RECEIVED
NOV 12 2015
SC Court of Appeals

RECEIVED
NOV 19 2015
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Opinion No. 2014-UP-318 (S.C. Ct. App. filed Aug. 6, 2014)

Linda Johnson, as Personal Representative of
the Estate of Inez Roberts,.....Petitioner,

v.

Heritage Healthcare of Estill, LLC, d/b/a Heritage
of the Lowcountry and/or Uni-Health Post Acute
Network of the Lowcountry, United Clinical Services,
Inc., United Rehab, Inc. and UHS-Pruitt Corporation,.....Respondents.

APPENDIX Vol. I

Monteith P. Todd
J. Michael Montgomery
SOWELL GRAY STEPP & LAFFITE, LLC
Post Office Box 11448
Columbia, S.C. 29211
(803) 929-1400

Jason E. Bring
W. Jerad Rissler
ARNALL GOLDEN GREGORY, LLC
171 17th Street, NW, Suite 2100
Atlanta, Georgia 30363
(404) 873-8500

ATTORNEYS FOR RESPONDENTS

Lee D. Cope
Matthew V. Creech
PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.
Post Office Box 457
Hampton, S.C. 29924
(803) 943-2111

Margie Bright Matthews
BRIGHT MATTHEWS LAW FIRM
Post Office Box 499
Walterboro, S.C. 29488
(843) 549-6029

ATTORNEYS FOR PETITIONER

INDEX TO APPENDIX

Appendix Vol. I..... ROA 1 – ROA 446

Appendix Vol. II.....ROA 447- ROA 698

Appendix Vol. III.

Appellants' Final Brief.....A1

Respondent' Final Brief A35

Appellants' Final Reply Brief A71

Court of Appeals' Opinion.....A93

Petition for Rehearing A97

Return to Petition for Rehearing A103

Order Denying Petition for Rehearing A111

20745

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM HAMPTON COUNTY
Court Of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case Nos. 2010-CP-25-489 and 2010-CP-25-490
South Carolina Court of Appeals No. 2012-207289

LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Respondent,

v.

HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS-PRUITT CORPORATION, Appellants.

RECORD ON APPEAL – VOLUME 1

Monteith P. Todd
J. Michael Montgomery
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Jason E. Bring
W. Jerad Rissler
Arnall Golden Gregory LLP
171 17th Street, NW, Suite 2100
Atlanta, Georgia 30363
(404) 873-8500
Attorneys for Appellants

Robert E. Horner
PO Box 11449
Columbia, SC 29211

Lee D. Cope
Peters, Murdaugh, Parker, Eltzroth & Detrick
Post Office Box 457
Hampton, SC 29924
(803) 943-2111

Charles J. McCutchen
Lanier & Burroughs, LLC
Post Office Drawer 2789
Orangeburg, SC 29116
(803)268-9800

Margie Bright Matthews
Post Office Box 499
Walterboro, SC 29488
(843) 549-6028
Attorneys for Respondent

Matthew V. Creech
PO Box 2500
Ridgeland, SC 29936

RECEIVED
AUG 15 2013
SC Court of Appeals

RECORD ON APPEAL
INDEX

Volume 1

ORDERS AND JUDGMENTS

Order Denying Defendants' Motion to Compel Arbitration, filed November 9, 2011 1

Order Denying Defendants' Motion for Reconsideration, filed January 17, 2012 14

Order Denying Motion to Strike (Wrongful Death), March 4, 2011 16

Order Denying Motion to Strike (Survival), March 4, 2011 18

PLEADINGS

Plaintiff's Notices of Intent 20

Wrongful Death Complaint 66

Survival Action Complaint 79

Answers of Heritage Health Care of Estill, LLC (Wrongful Death and Survival) 90

Answers of United Rehab, Inc. (Wrongful Death and Survival) 102

Answers of United Clinical Services, Inc. (Wrongful Death and Survival) 114

Answers of UHS-Pruitt Corporation (Wrongful Death and Survival) 126

Plaintiff's Motion to Strike (Wrongful Death) 138

Plaintiff's Motion to Strike (Survival Action) 140

Plaintiff's Motion to Compel, February 15, 2011 (Survival Action) 142

Plaintiff's Motion to Compel, July 2011 (Survival Action) 144

Defendants' Memorandum of Law in Support of Motion to Compel Arbitration and Stay Proceedings 146

Plaintiff's Memorandum in Opposition to Defendants' Motion to Compel Arbitration 178

Volume 2

Defendants' Notice of Motion and Motion to Reconsider....447

Plaintiff's Response to Motion to Reconsider....538

Defendants' Notice of Appeal....545

TRANSCRIPTS

Hearing Transcript of February 11, 2011 (Plaintiff's Motion to Strike)....564

Hearing Transcript of October 7, 2011 (Defendant's Motion to Compel Arbitration)....584

Deposition Transcript of Linda Johnson....609

Deposition Transcript of Sally Dobson....630

Stipulation as to Transcript of Hearing of October 7, 2011 (Defendant's Motion to Compel Arbitration)....636

EXHIBITS/DOCUMENTS

Statement of Impasse....643

Arbitration Agreement....645

Power of Attorney....647

Plaintiff's Answers to Defendant Heritage Healthcare of Estill, LLC's First Request for Admissions....652

Heritage Health Care of Estill, LLC's Admission Assessment....656

Heritage Health Care of Estill, LLC's Nurse's Notes....657

Heritage Health Care of Estill, LLC's Wound Care Notes....658

Heritage Health Care of Estill, LLC's Discharge Summary of Inez Roberts....695

AAA Healthcare Policy Statement (January 1, 2003)....696

Certificate of Counsel....697

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,

Plaintiff,

v.

HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni--Health Post Acute Network of the Lowcountry, UNITED CLINCIAL SERVICES, INC., UNITED REHAB, INC., And UHS-PRUITT CORPORATION,

Defendants,

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-25-489 & 490
(Survival and Wrongful Death)

ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION

FILED
2011 NOV -9 PM 2:05
CLERK OF COURT
HAMPTON, S.C.
BY

This matter came before me on October 7, 2011. The Plaintiff was represented by Margie Bright Matthews of Walterboro and Lee D. Cope of Hampton. The Defendants were represented by Michael Montgomery of Columbia.

BACKGROUND

Ms. Inez Roberts was admitted to the Heritage Healthcare of Estill LLC ("HHE") facility on or about August 22, 2007. At that time she was an eighty-five year old female who Plaintiff claims was in good physical condition. During her residency, the Plaintiff, Ms. Linda Johnson, claims that Ms. Roberts' condition worsened and that she developed avoidable pressure sores that resulted in her leg being amputated and her eventual death.

Ms. Johnson, acting as Personal Representative of her mother's Estate, brought wrongful death and survival claims against HHE and the other defendants on April 13, 2010. The claims

therein are the basis for the Defendants Motion to Stay and to Compel Arbitration. For the reasons set forth below, the Defendants' Motion is denied.

DISCUSSION

The policy of this state is to favor arbitration of disputes. Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581 (2003). However, not all arbitration clauses are enforceable. Arbitration is a matter of contract and S.C. courts must determine the enforceability of an arbitration agreement based on principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). In order to have a valid and enforceable contract, there must be a meeting of the minds as to all essential and material terms of the contract. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891 (1989).

A. FORUM SELECTED BY DEFENDANT HHE IS NOT AVAILABLE

The Arbitration Agreement between Ms. Johnson, on behalf of her mother, Ms. Roberts, and HHE is not enforceable. There is no dispute that the agreement at issue was prepared by HHE and calls for any "claim or claims" between the resident and HHE to be handled under the auspices of the American Arbitration Association (AAA). The relevant parties of the Arbitration Agreement is as follows:

> Proceeding. Any arbitration proceeding that takes place under this Arbitration Agreement shall follow the rules of the American Arbitration Association ("AAA") and any resulting decision shall be enforceable by a court of competent jurisdiction. The arbitration proceedings shall be conducted where the Facility is located or as close to the Facility as practical. The arbitration proceeding shall be conducted before one neutral arbitrator selected in accordance with the rules of the AAA. The parties agree to bear their own attorneys' fees and costs associated with the arbitration proceeding.

Effective January 1, 2003, the AAA no longer accepts for arbitration cases involving individual patients in a healthcare facility unless there was a post-dispute agreement to arbitrate. According to the pleadings, the dispute between the parties at issue in this case arose on or about February 2008 when the Plaintiff claims that the HHE staff failed to provide sufficient care such that she developed pressure sores. The arbitration agreement was signed August 22, 2007 by Ms. Johnson as power of attorney for Ms. Roberts. Therefore the Arbitration Agreement was signed "pre-injury." By its own language, the Resident and Facility Arbitration Agreement is not enforceable as the AAA will not hear the matter and the agreement is silent as to the method by which the arbitration shall be conducted absent the AAA rules.

Our Supreme Court has recently addressed this very issue. In Grant v. Magnolia Manor – Greenwood, Inc. et al, 383 S.C. 125, 678 S.E.2d 435 (2009), the Court held that the selection of a arbitration forum is an "integral part of the agreement." There, the chosen forum, the National Health Lawyers Association, took the same position as the AAA in that it would not administer arbitration of a health care personal injury claim unless the arbitration agreement was entered into after the event giving rise to the claim. Id. Because HHE chose the AAA's rules as the guiding principle for arbitration, it is an integral part of the agreement. The chosen forum also negates the ability to look to the Federal Arbitration Agreement ("FAA") for another means of arbitration. The Grant court held that the chosen means by which an arbitrator will be selected and the "rules that govern the arbitration" are not "logistical" nor "ancillary.'" Id. The Defendant HHE knew or should have known that the AAA did not recognize these types of arbitration agreements when it entered into it with Ms. Johnson. It should not look to the Court now to correct its mistake. Accordingly, the arbitration agreement must fail.

Despite the Defendants' contention to the contrary, there is no distinction between a chosen "forum" and an agreement that the parties will use the AAA "rules." In essence the two are inseparable. Rule R-2 of the Commercial Arbitration Rules and Administrative Procedures of the AAA provides as follows:

> When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authorities and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its officers.

Rule R-3 makes reference to the National Roster of Arbitrators. This Rule provides:

> The AAA shall establish and maintain a national roster of commercial arbitrators (National Roster) and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

Rule R-49 addresses administrative fees and provides that: "As a Not-For-Profit Organization, the AAA shall prescribe an initial filing fee and a case service fee to compensate it for the costs of providing administrative services."

Sub-paragraph C of Rule 51 addresses the neutral Arbiter's Compensation and provides that: "Any arrangement"

> for the compensation of a neutral arbiter shall be paid through the AAA and not directly between the parties and the arbitrator.

The American Arbitration Association Rules conclude by revealing that:

> These rules are the copyrighted property of the American Arbitration Association (AAA) and are intended to be used in conjunction with the AAA's administrative services. Unauthorized use or modification of these rules may violate copy write laws and other applicable laws.

Therefore, there is no discernible difference between the AAA as a "forum" or simply using the AAA's "rules."

Thus, an integral component of the parties' agreement has failed. As Grant dictates, when the forum fails the agreement fails and the parties cannot look to the FAA for a replacement forum.

B. THE FAA IS NOT INVOLVED AS THERE IS NO INTERSTATE COMMERCE IN THE AGREEMENT

In addition to Grant, there are reasons why this Court will not look to the FAA to "fix" the arbitration agreement as drafted by HHE. The agreement of the parties is not a transaction involving interstate commerce. This issue was addressed by the South Carolina Supreme Court in the case of Tims vs. Green, 310 S.C. 469, 427, S.E.2d 642 (1993). The Tims case involved an action by a nursing home resident seeking damages for injuries sustained while she was left unattended under a hair dryer at defendant's facility. The arbitration agreement between Tims and the Defendant required submission of any dispute to binding arbitration. The Defendant argued that interstate commerce was involved in the contract as the defendant was a division of a national corporation; it hired employees from out of state; it marketed its services out of state; purchased majority of its goods and equipment from out of state; and contemplated payments from Medicare and Medicaid. The lower court disagreed with the Defendants position finding the contract did not involve interstate commerce rendering the FAA moot. This was affirmed on appeal by the Supreme Court. The Court in Tims stated "although these factors could evidence the centers involvement in interstate commerce we find that their relationship to the agreement between the center and the respondent is insufficient to form the basis of a contract between the parties." Id.

Interstate commerce is a necessary basis for the application of the FAA. Because interstate commerce was absent in the contract between Tims and the Defendant, the Supreme Court refused to require arbitration because the Plaintiff's cause of action was not subject to the Arbitration Act of South Carolina and the Federal Arbitration Act was inapplicable.

In this case; there is no evidence of interstate commerce in the arbitration agreement between the parties. The contract was entered into between Ms. Johnson, a South Carolina resident and Heritage Healthcare of Estill, LLC, a South Carolina LLC. The agreement is void as to any issues of interstate commerce between the parties to the agreement. Furthermore, there has been no evidence of any interstate commerce between the parties to the arbitration agreement.

The Defendants' contention that interstate commerce is stipulated between the parties to the agreement is unavailing. Just as parties cannot "stipulate" to subject matter jurisdiction, parties cannot "stipulate" to interstate commerce that would invoke the FAA. It is not enough to say it must be evidenced in the contract itself. Tims.

Defendants' reference to the fact that Georgia corporations are also defendants is immaterial and not a basis for finding that the arbitration agreement involves interstate commerce. The agreement itself, the focus of this inquiry, does not mention any out of state entity. The agreement specifically limits arbitration to disputes involving the resident and the "facility." The "facility" is HHE, d/b/a Heritage of the Low Country. That is the facility listed in the arbitration agreement and that is the facility as set forth in the pleadings. There is no evidence that Ms. Johnson knew or should have known of the existence of the out of state corporations at the time she entered into this admission agreement. In addition, the responsive pleadings of the out of state corporations deny that they are responsible for the care provided at

the HHE facility. Moreover, there is no signed arbitration agreement or any other contract signed by the Plaintiff and UHS Pruitt, United Rehab and/or United Clinical Services. Accordingly, the FAA does not apply.

As the forum and rules of arbitration chosen by the Defendants in the case at bar are no longer available to the parties, the agreement must be strictly construed against defendant HHE.

C. THERE IS NO MEETING OF THE MINDS

The Court is also concerned about the lack of understanding between the parties in the case as to what exactly was being agreed upon. In order to have a contract, there must be a meeting of the minds as to essential parts of the contract. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891 (1989). Here, there is no meeting of the minds as to what the parties were entering into. The admission director for HHE, Ms. Sally Dobson, was deposed on May 5, 2011 in a different case involving the same arbitration agreement. She testified that she and the administrator explain to residents and family members that arbitration means that if "they have any complaints or any concerns that are not being taken care of in a timely manner then we can go into arbitration." When asked if she was aware that the arbitration agreement required adherence to the AAA rules, she testified as follows:

11

Q Did you know, Ms. Dobson, that the Arbitration Agreement that we're here about today contains a provision that the American Arbitration Association

12

rules have to be followed? Were you aware of that?
A If it's on that sheet of paper, Well, I don't know what the Arbitration Agreements are.
Q Well, how is it if you don't know, how would a resident know or their family member?
A I don't know.
Q Well, don't you think that's an important part of it?
A It is.

Q It's a material part of the contract?
A It is.
Q And but you don't know what it is?
A But I don't know what it is.
Q And so you can't expect a resident to know?
A That's --
MR. RISSLER: Object to the form.
A -- correct.
Q or their personal representative?
A Uh-huh (affirmative).
Q Right?
A Right.
Q Or power of attorney, right?
A Right.
Q Or their family member?
A Right.

The person HHE selected as the person to instruct residents and family members on the documents that they must sign in order to be admitted to the facility does not know what those very documents mean. Quite candidly, she further admits that there is no meeting of the minds as to an integral part of the contract. Accordingly, there is no meeting of the minds and the arbitration agreement must fail.

D. THE DEFENDANTS HAVE WAIVED ARBITRATION

Assuming that the arbitration agreement was valid or that the FAA applied, the Court finds that the Defendants have waived their right to arbitrate these claims. Parties can waive their right to enforce an arbitration agreement. Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (Ct.App. 1999) There are three factors generally considered to determine if a party has waived its right to enforce an arbitration clause: 1) the time between commencement of the action and moving for arbitration, 2) whether the party seeking to compel arbitration engaged in discovery before moving for arbitration, and 3) prejudice to the non-moving party which must be more than mere inconvenience. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007).

The Defendants waited too long to move for arbitration. The Plaintiff began these proceedings by filing a Notice of Intent that was served on the Defendants on or about April 15, 2010. After participating in the Notice of Intent proceedings and a failed mediation, the summons and complaint was filed on October 13, 2010. The instant motion was not filed until August 4, 2011. A nursing home negligence action cannot be commenced until the Plaintiff has filed and served a Notice of Intent. Thus, it is that action that is the appropriate starting place for determining when the party seeking arbitration could have moved to compel arbitration. In fact, S.C. Code 15-79-120 specifically addresses this issue and states that parties can agree to arbitrate prior to filing a medical malpractice action. The Defendants waited fourteen months before moving for arbitration. Our Courts have held that less time constitutes waiver. Rhodes, 374 S.C. at 125, 128 647 S.E.2d at 250, 252 (Ct. App. 2007)

During the long wait, the Defendants engaged in discovery. The Defendants decided to serve and answer discovery. The Defendants decided to take and defend depositions. The Defendants decided to participate in a pre-suit mediation on September 9, 2010 and a second mediation on August 10, 2011. The Defendants decided to participate in procedural and discovery hearings with the Court rather than move to compel arbitration. The Defendants decided to produce 6,990 pages of discovery documents during the course of this litigation. The Defendants have repeatedly availed themselves of this court system for the past sixteen months.

The prejudice to the Plaintiff is more than mere inconvenience. The parties have conducted extensive discovery, participated in two mediations, and attended two Court hearings. Our Courts have held that the cost associated with discovery that may not have been expended in arbitration is an example of prejudice that is beyond mere inconvenience. Evans v. Accent Manufactured Homes, Inc., 352 S.C. 544, 575 S.E.2d 74 (Ct. App. 2003). This Court finds that

significant time and money has been spent by the Plaintiff on a course of action that the Defendant could have sought to avoid much earlier on. The Defendants can point to no reasonable basis for waiting this long to move for arbitration. The only logical explanation for moving at this stage to compel arbitration is unnecessary delay and unfair prejudice to the Plaintiff. Accordingly, the Court finds that the Defendants have waived their right to arbitrate these claims, even if the arbitration agreement was valid.

CONCLUSION

The forum selected by the Defendant HHE will not hear this type of dispute. The South Carolina Supreme Court has determined that the forum selection is an integral part of the agreement and cannot be remedied by following the FAA, which does not apply to this intrastate agreement. Moreover, the Defendants have waited too long to move for arbitration and have substantially prejudiced the Plaintiff in the process such that any arbitration that it could have sought to compel is waived.

Therefore, the Defendants' Motion to Stay and Compel Arbitration is denied.

And it is so ordered.

The Honorable Carmen T. Mullen
Presiding Judge

Beaufort, SC

November 3, 2011

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP2500489
2010CP-25-490

Linda Johnson	Inez Roberts FILED NOV - 9 2011@2:05pm CLERK OF COURT HAMPTON COUNTY	Heritage Healthcare Of Estill Llc Uni-Health Post Acute Care of the Lowcountry United Rehab Inc	Heritage of the Lowcountry United Clinical Services Inc UHs Pruitt Corp
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: CLERK OF COURT

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), 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: _____

☐ 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 DENYING MOTION TO COMPEL ARBITRATION FILED 11-09-2011 SIGNED BY JUDGE MULLEN

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

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

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

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

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

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

Lee Deer Cope Peters M. Parker Eltzroth&Detrick,PA P.O. Box 457 Hampton, SC 29924-0457
Margie Bright Matthews Law Firm of Margie Bright Matthews P.O. Box 499 Walterboro, SC 29488

ATTORNEY(S) FOR THE PLAINTIFF(S)

William Jerad Rissler Attorney at Law 171 17th Street NW Suite 2100 Atlanta, GA 30363
Monteith Powell Todd Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
Robert E. Horner Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
John Michael Montgomery Sowell Gray Stepp & Laffiotte Llc P.O. Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Mylinda D Nettles

Mylinda Nettles, Clerk of Court

Court Reporter

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-25-489, 490

Linda Johnson, as PR of the Estate of Inez Roberts

PLAINTIFF(S)

Heritage Healthcare of Estill, et al.

DEFENDANT(S)

Submitted by: Monteith P. Todd

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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

☒ **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: Defendant's Motion for Reconsideration is respectfully denied without a hearing

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

2012 JAN 17 P 2:10
FILED IN THE OFFICE OF THE CLERK OF COURT FOR HAMPTON CO., S.C.

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

Circuit Court Judge

2142
Judge Code

1-11-12
Date

SCRCP Form 4C (12/2011)

For Clerk of Court Office Use Only

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

Lee Deer Cope Peters M. Parker Blitzroth&Detrick,PA P.O. Box 457 Hampton, SC 29924-0457
Charles McCutchen The Lanier Law Firm P.O. Drawer 2789 Orangeburg, SC 29116
Margie Bright Matthews Law Firm of Margie Bright Matthews P.O. Box 499 Walterboro, SC 29488

ATTORNEY(S) FOR THE PLAINTIFF(S)

William Jerad Rissler Attorney at Law 171 17th Street NW Suite 2100 Atlanta, GA 30363
Monteith Powell Todd Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
Robert E. Horner Sowell Gray Stepp & Laffitte, LLC P.O. Box 11449 Columbia, SC 29211
John Michael Montgomery Sowell Gray Stepp & Laffiette Llc P.O. Box 11449 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Mylinda Nettles - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **ORDER DENYING MOTION TO STRIKE**

This matter came before the Court for hearing on February 11, 2011, on Plaintiff's Motion to Strike filed on December 1, 2010. The parties advised the Court that they resolved all issues raised in the Motion to Strike, except as that motion related to the Fifth and Sixth Defenses of Defendants' Answers raising the defense of arbitration (the "Arbitration Defenses"). In particular, the defendants have withdrawn their defenses of insufficient Affidavit of Merit of Expert, statute of limitations and assumption of the risk and contributory negligence that have been subsumed by comparative negligence.

Plaintiff's basis for moving to strike the Arbitration Defenses was that Defendant had waived the right to assert arbitration as a defense by failing to assert the defense in response to a previous dispute relating to medical records, by participating in a pre-suit mediation, and by participating in discovery in the present litigation. The Defendants argued that waiver was not

appropriate at the Motion to Strike stage of the litigation and could only be raised if the defendants file a Motion to Compel Arbitration.

When considering a motion to strike a defense, the Court must decide whether a party should be allowed to plead a defense without considering any facts that support the defense. *Robinson vs. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct.App. 2009).

The Court agrees with the Defendant and holds that waiver is not appropriate at the Motion to Strike stage as it may require looking beyond the pleadings to determine if the defendants have waived their purported right to arbitrate the claims between the parties. Nothing herein, however, shall be construed to prevent the Plaintiff from asserting the defense of waiver to any Motion to Compel Arbitration that any defendant may raise in this litigation.

Plaintiff's Motion to Strike the Arbitration Defenses is therefore DENIED.

IT IS SO ORDERED.

Dated: 3/4/11
Kingstree, South Carolina

By: _____
Hon. Carmen T. Mullen
Presiding Judge

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	
Plaintiff,	ORDER DENYING MOTION TO STRIKE
v.	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION,	
Defendants.	

This matter came before the Court for hearing on February 11, 2011, on Plaintiff's Motion to Strike filed on December 1, 2010. The parties advised the Court that they resolved all issues raised in the Motion to Strike, except as that motion related to the Fifth and Sixth Defenses of Defendants' Answers raising the defense of arbitration (the "Arbitration Defenses"). In particular, the defendants have withdrawn their defenses of insufficient Affidavit of Merit of Expert, statute of limitations and assumption of the risk and contributory negligence that have been subsumed by comparative negligence.

Plaintiff's basis for moving to strike the Arbitration Defenses was that Defendant had waived the right to assert arbitration as a defense by failing to assert the defense in response to a previous dispute relating to medical records, by participating in a pre-suit mediation, and by participating in discovery in the present litigation. The Defendants argued that waiver was not

appropriate at the Motion to Strike stage of the litigation and could only be raised if the defendants file a Motion to Compel Arbitration.

When considering a motion to strike a defense, the Court must decide whether a party should be allowed to plead a defense without considering any facts that support the defense. *Robinson vs. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct.App. 2009).

The Court agrees with the Defendant and holds that waiver is not appropriate at the Motion to Strike stage as it may require looking beyond the pleadings to determine if the defendants have waived their purported right to arbitrate the claims between the parties. Nothing herein, however, shall be construed to prevent the Plaintiff from asserting the defense of waiver to any Motion to Compel Arbitration that any defendant may raise in this litigation.

Plaintiff's Motion to Strike the Arbitration Defenses is therefore DENIED.

IT IS SO ORDERED.

Dated: 3/4/11
Beaufort, South Carolina

By: _____
Hon. Carmen T. Mullen
Presiding Judge

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v; HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 AMENDED NOTICE OF INTENT TO FILE SUIT *(Survival Action)*

2010 AUG 13 PM 4:41

The Plaintiff, LINDA JOHNSON as Personal Representative of the Estate of INEZ ROBERTS, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant to the S.C. Code Ann. 15-5-90, Survival Action Act, on behalf of the statutory beneficiaries of the deceased for all damages authorized by said statute.

1. **ADVERSE PARTY.**

a. The adverse parties to this action are, upon information and belief Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") an entity organized under the laws of South Carolina with its principal place of business in the County of Hampton, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing home

facility. Defendant United Clinical Services, Inc. (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

b. Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage.

c. Defendant UCS provides clinical services to residents at Heritage.

d. Defendant UR provides rehabilitation services to residents at Heritage.

2. **SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.**

a. The Plaintiff, Linda Johnson, is a citizen and resident of the County of Hampton, State of South Carolina. She is the Personal Representative of the Estate of Inez Roberts, her mother which is open in Hampton County, South Carolina. She files this action to

give notice of her intent to file a Survival Action on behalf of Inez Roberts. (See Attached Survival Action Summons and Complaint marked as Exhibit A.)

b Ms. Roberts was a resident of Heritage from August 22, 2001 until the time of her death on July 31, 2009.

c. While a resident at Heritage, she required skilled nursing care from the staff at the nursing home.

d. The skilled nursing care required included, but was not limited to, proper nutritional support, adequate hydration, range of motion exercises and/or support, proper skin assessments, clinical services, rehabilitation, access to appropriate medical care and attention and reasonable measures to protect and promote quality of life and dignity.

e. That while a resident of Heritage Ms. Roberts developed a pressure sores on her leg and other parts of her body that were painful and required medical attention all to her injury and damage.

f. The Defendants and their staff, employees and agents failed to provide the requisite care and, as such, deviated from the standard of care in the following particulars:

1. In failing to provide adequate care to prevent the development of pressure sores;
2. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

3. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;
4. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;
5. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;
6. In failing to have sufficient and properly trained staff to care for its residents;
7. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;
8. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;
9. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
10. In such other particulars as the evidence may establish.

f. That as a direct and proximate result of the aforesaid deviations from the standard of care that were the negligent, reckless, willful careless, negligent per se and grossly negligent acts of the Defendants, Ms. Inez Roberts did suffer an amputation of her leg which caused her to incur medical bills, endure pain and suffering and other damages recognized by the law.

g. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of Inez Roberts for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

3. STANDARD INTERROGATORIES - *Rule 33(b) SCRCP.*

The information specified in the standard interrogatories *Rule 33(b) SCRCP* is attached hereto as Exhibit B. Exhibit C is Plaintiff's Answers to Standard Interrogatories.

4. AFFIDAVIT OF EXPERT.

The affidavit of an expert specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to § *15-36-100 SCCA.* (See Attached Affidavit of Byron Arbeit as Exhibit D.)

- Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	)	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 AMENDED SUMMONS (Negligence/Gross Negligence) *(Survival Action)* *(Jury Trial Requested)*

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day 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 this Complaint.

-Signature Page to Follow-

EXHIBIT
1A

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY:_____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	)	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 AMENDED COMPLAINT (Negligence/Gross Negligence) *(Survival Action)* *(Jury Trial Requested)*

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina, and brings this action a the Personal Representative of the Estate of Inez Roberts pursuant to the S.C. Code Ann. 15-5-90, the Survival Actions Act, on behalf of the statutory beneficiaries of the deceased for all damages authorized by said statute.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That by reason and in consequence of the aforesaid negligent, careless, reckless, willful, wanton and grossly negligent conduct of the Defendants, Ms. Roberts sustained serious, severe and permanent injury; that the above injuries were of such a nature as to require her to spend money for hospitalization, surgery, doctor's care and other medical necessities; that the Plaintiff suffered great pain, humiliation and mental anguish.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August __, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 **Standard Interrogatories for Notice of Intent to File Suit** *(Survival Action)*

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

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

3. Set forth names and addresses of all insurance companies which have liability and underinsured coverage relating to the claim, and set forth the number or

EXHIBIT B

numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

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

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

6. For each person who you expect to call as an expert witness, either in person or by deposition, at the trial of the case, please state the following:

(a) Give each person's name, business, and residential address, home and office telephone number, and such persons' professional specialty and qualifications;

(b) State the subject matter on which each person is expected to testify;

(c) State the substance of the facts and opinions to which each expert is expected to testify.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

- Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

August___, 2010.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-162
)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	
)	**Plaintiff's Answers to Standard Interrogatories for Notice of Intent to File Suit** *(Survival Action)*
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	
)	
Defendants)	

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

RESPONSE:

Linda Johnson
[redacted]

Mrs. Johnson has no written or recorded statement.

Gloria Gordon
[redacted]

EXHIBIT
C

[redacted]

Mrs. Gordon has no written or recorded statement at this time.

Carlos E. Montenegro, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Montenegro has no written or recorded statement at this time other than medical records.

Michael Blubaugh, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Blubaugh has no written or recorded statement at this time other than medical records.

John Samies, M.D.
The Regional Wound Center
3000 St. Mathews Road
Orangeburg, SC 29118

Dr. Samies has no written or recorded statement at this time other than medical records.

Plaintiff reserves the right to add additional medical providers as they become known.

All staff at the Defendant's facility that was required to or did provide care to Ms. Roberts.

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

RESPONSE:

Plaintiff has medical records that are related to this lawsuit.

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

RESPONSE:

- Loss of enjoyment of Life
- Disfigurement
- Pain and Suffering
- Medical Bills
- Funeral Bill

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

RESPONSE:

Plaintiff cannot identify any expert that he expects to call at the trial of this case at this early stage of discovery. A supplemental response will be forth coming. Furthermore, the Plaintiff reserves the right to call as an expert any medical provider that assisted Ms. Roberts with the injuries being complained of. Each medical provider's testimony will be based upon his or her education, experience and personal observation and treatment of Ms. Roberts. In addition, the Plaintiff will rely upon expert testimony of the expert who provided an Affidavit of Merit attached to the Notice of Intent to File Suit.

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

RESPONSE:

Linda Johnson is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

Gloria Gordon is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

The medical providers identified will testify as to the injuries sustained by Ms. Roberts as a result of the events described in the Complaint. The medical providers will also testify as to their treatment of those injuries.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFF

August___, 2010

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	C/A NO.: 2010-CP-25-_____
LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBBERTS, Plaintiff	
v.	AFFIDAVIT OF MERIT OF BYRON ARBEIT
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry., UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide

EXHIBIT D

adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zavada
Notary Public
State of Florida
Commission # DD666327
Expires May 4, 2011

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS)
Plaintiff(s))

vs.)

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY; UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION)
Defendant(s))

CIVIL ACTION COVERSHEET

2010-CP-25-162
Survival Action

FILED
2010 AUG 13 PM 4:41
BY: HYLIMIA C. TEETLES CLERK OF COURT HAMPTON COUNTY, S.C.

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2006
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmped.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 filled 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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption 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)

Previous Notice of Intent Case # 20___-CP-___-_____
- ☒ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ 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)
- ☐ Mandamus (520)
- ☒ Habeas Corpus (530)
- ☒ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☒ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☒ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ 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)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-_____
)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	NOTICE OF INTENT
)	TO
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	FILE SUIT *(Wrongful Death)*
)	
Defendants)	

FILED
2010 AUG 13 PM 4:41
MYLENDA C. TILLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

The Plaintiff, LINDA JOHNSON as Personal Representative of the Estate of INEZ ROBERTS, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant to the Wrongful Death Act of South Carolina, S.C. Code Ann. 15-51-10 et seq and other applicable statutory and/or common law.

1. ADVERSE PARTY.

a. The adverse parties to this action are, upon information and belief Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") an entity organized under the laws of South Carolina with its principal place of business in the County of Hampton, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing home

facility. Defendant United Clinical Services, Inc. (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

b. Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage.

c. Defendant UCS provides clinical services to residents at Heritage.

d. Defendant UR provides rehabilitation services to residents at Heritage.

2. **SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.**

a. The Plaintiff, Linda Johnson, is a citizen and resident of the County of Hampton, State of South Carolina. She is the Personal Representative of the Estate of Inez Roberts, her mother which is open in Hampton County, South Carolina. She files this action to

give notice of her intent to file a Wrongful Death action on behalf of the statutory beneficiaries of the Estate of Inez Roberts (See Attached Wrongful Death Summons and Complaint marked as Exhibit A.)

b. Ms. Roberts was a resident of Heritage from August 22, 2001 until the time of her death on July 31, 2009.

c. While a resident at Heritage, she required skilled nursing care from the staff at the nursing home.

d. The skilled nursing care required included, but was not limited to, proper nutritional support, adequate hydration; range of motion exercises and/or support, proper skin assessments, clinical services, rehabilitation, access to appropriate medical care and attention and reasonable measures to protect and promote quality of life and dignity.

e. That while a resident of Heritage Ms. Roberts developed a pressure sores on her leg and other parts of her body that were painful and required medical attention all to her injury and damage.

f. The Defendants and their staff, employees and agents failed to provide the requisite care and, as such, deviated from the standard of care in the following particulars:

1. In failing to provide adequate care to prevent the development of pressure sores;
2. In failing to provide sufficient measures to

prevent, treat and/or manage contractures;

3. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;
4. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;
5. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;
6. In failing to have sufficient and properly trained staff to care for its residents;
7. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;
8. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;
9. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
10. In such other particulars as the evidence may establish.

f. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

g. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of Inez Roberts for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

3. STANDARD INTERROGATORIES - *Rule 33(b) SCRCP.*

The information specified in the standard interrogatories *Rule 33(b) SCRCP* is attached hereto as Exhibit B. Exhibit C is Plaintiff's Answers to Standard Interrogatories.

4. AFFIDAVIT OF EXPERT.

The affidavit of an expert specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to § *15-36-100 SCCA.* (See Attached Affidavit of Byron Arbeit as Exhibit D.)

- Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August___, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	C/A NO.: 10-CP-25-_____
	)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
	)	
Plaintiff	)	
v.	)	SUMMONS
	)	(Negligence/Gross Negligence)
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION	)	*(Wrongful Death)* *(Jury Trial Requested)*
	)	
Defendants	)	
	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day 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 this Complaint.

-Signature Page to Follow-

EXHIBIT A

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEB D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August ___, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-_____
)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	COMPLAINT (Negligence/Gross Negligence) *(Wrongful Death)*
)	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	*(Jury Trial Requested)*
)	
Defendants)	

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina, and brings this action as the Personal Representative of the Estate of Inez Roberts pursuant to the S.C. Code Ann. 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of the Estate of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August __, 2010

STATE OF SOUTH CAROLINA:	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	C/A NO.: 10-CP-25-_____
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	**Standard Interrogatories for Notice of Intent to File Suit** *(Wrongful Death)*

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

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

3. Set forth names and addresses of all insurance companies which have liability and underinsured coverage relating to the claim, and set forth the number or

EXHIBIT B

numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

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

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

6. For each person who you expect to call as an expert witness, either in person or by deposition, at the trial of the case, please state the following:

(a) Give each person's name, business, and residential address, home and office telephone number, and such persons' professional specialty and qualifications;

(b) State the subject matter on which each person is expected to testify;

(c) State the substance of the facts and opinions to which each expert is expected to testify.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

- Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

August __, 2010.

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC.; and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-_____ **Plaintiff's Answers to Standard Interrogatories for Notice of Intent to File Suit** ***(Wrongful Death)***

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

RESPONSE:

Linda Johnson
[redacted]

Mrs. Johnson has no written or recorded statement.

Gloria Gordon
[redacted]

EXHIBIT
C

[redacted]

Mrs. Gordon has no written or recorded statement at this time.

Carlos E. Montenegro, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Montenegro has no written or recorded statement at this time other than medical records.

Michael Blubaugh, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Blubaugh has no written or recorded statement at this time other than medical records.

John Samies, M.D.
The Regional Wound Center
3000 St. Mathews Road
Orangeburg, SC 29118

Dr. Samies has no written or recorded statement at this time other than medical records.

Plaintiff reserves the right to add additional medical providers as they become known.

All staff at the Defendant's facility that was required to or did provide care to Ms. Roberts.

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

RESPONSE:

Plaintiff has medical records that are related to this lawsuit.

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

RESPONSE:

- Loss of enjoyment of Life
- Disfigurement
- Pain and Suffering
- Medical Bills
- Funeral Bill

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

RESPONSE:

Plaintiff cannot identify any expert that he expects to call at the trial of this case at this early stage of discovery. A supplemental response will be forth coming. Furthermore, the Plaintiff reserves the right to call as an expert any medical provider that assisted Ms. Roberts with the injuries being complained of. Each medical provider's testimony will be based upon his or her education, experience and personal observation and treatment of Ms. Roberts. In addition, the Plaintiff will rely upon expert testimony of the expert who provided an Affidavit of Merit attached to the Notice of Intent to File Suit.

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

RESPONSE:

Linda Johnson is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

Gloria Gordon is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

The medical providers identified will testify as to the injuries sustained by Ms. Roberts as a result of the events described in the Complaint. The medical providers will also testify as to their treatment of those injuries.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFF

August___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-25-_____ AFFIDAVIT OF MERIT OF BYRON ARBEIT

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my baokground, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide

EXHIBIT
D

adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zavata
Notary Public
State of Florida
Commission # DD668327
Expires May 4, 2011

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS)
Plaintiff(s))

vs.)

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION)
Defendant(s))

CIVIL ACTION COVERSHEET

2010-CP-25-397
Wrongful Death

FILED
2010 AUG 13 PM 4:41
MARION D. GRIFFLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2006
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmped.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 filled 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 Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR Exemption 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)

Previous Notice of Intent Case # 20___-CP-___-_____

- ☒ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ 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)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ 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)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-_____
)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	COMPLAINT
)	(Negligence/Gross Negligence)
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	*(Wrongful Death)*
)	*(Jury Trial Requested)*
Defendants)	

2010 OCT 13 AM 8:52
MYRNA PINKNEY
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina, and brings this action as the Personal Representative of the Estate of Inez Roberts pursuant to the S.C. Code Ann. 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of the Estate of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
October 26, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-25-_____ AFFIDAVIT OF MERIT OF BYRON ARBEIT

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide

EXHIBIT 1

adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbit

Sworn to and subscribed before me:

Notary Public

Date: 12/2-4/2009

Joy Zavada
Notary Public
State of Florida
Commission # DD688327
Expires May 4, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,

Plaintiff

v.

HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION

Defendants

IN THE COURT OF COMMON PLEAS

C/A NO.: 10-CP-25-_____

SUMMONS
(Negligence/Gross Negligence)
(Wrongful Death)
(Jury Trial Requested)

2010 OCT 13 AM 8:52
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY
FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day 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 this Complaint.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
October 12, 2010

STATE OF SOUTH CARO IA)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS

Plaintiff(s)

vs.

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION

Defendant(s)

2010-CP-25-490
Wrongful Death

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2006
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmped.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 filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
OCT 13 AM 8:52
CLERK OF COURT
HAMPTON, S.C.

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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption 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)

Previous Notice of Intent Case # 2010-CP-25-397

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ 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)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ 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)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: 10/12/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-____ **COMPLAINT** **(Negligence/Gross Negligence)** ***(Survival Action)*** ***(Jury Trial Requested)***

2010 OCT 13 AM 8:53

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina, and brings this action a the Personal Representative of the Estate of Inez Roberts pursuant to the S.C. Code Ann. 15-5-90, the Survival Actions Act, on behalf of the statutory beneficiaries of the deceased for all damages authorized by said statute.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That by reason and in consequence of the aforesaid negligent, careless, reckless, willful, wanton and grossly negligent conduct of the Defendants, Ms. Roberts sustained serious, severe and permanent injury; that the above injuries were of such a nature as to require her to spend money for hospitalization, surgery, doctor's care and other medical necessities; that the Plaintiff suffered great pain, humiliation and mental anguish.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
October 12, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)	C/A NO.: 2010-CP-25-_____
LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBERTS,)	
Plaintiff)	
V.)	AFFIDAVIT OF MERIT OF BYRON ARBEIT
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	
Defendants)	

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide



adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zevada
Notary Public
State of Florida
Commission # DD588327
Expires May 4, 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-___
)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	**SUMMONS**
)	**(Negligence/Gross Negligence)**
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	*(Survival Action)* *(Jury Trial Requested)*
)	
Defendants)	

FILED
2010 OCT 13 AM 8:53
MYLINDA D. HEWITT
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY _____

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day 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 this Complaint.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: Lee D. Cope

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
Octogber 12, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS

Plaintiff(s)

vs.

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION

Defendant(s)

2010-CP-25-489
Survival Action

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2006
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmpdlaw.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 filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

2010 OCT 13 AM 8:53

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 Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts	Torts - Professional Malpractice	Torts – Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☒ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case # 2010-CP-25-162	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	☐ Notice/ File Med Mal (230)	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Other (299)	☐ Personal Injury (350)	☐ Possession (450)
		☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)

Inmate Petitions	Judgments/Settlements	Administrative Law/Relief	Appeals
☐ PCR (500)	☐ Death Settlement (700)	☐ Reinstate Driver's License (800)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Foreign Judgment (710)	☐ Judicial Review (810)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Magistrate's Judgment (720)	☐ Relief (820)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Minor Settlement (730)	☐ Permanent Injunction (830)	☐ Municipal (930)
	☐ Transcript Judgment (740)	☐ Forfeiture-Petition (840)	☐ Probate Court (940)
	☐ Lis Pendens (750)	☐ Forfeiture—Consent Order (850)	☐ SCDOT (950)
	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Other (899)	☐ Worker's Comp (960)
			☐ Zoning Board (970)
	☐ Other (799)		☐ Public Service Commission (990)
			☐ Employment Security Comm (991)
			☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date: 10/12/10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **DEFENDANT HERITAGE HEALTHCARE OF ESTILL, LLC'S ANSWER TO COMPLAINT**

2010 NOV 29 PM 12:05

BY _____

COMES NOW Defendant Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or Uni-Health Post Acute Care of the Lowcountry ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. Provided that Plaintiff is not compelled to arbitrate her claims, Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)	CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
Plaintiff,)	DEFENDANT HERITAGE HEALTHCARE OF ESTILL, LLC'S ANSWER TO COMPLAINT
v.)	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION,)	
Defendants.)	

2010 NOV 29 PM 1:37
CLERK OF COURT
HAMPTON COUNTY, S.C.

COMES NOW Defendant Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or Uni-Health Post Acute Care of the Lowcountry ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	**DEFENDANT UNITED REHAB, INC.'S ANSWER TO COMPLAINT**

FILED
2010 NOV 29 PM 12:10
HAMPTON COUNTY, S.C.

COMES NOW Defendant United Rehab, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
Plaintiff,	)	DEFENDANT UNITED REHAB, INC.'S ANSWER TO COMPLAINT
v.	)	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION,	)	
Defendants.	)	

2010 NOV 29 PM 1:10
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

COMES NOW Defendant United Rehab, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **DEFENDANT UNITED CLINICAL SERVICES, INC.'S ANSWER TO COMPLAINT**

FILED
2010 NOV 29 PM 12:12
CLERK OF COURT
HAMPTON CO., S.C.

COMES NOW Defendant United Clinical Services, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corporation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
Plaintiff,	)	**DEFENDANT UNITED CLINICAL SERVICES, INC.'S ANSWER TO COMPLAINT**
v.	)	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION,	)	
Defendants.	)	

FILED
2010 NOV 29 PM 1:10
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

COMES NOW Defendant United Clinical Services, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24 2010.

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **DEFENDANT UHS-PRUITT CORPORATION'S ANSWER TO COMPLAINT**

2010 NOV 29 PM 12:10
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

COMES NOW Defendant UHS-Pruitt Corportation ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	
Plaintiff,	**DEFENDANT UHS-PRUITT CORPORATION'S ANSWER TO COMPLAINT**
v.	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION,	
Defendants.	

FILED
2010 NOV 29 PM 1:38
CLERK OF COURT
HAMPTON COUNTY, S.C.

COMES NOW Defendant UHS-Pruitt Corportation ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24 2010.

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni--Health Post Acute Network of the Lowcountry, UNITED CLINCIAL SERVICES, INC., UNITED REHAB, INC., And UHS-PRUITT CORPORATION, Defendants,	IN THE COURT OF COMMON PLEAS C/A No.: 2010-CP-25-490 (Wrongful Death) **PLAINTIFF'S MOTION TO STRIKE**

TO: JERAD RISSLER, ATTORNEY FOR THE ABOVE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Plaintiff will move before the Presiding Judge of the Fourteenth Judicial Circuit at a time and date set by the Court to strike the Defendants' 5th, 6th, 7th, 9th, 10th, and 11th defense. The basis of said Motion is that the defense raised by the Defendants is inapplicable to this lawsuit.

Consultation with opposing counsel would not prove beneficial to resolving this matter.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P. A.

BY: _____

Lee D. Cope
101 Mulberry Street, East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

Attorneys for the Plaintiff

November 1, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	C/A No.: 2010-CP-25-489
	)	(Survival Action)
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
Plaintiff,	)	
	)	PLAINTIFF'S MOTION TO STRIKE
v.	)	
HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni--Health Post Acute Network of the Lowcountry, UNITED CLINCIAL SERVICES, INC., UNITED REHAB, INC., And UHS-PRUITT CORPORATION,	)	
Defendants,	)	

TO: JERAD RISSLER, ATTORNEY FOR THE ABOVE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Plaintiff will move before the Presiding Judge of the Fourteenth Judicial Circuit at a time and date set by the Court to strike the Defendants' 5th, 6th, 7th, 9th, 10th, and 11th defense. The basis of said Motion is that the defense raised by the Defendants is inapplicable to this lawsuit.

Consultation with opposing counsel would not prove beneficial to resolving this matter.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P. A.

BY: _____

Lee D. Cope
101 Mulberry Street, East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

Attorneys for the Plaintiff

Dec
November 1, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A No.: 2010-CP-25-489
)	(Survival Action)
LINDA JOHNSON, as Personal)	
Representative of the Estate of)	
INEZ ROBERTS,)	
)	
Plaintiff,)	
)	**PLAINTIFF'S MOTION TO COMPEL**
v.)	
)	
HERITAGE HEALTHCARE OF)	
ESTILL, LLC, d/b/a Heritage of the)	
Lowcountry and/or Uni--Health Post)	
Acute Network of the Lowcountry,)	
UNITED CLINCIAL SERVICES,)	
INC., UNITED REHAB, INC.,)	
And UHS-PRUITT)	
CORPORATION,)	
)	
Defendants,)	
)	

TO: JERAD RISSLER, ATTORNEY FOR THE ABOVE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Plaintiff will move before the Presiding Judge of the Fourteenth Judicial Circuit at a time and date set by the Court for an order compelling the Defendants, to answer or respond, completely and without objection, to the following Interrogatories and Request for Production dated November 18, 2010:

Plaintiff's First Set of Interrogatories to Defendant Heritage Healthcare of Estill, LLC, Numbers 3-7 and 13-26

Plaintiff's First Set of Request for Production to Defendant Heritage Healthcare of Estill, LLC, Numbers 1-27, 29, and 31-32.

Plaintiff's First Set of Interrogatories to Defendant UHS-Pruitt Corporation Numbers 3-7 and 13-26

Plaintiff's First Set of Request for Production to Defendant UHS-Pruitt Corporation Numbers 1-11

Plaintiff's First Set of Interrogatories to Defendant United Rehab, Inc., Numbers 2-7 and 11-13

Plaintiff's First Set of Request for Production to Defendant United Rehab, Inc., Numbers 1-16

Plaintiff's First Set of Interrogatories to Defendant United Clinical Services, Inc., Numbers 2-7 and 11-13

Plaintiff's First Set of Request for Production to Defendant United Clinical Services, Inc., Numbers 1-16

The undersigned attorney for the plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope
101 Mulberry Street, East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Charles J. McCutchen, Esq.
Lanier & Burroughs, LLC
Post Office Drawer 2789
Orangeburg, SC 29116

Attorneys for the Plaintiff

February 15, 2011

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni--Health Post Acute Network of the Lowcountry, UNITED CLINCIAL SERVICES, INC., UNITED REHAB, INC., And UHS-PRUITT CORPORATION, Defendants,	IN THE COURT OF COMMON PLEAS C/A No.: 2010-CP-25-489 (Survival Action) PLAINTIFF'S MOTION TO COMPEL

FILED
2011 JUN -8 AM 8:42
MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

TO: JERAD RISSLER, ATTORNEY FOR THE ABOVE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Plaintiff will move before the Presiding Judge of the Fourteenth Judicial Circuit at a time and date set by the Court for an order compelling the Defendants, to answer or respond, completely and without objection, to Plaintiff's First Supplemental Request for Production that were served on or about February 14, 2011, Plaintiff's First Supplemental Interrogatories and Plaintiff's Second Supplemental Request for Production that were served on or about March 10, 2011.

The undersigned attorney for the plaintiff hereby certifies that consultation with opposing counsel would serve no useful purpose.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P. A.

BY: _____

Lee D. Cope
101 Mulberry Street, East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

Attorneys for the Plaintiff

June 6, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	CIVIL ACTION NO.: 10-CP-25-489 & 490
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS-PRUITT CORPORATION, Defendants.	)	**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

FILED
2011 AUG -3 PM 2:19
SYLVIA D. METTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

Defendants Heritage Healthcare of Estill, LLC, United Clinical Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation (collectively hereinafter referred to as "Defendants") hereby submit their Memorandum Of Law In Support Of Their Motion To Compel Arbitration and Stay Proceedings, showing the Court as follows:

I. INTRODUCTION

Defendants' Motion to Compel Arbitration and Stay Proceedings ("Motion") involves an arbitration agreement signed by Plaintiff Linda Johnson, on behalf of Plaintiffs' decedent Inez Roberts, and Heritage Healthcare of Estill, LLC ("Heritage Healthcare"). A true and correct copy of the Resident and Facility Arbitration Agreement ("Arbitration Agreement") is attached hereto as Exhibit A.

The Arbitration Agreement provides that any claims, disputes, or disagreements arising out of or related to the Admission Agreement or any service or care provided to Inez Roberts by Heritage Healthcare would be settled exclusively by binding arbitration. The Arbitration

Agreement expressly applies to "anyone whose Claim is derived through or on behalf of the Resident, including, without being limited to, any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident." (Exhibit A, ¶4.) Accordingly, the Arbitration Agreement should be enforced in accordance with its express terms, and this proceeding should be stayed pending arbitration.

II. STATEMENT OF FACTS

Defendant Heritage Healthcare operates a skilled nursing facility known as Heritage of the Lowcountry ("Lowcountry") located in Estill, South Carolina, in which Inez Roberts was a resident from August 22, 2007 through July 3, 2009. Ms. Roberts was admitted to Lowcountry by her daughter and power of attorney, Linda Johnson. (Deposition of Linda Johnson ("Johnson Depo.," attached hereto as Exhibit B), P.12, LL.12-13.) At the time of Mr. Roberts's admission to Lowcountry, Ms. Johnson was her agent pursuant to a duly recorded general Power of Attorney dated March 31, 2005. (A copy of the Power of Attorney is attached hereto as Exhibit C.) The Power of Attorney specifically authorized Ms. Johnson "to perform all and every act and thing whatsoever requisite and necessary to be done in and about my affairs as full and to all intents and purposes as I might or could do if personally present at the doing thereof...hereby ratifying and confirming all that my said attorney substitute shall lawfully do or cause to be done by virtue hereof." (Exhibit C, p.3) Plaintiff admits that she "had authority to sign the Arbitration Agreement on behalf of Inez B. Roberts pursuant to the Power of Attorney." (Resp. to Req. for Admissions, attached hereto as Exhibit D, No. 7.)

At the time of her admission to Lowcountry, Ms. Roberts had two children, Linda Johnson and Gloria Gordon. Ms. Johnson and Ms. Gordon were Ms. Roberts's closest living relatives. (Johnson Depo., PP. 9-10.) Ms. Roberts and Ms. Gordon both understood that Ms. Johnson was going to admit Ms. Roberts to Lowcountry and did not object to Ms. Johnson

admitting her to Lowcountry. (Johnson Depo. PP. 13-14.) Ms. Johnson believed that she had Ms. Roberts's permission to admit her to Lowcountry. (Johnson Depo. P. 14, LL. 11-13.)

In order to admit Inez Roberts to Lowcountry, Linda Johnson contracted with Lowcountry on behalf of Inez Roberts. Among the contracts that Linda Johnson entered into on behalf of Inez Roberts in order to procure her admission to Lowcountry was the Arbitration Agreement. (Johnson Depo. PP. 18-19; Exh. D, No. 6.) Ms. Johnson denied reading the Arbitration Agreement before signing it, but admitted that she was not prevented from reading it. (Johnson Depo. p. 19.) Ms. Johnson is a college graduate. (Johnson Depo. P. 8.) Based on these contracts, Heritage Healthcare admitted Inez Roberts to Lowcountry, and Inez Roberts remained a resident of Lowcountry from August 22, 2007 until July 3, 2009. During this time, Inez Roberts accepted the benefits of the contracts entered into on her behalf, including the admission to Lowcountry and the receipt of skilled nursing care from Lowcountry.

The Arbitration Agreement provides in part that "any and all controversies, claims, disputes, disagreements or demands of any kind . . . arising out of or related to the Resident's Admission Agreement with the Facility . . . or any service or care provided to the Resident by the Facility shall be settled exclusively by **binding arbitration.**" (Arbitration Agreement, Exhibit A, at 1 (emphasis in original).) The Arbitration Agreement expressly states "that the parties are waiving their right to a trial before a jury or a judge." (Id.) The Arbitration Agreement encompasses all claims involving "negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract." (Id., ¶ 1.) The Arbitration Agreement expresses the parties' intent that it is "binding upon the parties, their successors and assigns, including the agents, employees of the Facility, and anyone whose Claim is derived through or on behalf of the Resident, including, without being limited to, any parent, spouse, child, guardian, executor,

administrator, legal representative, or heir of the Resident." (Id., ¶4.) The Arbitration Agreement has never been revoked. (Johnson Depo. P. 36.)

In her Complaint, Plaintiff alleges that Defendants are liable for injuries that Inez Roberts allegedly sustained while she was a resident of Lowcountry. Plaintiff's allegations are based upon an underlying theory that Inez Roberts did not receive proper care and treatment while at Lowcountry. (See Complaint.) Therefore, the claims asserted in the Complaint fall squarely within the scope of the Arbitration Agreement. (Exhibit D, No. 10.)

III. ARGUMENT AND CITATION OF AUTHORITY

A. The Federal Arbitration Act Governs The Arbitration Agreement.

The Arbitration Agreement is governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (hereinafter, the "FAA"). The Arbitration Agreement constitutes "[a] written provision in . . . a contract evidencing a transaction involving [interstate] commerce" within the meaning of Section 2 of the FAA, making it "valid, irrevocable, and enforceable. . . ." 9 U.S.C. § 2; Allied-Bruce Terminix Cos., Inc. v. Dobson, 513 U.S. 265 (1995). The FAA extends to the outermost limits of Congress's constitutional powers under the Commerce Clause. Thus, an arbitration agreement comes within the FAA if it is executed in connection with a transaction that involves interstate commerce in any way, "even if the parties did not contemplate an interstate commerce connection." Allied-Bruce Terminix Cos., 513 U.S. at 281.

In the Arbitration Agreement, the parties "acknowledge and agree that the Resident's Arbitration Agreement effects a transaction involving interstate commerce, therefore the enforcement of this **Arbitration Agreement** shall be governed by federal law, specifically, the Federal Arbitration Act, notwithstanding any contrary provision of the Admission Agreement or state law." (Arbitration Agreement, Exh. A, ¶ 5.) Further, the care and services provided by Lowcountry to its residents, including Inez Roberts, "involve interstate commerce." The business

that Lowcountry conducts would not be possible were it not for supplies and services that move in interstate commerce. Moreover, although Heritage Healthcare is a South Carolina entity, the Plaintiff specifically named United Clinical Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation as defendants, and these entities are *Georgia* corporations. Thus, interstate commerce is alleged in the Plaintiff's Complaint itself.

Accordingly, the Arbitration Agreement involves interstate commerce and is governed by the FAA.

B. The Arbitration Agreement requires arbitration of the claims asserted by Plaintiffs in the Complaint.

"[T]here is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." Herron v. Century BMW, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010). In enacting the FAA, Congress established a strong federal policy in support of arbitration agreements, "requiring that [courts] 'rigorously enforce agreements to arbitrate.'" Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 226 (1987) (quoting Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)). The purpose of the FAA "was to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation." Booth v. Hume Publishing, Inc., 902 F.2d 925, 932 (11th Cir. 1990) (citing O.R. Securities v. Professional Planning Assocs., 857 F.2d 742, 745-46 (11th Cir. 1988)); accord Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 31 (1991) ("[B]y agreeing to arbitrate, a party 'trades the procedures and opportunities for review in the courtroom for the simplicity, informality, and expedition of arbitration.'"); Southland Corp. v. Keating, 465 U.S. 1, 7 (1984) (recognizing that one of the primary reasons parties choose arbitration is to avoid the expense and delay often associated with litigation). Congress's intent in enacting the FAA was "to

reverse the longstanding judicial hostility to arbitration agreements . . . and to place arbitration agreements upon the same footing as other contracts." Green Tree Financial Corp.-Ala. v. Randolph, 121 S. Ct. 513, 521 (2000) (quoting Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 33 (1991)).

The language of the FAA is not permissive, but instead mandates enforcement of arbitration agreements. Section 4 of the FAA provides in pertinent part as follows:

> The court shall hear the parties, and *upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.*

9 U.S.C. § 4 (emphasis added). "By its terms, the act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts ***shall*** direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218 (1985) (emphasis added).

The only two inquiries relevant to the enforcement of an arbitration agreement under the FAA are (1) whether the parties entered into a valid arbitration agreement; and (2) whether the dispute is within the scope of the arbitration agreement. If both of these questions are answered in the affirmative, "the court ***shall*** make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4 (emphasis added). In resolving this inquiry, the arbitration agreement at issue must be treated as any other contract and not subjected to greater scrutiny because it is an arbitration agreement. Indeed, any doubts regarding arbitrability must be resolved in favor of arbitration. See Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681, 686 (1995); Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265 (1995); Ferro Corp. v. Garrison Industries, Inc., 142 F.3d 926, 932 (6th Cir. 1998).

1. **The parties entered into a valid and binding arbitration agreement.**

The validity of the Arbitration Agreement must be determined in accordance with the general principles of contract law in South Carolina that would apply to any other contract. Herron, 387 S.C. at 531, 693 S.E.2d at 397; Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 130, 678 S.E.2d 435, 438 (2009); Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). Plaintiff acknowledges that she was authorized to execute the Arbitration Agreement on behalf of Ms. Roberts pursuant to a Power of Attorney. (Exhibit D, No. 7.) While Ms. Johnson testified that she did not read the Arbitration Agreement, she also testified that she was not prevented from reading the Arbitration Agreement before she signed it. (Johnson Depo. P. 19.) Ms. Johnson is a college graduate capable of reading and understanding the Arbitration Agreement. The South Carolina Supreme Court has recently reiterated that the failure to read an arbitration is not a defense to its enforcement:

> The Wattses both admitted they did not read the arbitration agreement, and their deposition testimony confirmed the failure to read the documents was solely attributed to them and not to Century's actions. Our jurisprudence forbids us to allow the Wattses to invalidate the enforceability of the arbitration agreement by claiming they did not read it. Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981)) ("A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it.").

Herron, 387 S.C. at 533, 693 S.E.2d at 398.

The execution of the Arbitration Agreement was knowing and voluntary. In fact, the Arbitration Agreement advises of the right to contact an attorney to obtain further explanation regarding the Arbitration Agreement. (Exhibit A, ¶ 8) ("**Right to Consultation. The Resident understands that the Resident has the right to consult an attorney of his or her choice about this Arbitration Agreement and to receive an explanation or clarification from the Facility's admissions coordinator. The Resident is not required to sign this Arbitration**

Agreement in order to be admitted to or to remain in the Facility.") Inez Roberts, by and through her daughter and power of attorney, Linda Johnson, represented that she had the opportunity to read the Arbitration Agreement and understood its contents. Immediately above the signature line and in all upper case type, the Arbitration Agreement states as follows:

> BY SIGNING THIS AGREEMENT, THE RESIDENT ACKNOWLEDGES THAT THE RESIDENT HAS HAD THE OPPORTUNITY TO READ THIS AGREEMENT OR IT HAS BEEN READ TO THE RESIDENT AND THE RESIDENT UNDERSTANDS ITS CONTENTS.

(Exhibit A, p.2.)

2. The Arbitration Agreement covers Plaintiff's claims.

The Arbitration Agreement unambiguously covers Plaintiff's claims, stating that:

> It is hereby understood and agreed by **Heritage of the Low Country** and Linda Johnson and or "Authorized Representative", together referred to as the "Resident") that, regardless of any other agreement or understanding between the Facility and the Resident, any and all controversies, claims, disputes, disagreements or demands of any kind (referred to as a "Claim" or "Claims") arising out of or relating to the Resident's Admission Agreement with the Facility (the "Admission Agreement") or any service or care provided to the Resident by the Facility shall be settled exclusively by **binding arbitration.** This means that the parties are waiving their right to a trial before a jury or a judge.

(Exhibit A, p.1) (emphasis in original). The parties further expressly agreed that the Arbitration Agreement would apply to non-signatories as follows:

> 4. Binding Effect. The parties intend that this **Arbitration Agreement** shall benefit and be binding upon the parties, their successors and assigns, including the agents, employees of the Facility, and anyone whose Claim is derived through or on behalf of the Resident, including, without being limited to, any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

(Exhibit A, ¶ 4.) The claims asserted in the Complaint are all "derived through or on behalf of the Resident [Inez Roberts]." The duties owed to Inez Roberts arise out of her admission to Lowcountry. All of Plaintiff's claims relate to the care provided to Inez Roberts during her residency at Lowcountry. The Arbitration Agreement expressly applies to "any and all

controversies, claims, disputes, disagreements or demands of any kind . . . arising out of or relating to the Resident's Admission Agreement with the Facility . . . or any service or care provided to the Resident by the Facility." (Exhibit A, p. 1.) The Arbitration Agreement further explains that "a Claim shall include . . . violations of any right granted to the Resident by law or by the Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract." (Exhibit A, ¶ 1.) All of Plaintiff's claims in the Complaint arise out of and relate to the "service [and] care provided to [Inez Roberts] by the Facility." (Exhibit A, p.1; see also Exhibit D, No. 10.) Because Plaintiff's claims arise out of Inez Roberts's admission to Lowcountry and are derivative of claims Inez Roberts could have asserted against Lowcountry, they are clearly covered by the Arbitration Agreement. Moreover, as Plaintiff seeks to hold all Defendants liable for the care provided at Lowcountry, all Defendants are entitled to enforce the Arbitration Agreement. Accordingly, Plaintiff is bound by the express terms of the Arbitration Agreement that she signed on behalf of Ms. Roberts.

3. The Arbitration Agreement Must Be Enforced.

In light of the foregoing expressions of controlling law and policy concerning arbitration, the facts of this case require this Court, according to the mandatory language of Sections 2 and 4 of the FAA, to enter an order staying this action and compelling arbitration. As demonstrated above, since the enactment of the FAA, the legislative and judicial policies of the United States and the State of South Carolina have expressly embraced arbitration as a favored method of dispute resolution. In keeping with these policies, the parties contracted to resolve whatever claims they may have against one another through arbitration and not in a judicial forum. A review of the Arbitration Agreement in this case plainly manifests the intent to submit the causes

of action alleged in the Complaint to arbitration. Indeed, the first page of the Arbitration Agreement states that "any and all controversies, claims, disputes, disagreements or demands of any kind (referred to as a 'Claim' or 'Claims') arising out of or relating to the Resident's Admission Agreement with the Facility (the 'Admission Agreement') or any service or care provided to the Resident by the Facility shall be settled exclusively by binding arbitration. This means that the parties are waiving their rights to a trial before a jury or a judge." (Exhibit A, p. 1.) The parties are bound by this plain expression of an agreement to arbitrate, and the Arbitration Agreement must be enforced.

IV. CONCLUSION

The parties to the Arbitration Agreement unequivocally agreed that any disputes relating to the Resident's Admission Agreement or to any service or care provided to Inez Roberts at Heritage Healthcare would be subject to binding arbitration. The FAA requires that such agreements to arbitrate be strictly enforced. Therefore, Defendants respectfully request that this Court compel Plaintiff to pursue her claims, if at all, in arbitration and stay this action pending the outcome of the arbitration proceedings, pursuant to Section 4 of the FAA, 9 U.S.C. § 4.

Respectfully submitted,

By: _____
W. Jerad Rissler
S.C. Bar No. 71662

W. Jerad Rissler, Esq.
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W., Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781
Jerad.Rissler@agg.com

ATTORNEYS FOR THE DEFENDANTS

August 2, 2011
Atlanta, Georgia

Resident and Facility

Arbitration Agreement

Please Read Carefully

It is hereby understood and agreed by Heritage of the Low Country and Linda Gilmore and or "Authorized Representative", together referred to as the "Resident") that, regardless of any other agreement or understanding between the Facility and the Resident, any and all controversies, claims, disputes, disagreements or demands of any kind (referred to as a "Claim" or "Claims") arising out of or relating to the Resident's Admission Agreement with the Facility (the "Admission Agreement") or any service or care provided to the Resident by the Facility shall be settled exclusively by binding arbitration. This means that the parties are waiving their right to a trial before a jury or a judge.

1. Claims. For purposes of this Arbitration Agreement, a Claim shall include, without being limited to, a claim for payment, nonpayment, or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract.

This Arbitration Agreement shall in no way, however, limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility, the long-term care ombudsman, or any appropriate government agency. This Arbitration Agreement does not affect the Facility's duties with respect to the provision of care and treatment.

2. Proceeding. Any arbitration proceeding that takes place under this Arbitration Agreement shall follow the rules of the American Arbitration Association ("AAA") and any resulting decision shall be enforceable by a court of competent jurisdiction. The arbitration proceeding shall be conducted where the Facility is located or as close to the Facility as practical. The arbitration proceeding shall be conducted before one neutral arbitrator selected in accordance with the Rules of the AAA. The parties agree to bear their own attorneys' fees and costs associated with the arbitration proceeding.

All related to the same incident, transaction, or related course of care or services, must be arbitrated in one arbitration proceeding. Any claim that arose before the date that a notice of arbitration is given to the Facility or received by the resident must be presented in the arbitration proceeding for which notice is given or it shall be considered waived and forever barred.

3. Awards. The Resident and the Facility agree that any damages awarded as a result of arbitration under this Arbitration Agreement shall be determined in accordance with state or federal law that is applicable to a comparable civil action, including any prerequisites to, credit against, or limitations on, such

EXHIBIT A

damages. The prevailing party in the arbitration proceeding or in any legal proceedings connected to the arbitration proceeding or this Arbitration Agreement shall be entitled to recover any reasonable attorneys' fees and costs that are actually incurred as a result.

4. Binding Effect. The parties intend that this Arbitration Agreement shall benefit and be binding upon the parties, their successors and assigns, including the agents, employees of the Facility, and anyone whose Claim is derived through or on behalf of the Resident, including, without being limited to, any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

5. Applicable Law. The Resident and the Facility acknowledge and agree that the Resident's Arbitration Agreement effects a transaction involving interstate commerce, therefore the enforcement of this Arbitration Agreement shall be governed by federal law, specifically, the Federal Arbitration Act, notwithstanding any contrary provision of the Admission Agreement or state law. Furthermore, the provisions of this Arbitration Agreement remain in effect after the Resident's Admission Agreement has been terminated.

6. Right to Consultation. The Resident understands that the Resident has the right to consult an attorney of his or her choice about this Arbitration Agreement and to receive an explanation or clarification from the Facility's admissions coordinator. The Resident is not required to sign this Arbitration Agreement in order to be admitted to or to remain in the Facility.

BY SIGNING THIS AGREEMENT, THE RESIDENT ACKNOWLEDGES THAT THE RESIDENT HAS HAD THE OPPORTUNITY TO READ THIS AGREEMENT OR IT HAS BEEN READ TO THE RESIDENT AND THE RESIDENT UNDERSTANDS ITS CONTENTS.

_____ _____
Resident's Signature *Date*

_____
Printed Name of Resident/Patient

/ Linda Johnson 8-22-07
Resident's Authorized Representative *Date*

Linda Johnson
Printed Name of Resident's Authorized Representative

Sally Dobson, ACSSD 8-22-07
Facility's Authorized Agent *Date*

Sally Dobson
Printed Name of Facility's Authorized Agent

_____ Initial

Co-Star Reporting
102 Waters Edge
Hampton, SC 29924

Transcript of:
Linda Johnson

Date: May 5, 2011

Case: LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS v. HERITAGE HEALTHCARE OF ESTILL, LLC, et al

Case No.: 2010-CP-25-489 & 490

Name of Court Reporter: Christina L. Richardson
Notary Public for South Carolina

Page 1

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
CASE NO.: 2010-CP-25-489&490

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS,

PLAINTIFF,

VS.

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A THE HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRDITT CORPORATION,

DEFENDANTS.

DEPOSITION

OF

Linda Johnson

Deposition of Linda Johnson, taken before Christina L. Richardson, a Notary Public in and for the State of South Carolina, commencing at the hour of 10:24 a.m., May 5, 2011, at the office of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., 101 Mulberry Street East, Hampton, South Carolina.

REPORTED BY
CHRISTINA L. RICHARDSON

Page 2

APPEARANCES

FOR THE PLAINTIFF

Las D. Cope, Esq.
Matthew V. Creech, Esq.
Peters, Murdaugh, Eltzroth, & Detrick, P.A.
Post Office Box 457
101 Mulberry Street East
Hampton, South Carolina 29924

FOR THE DEFENDANT

E. Jarad Riesler, Esq.
Arnall, Golden, Gregory, LLP
171 17th Street, NW
Suite 2100
Atlanta, Georgia 30363-1031

REPORTED BY

Christina L. Richardson
Co-Star Reporting
102 Waters Edge Road
Hampton, South Carolina 29924

ALSO PRESENT

Gloria R. Gordon

Page 3

INDEX OF EXAMINATION

STIPULATIONS.....4
DIRECT EXAMINATION BY MR. RIESLER.....5
CERTIFICATE.....38

INDEX OF EXHIBITS

DEFENDANTS'

1 Power of Attorney.....10
2 Arbitration Agreement for Inez Roberts signed by Linda Johnson.....15
3 "Plaintiff's Answers to Defendant Heritage Healthcare of Estill, LLC's First Request for Admissions".....30

*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS FROM DATE OF CERTIFICATION.

EXHIBIT
8

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

* * * *

The reading and signing of this deposition is WAIVED by the deponent and counsel for the respective parties.

MR. COPE: Let's put on the record first, Ratt Creech and I are here today on behalf of Linda Johnson; and it is our understanding that this deposition is for limited purposes of issues relating to an arbitration agreement and whether or not that arbitration agreement is enforceable. We agree with that; however, we obviously believe that it should be strictly applied and that no questions outside that issue can be asked. Of course, reserving the right should this arbitration agreement be found -- if the defendant's file a Motion to Compel Arbitration and if it is denied, we will allow him to come

back and take Ms. Johnson's deposition --

MR. RISSLER: All right.

MR. COPE: -- in accordance with the Rules of Civil Procedure.

MR. RISSLER: And that's our understanding as well, and this is Jered Rissler on the behalf of the Defendant's.

MR. COPE: Okay.

WHEREUPON, Linda Johnson, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

DIRECT EXAMINATION

BY MR. RISSLER:

Q Ms. Johnson, my name is Jered Rissler and I represent the Defendants in this case, Heritage Healthcare of Estill, LLC, which is the operator of the nursing home where your mother, Inez Roberts, resided; as well as United Clinical Services, Inc.; United Rehab, Inc.; and UCS Corporation, which are other Defendants named in the lawsuit that you have filed in this case.

I am going to be taking your deposition today. I'm going to do my best to ask questions as clearly as I can. If at any time I ask a question that you don't understand feel, free to ask me to repeat the question

or to rephrase it and I'll be happy to do that for you, okay?

A Yes.

Q All right. And, as you notice, we've got a court reporter here who's going to be taking down your testimony, so if you could give me a verbal response to my questions instead of you know nodding your head or shaking your head, it'll make it a lot easier for her.

A Okay.

Q And you're doing a good job so far of letting me finish my question before you begin your answer and that also is going to make the court reporter's job a lot easier. Okay?

A Yes.

Q And do you understand that you're under oath this morning?

A Yes.

Q Okay. And that's the same oath you would be under if you were giving testimony at a trial?

A Yes.

Q What did you do to prepare for deposition today?

MR. COPE: Don't tell him anything that we talked about.

Q Did you meet with anyone to prepare for your deposition?

A No.

Q Okay. Did you review any documents in preparation for your deposition?

A No.

Q Did you review your power of attorney or, excuse me, the power of attorney Ms. Roberts signed?

A Would you ask me again?

Q Have you reviewed the power of attorney that your mother signed appointing you as her agent?

A I'm not clearly understanding.

Q Did you review that document this morning?

MR. COPE: Object to the form

Q Are you aware of a Power of Attorney that your mother gave appointing you as her agent?

A Yes.

Q Okay. Have you reviewed that document recently?

A No.

Q Okay. Are you aware of an Arbitration Agreement that you signed when you admitted your mother to Heritage Healthcare of Estill?

A No.

Q And you've not reviewed that document?

A What it is?

Q Have you reviewed the Arbitration Agreement that you signed in this case?

A No.
Q Have you reviewed any other documents in connection with your deposition this morning?
A No.
Q Okay. And could you just tell me your educational background?
A Twelve years of high school and college.
Q Okay, college?
A Yeah.
Q Okay. Did you graduate from college?
A Yes.
Q Okay. What was your degree in?
A BS.
Q I'm sorry?
A BS degree.
Q Okay. And --
A Business and a minor in social work.
Q Any schooling beyond college?
A No.
Q And are you currently employed?
A No.
Q Okay. Have you been employed previously?
A Yes.
Q Okay. What job -- job titles have you held?
A Teacher, substitute teacher, housekeeper and that's the

work.
Q Okay. What grades did you teach?
A Preschool and substitute high school.
Q Okay. And you are the daughter of Inez Roberts?
A Yes.
Q Okay. Did Ms. Roberts have any other children?
A Yes.
Q Okay. And can you give me the names?
A Gloria Gordon.
Q Any other children?
A No.
Q Okay. Were there any other living relatives of Ms. Roberts when she was admitted to Heritage Healthcare of Estill?
A Repeat that.
Q Besides you and Ms. Gordon were -- did Ms. Roberts have any other living relatives at the time she was admitted to the nursing home?
A Yes.
Q Okay. And what relatives did she have?
A She had grands.
Q Okay. Was she married at the time?
A No, deceased husband.
Q Okay. Were you and Ms. Gordon the closest living relatives at the time she was admitted?

A Yes.
Q Okay, thank you. I'm going to hand you what's marked as Exhibit 1, and this is a document titled a Power of Attorney. Do you recognize that document?
(Thereupon, Defendant's Exhibit No. 1 was marked for identification.)
A Yes.
Q Okay. And that's the Power of Attorney appointing you the agent of Ms. Roberts?
A Yes.
Q I'm going to ask you to turn to the third page of that document. I'm going to read that first paragraph. On page three, the first paragraph says, "I do hereby give full power to perform all and every act and thing whatsoever requisite and necessary to be done in an about my affairs as full to all intensive purposes as I might or could do if personally present at the doing thereof, with full power of substitution or revocation, hereby ratifying and confirming all the my said attorney substitute shall lawfully do or cause to be done by virtue hereof." Did I read that correctly?
A Yes.
Q Is it your understanding that Power of Attorney gave you the authority to act on behalf of your mother?
MS. COPE: Object to the form.

A Say it again.
Q Is it your understanding that this Power of Attorney gave you the authority to act on behalf of your mother?
MR. COPE: Same objection.
Q You can answer the question.
A Repeat one more time what you say. Explain.
Q Certainly. This Power of Attorney, is it your understanding that this gave you the authority to act on behalf of your mother?
MR. COPE: Same objection.
A Could you break it down again?
Q Sure. Let me ask you this: Do you have an understanding of the purpose of this Power of Attorney?
A Yes.
Q Okay. And what was your understanding of the purpose of this Power of Attorney?
A If my mother was not able to -- to do than I was to carry out her wishes.
Q All right. I'm going to read for you the second paragraph on that third page and I'm going to ask you to follow along. It says, "I hereby declare, that any act or thing lawfully done here under by my said attorney, shall be binding on myself and my heirs, assigns, legal and personal representatives. I hereby ratify all that my attorney may do in the premise by

Page 12

virtue of this Power of Attorney, which shall remain in full force and effect until written notice of its revocation, signed by me, shall have been received by the grantee herein." Did I read that correctly?

A Yes.

Q Okay. Do you know whether this Power of Attorney has ever been revoked?

A No, I don't know. No.

Q Okay. Maybe I should ask that more clearly, Has the Power of Attorney ever been revoked?

A No.

Q Now you admitted your mom to Heritage of Estill?

A Yes.

Q Okay. And who was present when you conducted the admission? When you signed the admissions documents who was present at that?

A Myself.

Q Okay. Was anybody else there?

A No.

Q Did you discuss your mother's admission to Heritage of Estill before you admitted her there?

A Yes.

Q Okay. Who did you discuss it with?

A Family.

Q Okay. Which family members?

Page 13

A My sister.

Q Okay. Did you discuss it with anyone else?

A No.

Q Did you discuss it with your mother?

A No.

Q Okay. Did she understand that you were going to be admitting her to Heritage of Estill?

A Yes.

Q Okay. And you said you also discussed her admission to Heritage of Estill with Ms. Gordon?

A Yes.

Q Okay. And she understood that you were going to be admitting your mother to Heritage of Estill?

A Yes.

Q Did you have permission from your mother and from Ms. Gordon to admit your mother to Heritage of Estill?

MR. COPE: Object to the form.

A Repeat that again, please.

Q Did you have permission from your mother to admit her to Heritage of Estill?

A No.

Q You admitted her to Heritage of Estill against her wishes?

MR. COPE: Object to the form.

A She was there.

Page 14

Q Did you admit her -- where was she before you admitted her to Heritage of Estill? Was she -- did she come from a hospital or home?

A She came from the hospital?

Q Okay. And did she understand that you were going to be admitting her to Heritage of Estill?

A I don't know. I don't know.

Q Okay. Did she ever object to you admitting her to Heritage of Estill?

A No.

Q And did you believe that you had her permission to admit her to Heritage of Estill?

A Yes.

Q Who did you meet with in order to have your mother to Heritage of Estill?

A Ms. Sally Dobson.

Q Did you know Ms. Sally Dobson before -- before the date that you admitted your mother to Heritage of Estill?

A Yes.

Q And how did you know her?

A From the pharmacy.

Q Okay. How long had you known Ms. Dobson?

A About 30 years.

Q Okay. Had you had many encounters with MS. Dobson? Had you had many dealings with her, Ms. Dobson?

Page 15

A Somewhat.

Q Did you know Ms. Dobson personally?

A No.

Q Okay. Do you believe Ms. Dobson to be an honest person?

A Yes.

Q When did you meet with her to admit your mom to the facility?

A It was 2009 -- no, 2008 or two thousand -- when she left the hospital.

Q Okay. Do you remember if you met with Ms. Dobson sometime before your mom was admitted to Heritage of Estill or if you did it on the same day she was admitted? Do you remember that?

A Say that again.

Q Do you remember whether you met with Ms. Dobson some period of time before your mother was transferred from the hospital to the nursing home?

A The day of.

Q You met with her the day of?

A Yes.

Q Okay. Are you sure about that?

MR. COPE: Object to the form.

A Yes.

Q Okay. Tell me about that meeting? What happened at

Page 16

that meeting?
A I went to Bacill; my mother had arrived. They said she should be there, and she arrived, and I had to come in to fill out papers for her to be admitted. She was sent from Aiken.
Q Okay. Your mother was already at the facility when you came in to sign the papers?
A Yes.
Q All right. How long did the admissions process take, the signing of the paper work?
A I don't remember exactly.
Q Do you know approximately?
A Maybe between 30 minutes to an hour; I'm not sure.
Q Okay. Do you remember what was discussed at the -- at that meeting?
A That she'll be well taken care of, getting therapy.
Q Anything else that you can remember?
A I would be able to visit whenever I desired.
Q Anything else that you can remember?
A She would be in good hands.
Q And was it just you and Sally Dobson at this meeting where you admitted your mom to Heritage of Estill?
A Yes.
Q Okay. Did you sign some documents in connection with that admission?

Page 17

A Some papers, yes.
Q All right. Did Ms. Dobson go over that paperwork with you?
A She went through some papers.
Q Were you given an opportunity to read the papers that you signed?
A She read through them and I signed.
Q All right. Did you have the opportunity to read the
MR. COPE: Object to the form.
A I just remember.
Q I'm sorry?
A I just remember.
Q Were you allowed the opportunity to ask questions about any of the documents that you signed?
MR. COPE: Object to the form.
A I don't remember at the time.
Q And do you remember if you did ask any questions about any of the documents you were signing?
A Repeat what you asked me. I'm not being funny or anything.
Q No, that's okay. Do you remember if you did ask any questions about any of the documents you were signing?
A At this point I don't remember, at this point, of asking any questions; only that whether she would be taken care of.

Page 18

Q Okay. But you don't remember asking any questions besides that?
A There's a lot of questions. I'm trying to remember that day. If she needed me, would I be contacted?
Q Any other questions that you can remember at this time?
A At this moment, not.
Q Okay. Is there any information that Ms. Dobson gave you about the admissions paperwork that you believe was incorrect?
MR. COPE: Object to the form.
A I don't know. I'm not sure at this point.
Q Do you believe that Ms. Dobson misled you in any way about the admissions paperwork you were signing?
MR. COPE: Object to the form.
A I'm not sure.
Q I'm going to hand you what's marked as Exhibit 2 the Arbitration Agreement. Do you recognize that document?
(Thereupon, Defendant's Exhibit No. 2 was marked for identification.)
A Yes.
Q Do you recognize your signature on the second page of that document?
A Yes, here.
Q And that appears to be your signature?
A Here, yes.

Page 19

Q Okay. Did you read the Arbitration Agreement before signing it?
A No.
Q Did anyone prevent you from reading the Arbitration Agreement before signing it?
MR. COPE: Object to the form.
A What did you say?
Q Did anyone prevent you from reading this Arbitration Agreement before you signed it?
A No.
Q All right. Did anyone explain this document to you?
A Did they read it, you said? Explain -- say that again.
Q Yeah. At -- and referring to at the time during the admissions process with Sally Dobson, did anyone explain this Arbitration Agreement to you?
A I believe so, but I'm not -- they told me and I signed. No.
Q Okay. What do you remember being told to you about this document before you signed it?
A That my mother being admission and I need to sign this to get her in.
Q Okay. And who told you that?
A Ms. Dobson was the one that did the enrolling.
Q Okay. How did she phrase it?
A I don't really remember exactly her words, it just was

-- I don't remember exactly.
Q Okay. Do you remember in general?
A No.
Q Did you ask anyone for an explanation of this document, and again, referring to at the time of the meeting with Ms. Dobson?
A No.
Q Were you given any information about this document which was not true?
MR. COPE: Object to the form.
A Say it again.
Q Were you given any information by Ms. Dobson about this document that you believe is untrue?
MR. COPE: Same objection.
A Repeat the question.
Q Sure. Were you given any information about this document by Ms. Dobson that you believe was not the truth?
MR. COPE: Object to the form.
A I'm not sure.
Q Did anyone tell you that you had to sign this document in order for your mother to be admitted to Heritage of Estill?
A Yes, I had to sign the papers.
Q Did anyone tell you that you had to sign this document,

the Arbitration Agreement, in order to have your mother admitted to Heritage of Estill?
A Yes.
Q Okay. Who told you that?
A Ms. Dobson.
Q Okay. Do you remember how she phrased it?
MR. COPE: Jerry, I'm going to object. I mean you've asked that same question already? You asked, "Do you remember how she phrased it?" and she said "Not specifically." You said, "Do you remember generally?" She said, "Not really."
MR. RISSLER: This is a pretty important point if --
MR. COPE: I know, but you've already asked it --
MR. RISSLER: -- what she was told.
MR. COPE: -- and she answer it. She said, "I don't have a specific recollection and I don't have a general recollection." You asked that question. We can have the court reporter to read it back, but you've asked that question already.
Q Okay. Do you recall when it was that she told you that you had to sign this document to have your mother admitted?
A No, I don't.

Q I'm going to read for you the first paragraph of this document and ask you to follow along with me. "It is hereby understood and agreed that Heritage of the Lowcountry, and Linda Johnson, and/or Authorized Representative, together referred to as the Resident that, regardless of any other agreement or understanding between the facility and the resident, any and all controversies, claims, disputes, disagreements, or demands at any time, referred to as a claim or claims, arising out of or related to the Residents Admission Agreement with the Facility, the Admission Agreement, or any service or care provided to the Resident by the Facility shall be settled exclusively by binding arbitration." Did I read that first sentence correctly?
A Yes.
Q What is your understanding of that sentence?
A That -- that I give up my rights.
Q I'm sorry?
A That giving up my rights.
Q Which rights specifically?
A [Looks over to Mr. Cope.]
MR. COPE: Let me clarify, Linda. You looked like you wanted to ask me a question. As I told you, I can't answer any questions, but if you have

any questions you need to direct that to Mr. Rissler. Okay?
A Repeat that again. Or what are you asking?
Q I'm asking if you have an understanding of that first sentence of this Arbitration Agreement?
A No.
Q Okay. The second sentence, which is the last sentence of that first paragraph of the first page of the Arbitration Agreement. It says, "This means that the parties are waiving their right to a trial before a jury or a judge." Do you understand that sentence?
A No.
Q Okay. Do you understand that by signing the Arbitration Agreement the parties are waiving their right to a trial by a jury or a judge?
MR. COPE: Object to the form.
MS. GORDON: No.
Q I'm sorry, Ms. Gordon; I hear you giving answers and --
MS. GORDON: No, no.
Q -- that --
MS. GORDON: Yes or no. She's talking too much.
MR. COPE: Let's go off the record real quick.
(Whereupon, off the record at 11:07

Page 24

a.m.; back on the record at 11:09 a.m.)

Q. I was asking you that second sentence of the first paragraph on the first page of the Arbitration Agreement, says that "This means that the parties are waving their right to a trial before a jury or a judge;" Do you understand that language?

MR. COPE: Object to the form.

A. Ask me the question again.

Q. Sure. "This means that the parties are waving their right to a trial before a jury or a judge," do you understand that language?

MR. COPE: Same objection.

A. Yes.

Q. Okay. And how do you understand that language -- or strike that. What do you understand that language to mean?

A. We would need to pass by, pass over.

Q. Okay. So what do you understand that sentence as a whole to mean?

A. That my rights to a trial would by waivered. They waivered it.

Q. All right. I'm going to read to you now what's been numbered paragraph two on the first page of that Arbitration Agreement. I'm going to read that first sentence. "Any arbitration proceeding that takes place

Page 25

under this Arbitration Agreement shall follow the rules of the American Arbitration Association, the triple A, and any resulting decision shall be enforceable by a court of competent jurisdiction." Did you read that paragraph before signing the Arbitration Agreement?

A. Where were you reading?

Q. Do you see the paragraph about midway down the first page that's numbered two?

A. Yeah, number two.

Q. It says "Proceeding," do you see that? The "Proceeding" is underlined?

A. (Nods head up and down in an affirmative response.)

Q. Okay. And that first sentence it says, "Any arbitration proceeding that takes place under this Arbitration Agreement shall follow the rules of the American Arbitration Association, the triple A, and any resulting decision shall be enforceable by a court of competent jurisdiction." Do you see that sentence?

A. Yes.

Q. Okay. Had you read that sentence before you signed the Arbitration Agreement?

A. No.

Q. Okay. Did you have any discussions with anyone at Heritage of Estill about this paragraph before you signed this Arbitration Agreement?

Page 26

A. No.

Q. Okay. At the time that you signed the Arbitration Agreement, was the reference to the rules of the American Arbitration Association important to you?

A. Repeat your question.

Q. Let me, maybe, phrase it another way. It's my understanding that you did not read that paragraph two before you signed the Arbitration Agreement; is that correct?

A. Say it again.

Q. I believe you just told me that you did not read paragraph two before you signed the Arbitration Agreement?

A. I did not read it.

Q. Okay. And I'm assuming that if you didn't read it before you signed the agreement it could've played a role in your decision to sign the agreement; is that a fair assumption?

MR. COPE: Object to the form.

A. Can you repeat that again or --

Q. Sure.

A. -- break it down?

Q. Yes. You had said that you didn't read paragraph two before signing the Arbitration Agreement, and what I'm asking is, was the reference -- at the time you signed

Page 27

the Arbitration Agreement was the reference to the rules of the American Arbitration Association important to you?

MR. COPE: Object to the form.

A. Again please, sir.

MR. RISSLER: (To the court reporter:) Could you repeat the question for me or read it back?

THE COURT REPORTER: Would you like for me to play it back?

MR. RISSLER: That's fine.

(Play back is as follows:)

"Q. Yes. You had said that you didn't read paragraph two before signing the Arbitration Agreement, and what I'm asking is, was the reference -- at the time you signed the Arbitration Agreement was the reference to the rules of the American Arbitration Association important to you?"

"MR. COPE: Object to the form."

MR. COPE: Same objection.

A. No.

Q. I'm sorry?

A. No.

Q. Okay. The rules of the American Arbitration Association was not something that you took into

consideration when you decided to sign the Arbitration Agreement?

MR. COPE: Object to the form.

Q Is that correct?

MR. COPE: Same objection.

A Could you ask your question again?

Q When you signed the Arbitration Agreement, did you take into consideration, was one of the things you considered the reference to rules to the American Arbitration Association?

MR. COPE: Object to the form.

A I don't remember whether I -- I don't remember. May I be excused to go to the restroom?

Q Yes.

MR. COPE: Sure.

(Whereupon, off the record at 11:10 a.m.; back on the record at 11:22 a.m.)

Q Ms. Johnson, I'm going to turn your attention back to the Arbitration Agreement and on the second page of that there's a numbered paragraph six, it's in bold type. The last sentence of that says, "The Resident is not required to sign this Arbitration Agreement in order to be admitted or to remain in the Facility." Do you see that sentence?

A Yes.

Q Okay. And did I read that correctly?

A I was a little behind.

Q Do you want me to read it again?

A Yes.

Q Okay. "The Resident is not required to sign this Arbitration Agreement in order to be admitted or to remain in the Facility." Did I read that correctly?

A Yes.

Q And what is your understanding of that sentence?

MR. COPE: Object to the form.

A That the resident didn't have to sign in order to be in the facility.

Q All right. And below that in all caps, do you see that section that's in all capital letters?

A Yes.

Q It says, "By signing this agreement, the Resident acknowledges that the Resident has had the opportunity to read this agreement or it has been read to the Resident and the Resident understands its content." Did I read that correctly?

A Yes.

Q And did you have the opportunity to read the Arbitration Agreement?

A No.

Q You didn't have an opportunity to read that?

MR. COPE: Object to the form.

A I don't remember.

Q Why did you answer "no" to that question? Did anyone prevent you from reading the Arbitration Agreement?

A No.

Q Okay. And that's your signature above the line that says "Resident's Authorized Representative"?

A What'd you ask me?

Q This is your signature above "Resident's Authorized Representative"?

A Yes.

Q Okay. I'm going to hand you what's marked as Exhibit 3. Have you seen that document before today?

(Whereupon, Defendant's Exhibit No. 3 was marked for identification.)

A No.

Q I'm going to ask you, on the second page of that document of Exhibit 3, request number three says, "Please admit that you're a Personal Representative for Inez Roberts in the admission records at Heritage Healthcare and that throughout Inez Roberts' stay at Heritage Healthcare, the nursing home staff would advise and consult with and notify you of Inez Roberts' medical condition." Did I read that correctly?

A Yes.

Q Okay. And then below that response is "Denied," do you see that?

A Yes.

Q Okay. Do you deny that you are the Personal Representative for Inez Roberts in the admission records at Heritage Healthcare?

MR. COPE: Can you repeat that last question?

Q Yes. Do you deny that you are the Personal Representative for Inez Roberts in the admission records at Heritage Healthcare?

MR. COPE: Object to the form.

A Your question again? I want to...

Q Okay. I guess here's what I'm getting at, the request number three is denied. If you could read request number 3, I'm trying to figure out what the denial is or why it's denied. If you could read request number 3 and tell me --

MR. COPE: And I'm going to object as this being an outside of the scope. Now, you know, you wanted to ask about the Arbitration Agreement and you've asked. You've sent these Request for Admission, and I think this is getting it to -- any maybe this is what y'all want to do, I don't know, y'all want to start doing more discovery, but I think this is outside of it. She's already

said that she didn't -- she hasn't seen this. Obviously, her lawyer's prepared this. If you want to ask me, not in the deposition, I'll be glad to explain. But there's a discovery process for that and I think it's outside the scope of you wanting to ask her about the Arbitration Agreement.

MR. RISSLER: Well actions that she took on behalf of her mother and her authority to act --

MR. COPE: I'm just saying, if -- if you keep wandering here I'm going to go ahead and consider this to be the one shot at the deposition and that's it, because now you're getting in to why did we answer the question the way we did, and there's a process for doing that which is mainly a full blown deposition or additional interrogatories. And all I'm saying is, I think you're starting to get more into a full blown deposition. You've already been through and read the majority of the Arbitration Agreement; you've been through the admission process, so. And she says she hasn't seen this before today.

MR. RISSLER: Okay.

MR. COPE: So what are you going to continue asking her about, everything that she did as a

part of the admission process?

MR. RISSLER: No.

MR. COPE: Because that's outside the scope of the Arbitration Agreement.

MR. RISSLER: Her authority -- now if her authority to sign the Arbitration Agreement is not being contested, then there's no reason for me to go into this. If we're contesting -- and that's part of the problem is that the interrogatory response that we got when we asked why is the -- you know, why do you contest the arbitration, we got a one sentence response: "The Arbitration Agreement is unenforceable," and I have to go into this. If you're not contesting her authority to sign, I don't need to go into this under the -- if you're not contesting her authority to sign under the Power of Attorney then that's fine.

MR. COPE: We admitted --

MR. RISSLER: We can skip this.

MR. COPE: -- Number 2. All this comes out to a legal issue.

MR. RISSLER: Okay.

MR. COPE: It's not a factual issue, so I'm going to object. But like I say, if you want to continue this I'm not going to tell her not to

answer, but I can promise you if we end up not going through arbitration, if we continue getting into all these factual issues, I'm going to consider this the one shot at a deposition.

MR. RISSLER: Okay. That's fine we can -- we can skip to something else.

MR. COPE: Okay.

Q And going back to the Arbitration Agreement, I understand that -- that it's your contention that the Arbitration Agreement cannot be enforced; is that correct?

A State it again.

Q It's my understanding you as the plaintiff in this case are contending that the Arbitration Agreement cannot be enforced; is that correct?

MR. COPE: Object to the form.

A Repeat your question.

Q Okay. Going back to Exhibit 2, the Arbitration Agreement that you signed, is there any reason that you believe that that Arbitration Agreement should not be enforced?

MR. COPE: I think that, obviously, that relies on her consultation with counsel.

Q I don't want to know what your counsel has told you about the Arbitration Agreement. I want to know based

on facts, based on your signature on the Arbitration Agreement, based on your dealings with Sally Dobson and signing the arbitration, based on your signature on the Arbitration Agreement, is there any reason that you believe that this Arbitration Agreement should not be enforced?

MR. COPE: Object to the form. And you know, Jarad, she can't answer that without relying on counsel. That is a legal position and she can't answer that without relying on what her lawyer's have advised her on.

MR. RISSLER: Okay.

MR. COPE: No different than your client can't sit there and testify, I assume, on why this is legally enforceable.

MR. RISSLER: Okay.

MR. COPE: Isn't that what they hire you for?

MR. RISSLER: That is.

MR. COPE: Well then --

MR. RISSLER: Okay.

MR. COPE: -- by the same token she can't answer that without divulging what she's learned through consultation with us. Is that agreeable?

MR. RISSLER: Fair enough.

MR. COPE: Okay.

Q All right. You did sign the Arbitration Agreement, correct?
A Yes.
Q To your knowledge has the Arbitration Agreement ever been revoked? In other words, have you ever said to anyone at Heritage of Estill, "I don't want to abide by this anymore"?
A No.
Q Okay. Have you ever requested that any dispute between you and Heritage of Estill be resolved by arbitration?
MR. COPE: Wait, state that again?
Q Has she ever -- have you ever requested that any dispute between you and Heritage of Estill be resolved by arbitration?
A Repeat.
Q Yes. Have -- have you ever requested that any dispute between you or your mother and Heritage of Estill be resolved by arbitration?
A No.
Q Has Heritage Healthcare ever asserted a claim against your mother that you believe was required to be resolved by arbitration?
A Repeat.
Q I can probably ask it a little bit simpler. Has Heritage of Estill ever asserted any claims against

your mother?
A No.
MR. RISSLER: Those are all the questions I've got.
MR. COPE: Okay. We don't have any questions.

WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION IS CONCLUDED AT 11:37 A.M.

THE DEPONENT WAIVED THE READING AND SIGNING OF THE DEPOSITION.

(*This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF HAMPTON)

Be it known that I took the foregoing deposition of Linda Johnson;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn or affirmed to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true, accurate and complete transcript of the testimony given by said deponent after first being duly sworn, at the time and place aforesaid, to the best of my skill and ability; said deposition was reported by method of Stenomask utilizing speech recognition with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25th day of June, 2011.

Christina L. Richardson
Professional Court Reporter

Notary in and for the State of South Carolina
My Commission Expires: May 26, 2015

2005001 74
Filed for Record in
HAMPTON COUNTY SC
MYLINDA NETTLES
03-31-2005 At 03:45 pm.
D-POA 16.00
Book 299 Page 345 - 349

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

POWER OF ATTORNEY

Instrument Book Page
2005000000674 299 345

KNOW ALL MEN BY THESE PRESENTS, that I, INEZ B. ROBERTS, a citizen of Hampton County, South Carolina do hereby constitute and appoint LINDA JOHNSON, my true and lawful attorney for me in my name, place and stead:

To lease, let, take possession, bargain, sell, assign, convey, pledge, mortgage and encumber, repair, insure and generally manage, any and all property, both real and personal, which I own, or may hereafter acquire from any source; to sign, execute and deliver any and all legal documents in connection therewith, and in all ways and in every way to deal with all property real and personal which I may at any time hereafter own, and with all rights or interest at any time owned or possessed by me with respect to any such property, and with all or any part of such property rights and interest in any and all lawful ways in which I could myself deal with such property, rights and interest, and each part thereof. To convey, waive, release and relinquish all and every dower rights, all and every homestead estates, and all and every rights under and by virtue of the homestead exemption laws. To deposit any monies received from any source whatever for me, and in my name with any bank, and to draw and deliver checks in my name against said monies and other monies to be deposited in my name or to my credit; to endorse, discount, sell, and extend upon such terms as

Initials: IBR

Witness #1

Witness #2

A TRUE COPY
CLERK OF COURT FOR
HAMPTON COUNTY, S.C.
DATE 9-4-07

LINDA JOHNSON
PO BOX 234
BRUNSON, SC 29911

EXHIBIT
C

my attorney may deem best, all checks, drafts, notes, bills of exchange, trade and bankers' acceptances, and other negotiable or nonnegotiable papers; payable to me or to my order; and to accept and pay any note, draft, check, trade acceptances or bills of exchange drawn upon me in relation to said matters; to sell, transfer, and assign all and any stock, or certificates thereof, standing in my name, and to collect all dividends, coupons and interest on any stock, bonds, or other securities now or hereafter owned by me; to ask, demand, sue for, recover, collect, settle, compound, compromise and adjust, by payment or otherwise, any and all debts, claims or demands due or to become due to me or against me, and to make, give and execute full release, acquittance or other discharge for the same, whether under seal or otherwise; to execute vouchers in my behalf for any and all allowances and reimbursements properly payable to me by the United States; to take possession and order the removal and shipment of any property from any post, warehouse, depot, dock or other place of storage or safekeeping, government or private; to execute any forms which may be necessary to effect any allotment of or deduction from any pay and allowances; to execute any form which I may be required to execute in connection with obtaining dependence allowances under any authority statutory or otherwise; to do all things necessary concerning any insurance policies, including the right to change beneficiary.

Initials: RR (IBR)

Witness #1

Witness #2

I do hereby give full power to perform all and every act and thing whatsoever requisite and necessary to be done in and about my affairs as full to all intents and purposes as I might or could do if personally present at the doing thereof, with full power of substitution or revocation, hereby ratifying and confirming all that my said attorney substitute shall lawfully do or cause to be done by virtue hereof;

I HEREBY DECLARE, that any act or thing lawfully done hereunder by my said attorney, shall be binding on myself and my heirs, assigns, legal and personal representatives. I hereby ratify all that my attorney may do in the premise by virtue of this Power of Attorney, which shall remain in full force and effect until written notice of its revocation, signed by me, shall have been received by the grantee herein.

IT IS MY FURTHER INTENTION, that all express words and terms, used herein granting powers and rights, be construed in their broadest sense to include all synonymous terms and implied powers thereunder.

This Power of Attorney shall not be affected by physical disability or mental incompetence of the principal, which renders the principal incapable of managing her estate.

I, INEZ B. ROBERTS, the principal, sign my name to this instrument this 31 day, March, 2005 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Power of Attorney and that I sign it willingly, that I execute it as

Initials: IBR

Witness #1

Witness #2

my free and voluntary act for the purposes therein expressed, and I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Inez B Roberts

INEZ B. ROBERTS

We, Kristi H. Jarrell and Crystal L. Rivers the witnesses, sign our names to this the undersigned authority that the Principal signs and executes this instrument as and for his/her Power of Attorney and that he/she signs it willingly, and that each of us, in the presence and hearing of the Principal and in the presence and hearing of each other, hereby signs this Power of Attorney as witness to the Principal's signing, and that to the best of our knowledge the Principal is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Kristi H. Jarrell (Witness #1) address Kennett, SC

Crystal L. Rivers (Witness #2) address Hampton, SC

IBR

Initials: (IBR)

Kristi H. Jarrell
Witness #1

Crystal L. Rivers
Witness #2

Instrument Book Page
200500000674 299 347

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named INEZ B. ROBERTS, Principal, sign, seal and as her act and deed, deliver the within written Power of Attorney, and he/she with Crystal L. Byers witnessed the execution thereof.

Witness #1 (Signature)

SWORN to before me this

31st day of March, 2005.

Notary Public for South Carolina

My Commission Expires: 12/15/13

IBR

Initials: (IBR)

Witness #1

Witness #2

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-489 & 490 PLAINTIFF'S ANSWERS TO DEFENDANT HERITAGE HEALTHCARE OF ESTILL, LLC'S FIRST REQUEST FOR ADMISSIONS

TO: JERAD RISSLER, ESQUIRE ATTORNEY FOR DEFENDANT HERITAGE HEALTHCARE OF ESTILL, LLC:

1. Please admit that by a duly executed and recorded Power of Attorney, dated and filed of public records on March 31, 2005, a true and correct copy of which is attached hereto as Exhibit A (the "Power of Attorney"), Inez B. Roberts appointed you as her true and lawful attorney on March 31, 2005.

RESPONSE:

Admit

2. Please admit that the Power of Attorney authorized you "to perform all and every act and thing whatsoever requisite and necessary to be done in and about my affairs as full to all intents and purposes as I might or could do if personally present at the doing thereof... hereby ratifying and confirming all that my said attorney substitute shall lawfully do or cause to be done by virtue hereof."

EXHIBIT

D

RESPONSE:

Admit.

3. Please admit that you are the Personal Representative for Inez Roberts in the admission records at Heritage Healthcare and that throughout Inez Robert's stay at Heritage Healthcare, the nursing home staff would advise and consult with and notify you of Inez Robert's medical condition.

RESPONSE:

Denied.

4. Please admit that you have been involved in health care decisions for Inez Roberts in the admission records at Heritage Healthcare and that throughout Inez Robert's state at Heritage Healthcare, the nursing home staff would advise and consult with and notify you of Inez Robert's medical condition.

RESPONSE:

Denied.

5. Please admit that you admitted Inez Roberts to Heritage Healthcare on August 22, 2007 pursuant to the powers granted to you under the Power of Attorney.

RESPONSE:

Denied.

6. Please admit that the document attached hereto as Exhibit B is a true and correct copy of an Arbitration Agreement signed by you on August 22, 2007 in connection with the admission of Inez B. Roberts to Heritage Healthcare (the "Arbitration Agreement").

RESPONSE:

Admit

7. Please admit that you had authority to sign the Arbitration Agreement on behalf of Inez B. Roberts pursuant to the Power of Attorney.

RESPONSE:

Admit.

8. Please admit that Inez B. Roberts was admitted to Heritage Healthcare on August 22, 2007 and remained a resident of Heritage Healthcare until July 3, 2009.

RESPONSE:

Denied

9. Please admit that the Arbitration Agreement has never been modified, amended, or rescinded.

RESPONSE:

Denied

10. Please admit that all of the claims asserted by Plaintiff in the Complaint against the Defendants arise out of and relate to the services and care provided to Inez B. Roberts while a resident of Heritage Healthcare.

RESPONSE:

Admit

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Peters Murdaugh Parker Eltzroth & Detrick, PA
Matthew V. Creech, Esquire
Post Office Box 2500
Ridgeland, SC 29935

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEY FOR PLAINTIFFS

Hampton, South Carolina
February 18, 2011

CERTIFICATE OF SERVICE

This is to certify that I, **Shanna M. Jarrell**, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., attorneys for the Plaintiffs, have this date mailed via the U.S. Postal Service, a true and correct copy of the within ***Plaintiff's Answers to Defendant Heritage Healthcare of Estill, LLC's First Set of Request for Admissions*** with first class postage prepaid to:

W. Jerad Rissler, Esquire
Arnall Golden Gregory, LLP
171 17th Street, NW Ste 2100
Atlanta, GA 30363-1031

ATTORNEYS FOR DEFENDANTS

RE: Linda Johnson, as the Personal Representative of the Estate of Inez Roberts v. Heritage Healthcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, United Clinical Services, Inc., United Rehab, Inc., and UHS-Pruitt Corporation C/A No.: 2010-CP-25-489 & 490

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P.A.

BY: _____
Shanna M. Jarrell

February 28, 2011
Hampton, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC, d/b/a Heritage of the Lowcountry and/or Uni--Health Post Acute Network of the Lowcountry, UNITED CLINCIAL SERVICES, INC., UNITED REHAB, INC., And UHS-PRUITT CORPORATION, Defendants,	IN THE COURT OF COMMON PLEAS C/A No.: 2010-CP-25-489 & 490 (Survival and Wrongful Death) **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL ARBITRATION**

Plaintiff respectfully submits this Memorandum in Opposition to the Defendants' Motion to Compel Arbitration and Stay Proceeding.

STATEMENT OF FACTS

Ms. Inez Roberts was admitted to the Heritage Healthcare of Estill LLC ("HHE") facility on or about August 22, 2007. At that time she was an eighty-five year old female who was in good physical condition without any pressure sores. (*See HHE's Admission Assessment attached as Exhibit 1.*) On January 20, 2008, Ms. Roberts was first noted with having pressure sores. (*See HHE's Nurse's Notes Exhibit 2.*) Throughout the remainder of Ms. Roberts' residency, the pressure sores worsened. (*See Wound Care notes attached as Exhibit 3.*) Ms. Roberts eventually had to have her leg amputated. (*See Discharge Summary attached as Exhibit 4.*)

Ms. Linda Johnson, acting as Personal Representative of her mother's Estate, brought wrongful death and survival claims against HHE and the other defendants on April 13, 2010.

(*See Notice of Intent, Exhibits 5 and 6*). The claims therein are the basis for the Defendants Motion to Stay and to Compel Arbitration. For the reasons set out below the Defendants' Motion should be denied.

ARGUMENT

The policy of this state is to favor arbitration of disputes. Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc., 355 S.C. 605, 612, 586 S.E.2d 581 (2003). However, not all arbitration clauses are enforceable. Arbitration is a matter of contract and S.C. courts must determine the enforceability of an arbitration agreement based on principles of contract law. Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 364 (2001). In order to have a valid and enforceable contract, there must be a meeting of the minds as to all essential and material terms of the contract. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891 (1989).

A. FORUM SELECTED BY DEFENDANT HHE IS NOT AVAILABLE

The Arbitration Agreement (*attached hereto as Exhibit 7*) between Ms. Johnson on behalf of her mother, Ms. Roberts, and HHE is not enforceable. The agreement in this case was prepared by HHE and calls for any "claim or claims" between the resident and HHE to be handled under the auspices of the American Arbitration Association (AAA). Effective January 1, 2003 the AAA no longer accepted for arbitration cases involving individual patients in a healthcare facility unless there was a post-dispute agreement to arbitrate. (*See position of AAA attached as Exhibit 8.*) The dispute between the parties at issue in this case arose on or about February 2008 when HHE staff failed to provide sufficient care such that she developed pressure sores. (*See Affidavit of Byron Arbeit attached as Exhibit 9*). The arbitration agreement was signed August 22, 2007 by Ms. Johnson as power of attorney for Ms. Roberts. Therefore by its own language, the Resident and Facility Arbitration Agreement (*Exhibit 7*) is not enforceable as

the AAA will not hear the matter and the agreement is silent as to the method by which the arbitration shall be conducted absent the AAA rules.

Our Supreme Court has recently addressed this very issue. In Grant v. Magnolia Manor – Greenwood, Inc. et al, 383 S.C. 125, 678 S.E.2d 435 (2009), the Court held that the selection of a arbitration forum is an "integral part of the agreement." There, the chosen forum, the National Health Lawyers Association, took the same position as the AAA in that it would not administer arbitration of a health care personal injury claim unless the arbitration agreement was entered into after the event giving rise to the claim. Id. Because HHE chose the AAA's rules as the guiding principle for arbitration, it is an integral part of the agreement. The chosen forum also negates the ability to look to the Federal Arbitration Agreement ("FAA") for another means of arbitration. The Grant court held that the chosen means by which an arbitrator will be selected and the "rules that govern the arbitration" are not "logistical" nor "ancillary.'" Id. The Defendant HHE knew or should have known that the AAA did not recognize these types of arbitration agreements when it entered into it with Ms. Johnson. It should not look to the Court now to correct its mistake. Accordingly, the arbitration agreement must fail.

There is no distinction between a chosen "forum" and an agreement that the parties will use the AAAs "rules." In essence the two are inseparable. Rule R-2 of the Commercial Arbitration Rules and Administrative Procedures of the AAA provides as follows:

> When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authorities and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its officers.

Rule R-3 makes reference to the National Roster of Arbitrators. This Rule provides:

> The AAA shall establish and maintain a national roster of commercial arbitrators (National Roster) and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

Rule R-49 addresses administrative fees and provides that: "As a Not-For-Profit Organization, the AAA shall prescribe an initial filing fee and a case service fee to compensate it for the costs of providing administrative services."

Sub-paragraph C of Rule 51 addresses the neutral Arbiter's Compensation and provides that: "Any arrangement"

> for the compensation of a neutral arbiter shall be paid through the AAA and not directly between the parties and the arbitrator.

The American Arbitration Association Rules conclude by revealing that:

> These rules are the copyrighted property of the American Arbitration Association (AAA) and are intended to be used in conjunction with the AAA's administrative services. Unauthorized use or modification of these rules may violate copy write laws and other applicable laws.

Therefore, there is no discernible difference between the AAA as a "forum" or simply using the AAA's "rules."

There are other reasons why this Court should not look to the FAA to "fix" the arbitration agreement as drafted by HHE. The agreement of the parties is not a transaction involving interstate commerce. This issue was addressed by the South Carolina Supreme Court in the case of Tims vs. Green, 310 S.C. 469, 427, S.E.2d 642 (1993). The Tims case involved an action by a nursing home resident seeking damage for injuries sustained while she was left unattended under a hair dryer at defendant's facility. The arbitration agreement between Tims and the Defendant required submission of any dispute to binding arbitration. The Defendant argued that interstate commerce was involved in the contract as the defendant was a division of a national corporation;

it hired employees from out of state; it markets its services out of state; purchases majority of its goods and equipment from out of state; and contemplates payment from Medicare and Medicaid. The lower court disagreed with the Defendants position finding the contract did not involve interstate commerce rendering the FAA moot. This was affirmed on appeal by the Supreme Court. The Court in Tims stated "although these factors could evidence the centers involvement in interstate commerce we find that their relationship to the agreement between the center and the respondent is insufficient to form the basis of a contract between the parties." Id.

As interstate commerce is a necessary basis for the application of the FAA and no interstate commerce was found in the contract between Tims and the Defendant, the Supreme Court refused to require arbitration because the Plaintiff's cause of action was not subject to the Arbitration Act of South Carolina and the Federal Arbitration Act was inapplicable.

In this case there is no evidence of interstate commerce in the **arbitration agreement** between the parties. The contract was entered into between Ms. Johnson, a South Carolina resident (*See attached Application for Appointment of Linda Johnson, Exhibit 10*) and Heritage Healthcare of Estill, LLC, a South Carolina LLC. (*See attached S.C. Secretary of State listing for HHE, Exhibit 11*). The agreement is void as to any issues of interstate commerce between the parties to the agreement. Furthermore, there has been no evidence of any interstate commerce between the parties to the arbitration agreement. The HHE's self serving and meaningless inclusion that the parties stipulate that the agreement involves interstate commerce does not prove interstate commerce. Just as a parties cannot "stipulate" to federal court subject matter jurisdiction, the parties cannot "stipulate" to interstate commerce that would invoke the FAA. Other courts in South Carolina have denied FAA relief on this same type of hollow "stipulation." Without some evidence of interstate commerce in the transaction itself, the FAA cannot be invoked. This is the same result reached by this Court in a recent matter involving a

South Carolina resident and a South Carolina corporation. (*See Order Denying Motion to Compel Arbitration dated June 30, 2011, Nelle Smith as Personal Representative for Estate of John Gettys Smith v. Bayview Manor LLC, CA No. 2010-CP-07-5174 & 2010-CP-07-5175, attached as Exhibit 12*).

Defendants' reference to the fact that Georgia corporations are also defendants is immaterial and not a basis for finding that the arbitration agreement involves interstate commerce. (*See Defendants' Memorandum in Support of Motion to Compel Arbitration p. 5*). The agreement itself, the focus of this inquiry, does not mention any out of state entity. The agreement specifically limits arbitration to disputes involving the resident and the "facility." The "facility" is HHE, d/b/a Heritage of the Low Country. That is the facility listed in the arbitration agreement and that is the facility as set forth in the pleadings. There is no evidence that could remotely suggest that Ms. Johnson knew or should have known of the existence of the out of state corporations at the time she entered into this admission agreement. In addition, the out of state corporations deny that they are responsible for the care provided at the HHE facility. (*See Answers of Defendants UHS-Pruitt, United Rehab, Inc. and United Clinical Services, Inc., attached as Exhibits 13, 14, and 15, respectively*). Moreover, there is no signed arbitration agreement or any other contract signed by the Plaintiff and UHS Pruitt, United Rehab and/or United Clinical Services.[1] Accordingly, the FAA does not apply.

Further evidence that the arbitration agreement herein fails because of a lack of a forum and that the Defendant cannot resort to the FAA for sanctuary in this case can be found in the case of Peggy Benton, as Power of Attorney for Mary K. Weaver vs. Summit Place, Inc. Benton

[1] This issue was addressed in the Order of Judge Harrington in Powell v. Fundamental Long-Term Care Holding, LLC et al, 08-CP-08-0695 which held, *inter alia*, there is no valid agreement to arbitrate between the plaintiff and entities that are not even mentioned on the agreement. Because that is the exact same situation as the present case, the same result should be reached. (*See Powell Order, Exhibit 16*)

is a South Carolina Circuit Court case heard by The Honorable D. Garrison Hill of the Thirteenth Judicial Circuit. Judge Hill issued his initial Order on October 20, 2004 and subsequently denied the Defendant's Motion for Reconsideration by Order of November 17, 2004. (*See Judge Hill's Orders are attached hereto respectfully as Exhibits 17 and 18*). The Plaintiff craves reference to Judge Hill's Order as dealing with a situation almost identical to the present case.

Judge Hill in Benton after carefully considering the facts and law reasoned as follows:

- That after January 1, 2003 the AAA did not accept for arbitration disputes involving patients and health care providers unless the arbitration agreement was entered into after the dispute arose.
- The arbitration agreement in Benton was executed before the dispute arose.
- The arbitration agreement in Benton states that it was entered into pursuant to the FAA and under the rules of the AAA.
- An arbitration agreement at its essence is simply a contract and as such courts cannot make new agreements for the parties.
- The parties in Benton chose the AAA as the forum.
- The AAA would not entertain the Benton arbitration
- The parties were faced with a failed arbitral forum.
- The parties "choice of an arbitral forum is an integral and material term of the agreement to arbitrate".
- The AAA's "General Commercial Arbitration Rules" are complex and detailed.
- Courts cannot create new rules for arbitration
- The FAA cannot be a substitute forum as its rules and procedures differ from the AAA and FAA rules and procedure were not chosen by the parties.
- The South Carolina Arbitration Act is inapplicable.
- There exists no "meeting of the minds" in Benton so the arbitration agreement failed.

As the forum and rules of arbitration chosen by the Defendants in the case at bar are no longer available to the parties, the agreement should be strictly construed against defendant HHE and lacking a forum within which to conduct arbitration the defendant's motion must therefore fail.

There is no meeting of the minds as to what the parties were entering into. The admission director for HHE, Ms. Sally Dobson, was deposed on May 5, 2011 in a different case involving the same arbitration agreement. (*Dobson deposition attached as Exhibit 19*). She

testified that she and the administrator explain to residents and family members that arbitration means that if "they have any complaints or any concerns that are not being taken care of in a timely manner then we can go into arbitration." (*See pages 8 and 10, Dobson deposition*). When asked if she was aware that the arbitration agreement required adherence to the AAA rules, she testified as follows:

11

Q Did you know, Ms. Dobson, that the Arbitration Agreement that we're here about today contains a provision that the American Arbitration Association

12

rules have to be followed? Were you aware of that?
A If it's on that sheet of paper, Well, I don't know what the Arbitration Agreements are.
Q Well, how is it if you don't know, how would a resident know or their family member?
A I don't know.
Q Well, don't you think that's an important part of it?
A It is.
Q It's a material part of the contract?
A It is.
Q And but you don't know what it is?
A But I don't know what it is.
Q And so you can't expect a resident to know?
A That's --
MR. RISSLER: Object to the form.
A -- correct.
Q or their personal representative?
A Uh-huh (affirmative).
Q Right?
A Right.
Q Or power of attorney, right?
A Right.
Q Or their family member?
A Right.

The very person that HHE selected as the person to instruct residents and family members on the documents that they must sign in order to be admitted does not know what those very documents mean. Accordingly, there is no meeting of the minds and the arbitration agreement must fail.

B. THE DEFENDANTS HAVE WAIVED ARBITRATION

Parties can waive their right to enforce an arbitration agreement. Liberty Builders, Inc. v. Horton , 336 S.C. 658, 521 S.E.2d 749 (Ct.App. 1999) There are three factors generally considered to determine if a party has waived its right to enforce an arbitration clause: 1) the time between commencement of the action and moving for arbitration, 2) whether the party seeking to compel arbitration engaged in discovery before moving for arbitration, and 3) prejudice to the non-moving party which must be more than mere inconvenience. Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007).

The Defendants waited too long to move for arbitration. The Plaintiff began these proceedings by filing a Notice of Intent that was served on the Defendants on or about April 15, 2010. After participating in the Notice of Intent proceedings and a failed mediation, the summons and complaint was filed on October 13, 2010. The instant motion was not filed until August 4, 2011. A nursing home negligence action cannot be commenced until the Plaintiff has filed and served a Notice of Intent. Thus, it is that action that is the appropriate starting place for determining when the party seeking arbitration could have moved to compel arbitration. In fact, S.C. Code 15-79-120 specifically addresses this issue and states that parties can agree to arbitrate prior to filing a medical malpractice action. The Defendants waited fourteen months before waiting to move for arbitration. Our Courts have held that less time constitutes waiver. Rhodes, 374 S.C. at 125, 128 647 S.E.2d at 250, 252 (Ct. App. 2007)

During the long wait, the Defendants engaged in discovery. The Defendants decided to serve and answered discovery. The Defendants decided to take and defend depositions. The Defendants decided to participate in a pre-suit mediation on September 9, 2010 and a second mediation on August 10, 2011. The Defendants decided to participate in procedural and

discovery hearings with the Court rather than move to compel arbitration.[2] The Defendants decided to produce 6,990 pages of discovery documents during the course of this litigation.. By its own actions and inactions, the Defendants have repeatedly availed themselves of the court system for the past sixteen months.

The prejudice to the Plaintiff is more than mere inconvenience. The parties have conducted extensive discovery, participated, in person, in two mediations, attended two Court hearings and the Plaintiff is currently planning for trial. The only remaining matters to complete are depositions of the witnesses identified by the Defendants and final expert preparation. This case is subject to trial on the very next term of court in Hampton County. The Plaintiff has abided by the rules, prepared for trial and is very close to her constitutional right to have this dispute heard by a jury. Moreover, she has expended money in filing fees, attorney expenses and discovery and deposition costs. Our Courts have held that the cost associated with discovery that may not have been expended in arbitration is an example of prejudice that is beyond mere inconvenience. Evans v. Accent Manufactured Homes, Inc., 352 S.C. 544, 575 S.E.2d 74 (Ct. App. 2003). Other Courts in South Carolina have held similar delay to constitute waiver. (*See Order of Judge Miller, Coleman v. Mariner Health Care, Inc., et al, 10-CP-21, 0835, dated March 18, 2011, attached as Exhibit 20; Order of Judge Miller, Briody vs. THI of South Carolina at Magnolia Place at Greenville, LLC, et al, 09-CP-23-6381, dated July 13, 2010, attached as Exhibit 21).*

The Defendants can point to no reasonable basis for waiting this long to move for arbitration. If they argue that they wanted participate in limited discovery and depositions to learn facts about arbitration, they have availed themselves of the very rules and procedures that

[2] Hearing on Plaintiff's Motion to Strike certain defenses on February 11, 2011 and Hearing on Plaintiff's Motion to Compel discovery responses on March 16, 2011.

they now want to avoid. The Plaintiff has no similar "tool" for delay. At the end of the day, the only logical explanation for moving at this stage to compel arbitration is unnecessary delay.

CONCLUSION

The forum selected by the Defendant HHE will not hear this type of dispute. The South Carolina Supreme Court has determined that the forum selection is an integral part of the agreement and cannot be remedied by following the FAA, which does not apply to this intrastate agreement. Moreover, the Defendants have waited too long to move for arbitration and have substantially prejudiced the Plaintiff in the process such that any arbitration that it could have sought to compel is waived. Accordingly, Defendants' Motion should be denied.

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope
101 Mulberry Street, East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

Attorneys for the Plaintiff

October 12, 2011

Exhibit 1

SKIN NOTES

DATE	PROGRESS NOTES & COMMENTS	SIGNATURE
5-22-07	Admitted to room 107 85 year old DA Dy who appears to be in a cachectical condition. The resident is edentulous. The resident has an open area @ Mid Area, and an old scar Cross her @ knee. On her (R) mid back resident has an old scar. On the resident head lump on inner brow, and on her right arm resident has an old bruise. Peripherals feels are dry and flaky but they are not red or macerated. Sacral area and buttocks are free from redness or open areas. Other than moisturizing treatment of other treatments are needed at present time.	Janet Kendall
5-29-07	@ open area noted & Treatments needed	Janet Kendall
6-6-07	Skin integrity remains intact.	Janet Kendall
1/24/08	Admission area on R. Check is 5 cm x 7.5 cm Staphylococcal due to area of 3 days of pain. Call C to Dr Slater.	Educator Johnson

Resident Name: Inez Roberts | ID # | Room # | Physician

Inez Roberts
Low Country 00597

Exhibit 2

Resident/Patient Name | ID # | Room # | Physician

NURSE'S NOTES

DATE/TIME	NOTES	Nurse's Signature
1/24/08	Hydrocolloid Dsg under recommendation to cover to ulcerated area on (R) hip 5cm x 3.5cm in Stage 3 stage + pain. Con't to monitor skin for Alert & responsive resp even + unlabored Total Care c ADL's. Continue Meals Pt. Diversion to maintain Activity level. Pt is Dependent c 50-75% c total assistance. Family visiting. Call light within reach. Con't to assist c this	
1/25/08	Alert calm & quiet. Resp unlabored. Total Care c ADL's. Adapt noted on (R) ↑ lateral (L) foot. Hydrocolloid dsg changed. Ordered recommended Xeroform dsg to area c Abx. Continue q d. Family notified of new dsg. Con't to monitor. Diversion Activity	
1/26/08	Alert & responsive. Resp even + unlabored. Total Care c ADL's. Must be fed & positioned. 50-75% c 00 cm wk Elevation. Pt (L) foot lateral (R) side. Xeroform dsg changed c clean c sterile technique. Pt tolerated well. Continue to monitor skin integrity. Continue c C & P	
2/3/08 11 AM	No [illegible] Observed. Resident alert & confused. Ate 90% of meal and the Palmetto Bldg. room. Pt took am meds crushed in pudding and self fed. Pt ate 20% of cereal, 0% of egg & 0% and was offered bkfst. Dependent with ADLs. Total dsm rvd.	
2-3-08 7P-7A	Resident has an open area on (R) hip 4cm x 3.5 cm a yellow [illegible] Pt denies pain. Dsg changed. Wound bed pink [illegible] Pt tolerated well. Edges. Instructed [illegible]	

Nurse's Signature

Inez Roberts
Low Country 00178

NURSE'S NOTES

Resident/Patient Name | ID # | Room # | Physician

Exhibit 3

+rmc
the Regional Medical Center

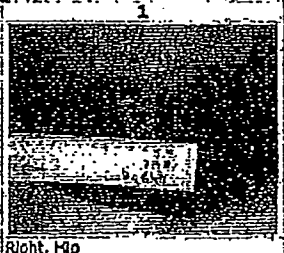
Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	2/14/2008
Patient Number:	[redacted]	Clinician:	Collins, Alexandra
Patient Date of Birth:		Physician / Extender	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	92
Weight (lbs):	180	Blood Pressure (mmHg):	128/60
Body Mass Index (BMI):	34		
Temperature (°F):	97.9		
Respiratory Rate (breaths/min):	18		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1	2	3
Photos:			
Wound Location:	Right, Mid	Right, Medial, Foot	Left, Medial, Foot grt toe met head
Wound Type:	Pressure Ulcer	Pressure Ulcer	Pressure Ulcer
Additional Wound Type:	N/A	N/A	N/A
Acquired At Facility:	No	No	No
Date Acquired:			
Wound Status:	Not Healed	Amputated	Amputated
Measurements L x W x D (cm)	2x3x0.1	3x3x0.1	5x5.5x0.1
Hypergranulated:	No	No	No
Area (cm²):	4.71	7.07	21.6
Volume (cm³):	0.47	0.71	2.16
Tunneling:	No	No	No
Undermining:	No	No	No
Wound Progress:	Initial Exam	Initial Exam	Initial Exam
Stage:	Necrotic Tissue (unstageable)	Stage 2	Stage 2
Exudate Amount:	Moderate	None	None
Exudate Type:	Yellow		
Odor:	None	None	None
Pain:	5	4	4
Wound Margin:	Flat and Intact	Flat and Intact	Flat and Intact
Adherent Yellow Slough:			
Moist Yellow Slough:	26-50%		
Dry Black Eschar:			
Moist Black Eschar:			
Epithelialization:			
Granulation:			
Exposed Structures:			
Debridement:			
Time-Out Taken:			
Pain Control:			
Tissue Debrided:			
Level:			
Instrument:			
Bleeding:			
Hemostasis Achieved:			
Procedural Pain:			
Post Procedural Pain:			

Debridement Treatment Response:			
Response Comments:			
Paring:			
Hypergranulation Treated:			
Peripheral Skin Texture:			
Shiny:	N/A	N/A	N/A
Peripheral Skin Moisture:			
Peripheral Skin Color:			
Temperature:	Warm	Warm	Warm
Local Pulse:		Normal	Normal
Products Used:			
Assessment Notes:	center of wound is yellow eschar and purple blister noted to top portion of wound	purple discolored area with 1.4cm x 1.8cm purple blister noted to center	purple discolored area with dark purple blister noted to center measuring 3.5cm x 3.8cm

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product
- Cleansed wound bed. PRN using mild soap and water (1)
- Applied Primary Dressing as ordered. Per Physician Order using DuoDerm Extra Thin (1)

Notes

Wound #2 (Right, Medial Foot)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product
- Cleansed wound bed. PRN using mild soap and water (1)
- Applied topical product to wound base as ordered. Per Physician Order using Granulex spray (1)
- Applied Primary Dressing as ordered. Per Physician Order using Gauze Sponges (1)
- Applied Secondary Dressing as ordered. Per Physician Order using 4" roll gauze (1)
- Secured dressing in place. PRN using Prevalon boot (1)

Notes

Wound #3 (Left, Medial Foot mt 1st met head)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product
- Cleansed wound bed. PRN using mild soap and water (1)
- Applied topical product to wound base as ordered. Per Physician Order using Granulex spray (1)
- Applied Primary Dressing as ordered. Per Physician Order using Gauze Sponges (1)
- Applied Secondary Dressing as ordered. Per Physician Order using 4" roll gauze (1)
- Secured dressing in place. PRN using Prevalon boot (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name: Roberts, Inez
Patient Number: [redacted]
Patient Date of Birth:

Date: 2/14/2008

Physician / Extender: Samies, John

Verbal / Phone Orders: No

Goals

Dressings

- Apply duoderm dressing in contact with wound bed as primary dressing to right hip wound Change dressing Q 3 days and prn soilage

Offloading

- Assure no contact of wound with surfaces.
  Wheelchair
  Wheelchair cushion. Do not use donut-type devices.
  Seat lifts or shift position in chair Q 15 minutes when up
  Order Specialty Bed, low airloss. Turn Q 2 hours. Avoid right hip down position. Limit side lying to 30 degree tilt.

  Specialty shoe/device: prevalon boots bilateral feet at all times

Follow up Appointment

- 2-3 Weeks

Wound Cleansing

- Cleanse wound with mild soap and water prior to applying new dressing. Do not scrub or use excessive force.
  OK to shower but do not soak wound Gently pat wound dry prior to applying new dressing

Topical Treatments

- granulex spray feet bid including ulcerations. wrap ulcers with kerlex and gauze dressing

Dietary

- Increased protein

  Supplement: would recommend adding protein and calorie supplements - eg: ensure or boost 1 can tid.

Notes

Entered By: Samies, MD, John on 02/14/2008 10:32:00 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name:	Roberts, Inez	**Date:**	2/14/2008
Patient Number:			
Patient Date of Birth:	[redacted]		
		Physician / Extender:	

Subjective

Patient has the following past family social history items: Cancer - No , Diabetes, Heart Disease, Hypertension, Kidney Disease - No , Lung Disease - No , Mental Illness, Seizures, Stroke, Thyroid Problems - No .

In the Prior Wound History system, the patient currently has Topical Treatment.

In the General Health/Constitutional Symptoms system, the patient complains or has symptoms of Fatigue - No , Height / Weight Appropriate, Loss of Appetite - No , Night Sweats - No , Sedentary, Well Developed, Well Nourished. Currently has Influenza Vaccine Current, Pneumonia Vaccine Current.

In the Eyes system, the patient complains or has symptoms of Vision Changes, Glasses / Contacts. Currently has Cataracts, No Glaucoma, No Retinopathy.

In the Ear/Nose/Mouth/Throat system, the patient complains or has symptoms of Hearing Loss / Aid, Dental Problems.

In the Cardiovascular (Central) system, the patient complains or has symptoms of Arrhythmia. Currently has Congestive Heart Failure, Coronary Artery Disease (CAD), Hyperlipidemia, Hypertension, No Myocardial Infarction (MI).

In the Cardiovascular (Peripheral) system, the patient complains or has symptoms of Edema. Currently has Deep Vein Thrombosis (DVT), No Peripheral Vascular Disease.

In the Respiratory system, the patient complains or has symptoms of Shortness of Breath, Wheezing - No . Currently has No Asthma, No Chronic Obstructive Pulmonary Disease (COPD), No Pneumonia.

In the Gastrointestinal (GI) system, the patient complains or has symptoms of Bowel Incontinence, Nausea / Vomiting / Diarrhea (N/V/D) - No , Constipation, Loss of Appetite - No . Currently has No Cirrhosis, No Gastro Esoph. Reflux Disease (GERD), No Hepatitis, Hiatal Hernia, No Inflammatory Bowel, No Pancreatitis.

In the Genitourinary (GU) system, the patient complains or has symptoms of Dysuria - No , Frequency, Hematuria - No , Urgency, Urinary Incontinence. Currently has No End Stage Renal Disease, No Hemodialysis, Kidney Disease, No Kidney Stones, Menarche, Menopause.

In the Musculoskeletal system, the patient complains or has symptoms of Contractures - No , Deformities - No , Muscle Pain - No , Muscle Wasting - No , Muscle Weakness. Currently has Arthritis, No Gout, No Hip Fracture, Osteoarthritis, No Osteoporosis. And has a surgical history of Amputation - No , Implanted Surgical Hardware.

In the Neurological system, the patient complains or has symptoms of Numbness - No , Tingling - No , Weakness, Headaches - No , Paralysis - No , Seizures - No . Currently has No Stroke, Transient Ischemic Attack (TIA).

In the Psychiatric system, the patient complains or has symptoms of Memory Loss. Currently has Alzheimers, Dementia.

In the Endocrine system, the patient currently has Thyroid Disease, Type II Diabetes.

In the Hematologic/Lymphatic system, the patient currently has No Anemia, Anticoagulant Therapy, No Sickle Cell Anemia.

In the Allergic/Immunologic system, the patient currently has No AIDS, No HIV Positive.

In the Oncologic system, the patient currently has No Cancer, No Received Chemotherapy, No Received Radiation.

In the Miscellaneous system, the patient currently has No ETOH Abuse, Influenza Vaccine Current, Pneumonia Vaccine Current, No Tobacco Use.

In the Past Medical/Surgical History system, the patient has a surgical history of Acute care stay greater then 3 days - No , Acute care stay included critical care - No , Surgery greater then 4 hours - No .

In the Co-Morbid Conditions system, the patient currently has No AIDS, No Anemia, Congestive Heart Failure, Dementia, No Gout, Hypertension.

Objective

Height: 61 In, Weight: 180 lbs, Temperature: 97.9, Pulse: 92, Respiratory Rate: 18, Blood Pressure: 128/60.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 2x3x0.1 cm;4.712 cm² (area);0.471 cm³ (volume).Wound 2 a(n)Pressure Ulcer, is over the Right,Medial Foot, with measurements of 3x3x0.1 cm;7.068 cm² (area);0.707 cm³ (volume),Wound 3 a(n)Pressure Ulcer, is over the Left,Medial Foot, with measurements of 5x5.5x0.1 cm;21.598 cm² (area);2.16 cm³ (volume).

Assessment

.Heart rate regular & WNL.soft systolic, heart murmur no gallop or rub. Normal carotid upstroke. No jugular venous distention noted. PMI nondisplaced. General color is normal and without cyanosis.
. Peripheral pulses 2+dp bilat and equal in all extremities. No clubbing or edema noted. No dependant rubor. No varicosities. No evidence of vasculopathy.
.Respiratory rate is WNL at rest and on room air. Bilateral breath sounds are clear and equal in all lobes. No rales, No wheezes, No rhonchi. Respiratory effort is easy, symmetric bilaterally and coordinated with breathing.
.has muscle atrophy. has contractures knees, no hot joints
.Abdomen is soft and non-distended. No masses . No organomegaly .Bowel sounds are active in all quadrants.
.Bladder is non-distended.
.No abnormal bleeding or clotting issues. No evidence of cervical, axillary, eptrochlear or inguinal lymphadenopathy .
.confusion evident. conversant. no focal weakness but difficult to assess sec. cooperation. poor memory.
.muscle atrophy
.Hair, skin and nail color and texture normal and healthy in appearance. No rashes, lesions. Skin color normal for race. No evidence of fungal disease of skin or nails.
.poor vision bilat
.poor dentition
.Normal hair growth pattern.
.dmentia pleasant

Plan

The following Physician Orders were made. Follow up Appointment: . Dressings: . Offloading: . Wound Cleansing: Cleanse Wound:. Topical Treatments: Moisturizing lotion to surrounding skin:. Dietary: As tolerated:.

Notes

the right hip has eschar which is without erythema or drainage. the left foot has purple blister and discoloration around it which is purple . there is no erythema. the right foot has ulceration also --"kissing ulcer" feet seem painful but difficult to tell.

Diagnosis

Diagnoses: 707.06: Pressure Ulcer ankle, 707.09: Pressure Ulcer, other site (head), 718.40: Contracture joint - unspecified, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 02/14/2008 10:29:37 AM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

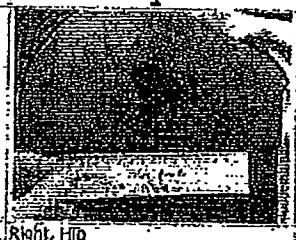
Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	3/6/2008
Patient Number:	[redacted]	Clinician:	Taylor, Amanda
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	88
Weight (lbs):	180	Blood Pressure (mmHg):	112/76
Body Mass Index (BMI):	34		
Temperature (°F):	101.0		
Respiratory Rate (breaths/min):	24		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1	2	3
Photos:			
Wound Location:	Right, Hip	Right, Medial, Foot	Left, Medial, Foot grt toe met head
Wound Type:	Pressure Ulcer	Pressure Ulcer	Pressure Ulcer
Additional Wound Type:	N/A	N/A	N/A
Acquired At Facility:	No	No	No
Date Acquired:			
Wound Status:	Not Healed	Amputated	Amputated
Measurements L x W x D (cm)	4.5x6.4x0.1	2.3x3.4x0.1	2.7x2x0.1
Hypergranulated:	No	No	No
Area (cm²):	22.62	6.14	4.24
Volume (cm³):	2.26	0.61	0.42
Tunneling:	No	No	No
Undermining:	No	No	No
Wound Progress:	Deteriorating	Deteriorating	Deteriorating
Stage:	Necrotic Tissue (unstageable)	Necrotic Tissue (unstageable)	Necrotic Tissue (unstageable)
Exudate Amount:	Scant	None	None
Exudate Type:	Foul Purulent		
Odor:	Strong	None	None
Pain:	0	4	4
Wound Margin:	Flattened	Flat and Intact	Flat and Intact
Adherent Yellow Slough:			
Moist Yellow Slough:			
Dry Black Eschar:	76-100%	76-100%	76-100%
Moist Black Eschar:			
Epithelialization:			
Granulation:			
Exposed Structures:			
Debridement:			
Time-Out Taken:			
Pain Control:			
Tissue Debrided:			
Level:			
Instrument:			
Bleeding:			
Hemostasis Achieved:			
Procedural Pain:			
Post Procedural Pain:			

Debridement Treatment Response:			
Response Comments:			
Paring:			
Hypergranulation Treated:			
Peripheral Skin Texture:			
Shiny:	Yes	N/A	N/A
Peripheral Skin Moisture:			
Peripheral Skin Color:			
Temperature:	Warm	Warm	Warm
Local Pulse:		Normal	Normal
Products Used:			
Assessment Notes:	eschar measures 4.5cm x 6.4cm / induration measures 15.0cm x 15.0cm / pt. sent to Colleton County Hospital for admit.	now converted to "fluctuant" eschar dry black eschar at present	

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol
- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product*
- Cleansed wound bed. PRN using mild soap and water (1)
- Applied Primary Dressing as ordered. Per Physician Order using DuoDerm Extra Thin (1)

Wound Treatment Protocol
- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product*
- Cleansed wound bed. PRN using SenClens (1)
- Applied Primary Dressing as ordered. Per Physician Order using Normal Saline Dampened Gauze (1)

Notes

Wound #2 (Right, Medial Foot)

Wound Treatment Protocol
- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product*
- Cleansed wound bed. PRN using mild soap and water (1)
- Applied topical product to wound base as ordered. Per Physician Order using Granulex spray (1)
- Applied Primary Dressing as ordered. Per Physician Order using Gauze Sponges (1)
- Applied Secondary Dressing as ordered. Per Physician Order using 4" roll gauze (1)
- Secured dressing in place. PRN using Prevalon boot (1)

Notes

Wound #3 (Left, Medial Foot ork toe met head)

Wound Treatment Protocol
- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product*
- Cleansed wound bed. PRN using mild soap and water (1)
- Applied topical product to wound base as ordered. Per Physician Order using Granulex spray (1)
- Applied Primary Dressing as ordered. Per Physician Order using Gauze Sponges (1)
- Applied Secondary Dressing as ordered. Per Physician Order using 4" roll gauze (1)
- Secured dressing in place. PRN using Prevalon boot (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name:	Roberts, Inez	**Date:**	3/6/2008
Patient Number:			
Patient Date of Birth:	[redacted]		
		Physician / Extender:	Samles, John

Verbal / Phone Orders: No

Goals

Notes

discussed with dr blubaugh. Pt appears to be deteriorating. discussed need for hospitalization for infection. Discussed with family. suggestions made for care to dr blubaugh. he agrees to admit to his local hospital . arrangements made

Entered By: Samles, MD, John on 03/26/2008 6:14:00 PM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 3/6/2008
Patient Number: [redacted]
Patient Date of Birth:
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 101.0, Pulse: 88, Respiratory Rate: 24, Blood Pressure: 112/76.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 4.5x6.4x0.1 cm;22.619 cm² (area);2.262 cm³ (volume).Wound 2 a(n)Pressure Ulcer, is over the Right,Medial Foot, with measurements of 2.3x3.4x0.1 cm;6.142 cm² (area);0.614 cm³ (volume).Wound 3 a(n)Pressure Ulcer, is over the Left,Medial Foot, with measurements of 2.7x2x0.1 cm;4.241 cm² (area);0.424 cm³ (volume).

Assessment

Plan

Notes

the hip wound is larger though the foot wounds on right and left hav decreased in size.these are eschars no erythema no significant drainage . there is erythema about the hip wound and the patient appears toxic. has low grade temp./ lungs fairly clear.

Diagnosis

Diagnoses: 707.06: Pressure Ulcer ankle, 707.04: Pressure Ulcer hip, 707.04: Pressure Ulcer hip, 707.09: Pressure Ulcer, other site (head), 707.09: Pressure Ulcer, other site (head), 707.09: Pressure Ulcer, other site (head), 718.40: Contracture joint - unspecified, 718.40: Contracture joint - unspecified, 682.6: cellulitis and abcess - leg, except foot, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 03/26/2008 6:12:37 PM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	7/9/2008
Patient Number:	[redacted]	Clinician:	Taylor, Amanda
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	72
Weight (lbs):	180	Blood Pressure (mmHg):	134/68
Body Mass Index (BMI):	34		
Temperature (°F):	97.1		
Respiratory Rate (breaths/min):	16		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1	2	3
Photos:		No Photos	No Photos
Wound Location:	Right, Hip	Right, Medial, Foot	Left, Medial, Foot grt toe met head
Wound Type:	Pressure Ulcer	Pressure Ulcer	Pressure Ulcer
Additional Wound Type:	N/A	N/A	N/A
Acquired At Facility:	No	No	No
Date Acquired:			
Wound Status:	Not Healed	Amputated	Amputated
Measurements L x W x D (cm)	4.8x4x3	0x0x0	
Hypergranulated:	No	No	No
Area (cm²):	15.08	0	
Volume (cm³):	45.24	0	
Tunneling:	No	No	No
Undermining:	No	No	No
Wound Progress:	Deteriorating		
Stage:	Stage 3		
Exudate Amount:	Scant		
Exudate Type:	Sero-sanguineous		
Odor:	Strong		
Pain:	0		
Wound Margin:	Flattened		
Adherent Yellow Slough:			
Moist Yellow Slough:	1-25%		
Dry Black Eschar:			
Moist Black Eschar:			
Epithelialization:			
Granulation:	76-100%		
Exposed Structures:			
Debridement:			
Time-Out Taken:			
Pain Control:			
Tissue Debrided:			
Level:			
Instrument:			
Bleeding:			
Hemostasis Achieved:			
Procedural Pain:			
Post Procedural Pain:			

Debridement Treatment Response:			
Response Comments:			
Partial:			
Hypergranulation Treated:			
Peripheral Skin Texture: Shiny	Yes	N/A	N/A
Peripheral Skin Moisture:			
Peripheral Skin Color: Temperature:	Warm	N/A	N/A
Local Pulse:			
Products Used:			
Assessment Notes:	Less than 10% yellow slough/ wound VAC initiated per NH staff and machine not sent with pt. / NS dampened gauze applied to wound until pt. returns to NH.		

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Wound VAC (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name:	Roberts, Inez	**Date:**	7/9/2008
Patient Number:	[redacted]		
Patient Date of Birth:		**Physician / Extender:**	Samles, John

Verbal / Phone Orders: No

Goals

Notes

continue with vac. Would like to recheck 2 wks. Probably complete vac at next visit.

Entered By: Samles, MD, John on 07/09/2008 11:38:00 AM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 7/9/2008
Patient Number: [redacted]
Patient Date of Birth:
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 97.1, Pulse: 72, Respiratory Rate: 16, Blood Pressure: 134/68.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 4.8x4x3 cm;15.079 cm² (area);45.238 cm³ (volume).Wound 2 a(n)Pressure Ulcer, is over the Right,Medial Foot, with measurements of 0x0x0 cm;0 cm² (area);0 cm³ (volume).Wound 3 a(n)Pressure Ulcer, is over the Left,Medial Foot, with measurements of xx cm; cm² (area); cm³ (volume).

Assessment

Plan

Notes

hip wound looks good with healthy granulation . no erythema.

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samies, MD, John on 07/09/2008 11:37:50 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

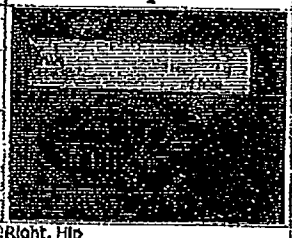
Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	7/24/2008
Patient Number:	[redacted]	Clinician:	Taylor, Amanda
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	88
Weight (lbs):	180	Blood Pressure (mmHg):	130/90
Body Mass Index (BMI):	34		
Temperature (°F):	97.0		
Respiratory Rate (breaths/min):	20		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1
Photos:	
Wound Location:	Right, Hip
Wound Type:	Pressure Ulcer
Additional Wound Type:	N/A
Acquired At Facility:	No
Date Acquired:	
Wound Status:	Not Healed
Measurements L x W x D (cm)	4.3x3x1
Hypergranulated:	No
Area (cm²):	10.13
Volume (cm³):	10.13
Tunneling:	Yes
Position 1 (o'clock):	3
Maximum Distance 1 (cm):	1.5
Undermining:	No
Wound Progress:	Improving
Stage:	Stage 3
Exudate Amount:	Scant
Exudate Type:	Sero-sanguineous
Odor:	Strong
Pain:	0
Wound Margin:	Flattened
Adherent Yellow Slough:	
Moist Yellow Slough:	1-25%
Dry Black Eschar:	
Moist Black Eschar:	
Epithelialization:	
Granulation:	51-75%, Pink
Exposed Structures:	
Debridement:	
Time-Out Taken:	
Pain Control:	
Tissue Debrided:	
Level:	
Instrument:	
Bleeding:	
Hemostasis Achieved:	

Roberts- TWC- 14

Procedural Pain:	
Post Procedural Pain:	
Debridement Treatment Response:	
Response Comments:	
Peling:	
Hypergranulation Treated:	
Peripheral Skin Texture:	
Shiny:	Yes
Peripheral Skin Moisture:	
Peripheral Skin Color:	
Temperature:	Warm
Local Pulse:	
Products Used:	
Assessment Notes:	pale granulation tissue with macerated edges, VAC in place today, but no granufoam in tunnel of depth

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed. PRN using no associated product
- Cleansed Wound Bed: PRN using SeaClens (1)
- Applied Primary Dressing as ordered. Per Physician Order using Wound VAC (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name: Roberts, Inez
Patient Number: [redacted]
Patient Date of Birth:

Date: 7/24/2008

Physician / Extender: Samles, John

Verbal / Phone Orders: No

Goals

Notes

would continue vac. Please put strip of granufoam (black foam into tunnel) and fill the dead space but do not pack tightly into the area. Use vac drape to "windowpane" around wound to prevent maceration of edges . It is also helpful to bridge tubing with some foam under it to prevent potential trauma from vac tubing. You are doing an excellent job overall with this wound !!

Entered By: Samles, MD, John on 07/24/2008 11:24:00 AM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 7/24/2008
Patient Number: [redacted]
Patient Date of Birth:
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 97.0, Pulse: 88, Respiratory Rate: 20, Blood Pressure: 130/90.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 4.3x3x1 cm;10.131 cm^2 (area);10.131 cm^3 (volume).

Assessment

Plan

Notes

the right hip wound is markedly improved. There is no erythema.

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 07/24/2008 11:21:45 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

rmc
the Regional Medical Center

Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	8/7/2008
Patient Number:	[redacted]	Clinician:	Gehling, Marie
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	82
Weight (lbs):	180	Blood Pressure (mmHg):	
Body Mass Index (BMI):	34		
Temperature (°F):	96.6		
Respiratory Rate (breaths/min):	20		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1		
Photos:			
Wound Location:	Right Hip		
Wound Type:	Pressure Ulcer		
Additional Wound Type:	N/A		
Acquired At Facility:	No		
Date Acquired:			
Wound Status:	Not Healed		
Measurements L x W x D (cm)	3.7x3x1.4		
Hypergranulated:	No		
Area (cm²) :	8.72		
Volume (cm³) :	12.2		
Tunneling:	No		
Undermining:	No		
Wound Progress:	Improving		
Stage:	Stage 3		
Exudate Amount:	Moderate		
Exudate Type:	Yellow		
Odor:	Mild		
Pain:	0		
Wound Margin:	Thickened		
Adherent Yellow Slough:			
Moist Yellow Slough:	1-25%		
Dry Black Eschar:			
Moist Black Eschar:			
Epithelialization:			
Granulation:	51-75%, Pink		
Exposed Structures:			
Debridement:			
Time Out Taken:			
Pain Control:			
Tissue Debrided:			
Level:			
Instrument:			
Bleeding:			
Hemostasis Achieved:			
Procedural Pain:			
Post Procedural Pain:			

Debridement Treatment Response:	
Response Comments:	
Pain:	
Hypergranulation Treated:	
Peripheral Skin Texture:	
Shiny:	No
Peripheral Skin Moisture:	
Peripheral Skin Color:	
Temperature:	WNL
Local Pulse:	
Products Used:	
Assessment Notes:	pale base, had Vac sponge in wound but no VAC pump attached.

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Wound VAC (1)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Calcium Alginate (1)
- Applied Secondary Dressing as ordered, Per Physician Order using Gauze (1)
- Secured dressing in place, PRN using Medipore (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name: Roberts, Inez
Patient Number: [redacted]
Patient Date of Birth:

Date: 8/7/2008.

Physician / Extender: Samles, John

Verbal / Phone Orders: No

Goals

Notes

kaltostat and gauze (calcium alginate) to right hip changed daily. Can discontinue VAC. Sensicare or similar to sacrum daily. return 3- 4 wks

Entered By: Samles, MD, John on 08/07/2008 11:45:00 AM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 8/7/2008
Patient Number:
Patient Date of Birth: [redacted]
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 96.6, Pulse: 82, Respiratory Rate: 20.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 3.7x3x1.4 cm;8.717999 cm² (area);12.205 cm³ (volume).

Assessment

Plan

Notes

hip wound is much improved. there is no erythema. Vac did not accompany pt to visit. wound clean , small area erythema without skin loss at sacrum

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 08/07/2008 11:43:46 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	8/7/2008
Patient Number:	[redacted]	Clinician:	Gehling, Marie
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	82
Weight (lbs):	180	Blood Pressure (mmHg):	
Body Mass Index (BMI):	34		
Temperature (°F):	96.6		
Respiratory Rate (breaths/min):	20		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1
Photos:	
Wound Location:	Right Hip
Wound Type:	Pressure Ulcer
Additional Wound Type:	N/A
Acquired At Facility:	No
Date Acquired:	
Wound Status:	Not Healed
Measurements L x W x D (cm)	3.7x3x1.4
Hypergranulated:	No
Area (cm²):	8.72
Volume (cm³):	12.2
Tunneling:	No
Undermining:	No
Wound Progress:	Improving
Stage:	Stage 3
Exudate Amount:	Moderate
Exudate Type:	Yellow
Odor:	Mild
Pain:	0
Wound Margin:	Thickened
Adherent Yellow Slough:	
Moist Yellow Slough:	1-25%
Dry Black Eschar:	
Moist Black Eschar:	
Epithelialization:	
Granulation:	51-75%, Pink
Exposed Structures:	
Debridement:	
Time-Out Taken:	
Pain Control:	
Tissue Debrided:	
Level:	
Instrument:	
Bleeding:	
Hemostasis Achieved:	
Procedural Pain:	
Post Procedural Pain:	

Debridement Treatment Response:			
Response Comments:			
Partial:			
Hypergranulation Treated:			
Peripheral Skin Texture:			
Shiny:	No		
Peripheral Skin Moisture:			
Peripheral Skin Color:			
Temperature:	WNL		
Local Pulse:			
Products Used:			
Assessment Notes:	pale base, had VAc sponge in wound but no VAC pump attached.		

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Wound VAC (1)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Calcium Alginate (1)
- Applied Secondary Dressing as ordered, Per Physician Order using Gauze (1)
- Secured dressing in place, PRN using Medipore (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name:	Roberts, Inez	**Date:**	8/7/2008
Patient Number:	[redacted]		
Patient Date of Birth:			
		Physician / Extender:	Samles, John

Verbal / Phone Orders: No

Goals

Notes

kaltostat and gauze (calcium alginate) to right hip changed daily. Can discontinue VAC. Sensicare or similar to sacrum daily. return 3- 4 wks

Entered By: Samles, MD, John on 08/07/2008 11:45:00 AM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 8/7/2008
Patient Number:
Patient Date of Birth: [redacted]
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 96.6, Pulse: 82, Respiratory Rate: 20.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 3.7x3x1.4 cm;8.717999 cm² (area);12.205 cm³ (volume).

Assessment

Plan

Notes

hip wound is much improved. there is no erythema. Vac did not accompany pt to visit. wound clean . small area erythema without skin loss at sacrum

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 08/07/2008 11:43:46 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

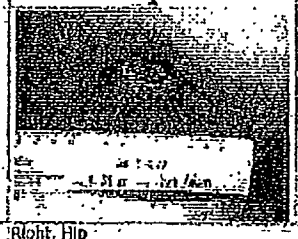
Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	8/29/2008
Patient Number:	[redacted]	Clinician:	Collins, Alexandra
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	98
Weight (lbs):	180	Blood Pressure (mmHg):	100/62
Body Mass Index (BMI):	34		
Temperature (°F):	96.9		
Respiratory Rate (breaths/min):	14		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1
Photos:	
Wound Location:	Right, Hip
Wound Type:	Pressure Ulcer
Additional Wound Type:	N/A
Acquired At Facility:	No
Date Acquired:	
Wound Status:	Not Healed
Measurements L x W x D (cm)	3.3x2.5x1.4
Hypergranulated:	No
Area (cm²):	6.48
Volume (cm³):	9.07
Tunneling:	No
Undermining:	No
Wound Progress:	Improving
Stage:	Stage 3
Exudate Amount:	Moderate
Exudate Type:	Yellow
Odor:	Mild
Pain:	0
Wound Margin:	Thickened and Rolled Under
Adherent Yellow Slough:	
Moist Yellow Slough:	
Dry Black Eschar:	
Moist Black Eschar:	
Epithelialization:	
Granulation:	76-100%, Pink
Exposed Structures:	
Debridement:	
Time-Out Taken:	
Pain Control:	
Tissue Debrided:	
Level:	
Instrument:	
Bleeding:	
Hemostasis Achieved:	
Procedural Pain:	
Post Procedural Pain:	

Debridement Treatment Response:		
Response Comments:		
Pain:		
Hypergranulation Treated:		
Peripheral Skin Texture:		
Shiny:	No	
Peripheral Skin Moisture:		
Peripheral Skin Color:		
Temperature:	WNL	
Local Pulses:		
Products Used:		
Assessment Notes:	pale pink wound base, edges thick and rolled under	

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product*
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Wound VAC (1)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product*
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Calcium Alginate (1)
- Applied Secondary Dressing as ordered, Per Physician Order using Gauze (1)
- Secured dressing in place, PRN using Medipore (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s):	Date(s):
Physician Signature(s):	Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name: Roberts, Inez **Date:** 8/29/2008
Patient Number: [redacted]
Patient Date of Birth:
Physician / Extender: Samles, John

Verbal / Phone Orders: No

Goals

Notes

kaltostat and gauze (calcium alginate) to right hip changed daily. Sensicare or similar to sacrum daily. return 3- 4 wks

Entered By: Samles, MD, John on 08/29/2008 11:49:00 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 8/29/2008
Patient Number:
Patient Date of Birth: [redacted]
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 96.9, Pulse: 98, Respiratory Rate: 14, Blood Pressure: 100/62.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 3.3x2.5x1.4 cm;6.479 cm² (area);9.071 cm³ (volume).

Assessment

Plan

Notes

the right hip wound is smaller. there is lot of epiboly but wound edge is very thickened. no erythema depth less.

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samies, MD, John on 08/29/2008 11:48:59 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	9/26/2008
Patient Number:	[redacted]	Clinician:	Fogle, Laura
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	108
Weight (lbs):	180	Blood Pressure (mmHg):	132/92
Body Mass Index (BMI):	34		
Temperature (°F):	98.5		
Respiratory Rate (breaths/min):	20		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1
Photos:	
Wound Location:	Right Hip
Wound Type:	Pressure Ulcer
Additional Wound Type:	N/A
Acquired At Facility:	No
Date Acquired:	
Wound Status:	Not Healed
Measurements L x W x D (cm)	2x2.3x0.5
Hypergranulated:	No
Area (cm²):	3.61
Volume (cm³):	1.81
Tunneling:	No
Undermining:	No
Wound Progress:	Improving
Stage:	Stage 3
Exudate Amount:	Moderate
Exudate Type:	Yellow
Odor:	Mild
Pain:	0
Wound Margin:	Thickened and Rolled Under
Adherent Yellow Slough:	
Moist Yellow Slough:	
Dry Black Eschar:	
Moist Black Eschar:	
Epithelialization:	
Granulation:	76-100%, Pink
Exposed Structures:	
Debridement:	
Time Out Taken:	
Pain Control:	
Tissue Debrided:	
Level:	
Instrument:	
Bleeding:	
Hemostasis Achieved:	
Procedural Pain:	
Post Procedural Pain:	

Debridement Treatment Response:	
Response Comments:	
Pain:	
Hypergranulation Treated:	
Peripheral Skin Texture:	
Shiny:	No
Peripheral Skin Moisture:	
Peripheral Skin Color:	
Temperature:	WNL
Local Pulse:	
Products Used:	
Assessment Notes:	periwound maceration noted, wound improving

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol

a. Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
b. Cleansed wound bed, PRN using SeaClens (1)
c. Applied Primary Dressing as ordered: Per Physician Order using Wound VAC (1)

Wound Treatment Protocol

- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Calcium Alginate (1)
- Applied Secondary Dressing as ordered, Per Physician Order using Gauze (1)
- Secured dressing in place, PRN using Mepipore (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name: Roberts, Inez
Patient Number: [redacted]
Patient Date of Birth:

Date: 9/26/2008

Physician / Extender: Samles, John

Verbal / Phone Orders: No

Goals

Notes

Continue kaltostat and gauze (calcium alginate) to right hip changed daily; return 4-6 wks

Entered By: Samles, MD, John on 09/26/2008 11:58:00 AM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 9/26/2008
Patient Number:
Patient Date of Birth: [redacted]
Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 98.5, Pulse: 108, Respiratory Rate: 20, Blood Pressure: 132/92.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 2x2.3x0.5 cm;3.613 cm² (area);1.806 cm³ (volume).

Assessment

Plan

Notes

the right hip wound is smaller. there is no erythema . there is serous drainage. overall the wound is doing well.

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 09/26/2008 11:57:32 AM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

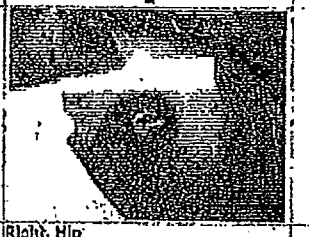
Multi Wound Chart Details

Patient Name:	Roberts, Inez	Date:	10/24/2008
Patient Number:	[redacted]	Clinician:	Fogle, Laura
Patient Date of Birth:		Physician / Extender:	Samles, John

Vital Signs

Height (in):	61	Pulse (bpm):	68
Weight (lbs):	180	Blood Pressure (mmHg):	130/62
Body Mass Index (BMI):	34		
Temperature (°F):	97.3		
Respiratory Rate (breaths/min):	18		
Capillary Blood Glucose (mg/dl):			

Wound Assessments

Wound Number:	1
Photos:	
Wound Location:	Right, Hip
Wound Type:	Pressure Ulcer
Additional Wound Type:	N/A
Acquired At Facility:	No
Date Acquired:	
Wound Status:	Not Healed
Measurements L x W x D (cm)	2x1x0.4
Hypergranulated:	No
Area (cm²):	1.57
Volume (cm³):	0.63
Tunneling:	No
Undermining:	No
Wound Progress:	Improving
Stage:	Stage 3
Exudate Amount:	Moderate
Exudate Type:	Yellow
Odor:	Mild
Pain:	0
Wound Margin:	Thickened and Rolled Under
Adherent Yellow Slough:	
Moist Yellow Slough:	
Dry Black Eschar:	
Moist Black Eschar:	
Epithelialization:	
Granulation:	76-100%, Pink
Exposed Structures:	
Debridement:	
Time-Out Taken:	
Pain Control:	
Tissue Debrided:	
Level:	
Instruments:	
Bleeding:	
Hemostasis Achieved:	
Procedural Pain:	
Post Procedural Pain:	

Debridement Treatment Response:				
Response Comments:				
Pering:				
Hypergranulation Treated:				
Peripheral Skin Texture:				
Shiny:	No			
Peripheral Skin Moisture:				
Peripheral Skin Color:				
Temperature:	WNL			
Local Pulse:				
Products Used:				
Assessment Notes:	smaller			

Treatment Notes

Wound #1 (Right Hip)

Wound Treatment Protocol
- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Wound VAC (1)

Wound Treatment Protocol
- Removed old dressing, taking care to avoid trauma to the wound bed, PRN using no associated product
- Cleansed wound bed, PRN using SeaClens (1)
- Applied Primary Dressing as ordered, Per Physician Order using Calcium Alginate (1)
- Applied Secondary Dressing as ordered, Per Physician Order using Gauze (1)
- Secured dressing in place, PRN Using Medipore (1)

Notes

Multi Wound Chart Notes

Clinician Signature(s): Date(s):

Physician Signature(s): Date(s):

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Physician Orders Details

Patient Name: Roberts, Inez
Patient Number: [redacted]
Patient Date of Birth:

Date: 10/24/2008

Physician / Extender: Samles, John

Verbal / Phone Orders: No

Goals

Notes

continue with calcium alginate dressing daily. return 3 wks

Entered By: Samles, MD, John on 10/24/2008 12:27:00 PM

Clinician Signature(s): **Date(s):**

Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

THE REGIONAL WOUND CENTER

+rmc
the Regional Medical Center

Progress Note Details

Patient Name: Roberts, Inez **Date:** 10/24/2008
Patient Number:
Patient Date of Birth: [redacted]

Physician / Extender:

Objective

Height: 61 in, Weight: 180 lbs, Temperature: 97.3, Pulse: 68, Respiratory Rate: 18, Blood Pressure: 130/62.

Wound 1 a(n)Pressure Ulcer, is over the Right Hip, with measurements of 2x1x0.4 cm;1.571 cm² (area);0.628 cm³ (volume).

Assessment

Plan

Notes

right hip wound is smaller. there is no erythema. the drainage is small. base is granulating

Diagnosis

Diagnoses: 707.04: Pressure Ulcer hip, 707.04: Pressure Ulcer hip, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree, 707.23: Pressure ulcer stage III, 263.0: Other and unspecified protein-calorie malnutrition - moderate degree.

Entered By: Samles, MD, John on 10/24/2008 12:26:37 PM

Clinician Signature(s): **Date(s):**
Physician Signature(s): **Date(s):**

THE REGIONAL WOUND CENTER

Exhibit 4

Colleton Medical Center

DISCHARGE SUMMARY

PATIENT: ROBERTS, INEZ

MEDICAL RECORD #: [redacted]

ADMISSION DATE: 04/13/2008

DISCHARGE DATE: 05/07/2008

DATE OF DISCHARGE: 04/30/2008

DISCHARGE DIAGNOSES:

1. Gangrene in the lower extremities.
2. Dehydration.
3. History of osteomyelitis in the right hip.
4. Hyperkalemia.
5. Type II diabetes mellitus requiring insulin.
6. Possible pneumonia.
7. Peripheral artery disease.
8. Prerenal azotemia with possible acute renal insufficiency.
9. Atrial fibrillation.
10. Hypertension.
11. Hypercholesterolemia.
12. Depression.
13. CODE STATUS IS DNR.

HISTORY AND HOSPITAL COURSE: Ms. Roberts is an 85-year-old known to me from Heritage Nursing Home, who was admitted because of fever, dehydration, and leukocytosis. She was treated with IV antibiotics. An Infectious Disease consult was requested. She has been on multiple antibiotics including Vancomycin, Zyvox, Diflucan, and Primaxin. She had gangrene of the feet, which progressed. After some initial delay her family did consent to amputation which was done by Dr. Stiegler. Her white blood cell count is trending downward. Dr. Marosok is recommending stopping all antibiotics and discharging her to the nursing home.

UPDATED HISTORY AND PHYSICAL:

SUBJECTIVE: She appears comfortable. She has no specific complaint. She does not communicate much.

OBJECTIVE: Temperature 97.9, pulse 111, respiratory rate 20, blood pressure 142/75. Heart sounds are regular. Soft systolic murmur is heard. Breath sounds are diminished. Abdomen is soft, non tender, and non distended. Bowel sounds are normal. Extremities have no edema.

Exhibit 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS)
Plaintiff(s))

vs.)

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION)
Defendant(s))

CIVIL ACTION COVERSHEET

2010-CP-25-102

FILED
2010 APR 13 AM 10:15
MYLINDA D. NETTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2106
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmped.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 filled 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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption 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)
Previous Notice of Intent Case # 20___-CP-___-___
☒ Notice/ File Med Mal (230)
☐ Other (299)

Torts – Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ 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)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ 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)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)

☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	)	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-1102 NOTICE OF INTENT TO FILE SUIT

FILED
2010 APR 13 AM 10:15
MYLINDA S. METTLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

The Plaintiff, LINDA JOHNSON as Personal Representative of the Estate of INEZ ROBERTS, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant to *§15-79-125*.

1. **ADVERSE PARTY.**

a. The adverse parties to this action are, upon information and belief Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") an entity organized under the laws of South Carolina with its principal place of business in the County of Hampton, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing home facility. Defendant United Clinical Services, Inc. (herein after

"UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

b. Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage.

c. Defendant UCS provides clinical services to residents at Heritage.

d. Defendant UR provides rehabilitation services to residents at Heritage.

2. SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.

a. The Plaintiff, Linda Johnson, is a citizen and resident of the County of Hampton, State of South Carolina. She is the Personal Representative of the Estate of Inez Roberts, her mother which is open in Hampton County, South Carolina. She files this action to give notice of her intent to file a Survival Action on behalf of the

Estate of Inez Roberts for her conscious pain and suffering and all other damages offered at law. (See Attached Personal Injury Summons and Complaint marked as Exhibit A.)

b Ms. Roberts was a resident of Heritage from August 22, 2001 until the time of her death on July 31, 2009.

c. While a resident at Heritage, she required skilled nursing care from the staff at the nursing home.

d. The skilled nursing care required included, but was not limited to, proper nutritional support, adequate hydration, range of motion exercises and/or support, proper skin assessments, clinical services, rehabilitation, access to appropriate medical care and attention and reasonable measures to protect and promote quality of life and dignity.

e. That while a resident of Heritage Ms. Roberts developed a pressure sores on her leg and other parts of her body that were painful and required medical attention all to her injury and damage.

f. The Defendants and their staff, employees and agents failed to provide the requisite care and, as such, deviated from the standard of care in the following particulars:

1. In failing to provide adequate care to prevent the development of pressure sores;
2. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

3. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;
4. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;
5. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;
6. In failing to have sufficient and properly trained staff to care for its residents;
7. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;
8. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;
9. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
10. In such other particulars as the evidence may establish.

f. That as a direct and proximate result of the aforesaid deviations from the standard of care that were the negligent, reckless, willful careless, negligent per se and grossly negligent acts of the Defendants, Ms. Inez Roberts did suffer an amputation of her leg which caused her to incur medical bills, endure pain and suffering and other damages recognized by the law.

g. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of the Estate of Inez Roberts for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

3. STANDARD INTERROGATORIES - *Rule 33(b) SCRCP.*

The information specified in the standard interrogatories *Rule 33(b) SCRCP* is attached hereto as Exhibit B. Exhibit C is Plaintiff's Answers to Standard Interrogatories.

4. AFFIDAVIT OF EXPERT.

The affidavit of an expert specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to § *15-36-100 SCCA.* (See Attached Affidavit of Byron Arbeit as Exhibit D.)

- Signature Page to Follow -

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

Hampton, South Carolina
April___, 2010

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

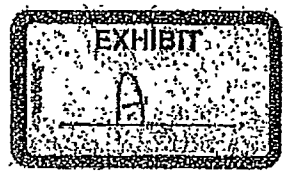
ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-_____ SUMMONS (Negligence/Gross Negligence) *(Jury Trial Requested)*

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day 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 this Complaint.

-Signature Page to Follow-



PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
April ___, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	C/A NO.: 10-CP-25-_____
	)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
	)	
Plaintiff	)	
v.	)	COMPLAINT (Negligence/Gross Negligence)
	)	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION	)	*(Jury Trial Requested)*
	)	
Defendants	)	

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That by reason and in consequence of the aforesaid negligent, careless, reckless, willful, wanton and grossly negligent conduct of the Defendants, Ms. Roberts sustained serious, severe and permanent injury; that the above injuries were of such a nature as to require her to spend money for hospitalization, surgery, doctor's care and other medical necessities; that the Plaintiff suffered great pain, humiliation and mental anguish.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of the Estate of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

Hampton, South Carolina
April __, 2010

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	C/A NO.: 10-CP-25-_____
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff	
v.	Standard Interrogatories for Notice of Intent to File Suit
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health-Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

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

3. Set forth names and addresses of all insurance companies which have liability and underinsured coverage relating to the claim, and set forth the number or

EXHIBIT B

numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

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

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

6. For each person who you expect to call as an expert witness, either in person or by deposition, at the trial of the case, please state the following:

(a). Give each person's name, business, and residential address, home and office telephone number, and such persons' professional specialty and qualifications;

(b) State the subject matter on which each person is expected to testify;

(c) State the substance of the facts and opinions to which each expert is expected to testify.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

- Signature Page to Follow -

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

April ___, 2010.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-_____
)	
LINDA JOHNSON, as Personal)	
Representative of the Estate of)	
INEZ ROBERTS,)	
)	
Plaintiff)	
v,)	
)	**Plaintiff's Answers to Standard**
HERITAGE HEALTHCARE)	**Interrogatories for**
OF ESTILL, LLC d/b/a Heritage)	**Notice of Intent to File Suit**
Of the Lowcountry and/or)	
d/b/a Uni-Health Post-Acute Care of)	
of Lowcountry, UNITED)	
CLINICAL SERVICES, INC.,)	
UNITED REHAB, INC., and)	
UHS- PRUITT CORPORATION)	
)	
Defendants)	
)	

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

RESPONSE:

Linda Johnson

[redacted]

Mrs. Johnson has no written or recorded statement.

Gloria Gordon

[redacted]

EXHIBIT

[redacted]

Mrs. Gordon has no written or recorded statement at this time.

Carlos E. Montenegro, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Montenegro has no written or recorded statement at this time other than medical records.

Michael Blubaugh, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Blubaugh has no written or recorded statement at this time other than medical records.

John Samies, M.D.
The Regional Wound Center
3000 St. Mathews Road
Orangeburg, SC 29118

Dr. Samies has no written or recorded statement at this time other than medical records.

Plaintiff reserves the right to add additional medical providers as they become known.

All staff at the Defendant's facility that was required to or did provide care to Ms. Roberts.

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

RESPONSE:

Plaintiff has medical records that are related to this lawsuit.

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

RESPONSE:

- Loss of enjoyment of Life
- Disfigurement
- Pain and Suffering
- Medical Bills

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

RESPONSE:

Plaintiff cannot identify any expert that he expects to call at the trial of this case at this early stage of discovery. A supplemental response will be forth coming. Furthermore, the Plaintiff reserves the right to call as an expert any medical provider that assisted Ms. Roberts with the injuries being complained of. Each medical provider's testimony will be based upon his or her education, experience and personal observation and treatment of Ms. Roberts. In addition, the Plaintiff will rely upon expert testimony of the expert who provided an Affidavit of Merit attached to the Notice of Intent to File Suit.

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

RESPONSE:

Linda Johnson is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

Gloria Gordon is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

The medical providers identified will testify as to the injuries sustained by Ms. Roberts as a result of the events described in the Complaint. The medical providers will also testify as to their treatment of those injuries.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____
Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

April ___, 2010

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF BSTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants.	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-25-_____ AFFIDAVIT OF MERIT OF BYRON ARBEIT

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide



adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zavada
Notary Public
State of Florida
Commission # DD668327
Expires May 4, 2011

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)

LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS)
Plaintiff(s))

vs.)

HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION)
Defendant(s))

CIVIL ACTION COVERSHEET

2010-CP-25-162
Survival Action

FILED
2010 AUG 13 PM 4:41
VIVIENNE B. WELLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2000
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmped.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 filled 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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption 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)
- Previous Notice of Intent Case # 20____-CP-_____
- ☒ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ 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)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ 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)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 AMENDED NOTICE OF INTENT TO FILE SUIT *(Survival Action)*

FILED
2010 AUG 13 PM 4:11
HAMPTON COUNTY, S.C.
CLERK OF COURT
BY

The Plaintiff, LINDA JOHNSON as Personal Representative of the Estate of INEZ ROBERTS, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant to the S.C. Code Ann. 15-5-90, Survival Action Act, on behalf of the statutory beneficiaries of the deceased for all damages authorized by said statute.

1. ADVERSE PARTY.

a. The adverse parties to this action are, upon information and belief Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") an entity organized under the laws of South Carolina with its principal place of business in the County of Hampton, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing home

facility. Defendant United Clinical Services, Inc. (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

b. Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage.

c. Defendant UCS provides clinical services to residents at Heritage.

d. Defendant UR provides rehabilitation services to residents at Heritage.

2. **SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.**

a. The Plaintiff, Linda Johnson, is a citizen and resident of the County of Hampton, State of South Carolina. She is the Personal Representative of the Estate of Inez Roberts, her mother which is open in Hampton County, South Carolina. She files this action to

give notice of her intent to file a Survival Action on behalf of Inez Roberts. (See Attached Survival Action Summons and Complaint marked as Exhibit A.)

b. Ms. Roberts was a resident of Heritage from August 22, 2001 until the time of her death on July 31, 2009.

c. While a resident at Heritage, she required skilled nursing care from the staff at the nursing home.

d. The skilled nursing care required included, but was not limited to, proper nutritional support, adequate hydration, range of motion exercises and/or support, proper skin assessments, clinical services, rehabilitation, access to appropriate medical care and attention and reasonable measures to protect and promote quality of life and dignity.

e. That while a resident of Heritage Ms. Roberts developed a pressure sores on her leg and other parts of her body that were painful and required medical attention all to her injury and damage.

f. The Defendants and their staff, employees and agents failed to provide the requisite care and, as such, deviated from the standard of care in the following particulars:

1. In failing to provide adequate care to prevent the development of pressure sores;
2. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

3. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;
4. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;
5. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;
6. In failing to have sufficient and properly trained staff to care for its residents;
7. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;
8. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;
9. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
10. In such other particulars as the evidence may establish.

f. That as a direct and proximate result of the aforesaid deviations from the standard of care that were the negligent, reckless, willful careless, negligent per se and grossly negligent acts of the Defendants, Ms. Inez Roberts did suffer an amputation of her leg which caused her to incur medical bills, endure pain and suffering and other damages recognized by the law.

g. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of Inez Roberts for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

3. STANDARD INTERROGATORIES - *Rule 33(b) SCRCP.*

The information specified in the standard interrogatories *Rule 33(b) SCRCP* is attached hereto as Exhibit B. Exhibit C is Plaintiff's Answers to Standard Interrogatories.

4. AFFIDAVIT OF EXPERT.

The affidavit of an expert specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to § *15-36-100 SCCA.* (See Attached Affidavit of Byron Arbeit as Exhibit D.)

- Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 AMENDED SUMMONS (Negligence/Gross Negligence) *(Survival Action)* *(Jury Trial Requested)*

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof; exclusive of the day 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 this Complaint.

-Signature Page to Follow-

EXHIBIT 1

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage. Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 AMENDED COMPLAINT (Negligence/Gross Negligence) *(Survival Action)* *(Jury Trial Requested)*

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina, and brings this action a the Personal Representative of the Estate of Inez Roberts pursuant to the S.C. Code Ann. 15-5-90, the Survival Actions Act, on behalf of the statutory beneficiaries of the deceased for all damages authorized by said statute.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That by reason and in consequence of the aforesaid negligent, careless, reckless, willful, wanton and grossly negligent conduct of the Defendants, Ms. Roberts sustained serious, severe and permanent injury; that the above injuries were of such a nature as to require her to spend money for hospitalization, surgery, doctor's care and other medical necessities; that the Plaintiff suffered great pain, humiliation and mental anguish.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August __, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HAMPTON	)	C/A NO.: 10-CP-25-162
	)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
	)	
Plaintiff	)	
v.	)	
	)	**Standard Interrogatories for Notice of Intent to File Suit** *(Survival Action)*
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION	)	
	)	
Defendants	)	

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

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

3. Set forth names and addresses of all insurance companies which have liability and underinsured coverage relating to the claim, and set forth the number or

EXHIBIT B

numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

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

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

6. For each person who you expect to call as an expert witness, either in person or by deposition, at the trial of the case, please state the following:

(a) Give each person's name, business, and residential address, home and office telephone number, and such persons' professional specialty and qualifications;

(b) State the subject matter on which each person is expected to testify;

(c) State the substance of the facts and opinions to which each expert is expected to testify.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

- Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

August___, 2010.

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-162 **Plaintiff's Answers to Standard Interrogatories for Notice of Intent to File Suit** ***(Survival Action)***

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

RESPONSE:

Linda Johnson
[redacted]

Mrs. Johnson has no written or recorded statement.

Gloria Gordon
[redacted]

EXHIBIT 1

[redacted]

Mrs. Gordon has no written or recorded statement at this time.

Carlos E. Montenegro, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Montenegro has no written or recorded statement at this time other than medical records.

Michael Blubaugh, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Blubaugh has no written or recorded statement at this time other than medical records.

John Samies, M.D.
The Regional Wound Center
3000 St. Mathews Road
Orangeburg, SC 29118

Dr. Samies has no written or recorded statement at this time other than medical records.

Plaintiff reserves the right to add additional medical providers as they become known.

All staff at the Defendant's facility that was required to or did provide care to Ms. Roberts.

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

RESPONSE:

Plaintiff has medical records that are related to this lawsuit.

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

RESPONSE:

- Loss of enjoyment of Life
- Disfigurement
- Pain and Suffering
- Medical Bills
- Funeral Bill

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

RESPONSE:

Plaintiff cannot identify any expert that he expects to call at the trial of this case at this early stage of discovery. A supplemental response will be forth coming. Furthermore, the Plaintiff reserves the right to call as an expert any medical provider that assisted Ms. Roberts with the injuries being complained of. Each medical provider's testimony will be based upon his or her education, experience and personal observation and treatment of Ms. Roberts. In addition, the Plaintiff will rely upon expert testimony of the expert who provided an Affidavit of Merit attached to the Notice of Intent to File Suit.

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

RESPONSE:

Linda Johnson is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

Gloria Gordon is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

The medical providers identified will testify as to the injuries sustained by Ms. Roberts as a result of the events described in the Complaint. The medical providers will also testify as to their treatment of those injuries.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFF

August ___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- FRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-25-_____ AFFIDAVIT OF MERIT OF BYRON ARBEIT

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide.

EXHIBIT 1

adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zavada
Notary Public
State of Florida
Commission # DD686327
Expires May 4, 2011

Exhibit 6

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON)
)
LINDA JOHNSON, AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF INEZ ROBERTS) CIVIL ACTION COVERSHEET
Plaintiff(s))
)
vs.)
)
HERITAGE HEALTHCARE OF ESTILL, LLC, D/B/A HERITAGE OF THE LOWCOUNTRY AND/OR D/B/A UNI-HEALTH POST ACUTE CARE OF THE LOWCOUNTRY, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., AND UHS-PRUITT CORPORATION)
Defendant(s))

2010-CP-25-397
Wrongful Death

FILED
2010 AUG 13 PM 4:41
MARLINDA B. WHITTLES
CLERK OF COURT, S.C.
HAMPTON COUNTY, S.C.
BY _____

(Please Print)
Submitted By: Lee D. Cope
Address: PO Box 457
Hampton, SC 29924

SC Bar #: 14361
Telephone #: (803) 914-2006
Fax #: (803) 914-2015
Other:
E-mail: lcope@pmpcd.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 filled 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 Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption 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)
Previous Notice of Intent Case #
20___-CP-_____-_____
☒ Notice/ File Med Mal (230)
☐ Other (299)

Torts – Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ 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)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)

Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture—Consent Order (850)
☐ 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)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature: _____ Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

   a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

   b. Requests for temporary relief;

   c. Appeals

   d. Post Conviction relief matters;

   e. Contempt of Court proceedings;

   f. Forfeiture proceedings brought by governmental entities;

   g. Mortgage foreclosures; and

   h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	C/A NO.: 10-CP-25-
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	NOTICE OF INTENT TO FILE SUIT *(Wrongful Death)*

FILED
2010 AUG 13 PM 4:41
MYLINDA D. WEEKLES
CLERK OF COURT
HAMPTON COUNTY, S.C.
BY

The Plaintiff, LINDA JOHNSON as Personal Representative of the Estate of INEZ ROBERTS, does hereby submit this Notice of Intent to File Suit and seek a jury trial pursuant to the Wrongful Death Act of South Carolina, S.C. Code Ann. 15-51-10 et seq and other applicable statutory and/or common law.

1. ADVERSE PARTY.

a. The adverse parties to this action are, upon information and belief Heritage Healthcare of Estill, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") an entity organized under the laws of South Carolina with its principal place of business in the County of Hampton, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing home

facility. Defendant United Clinical Services, Inc. (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina. Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

b. Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage.

c. Defendant UCS provides clinical services to residents at Heritage.

d. Defendant UR provides rehabilitation services to residents at Heritage.

2. SHORT AND PLAIN STATEMENT OF THE FACTS SHOWING THAT THE PARTY FILING THE NOTICE IS ENTITLED TO RELIEF.

a. The Plaintiff, Linda Johnson, is a citizen and resident of the County of Hampton, State of South Carolina. She is the Personal Representative of the Estate of Inez Roberts, her mother which is open in Hampton County, South Carolina. She files this action to

give notice of her intent to file a Wrongful Death action on behalf of the statutory beneficiaries of the Estate of Inez Roberts (See Attached Wrongful Death Summons and Complaint marked as Exhibit A.)

b. Ms. Roberts was a resident of Heritage from August 22, 2001 until the time of her death on July 31, 2009.

c. While a resident at Heritage, she required skilled nursing care from the staff at the nursing home.

d. The skilled nursing care required included, but was not limited to, proper nutritional support, adequate hydration, range of motion exercises and/or support, proper skin assessments, clinical services, rehabilitation, access to appropriate medical care and attention and reasonable measures to protect and promote quality of life and dignity.

e. That while a resident of Heritage Ms. Roberts developed a pressure sores on her leg and other parts of her body that were painful and required medical attention all to her injury and damage.

f. The Defendants and their staff, employees and agents failed to provide the requisite care and, as such, deviated from the standard of care in the following particulars:

1. In failing to provide adequate care to prevent the development of pressure sores;
2. In failing to provide sufficient measures to

prevent, treat and/or manage contractures;

3. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;
4. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;
5. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;
6. In failing to have sufficient and properly trained staff to care for its residents;
7. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;
8. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;
9. In failing to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances; and
10. In such other particulars as the evidence may establish.

f. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish, and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

g. That by reason of the foregoing, the Plaintiff is informed and believes that she is entitled to judgment against the Defendants on behalf of Inez Roberts for both actual and punitive damages; all of which damages were proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in an amount as may be set and determined by the trier of fact in this matter.

3. STANDARD INTERROGATORIES - *Rule 33(b) SCRCP.*

The information specified in the standard interrogatories *Rule 33(b) SCRCP* is attached hereto as Exhibit B. Exhibit C is Plaintiff's Answers to Standard Interrogatories.

4. AFFIDAVIT OF EXPERT.

The affidavit of an expert specifying at least one negligent act or omission claimed to exist and the factual basis for each claim based upon the available evidence at this time is attached hereto pursuant to § *15-36-100 SCCA.* (See Attached Affidavit of Byron Arbeit as Exhibit D.)

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

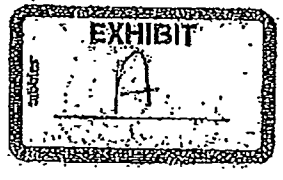
Hampton, South Carolina
August___, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	)	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-_____ SUMMONS (Negligence/Gross Negligence) *(Wrongful Death)* *(Jury Trial Requested)*

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscribed at their office, 101 Mulberry Street East, Hampton, South Carolina, within thirty (30) days after the service hereof, exclusive of the day 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 this Complaint.

-Signature Page to Follow-



PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August ___, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HAMPTON	)	C/A NO.: 10-CP-25-_____
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,	)	
Plaintiff	)	
v.	)	COMPLAINT (Negligence/Gross Negligence) *(Wrongful Death)*
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION	)	*(Jury Trial Requested)*
Defendants	)	

COMES NOW the Plaintiff above named complaining of the Defendant alleges and says as follows:

1. That the Plaintiff is a citizen and resident of Hampton County, South Carolina, and brings this action as the Personal Representative of the Estate of Inez Roberts pursuant to the S.C. Code Ann. 15-51-10, the Wrongful Death Act, and other applicable statutory and/or common law.

2. That, upon information and belief, the Defendant Heritage Helathcare of Estill, LLC, d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry (herein after referred to as "Heritage") and entity organized under the laws of the state of South Carolina and that its principal place of business is in Hampton County, South Carolina. At the time of the acts complained of, Heritage was a skilled nursing facility.

3. That upon information and belief, Defendant United Clinical Services, Inc., (herein after "UCS") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

4. That upon information and belief, Defendant United Rehab, Inc., (herein after "UR") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

5. That upon information and belief, Defendant UHS-Pruitt Corporation (herein after "Pruitt") is a corporation believed to be organized under the laws of Georgia but that provides services in Hampton County, South Carolina.

6. That upon information and belief, Defendant Pruitt owns, operates, manages and oversees Heritage. It provides for the training, employees and budgetary decisions and needs for Heritage. Pruitt is responsible for the level of care received by residents at Heritage. Defendant UCS provides clinical services to residents at Heritage. Defendant UR provides rehabilitation services to residents at Heritage.

7. That on August 22, 2007, Inez Roberts became a resident at the Defendants' nursing facility, and that she paid a fee to the Defendants for her care. That, while a resident of Defendants' facility, Ms. Roberts suffered grave and severe injuries.

8. That on March 6, 2008, Ms. Roberts was admitted to Colleton Medical Center for severe dehydration.

9. During the course of her stay, Ms. Roberts developed pressure sores which caused her to have her right leg amputated.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence

10. While in the Defendants' care, custody and control, Ms. Roberts did suffer

grave and severe injuries and humiliation at the facility as a direct and proximate result of the following negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, combining and concurring:

a. In failing to provide adequate care to prevent the development of pressure sores;

b. In failing to provide sufficient measures to prevent, treat and/or manage contractures;

c. In failing to provide proper and adequate hydration and nutrition for Ms. Roberts;

d. In failing to exercise reasonable care for the safety and well-being of Ms. Roberts under the circumstances;

e. In failing to properly document Ms. Roberts' condition and care that prevented the continuity of care necessary to promote her health and well being;

f. In failing to have sufficient and properly trained staff to care for its residents;

g. In failing to provide appropriate clinical services to prevent pressure sores, dehydration and malnutrition;

h. In failing to provide appropriate rehabilitative services to prevent contractures and pressure sores;

i. In failing to create, maintain and implement a proper care plan for the management of Ms. Roberts' health and well being;

j. In failing to exercise that degree of care which a reasonably

prudent person would have exercised under the same or similar circumstances; and

k. In such other particulars as the evidence may establish.

11. That as a direct and proximate result of the aforesaid negligent, reckless, willful, careless, negligent per se and grossly negligent acts of the Defendants, the deceased Plaintiff's beneficiaries have suffered grief, sorrow, mental anguish; and all of the damages which accompany the loss of a loved one; the beneficiaries have suffered pecuniary loss, all to the Plaintiff's actual and punitive damages.

12. That by reason for the foregoing, Plaintiff is informed and believes that she is entitled to judgment against the Defendants for both actual and punitive damages on behalf of the Estate of Inez Roberts; all of which damages which proximately caused by the Defendants' acts and/or omissions as are more fully set forth above, in a amount as may be set and determined by the trier of fact in this matter.

WHEREFORE, Plaintiff prays for judgment against the Defendants for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

-Signature Page to Follow-

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.

BY: _____

LEE D. COPE, ESQUIRE
101 Mulberry Street East
Post Office Box 457
Hampton, South Carolina 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

Hampton, South Carolina
August__, 2010

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-25-_____ **Standard Interrogatories for Notice of Intent to File Suit** *(Wrongful Death)*

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

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

3. Set forth names and addresses of all insurance companies which have liability and underinsured coverage relating to the claim, and set forth the number or

EXHIBIT 3

numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

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

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

6. For each person who you expect to call as an expert witness, either in person or by deposition, at the trial of the case, please state the following:

(a) Give each person's name, business, and residential address, home and office telephone number, and such persons' professional specialty and qualifications;

(b) State the subject matter on which each person is expected to testify;

(c) State the substance of the facts and opinions to which each expert is expected to testify.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

- Signature Page to Follow -

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFFS

August __, 2010.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 10-CP-25-_____
)	
LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	**Plaintiff's Answers to Standard Interrogatories for Notice of Intent to File Suit** *(Wrongful Death)*
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	
)	
Defendants)	

TO THE DEFENDANT ABOVE NAMED:

The plaintiff in the above case requests that the defendant answer the following Interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

1. Give the name and address of each person whom you know to be a witness concerning the facts in this case and state whether or not a written or recorded statement has been taken from each such witness and provide the name and address of each person who has possession of each such statement.

RESPONSE:

Linda Johnson

[redacted]

Mrs. Johnson has no written or recorded statement.

Gloria Gordon

[redacted]

EXHIBIT C

[redacted]

Mrs. Gordon has no written or recorded statement at this time.

Carlos E. Montenegro, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Montenegro has no written or recorded statement at this time other than medical records.

Michael Blubaugh, M.D.
Colleton Medical Center
501 Robertson Blvd.
Colleton, SC 29488

Dr. Blubaugh has no written or recorded statement at this time other than medical records.

John Samies, M.D.
The Regional Wound Center
3000 St. Mathews Road
Orangeburg, SC 29118

Dr. Samies has no written or recorded statement at this time other than medical records.

Plaintiff reserves the right to add additional medical providers as they become known.

All staff at the Defendant's facility that was required to or did provide care to Ms. Roberts.

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

RESPONSE:

Plaintiff has medical records that are related to this lawsuit.

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

RESPONSE:

- Loss of enjoyment of Life
- Disfigurement
- Pain and Suffering
- Medical Bills
- Funeral Bill

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

RESPONSE:

Plaintiff cannot identify any expert that he expects to call at the trial of this case at this early stage of discovery. A supplemental response will be forth coming. Furthermore, the Plaintiff reserves the right to call as an expert any medical provider that assisted Ms. Roberts with the injuries being complained of. Each medical provider's testimony will be based upon his or her education, experience and personal observation and treatment of Ms. Roberts. In addition, the Plaintiff will rely upon expert testimony of the expert who provided an Affidavit of Merit attached to the Notice of Intent to File Suit.

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

RESPONSE:

Linda Johnson is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

Gloria Gordon is expected to testify about the injuries and the care that her mother received as well as her condition before and after the incident which is the subject of this action.

The medical providers identified will testify as to the injuries sustained by Ms. Roberts as a result of the events described in the Complaint. The medical providers will also testify as to their treatment of those injuries.

These interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorney obtain further information between the time answers are served and the time of trial.

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P. A.

BY: _____

Lee D. Cope, Esquire
P. O. Box 457
Hampton, SC 29924
(803) 943-2111

AND

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office box 499
Walterboro, SC 29488

ATTORNEYS FOR PLAINTIFF

August___, 2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HAMPTON)	C/A NO.: 2010-CP-25-_____
)	
LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBERTS,)	
)	
Plaintiff)	
v.)	AFFIDAVIT OF MERIT OF BYRON ARBEIT
)	
HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION)	
)	
Defendants)	

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide

EXHIBIT 1

adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Arbeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zavada
Notary Public
State of Florida
Commission # DD866327
Expires May 4, 2011

Exhibit 7

Resident and Facility
Arbitration Agreement
Please Read Carefully

It is hereby understood and agreed by Heritage of the Low Country and [redacted] and or "Authorized Representative", together referred to as the "Resident") that, regardless of any other agreement or understanding between the Facility and the Resident, any and all controversies, claims, disputes, disagreements or demands of any kind (referred to as a "Claim" or "Claims") arising out of or relating to the Resident's Admission Agreement with the Facility (the "Admission Agreement") or any service or care provided to the Resident by the Facility shall be settled exclusively by binding arbitration. This means that the parties are waiving their right to a trial before a jury or a judge.

1. Claims. For purposes of this Arbitration Agreement, a Claim shall include, without being limited to, a claim for payment, nonpayment, or refund for services rendered to the Resident by the Facility, violations of any right granted to the Resident by law or by the Admission Agreement, breach of contract, fraud or misrepresentation, negligence, gross negligence, malpractice, or any other claim based on any departure from accepted standards of medical or health care or safety whether sounding in tort or in contract.

This Arbitration Agreement shall in no way, however, limit the Resident's right to file a grievance or complaint, formal or informal, with the Facility, the long-term care ombudsman, or any appropriate government agency. This Arbitration Agreement does not affect the Facility's duties with respect to the provision of care and treatment.

2. Proceeding. Any arbitration proceeding that takes place under this Arbitration Agreement shall follow the rules of the American Arbitration Association ("AAA") and any resulting decision shall be enforceable by a court of competent jurisdiction. The arbitration proceeding shall be conducted where the Facility is located or as close to the Facility as practical. The arbitration proceeding shall be conducted before one neutral arbitrator selected in accordance with the rules of the AAA. The parties agree to bear their own attorneys' fees and costs associated with the arbitration proceeding.

All related to the same incident, transaction, or related course of care or services, must be arbitrated in one arbitration proceeding. Any claim that arose before the date that a notice of arbitration is given to the Facility or received by the resident must be presented in the arbitration proceeding for which notice is given or it shall be considered waived and forever barred.

3. Awards. The Resident and the Facility agree that any damages awarded as a result of arbitration under this Arbitration Agreement shall be determined in accordance with state or federal law that is applicable to a comparable civil action, including any prerequisites to, credit against, or limitations on, such

EXHIBIT

damages. The prevailing party in the arbitration proceeding or in any legal proceedings connected to the arbitration proceeding or this Arbitration Agreement shall be entitled to recover any reasonable attorneys' fees and costs that are actually incurred as a result.

4. Binding Effect. The parties intend that this Arbitration Agreement shall benefit and be binding upon the parties, their successors and assigns, including the agents, employees of the Facility, and anyone whose Claim is derived through or on behalf of the Resident, including, without being limited to, any parent, spouse, child, guardian, executor, administrator, legal representative, or heir of the Resident.

5. Applicable Law. The Resident and the Facility acknowledge and agree that this Resident's Arbitration Agreement affects a transaction involving interstate commerce, therefore the enforcement of this Arbitration Agreement shall be governed by federal law, specifically, the Federal Arbitration Act, notwithstanding any contrary provision of the Admission Agreement or state law. Furthermore, the provisions of this Arbitration Agreement remain in effect after the Resident's Admission Agreement has been terminated.

6. **Right to Consultation. The Resident understands that the Resident has the right to consult an attorney of his or her choice about this Arbitration Agreement and to receive an explanation or clarification from the Facility's admissions coordinator. The Resident is not required to sign this Arbitration Agreement in order to be admitted to or to remain in the Facility.**

BY SIGNING THIS AGREEMENT, THE RESIDENT ACKNOWLEDGES THAT THE RESIDENT HAS HAD THE OPPORTUNITY TO READ THIS AGREEMENT OR IT HAS BEEN READ TO THE RESIDENT AND THE RESIDENT UNDERSTANDS ITS CONTENTS.

_____ _____
Resident's Signature *Date*

_____
Printed Name of Resident/Patient

Linda Johnson 8-22-07
Resident's Authorized Representative *Date*

Linda Johnson
Printed Name of Resident's Authorized Representative

Sally Dobson, AC550 8-22-07
Facility's Authorized Agent *Date*

Sally Dobson
Printed Name of Facility's Authorized Agent

_____ Initial

Exhibit 8

Healthcare Policy Statement

As a result of a review of its caseload in the health care area, the American Arbitration Association has announced that it will no longer accept the administration of cases involving individual patients without a post-dispute agreement to arbitrate. In order to provide sufficient notice to provide for an orderly transition, this change will become effective on January 1, 2003.

AAA, the world's largest provider of alternative dispute resolution services, has also determined that there will be no change in the administration of cases in the health care area where businesses, providers, health care companies, or other entities are involved on both sides of the dispute.

Distinguishing a patient undergoing health care treatment from other situations involving an individual, AAA has determined that they will continue to administer pre-dispute agreements to arbitrate in all areas outside of the health care field, as long as there are appropriate due process safeguards as defined by the courts.

©2007 AMERICAN ARBITRATION ASSOCIATION. ALL RIGHTS RESERVED

Exhibit 9

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNAON, as Personal Representative of the Estate of INEZ ROBBRTS, Plaintiff v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage Of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of of Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC., and UHS- PRUITT CORPORATION Defendants	IN THE COURT OF COMMON PLEAS C/A NO.: 2010-CP-25-_____ AFFIDAVIT OF MERIT OF BYRON ARBEIT

1) I am over 18, legally competent, and I make this affidavit based upon medical records provided to me as well as my background, education, training, and experience.

2) I am a nursing home administrator licensed to administer nursing homes in Louisiana and Indiana. I have passed my national board exam in nursing home administration in 1982.

3) I have been provided the nursing home chart of Ms. Inez Roberts, deceased.

4) Based on the materials I have reviewed, it is my opinion that there was a deviation from the standard of care as it related to the care and treatment given Ms. Roberts at Heritage of the Lowcountry. The lack of proper care substantially contributed to a decline in Ms. Roberts' health and well-being while a resident at the nursing home until the time of her death in July, 2009.

5) During February 2008, Ms. Roberts developed avoidable injurious pressure sores. The Defendants also failed during Ms. Roberts' residency to provide

EXHIBIT
D

adequate hydration, nutrition, and nursing services that contributed to a significant deterioration in her healthcare status.

6) I reserve the right to alter, amend, add, or delete opinions as new information becomes available.

Byron Gabeit

Sworn to and subscribed before me:

Notary Public

Date: 12/24/2009

Joy Zavala
Notary Public
State of Florida
Commission # DD688327
Expires May 4, 2011

Exhibit 10

STATE OF SOUTH CAROLINA

COUNTY OF: HAMPTON

IN THE MATTER OF: INEZ ROBERTS

IN THE PROBATE COURT

CASE NUMBER: 2009ES2501158

APPLICATION FOR	(check any that apply)	PETITION FOR
INFORMAL		FORMAL
☐ PROBATE OF WILL		☐ TESTACY
☒ APPOINTMENT		☐ APPOINTMENT

Applicant/Petitioner: LINDA JOHNSON
Address: [redacted]
Telephone: [redacted]

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding,

DAUGHTER

2. Decedent Information

Name: INEZ ROBERTS
Social Security Number: [redacted]
Date of Birth: [redacted]
Date of Death: 7/31/2009
Age at date of death: 86
Domicile at date of death: HAMPTON COUNTY (county) SC (state)

3. Venue for this proceeding is proper in this county because:

☒ Decedent was domiciled in this county at date of death.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
☐ Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
LINDA JOHNSON	[redacted]	[redacted]	DAUGHTER
GLORIA GORDON			DAUGHTER

(use additional sheet if necessary)

PROBATE COURT
HAMPTON COUNTY SC
FILED
DATE 12/01/09
TIME 10:00 AM PC

FORM #300 (07/2005)
62-3-203, 62-3-301, 62-3-303, 62-3-401, 62-3-402, 62-3-409
62-3-414, 62-3-601, 62-3,704, 44-23-1090, 44-23-1120

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a guardian or conservator ever been appointed for this person?

☐ NO ☒ YES If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten years passed since the decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of none and real estate of about the value of $41,800.00. (A full inventory and appraisement, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☒ The original is attached
- ☐ The original is in the Court's possession
- ☐ An authenticated copy of a will probated in another jurisdiction is attached
- ☐ An authenticated copy of a will not probated in another jurisdiction is attached
- ☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: _____
codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

A guardian was appointed to get medical records.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

LINDA JOHNSON

2. Priority for this appointment is:
- ☒ named as Primary Personal Representative in will
- ☐ named as Alternate Personal Representative in will
- ☐ nominee of above Primary Personal Representative in will
- ☐ nominee of above Alternate Personal Representative in will
- ☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
- ☐ other devisee of decedent, (describe):_____ or nominee of said devisee
- ☐ surviving spouse of decedent or nominee of said spouse
- ☐ other heir of decedent (describe): _____
- ☐ creditor (Forty-five days after death must have passed), or nominee of creditor
- ☐ other (describe): _____

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

GLORIA GORDON

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 9th day of December, 20 09

Notary Public for South Carolina.
My Commission Expires: 12/10/2017

Signature: Linda R. Johnson
Name: LINDA JOHNSON
Address: [redacted]
E-mail:
Telephone (O):
(H):

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 20 ____.

_____, Probate Court Judge

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this day of , 20 .

_____

, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, , be admitted formally to probate.

Executed this day of , 20 .

_____

, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 10th day of JUL, 20[illegible].

_____

, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Linda R. Johnson
Name:
Address:

E-mail:
Telephone (O):
(H):

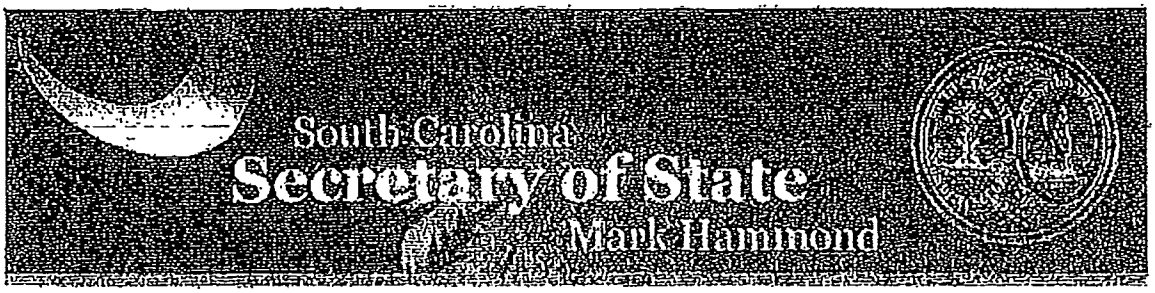
Signature:
Name:
Address:

E-mail:
Telephone (O):
(H):

Attorney:
Address:

E-mail:
Telephone (O):

Exhibit 11



HERITAGE HEALTHCARE OF ESTILL, LLC

Note:This online database was last updated on 10/3/2011 6:01:29 PM. See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	C T CORPORATION SYSTEM
ADDRESS:	2 Office Park Court
CITY:	Columbia
STATE:	SC
ZIP:	29223
SECOND ADDRESS:	Suite 103
FILE DATE:	09/06/2006
EFFECTIVE DATE:	09/06/2006
DISSOLVED DATE:	/ /

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Agent	05/06/2010	CH AGT ADDRESS	
Domestic LLC	09/06/2006	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Exhibit 12

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT NELLE SMITH, as Personal Representative of the Estate of JOHN GETTYS SMITH, Plaintiff v. BAYVIEW MANOR, LLC d/b/a Bay View Manor, Defendant	IN THE COURT OF COMMON PLEAS C/A NO.: 10-CP-07-5174 (Wrongful Death) C/A NO.: 10-CP-07-5175 (Survival) **Order Denying Defendant's Motion to Stay Action and Compel Arbitration** **(Wrongful Death/Survival)**

11 JUL -1 PM 12:44
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter comes before me on the Defendant's Motion to Stay Action and Compel Arbitration. For the reasons set forth below, the motion is denied.

FACTUAL BACKGROUND

The decedent, Mr. John Gettys Smith, was a resident at the defendant's nursing facility, Bay View Manor, from March 12, 2008 until his death on February 24, 2009. At the time of his admission, the plaintiff, Mrs. Nelle Smith (wife of the decedent) signed all admission documents that were necessary for her husband's admission to Bay View. Included in the documents were a Waiver of Jury Trial and Optional Arbitration Agreement. At the time of Mr. Smith's admission, Mrs. Smith was not a power of attorney for her husband, guardian, or authorized by any other appointment to contractually bind Mr. Smith. Subsequently, the Beaufort County Probate Court appointed Mrs. Smith as conservator for Mr. Smith, and following this appointment, Mrs. Smith signed a Re-Admission Agreement on behalf of her husband.

Mrs. Smith filed a survival action and wrongful death action against the Defendant alleging negligent care.

LAW

The Defendant contends the Optional Arbitration Clause contained within its admission documents is governed by the FAA.[1]

The FAA provides that a written provision in any contract evidencing a transaction involving commerce which provides that the controversy shall be resolved by arbitration shall be "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."See 9 U.S.C.§ 2 (1988). If interstate commerce is affected, the FAA will preempt state laws which would otherwise render the arbitration agreement unenforceable. Id.

The transaction between the parties in this lawsuit does not involve interstate commerce. The admission agreement containing the Optional Arbitration Clause that the Defendant seeks to enforce must itself involve interstate commerce. Timms v. Greene, 310 S.C. 469, 427 S.E.2d 642 (1993). This the Defendant cannot prove. The Defendant produced the affidavit of Ms. Sheila Stevens, the administrator of Bay View Manor, LLC. Her affidavit contains anecdotal evidence that the *facility* is involved in interstate commerce. It fails, however, to provide any reference to interstate commerce involved in a purported contractual agreement between a citizen of South Carolina and a business created, organized and operating in South Carolina at the time the transaction was commenced. Absent a showing that the *transaction* at issue involved interstate commerce, the Defendant cannot rely on the FAA to govern the binding arbitration it seeks.

[1] The Optional Arbitration Clause contained in the Admission Agreement at issue purports to be governed by the S.C. Uniform Arbitration Act ("SCUAA"). However, the Defendant admitted during the hearing that the SCUAA does not apply in this personal injury case. The subject clause, presumably anticipating such a result, states that if the SCUAA does not apply, then it is to be governed by the FAA.

Therefore, the FAA cannot govern this dispute because the transaction between the parties does not involve interstate commerce.

CONCLUSION

For the reasons set forth above, the Defendant's Motion to Stay the Action and Compel Arbitration is DENIED.

And it is so ORDERED.

The Honorable Carmen T. Mullen
Presiding Judge

Beaufort, South Carolina

June 30, 20111

Exhibit 13

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action) **DEFENDANT UHS-PRUITT CORPORATION'S ANSWER TO COMPLAINT**

COMES NOW Defendant UHS-Pruitt Corportation ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corporation is a trade name of Pruitt Corporation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner:

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 17, 2010.

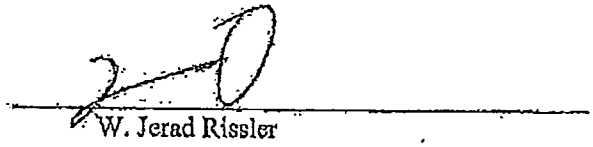
CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the **DEFENDANT UHS-PRUITT CORPORATION'S ANSWER TO COMPLAINT** upon all other parties in this matter by U.S. Mail, first class postage, as follows:

Lee D. Cope, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office Box 499
Walterboro, SC 29488

This 24 day of November, 2010.



W. Jerad Rissler

ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **DEFENDANT UHS-PRUITT CORPORATION'S ANSWER TO COMPLAINT**

COMES NOW Defendant UHS-Pruitt Corportation ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

2926795v1

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the **DEFENDANT UHS-PRUITT CORPORATION'S ANSWER TO COMPLAINT** upon all other parties in this matter by U.S. Mail, first class postage, as follows:

Lee D. Cope, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office Box 499
Walterboro, SC 29488

This 24 day of November, 2010.

W. Jerad Rissler

ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781

2926795v1

Exhibit 14

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action) **DEFENDANT UNITED REHAB, INC.'S ANSWER TO COMPLAINT**

COMES NOW Defendant United Rehab, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Prultt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

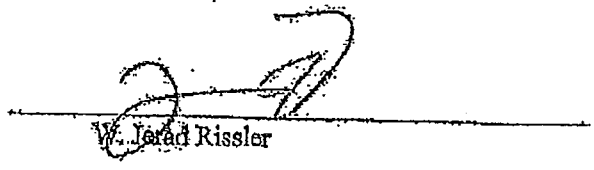
CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the **DEFENDANT UNITED REHAB, INC.'S ANSWER TO COMPLAINT** upon all other parties in this matter by U.S. Mail, first class postage, as follows:

Lee D. Cope, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office Box 499
Walterboro, SC 29488

This 24 day of November, 2010.



W. Jerad Rissler

ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781

29268079v1

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **DEFENDANT UNITED REHAB, INC.'S ANSWER TO COMPLAINT**

COMES NOW Defendant United Rehab, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24, 2010.

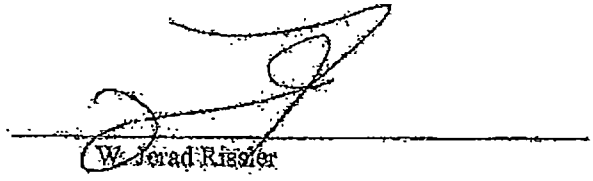
CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the **DEFENDANT UNITED REHAB, INC.'S** upon all other parties in this matter by U.S. Mail, first class postage, as follows:

Lee D. Cope, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office Box 499
Walterboro, SC 29488

This 24 day of November, 2010.



W. Jerad Rissler

ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781

Exhibit 15

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v. HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry; UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0489 (Survival Action) **DEFENDANT UNITED CLINICAL SERVICES, INC.'S ANSWER TO COMPLAINT**

COMES NOW Defendant United Clinical Services, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corportation is a trade name of Pruitt Corportation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. §.15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 24 2010.

2926805v1

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the **DEFENDANT UNITED CLINICAL SERVICES, INC.'S ANSWER TO COMPLAINT** upon all other parties in this matter by U.S. Mail, first class postage, as follows:

Lee D. Cope, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office Box 499
Walterboro, SC 29488

This 21 day of November, 2010.

W. Jerad Rissler

ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781

STATE OF SOUTH CAROLINA COUNTY OF HAMPTON LINDA JOHNSON, as Personal Representative of the Estate of INEZ ROBERTS, Plaintiff, v, HERITAGE HEALTHCARE OF ESTILL, LLC d/b/a Heritage of the Lowcountry and/or d/b/a Uni-Health Post Acute Care of the Lowcountry, UNITED CLINICAL SERVICES, INC., UNITED REHAB, INC. and UHS-PRUITT CORPORATION, Defendants.	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO. 2010-CP-25-0490 (Wrongful Death) **DEFENDANT UNITED CLINICAL SERVICES, INC.'S ANSWER TO COMPLAINT**

COMES NOW Defendant United Clinical Services, Inc. ("Defendant"), a defendant in the above-styled case, and specifically preserving its defense that this action is barred by reason of Plaintiff's agreement to arbitrate any claims, files this Answer and Defenses to Plaintiff's Complaint and respectfully shows the Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified, or explained and demands strict proof thereof.

FOR A SECOND DEFENSE

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 of the Complaint and therefore denies the same and demands strict proof thereof.

3. Defendant admits the allegations contained in Paragraph 2 of the Complaint.

4. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5. Defendant admits the allegations contained in Paragraph 4 of the Complaint.

6. Defendant admits that UHS-Pruitt Corporation is a trade name of Pruitt Corporation, a corporation organized under the laws of Georgia, that provides services in Hampton County, South Carolina.

7. Defendant denies the allegations contained in Paragraph 6 of the Complaint.

8. Defendant admits that Inez Roberts was admitted to Heritage Healthcare of Estill on August 22, 2007. Defendant denies the remainder of the allegations contained in Paragraph 7 of the Complaint.

9. The medical records speak for themselves. To the extent the allegations of Paragraph 8 of the Complaint do not accurately reflect the medical records, those allegations are denied.

10. Defendant denies the allegations of Paragraph 9 of the Complaint.

11. Defendant denies the allegations of Paragraph 10 of the Complaint, including all subparts of Paragraph 10.

12. Defendant denies the allegations of Paragraph 11 of the Complaint.

13. Defendant denies the allegations of Paragraph 12 of the Complaint.

FOR A THIRD DEFENSE

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

FOR A FOURTH DEFENSE

15. Defendant denies that it is liable to Plaintiff for any sum or in any manner.

FOR A FIFTH DEFENSE

16. Plaintiff's Complaint is barred because Plaintiff is bound by an arbitration agreement that applies to the claims raised in the Complaint. Arbitration is the exclusive remedy available to Plaintiff, and Plaintiff is therefore barred from bringing this action. This proceeding should be dismissed or stayed pending arbitration, and all discovery should be stayed. By answering this Complaint, Defendant does not waive the opportunity to arbitrate but instead insists that Plaintiff's claims be arbitrated. Defendant reserves all defenses to arbitration.

FOR A SIXTH DEFENSE

17. Plaintiff's claims are barred in whole or in part under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (hereinafter "FAA").

FOR A SEVENTH DEFENSE

18. Plaintiff has failed to include an affidavit complying with S.C. Code Ann. § 15-36-100 in that the affidavit attached to Plaintiff's Notice of Intent to File Suit fails to aver that the affiant is qualified as required by S.C. Code Ann. § 15-36-100(A) and fails to specify any negligent act or omission claimed to exist or the factual basis for each claim as required by S.C. Code Ann. § 15-36-100(B).

FOR AN EIGHTH DEFENSE

19. Plaintiff's claims are barred, in whole or in part, for failure to join indispensable parties.

FOR A NINTH DEFENSE

20. Plaintiff's claims are barred in whole or in part under the applicable statute of limitations.

FOR A TENTH DEFENSE

21. Plaintiff's claims are barred in whole or in part by assumption of the risk.

FOR AN ELEVENTH DEFENSE

22. Plaintiff's claims are barred in whole or in part by contributory negligence.

FOR A TWELFTH DEFENSE

23. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of Plaintiff.

FOR A THIRTEENTH DEFENSE

24. Any recovery against Defendant must be reduced by the degree that the alleged injuries of Plaintiff were caused by the actions or inactions of others.

FOR A FOURTEENTH DEFENSE

25. The Complaint is barred because Plaintiff has not sustained any injuries or damages as a proximate result of any act, omission, or breach of duty by Defendant.

FOR A FIFTEENTH DEFENSE

26. Plaintiff's claims are barred, in whole or in part, because any alleged damage was not foreseeable and any alleged injury is too remote.

FOR A SIXTEENTH DEFENSE

27. Plaintiff's claims are barred, in whole or in part, for failure to mitigate damages.

FOR A SEVENTEENTH DEFENSE

28. Plaintiff has failed to state specific allegations sufficient to justify the award of punitive damages.

FOR AN EIGHTEENTH DEFENSE

29. Plaintiff's claims for punitive damages are barred to the extent that they are

excessive under the Constitutions of the United States of America and the State of South Carolina.

FOR A NINETEENTH DEFENSE

30. Plaintiff's claims for punitive damages are barred to the extent that they violate Defendant's due process rights under the Fifth and Fourteenth Amendments to the United States Constitution.

FOR A TWENTIETH DEFENSE

31. Plaintiff's claims for punitive damages are barred to the extent that they violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

FOR A TWENTY-FIRST DEFENSE

32. Defendant reserves the right to assert any and all additional defenses as may be determined to be applicable during the course of discovery.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant respectfully prays that this Court dismiss this action and grant Defendant such other relief as this Court deems just and proper. **Provided that Plaintiff is not compelled to arbitrate her claims,** Defendant requests a twelve-person jury.

By: _____
W. Jerad Rissler

W. Jerad Rissler, Esquire
South Carolina Bar No. 71662
Tyler L. Arnold, Esquire
South Carolina Bar No. 80221
ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Ph: (404) 873-8780
Fax: (404) 873-8781
Jerad.Rissler@agg.com

Attorneys for Defendant

Atlanta, Georgia
November 2_, 2010.

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the **DEFENDANT UNITED CLINICAL SERVICES, INC.'S ANSWER TO COMPLAINT** upon all other parties in this matter by U.S. Mail, first class postage, as follows:

Lee D. Cope, Esq.
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
Post Office Box 457
Hampton, South Carolina 29924

Margie Bright Mathews, Esq.
Bright Mathews Law Firm
Post Office Box 499
Walterboro, SC 29488

This 27 day of November, 2010.

W. Jerad Rissler

ARNALL GOLDEN GREGORY LLP
171 17th Street, N.W.
Suite 2100
Atlanta, Georgia 30363
Telephone: (404) 873-8780
Facsimile: (404) 873-8781

Exhibit 16

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS
Willie Powell, Individually and as Personal Representative of the Estate of Rebecca Powell, Plaintiff, Versus Fundamental Long-Term Care Holdings, LLC, THI of Baltimore, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC,THI of Baltimore Management, LLC, Magnolia Manor-Moncks Corner, Inc., THI of South Carolina at Moncks Corner, LLC, THI Immediate Healthcare Staffing, LLC, Defendants.	C/A No. 08-CP-08-695 **ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND COMPEL ARBITRATION**

FILED
2008 SEP 29 PM 3:58
CLERK OF COURT
BERKELEY COUNTY

This matter was before the Court on the Defendants Fundamental Long-Term Care Holdings, LLC, THI of Baltimore, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC, THI of Baltimore Management, LLC, Magnolia Manor-Moncks Corner, Inc., THI of South Carolina at Moncks Corner, LLC, THI Immediate Healthcare Staffing, LLC's Motion to Dismiss this matter and to Compel Arbitration. For the following reasons, the Court denies the Defendants' motion and orders that the parties proceed with discovery.

FACTUAL BACKGROUND

Rebecca Powell ("Ms. Powell"), now deceased, was admitted to a skilled nursing facility located at 505 S. Live Oak Drive, Moncks Corner, South Carolina, 29461 on August 25, 2003, and placed under the care, supervision and control of the Defendants. At the time of her admission Rebecca Powell did not sign her own Admission Contract. The Defendants allege that Ms. Powell's daughter, Pamela Powell, executed the agreement with the Defendants as the "fiduciary party." The Admission Contract contained an arbitration clause in paragraph VI on the last page. It is undisputed that (1) Ms. Powell did not sign the document; (2) Ms. Powell's daughter was not Ms. Powell's power of attorney and had no

power to bind Ms. Powell; (3) Ms. Powell's daughter is not the Personal Representative of Ms. Powell's estate; (4) none of the Defendants named in this case are mentioned anywhere in the agreement and (4) the document was signed prior to the alleged injuries in this case.

Mrs. Powell was a resident at the Defendants' facility from August 25, 2003 until shortly before her death on March 30, 2008, with the exception of outings and hospital admissions. The Plaintiff alleges that Ms. Powell suffered injuries and death due to the Defendants' negligence. The Defendants deny the claims.

LEGAL CONCLUSIONS

The Court finds that the arbitration clause in the Admission Contract is not binding on the Plaintiff, as it was not signed and executed by her, nor is the clause still valid as the body chosen to arbitrate any dispute under the contract can no longer do so.

There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (S.C. App., 1999). However, case law is clear that in determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" *Id.* (citing *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir.1998) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L.Ed.2d 985 (1995)). Furthermore, Arbitration is available only when the parties involved contractually agree to arbitrate. *Id.* In determining whether a particular dispute can be compelled to arbitration, a Court conducts an inquiry into whether "a valid agreement to arbitrate exists between the parties." *Hooters of America v. Phillips*, 173 F.3d. 933, 938 (4th Cir. 1999).

In this case, the Parties have not agreed to arbitrate as the contract was not executed by the Plaintiff or her valid representative. In addition, the clause is moot and ineffective because there is no proper forum, as the NHLA will no longer arbitrate this type of case.

1. The Court finds there is not a valid binding contract between the parties.

Under the FAA, the party seeking arbitration must first show a written agreement between the parties to arbitrate. There is nothing in the record to show that Pamela Powell had authority to act as agent the Plaintiff, Rebecca Powell, and/or of her estate, and bind the Plaintiff or waive the Plaintiff's right to a jury trial.

The Admission Contract containing the arbitration clause which Defendants seek to enforce was signed by Pamela Powell, the daughter of Rebecca Powell, and the box was not checked to specify Pamela Powell's relationship to Rebecca Powell and/or her authority to enter into the contract. It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority. *Frasier v. Palmetto Homes of Florence*, 473 S.E.2d 865 (S.C. App. 1996). There is no evidence that Pamela Powell possessed any other relationship with Rebecca Powell, such as Power of Attorney or Guardian, that would be capable of binding Rebecca Powell to this agreement.

Magnolia Manor's social progress notes document that Mrs. Powell was an "involved resident" who was very aware of her surroundings, as early as the time of admission. Magnolia Manor documented in its Activities Progress Notes that Mrs. Powell "like[d] any and all activities" including "Church Worship" and that she "love[d] to play Bingo." The March 2, 2006, quarterly social notes indicate that Mrs. Powell "continue[d] to be part of facility life by participating in activities and interacting with staff and residents." Magnolia Manor further documented Mrs. Powell to be a "good candidate for worship, small group activities, puzzles and memory games." As of September 21, 2006, only six months before Mrs. Powell's death, it is clear that she was very active and aware of her surroundings. Magnolia Manor's activity progress notes of that date noted that Mrs. Powell was "able to self select activities" and that Mrs. Powell still "enjoy[ed] church, music, bingo & team games." Even at the onset of the sacral pressure ulcer which would lead to Mrs. Powell's death, as of December 13, 2006, it was noted that Ms. Powell was able to self "select group activities" and that Mrs. Powell still

enjoyed "church, music & bingo." *Additionally, the Defendants noted, as of January 22, 2004, Rebecca Powell was awoke and oriented to her name, age, year of birth, town, country and birth.*

Because the Defendants own records indicate the patient was apparently competent when she was admitted to the facility, arrangements should have been made to have the resident execute the contract. The Defendants have presented no evidence to show that an authorized party signed the agreement, nor that they at any time attempted to ensure the agreement was properly executed and valid between the parties.

Furthermore, the document which the Defendants allege constitutes an agreement to arbitrate is only as to "Magnolia Manor" (a non-existent corporation) and does not mention *any* of the named Defendants in this lawsuit: Fundamental Long-Term Care Holdings, LLC, THI of Baltimore, LLC, THI of Baltimore, Inc., THI of South Carolina, LLC, THI of Baltimore Management, LLC, Magnolia Manor-Moncks Corner, Inc., THI of South Carolina at Moncks Corner, LLC, or THI Immediate Healthcare Staffing, LLC.[1] Accordingly, the Court finds no valid agreement to arbitrate.

II. <u>The Court finds that the Arbitration Clause is Unenforceable Due to an Omitted Material Term – the lack of a definitive forum.</u>

Even if there were a valid agreement between Ms. Powell and the Defendants, the Court finds that the arbitration clause contained in the Admission Contract at hand is unenforceable because a material part of the arbitration clause no longer exists.

The arbitration clause states that arbitration "... shall be resolved by binding arbitration administered by the National Health Lawyers Associations (the "NHLA"). The NHLA, now known as the American Health Lawyers Association (hereinafter "AHLA"), amended its rules for cases filed with the service after January 1, 2004. The Service will only administer consumer health care liability claims if an agreement to arbitrate was entered into by the parties in writing *after* the alleged injury occurred. This rule change applies to a very limited type of claim, namely medical malpractice, medical negligence or products liability cases brought by a patient, former patient or their representative. This change not

only rests with the AHLA (f/k/a the NHLA), but also with the world's leading provider of conflict management and dispute resolution services known as the American Arbitration Association (hereinafter "AAA"). As of January 1, 2003, the AAA announced that it will no longer accept the administration of cases involving individual patients without a post-dispute agreement to arbitrate. The Senior Vice President of the AAA, Robert Meade, stated that the AAA thought it was appropriate to change their policy in these types of cases since, "medical problems can be life or death situations and require special consideration."

While strong federal policy in favor of arbitration is well-established, the FAA makes clear that arbitration agreements must "be valid, irrevocable and enforceable... " to be enforced. *Smith Barney, Inc. v. Critical Health Systems of NC*, 212 F.3d 858, 861 (4th Cir. 2000) (citing 9 U.S.C. § 2). As set forth in Part I, *supra*, in determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" *Towles v. United Healthcare Corp.* 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (S.C. App., 1999)(citing *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir.1998) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L.Ed.2d 985 (1995)). The choice of the arbitral forum is one of the most important and material terms in an agreement to arbitrate. Consideration of objections by the Court to the arbitral forum are warranted. See *Penn v. Ryan's Family Steakhouses, Inc.*, 95 F. Supp.2d 940, 947 (2000). The judicial inquiry may include an examination of contractual defects such as lack of mutual assent and want of consideration, as well as other grounds existing at law or equity, including fraud, duress, and unconscionability. See *Sydnor v. Conseco Fin. Servicing Corp.*, 252 F.3d.302, 205 (4th Cir.2001).

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. *Player v. Chandler*, 299 S.C. 101, 105, 1989 (citing *Hughes v. Edwards*, 265 S.C. 529 (1975). The forum chosen for the arbitration to take place is just that, essential and material.

In *Smith Barney*, the arbitration agreement provided that arbitration would proceed in accordance with the rules of three self-regulatory organizations, the NASD, the NYSE and the AMEX. "Notably, the agreement makes no mention whatsoever of the AAA." *Smith Barney* at 862. "Where the parties have agreed explicitly to settle their disputes before particular arbitration fora, that agreement must control. To hold otherwise would require us to impose a strained construction on a straightforward agreement." *Id.* at 862 (internal citations omitted). Similarly, in the case before this Court, the clause specifically states that the NHLA shall administer the arbitration, and the NHLA, now known as the AHLA, no longer will arbitrate this dispute without an arbitration clause signed post injury; therefore, the forum fails and the arbitration clause is unenforceable.

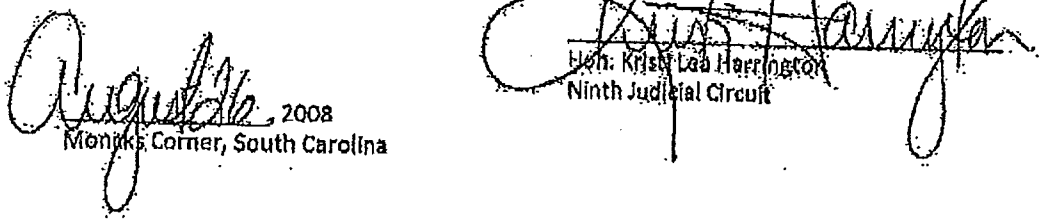
In these types of cases similarly situated Defendants have asserted that §5 of the FAA can be invoked so as not to destroy the enforceability and effectiveness of the arbitration clause. While this argument is enticing, the plain language of §5 prevents its use in this instance. In this particular cased, there has not been a lapse in naming an arbitrator as contemplated by §5 of the FAA, rather, the parties' agreement as to the administration and forum for the arbitration has lapsed. Had the parties not agreed specifically on NHLA to administer this arbitration, this Court could apply §5 to appoint an arbitrator if the parties could not agree upon the same.

An agreement which neglects material terms may be found unenforceable for indefiniteness. *Lindsay v. Lindsay*, 491 S.E.2d 583 (S.C. App. 1997). "Ordinarily, a court will not supply omitted terms to an agreement, and an agreement where the parties did not agree to essential terms will simply not be enforced." *Id.* In this particular case, even if the contract was validly executed, there was not "meeting of the minds" as to the terms of arbitration, specifically the choice of arbitrator. The choice of an arbitrator is an important, essential, and material term of an agreement to arbitrate, to say otherwise undermines the purpose of the arbitration process. Through no fault of either party, the parties cannot now arbitrate this dispute through the NHLA. As a result, the promise that the dispute "shall be resolved by binding arbitration administered by the National Health Lawyers Associations" is moot and

Ineffective. The Plaintiff cannot be bound to act on a promise that is no longer possible; therefore, the Court finds that arbitration should not be compelled in this case.

CONCLUSION

For the above reasons, the Court denies the Defendants' motion to compel arbitration and finds that and Orders that the case is properly before the Court and discovery shall proceed.



Hon. Kristi Lea Harrington
Ninth Judicial Circuit

2008
Moncks Corner, South Carolina

Exhibit 17

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Peggy Benton as Power of Attorney for Mary K. Weaver, Plaintiff, v. Summit Place, Inc., Defendant(s).	IN THE COURT OF COMMON PLEAS C.A. NO. 2004-CP-23-0267 ORDER DENYING MOTION TO COMPEL ARBITRATION ENTERED COMPUTER

This matter is before this Court upon the Defendant's Motion to Compel Arbitration. The Defendant seeks to compel arbitration under an arbitration provision included in an admission agreement that Plaintiff signed as Mary K. Weaver's attorney in fact with the Defendant nursing home when Weaver entered Defendant's facility for care. The motion hearing was held on September 7, 2004. Thereafter, the court requested the parties to provide supplemental memoranda. The parties' counsel argued their positions and the Court has reviewed the parties' original and supplemental memoranda.

DISCUSSION

The parties both acknowledge that the American Arbitration Association (AAA) no longer accepts health care arbitrations involving patients unless the arbitration agreement

is entered into after the dispute arises.[1] It is uncontested that the arbitration agreement was made by the parties before AAA changed its policy and before the current dispute arose. The arbitration clause states in pertinent part:

> Any and all claims or controversies arising out of or in any way relating to the resident's stay at the Facility including the care and treatment received by the resident at the Facility shall be submitted to binding arbitration pursuant to the United States Arbitration Act, 9 U.S.C. 1 to 207 ("Federal Arbitration Act") and pursuant to the arbitration rules of the American Arbitration Association. This right to demand arbitration includes, without limitation, disputes regarding interpretation of this Agreement, disputes arising under State or Federal law, either currently existing or arising in the future, including claims for statutory, compensatory or punitive damages and claims based on breach of contract, tort or breach of statutory duties. Notwithstanding any other provision in any agreement or contract between the Facility and the resident, the parties agree that this Agreement to Arbitrate shall be governed by the Federal Arbitration Act.
>
> The parties shall agree upon an arbitrator. If the parties cannot reach an agreement regarding the choice of an arbitrator within twenty (20) days of submission of the arbitration demand, the arbitration shall be submitted to the American Arbitration Association for selection of an arbitrator. Either party may elect that the matter be heard by three (3) arbitrators, all to be chosen by the above method. With regard to discovery, each party shall be allowed to depose a maximum of three (3) non-expert witnesses. Each party is limited to two (2) expert witnesses and depositions shall be limited to four (4) hours per expert. No later than fourteen (14) working days before the arbitration hearing, the parties shall exchange a list of witnesses, a list of exhibits, and any sworn statements to be relied upon at the arbitration. All arbitration hearings shall be held at a place designated by the arbitrator(s) in the county in which the facility is located. (Emphasis added.)

Section 2 of the Federal Arbitration Act (FAA) states that:

---

[1] This change became effective January 1, 2003. The AAA based its decision in part on due process concerns raised by the July 27, 1998 Final Report of the Commission on Health Care Dispute Resolution ("Commission"). The Commission was sponsored by AAA, the American Bar Association, and the American Medical Association.
See http://www.adr.org/upload/LIVESITE/focusArea/Healthcare/healthcare.pdf

> A written provision in any maritime transaction or a contract evidencing a transaction involving interstate commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (Emphasis added.)

9 U.S.C. 2. The FAA does not require parties to arbitrate when they have not agreed to do so. Zabinski v. Bright Acres Assoc., 553 S.E.2d 110 (S.C. 2001). The FAA simply requires courts to enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms. Zabinski, supra.

General contract principles of state law apply to arbitration clauses governed by the FAA. Munoz v. Green Tree Financial Corp., 542 S.E.2d 360 (S.C. 2001). In determining whether the parties executed a valid agreement to arbitrate, courts generally apply ordinary state-law principles governing the formation of contracts. Sydnor v. Conseco Financial Serving Corp., 252 F.3d 302, 305 (4th Cir. 2001). Of course, courts do not have authority to make new agreements for the parties. The court's duty is limited to interpretation of the contract made by parties, "regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." C.A.N. Enterprises, Inc. v. South Carolina Health & Human Serv. Fin. Comm'n, 373 S.E.2d 584, 587 (S.C. 1988) (citation omitted).

The United States Court of Appeals for the Second Circuit considered the issue of a failed arbitral forum provision in In re Salomon Inc. Shareholders' Derivative Litigation, 68 F.3d 554 (2d Cir. 1995). Salomon, a shareholders' derivative action against former corporate officers, concerned an arbitration clause providing for

arbitration before the NYSE. The district court initially granted the Defendant's motion to compel arbitration, but the NYSE refused to hear the matter. Salomon at 556. Thereafter, the court declined to compel arbitration and set the case for trial. The court stated that when the NYSE refuses to arbitrate the matter, "there is no further promise to arbitrate in another forum." The court was concerned not with whether, but where the dispute could be arbitrated under the agreements. The court held "we cannot compel a party to arbitrate a dispute before someone other than the NYSE when that party had agreed to arbitrate only before the NYSE and the NYSE, ... has refused to use its facilities to arbitrate the dispute in question...." The court refused to appoint substitute arbitrators and compel arbitration in another forum because the arbitration agreements required that any arbitration be before the NYSE, and not any other arbitral forum. Id. at 677-681.

In Alan v. Superior Court, 3 Cal. Rptr.3d 377 (Cal. App. 2 Dist. 2003), Salomon was followed closely. In Alan, the arbitration agreements provided for arbitration before the NYSE or NASD and governed by the rules of the organization's convening panel. In its motion to compel arbitration, the brokers chose the forum provided by NASD. Alan at 383. The Alan court stated:

> As we read the arbitration provisions, the parties are required, as an integral part of the agreements between them, to submit their disputes to an arbitral forum designated in the arbitration provisions. Thus, if ... the forum selected by the brokers declines to hear the matter, the dispute is to be tried in court. In other words, the arbitration provisions mean *all* arbitrations must be conducted in a *forum* convened by, and subject to the *rules* of, the chosen SRO [forum]. This is so because, as we next discuss, the arbitration provisions encompass more than the simple task of appointing an arbitrator. They determine the selection of a "forum" –a

court or arbitral tribunal –each with its own set of rules and procedures. (Italics in original, without footnote)

Id., at 383. The Alan court goes on to analyze and rely on Salomon and also cites the following additional authority: Smith Barney v. Critical Health Systems of N.C., 212 F.3d 858, 861-862 (4th Cir. 2000), Luckie v. Smith Barney, Harris Upham Co., Inc., 999 F.2d 509 (11th Cir. 1993), Merrill Lynch v. Georgiadis, 903 F.2d 109 (2d Cir. 1990), and PaineWebber, Inc. v. Rutherford, 903 F.2d 106, 108 (2d Cir. 1990). Id., at 384.

Here, the court finds that the choice of an arbitral forum is an integral and material term of the agreement to arbitrate. The parties' agreement provides for arbitration by AAA pursuant to its rules. In construing the language of the agreement, it is clear that the parties intended the forum selection and arbitration agreement to be entire, not divisible. See National Iranian Oil Company v. Ashland Oil, Inc., 817 F.2d 326, 334 (5th Cir. 1987). It is undisputed that the AAA no longer handles arbitration of health care disputes involving patients, unless agreed to after the dispute arises, and has no specific arbitration rules for such disputes.

The parties agreed that any arbitration would be conducted according to the "rules" of the AAA. While the AAA evidently never established specific rules for patient healthcare disputes, the Court takes judicial notice that the AAA's general Commercial Arbitration Rules are quite complex and detailed. See http://www.adr.org. For example, the rules provide what evidence is admissible, discovery exchanges, scheduling deadlines, and discovery deadlines, pretrial conference, procedures, the scope and form of the award, grounds for modifying an award, and how and by whom the

arbitrator(s) is(are) compensated. These are essential terms, and nothing in 9 U.S.C. 5[2] allows the court to create new "rules" for the parties.

The choice of arbitral forum is one of the most important and material terms in an agreement to arbitrate. The choice of arbitral forum also dictates the rules of arbitration and the rights of the parties including, but not limited to, presentation of evidence, scheduling, deadlines, discovery issues, costs, expenses, and appeals. Moreover, the agreement here provided that if the parties could not agree on an arbitrator they would turn to AAA's selection process. The parties thus intended that if they could not agree on who would arbitrate their dispute, they would be assured of having experienced, qualified, AAA-caliber arbitrators in any event. The Salomon and Alan court's analysis discussed above is directly applicable here. As stated in Salomon, because the AAA refuses, there is no further promise to arbitrate in another arbitral forum.

Where the arbitration forum and procedures are a material part of the contract, Section 5 of the FAA cannot remedy the contract's explicit choice of an arbitral forum and rules for arbitration. The court cannot reform the contract to add or replace material terms that were not included in the contract without violating South Carolina law on contracts. See Edens v. Laurel Hill, Inc., 271 S.C. 360, 247 S.E.2d 434 (1978) (In order for a binding contract to exist, there must be a mutual manifestation of assent to all of

[2] This section provides as follows:
If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator of arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator. 9 U.S.C.§5.

the terms of the contract). As the Fourth Circuit has observed:

> Where the parties have agreed explicitly to settle their disputes before particular arbitration fora that agreement must control. *See Georgiadis*, 903 F.2d at 113. To hold otherwise would require us to impose a strained construction on a straightforward agreement. It is far better to interpret the agreement based on what is specified, rather than attempt to incorporate other remote rules by reference. Here Critical Health had the choice of three fora. We can see no reason to pass over the three specified fora and allow arbitration to proceed in a fourth unspecified arena.

Smith Barney, Inc. v. Critical Health Systems of North Carolina, Inc. of Raleigh, North Carolina, 212 F.3d 858, 862 (4th Cir. 2000).

The FAA's Section 5 does not control here. As discussed in Salomon, Section 5 remedies a 'mechanical breakdown in the arbitrator selection process', but not where the contract's chosen arbitration forum refuses to arbitrate the dispute and leaves the parties without an arbitral forum.

As the Alan court explained:

> "[Case law does not] stand[ ] for the proposition that ... courts may use [the Federal Arbitration Act] to circumvent the parties' designation of an exclusive arbitral forum ... [W]here it is clear that the failed [forum selection] term is not an ancillary logistical concern but rather is as important a consideration as the agreement to arbitrate itself, a court will not sever the failed term from the rest of the agreement and the entire arbitration provision will fail.' " (*Salomon, supra*, 68 F.3d at p. 561, italics omitted.)
>
> We conclude that, here, the arbitration provisions will fail in their entirety without NASD participation because the forum selection provisions are an integral part of the agreements to arbitrate. The parties agreed to an NASD forum, and the NASD will not provide one in California. "[A]n agreement to arbitrate before a particular forum is as integral a term of a contract as any other, which courts must enforce." (citation omitted).

JH

Alan at 386. In the present case, the AAA is the exclusive arbitral forum. The court cannot change the agreement and impose unilaterally another arbitral forum and arbitration rules for the parties. See Smith Barney, at 862.

The South Carolina Arbitration Act has a similar provision for appointing omitted arbitrators, but is inapplicable here under the same analysis as under the FAA. Further, it is uncontested that the agreement fails to comply with the requirements of the South Carolina Arbitration Act, which requires conspicuousness: The South Carolina Uniform Arbitration Act requires that the arbitration notice be "typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract." S.C. Code Ann. 15-48-10. Because it is undisputed that this statutorily required notice is absent, the South Carolina Act does not apply.

CONCLUSION

In short, this case is analogous to Salomon and Alan. Using their analysis, the Defendant's Motion to Compel Arbitration must be denied. The parties agreed that the AAA forum and rules would apply. The AAA has failed as the arbitral forum. The forum and rules are essential terms of the parties' contract.

Therefore, the Court holds:

(1) The arbitration provision is unenforceable due to the fact that the AAA no longer arbitrates health care disputes involving patients unless the arbitration agreement was entered into after the dispute arose. Accordingly, there is no longer a "meeting of the minds" on the rules governing or the forum for the arbitration. While courts should liberally interpret arbitration agreements and resolve doubts in favor of

9/11

arbitrability, the parties' agreement cannot be rewritten;

(2) Because the AAA is no longer an available forum, the Court finds the logic of the Second Circuit in the Salomon decision compelling; and

(3) The other issues raised need not be reached given this ruling.

Defendants' motion to compel arbitration is therefore denied.

IT IS SO ORDERED!

D. GARRISON HILL, JUDGE
13TH JUDICIAL CIRCUIT

Dated 10-20-2004
Greenville, South Carolina

Exhibit 18

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT
Peggy Benton, as Power of Attorney for Mary K. Weaver, Plaintiff, v. Summit Place, Inc., Defendant.	C.A. No. 2003-CP-23-0267 4 ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER

FILED IN THE OFFICE OF THE CLERK OF COURT GREENVILLE, S.C.
2004 NOV 17 P 2:54

The court has reviewed Defendant Summit Place, Inc.'s Motion to Reconsider. For the following reasons, the motion is respectfully denied.

Public policy strongly favors arbitration. Our supreme court recently reaffirmed this policy, noting that "[a]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Carolina Care Plan, Inc. v. United Healthcare Services, Inc., 2004 WL 2377630, S.C. Sup Ct. Op No. 25879 (October 18, 2004). Likewise, in their latest pronouncement regarding arbitration, the United States Supreme Court held that Congress's unmistakable intent underlying the "involving commerce" language of the Federal Arbitration Act (FAA) was designed to allow the "broadest permissible exercise of Congress's commerce clause power." Citizens Bank v. Alfabco, Inc., 123 S.Ct. 2037, 2039 (2003) (per curiam).

The issues raised in the Carolina Care Plan and Alfabco cases, however, involved whether a particular dispute was arbitrable under the parties' arbitration agreement.

By contrast, in the case at hand the question addressed by the courts October 26, 2004 order was whether the agreement to arbitrate was itself enforceable at all. And while "there is strong presumption in favor of the validity of arbitration agreements", arbitration is "available only when the parties involved contractually agree to arbitrate." Towles v. United Health Care Corp. 338 S.C. 29, 37, 524 S.E.2d 839 (Ct.App. 1999).

The idea of arbitration is premised on consent, and the pro-arbitration presumptions and policies were designed to further the intent of private parties who had consensually agreed to arbitrate their disputes. Indeed, the FAA was primarily aimed at reversing the common law hostility to arbitration. In enacting the FAA, Congress meant to place arbitration agreements " 'upon the same footing as other contracts.' " Volt Information Sciences, Inc. v. Stanford, 489 U.S. 468, 478 (1989). The FAA thus makes arbitration agreements as enforceable as other contracts, "but not more so." Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404 n.12 (1967). The FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds or exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Courts apply ordinary state-law principles governing the formation of contracts in determining whether a valid arbitration agreement exists. Housing Authority of City of Columbia v. Cornerstone Housing, LLC, 356 S.C. 328, 335, 588 S.E.2d 617 (Ct. App. 2003).

Defendant asserts that 9 U.S.C. § 5 can be invoked to save the parties' agreement. Defendant reasons that the dominant intent of the parties was to arbitrate their dispute, and the references to AAA denote subsidiary details. While this argument is alluring, the plain language of Section 5 prevents its use in this instance. Section 5, which is titled "Appointment of Arbitrators or Umpires," states:

> If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Here, there has not been "a lapse in the naming of an arbitrator . . ."; rather, the parties' agreement as to the rules and forum for the arbitration has lapsed. The court has little choice but to assume the parties meant what they said when they contracted to arbitrate "pursuant to the rules of the American Arbitration Association." Had the parties not included this language in their agreement, the court could appropriately apply Section 5 to appoint an arbitrator on motion in the event the parties could not agree upon one.

In essence, Defendant seeks to have this court delete the phrase "pursuant to the rules of the American Arbitration Association." In order to do so, the court would have to find that this phrase was superfluous and incidental to the parties'

arbitration agreement. This the court cannot do. Rather than consisting of a mere "ancillary logistical concern," the parties' express intent that their arbitration be governed by the expansive rules of the AAA was central to their agreement. See In Re Salomon, Inc. Shareholders' Derivative Litigation, 68 F.3d 554, 561 (2d Cir. 1995) (parties' agreement to arbitrate "in accordance with" the constitution and rules of the NYSE signaled that the dominant intent of the parties was to arbitrate in a particular forum; where the NYSE refused to arbitrate the parties' dispute, the entire arbitration provision fails and 9 U.S.C. § 5 cannot be invoked to revive it).

The significance of the agreement to abide by AAA Rules may be illustrated by following Defendant's argument to its logical ends. Were the court to compel arbitration, the parties would proceed to agree on an arbitrator or arbitrators. Absent agreement, the court on motion of one of the parties could then employ 9 U.S.C. § 5 to appoint an arbitrator (or a panel of three arbitrators at the election of a party). The arbitration would proceed, and the limited discovery rules and witness conditions contained in the agreement would presumably apply. The arbitrator(s) would then hear the case, but without the benefit of any other proscribed rules or framework.[1] The parties would be left to resolve their dispute on a field of unknown boundaries. They would be confronted with a pervasive unpredictability as to what "rules" would govern

[1]The parties obviously could still agree to follow their own rules, but the speculative possibility of such future agreement is inadequate to constitute the mutual assent necessary for an enforceable contract. Ellis v. Taylor, 316 S.C. 245, 449 S.E.2d 487 (1994) (contract provision leaving material terms open for future agreement is void for indefiniteness.)

PH

the arbitration hearing itself, an uncertainty that would likely spawn additional litigation and frustrate finality.[2] Such results would be contrary to the interests of justice, the underlying policy goals of arbitration, and, of course, the parties' manifest intent.

It would strain credulity to find that once the parties' chosen rules for the arbitration no longer existed, there still somehow remained a mutual assent to arbitrate. Simply put, once the rule and forum provisions failed, there was no longer a meeting of the minds as to all the essential and material terms. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (for contract to be valid and enforceable, there must be a meeting of the minds as to all essential and material terms).

The undisputed fact that AAA is no longer an available forum for the parties' arbitration renders the entire agreement uncertain and, therefore, unenforceable. See Prestwick Golf Club, Inc. v. Prestwick Ltd. Partnership, 331 S.C. 385, 390, 503 S.E.2d 184 (1998) ("The requirements of certainty in contracts ensure that the parties intend to conclude a binding agreement."); King v. Oxford, 282 S.C. 307, 316, 318 S.E.2d 125 (Ct. App. 1984).

[2] It could be argued that the FAA provides some basic rules concerning the procedure of an arbitration. See 9. U.S.C. § §7, 9-11 (establishing inter alia, witness rules, fees, and award procedures). Yet the very paucity of these procedures highlights again the importance of the parties' designation that AAA rules apply. As the court noted in its earlier order, AAA rules are quite detailed and confer substantial rights upon the parties in various areas, many of which the FAA either does not allow or even address. For example, AAA rules allow the parties the right to subpoena; the FAA grants that power only to the arbitrator. 9 U.S.C. § 7. The AAA rules also delineate rules regarding pleadings, amendments of pleadings, pre-trial conferences, the right to counsel, evidence, and various deadlines. See Commercial Arbitration Rules of the American Arbitration Association.

9th

CONCLUSION

Based on the foregoing analysis and authorities, the Defendant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.

D. Garrison Hill

D. GARRISON HILL
PRESIDING JUDGE
THIRTEENTH JUDICIAL CIRCUIT

November 17, 2004
Greenville, South Carolina

Exhibit 19

CO-STAR REPORTING
102 WATERS EDGE
HAMPTON, SC 29924
TEL: (803) 943-7119 FAX (803) 9430353 CELL: (803) 942-3109
jmalrichardson@yahoo.com

Transcript of:
Sally Dobson

Date: May 5, 2011

Case: Cherry Scott as Personal Representative of the Estate of Elizabeth Jones v. Heritage Healthcare of Estill, LLC, et al.

Case No.: 2010-25-CP-491 & 492

Name of Court Reporter: Christina L. Richardson
Notary Public for South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2010-CP-25-491&492
COUNTY OF HAMPTON)
)
Cherry Scott as Personal)
Representative of the Estate)
of Elizabeth Jones,)
) VIDEO DEPOSITION
PLAINTIFF,) OF
)
VS.)
) Sally Dobson
Heritage Healthcare of the)
Estill, LLC, d/b/a Heritage of)
the Lowcountry and/or d/b/a)
Uni-Health Post Acute Care of)
the Lowcountry, United)
Clinical Services, Inc.,)
United Rehab, Inc., and UHS-)
Prolit Corporation,)
)
DEFENDANTS.)
)
_____)

Video deposition of Sally Dobson, taken before Christina L. Richardson, a Notary Public in and for the State of South Carolina, commencing at the hour of 2:10 p.m., May 5, 2011, at the office of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., 101 Mulberry Street East, Hampton, South Carolina.

REPORTED BY
CHRISTINA L. RICHARDSON

APPEARANCES
FOR THE PLAINTIFF
Lee D. Cope, Esq.
Peters, Murdaugh, Elzroth, & Detrick, P.A.
Post Office Box 457
101 Mulberry Street East
Hampton, South Carolina 29924

Charles J. McCutchen, Esq.
Lanier & Burroughs, LLC
Post Office Drawer 2789
Orangeburg, South Carolina 29116

FOR THE DEFENDANT
W. Jarad Rissler, Esq.
Arnall, Golden, Gregory, LLP
171 17th Street, NW
Suite 2100
Atlanta, Georgia 30363-1031

REPORTED & VIDEOTAPED BY
Christina L. Richardson
Co-Star Reporting
102 Waters Edge Road
Hampton, South Carolina 29924

INDEX OF EXAMINATION

STIPULATIONS.....4
DIRECT EXAMINATION BY MR. COPE.....5
CERTIFICATE.....20

INDEX OF EXHIBITS

A Resident and Facility Arbitration Agreement
Elizabeth Jones, signed by Ellen Jenkins.....17

*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS FROM DATE OF CERTIFICATION.

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

The reading and signing of this deposition is WAIVED by the deponent and counsel for the respective parties.

MR. COPE: Okay. We've agreed to take Ms. Sally Dobson's deposition for the limited purposes of her involvement with the admission and arbitration issues in the Cherry Scott case. By taking her deposition today we're not waiving our rights should we be allowed to proceed with litigation or if the Defendant does not move to compel arbitration that we would be allowed to take her deposition again if necessary on the merits of the case.

MR. RISSLER: We agree.

THE VIDEOGRAPHER: Going on the video record now.

Page 5

WHEREUPON, Sally Dobson, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

DIRECT EXAMINATION

BY MR. COPE:

Q Would you state your full name for the record, please?
A Sally Stanley Dobson.
Q And your address?
A [redacted] South Carolina.
Q And you are employed by the -- by the nursing home in Estill. What's the name of your employer?
A Uni-Health Post Acute Care of the Low Country.
Q Okay. I want to ask you some questions today about part of your job duties and responsibilities as I understand that that is with the admission process?
A Uh-huh (affirmative).
Q Are you involved in that?
A I am.
Q Tell me about your level of involvement with the admission process of a new resident.
A -- I am the admissions director. I take referrals from the hospital or from home. We go over them, we check the pay sources, and then if we can help these people or can admit them for care then we do the process of

Page 6

admitting them.
Q Okay. What is your involvement in the actual admission process itself?
A I sign -- I have the paperwork signed by either the patient or a family member.
Q Okay. Are you familiar with what family members can enter into contract agreements for the resident?
A Most of the family members that I have come in contact with who have been taken care of, like the mother or the father, is a daughter, son, sometimes a sister, a brother.
Q Are you aware of whether or not someone that does not have a Power of Attorney has the legal ability to enter into a contract for somebody else?
MR. RISSLER: Object to the form.
Q Do you understand my question?
A No.
Q If -- are you aware of any legal requirements that must be met, for example, for me to admit Mr. Rissler into a nursing home?
A No.
Q Okay.
MR. RISSLER: Object to the form. And object to you trying to have me admitted.
THE DEPONENT: [Laughs.]

Page 7

MR. COPE: I wasn't trying.
Q But would you let me admit Mr. Rissler into a nursing home?
A Can y'all admit me?
Q But do you understand my question, Ms. Dobson?
A Uh-huh (affirmative). Yes, I do.
Q Do you even take that into consideration or is it just you deal with the family members that are present?
A I deal with the family members that are present and have been taking care of this -- the parent or the sister or brother.
Q Okay. Do you require that they provide you with a copy of a Power of Attorney?
A If they have a copy of the Power of Attorney we ask that we get a copy of it.
Q Okay. Tell me how you explain the documents to them.
A I go sheet by sheet and tell them what they are about to sign. If they refuse to sign it, I mark through it and put "refused to sign," I initial it and then have them initial it.
Q So if they don't understand something you explain it to them?
A Yes.
Q In detail?
A Yes.

Page 8

Q Because they have to make an informed consent before it can be binding, right?
A Correct.
Q Okay. What is an Arbitration Agreement?
A It is an agreement that if they have any concerns or complaints, that are not being taken care of in a timely manner, they have the right to an arbitration.
Q Okay.
A When they sign the Arbitration Agreement that waivers their right to a jury trial or, you know, having it in court.
Q Okay.
A They are informed of this whenever they are there to sign.
Q How does the arbitration -- tell me how an arbitration occurs? Because I assume they want to know that. I mean, what is an arbitration?
A Most of them don't want to know it.
Q Well, what is it?
A -- I mean they -- they just -- they either say, "I don't understand what you're talking about," and then we read over the Arbitration Agreement. And then if they want to sign it and agree to sign, they will sign it.
Q Well, because you said that it's got to a knowing, an understanding, I assume you understand what's --

Page 9

A Uh-huh (affirmative).
Q -- an Arbitration Agreement don't you?
A Uh-huh (affirmative).
Q Is that a "yes"?
A Yes, sir. I'm --
Q Okay.
A -- sorry.
Q So tell me how an arbitration proceeding occurs.
MR. RISSLER: Object to the form.
Q Since that's what you're -- you're giving up your jury trial in lieu of an arbitration proceeding. I assume you have to understand what that is before you can expect a person signing to understand it, right?
A Correct.
Q So tell me, what is an arbitration proceeding?
A It's -- well, let's see. I really don't know how to explain it to you.
Q Well, try as best you can.
A Okay. It is where --
Q Well, let me ask you, because if you don't know how to explain it, how do you explain it to --
A Well, I read it --
Q -- patient?
A -- to them.
Q I understand, but you've already told me there's some

Page 10

things they don't -- they may not understand --
A Uh-huh (affirmative).
Q -- right?
A Correct.
Q And so you would be the one that has to explain it to them, right?
A Correct. I would --
MR. RISSLER: Object to the form.
Q Yeah.
A I would get somebody else to explain it to them.
Q Who else explains it to them?
A I can get my administrator to explain it.
Q Has he ever explained to you what an arbitration proceeding --
A Yes.
Q -- entails?
A Yes, he has.
Q And what has he told you?
A Well, he just tells me that it is an agreement that if they have any complaints or any concerns that are not being taken care of in a timely manner then we can go into arbitration.
Q So when you go over the form that's -- what you just told me --
A Uh-huh (affirmative).

Page 11

Q -- is exactly what you tell them?
A Uh-huh (affirmative).
Q Is that a "yes"?
A Yes, sir.
Q Okay. Because you've already got the form filled out for them, right?
A That's correct.
Q You put a little check next to where they have to sign?
A Yes.
Q Okay. And you don't read over the form every time to them, do you?
A No, sir.
Q Have you ever told them about any limitations in the Arbitration Agreement?
A Not to my knowledge, no, sir.
Q Well, have you ever told them about any issues with the arbitration rules that would be applied --
A No, sir.
Q -- under these agreements?
A No, sir.
Q Are you aware of any?
A No, sir.
Q Did you know, Ms. Dobson, that the Arbitration Agreement that we're here about today contains a provision that the American Arbitration Association

Page 12

rules have to be followed? Were you aware of that?
A If it's on that sheet of paper, Well, I don't know what the Arbitration Agreements are.
Q Well, how is it if you don't know, how would a resident know or their family member?
A I don't know.
Q Well, don't you think that's an important part of it?
A It is.
Q It's a material part of the contract?
A It is.
Q And but you don't know what it is?
A But I don't know what it is.
Q And so you can't expect a resident to know?
A That's --
MR. RISSLER: Object to the form.
A -- correct.
Q Or their personal representative?
A Uh-huh (affirmative).
Q Right?
A Right.
Q Or power of attorney, right?
A Right.
Q Or their family member?
A Right.
Q Okay. Are you aware -- Well, do you know what the AAA

Page 13

is?
A No, I don't.
Q Okay. Do you know what the fee schedule is for the American Arbitration Association when you use their rules to arbitrate a dispute?
A No, I don't.
Q Are there certain matters between the nursing home and the resident or their family member that may not fall under the arbitration agreement?
A I don't know.
Q Well, doesn't the family need to know that when they sign this?
A I would think so, yes, sir.
Q But you're not aware?
A I'm not aware.
Q And you're the only person that meets with them to go over these documents, correct?
A Yes, sir.
Q You've been over the document for the admission of Ms. Elizabeth Jones?
A Yes.
Q You looked at it prior to the deposition beginning today, haven't you?
A Yes.
Q Did you see anything in there that you didn't

Page 14

understand in the Arbitration Agreement?
A I don't think so.
Q Okay. Has anyone ever told you that the American Arbitration Association, which is -- which you'll see in a moment, is a part of the Arbitration Agreement that you signed off on. They initiated a policy in January of 2003 that they would not recognize Arbitration Agreements unless it was signed after an injury giving rise to an arbitration dispute.
MR. RISSLER: Object to the form.
Q Were you aware of that?
A No, sir.
Q Do you think patient's should be aware of that --
MR. RISSLER: Object to the form.
Q -- if they --
A Yes, sir.
Q -- signed this? You do?
A (Nods head up and down in an affirmative response.)
Q But you weren't aware of that?
A I was not aware of that.
Q And so for every one you've ever had a patient or a resident or a family sign, if it contained the American Arbitration Association rule requirement, they should know that that the American Arbitration Association does not favor pre-dispute Arbitration Agreements?

Page 15

MR. RISSLER: Object to the form.
Q Right.
A I don't know. I -- I don't --
Q Well, if that's -- if I'm right --
A Okay, if you're right.
Q If I'm right that they took the position in January of 2003 that they would no longer recognize as arbitrations before them an Arbitration Agreement that was signed before the injury that gave rise to the dispute, don't you think that residents and their family members and power of attorney should be advised of that?
MR. RISSLER: Object to the form.
A I don't know.
Q Wouldn't you have wanted to that before you had somebody sign that?
A I would think so, yes, sir.
Q Don't you think the right to a jury trial is a substantial right?
MR. RISSLER: Object to the form.
A I -- I don't agree jury trials.
Q And do you agree with the constitution that provides --
A Oh, yes --
Q -- for it?
A -- I do. But...

Page 16

Q Why don't you agree with jury trials, Ms. Dobson?
MR. RISSLER: Object to the form.
A Well, it's not always a -- I mean it's not all of the time, you know, but I feel like that some things are -- I don't know. I don't know.
Q Well, who would be the arbitrator if there was a dispute between a resident and the nursing home?
A Who would be the arbitrator?
Q Yeah.
MR. RISSLER: Object to the form.
A Well, one would be assigned?
Q By who?
A I don't know.
Q Well, how are you advising people to sign this if you don't even know how it's going to work out?
A I don't know.
Q It doesn't seem fair does it?
A Uh-huh (affirmative).
MR. RISSLER: Object to the form.
A No.
MR. COPE: Let's take a quick break.
THE DEPONENT: Okay.
MR. COPE: Okay.
(Whereupon, off the record at 2:22 p.m.; back on the record at 2:23 p.m.)

Page 17

Q I want to hand you what has already been marked Exhibit A to your deposition, which is an Arbitration Agreement, and ask you if you recognize that document?
(Whereupon, Defendant's/Plaintiff's Exhibit No. A was marked for identification.)
A Yes, I do.
Q And on page one of Exhibit A, is that your handwriting where you wrote in Ellen Jenkins?
A Yes, it is.
Q And do you know whether or not Ms. Ellen Jenkins had Power of Attorney over her sister?
A No, I do not.
Q How do you determine whether or not the resident has the right state of mind to sign this herself?
A Repeat the question.
Q How do you determine whether or not the resident has the mental capacity to enter into this contract them self?
A We have a mini-mental state exam done, usually before a patient is admitted to the nursing facility, and the nursing staff at the hospitals usually do this, and if they score below 20 or less then they do not have the mental capacity to --
Q Okay.
A -- sign documents.

Page 18

Q And do you know if that's the case with Ms. Elizabeth Jones?
A I don't know.
Q Have you gone back and checked?
A No, I have not.
Q Okay. If she had the mental capacity would it have been more appropriate for you to go to her?
A Yes --
MR. RISSLER: Object --
A -- sir.
MR. RISSLER: -- to the form.
Q Okay.
MR. COPE: Those are all the questions I have Ms. Dobson.
THE DEPONENT: Yes, sir.
MR. COPE: Thank you. Yes, ma'am. Well, if you want me to think about it, I'll see if I can come up with some more.
THE DEPONENT: That's all right.
MR. COPE: Jerad?
MR. RISSLER: I got no questions.
MR. COPE: Okay.

WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION IS CONCLUDED AT 2:25 P.M.

Page 19

THE DEPONENT WAIVED THE READING AND SIGNING OF THE DEPOSITION.

(*This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.)

Page 20

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF HAMPTON)

Be it known that I took the foregoing video deposition of Sally Dobson;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;
That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn or affirmed to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;
The foregoing transcript represents a true, accurate and complete transcript of the testimony given by said deponent after first being duly sworn, at the time and place aforesaid, to the best of my skill and ability; said deposition was reported by method of Stenomask utilizing speech recognition with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.
I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action;

IN WITNESS WHEREOF I have hereunto set my hand and seal this 27th day of June, 2010.

Christina L. Richardson
Professional Court Reporter

Notary in and for the State of South Carolina
My Commission Expires: May 26, 2015

Exhibit 20

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)
)
Ann Coleman, Individually, and as Personal Represenatative of the Estate of Mary Brinson,) CASE NO.
☒ Plaintiff)
) 2010-CP-21-00835
v.)
) MOTION AND ORDER INFORMATION FORM AND COVER SHEET
Mariner Health Care, Inc. F/K/A Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC Midamerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC Midatlantic Holding Company, Living Centers-Southeast, Inc., Grancare South Carolina, Inc., Individually And D/B/A Faith Health Care Center, Savaseniorcare Management, LLC, Savaseniorcare Administrative Services, LLC, Savaseniorcare, LLC, Savaseniorcare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually And D/B/A Faith Health Care Center, Ask Holdings, LLC, Leonard Gruntesin, An Individual, Murray Forman, An Individual, Boyd P. Gentry, An Individual, Abraham Shaulson A/K/A Abraham Shavlson A/K/A A. Shawson, A/K/A Abraham Shawson, An Individual, Avi Klein, An Individual, SC Property Holdings, LLC, SC Faith, LLC, And John Does 1-26.
☐ Defendant.)

FILED
2011 MAR 25 PM 3:59
CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

Plaintiff's Attorney:	Defendant's Attorney:
Matthew Chrisitian, Bar No. 70516 Address: 1007 East Washington Street, Greenville, SC 29601 phone: 864-232-7363 fax: 864-370-3731 e-mail: mchristian@christianandavis.com other:	, Bar No. Address: phone: fax: e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

CERTIFIED A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

SCCA/233 (11-03)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant — March 24, 2011 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:

☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE) C.A. No.: 2010-CP-21-835

FILED
2011 MAR 25 PM 4:02
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

Ann Coleman, Individually, Chantes Personal Representative of the Estate of Maude Brinson,

Plaintiff,

v.

Mariner Health Care, Inc. f/k/a Mariner Post-Acute Network, LLC, Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Ask Holdings, LLC, Leonard Grunstein, an Individual, Murray Forman, an Individual, Boyd P. Gentry, an Individual, Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and John Does 1-26.,

Defendant(s).

ORDER DENYING DEFENDANTS MARINER HEALTH CARE MANAGEMENT COMPANY, MARINER HEALTH CENTRAL, INC., GRANCARE SOUTH CAROLINA, INC., INDIVIDUALLY AND d/b/a FAITH HEALTH CARE CENTER, MARINER HEALTH CARE, INC. f/k/a MARINER POST ACUTE NETWORK, LLC, MARINER HEALTH GROUP, INC., MHC HOLDING COMPANY, MHC FLORIDA HOLDING COMPANY, MHC GULF COAST HOLDING COMPANY, MHC MIDAMERICA HOLDING COMPANY, MHC ROCKY MOUNTAIN HOLDING COMPANY, MHC NORTHEAST HOLDING COMPANY, MHC WEST HOLDING COMPANY, MHC TEXAS HOLDING COMPANY, MHC MIDATLANTIC HOLDING COMPANY, LIVING CENTERS-SOUTHEAST, INC., SAVASENIORCARE ADMINISTRATIVE SERVICES, LLC, SAVASENIORCARE, LLC, SAVASENIORCARE INC., NATIONAL SENIOR CARE, INC., LEONARD GRUNSTEIN, BOYD P. GENTRY, AND MURRAY FORMAN MOTION TO STAY ACTION AND COMPEL ARBITRATION (WRONGFUL DEATH ACTION)

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

PROCEDURAL

This matter came before the Court on the motion of Defendants Mariner Health Care Management Company, Mariner Health Central, Inc., Grancare South Carolina, Inc., individually and d/b/a Faith Health Care Center, Mariner Health Care, Inc. f/k/a Mariner Post Acute Network, LLC, Mariner Health Group, Inc., MHC Holding Company, MHC Florida Holding Company, MHC Gulf Coast Holding Company, MHC MidAmerica Holding Company, MHC Rocky Mountain Holding Company, MHC Northeast Holding Company, MHC West Holding Company, MHC Texas Holding Company, MHC MidAtlantic Holding Company, Living Centers-Southeast, Inc., SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Leonard Grunstein, Boyd P. Gentry and Murray Forman, to stay the action and compel arbitration and was heard on January 6, 2011. All parties were represented by counsel and provided oral arguments and also submitted written memoranda and exhibits supporting their positions. The Court hereby denies Defendants' Motion to Stay Action and Compel Arbitration for the reasons set forth below.

BACKGROUND

Mary Brinson, deceased, was admitted to Faith Health Care Center on June 2, 2006 where she remained until September 16, 2006. She was then readmitted to Faith Health Care Center on December 13, 2006 and resided there until December 26, 2006. When Mary Brinson was admitted on June 2, 2006, the licensee was Grancare South Carolina, Inc., and when she was admitted on December 13, 2006, the licensee was Palmetto Faith Operating, LLC.

Ann Coleman is the Personal Representative of the estate of Mary Brinson. Ann Coleman is the sister of Mary Brinson, deceased. When Mary Brinson was admitted to Faith Health Care Center on June 2, 2006 and on December 13, 2006, no one had a Power of Attorney for Mary Brinson. Furthermore, at that time no one had a conservatorship and no one had been

appointed guardian for Mary Brinson during these times. Despite the fact that Ann Coleman did not have a Power of Attorney for her sister, Faith Health Care Center requested that Ann Coleman sign an Arbitration Agreement during the admission process when Mary Brinson was admitted on both occasions. It is from the June 1, 2006, Arbitration Agreement which these Defendants seek to enforce.

DISCUSSION

1. The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister.

The Arbitration Agreement is not enforceable because Ann Coleman lacked the capacity to contract on behalf of her sister. South Carolina law recognizes that arbitration agreements are contracts. The interpretation and enforcement of arbitration agreements are scrutinized using contract principles of law. The Defendants' own Admissions Agreement also recognizes that the Arbitration Agreement is a contract. It is a basic tenant of contract law that the parties to the contract must have the capacity to contract.

"The first element of a contract is that the parties have the capacity to contract... Further, capacity to contract relates to the status of the person rather than to circumstances surrounding the contract." (17 C.J.S. Contracts §32) Ann Coleman did not have that authority. Furthermore, Defendants admit that they are not aware of any Power of Attorney held by Ann Coleman on behalf of Mary Brinson at the time that the Arbitration Agreement was signed (Defendants Answers to Interrogatories—Mariner Interrogatory 24 and Grancare Interrogatory 32).

Defendants rely upon the South Carolina Adult Health Care Consent Act (S.C. Code Ann. §44-66-10 *et seq*) and the South Carolina Bill of Rights for Residents of Long-Term Care Facilities (S.C. Code Ann. §44-81-10 *et seq*) as granting authority to Ann Coleman to enter into the Arbitration Agreement on behalf of her sister, Mary Brinson. S.C. Code Ann. §44-66-30

notes that "(A) Where a patient is unable to consent, decisions concerning his health care may be made by the following persons in order of priority: .... (6) an adult sibling...of the patient..." S.C. Code Ann. §44-66-20(1) provides the definition of "health care" as meaning "a procedure to diagnose or treat a human disease, ailment, defect, abnormality, or complaint, whether of physical or mental origin. It also includes the provision of intermediate or skilled nursing care; services for the rehabilitation of the injured, disabled, or sick persons; and the placement in or removal from a facility that provides these forms of care." It says nothing that could be construed as conferring the ability to enter into a separate legal document waiving an individual's rights to due process under the law for another individual. Clearly, this act does not confer legal authority to enter into contracts for another person.

It is admitted by all parties that Mary Brinson did not have the capacity to contract for herself. The Defendants admit that Ms. Brinson was incompetent by virtue of their responses to Plaintiff's Request to Admit in addition to the fact that the medical director at the Faith Healthcare Center facility certified that Ms. Brinson was unable to consent to or make her own healthcare decisions.

While the South Carolina Adult Healthcare Consent Act does grant Ms. Coleman the authority to make "healthcare decisions" on behalf of her sister, consent for medical treatment for someone unable to consent is not the same as binding an incompetent person to a legally binding contract such as an arbitration agreement without the authority to do so.

Defendants also rely on S.C. Code Ann. §44-81-10 *et seq* to argue that Ms. Coleman has the legal authority to bind her sister to a contract and waive her sister's rights under the law. This Court declines to adopt this application of this Act. The Bill of Rights for long-term care facilities sets out the rights given to a long term care resident or resident's representative under the law; however, these rights are, once again, rights concerning the resident's access to

healthcare and to be free from abuse and does not purport to grant others authority to enter into contracts for the resident. The Bill does not contemplate the resident's or the resident's representative's rights under the law for the authority or capacity to contract. The Bill defines representative as "a resident's legal guardian, committee, or next of kin or other person acting as agent of a resident who does not have a legally appointed guardian." The fact that the authors of this Bill felt it necessary to note that the resident may not have a guardian appointed under the law affirms their intentions that the Bill was designed to protect an individual's right of access to healthcare whether or not the individual has appointed a representative under the law. The Bill does not allow for an individual without any authority from the resident to be imbued with the legal authority to enter a contact waiving a resident's rights under the law.

The courts in North Carolina have recently decided an issue similar to the one at hand, finding that the authority granted by a state's Health Care Consent Act does not grant legal authority for the purpose of entering binding contracts. *Munn v. Haymount Rehabilitation & Nursing Center, Inc., et. al.*, No. COA 10-105 (NC Ct.App., Filed 21 Dec. 2010). In fact, in *Munn*, the Court specifically notes that "consent for medical care for another person who is unable to consent is a completely different issue than being an agent who has the authority to enter into a contract such as an arbitration agreement." Therefore, with similar reasoning this Court finds that Ann Coleman did not have actual authority to enter into the Arbitration Agreement on behalf of Mary Brinson.

The Defendants further argued that Ann Coleman acted as Mary Brinson's apparent agent. South Carolina case law on this issue is well established. Defendants argue that an agent's implied authority can be circumstantially provided by evidence and conduct and in doing so, rely on *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966), and *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004). This reliance is

misplaced. *Heil-Quaker* and *WDI Meredith & Co.* hold that apparent agency is based upon the principal holding the agent out or allowing the agent to hold himself or herself out with the alleged authority. "Apparent authority is the authority that the principal intended the agent to have or such power that a principal holds his agent as possessing or permits him to exercise." *Heil-Quaker v. Swindler*, 255 F.Supp. 445 (D.S.C. 1966). Because Mary Brinson was incompetent, she was incapable of granting the power to Ann Coleman and incapable of making a decision to allow Ann Coleman to hold herself out as Mary Brinson's agent. Therefore, Mary Brinson as the principal did never and could never exercise such an intent. If a person does not possess the capacity to make their own healthcare decisions, they would not possess the capacity to convey their rights under the law to another individual. Furthermore, even if such an individual could convey such rights in such circumstances, there is no evidence that Mary Brinson exhibited such an intent.

The Defendants further rely on *WDI Meredith & Co., v. American Telesis, Inc.*, 359 S.C. 474, 597 S.E.2d 885 (Ct.App. 2004) for the proposition that "to establish apparent authority, either the principal must intend to cause the third person to believe the agent is authorized to act for him, or he should realize that his conduct is likely to create such belief". As the court also noted in *WDI Meredith*, "an agency may not, however, be established solely by the declarations and conduct of an alleged agent." (citing *Muller v. Myrtle Beach Golf & Yacht Club*, 303 S.C. 137, 142-143, 399 S.E.2d at 433 (Ct.App. 1990) overruled on other grounds by *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000)). An incompetent individual such as Mary Brinson would be unable to possess this intent or realize that any conduct would create such a belief.

The Defendants also rely on *Carraway v. Beverley Enterprises Alabama, Inc.* 978 So. 2d 27 (Aa. 2007). In this Alabama case, the Plaintiff was a brother of a resident of a nursing home

facility who executed a number of documents on his sister's behalf on her admission to the facility, including an arbitration agreement. The brother of the plaintiff did not have a Power of Attorney. Shortly after his sister's admission, a Power of Attorney was executed naming the brother as her attorney-in-fact. The fact that the sister provided a Power of Attorney shortly after her admission indicates that she was indeed competent, unlike the present case with Mary Brinson. Therefore, the sister could have allowed or exhibited the intent for her brother to be held out as her representative unlike Mary Brinson. Furthermore, in *Carraway* the sister in essence ratified the representation by the brother by shortly thereafter naming him as her power of attorney by her own decision. This court finds the reasoning of *Mann* to be on point and applicable. Therefore, since Mary Brinson, the principal, was incapable of making any decisions or demonstrating any intentions conveying any authority to Ann Coleman, Ann Coleman did not have the apparent authority to contract or to enter into a binding contractual agreement such as an arbitration agreement on behalf of Mary Brinson.

Furthermore, according to the Defendants' admission documents, they were aware that Ann Coleman did not have a Power of Attorney. The face sheet from the admissions documents as well as other documents indicate that Ann Coleman did not have any other legal oversight, durable power of attorney or healthcare proxy. The Defendants are sophisticated individuals and corporations which are accustomed to dealing with arbitration provisions and understand the implications of a Power of Attorney. (*Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19 at 24 {¶29}). The Defendants cannot reasonably assert that Ann Coleman was the apparent agent of Mary Brinson when they had the knowledge to understand the meaning of a Power of Attorney and the fact that Ann Coleman did not have one. The fact that the Defendants have a form which would allow for the documentation of some form of authority indicates that they knew that there are certain requirements which much be met before an

individual can be imbued with the authority to act as an agent, and further demonstrates that they knew that none of the documents which would give Ann Coleman such authority existed at the time that Mary Brinson was admitted to their facility.

Therefore, Ann Coleman had neither actual nor apparent authority to act on behalf of Mary Brinson and to sign away her right to a jury trial by entering into the arbitration agreement. As a result, the arbitration agreement is null and void because Ann Coleman lacked the capacity and authority to ever execute it on behalf of Mary Brinson.

2. **The Arbitration Agreement is not enforceable against the statutory beneficiaries.**

The agreement to arbitrate explicitly specifies that it is "an agreement to arbitrate any dispute that might arise between Mary Brinson ("Resident") and/or _____ ("Legal Representative") and Faith Healthcare ("Facility")...". The agreement clearly allowed for the application of the agreement to extend to a resident's representative and, in this instance, was not so applied. Even if so applied, in the current actions, Ann Coleman has filed both a wrongful death and a survival action. While this court finds independently that Ann Coleman lacked the authority to enter into the contract on behalf of Mary Brinson and is therefore, null and void, this court also finds that the arbitration agreement cannot be enforced because it cannot apply to statutory beneficiaries who are not parties to the agreement. This principal has been specifically upheld in other jurisdictions. (*Woodall v. Avalon Care.Center-Federal Way, LLC*, 155 Wash.App. 919, 231 P.3d 1252 (2010). *Small v. HCF of Perrysburg, Inc.*, 159 Ohio App.3d 66, 823 N.E.2d 19).

While Ann Coleman did not have authority to waive the rights of Mary Brinson, even if she did, she did not have the authority to waive the right to statutory beneficiaries under the arbitration agreement at hand. South Carolina law is clear that a wrongful death claim exists for the statutory beneficiaries. Because the statutory beneficiaries are not parties to the contract, and

because the statutory beneficiaries have not conveyed any power to the signatory to the agreement, their claims could not be waived and any attempt to apply the agreement to them would be null and void.

3. **The Arbitration Agreement is procedurally and substantively unconscionable and impossible to enforce.**

The Defendants acted in a manner inconsistent with their own policies and procedures. The facility policy in effect at the time of Mary Brinson's admission clearly required that a member of the admissions staff explain the admissions and financial documents to the person signing them. This includes the Arbitration Agreement at issue here. Specifically, the policy states its purpose as intended to "provide an informative environment that should reduce the fears and anxieties of the resident and family during the admissions process" and requires that "the Administrator, through the Admissions Staff, is responsible for ensuring that the facility and the resident follow the established admission policy, as it may apply." Additionally, the policy requires that "the Admission staff will explain and offer an Arbitration Agreement to the resident or responsible party (emphasis added)". On the basis of the Affidavit of Ann Coleman and the admission of the Defendants that the Arbitration Agreement was presented as part of a larger admissions package, the Court finds that these documents were not explained to Ms. Coleman, nor was it made clear to her that the Arbitration Agreement was voluntary and not a requirement for Mary Brinson's admission to the facility.

Additionally, it is the finding of this Court that, even were the Arbitration Agreement valid, it can not be construed to apply to all claims at issue in the case at hand. An Arbitration Agreement, or any contract, for that matter, applies only to claims arising which would be made by someone standing in the shoes of the contractor, in this case, Mary Brinson, and cannot be construed so as to apply to those claims which may be brought on behalf of others with standing

to a claim. Claims that have been made on behalf of Ann Coleman and the other statutory beneficiaries of Mary Brinson's estate are not and were not parties to the Arbitration Agreement and cannot retroactively be joined to the contract.

Moreover, not all of the Defendants to this case have moved for arbitration—specifically, there are five defendants to the case at hand who are not currently seeking to enforce arbitration. In fact, one of these defendants, Palmetto Health Care, LLC, had previously moved for enforcement and has subsequently withdrawn its petition. Parties who are not seeking arbitration cannot be forced to arbitrate a matter any more than individuals who are not party to the agreement can. As a result, this Court is faced with the possibility that, if the Arbitration Agreement is deemed valid portions of the claims along with some of the parties would be subject to arbitration while other portions of the claims and different parties to this action would be subject to trial by jury. Should this be allowed, the very real possibility of conflicting rulings on common issues of law and fact may result.

Instructive on this issue is the matter of *Birl v. Heritage Care, LLC*, 172 Cal.App.4th 1313, 91 Cal.Rptr.3d 777. In *Birl* a case was brought by the family of a deceased patient against a hospital, physicians, and a nursing facility and the nursing facility sought to compel arbitration. Of relevance, the Court here noted that "(1) the hospital and physicians with no arbitration agreement were involved in the same transaction as the nursing facility; (2) all defendants were involved in a series of related transactions with the patient; (3) there was a possibility of conflicting rulings on common issues of law or fact; and (4) patient's family members were third parties to the patient's arbitration agreement." In its ruling denying the nursing facility's motion to compel arbitration, California's Appellate Court noted that "the trial court properly noted the possibility of conflicting rulings on common issues of law or fact if defendant Heritage was not

joined to the court action with the other defendants...Different triers of fact in different proceedings could come to different conclusions..." *Id.* at 1321.

The Court in *Birl* also took note that the Plaintiffs in that action asserted claims "not just as successors in interest, but also individually and as surviving heirs" (*Id.* at 1321), just as Ms. Coleman has done in the cases at issue now, and that such claims for "wrongful death and emotional distress were brought by plaintiffs in their individual capacities" and not as persons who had stepped into the shoes of the decedent. It was the conclusion of the *Birl* Court that the possibility of conflicting rulings on a common issue of law or fact was real and that "different triers of fact could reach different conclusions as to which party was at fault, the cause of any injuries, and the apportionment of liability—unless all the parties are jointed to one action" (*Id.* at 1322). Based on such a finding, the Court determined that it was proper to deny the nursing facility's motion to compel arbitration.

While the circumstances of the current actions differ slightly from those of *Birl*, it remains consistent that compelling arbitration of certain claims but not of others and compelling arbitration with respect to some defendants but not others will result in the conflicting rulings as contemplated in *Birl*. Furthermore, such a division of the cases would result in an unreasonable hardship for Plaintiff, as she and the other statutory beneficiaries of Ms. Brinson's estate would be effectively forced to litigate claims arising from the same or related events in two separate forums. Therefore, to uphold the Arbitration Agreement would not only pose a potential impossibility, it is also unreasonable and unconscionable to force a Plaintiff to prosecute her claims in such a fashion, especially when this issue was not explained to her. Our Courts have discussed and recognized that it is proper to deny Arbitration Agreements with impossibility of enforcement. (*Grant v. Magnolia Manor-Greenwood, Inc.*, 383 SC 125, 678 S.E.2d 435 (S.C. 2009)).

It is the finding of this Court that the Arbitration Agreement was presented to Ms. Coleman as part of a larger admissions packet and the meaning of the Arbitration Agreement was not explained; that Ms. Coleman was not informed that her signature on the Arbitration Agreement was optional and not a prerequisite for her sister to receive care; that the current conditions are that most, but not all of the defendants are seeking to compel arbitration; and compelling arbitration of Plaintiff's claims while not compelling arbitration to some claims against other Defendants, or by statutory beneficiaries who are not seeking either arbitration or were not parties to the contract makes the Arbitration Agreement as a whole impossible, unconscionable and therefore, unenforceable.

4. **The Defendants' delay has effectively nullified the agreement and waived any right the Defendants may have had to force Arbitration.**

The Plaintiff's Notice of Intent was filed in July of 2009, providing the Defendants with notice of impending litigation. The Notice of Intent stage took a usual course and, in fact, was extended beyond the normal time frame due to the substantial number of defendants in the case. The parties completed the required pre-suit mediation in January of 2010 which was unsuccessful in reaching a resolution. The Plaintiff filed the Summons and Complaint in March of 2010. Defendants began filing their Answers in May of 2010, and it was at this time that Plaintiff was provided with the first notice of the existence of an Arbitration Agreement and the Defendants' allegation that the issues and incidents addressed by Plaintiff's Complaint were governed by said Arbitration Agreement only by virtue of one of the Defendants' affirmative defenses. Even in light of said notice, Defendants did not move to seek enforcement of the Arbitration Agreement until August of 2010, more than a year after they had been first placed on notice of pending litigation and had been served with the Notice of Intent to Sue. This was also well after Plaintiff had served Discovery and filed a Motion to Compel.

The Courts in South Carolina have long recognized the act of abandonment as a valid basis for an exception to a contract's enforceability:

> Generally, no-damage-for-delay provisions are valid and enforceable so long as they meet ordinary rules governing the validity of contracts. *See* Annot., *Validity and Construction of "No Damage Clause" with Respect to Delay in Building or Construction Contract*, 74 A.L.R.3d 187 §2[a] (1976). A certain majority of jurisdictions, however, recognize certain exceptions to such clauses. *Id.* Among the recognized exceptions are (a) delay caused by fraud, misrepresentation, or other bad faith... (c) delay which has extended such an unreasonable length of time that the party delayed would have been justified in abandoning the contract... *U.S. f/u/b/a Williams Electric Company, Inc. v. Metric Constructors, Inc.* 325 S.C. 129, 480 S.E.2d 447 (1997).

The contract at issue here is, of course, the Arbitration Agreement. First, the Agreement does not contain a "no-damage-for-delay" provision, and, as such, had Defendants intended to rely upon the Agreement, they should have acted promptly upon the first notice of a civil action. Secondly, and being generous to Defendants, they waited a full nine months after Plaintiff's first filings to make any mention of an Arbitration Agreement and an additional three months more before moving to enforce said Agreement.

"[I]n South Carolina, there exists in every contract an implied obligation of good faith and fair dealing." *Id.* citing *Adams v. Creel*, 320 S.C. 274, 465 S.E.2d 84 (1995); *Parker v. Byrd*, 309 S.C. 189, 420 S.E.2d 850 (1992); *Tharpe v. G.E. Moore*, 254 S.C. 196, 174 S.E.2d 397 (1970). Continuing, "A number of courts recognize an exception to a no-damage clause where delays are so unreasonable in length or duration that they amount to an abandonment of the contract..." *U.S. f/u/b/a Williams Electric* at 134-135 citing *74 A.L.R.3d* at 226-230 §7(i). "An abandonment need not be express but may be inferred from the conduct of the parties and attendant circumstances." *Quality Concrete Products, Inc., v. Thomason*, 253 S.C. 579, 172

S.E.2d 297 (1970). "Abandonment of a contract by one party is the giving up of the right of benefit due from the other party." *Ro-Lo Enterprises v. Hicks Enterprises*, 294 S.C. 111, 362 S.E.2d 888 (Ct. App. 1987). "As with the above mentioned exceptions, an abandonment of the contract involves a breach of the implied obligation of good faith and fair dealing. Accordingly, we adopt this exception and find that if a party abandons the contract, they also abandon their right to rely on a no damage for delay clause." *U.S. f/u/b/a Williams Electric* at 135. Likewise, South Carolina Courts have previously considered and found that significant delay is tantamount to abandonment and constitutes a sufficient basis to support a finding of abandonment with respect to an arbitration agreement. (See also *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (S.C. App. 2003), *Deloitte & Touche, LLP v. Unisys Corp*, 358 S.C. 179, 594 S.E.2d 523).

As previously discussed, the Arbitration Agreement the Defendants now seek to enforce does not contain a no-damage-for-delay clause, which make the performance under the Agreement an even more time-sensitive issue. The Defendants delayed almost a year before notifying Plaintiff of such an agreement and waited more than a year before moving for the enforcement of the Agreement. During the entire length of their delay, they conducted themselves in a manner consistent with parties that intended to proceed with litigation through the confines of the judicial process. It is the ruling of this Court that, the Defendants, through their actions and delay, abandoned any rights they may have been afforded to force this matter to arbitration. To allow the Defendants to now insist on adherence to the Arbitration Agreement which was the subject of the Motion before this Court, not only amounts to an unconscionable act, but it is also in disagreement with established precedent—precedent that finds contracts far more lenient on the issue of delay than the one at hand to have been abandoned in the face of acts such as those displayed by the Defendants here.

5. **Excepting GranCare South Carolina, Inc., Mariner Health Care Management Company, and Mariner Health Central, Inc., the Defendants bringing this motion have argued in a manner inconsistent with the parties who have standing to enforce an Arbitration Agreement.**

GranCare South Carolina, Inc., was the operator of Faith Healthcare Center at the time of Mary Brinson's June 2006 admission, and all of the other defendants bringing this motion have alleged elsewhere that they do not operate nursing homes, do not have any ties to Faith Healthcare Center, have never transacted business in South Carolina, do not own property in South Carolina, and have never had any influence over the operations of Faith Healthcare Center. In fact, simultaneous to the hearing of this Motion to Compel Arbitration, these same Defendants argued a Motion to Dismiss for Lack of Personal Jurisdiction. Yet despite these protestations, these Defendants have sought to enforce an Arbitration Agreement between a facility they contend they have no interest in or control over, in a state they do not transact business in, in an industry in which they do not participate, and that this Court holds no jurisdiction over them. It cannot be rationally argued that all of these Defendants are parties to this contract, while at the same time argue that they have never contracted in South Carolina, never conducted business in South Carolina or are not tied in with the operation of the nursing facility. If the Defendants' arguments were accepted as true, then they would not have standing to enforce the Arbitration Agreement and the impossibility of prosecuting the claims in two separate forums becomes even more significant as discussed hereinabove.

6. **The Defendants' argument that Mary Brinson was a third party beneficiary to the contract is illogical and premised on the rights of Ann Coleman as signatory, which said rights do not exist.**

Defendants' have sought to argue that Mary Brinson was the third party beneficiary to the Admissions and Arbitration Agreements. While this Court concedes that it was Ms. Brinson's admission into Faith Healthcare Center that was contemplated by the Admissions Agreement, the

Defendants' extension of this argument that seeks to cast Ms. Brinson as a third party beneficiary of said agreements is misplaced as it assumes that Ann Coleman had the right to contract on behalf of Ms. Brinson. As this Court has already discussed at length, while Ann Coleman did have the right under the Adult Health Care Consent Act to consent to medical treatment, she did not have the right to commit her sister to a legally binding contract that agreed to the removal of Ms. Brinson's rights under the law. Because Ann Coleman did not have the right to contract on behalf of her sister, Mary Brinson cannot possibly be a third party beneficiary as the contract itself was never valid.

7. **The Defendants' argument that Plaintiff should be equitably estopped from denying the existence of an enforceable Arbitration Agreement is rejected.**

As with the argument concerning the third party beneficiary status of Mary Brinson, the Court finds that the Defendants' argument with respect to the Arbitration Agreement and estoppel of the Plaintiff is, once again, misguided and assumes a premise which this Court has previously rejected.

> The principle of estoppel in equity stands on the very foundation of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other and gives that effect and meanings to their actions which common sense and justice dictate. The essential elements of equitable estoppel are ignorance of the party invoking the estoppel of the truth as to the facts in question and a misrepresentation or deceptive conduct of the party against whom estoppel is sought to be applied, which in fact misleads the person asserting the estoppel to rely on the misrepresentation or conduct to change his position prejudicially as a result of the reliance. *SCJur* "Estoppel" §4.

The Defendants' estoppel argument is not only misguided, it misses the true nature of estoppel. As this Court has previously discussed, it was Faith Healthcare Center's failure to explain the Arbitration Agreement in accordance with the Defendants' policies and procedures coupled with the manner in which the Arbitration Agreement was presented to Ann Coleman that

caused and contributed to Ms. Coleman not understanding the true nature of the document she was signing. The unconscionability of this process as described hereinabove serves as an additional sustaining ground for the finding that the Arbitration Agreement is not valid. The Defendants could not reasonably rely on the contract/agreement when they knew that Ann Coleman lacked the authority to enter into such a contract/agreement. The Defendants are assuming that it is the representation of the agent and not the principal that is the determinant of apparent authority and an establishment of agency when, as this Court has already discussed, it is the actions of the principal. As such, this Court rejects the Defendants' argument for equitable estoppel.

Furthermore, the Defendants have argued that Plaintiff cannot deny the validity of the Arbitration Agreement yet rely on the Admissions Agreement in alleging that the Defendants' were in breach of contract with respect to their contractual obligation to provide appropriate medical care to Mary Brinson. It is the Defendants' contention that the Arbitration Agreement and the Admissions Agreement are part of the same agreement between the parties and, as such, Plaintiff cannot disclaim the Arbitration Agreement. Defendants further argued that the Arbitration Agreement was part of the entire agreement between the parties and that the Plaintiff should not be able to argue that the Arbitration Agreement is invalid while asserting claims arising out of the relationship between the parties and that the Plaintiff should be equitably estopped form doing so. Plaintiff opposed these contentions. The errors in this argument have already been discussed. The Defendants again assume that the Arbitration Agreement and Admissions Agreement are on the same footing. As this Court has stated before, they are not. An agreement concerning the provision of health care is a far different matter than an agreement to waive legal and constitutional rights. As such, the Defendants' argument concerning estoppel is rejected.

CONCLUSION

This Court declines to enforce the Arbitration Agreement. Ann Coleman lacked the authority to bind her sister to any contract which removed her rights under the law and the Constitution. That she has the statutory authority to assist in making decisions regarding the treatment and care on behalf of her sister is irrelevant to the determination of whether she had the authority to contract on behalf of her sister in a separate legal agreement. The determination of agency is made based upon the principal and not the agent, and the Defendants' own documents demonstrate that they were aware that Mary Brinson was incapable of demonstrating any such intention or making any such representation. The Defendants cannot now reasonably argue that they thought Ms. Coleman had "apparent" authority, as they were aware of the legal requirements governing arbitration agreements.

Likewise, the Arbitration Agreement does not apply to all parties to this suit as it governs neither the claims brought on behalf of Mary Brinson's statutory beneficiaries, nor a portion of the Defendants who have not sought to force arbitration. Such circumstances give rise to the possibility of conflicting findings based on the same facts depending on the forum in which the issues are heard. These circumstances render the Arbitration Agreement unconscionable and impossible. Adding to the Agreement's unconscionability is Faith Healthcare Center's failure to adequately and appropriately inform Ms. Coleman as to the nature of the documents she was signing. She was not advised of the meaning of the Arbitration Agreement, nor was she advised that her signature on said Agreement was voluntary and that a refusal to sign would have no affect on her sister's admission to the facility.

The Arbitration Agreement was further abandoned by the Defendants through their delay. The Defendants proceeded to engage in the litigation process with Plaintiff, allowing this case to

more forward for more than a year after the filing of the Notice of Intent before they sought any enforcement of the Arbitration Agreement. South Carolina precedent is clear that, had the Defendants intended to seek enforcement of the Agreement, they should have done so at the outset of this matter, not more than a year after its genesis. And while it has been the finding of this Court in a separate Order that the Plaintiff has made a sufficient showing for jurisdiction over Defendants in this case, the myriad of issues discussed previously preclude any finding in favor of their Motion to Compel Arbitration, as they have argued inconsistent and irreconcilable positions.

Finally, it is the belief of this Court that the Defendants' arguments concerning the third party beneficiary status of Mary Brinson and the argument concerning equitable estoppel are misguided and are rejected by the Court.

Therefore, it is the finding of this Court that the Plaintiff did not have the legal authority to execute the Arbitration Agreement on behalf of her sister; the Arbitration Agreement does not apply to all parties to this suit, giving rise to the possibility of divergent outcomes premised on the same facts; that the Arbitration Agreement itself is impossible and unconscionable; and that the Defendants abandoned the Agreement through their delay in seeking its enforcement. As such, Defendants' Motion to Stay Action and Compel Arbitration is denied in its entirety.

IT IS SO ORDERED.

The Honorable Michael G. Nettles
Twelfth Circuit of the State of South Carolina

Florence, South Carolina
Date: 3-18-11

FILED
2011 MAR 25 PM 12:02
CONNIE BRESLAW
CLERK OF COURT
FLORENCE COUNTY, SC

Exhibit 21

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case Number: 2009-CP-23-6381

2009 JUL 13 P 1:22

Florence L. Briody, Personal Representative of the Estate of Harriett Lucy Hartsgrove,	)	
Plaintiff,	)	FILED-CLERK OF COURT GREENVILLE CO. S.C. [illegible]
vs.	)	ORDER
THI of South Carolina at Magnolia Place at Greenville, LLC, THI of South Carolina, LLC, THI of Baltimore, Inc., Fundamental Long Term Care Holdings, LLC, Fundamental Administrative Services, LLC and Fundamental Clinical Consulting, LLC	)	
Defendants.	)	

This matter comes before the Court on Defendant THI of South Carolina at Magnolia Place at Greenville, LLC's Motion to Stay and to Compel Arbitration as follows:

I. FINDINGS OF FACT

1. Harriett Hartsgrove was 92 years old when she became a resident of Magnolia Place of Greenville in June 15, 2005. Ms. Hartsgrove executed a durable power of attorney on June 10, 2005.

2. On June 15, 2005, Ms. Hartsgrove's daughter, Florence L. Briody, executed all of the admissions documents on behalf of her mother, including an "Admission Contract" which contained an arbitration provision to be "administered by the National Health Lawyers Association (the 'NHLA')." The NHLA is now the American Health Lawyers Association or AHLA. Also on June 15, 2005, Mrs. Briody also executed a separate Arbitration Agreement in which the parties agreed to arbitrate "as provided by the National Arbitration Forum Code of Procedure."

3. Ms. Hartsgrove was injured in September 10, 2007 while in the custody and care of Defendant. Ms. Hartsgrove was hospitalized on September 15, 2007 as a result of this injury. Plaintiff alleges negligence related to the cause and treatment of this injury, which is the basis of the claims asserted in this action.

4. In 2004, the AHLA ceased administering pre-injury arbitration agreements.[1] At the time Mrs. Briody executed the Arbitration Agreement in June 2005, AHLA's rules of arbitration provided:

> The parties shall be bound by these Rules whenever they have agreed in writing to arbitration by the Service or under the Rules. The Service will administer a "consumer health care liability claim" under the Rules on or after January 1, 2004 *only if all of the parties have agreed in writing to arbitrate the claim after the injury has occurred and a copy of the agreement is received by the Service* at the time the parties make a request for a list of arbitrators. For purposes of the Rules, a "consumer health care liability claim" means a claim in which a current or former patient or a current or former patient's representative (including his or her estate or family) alleges that an injury was caused by the provision of (or the failure to provide) health care services or medical products by a health care provider or the manufacturer, distributor, supplier, or seller of a medical product.

5. Under the AHLA Rules, the parties may not vary the rules on communications, service, counting of days, publication and form of the award, release of documents, or administration. The parties are bound by a panel of arbitrators selected by the service. Standing alone, the parties' waiver of this set of rights in the Admissions Contract's arbitration provisions and the AHLA rules appear to reflect their specific intent to arbitrate *exclusively* before that body. The AHLA has its own fee schedule that applies to all aspects of the arbitration. The AHLA appears to be an integral part of the agreement to arbitration.

6. However, at the same time as Mrs. Briody executed the Admissions Contract,

[1] Defendant contends that a later amendment to the AHLA rule permits arbitration under a pre-injury arbitration agreement if a judge orders the AHLA to administer the arbitration agreement. This rule was not in place at the time the parties executed the agreement. Second, the AHLA is not a party to this action and it is difficult to understand how the court issue an order directed at AHLA. Third, because Defendant contends that in fact the National Arbitration Forum's rule govern the arbitration, it is difficult to reconcile this contention with the application of the AHLA's subsequent amendment.

Mrs. Briody signed a separate Arbitration Agreement requiring "arbitration as provided by the National Arbitration Forum Code of Procedure" ("NAF Code"). The NAF has its own fee schedule hat applies to all aspects of the arbitration. It also has rules on communications, service, counting of days, publication and form of the award, release of documents and administration. These terms are different than in the AHLA rules.

7. Importantly, as it relates to administration, the 2005 NAF Code provides:

> "This Code shall be deemed incorporated by reference in every Arbitration Agreement, which refers to the National Arbitration Forum, the International Arbitration Forum, the Arbitration Forum, arbitration-forum.com or this Code of Procedure, unless the Parties agree otherwise. **This Code shall be administered only by the National Arbitration Forum.**"

(Emphasis added). Standing alone, the parties' agreeing to arbitrate as provided by the NAF Code of Procedure would appear to reflect their specific intent to arbitrate *exclusively* before that body. Based upon these rules which by its terms are incorporated by reference into the Arbitration Agreement, the NAF appears to be an integral part of the agreement.

8. Mrs. Briody was not given a copy of either the AHLA rules nor the NAF Code or Procedure at the time she executed either agreement.

9. On July 17, 2009, the NAF entered into a Consent Judgment with the State of Minnesota, following a yearlong investigation by the Minnesota Attorney General's office. The terms of the Consent Judgment clearly and unequivocally state that the National Arbitration Forum is to stop "any business related to the arbitration of consumer disputes."

10. This divesture applies to all "Consumer Arbitration," which includes "any arbitration involving the dispute between a business entity and a private individual which relates to goods, *services*, or property of any kind *allegedly provided by any business entity to the*

Individual, or payment for such goods, services, or property.[2] Paragraph 3 of the Consent Judgment states:

> On or after July 24, 2009 no NAF Entity shall:
>
> a. Accept any fee for processing any new Consumer Arbitration.
>
> b. Administer or process any new Consumer Arbitration.
>
> c. In any manner participate in any new Consumer Arbitration.
>
> d. Attempt to influence the outcome of any arbitration proceeding currently pending before it.[3]

11. The parties mediated this case pursuant to S.C. Code §15-79-125 on April 22, 2009. Defendant did not move to compel arbitration nor demand arbitration before this mediation.

12. After filing the Notice of Intent but prior to filing litigation, counsel for Defendant, Mac White, represented to Plaintiff's counsel, W. Andrew Arnold, that there was an arbitration agreement between the parties.[4]

13. Plaintiff's counsel asked for a copy of the arbitration agreement between the parties, and Defendant's counsel provided him with a copy of an arbitration agreement, which stated that arbitration should be provided by the National Arbitration Forum Code of Procedure.

---

[2] Id. ¶ 2. The language of the Consent Judgment clearly indicates that this divesture applies to claims arising in ALL states, not just potential claims in the State of Minnesota.

[3] Id. ¶ 3. Defendant does not dispute that this language encompasses actions involving allegations of negligent care at a nursing home in South Carolina.

[4] The findings of fact contained in paragraphs 13 through 30 are based upon the record of filings and the facts contained in uncontradicted Affidavit of Counsel filed on behalf of Plaintiff. Defendant's counsel did not file an opposing affidavit nor present any testimony contradicting the facts set out in the Affidavit of Counsel.

Mr. White represented to Mr. Arnold that this agreement was *the* arbitration agreement between the parties.[5]

14. Plaintiff filed the Summons and Complaint in July 2009. It was served on Defendant in August 2009. Defendant did not move to compel arbitration nor did Defendant raise arbitration as a defense before serving an Answer in September 2009.[6]

15. Defendant served an Amended Answer in October 2009, which also failed to raise arbitration as a defense.

16. Plaintiff served discovery on Defendant in October 2009. Defendant asked for an extension and then served non-responses in December 2009, contending that they were not in possession of any documents responsive to such requests, which would have included arbitration agreements. (See Plaintiff's Motion to Compel.)

17. In December 2009, Plaintiff moved to compel discovery and moved to amend its complaint. Defendant opposed both motions. At no such time during these proceedings did Defendant raise either arbitration agreement as a defense to Plaintiff's claims or Plaintiff's motions. Plaintiff's motion to amend was granted and the court held that the amendments as it relates to THI of South Carolina at Magnolia Place at Greenville, LLC related back to August 2009.

18. In January 2010, Plaintiff had served subpoenas on several of Defendant's employees. In January 2010, Defendant made a motion to quash these subpoenas. At no time during these proceedings did Defendant raise either arbitration agreement as a defense.

---

[5] This was shortly after the decision of *Grant* v. *Magnolia Manor of Greenwood*, 383 S.C. 125, 678 S.E.2d 435 (2009) had been decided which invalidated an agreement by the Supreme Court of South Carolina. This was also before the Minnesota consent order prohibiting the National Arbitration Forum (NAF) from administering arbitration in cases like the present case.

[6] Plaintiff misidentified Defendant as "Magnolia Place of Greenville, Inc. d/b/a as Magnolia Place of Greenville."

19. In January 2010, Plaintiff filed and served its Amended Complaint. Plaintiff re-served discovery on Defendant in February 2010.

20. In February 2010, Defendant filed an Answer and for the first time, Defendant included a defense based upon the arbitration agreement. However, Defendant did not move to compel arbitration at that time.

21. Later in February 2010, Defendant served "responses" to Plaintiff's Interrogatories and Requests to for Production. In these responses, Defendant did not answer any interrogatories nor produce any documents, but instead objected to all discovery requests because of the existence of "an enforceable Arbitration Agreement." However, Defendant did not file a motion to compel arbitration at that time.

22. After receiving the discovery responses, Plaintiff's counsel alerted Defendant's counsel to the existence of the Minnesota consent order prohibiting NAF from administering arbitration in the present case. Defendant's counsel asked that Plaintiff's provide a copy of the consent order and indicated (perhaps implicitly) that he was unfamiliar with this consent order.

23. Plaintiff moved to compel responses to her Interrogatories and Requests to Produce. A hearing was scheduled for May 24, 2010.

24. As required by the standing court order, the parties mediated a second time on May 13, 2010.

25. On May 14, 2010 (ten days before the scheduled hearing on Plaintiff's motion to compel discovery), Defendant filed a motion to compel arbitration and requested that it be scheduled for May 24, 2010.

26. The delay in seeking to arbitrate this matter has resulted in Plaintiff's counsel spending 50 to 75 hours in attorney time, which would have been rendered unnecessary by a timely motion to compel arbitration.

27. The delay in seeking to compel arbitration of this matter has also resulted in the incurring of unnecessary expenses, including mediation expenses and other court costs.

28. Moreover, Defendant's Senior Counsel, Eva Gonzalez, represented to Plaintiff's counsel that liability insurance is provided under a rapidly eroding insurance policy and that attorney fees and other expenses reduce the amount of insurance available to cover a judgment. (Defendant has refused to provide a copy of this insurance policy to Plaintiff.)

29. In addition, there is a factual dispute as to whether the medical director was advised of Harriett's Hartsgrove injury. There may be claims against the medical director, but because of the delay, discovery may be delayed until after the statute of limitations expires, which may be in September 2010.[7]

30. Defendant's 17 month delay in seeking to arbitrate this matter and filing a motion to compel arbitration since the filing of the Notice of Intent and the almost 10 month delay since the filing of this action has resulted in prejudice to Plaintiff. Accordingly, Defendant has waived its right to enforce arbitration in this case.

II. CONCLUSIONS OF LAW

A. Standard of Review

When ruling on a motion to compel arbitration, the court uses a standard analogous to the summary judgment standard. *See e.g., Par-Knit Mills, Inc. v. Stockbridge Fabrics Co., Ltd., 636 F.2d 51, 54 (3d Cir.*1980). "Only when there is no genuine issue of fact concerning the formation of the agreement should the court decide as a matter of law that the parties did or did not enter into such an agreement." *Id.* "Although we [South Carolina Courts] are constrained to resolve all

[7] This court does not intend to make a finding on the statute of limitations since there may be arguments regarding tolling, equitable and otherwise. This court merely takes note that the Ms. Hartsgrove's injuries occurred in September 2007 and generally, a three year statute of limitations applies to claims for negligence.

doubts in favor of arbitration, this is not an absolute truism intended to replace careful judicial analysis." *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 172, 644 S.E.2d 718, 720 (2007).

Section 2 of the FAA states that:

> A written provision in...a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 USC § 2 (emphasis added). "[T]he court should apply 'ordinary state-law principles that govern the formation of contracts.'" *Towles v. United Healthcare Corp.* 338 S.C. 29, 37, 524 S.E. 2d 839, 844 (Ct. App. 1999) (citing *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir. 1998) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L.Ed.2d 985 (1995)). "Arbitration is a matter of contract and controlled by contract law." *South Carolina Pub. Serv. Auth. v. Great Western Coal (Kentucky), Inc.*, 312 S.C. 559, 563, 437 S.E.2d 22, 25 (1993) (citing 5 Am. Jur. 2d *Arbitration and Award* § 11 (1962). This court has applied South Carolina contract law to the facts in the record of this case.

B. The South Carolina Supreme Court's Holding in *Grant v. Magnolia Manor-Greenwood, Inc.* 383 S.C. 125, 678 S.E.2d 435 (2009) Mandates Denial of Defendant's Motion to Compel Arbitration.

Defendant seeks to enforce two separate arbitration agreements, each of which reference different arbitration forums administered in accordance with different rules for arbitration, different methods of selecting arbitrators from lists of panels maintained by two different arbitration services. Despite these facts, Defendant argues that the parties designated the AHLA as "their chosen forum." Although this Court finds this argument to be without merit because of the existence of two different agreements to arbitrate with conflicting sets of procedures,

(discussed below in Part C), the South Carolina Supreme Court holding in *Grant v. Magnolia Manor-Greenwood, Inc.* 383 S.C. 125, 678 S.E.2d 435 (2009) warrants denial of Defendants motion to compel arbitration even if the AHLA was the chosen forum of the parties. The Supreme Court in *Grant* held that because the selection of AHLA as an arbitration forum was an "integral" part of that arbitration agreement and because AHLA was no longer available to arbitrate the dispute, the arbitration agreement was unenforceable. *Id.* at 132. Because the same arbitration agreement is at issue in this case, this Court concludes that the decision in *Grant* is controlling and that a denial of Defendant's motion for arbitration to be administered by the AHLA.

Defendant seeks to re-litigate the issue decided in *Grant*, despite the fact that the law, the arbitration agreement, and the arbitration rules are the same as in *Grant.* Defendant argues that the Supreme Court overlooked a fact in the record of *Grant,* which Defendant explains in footnote 3 of its memorandum in support of its motion to compel arbitration:

> decision was predicted on the erroneous presumption that the AHLA had amended its rules in 2004 to provide that in health care liability cases, 'the AHLA would only arbitrate claims pursuant to arbitration agreements entered into after the alleged injury occurred.' In fact, under its amended rules, the AHLA continues to arbitrate health care liability claims pursuant to pre-injury arbitration agreements *when ordered by a court to do so.*

Accordingly, Defendant indicates that "*Grant* is inapposite because the AHLA is available to administer the parties arbitration." In support of this position, Defendant cites a copy of AHLA Rules that were amended in 2006 in support of this contention and seeks to have this court *order AHLA to administer an arbitration between the parties.*[8]

[8] Even if this court were to ignore all the other infirmities with Defendant's argument, the rule that Defendant's purport to rely upon makes clear that it only applies if "a judge orders that the service administer an arbitration...." This court does not believe that it can order the AHLA to do anything unless it is a party to this action. *See e.g., Green Tree Servicing, LLC v. Adams,* 375 S.C. 583, 654 S.E.2d 100 (S.C. App. 2007). The court may not act against a party without personal jurisdiction. *BB & T v. Taylor,* 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). Moreover, a court should not render a judgment affecting the rights of a party without proper notice. *Ex*

First, the amended rule relied upon by Defendant was not in effect when the parties to the current dispute executed the Admissions Contract in 2005, and thus, at that time AHLA the provision relied upon by Defendant was not in existence at that time. At that time, the AHLA's rules of arbitration provided:

> The parties shall be bound by these Rules whenever they have agreed in writing to arbitration by the Service or under the Rules. The Service will administer a "consumer health care liability claim" under the Rules on or after January 1, 2004 *only if all of the parties have agreed in writing to arbitrate the claim after the injury has occurred and a copy of the agreement is received by the Service* at the time the parties make a request for a list of arbitrators. For purposes of the Rules, a "consumer health care liability claim" means a claim in which a current or former patient or a current or former patient's representative (including his or her estate or family) alleges that an injury was caused by the provision of (or the failure to provide) health care services or medical products by a health care provider or the manufacturer, distributor, supplier, or seller of a medical product.

See Magnolia Healthcare, Inc. v. Barnes ex rel. Grigsby, 994 So.2d 159 (Miss. 2008).[9] This court believes that the scope of claims governed by the AHLA rules at the time of entering into the contract reflects the agreement of the parties.[10]

The Defendant cites *Adler v. Dell, Inc.* No. 08-CV-13170, 2009 WL 4580739 (E.D. Mich. Dec. 3, 2009) as authority supporting its position. First, *Adler* conducted the same analysis as our Supreme Court *Grant* and reached a different conclusion. This court is not at liberty to adopt the *Adler* approach instead of *Grant*, which represents binding precedent. Nonetheless, the arbitration agreement in *Adler* stated that the "SHALL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION ADMINISTERED BY THE NATIONAL ARBITRATION FORUM (NAF) under its Code of Procedure then in effect..."

Parte South Carolina Dep't of Revenue, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct.App.2002). Thus, the AHLA remains unavailable whether it applies the 2005 AHLA rule that existed at the time the parties executed the agreement or the 2006 rules that were amended after the parties had entered into an agreement.

[9] The Court relies on this *Magnolia HealthCare* case since a copy of the 2005 rules were not available to Plaintiff. Presumably, Defendant would have a copy of these rules dating back to 2005, and it has not contested this court taking judicial notice of the AHLA rules as found by the Mississippi Supreme Court.

[10] This conclusion relates to the "meeting of the minds" requirement discussed further in Part C of this opinion.

Id. at *1 (capital letters in original and bold emphasis added). Thus, for various reasons, this court does not find *Adler* persuasive.

Second, even if the 2006 AHLA amendments can be said to expand the scope of the arbitration rules, these rules pre-date the decision in *Grant* by three years and were the rules upon which the Supreme Court relied in reaching his holding in *Grant*. This court is simply not persuaded that the Supreme Court reached a erroneous decision in *Grant* because it failed to take note of a central fact. Even so, there are compelling reasons for this court to reach the same conclusion as *Grant* that AHLA is no longer "unavailable."

First, the 2006 AHLA rules urged by Defendant make clear that the AHLA will only arbitrate a dispute (such as exist in this case) if it is ordered to do so by a court of law. This is because the AHLA will not honor a pre-injury arbitration agreement, and thus, the AHLA requires the court to make a new post-injury agreement for the parties. According to the AHLA,

> If a judge gives a written order that the AHLA ADR Service administer an arbitration under the terms of a pre-injury arbitration agreement, signed by the parties, the AHLA ADR Service interprets the order as a *de facto* post-injury agreement to arbitrate the claim and thus will administer the matter.

http://www.healthlawyers.org/Resources/ADR/Pages/RulesAmendment.aspx[11] Considering the AHLA rules that existed at the times the parties contracted in 2005, such an order would indeed create a new agreement between the parties. The Court is "without authority to alter a contract by construction or to make new contracts for the parties." *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988) (citing *Gilstrap v. Culpepper*, 283 S.C. 83, 86, 320 S.E.2d 445 (1984)). This court is not willing

[11] This statement comes from the AHLA website cited by Defendant. Plaintiff provided the court with a copy of this website, without objection, during the hearing.

to make a new post-injury agreement by way of an order of this court to remedy a situation the parties did not undertake voluntarily to remedy themselves.[12] *See Grant*, 678 S.E.2d at 437 ("The partiesdid not modify the admission contract to reflect the AHLA policy change.")

In addition, Defendant also seeks enforcement of a second arbitration agreement, which requires "arbitration as provided for by the *National Arbitration Forum Code of Procedure.*"[13] Putting aside at the moment the contradictory AHLA arbitration agreement, the NAF agreement considered independently suffers from the same deformity as the arbitration agreement that contains the AHLA provision. The NAF is prohibited by court order from participating "any business related to the arbitration of consumer disputes" or "in any manner participat[ing] in any new Consumer Arbitration."[14] However, an arbitration conducted "as provided by the [NAF] Code of Procedure" must comply with Rule 1 of the NAF Code which states that "**[t]his Code shall be administered only by the National Arbitration Forum.**" (emphasis added).

Considering the NAF Agreement on its own terms, this court finds that the NAF is an "integral part" of the second arbitration agreement. *See e.g. Carideo v. Dell, Inc.*, 2009 WL 3485933 (W.D. Wash.)(holding NAF was integral to an agreement to arbitrate and expressly rejected approach of *Adler*); *Carr v. Gateway, Inc.*, 395 Ill.App.3d 1079, 918 N.E.2d 598 (Ill.App. 5 Dist. 2009)(holding NAF as forum was integral to the agreement.) In *Carr*, the Court quoted and cited *Grant* when it said: "'[T]he designation of a [specific arbitral] forum such as the [NAF] 'has wide-ranging substantive implications that may affect, *inter alia*, the arbitrator-selection process, the law, procedures, and rules that govern the arbitration, the enforcement of

[12] It is difficult to understand how Defendant gets the benefit of a 2006 amendment when Defendant advocates an construction that reconciles the two arbitration agreements by suggesting that the intent was for the AHLA to conduct the arbitration in accordance with the NAF Code of Procedure. Despite this argument, Defendant repeatedly makes reference to the AHLA rules, which if the NAF Code governs are moot.

[13] Plaintiff has attached a copy of the rules in existence at the time the parties signed the arbitration agreements.
[14] See Consent Judgment, ¶ 1.

the arbitral award, and the cost of the arbitration.'" *Id.* at 1087 (citation omitted). The adoption of a set of rules that by its own terms requires administration by a particular forum makes that forum "integral."

And, since the NAF is unavailable, the ruling in *Grant* is controlling as to the arbitration agreement in the Arbitration Agreement as well. Accordingly, this court denies Defendant's motion to stay this matter and compel arbitration.

C. **There was no "Meeting of the Minds" on the Material Terms of an Enforceable Agreement to Arbitrate.**

Assuming *arguendo*, that *Grant* is inapposite, Defendant's motion encounters perhaps an even greater obstacle in that its seeks at once to enforce two separate and contradictory sets of arbitration procedures both of which are to be administered by separate and distinct forums. "The Federal Arbitration Act recognizes that arbitration is strictly a matter of contract and that the parties to an arbitration agreement are at liberty to choose the terms under which they will arbitrate." *Dowling v. Home Buyers Warranty Corp., II*, 311 S.C. 233, 236, 428 S.E.2d 709, 710 (1993) (citing *Volt Info. Scis., Inc. v. Board of Trustees*, 489 U.S. 468, 479, 109 S. Ct. 1248, 1255, 103 L.Ed.2d 488, 500 (1989)). The contradictory nature of the two agreements makes it impossible to enforce fully enforce both without taking out the court's blue pencil, rewriting each set rules to reconcile the differences and to make guess as to the secret intentions of the parties.

General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 539, 542 S.E.2d 360, 364 (2001). The choice of the arbitral forum is one of the most important and material terms in an agreement to arbitrate. South Carolina common law requires that "[i]n order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with

regard to all essential and material terms of the agreement. *Grant* at 130 *citing Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891(1989). This court finds that that the contradictory rules and the provisions of such rules that mandate administration by separate arbitral forums indicates clearly that the parties did not have a meeting of the minds in regards tot he material terms of an enforceable arbitration agreement.

First, the Supreme Court in *Grant* found that "[w]here designation of a specific arbitral forum has implications that may substantially affect the substantive outcome of the resolution," the designation of a forum such as AHLA is "an integral part of the agreement." *Id.* at 131. This provisions cannot be reconciled with the separate agreement to arbitrate "as provided by the National Arbitration Forum Code of Procedure," which according to Rule 1, "**shall be administered only by the National Arbitration Forum.**" *See e.g., Collins v. Doe*, 352 S.C. 462, 574 S.E.2d 739 (2002)(use of words such as "shall" or "must" indicates a mandatory requirement). This court concludes that an agreement that requires that AHLA administer an arbitration under Rules that mandate that the NAF administer the arbitration cannot be reconciled.

Moreover, there are procedures that the AHLA considers non-negotiable if it is to administer an arbitration. "Under the AHLA policy, **the parties may not vary the rules on** communications, service, counting of days, publication and form of the award, release of documents, **or administration. The parties are bound by a panel of arbitrators selected by the service.**" *Grant* at 131-32 (emphasis added). However, the NAF Code has different requirements regarding communications, service, counting days, publication and form of the award, release of documents and administration. Under the NAF, it provides its own panel of arbitrators. Applying the NAF Code would "vary" these non-negotiable and mandatory rules, on which AHLA participation is conditioned. Again, these provisions cannot be reconciled and this

court cannot rewrite a set of rules in an attempt to make one agreement from two sets of contradictory rules.

It is nonsensical that the parties could have had a meeting of the minds to use two separate procedures, to be administered by separate forums, each of which is "integral" to arbitration process provided by the respective e rules, and each containing mandatory but contradictory procedures, not the least of which is separate and distinct methods of selecting arbitrators. Parties cannot be said to have had a meeting of the minds on matters which are indefinite, vague, uncertain, and even incomprehensible. "Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract."[15] *Reed v. Boykin*, 282 S.C. 614, 320 S.E.2d 68 (S.C.App.,1984) *quoting* 1 CORBIN ON CONTRACTS, § 95 (1963). The existence of two contradictory arbitration provisions creates an indefinite and uncertain set of circumstances that is impossible for the parties and courts to decipher with any degree of confidence, especially five years after the fact.

In *Rockel v. Cherry Hill Dodge*, 368 N.J. Super. 577, 847 A.2d 621, 624 (N.J. 2004), the New Jersey Superior Court confronted a sufficient similar set of facts, which involved two distinct and different arbitration agreements. The New Jersey Superior Court held that "the arbitration agreement is highly ambiguous because the parties executed two documents which contain separate and somewhat disparate arbitration clauses. This ambiguity, we conclude, is fatal to the compelling of the arbitration of plaintiffs' CFA claims."

There was no meeting of the minds in regards to which forum would administer the arbitration, which rules would apply nor the scope of the claims subject to arbitration. There are

[15] Plaintiff omitted a phrase inserted into the quoted material "[such as consideration, as we have in the instant case]" to avoid confusion.

no facts in the record which provide any clue to the manner in which both parties reconciled these contradictions in their minds, assuming such would have been possible since Plaintiff was never given a copy of either set of rules at the time of signing. *See Hooters of America, Inc. v. Phillips*, 39 F.Supp.2d 582 (D.S.C.1998) *affirmed and remanded*, 173 F.3d 933 (4th Cir. 1999)(meeting of the minds includes a meeting of the minds on the rules governing arbitration.) The Court is "not at liberty to consider the undisclosed or secret intentions of the parties but must be governed by their outward expressions." *Kable v. Simmons*, 217 S.C.161, 60 S.E.2d 79, 81 (1950). Accordingly, Defendant's motion must be denied because there was no meeting of the minds.

D. The Defendant Waived its Right to Enforce the Arbitration Agreement.

Finally, even if this court was to determine that an enforceable arbitration obligation exists, then it is clear to this Court that Defendant has waived its right to enforce the arbitration agreements. Served with the Notice of Intent in December 2008, Defendant failed to assert the arbitration agreement or request arbitration for over 17 months. Having waiting 17 months after it was first served with the Notice of Intent and almost 10 months since being served with the Summons and Complaint, Defendant has deliberately delayed seeking to compel arbitration to delay the action.[16] Defendant filed an Answer September 2009 and then an Amended Answer in October 2009, but in neither was arbitration asserted as a defense. Defendant served discovery in November 2009, filed a motion to quash in January 2010, sought a protective order in January 2010, participated in pre-suit mediation (April 2009) and then a year later, participated in court mandated mediation (May 2010). After objecting to discovery in March 2010, it held its motion to compel arbitration until the last possible day before it could use arbitration to further delay discovery. Defendant has certainly been unjustifiably slow in demanding arbitration.

[16] Defendant has not proffered any reason to justify its 17 month delay in seeking to compel arbitration.

It is undisputed that "the right to enforce an arbitration clause may be waived." *Deloitte & Touche, LLP v. Unisys Corp.*, 358 S.C. 179, 184, 594 S.E.2d 523, 525 (S.C. Ct. App. 2004); *General Equip. & Supply Co. v. Keller Rigging & Constr., SC, Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct.App.2001); *Hyload, Inc. v. Pre-Engineered Prods., Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct.App.1992); 6 C.J.S. Arbitration § 37 (1975). "**A party may waive the right to arbitration by being unjustifiably slow in seeking arbitration.**" *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 550, 575 S.E.2d 74, 76- 77 (S.C. Ct. App. 2003)(emphasis added). The "party seeking to establish waiver must show prejudice through an undue burden caused by delay in demanding arbitration." Id. (citing *Sentry Eng'g & Constr., Inc. v. Mariner's Cay Dev. Corp.*, 287 S.C. 346, 351, 338 S.E.2d 631, 634 (1985)).

In this case, Plaintiff has litigated for 17 months, and Plaintiff's counsel has wasted at least 50 hours of valuable time, including the attendance of two fruitless mediations, neither of which would have not been necessary if Defendant had timely sought to compel arbitration. In addition, Plaintiff's has been required to amend pleadings and move to compel discovery, which required an expenditure of attorney time, which all would have been rendered unnecessary by a timely motion to arbitrate. Moreover, these activities resulted in unnecessary expenses, including motion fees, service fees, and mediation expenses. *See* Evans v. Accent Manufactured Homes, Inc. 352 S.C. 544, 575 S.E.2d 74 (S.C. App. 2003)(holding incurring costs that would not have been incurred had party moved for arbitration constituted prejudice).

Moreover, under the NAF Code of Procedure, Plaintiff can be held liable for "all expenses and costs, including attorney fees..." for commencing litigation. Defendant's litigation and costs are much more significant after 17 months than such would have been if Defendant would have sought to arbitrate at the outset of the action. This exposure to thousands of extra

dollars in sanctions for filing an action is not only unconscionable but a clear example of prejudice.

In addition, according to the uncontradicted facts contained in the Affidavit of Counsel, Defendant's Senior Counsel, Eva Gonzalez, has represented to Plaintiff's counsel that liability coverage was provided under a rapidly eroding insurance policy and that attorney fees and other expenses reduce the amount of insurance available to cover a judgment. Because the entity that manages the facility d/b/a Magnolia Place of Greenville has little or no assets, this potentially could completely eliminate a remedy for Plaintiff's harm. In addition, after 17 months, Defendants have successfully frustrated discovery, and now the statute of limitations may expire in September 2010. Potential claims against others will be place in jeopardy if a stay is granted and the parties are required to select an arbitrator prior to being able to commence discovery.

"There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." Id; see Unisys, 358 S.E. at 184, 594 S.E.2d at 525. The determination of whether one's actions constitute waiver is a question of fact. *Laser Supply and Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 676 S.E.2d 139 (Ct.App.2009). Based upon the facts before this court, this Court concludes that Defendant has waived its right to enforce any agreement to arbitrate that may exist between the parties.

IV. CONCLUSION

For all the reasons stated above, this Court denies Defendant's motion to compel arbitration and to stay the proceedings.

IT IS SO ORDERED.

Judge Edward Miller
Thirteenth Circuit Court Judge

Dated: 9/13/10