hours per day during the week and 6-8 hours per day on weekends.	Provide care, assistance and safe environment	Per Unit	Unit cost = One week of attendant care. Attendant care for 51 weeks per year at Interim Home Health Care hourly rate for CNA's @\$18.50 per hour on weekdays and \$19.50 per hour on weekends. At Home Total Care charges \$18.00 per hour any day of the week
		2009			\$1,107.00	
	81	Ending *			to	
		2063			\$1,151.75	
					Per Year	
					\$56,457.00	
					to	
					\$58,739.25	60

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Case Management

Item / Service	Age	Year	Frequency/ Replacement	Purpose	Cost	Comment
Care coordination first year	Beginning	2009	100 hours	Coordinate purchases, building quotes, attendant care, etc.	Per Unit \$85.00 to \$95.00	Unit cost = Hourly rate for Case Manager. More time will be needed the first year to coordinate accessibility, medical and home care needs. 61
	Ending	2009			Per Year \$8,500.00 to \$9,500.00	
Care coordination 2009 through life expectancy	Beginning	2010	30-60 hours per year	Coordinate purchases and care needs	Per Unit \$85.00 to \$95.00	Unit cost = Hourly rate charged by Case Manager. 62
	Ending	2063			Per Year \$2,700.00 to \$5,400.00	

Exhibit C

Gerald N. Hinson, M. Ed.
143 Lancaster Street
Chester, South Carolina 29706
803-377-2544 803-379-8008

February 28, 2009

EVALUATION of LOSSES
For
Ms. Kristy L. Orlowski (a/k/a Kristy Wood)

Date of Birth:	August 14, 1982
Gender:	Female
Race:	Caucasian
SSN:	247-57-4027
Education:	High School Graduate, York Comprehensive High School 2000; Brookstone College, Business-Administrative Assistant, 1 semester, did not complete
Family Status:	Divorced; previously married on March 22, 2002
Occupation:	Administrative Assistant / Office Support
Date of Incident:	September 21, 2003
Age at Time of Incident:	21 years; 1 month
Life Expectancy:	¹ 80.87 years; 59.79 years past the date of incident
Age Eligible for Full Social Security Retirement:	² Individuals born in 1980 and after must work to age 67; Ms. Wood was 21 years old at the time of incident and would have to work an additional 46 years.

¹ United States Social Security Administration, Office of the Chief Actuary, *Period Life Table 2004*
² United States Social Security Administration, Retirement Benefits, SSA Publication No. 05-16035, ICN 457500

Economic Damage Analysis

In this report, I will provide pertinent vocational related information and analysis to assist in the determination of economic losses associated with the untimely incident of September 21, 2003.

Ms. Kristy L Orlowski (a/k/a Kristy Wood) was born on August 14, 1982 and graduated from York Comprehensive High School in 2000. Before Ms. Orlowski graduated from high, Ms. Orlowski with support from her mother indicated that she participated in the school to work program by working in the office at the York County Board of Disabilities. After graduating, she continued to work in the office at the York County Board of Disabilities in York, S.C. It was also reported that, Ms. Orlowski worked for a period of time helping in an administrative role for the National Guard prior to entering basic training at Fort Jackson, South Carolina. After completing training at Fort Jackson, Ms. Orlowski worked as an administrative assistant for a limousine service for Mr. Bill Barnes earning approximately \$10 per hour. Ms. Orlowski reportedly worked in an administrative position on an assignment for Core Staff after she was married in March of 2002 earning approximately \$10 per hour. Ms. Orlowski has been unable to work since the untimely incident in September 2003.

At some point in time after graduating from high school, Ms. Orlowski attended Brookstone College of Business in pursuit of additional training for an administrative career. Ms. Orlowski reportedly completed one semester prior to having to withdraw.

In addition to the research that I have completed, one of my associates, Marlene Dial Hinson obtained additional information through an in home visit on February 19, 2009 with Mrs. Gladys Sims, Duly Appointed Guardian and Conservator of Ms. Orlowski, Mr. Sims and Ms. Orlowski. Furthermore, I reviewed records provided to me by Attorney Thad L. Myers of Whetstone Myers Perkins & Young, L.L.C. consisting of:

- Depositions of family members:
 - Linda Orlowski
 - Michael McCammon
 - Celeste D. Johnson (with exhibits)
 - Larry D. Sims
 - Gladys Sims (with exhibits)
 - Leonard Orlowski
 - Christopher Orlowski (with exhibits)
- Tax Returns
- Life Care Plan
- Examiner's Report of David R. Wiercislowski, MD
- Examiner's Report of C. Scott McLanahan, MD
- Client Form and report of Oliver G. Wood, Jr.
- Amended Answer for Defendant Taylor
- Answer of Defendants
- Summons and Complaint
- Order to Substitute Parties and Amended Caption

OCCUPATIONAL INFORMATION RELATED TO MS. ORŁOWSKI'S CAREER PATH

Wages by Occupation and Local Area

Wages for Executive Secretaries and Administrative Assistants

Location	Pay Period	2007				
		10%	25%	Median	75%	90%
United States	Hourly	\$12.53	\$15.03	\$16.58	\$23.14	\$28.49
	Yearly	\$26,100	\$31,300	\$38,800	\$48,100	\$59,300
South Carolina	Hourly	\$11.73	\$13.78	\$16.82	\$19.84	\$24.08
	Yearly	\$24,400	\$28,700	\$34,600	\$41,300	\$50,100
Charlotte-Gastonia-Concord, NC-SC MSA	Hourly	\$12.49	\$14.55	\$17.48	\$21.08	\$24.44
	Yearly	\$26,000	\$30,300	\$36,400	\$43,800	\$50,800

Wages for Secretaries, Except Legal, Medical, and Executive

Location	Pay Period	2007				
		10%	25%	Median	75%	90%
United States	Hourly	\$8.62	\$10.79	\$13.57	\$15.87	\$20.36
	Yearly	\$17,900	\$22,400	\$28,200	\$35,100	\$42,300
South Carolina	Hourly	\$9.31	\$10.80	\$12.99	\$15.28	\$18.18
	Yearly	\$19,400	\$22,500	\$27,000	\$31,800	\$37,800
Charlotte-Gastonia-Concord, NC-SC MSA	Hourly	\$9.30	\$11.23	\$13.62	\$16.31	\$19.08
	Yearly	\$19,300	\$23,400	\$28,300	\$33,900	\$39,700

National Data Source: Bureau of Labor Statistics, Occupational Employment Statistics Survey

State Data Source: South Carolina Wage Information

OCCUPATIONAL PROFILE

EXECUTIVE SECRETARIES AND ADMINISTRATIVE ASSISTANTS: SOUTH CAROLINA

Occupation Description

Provide high-level administrative support by conducting research, preparing statistical reports, handling information requests, and performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls, and scheduling meetings. May also train and supervise lower-level clerical staff. Exclude "Secretaries".

State and National Trends

United States	Employment		Percent Change	Job Openings
	2008	2016		
Executive secretaries and administrative assistants	1,618,000	1,857,100	+ 15 %	49,670
South Carolina	Employment		Percent Change	Job Openings
	2008	2016		
Executive secretaries and administrative assistants	14,130	16,310	+ 15 %	440

Job Openings refers to the average annual job openings due to growth and net replacement.

National Data Source: Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections

State Data Source: South Carolina Employment Security Commission

Knowledge, Skills, and Abilities

The most important knowledge, skills, and abilities (KSAs) are listed for Executive Secretaries and Administrative Assistants.

Knowledge:

- **Clerical** - Knowledge of administrative and clerical procedures and systems such as word processing, managing files and records, stenography and transcription, designing forms, and other office procedures and terminology.
- **English Language** - Knowledge of the structure and content of the English language including the meaning and spelling of words, rules of composition, and grammar.
- **Customer and Personal Service** - Knowledge of principles and processes for providing customer and personal services. This includes customer needs

assessment, meeting quality standards for services, and evaluation of customer satisfaction.

- **Computers and Electronics** - Knowledge of circuit boards, processors, chips, electronic equipment, and computer hardware and software, including applications and programming.
- **Administration and Management** - Knowledge of business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods, and coordination of people and resources.

Skills:

- **Active Listening** - Giving full attention to what other people are saying, taking time to understand the points being made, asking questions as appropriate, and not interrupting at inappropriate times.
- **Reading Comprehension** - Understanding written sentences and paragraphs in work related documents.
- **Time Management** - Managing one's own time and the time of others.
- **Speaking** - Talking to others to convey information effectively.
- **Writing** - Communicating effectively in writing as appropriate for the needs of the audience.

Abilities:

- **Oral Comprehension** - The ability to listen to and understand information and ideas presented through spoken words and sentences.
- **Written Comprehension** - The ability to read and understand information and ideas presented in writing.
- **Written Expression** - The ability to communicate information and ideas in writing so others will understand.
- **Oral Expression** - The ability to communicate information and ideas in speaking so others will understand.
- **Speech Clarity** - The ability to speak clearly so others can understand you.

Source: Occupational Information Network: Executive Secretaries and Administrative Assistants.

Tasks and Activities

Occupation specific tasks and the most important generalized work activities are listed for Executive Secretaries and Administrative Assistants.

Occupation Specific Tasks:

- Attend meetings to record minutes.
- Compile, transcribe, and distribute minutes of meetings.
- Conduct research, compile data, and prepare papers for consideration and presentation by executives, committees and boards of directors.
- Coordinate and direct office services, such as records and budget preparation, personnel, and housekeeping, in order to aid executives.
- File and retrieve corporate documents, records, and reports.
- Greet visitors and determine whether they should be given access to specific individuals.
- Interpret administrative and operating policies and procedures for employees.
- ~~Make travel arrangements for executives.~~
- Manage and maintain executives' schedules.
- Meet with individuals, special interest groups and others on behalf of executives, committees and boards of directors.
- Open, sort, and distribute incoming correspondence, including faxes and email.
- Perform general office duties such as ordering supplies, maintaining records management systems, and performing basic bookkeeping work.
- Prepare agendas and make arrangements for committee, board, and other meetings.
- Prepare invoices, reports, memos, letters, financial statements and other documents, using word processing, spreadsheet, database, or presentation software.
- Prepare responses to correspondence containing routine inquiries.
- Read and analyze incoming memos, submissions, and reports to determine their significance and plan their distribution.
- Review operating practices and procedures to determine whether improvements can be made in areas such as workflow, reporting procedures, or expenditures.
- Set up and oversee administrative policies and procedures for offices or organizations.
- Supervise and train other clerical staff.

Generalized Work Activities:

- **Performing Administrative Activities** - Performing day-to-day administrative tasks such as maintaining information files and processing paperwork.
- **Interacting With Computers** - Using computers and computer systems (including hardware and software) to program, write software, set up functions, enter data, or process information.
- **Getting Information** - Observing, receiving, and otherwise obtaining information from all relevant sources.
- **Communicating with Supervisors, Peers, or Subordinates** - Providing information to supervisors, co-workers, and subordinates by telephone, in written form, e-mail, or in person.
- **Establishing and Maintaining Interpersonal Relationships** - Developing constructive and cooperative working relationships with others, and maintaining them over time.

Detailed Work Activities:

- analyze organizational operating practices or procedures
- answer customer or public inquiries
- arrange teleconference calls
- compile numerical or statistical data
- coordinate staff or activities in clerical support setting
- develop new office forms
- develop policies, procedures, methods, or standards
- develop records management system
- explain rules, policies or regulations
- file or retrieve paper documents and related materials
- maintain records, reports, or files
- oversee execution of organizational or program policies
- plan meetings or conferences
- plan or organize work
- prepare reports
- prepare reports for management
- recommend improvements to work methods or procedures
- recommend solutions of administrative problems
- schedule meetings or appointments
- schedule or contract meeting facilities
- select software for clerical activities
- use computers to enter, access or retrieve data
- use oral or written communication techniques
- use word processing or desktop publishing software
- write business correspondence

Source: Occupational Information Network Executive Secretaries and Administrative Assistants.

Education and Training

Occupation: Executive Secretaries and Administrative Assistants

Most Common Educational/Training Level: Work experience in a related occupation

Related Instructional Programs:

- Administrative Assistant and Secretarial Science, General
- Executive Assistant/Executive Secretary
- Medical Administrative/Executive Assistant and Medical Secretary

Distribution of Educational Attainment

Occupation	Percent of employees aged 25 to 44 in the occupation with highest level of educational attainment is		
	High School or Less	Some College	Bachelor Degree or More
Executive secretaries and administrative assistants	33%	48.7%	18.3%
Secretaries and Administrative Assistants	33%	48.7%	18.3%
Office and Administrative Support	36.2%	44.1%	19.7%
Total, All Occupations	38.8%	29.1%	32.1%

Source: Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections (Education/Training Level, Educational Attainment); National Center for Education Statistics (Typical Instructional Programs)

Related Occupation Profiles
Occupations with similar skill requirements

- Court, Municipal, and License Clerks
- Legal Secretaries
- Library Technicians
- Management Analysts
- Procurement Clerks
- Production, Planning, and Expediting Clerks
- Secretaries, Except Legal, Medical, and Executive

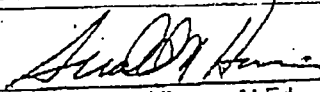
Summary and Conclusions

In consideration of all of the above, it is reasonable to believe that in September of 2003 at the time of incident that there was an expectation that Ms. Orlowski would live another 59 plus years and work another 48 years before being eligible for retirement. Ms. Orlowski has been unable to work since the untimely incident in September 2003. At the time of incident, Ms. Orlowski had worked as an administrative assistant and there was reasonable degree of certainty that she would continue to work as an

Page 9 – Ms. Kristy L OOrlowski (a/k/a Kristy Wood)

administrative assistant. It is my opinion and reasonable to believe upon research and review of national and state wage data that her annual income would approach the median annual income of ³\$28,300 for wages for Secretaries, Except Legal, Medical, and Executive in the Charlotte-Gastonia-Concord, NC-SC MSA if she were still in the workforce. ⁴Additional consideration was made of Ms. Orlowski's educational level. In 2007, the median annual earnings for year-round, full-time female workers age 25 and over that completed high school was \$27,477.

If I can be of any further assistance, please contact me..



Gerald N. Hinson, M.Ed.

³National Data Source: Bureau of Labor Statistics, Occupational Employment Statistics Survey
State Data Source: South Carolina Wage Information

⁴United States Department of Commerce, Economics and Statistics Administration, United States Census Bureau,
Educational Attainment in the United States: 2007 Issued January 2009.

Exhibit D

CLIENT: Kristy Orłowski

MEDICAL SUMMARY FORM

Provider	Date/Serv.	Acct. #	Total
Carolina Neurosurgery & Spine	11/15/04-11/27/07	2135	42,372.00
Prescriptions	01/02/07-11/29/07		2,300.04
Carolinas Medical Center	12/11/03	C03347-00071	4,813.00
	12/11/03-03/30/04	C0334502593	605,428.80
	04/05/04-04/09/04	C9100580767	15,450.57
	04/09/04	C0410000862	292.50
	04/13/04	C0410500262	292.50
	04/13/04	C9100584775	329.75
	05/04/04	C0412502910	617.50
	05/04/04	C0412101167	785.50
	05/12/04	C0413303249	283.50
	08/13/04	C0422401454	529.50
	03/23/05-03/24/05	C0506801538	14,697.89
	04/15/05	C0510400597	900.00
	06/10/05	C0515900643	148.25
Piedmont Medical Center	07/13/05-07/28/05	013509154 (?)	1,076.50
	07/22/05		2,452.50
	07/22/05-07/23/05		926.00
	03/24/06		408.00
	11/16/07	016500308	800.00
Healthsouth Rehabilitation Hospital	06/19/07-10/30/07	202279	2,005.00
Health Services Foundation	12/12/03-09/07/04		37,408.00
CMC Faculty Physicians	04/28/04-08/25/05		8,939.00
CVS Pharmacy	07/12/04-11/29/07		10,598.53

			753854.83

Exhibit E

REVISED PRELIMINARY
APPRAISAL OF FINANCIAL LOSS
DUE TO INJURY
TO
MS. KRISTY ORLOWSKI

Prepared

for

Mr. Thad L. Myers
Ms. Cheryl F. Perkins
Attorneys at Law

Prepared

by

Dr. Oliver G. Wood, Jr.

March 5, 2009

Ms. Kristy Orlowski sustained a financial loss because of her injury on September 12, 2003. The elements of financial loss considered in this revised preliminary report are earning capacity, the value of extraordinary care provided for Ms. Orlowski, and future medical care costs. The loss in earning capacity is appraised for the before- and after-trial periods. The value of extraordinary care is appraised for the before-trial period only. Future medical care costs are appraised for the after-trial period only. After-trial losses are discounted to present value as of April 8, 2009.

Ms. Orlowski was born on August 14, 1982, and was 21.08 years old at the time of injury. According to South Carolina Code Section 19-1-150, her life expectancy was an additional 60.28 years to age 81.36 on 2063.98. It is assumed that before she was injured, Ms. Orlowski had no reason to expect less than a normal life expectancy.

LOSS IN EARNING CAPACITY

Before she was injured, Ms. Orlowski had worked as an Administrative Assistant and earned approximately \$10.00 per hour.

Gerald N. Hinson, M. Ed., evaluated Ms. Orlowski's before- and after-injury earning capacity. According to Mr. Hinson, "At the time of incident, Ms. Orlowski had worked as an administrative assistant and there was a reasonable degree of certainty that she would continue work as an administrative assistant." According to Mr. Hinson, "It is reasonable to believe upon research and review of national and state wage data that her annual income would approach the median annual income of \$28,300 for wages for Secretaries, Except Legal, Medical, and Executive in the Charlotte-Gastonia-Concord, NC-SC MSA if

she were still in the workforce." According to Mr. Hinson, Ms. Orlowski has been unable to work since the incident in September 2003.

For purposes of this report, it is assumed that had she not been injured, Ms. Orlowski would have returned to work in approximately January 2004 (after maternity leave). For purposes of this report, it is assumed that after 3 years, Ms. Orlowski's earning capacity would have increased to the median level of \$28,300 per year (in 2007 dollars). For purposes of this report, it is assumed that because of her injury, Ms. Orlowski is unemployable in the competitive labor market.

The before-trial loss in earning capacity is \$131,628. The present value of the after-trial loss in earning capacity is \$720,157.

VALUE OF EXTRAORDINARY CARE PROVIDED FOR MS. ORLOWSKI

According to Ms. Orlowski's mother, from approximately July 2004 to July 2006, she provided an average of 14 hours per day of extraordinary care, and since approximately July 2006, she has provided an average of 10 hours per day of extraordinary care. The value of extraordinary care is appraised at \$16.73 per hour (in 2004 dollars). This rate is the mean hourly wage for Licensed Practical and Licensed Vocational Nurses in South Carolina in 2004. The value of extraordinary care is appraised for the before-trial period only and totals \$338,588.

FUTURE MEDICAL CARE COSTS

Because of the injuries sustained by Ms. Orlowski, she will require medical care for the remainder of her life. Ms. Leanna Hollenbeck, MS, CLCP, CRC, CCM, prepared a Life Care Plan for Ms. Orlowski. Elements of the Life Care Plan, frequency, current annual or periodic cost, and duration of each element are contained in Exhibit 1. The present value of the total future medical care costs is \$4,254,868. Exhibit 2 contains a summary.

TOTAL FINANCIAL LOSS

The present value of the total financial loss is \$5,445,239. Elements of this loss are contained in Exhibit 3. This report does not contain an evaluation of any past medical care costs.

Oliver J. Wood Jr.
3/5/09

EXHIBIT 1
ELEMENTS OF LIFE CARE PLAN

Elements	Frequency	Average Current Periodic or Annual Cost	Duration
A. PROJECTED EVALUATIONS			
1. Home Accessibility Evaluation	1 x only	\$125	2009
2. Occupational Therapy Evaluation	annual	125	2009 - life
3. Physical Therapy Evaluation	annual	125	2009 - life
B. PROJECTED THERAPEUTIC MODALITIES			
1. Occupational Therapy	annual	2,000	2009 - life
2. Physical Therapy	annual	2,813	2009 - life
C. WHEELCHAIR(S)/MOBILITY/MAINTENANCE			
1. Reclining Manual Wheelchair	1 x 5 years	2,000	2009 - life
2. Roll-In Shower Chair	1 x 5 years	1,000	2009 - life
3. Wheelchair and Shower Chair Maint.	annual	265	2009 - life
D. WHEELCHAIR ACCESSORIES			
1. Back Cushion for Wheelchair	1 x 2-3 years	350	2009 - life
2. Flip Away Padded Armrest	1 x 5-7 years	180	2009 - life
3. Plastic Molded Lap Tray	1 x 3-5 years	50	2009 - life
4. Transfer Board	1 x 5 years	48	2009 - life
5. Wheelchair Air Cushions	1 x 3-5 years	325	2009 - life
6. Wheelchair Backpack	1 x 3-5 years	35	2009 - life
7. Wheelchair Cushion Covers	annual	60	2009 - life
E. ORTHOTICS/PROSTHETICS			
1. Orthopedic Shoes to fit with braces	1 x 2 years	175	2009 - life
2. Wrist splint, elbow orthosis, & leg braces	1 x 3-5 years	1,728	2009 - life
F. DURABLE MEDICAL ITEMS			
1. Rolling Hydraulic/Electric Patient Lift	1 x 7 years	3,000	2009 - life
2. Replacement Patient Sling for Lift	1 x 2 years	200	2009 - life
3. Mattress for Hospital Bed	1 x 3 years	500	2011 - life
4. Lift for Swimming Pool	5 x only	6,389	2009 - life
5. Fully Adjustable Electric Bed with Mattress	1 x 7 years	1,000	2011 - life
6. Gel Overlay for Mattress	1 x 3 years	375	2011 - life
G. AIDS FOR INDEPENDENT FUNCTION			
1. Platform Walker	1 x 5 years	175	2009 - life
2. Commode Chair	1 x 5 years	113	2009 - life
3. Door Jam Ramps (2)	1 x only	150	2009
4. Eating & Feeding Products	1 x only	200	2009
5. Hand Held Shower Sprayer	1 x 5 years	30	2009 - life
H. SUPPLIES			
1. Depend Underwear	annual	1,186	2009 - life
2. Miscellaneous Supplies	annual	100	2009 - life
3. Washable Bed Pads	annual	163	2009 - life

Exhibit 1

Page 2

Elements	Frequency	Average Current Periodic or Annual Cost	Duration
I. MEDICATIONS			
1. Amantadine 100 mg	annual	484	2009 - 2013
2. Antifungal Extra Thick Secure	annual	150	2009 - life
3. Bactroban Nasal 2% Ointment	annual	146	2009 - life
4. Beconase AQ 0.42%	annual	787	2009 - life
6. Clonazepam 1 mg	annual	442	2009 - life
6. Gabapentin 300 mg	annual	1,498	2009 - 2018
7. Methylphenidate 10 mg (Ritalin)	annual	231	2009 - 2018
8. Nystatin 100,000 U/GM	annual	84	2009 - life
9. OTC Laxative and Stool Softeners	annual	300	2009 - life
10. Trazadone 50 mg	annual	159	2009 - 2013
11. Venlafaxine HCL 75 mg	annual	1,388	2009 - 2013
J. HOME CARE			
1. Fully Accessible Home	1 x only	21,250	2009
cost of new home = \$175,000 - \$250,000 (based on building handicapped accessible features into a new house @ 10% and avg cost of \$212,500)			
K. FACILITY CARE			
1. York Adult Daycare	annual	12,750	2009 - life
2. York Adult Daycare Transportation	annual	1,913	2009 - life
L. FUTURE MEDICAL CARE ROUTINE			
1. Follow-up Visits with Physiatrist	annual	734	2009 - life
M. TRANSPORTATION			
1. Wheelchair Accessible Van (net of est. normal car and salvage value)	1 x 7 years	37,576	2009 - life
2. Maintenance of Hydraulic Lift	1 x 5-7 years	600	2009 - life
3. AAA Membership	annual	75	2009 - life
4. Mileage Allowance for medical travel	annual	202	2009 - life
5. Portable Ramp	1 x 5 years	350	2009 - life
N. ACUTE MEDICAL INTERVENTION			
1. Monthly Baclofen Pump Refills	annual	14,640	2009 - life
2. Physician's Fee for Baclofen pump refills	annual	2,202	2009 - life
3. Reprogram Pump	annual	700	2009 - life
4. Replace Catheter	1 x 2 years	1,713	2009 - life
5. Replace Baclofen Pump	1 x 3-5 years	33,600	2009 - life
6. Surgeon's Fee to Replace Baclofen Pump	1 x 3-5 years	1,830	2009 - life
7. Anes. Fee to Replace Baclofen Pump	1 x 3-5 years	1,265	2009 - life
O. ATTENDANT CARE			
1. 24-hour Attendant Care	annual	2,471	2009 - life
2. Attendant Care	annual	57,598	2009 - life
P. CASE MANAGEMENT			
1. Care Coordination - 1st year	100 hours	9,000	2009
Care Coordination - thereafter	annual	4,050	2010 - life

Source: Ms. Leanne Hollenbeck, MS, CLCP, CRC, CCM.

EXHIBIT 2
PRESENT VALUE OF FUTURE MEDICAL CARE COSTS
(04/07/2009 - LIFE EXPECTANCY AT AGE 81.38 ON 2063.98)

Elements	Present Value	
A. PROJECTED EVALUATIONS	\$125	
1. Home Accessibility Evaluation	3,852	
2. Occupational Therapy Evaluation	3,852	
3. Physical Therapy Evaluation		\$7,829
B. PROJECTED THERAPEUTIC MODALITIES	61,595	
1. Occupational Therapy	88,616	
2. Physical Therapy		148,211
C. WHEELCHAIR(S)/MOBILITY/MAINTENANCE	10,104	
1. Reclining Manual Wheelchair	5,050	
2. Roll-In Shower Chair	6,319	
3. Wheelchair and Shower Chair Maint.		21,473
D. WHEELCHAIR ACCESSORIES	3,415	
1. Back Cushion for Wheelchair	808	
2. Flip Away Padded Armrest	313	
3. Plastic Molded Lap Tray	241	
4. Transfer Board	2,029	
5. Wheelchair Air Cushions	217	
6. Wheelchair Backpack	1,174	
7. Wheelchair Cushion Covers		8,197
E. ORTHOTICS/PROSTHETICS	2,107	
1. Orthopedic Shoes to fit with braces	10,788	
2. Wrist splint, elbow orthosis, & leg braces		12,895
F. DURABLE MEDICAL ITEMS	11,265	
1. Rolling Hydraulic/Electric Patient Lift	2,385	
2. Replacement Patient Sling for Lift	3,769	
3. Mattress for Hospital Bed	18,222	
4. Lift for Swimming Pool	3,499	
5. Fully Adjustable Electric Bed with Mattress	2,825	
6. Gel Overlay for Mattress		39,965
G. AIDS FOR INDEPENDENT FUNCTION	1,010	
1. Platform Walker	667	
2. Commode Chair	150	
3. Door Jam Ramps	200	
4. Eating & Feeding Products	152	
5. Hand Held Shower Sprayer		2,079
H. SUPPLIES	27,086	
1. Depend Underwear	2,279	
2. Miscellaneous Supplies	3,705	
3. Washable Bed Pads		33,050

Exhibit 2

Page 2

Elements	Present Value	
I. MEDICATIONS		
1. Amantadine 100 mg	1,809	
2. Antifungal Extra Thick Secure	5,677	
3. Bactroban Nasal 2% Ointment	5,536	
4. Beconase AQ 0.42%	29,791	
5. Clonazepam 1 mg	16,746	
6. Gabapentin 300 mg	12,212	
7. Methylphenidate 10 mg (Ritalin)	1,882	
8. Nystatin 100,000 U/GM	3,192	
9. OTC Laxative and Stool Softeners	6,847	
10. Trazadone 50 mg	595	
11. Venlafaxine HCL 75 mg	11,316	
		95,603
J. HOME CARE		21,250
1. Not Accessible Home		
K. FACILITY CARE		
1. York Adult Daycare	587,893	
2. York Adult Daycare Transportation	56,735	
		644,428
L. FUTURE MEDICAL CARE ROUTINE		27,590
1. Follow-up Visits with Physiatrist		
M. TRANSPORTATION		
1. Wheelchair Accessible Van	141,076	
(net of est. normal car and salvage value)		
2. Maintenance of Hydraulic LIR	3,189	
3. AAA Membership	1,397	
4. Mileage Allowance for medical travel	5,982	
5. Portable Ramp	1,767	
		153,391
N. ACUTE MEDICAL INTERVENTION		
1. Monthly Baclofen Pump Refills	554,120	
2. Physician's Fee for Baclofen pump refills	82,772	
3. Reprogram Pump	25,376	
4. Replace Catheter	31,544	
5. Replace Baclofen Pump	310,392	
6. Surgeon's Fee to Replace Baclofen Pump	17,811	
7. Anes. Fee to Replace Baclofen Pump	12,311	
		1,034,326
O. ATTENDANT CARE		
1. 24-hour Attendant Care	76,103	
2. Attendant Care	1,773,882	
		1,849,985
P. CASE MANAGEMENT		154,594
1. Care Coordination		
TOTAL FUTURE MEDICAL CARE COSTS		\$4,254,866

May 16, 2008 4:26PM

No. 0611 P. 2

(1)

**PRELIMINARY
APPRAISAL OF
THE FUTURE MEDICAL CARE COSTS
FOR
MS. KRISTY ORLOWSKI**

Prepared

for

**Mr. Thad L. Myers
Ms. Cheryl F. Perkins
Attorneys at Law**

Prepared

by

Dr. Oliver G. Wood, Jr.

May 16, 2008

1

Ms. Kristy Orłowski sustained a financial loss because of her injury on September 12, 2003. The only elements of loss considered in this preliminary report are future medical care costs. Future medical care costs are discounted to present value as of July 7, 2008.

Ms. Orłowski was born on August 14, 1982, and was 21.08 years old at the time of injury. According to South Carolina Code Section 16-1-150, her life expectancy was an additional 60.28 years to age 81.38 on 2063.98. It is assumed that before she was injured, Ms. Orłowski had no reason to expect less than a normal life expectancy.

FUTURE MEDICAL CARE COSTS

Because of the injuries sustained by Ms. Orłowski, she will require medical care for the remainder of her life. Ms. Leanne Hollenbeck, MS, CLGP, CRC, CCM, prepared a Life Care Plan for Ms. Orłowski. Elements of the Life Care Plan, frequency, current annual or periodic cost, and duration of each element are contained in Exhibit 1. The present value of the total future medical care costs is \$4,413,580. Exhibit 2 contains a summary.

William J. Wood Jr.
5/16/08

**EXHIBIT 1
ELEMENTS OF LIFE CARE PLAN**

Elements	Frequency	Average Current Periodic or Annual Cost	Duration
A. PROJECTED EVALUATIONS			
1. Home Accessibility Evaluation	1 x only	\$125	2008
2. Occupational Therapy Evaluation	annual	125	2008 - life
B. PROJECTED THERAPEUTIC MODALITIES			
1. Occupational Therapy	annual	7,819	2008 - life
2. Physical Therapy	annual	7,819	2008 - life
C. WHEELCHAIR(S) MOBILITY/MAINTENANCE			
1. Reclining Manual Wheelchair	1 x 5 years	1,650	2008 - life
2. Roll-In Shower Chair	1 x 5 years	1,000	2008 - life
3. Wheelchair and Shower Chair Maint.	annual	285	2008 - life
D. WHEELCHAIR ACCESSORIES			
1. Back Cushion for Wheelchair	1 x 2-3 years	350	2008 - life
2. Flip Away Padded Armrest	1 x 5-7 years	180	2008 - life
3. Plastic Molded Lap Tray	1 x 3-5 years	50	2008 - life
4. Transfer Board	1 x 5 years	48	2008 - life
5. Wheelchair Air Cushions	1 x 3-5 years	325	2008 - life
6. Wheelchair Backpack	1 x 3-5 years	35	2008 - life
E. ORTHOTICS/PROSTHETICS			
1. Orthopaedic Shoes to fit with braces	1 x 2 years	175	2008 - life
2. Wrist splint, elbow orthosis, & leg braces	1 x 3-5 years	1,728	2008 - life
F. DURABLE MEDICAL ITEMS			
1. Rolling Hydraulic/Electric Patient Lift	1 x 10 years	3,000	2008 - life
2. Replacement Patient Girdle for Lift	annual	200	2008 - life
3. Fully Adjustable Electric Bed with Mattress	1 x 10 years	1,500	2014 - life
4. Gel Overlay for Mattress	1 x 5 years	375	2014 - life
5. Lift for Swimming Pool	5 x only	10,439	2008 - life
G. AIDS FOR INDEPENDENT FUNCTION			
1. Platform Walker	1 x 5 years	175	2008 - life
2. Commode Chair	1 x 5 years	113	2008 - life
3. Door Jam Ramps	1 x only	180	2008
4. Eating & Feeding Products	1 x only	200	2008
5. Hand Held Shower Sprayer	1 x 5 years	30	2008 - life
H. SUPPLIES			
1. Depend Underwear	annual	1,185	2008 - life
2. Miscellaneous Supplies	annual	100	2008 - life
3. Washable Bed Pads	annual	183	2008 - life

May. 16. 2008 4:26PM

No. 0611 P. 5

3

Page 2

Exhibit 1	Elements	Frequency	Average Current Periodic or Annual Cost	Duration
I. MEDICATIONS				
1. Amitadine 100 mg	annual	441	2008 - life	
2. Antifungal Extra Thick Secure	annual	188	2008 - life	
3. Bacitracin Nasal 2% Ointment	annual	188	2008 - life	
4. Beconase AQ 0.42%	annual	784	2008 - life	
5. Clonazepam 1 mg	annual	884	2008 - life	
6. Gabapentin 300 mg	annual	1,737	2008 - life	
7. Methylphenidate 10 mg (Ritalin)	annual	514	2008 - life	
8. Nyctalin 100,000 U/GM	annual	45	2008 - life	
9. OTC Laxative and Stool Softeners	annual	300	2008 - life	
10. Trazadone 60 mg	annual	159	2008 - life	
11. Venlafaxine HCL 75 mg	annual	1,388	2008 - life	
J. HOME CARE				2008
1. Build New Accessible Home	1 x only	212,500	unknown	
Less: Normal Home			unknown	
Net Accessible Home				
K. FACILITY CARE				
1. York Adult Daycare	annual	12,760		2008 - life
L. FUTURE MEDICAL CARE ROUTINE				
1. Follow-up Visits with Psychiatrist	annual	734		2008 - life
M. TRANSPORTATION				
1. Wheelchair Accessible Van	1 x 7 years	18,000		2008 - life
(out of est. normal car and salvage value)				
2. Maintenance of Hydraulic Lift	1 x 5-7 years	900		2008 - life
3. AAA Membership	annual	78		2008 - life
4. Mileage Allowance for medical travel	annual	144		2008 - life
5. Portable Ramp	1 x 5 years	360		2008 - life
N. ACUTE MEDICAL INTERVENTION				
1. Monthly Baclofen Pump Refills	annual	11,840		2008 - life
2. Physician's Fee for Baclofen pump refills	annual	2,202		2008 - life
3. Reprogram Pump	annual	700		2008 - life
4. Replace Catheter	1 x 2 years	1,713		2008 - life
5. Replace Baclofen Pump	1 x 3-5 years	83,600		2008 - life
6. Surgeon's Fee to Replace Baclofen Pump	1 x 3-5 years	1,830		2008 - life
7. Anest. Fee to Replace Baclofen Pump	1 x 3-5 years	938		2008 - life
O. ATTENDANT CARE				
1. 24-hour Attendant Care	annual	2,980		2008 - life
2. Attendant Care	annual	55,520		2008 - life
P. CASE MANAGEMENT				
1. Care Coordination - 1st year	100 hours	8,000		2008
Care Coordination - thereafter	annual	8,600		2008 - life

Source: Ms. Leanna Hohenbeck, MS, CLCP, CRC, CCAL

EXHIBIT 2
PRESENT VALUE OF FUTURE MEDICAL CARE COSTS
(5/10/2008 - LIFE EXPECTANCY AT AGE 61.38 ON 2003.28)

Elements	Present Value	
A. PROJECTED EVALUATIONS	\$125	
1. Home Accessibility Evaluation	3,879	
2. Occupational Therapy Evaluation		\$4,004
B. PROJECTED THERAPEUTIC MODALITIES	242,448	
1. Occupational Therapy	242,448	
2. Physical Therapy		484,892
C. WHEELCHAIR(S) MOBILITY/MAINTENANCE	8,338	
1. Reclining Manual Wheelchair	5,050	
2. Roll-In Shower Chair	5,338	
3. Wheelchair and Shower Chair Maint.		19,725
D. WHEELCHAIR ACCESSORIES	3,418	
1. Back Cushion for Wheelchair	808	
2. Flip Away Padded Armrest	313	
3. Plastic Molded Lap Tray	241	
4. Transfer Board	2,029	
5. Wheelchair Air Cushions	217	
6. Wheelchair Backpack		7,023
E. ORTHOTICS/PROSTHETICS	2,114	
1. Orthopedic Shoes to fit with braces	10,788	
2. Wrist splint, elbow orthosis, & leg braces		12,902
F. DURABLE MEDICAL ITEMS	8,488	
1. Rolling Hydraulic/Electric Patient Lift	4,729	
2. Replacement Patient Sling for Lift	3,229	
3. Fully Adjustable Electric Bed with Mattress	1,484	
4. Gel Overlay for Mattress	28,505	
5. Lift for Swimming Pool		44,419
G. AIDS FOR INDEPENDENT FUNCTION	898	
1. Platform Walker	587	
2. Commode Chair	150	
3. Door Jam Ramps	200	
4. Eating & Feeding Products	162	
5. Hand Held Shower Sprayer		1,855
H. SUPPLIES	27,177	
1. Depend Underwear	2,289	
2. Miscellaneous Supplies	3,721	
3. Washable Bed Pads		33,187

Exhibit 2

Page 2

Elements	Present Value	
I. MEDICATIONS	18,857	
1. Amantadine 100 mg	8,304	
2. Antifungal Extra Thick Secure	7,088	
3. Bectroban Nasal 2% Ointment	28,838	
4. Beconase AQ 0.42%	32,897	
5. Clonazepam 1 mg	66,388	
6. Gabapentin 800 mg	18,847	
7. Methylphenidate 10 mg (Ritalin)	1,730	
8. Nystatin 100,000 U/GM	6,578	
9. OTC Laxative and Stool Softeners	6,071	
10. Trazadone 50 mg	59,022	
11. Venlafaxine HCL 75 mg		246,838
J. HOME CARE		unknown
1. Not Applicable Home		
K. FACILITY CARE		594,674
1. York Adult Daycare		
L. FUTURE MEDICAL CARE ROUTINE		27,848
1. Follow-up Visits with Physician		
M. TRANSPORTATION	67,582	
1. Wheelchair Accessible Van (net of est. rental car and salvage value)	3,336	
2. Maintenance of Hydraulic Lift	1,400	
3. AAA Membership	4,288	
4. Mileage Allowance for medical travel	1,707	
5. Portable Ramp		76,371
N. ACUTE MEDICAL INTERVENTION	444,689	
1. Monthly Baclofen Pump Refills	83,540	
2. Physician's Fee for Baclofen pump refills	25,600	
3. Reprogram Pump	31,745	
4. Replace Catheter	310,382	
5. Replace Baclofen Pump	17,811	
6. Surgeon's Fee to Replace Baclofen Pump	8,108	
7. Anes. Fee to Replace Baclofen Pump		822,885
O. ATTENDANT CARE	79,811	
1. 24-hour Attendant Care	1,721,836	
2. Attendant Care		1,795,647
P. CASE MANAGEMENT		139,140
1. Case Coordination		
TOTAL FUTURE MEDICAL CARE COSTS		\$4,413,560

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 09-CP-46-5178

STATE OF SOUTH CAROLINA

COUNTY OF YORK

GLADYS SIMS, AS THE DULY
APPOINTED GUARDIAN AND
CONSERVATOR OF KRISTY L.
ORLOWSKI (AKA KRISTY WOOD)

Plaintiff.

vs.

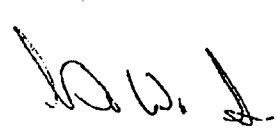
AFFIDAVIT

AMISUB OF SOUTH CAROLINA
INC., d/b/a PIEDMONT MEDICAL
CENTER; WILLIAM ALLEYNE, M.D.;
And C. EDWARD CREAGH, M.D.

Defendants

AFFIDAVIT OF GLADYS SIMS

1. My name is Gladys Sims and I am over eighteen years of age. The following statements are based on my personal knowledge.
2. Kristy Wood, formerly known as Kristy Orłowski, is my daughter.
3. On September 12, 2003, Kristy suffered a seizure and gave birth to her daughter, Brianna.
4. Exhibit "A" is a picture of Kristy with Brianna at Brianna's first birthday, September 12, 2004. Brianna died on March 21, 2006.



5. Beginning on September 12, 2003 and continuing through the present, Kristy:
- a. Cannot perform the most basic personal hygiene tasks and has to be assisted with every aspect of daily life;
 - b. Cannot walk, or even stand for long periods of time, and she has tremendous difficulty using her hands and arms;
 - c. Cannot carry on a normal conversation but she can respond to some commands and respond to very basic conversation;
 - d. Will say "yes" and mean "no" and has to go back to rethink her answer;
 - e. Cannot accurately tell her care givers whether she received medicine or not, sometimes thirty minutes after she has taken the medicine;
 - f. Has a diminished short term memory;
 - g. Cannot identify where on her body she feels pain if she is in pain;
 - h. Cannot use a telephone or a computer;
 - i. Cannot provide her own transportation;
 - j. Cannot hold any sort of job; and
 - k. Mistakenly thinks that she had twins when Brianna was born and that the twin, a boy, is still alive.
6. Before the September 12, 2003 seizure, Kristy was a vibrant young lady who was looking forward to having a family and continuing to work and serve with the Army National Guard.

7. I have not seen any improvement of her condition to any significant degree as the years have passed.

FURTHER, AFFIANT SAYETH NOT

Gladys W. Sims

AFFIANT SIGNATURE

BEFORE ME, the undersigned authority, personally appeared Gladys Sims who is personally known to me/not personally known but produced the following identification S.C.D. 007942223, and who, upon being first duly sworn according to law, deposes and says that she executed the foregoing Affidavit and that the statements made herein are true and correct to the best of her knowledge and belief.

SWORN AND SUBSCRIBED before me this 10th day of June, 2010.

Martin L. Longi
Notary Public

My commission expires 03-19-15

AFFIDAVIT OF SERVICE

State of South Carolina
County of York
Court of Common Pleas

FILED-RECEIVED
2010 MAR 11 PM 2:48

Case Number: 09-CP-46-5178
File Number: P-10-118

Plaintiff:
Gladys Sims, as duly appointed Guardian and Conservator of
Kristy L. Orlowski (a/k/a Kristy Wood)

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

vs.

Defendant:
Amisub of South Carolina, Inc., d/b/a Piedmont Medical Center; William Alleyne, M.D.;
and C. Edward Creagh, M.D.

Received by McGowan Hood & Felder to be served on C. Edward Creagh, M.D., 124 Glenwood Drive Rock Hill, SC. I, Andrew Staffileno, being duly sworn, depose and say that on the 4th day of March, 2010 at 11:25am, executed service by delivering a true copy of the Civil Action Coversheet, Summons & Complaint in accordance with state statutes in the manner marked below:

- (☒) INDIVIDUAL SERVICE: Service personally to the within-named.
- () SUBSTITUTE SERVICE: By delivering to: _____, as
_____ a person authorized to accept service and/or a
person of discretion and appropriate age, residing at the residence of the within named person
and present at said residence at the time of service.
- () CORPORATE SERVICE: By delivering to: _____, as

- () NON SERVICE: Due to the reasons detailed in Details below.
- () MILITARY STATUS: Y or N, If Yes, what branch: _____

Place of Service: Carolina Pulmonary 124 Glenwood Drive Rock Hill, SC

Details: Served in office.
W/M/65-70 yrs old/5-10/180 lbs/Gray Hair

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the
9 day of March, 2010 by the affiant
who is personally known to me.

[Signature]
NOTARY PUBLIC

My Commission Expires 11/30/2014

[Signature]
PROCESS SERVER
Andrew Staffileno
AJS Investigations, LLC

For: Philip Lee Smith

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF KRISTY L ORLOWSKI

CASE NUMBER 2004GC1200010

FILED
2009 JAN 16 AM 11:07
JUDGE L. H. RODDEY
YORK COUNTY, SC

PROBATE COURT

CERTIFICATE OF APPOINTMENT

This is to certify that

CHRISTOPHER T ORLOWSKI

is/are the duly qualified

- ☐ PERSONAL REPRESENTATIVE
☒ GUARDIAN
☒ CONSERVATOR
☐ TRUSTEE
☐ _____

in the above matter and that this appointment, having been executed on
the 05TH day of MARCH, 2004, is
now in full force and effect, including authorization to receive all
monies, income, principal, interest & dividends of and belonging to said
estate.

RESTRICTIONS:

NONE.

Executed this 05TH day of MARCH, 2004

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Lois H. Roddey

LOIS H. RODDEY

Probate Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE MATTER OF BRIANNA MIRANDA ORLOWSKI

IN THE PROBATE COURT
CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2006ES1200208

This is to certify that
CHRISTOPHER T ORLOWSKI

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 25th day of August, 2006 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: NONE.

Executed this 2nd day of October, 2006

Do not accept a copy of this certificate without
the raised seal of the Probate Court.

Lois H. Roddey
LOIS H. RODDEY, JUDGE OF PROBATE

Probate

090
411

STATE OF SOUTH CAROLINA
COUNTY OF YORK

PROBATE COURT

IN THE MATTER OF KRISTY L. WOOD

CASE NUMBER 2008GC4600005

CERTIFICATE OF APPOINTMENT

This is to certify that

GLADYS SIMS

is/are the duly qualified

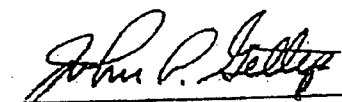
- ☐ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☒ CONSERVATOR
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 3rd day of September, 2008 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: THIS CERTIFICATE ONLY AUTHORIZES THE CONSERVATOR TO ENTER INTO A SETTLEMENT AGREEMENT ON BEHALF OF THE INCAPACITATED PERSON, KRISTY L. WOOD. WHEN THE SETTLEMENT IS RESOLVED, IT WILL NEED TO BE DETERMINED BY THE COURT IF A BOND WILL NEED TO BE FILED BEFORE ANY FUNDS ARE RELEASED.

Executed this 30th day of July, 2009.

Do not accept a copy of this certificate without
the raised seal of the Probate Court.



JOHN P. GETTYS, PROBATE COURT

STATE OF SOUTH CAROLINA
COUNTY OF YORK

PROBATE COURT

IN THE MATTER OF KRISTY L. WOOD

CASE NUMBER 2008GC4600055

CERTIFICATE OF APPOINTMENT

This is to certify that

GLADYS SIMS

is/are the duly qualified

- ☐ PERSONAL REPRESENTATIVE
☒ GUARDIAN
☐ CONSERVATOR
☐ TRUSTEE

In the above matter and that this appointment, having been executed on the 3rd day of September, 2008 is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

Executed this 30th day of July, 2009

Do not accept a copy of this certificate without
the raised seal of the Probate Court.



JOHN P. GETTYS, PROBATE COURT

Josh Thompson

From: Kimball, Jack <jack.kimball@yorkcountygov.com>
Sent: Tuesday, January 17, 2012 10:55 AM
To: Billy Gunn
Cc: Donna Laughridge; Josh Thompson; sking@wardfirm.com;
cmcgowan@mcgowanhood.com; ahutchins@mcgowanhood.com; Motz, Maryann
Subject: RE: SIMS v AMISUB et al- case no 2009-cp-46-5178

Billy et al.:

Thank you. The motion will be removed from the roster.

Jack Kimball

From: Billy Gunn [mailto:BGunn@holcombebomar.com]
Sent: Tuesday, January 17, 2012 10:37 AM
To: Kimball, Jack
Cc: Donna Laughridge; Josh Thompson; Spencer King (s.king@wardfirm.com); Chad McGowan (cmcgowan@mcgowanhood.com); Annie Hutchins (ahutchins@mcgowanhood.com)
Subject: SIMS v AMISUB et al- case no 2009-cp-46-5178

Your Honor,

A Motion to Determine Sufficiency of Responses to Requests to Admit I filed on behalf of Amisub in the above is set before Your Honor for oral argument this coming Thursday the 19th of Jan at 11 am. We have reached an agreement with plaintiffs attorney Chad McGowan which will extinguish the need for a hearing. Plaintiff has agreed to delete qualifying language in her responses, of course reserving all her rights regarding admissibility on all grounds.

This will permit the Court to better spend the time on other weighty matters.

Thanks so much, Judge.

Billy

William U Gunn
HOLCOMBE BOMAR PA

Attorneys at Law

PO Box 1897

Spartanburg SC 29304

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864.316.6255 (mobile)

864.585.3844 (fax)

brunn@holcombebomar.com