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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
Court of Common Pleas

RECEIVED

FEB 01 2013

Michael G. Nettles, Circuit Court Judge

SC Court of Appeals

Case Nos. 2010-CP-21-00835 & -00836

Ann Coleman, individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

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,

Defendants,

Of whom 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 Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are

Appellants.

RECORD ON APPEAL, VOLUME II

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Attorneys for Appellants

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Ann Coleman, Individually, and as
Personal Representative of the Estate
of Mary Brinson,

Plaintiff,

v.)

Mariner Health Care, Inc., Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC MidAtlantic Holding
Company, GranCare South Carolina,
Inc., Individually and d/b/a Faith
Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC,
SavaSeniorCare, Inc., Oaktree Capital
Management, LLC, Wells Fargo
Foothill, Inc., as successor to Foothill
Capital Corporation, Highland Capital
Management, LP, Greenlight Capital,
LLC, National Senior Care, Inc.,
Harry Grunstein, an Individual,
Premier Properties of South Carolina,
LLC, 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 Shavison
a/k/a A. Shawson a/k/a Abraham
Shawson, an Individual, Avi Klein, an
Individual, SC Property Holdings,
LLC, and SC Faith, LLC,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2009-CP-21-

**NOTICE OF INTENT TO FILE
SUIT IN A MEDICAL
MALPRACTICE CASE
(§15-79-125 SCCA)
(SURVIVAL ACTION)**

CERTIFIED A TRUE COPY
Amie J. L. Smith
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2009 JUL 16 AM 11:30
FLORENCE COUNTY, SC

000443

The Plaintiff submits this Notice of Intent to File Suit pursuant to §15-79-125 of the 1976 South Carolina Code of Laws as amended.

- I. Venue is proper in this Court because the Defendant resides within the County of _____ or the most substantial part of the alleged act or omission giving rise to this cause of action occurred in this County.
- II. An Affidavit of an expert witness, subject to the Affidavit requirements established in §15-36-100, 1976 South Carolina Code of Laws, as amended is submitted herewith (Tab 1).
- III. A short and plain statement of the facts showing that the Plaintiff is entitled to relief is submitted in the attached Complaint (Tab 2)
- IV. Standard interrogatory responses are attached under Tab 3.
- V. Please take notice that pursuant to the *South Carolina Court-Annexed ADR Rule (Rule 4)* you are advised that this dispute is subject to pre-suit mediation within 120 days and that the names of the primary and secondary mediators are:

_____, Primary Mediator

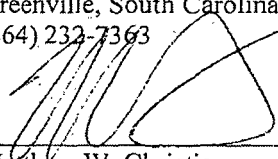
_____, Secondary Mediator

As appointed by the Clerk of Court of Florence County the ____ day of _____, 2009.

(Notwithstanding the Clerk of Court's appointment, the parties by agreement may choose a different mediator at any time).

[signature page to follow]

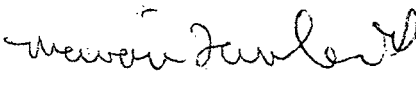
CHRISTIAN & DAVIS
Attorneys at Law
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(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: July 14, 2009

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Marion S. Fowler, III, MD
S.C. Bar No.: 11816
Attorney for Plaintiff

Lake City, South Carolina
Date: July 15, 2009

STATE OF TEXAS

COUNTY OF McLENNAN

Ann Coleman, Individually, and as
Personal Representative of the Estate
of Mary Brinson,

Plaintiff,

v.

Mariner Health Care, Inc., Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC MidAtlantic Holding
Company, GranCare South Carolina,
Inc., Individually and d/b/a Faith
Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC,
SavaSeniorCare, Inc., Oaktree Capital
Management, LLC, Wells Fargo
Foothill, Inc., as successor to Foothill
Capital Corporation, Highland Capital
Management, LP, Greenlight Capital,
LLC, National Senior Care, Inc.,
Harry Grunstein, an Individual,
Premier Properties of South Carolina,
LLC, 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, and SC Faith, LLC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.:

**AFFIDAVIT OF EXPERT WITNESS IN
MEDICAL MALPRACTICE CASE
§ §s 15-36-100, 15-79-125
1976 SC Code.**

SUZANNE FREDERICK, R.N.-BC, MSN, CWCN being duly sworn deposes and says:

000446

1. That I am over the age of 18 years old and qualified and competent to issue this Affidavit.
2. That I qualify as an "expert" as defined in S.C. Code § 15-36-100 (A).
3. I have actual professional knowledge and experience in the specialty and area of practice in which this opinion is given, as a result of my having been regularly engaged in active practice nursing or teaching in that area of specialty and have practiced and/or taught for at least three of the last five years immediately preceding this opinion.
4. That my professional qualifications are accurately set forth in my curriculum vitae, which is attached hereto.
5. This Affidavit is made pursuant to § 15-36-100 of the 1976 South Carolina Code of Laws, which requires that this Affidavit must specifically name at least one negligent act or omission claim to exist in the factual basis for each claim based on the available evidence at the time of the filing of the Affidavit.
6. The evidence made available to me, for my review, prior to the making of this Affidavit includes information provided and the following medical records:
 - a. Carolina Hospital;
 - b. McLeod Hospital;
 - c. Faith Nursing Home;
 - d. Regency Hospital (RHC) of Florence; and
 - e. Honorage Nursing Home.
7. Through my professional standing as set forth above, I am familiar with the applicable standard of care for the performance of a nursing home facility applicable to the conduct of the Defendants. The standard of care requires the following:
 - a. Comprehensive and timely assessment and evaluation outlining all risk factors with which Mary Brinson presented to design an appropriate plan of care;
 - b. Provision of timely and comprehensive monitoring of pressure sores;

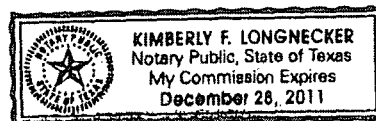
- c. Implement appropriate intervention to promote the prevention of a pressure ulcer; and
 - d. Implement appropriate evaluation and treatment for pressure sores once they develop.
8. I have reviewed the evidence submitted to me and based on my expertise, as set forth above, it is my opinion to a reasonable degree of medical and nursing certainty that the Defendants and their employees committed the following negligent acts:
- a. Failing to perform a comprehensive and timely assessment and evaluation outlining all the risk factors which Mary Brinson presented to design an appropriate plan of care and update same as necessary;
 - b. Failing to provide timely and comprehensive monitoring pressure sores;
 - c. Failing to implement the appropriate intervention to promote the prevention of a pressure ulcer; and
 - d. Failing to implement appropriate evaluation and treatment for pressure sores once they developed.
9. The factual basis for my opinion is based upon the available evidences;
- a. I am familiar with the standard of nursing care applicable in this case by virtue of my education, training, and experience; and
 - b. Careful review of the evidence and discovery to date as described above.
10. I specifically reserve the right to add to, amend or subtract from this Affidavit as new evidence comes into discovery or as new opinions are formulated.

Suzanne Frederick RN-BC, MSN, CWCN
SUZANNE FREDERICK, RN-BC, MSN, CWCN

SWORN to before me this 6 day of July, 2009.

Kimberly F. Longnecker
Notary Public for Texas

My commission expires: _____



000448

SUZANNE FREDERICK, R.N., MSN, BC
260 Settlers Creek Trail
Waco, Texas 76712
(254) 848-7374
fax (254) 848-7375

EDUCATION University of Texas at Arlington. Arlington, Texas.
Master of Nursing Administration. Graduation Date: May 1996.

University of Mary Hardin Baylor. Belton, Texas.
Bachelor of Science in Nursing. Graduation Date: May 1983.

LICENSURE Professional nurse Licensure in Texas

CERTIFICATIONS

Board Certified Gerontological Nurse
CCRN - Certified Critical Care Registered Nurse 1987-1994
ACLS - Advanced Cardiac Life Support - Past Instructor
PALS - Pediatric Advanced Life Support - Past Instructor
TNCC - Trauma Nursing Core Course

EXPERIENCE

2003 - **McLennan Community College**
Present **Clinical Nursing Instructor** - Teach nursing students in Nursing Home and Hospital.

2003 - **University of Texas at Arlington**
2005 **Clinical Nursing Instructor** - Teach Nursing Administration class at Graduate Level

1999 - **United States Department of Justice**
2005 **Nursing Home Consultant** - Investigate nursing homes to determine if standard of care is being met. Provide consultation and follow up to assist the facilities in making improvements.

1996 - **Hillcrest Baptist Medical Center, Waco, Texas (Hospital)**
2004 **Nursing Supervisor** - Supervise nursing staff on part time basis on all units, work with nursing staff in patient care decisions, develop and monitor nursing policy and procedures and standards of care, supervise Code Blue Team, Trauma Team member in E.R., JCAHO survey preparation, Nursing Education - present inservices on broad range of topics for nursing staff including Critical Care Course and Orientation.

Staff Nurse duties hospital wide.

1996 - **Regis/St. Elizabeth's Centers, Waco, Texas (Nursing Home)**
2003 **Subacute Program Director/Staff RN** -
Served as Director for eight month start-up phase during 1997- 1998 to oversee all aspects of operating a subacute unit in Long Term Care facility. Provide nursing

education to insure nursing competencies, develop policies and procedures, standards of care and insure compliance with regulations. Part time as staff RN, assist with nurse staffing, patient assessments, MDS and Care Plans, nursing education, supervision and new projects.

1996 -1999 **Extra Step Home Health, The Wound Care Specialists, Waco, Texas** - Wound care specialty agency, Nursing education, Quality Improvement, patient care and administrative duties on part time basis.

Synergy Healthcare - Provide education through inservices and workshops to nurses in Long Term Care, Hospitals, Home Health, etc.

1990-1996 **Hillcrest Baptist Medical Center, Waco, Texas**
Director, Critical Care Nursing & Respiratory Therapy

Conduct overall management activities and coordination of two Intensive Care Units, one Telemetry Unit and Respiratory Care department including apx. 90 FTE's, patient population includes Pediatric through Geriatric; develop and enforce policies, procedures and standards of care, supervise orientation and continuing education process of all new staff; develop capital and operating budgets

1987-1990 **Hillcrest Baptist Medical Center, Waco Texas**
Coordinator of Nurse Internship Program

Plan, implement, coordinate and evaluate program; supervise approximately twenty new graduate nurses in all clinical areas including medical, surgical, emergency, critical care and oncology; instruct interns in classroom setting and at bedside in all clinical areas

Geriatrics
Medical-Surgical
Surgical Intensive Care
Pediatrics
Emergency Department
Cardio-Pulmonary Intensive Care

Concurrent
1988-1990 **Hillcrest Baptist Medical Center, Waco Texas**
Critical Care Nurse Educator

Conduct orientation program for new associates in critical care units; Co-coordinator of hospital wide Staff Development Program - Supervise seventeen unit staff developers in orientation and educational programs for individual nursing units; plan and present continuing education programs in critical care including annual courses for ICU, CCU and ER; Clinical educator for critical care nurses

1988-1990 **McLennan Community College, Waco Texas**
Instructor - Certified Nursing Assistant Program

Taught-Nursing Assistant Program including clinical and didactic portions; approximately 80 hour course to prepare students to work in Nursing Homes and Hospitals; Course prepared students to seek Certified Nurse Aide status.

1986-87 **Hillcrest Baptist Medical Center, Waco, Texas**
Assistant Head Nurse/Head Nurse Intensive Care Unit

Supervise approximately forty associates in an 18-bed trauma, medical-surgical, pediatric ICU; establish and maintain effective staffing patterns; develop and implement policies and procedures; manage all budgetary aspects of unit

1983-86 **Hillcrest Baptist Medical Center, Waco, Texas**
Staff Nurse ICU, CCU and ER

AFFILIATIONS

National League for Nursing (NLN)
American Geriatrics Society
Texas Geriatrics Society
Association for the Advancement of Wound Care
National Gerontological Nursing Association
American Association of Critical Care Nurses
Texas Hospital Association 1990-1996
Texas Organization of Nurse Executives 1990-1996
The Council On Alcohol & Drug Abuse - Board Member 1999 - 2001

PUBLICATIONS

Frederick, S. (2002). Geriatric Pain. In Iyre, Patricia (Ed.), Medical Legal Aspects of Pain and Suffering. Tucson, AZ: Lawyers & Judges.

FEE SCHEDULE

Record Review, Consultation, Written Reports
\$ 125.00 / hour
and other time dedicated to a case, i.e., travel

Deposition and Trial Preparation & Testimony
\$ 250.00 / hour

000452

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

Ann Coleman, Individually, and as)
Personal Representative of the Estate)
of Mary Brinson,)

Plaintiff,)

v.)

Mariner Health Care, Inc., Mariner)
Health Care Management Company,)
Mariner Health Central, Inc., Mariner)
Health Group, Inc., MHC Holding)
Company, MHC MidAtlantic Holding)
Company, GranCare South Carolina,)
Inc., Individually and d/b/a Faith)
Health Care Center, SavaSeniorCare)
Management, LLC, SavaSeniorCare)
Administrative Services, LLC,)
SavaSeniorCare, LLC,)
SavaSeniorCare, Inc., Oaktree Capital)
Management, LLC, Wells Fargo)
Foothill, Inc., as successor to Foothill)
Capital Corporation, Highland Capital)
Management, LP, Greenlight Capital,)
LLC, National Senior Care, Inc.,)
Harry Grunstein, an Individual,)
Premier Properties of South Carolina,)
LLC, 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, and SC Faith, LLC,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

C.A. No.:

COMPLAINT
(Survival Action)
JURY TRIAL REQUESTED

000453

The Plaintiff would show this Honorable Court the following:

PARTIES

1. That the Plaintiff Ann Coleman (hereinafter "Ann Coleman") is a citizen and resident of Florence County, South Carolina. At all times relevant herein, Ann Coleman was the sister of Mary Brinson (hereinafter "Mary Brinson") and is the duly appointed Personal Representative of the Estate of Mary Brinson, deceased. At the time of her death, Mary Brinson was a citizen and resident of Florence County, South Carolina.

2. Defendant Mariner Health Care, Inc. (hereinafter "Mariner Health Care"), is a business organized and existing under the laws of the State of Delaware. At all times relevant herein, this Defendant is and was a business which employs and/or contracts for the employment of physicians, nurses, and related staff to provide healthcare services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Mary Brinson. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and in concert with its affiliated and/or parent entities Mariner Health Care Management Company and Mariner Health Central, Inc. as Mariner Health Group, Inc. (hereinafter collectively "Mariner Health Group"). At all times relevant herein, agents, employees, servants, and apparent agents of Mariner Health Care, Mariner Health Group, MHC Holding Company, MHC MidAtlantic Holding Company, and GranCare of South

Carolina, Inc., Individually, and d/b/a Faith Health Care Center acted on behalf of themselves and on behalf of Mariner Health Care.

3. Defendant MHC Holding Company (hereinafter "MHC Holding") is a business organized and existing under the laws of the State of Delaware. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through those of its subsidiaries. At all times relevant herein, MHC Holding is and was a wholly owned subsidiary of Mariner Health Care and acted on behalf of itself and as agent for Defendants Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Holding acted on behalf of themselves and MHC Holding.

4. Defendant MHC MidAtlantic Holding Company (hereinafter "MHC MidAtlantic") is a business organized and existing under the laws of the State of Delaware. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through those of its subsidiaries. At all times relevant herein, MHC MidAtlantic is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC MidAtlantic acted on behalf of themselves and MHC MidAtlantic.

5. Defendant GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center (hereinafter "GranCare South Carolina"), is a business organized and existing under the Laws of the State of South Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. At all times relevant herein, GranCare South Carolina is and was a wholly owned subsidiary of MHC MidAtlantic and acted on behalf of itself and as agent for Defendants MHC MidAtlantic Holding Company, MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of GranCare South Carolina acted on behalf of themselves and GranCare South Carolina.

6. Defendant SavaSeniorCare Management, LLC (hereinafter "Sava Management") is a business organized and existing under the Laws of the State of Delaware providing payroll, general accounting, accounts payable, accounts receivable, and purchasing services as well as oversight in the hiring and firing of suppliers and vendors for Mariner Health Care and its subsidiary facilities and which represents itself to contracting agencies and the public at large as being highly capable and skilled in providing oversight and management for nursing home and rehabilitation facilities such as those operated by GranCare South Carolina, Mariner Health Care, and Palmetto Faith Operating, LLC. Further, this Defendant managed and oversaw the nursing home facilities operated by GranCare South Carolina, Mariner Health Care, and Palmetto Faith

Operating, LLC. This Defendant, through its provision of services for Mariner Health Care, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina.

7. SavaSeniorCare, LLC, SavaSeniorCare, Inc., and SavaSeniorCare Administrative Services, LLC are businesses organized and existing under the laws of the State of Delaware which are authorized to transact business in the State of South Carolina. Upon information and belief, through their individual actions and in concert with their affiliated and/or subsidiary company, SavaSeniorCare Management, LLC, these companies engaged in the oversight, management, direction, and operation of nursing home facilities in Florence County, South Carolina, deriving substantial business therefrom. At all times relevant herein, agents, employees, servants, and apparent agents of SavaSeniorCare Management, LLC, SavaSeniorCare Administrative, LLC, SavaSeniorCare, LLC and SavaSeniorCare, Inc. acted on behalf of themselves and on behalf of SavaSeniorCare Administrative, LLC and their affiliate and/or parent companies.

Furthermore, Defendants SavaSeniorCare, LLC, SavaSeniorCare, Inc., and SavaSeniorCare Administrative Services, LLC (hereinafter collectively referred to as "SavaSeniorCare") are businesses organized and existing under the laws of the State of Delaware which, upon information and belief, has acquired and is successor to Mariner Health Care and, as such, is vested with the rights, duties, and liabilities which previously fell to Mariner Health Care.

8. Defendant Oaktree Capital Management, LLC is a business organized and existing under the laws of the State of California with its principal place of business

elsewhere, but which, upon information and belief, is authorized to conduct business in Florence, County, South Carolina. At all times relevant herein, this Defendant holds or held a direct or indirect ownership interest in Mariner Health Care, Inc. and exercised direction and control over its operations and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents of Oaktree Capital Management, LLC acted on behalf of themselves and of Oaktree Capital Management, LLC. At all times relevant herein this Defendant acted on behalf of itself and on behalf of or in concert with Mariner Health Care, Inc. and SavaSeniorCare.

9. Defendant Wells Fargo Foothill, Inc., is a business organized and existing under the laws of the State of California with its principal place of business elsewhere, but which, upon information and belief, is authorized to conduct business in Florence, County, South Carolina. Upon information and belief, Wells Fargo Foothill, Inc., has acquired and is successor to Foothill Capital Corporation and, as such, accepted the right, duties and liabilities of Foothill Capital Corporation. At all times relevant herein, Foothill Capital Corporation held a direct or indirect ownership interest in Mariner Health Care, Inc. and exercised direction and control over its operations and/or fiscal decisions. Wells Fargo Foothill, Inc. and Foothill Capital Corporation shall hereinafter be collectively referred to as "Foothill Capital". At all times relevant herein, agents, employees, servants, and apparent agents of Foothill Capital acted on behalf of themselves and of Foothill Capital.

10. Defendant Highland Capital Management, LP is a business organized and existing under the laws of the State of Delaware with its principal place of business elsewhere, but which, upon information and belief, is authorized to conduct business in

Florence, County, South Carolina. At all times relevant herein, this Defendant holds or held a direct or indirect ownership interest in Mariner Health Care, Inc., and exercised direction and control over its operations and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents of Highland Capital Management, LP acted on behalf of themselves and of Highland Capital Management, LP.

11. Defendant Greenlight Capital, LLC is a business organized and existing under the laws of the State of Delaware with its principal place of business elsewhere, but which, upon information and belief, is authorized to conduct business in Florence, County, South Carolina. At all times relevant herein, Defendant holds or held a direct or indirect ownership interest in Mariner Health Care, Inc., and exercised direction and control over its operations and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents of Greenlight Capital, LLC acted on behalf of themselves and of Greenlight Capital, LLC.

12. Defendant National Senior Care, Inc., is a business organized and existing under the laws of the State of Delaware and which, upon information and belief, is authorized to transact and conduct business in Florence County, South Carolina. National Senior Care, Inc. is an entity which was formed for the purpose of completing the transactions contemplated by the Merger Agreement with Mariner Health Care, Inc..

The president, sole officer, and sole shareholder of National Senior Care, Inc., is Defendant Harry Grunstein (hereinafter "Harry Grunstein"), an individual, who, following the merger with Mariner Health Care, Inc., assumed the role of President of Mariner Health Care, Inc., and is also now, upon information and belief, the Chief

Executive Officer of SavaSeniorCare, LLC, the successor entity of Mariner Health Care, Inc. Upon information and belief, National Senior Care, Inc. is a shell corporation whose true purpose is to shield Defendant Harry Grunstein from personal liability arising from potential claims against Mariner facilities. Upon information and belief, Harry Grunstein is a citizen and resident of Nassau County, New York but maintains a place of business in and has substantial ties to DeKalb County, Georgia. At all times relevant herein, Defendant Harry Grunstein is and was an employee, servant, and/or agent of National Senior Care, Inc., Mariner Health Care, Inc. and its affiliated and/or parent corporations and acted on behalf of himself and National Senior Care, Inc. and/or Mariner Health Care, Inc. and its affiliated and/or parent corporations and/or SavaSeniorCare, LLC and its affiliated and/or parent corporations which conducted business in Florence County, South Carolina. Further, Harry Grunstein directed the operations and management of these companies.

13. Defendant Premier Properties of South Carolina, LLC (hereinafter "Premier Properties") is a business organized and existing under the laws of the State of South Carolina employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina. At all times relevant, agents, employees, servants, and apparent agents of Premier Properties acted on behalf of themselves and on behalf of Premier Properties. Upon information and belief,

at all times relevant herein, Premier Properties acted on behalf of itself and on behalf of GranCare South Carolina, Mariner Health Care, Inc., Mariner Health Care Management Company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC MidAtlantic Holding Company, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., Oaktree Capital Management, LLC, Foothill Capital Corporation, by and through its successor Wells Fargo Foothill, Inc., Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Inc., and Harry Grunstein.

14. Defendant Palmetto Health Care, LLC (hereinafter "Palmetto Health Care") is a business organized and existing under the laws of the State of Delaware. At all times relevant herein, this Defendant is and was a business which employs and/or contracts for the employment of physicians, nurses, and related staff to provide healthcare services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Mary Brinson. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and by and through its subsidiary, Palmetto Faith Operating, LLC. Furthermore, at all times relevant herein, Defendant holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents of Palmetto Health Care and Palmetto Faith Operating, LLC, Individually and d/b/a Faith

Health Care Center acted on behalf of themselves and Palmetto Health Care. The decisions and actions by this company and its agents affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

15. Defendant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center (hereinafter "Palmetto Faith Operating"), is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to conduct business in the State of South Carolina and indeed does so by employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. At all times relevant herein, Palmetto Faith Operating is and was a wholly owned subsidiary of Palmetto Health Care and acted on behalf of itself and as agent for Defendant Palmetto Health Care. At all times relevant herein, agents, employees, servants, and apparent agents of Palmetto Faith Operating acted on behalf of themselves and Palmetto Faith Operating, Ask Holdings, LLC, Palmetto Health Care, and Leonard Grunstein.

16. Defendant Ask Holdings, LLC is a business organized and existing under the laws of the State of New York. At all times relevant herein, Defendant Ask Holdings, LLC holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents of Ask Holdings, LLC acted on behalf of themselves and of Ask Holdings, LLC. The decisions and actions by this

company and its agents affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

17. Defendant Leonard Grunstein (hereinafter "Leonard Grunstein") is an individual who, upon information and belief, is a citizen and resident of New York County, New York. At all times relevant herein, Leonard Grunstein holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. Furthermore, Leonard Grunstein holds management/member interests and rights to Palmetto Health Care, LLC and SC Property Holdings, LLC and is a beneficial owner of and, upon information and belief, the Chairman of SavaSeniorCare, LLC, all of which, upon information and belief, accepted the rights, duties, and liabilities as successor to Mariner Health Care, Inc., and its affiliated entities. Upon information and belief, Leonard Grunstein has been involved in directing operations and/or management of these companies. At all times relevant herein, Leonard Grunstein acted on behalf of himself and on behalf of Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, SC Property Holdings, LLC and SavaSeniorCare, LLC. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

18. Upon information and belief, Defendant Murray Forman (hereinafter "Murray Forman") is a citizen and resident of Queens County, New York and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Murray Forman has ownership/stockholder/membership interest in SC Property Holdings, LLC, Palmetto Health Care, LLC, and SavaSeniorCare, LLC, and has used his position to exercise direction or control over the operations and/or fiscal

decisions of these entities and their affiliates. At all times relevant herein, Murray Foreman has acted on behalf of himself and on behalf of Palmetto Faith Operating, Palmetto Health Care, LLC, SC Property Holdings, and SavaSeniorCare, LLC, all of which, upon information and belief, accepted the rights, duties, and liabilities as successor to Mariner Health Care, inc., and its affiliated entities. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

19. Upon information and belief, Defendant Boyd P. Gentry (hereinafter "Boyd Gentry") is a citizen and resident of Fulton County, Georgia and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Boyd Gentry is or was at all times relevant, the Vice President, Treasurer and Chief Financial Officer of Mariner Health Care, Inc., and has used his position to exercise direction or control over the operations and/or fiscal decisions of the entities to which he is party. At all times relevant herein, Boyd Gentry has acted on behalf of himself and on behalf of Palmetto Faith Operating and Mariner Health Care, Inc. and its affiliated entities. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

20. Upon information and belief, Defendant Abraham Shaulson a/k/a Abraham Shavlson a/k/a A. Shawson a/k/a Abraham Shawson (hereinafter "Abraham Shaulson") is a citizen and resident of Dade County, Florida and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Abraham Shaulson has ownership/stockholder/membership interest in SC Property Holdings, LLC and Ask Holdings, LLC and has used his position to exercise direction or control over the

operations and/or fiscal decisions of these entities and their affiliates, all of which affect the funding, staffing and care at Faith Health Care Center and Palmetto Faith Operating. At all times relevant herein, Abraham Shaulson has acted on behalf of himself and on behalf of Palmetto Faith Operating, SC Property Holdings, LLC, and Ask Holdings, LLC. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

21. Upon information and belief, Defendant Avi Klein (hereinafter "Avi Klein") is a citizen and resident of Dade County, Florida and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Avi Klein has ownership/stockholder/membership interest in Palmetto Health Care, LLC and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates, all of which affect the funding, staffing and care at Faith Health Care Center and Palmetto Faith Operating. At all times relevant herein, Avi Klein has acted on behalf of himself and on behalf of Palmetto Faith Operating and Palmetto Health Care, LLC. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

22. SC Property Holdings, LLC (hereinafter "SC Property Holdings") is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to do business in and owns property in Florence County, South Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing nursing and physician services and operating nursing

home and rehabilitation facilities for persons such as Mary Brinson. This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and by and through its subsidiary, SC Faith, LLC. At all times relevant, agents, employees, servants, and apparent agents of SC Property Holdings and SC Faith, LLC acted on behalf of themselves and on behalf of SC Property Holdings. Furthermore, SC Property Holdings acted on behalf of itself and Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, LLC, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein.

23. Defendant SC Faith, LLC (hereinafter "SC Faith") is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to conduct business in and owns property in Florence County, South Carolina and does so by employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina. At all times relevant herein, SC Faith is and was a wholly owned subsidiary of SC Property Holdings and acted on behalf of itself and as agent for Defendant SC Property Holdings, Ask Holdings, LLC, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Kelin. At all times relevant herein, agents, employees, servants, and apparent agents of

SC Faith and SC Property Holdings acted on behalf of themselves and on behalf of SC Faith.

24. Upon information and belief, at all times relevant herein which occurred prior to September 29, 2006, Mariner Health Care, Mariner Health Group, MHC Holding, MHC MidAtlantic, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Harry Grunstein and Premier Properties owns, operated, and managed GranCare South Carolina in its operation of the facility identified to the public as Faith Health Care Center in Florence, South Carolina, or, as successors accepted the duties, rights and liabilities for Faith Health Care Center.

25. At all times relevant to this Complaint which occurred prior to September 29, 2006, GranCare South Carolina was owned, managed and operated by MHC MidAtlantic, MHC Holding, Mariner Health Care, Mariner Health Group, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, Premier Properties, and/or National Senior Care whose operations were directed and/or ordered by the entities themselves and Harry Grunstein directly or by and through the services of SavaSeniorCare Management and/or SavaSeniorCare Administrative. At all times relevant herein, policies, procedures, and guidelines at GranCare South Carolina d/b/a Faith Health Care Center were promulgated and controlled by Mariner Health Care, Mariner health Group, MHC MidAtlantic, MHC Holding, Sava Management, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP,

Greenlight Capital, Premier Properties, National Senior Care, SavaSeniorCare and/or Harry Grunstein.

26. All acts and omissions of GranCare South Carolina d/b/a Faith Health Care Center were authorized, approve, and/or ratified by Mariner Health Care, Mariner Health Group, MHC Holding, MHC MidAtlantic, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Premier Properties and/or Harry Grunstein.

27. All acts and omissions by GranCare South Carolina and its respective employees, agents, servants or apparent agents were authorized, approved, or ratified by Mariner Health Care, Mariner Health Group, MHC Holding, MHC MidAtlantic, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Premier Properties and/or Harry Grunstein.

28. Mariner Health Care, Mariner Health Group, MHC Holding, MHC MidAtlantic, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, and Premier Properties, under the direction and supervision of and in concert with Harry Grunstein, maintained, managed, and controlled the budget, staff, employees, facilities, funding, billing and many other aspects of the business of GranCare South Carolina, all of which affected and impacted resident care and treatment.

29. Mariner Health Care, Inc., Mariner Health Care Management, Mariner Health Group, Inc., MHC Holding Company, MHC MidAtlantic Holding Company,

GranCare South Carolina, Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., Oaktree Capital Management, LLC, Wells Fargo Foothill, Inc., as successor to Foothill Capital Corporation, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Inc., Harry Grunstein, an Individual, Premier Properties of South Carolina, LLC and their affiliates shall hereinafter be collective referred to as "Faith Health Care".

30. Upon information and belief, at all times relevant herein which occurred after September 29, 2006, Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and SC Faith own, operate, and manage Palmetto Faith Operating in its operation of the facility identified to the public as Faith Health Care Center in Florence, South Carolina.

31. At all times relevant to this complaint which occurred after September 29, 2006, Palmetto Faith Operating is owned by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and/or SC Faith whose operations were directed and/or ordered by the entities and/or individuals themselves. At all times relevant herein, policies, procedures, and guidelines at Faith Health Care Center, Palmetto Faith Operating, and Palmetto Health Care were promulgated and controlled by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and/or SC Faith.

32. All acts and omissions by Palmetto Faith Operating and its respective employees, agents, servants or apparent agents were authorized, approved, or ratified by

Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings and/or SC Faith.

33. Palmetto Health Care and SC Property Holdings, under the direction and supervision of and in concert with Leonard Grunstein and Murray Foreman, SC Property Holdings and Ask Holdings, under the direction and supervision of and in concert with Abraham Shaulson, Palmetto Health Care under the direction and supervision of and in concert with Avi Klein, all collectively together with Boyd Gentry, maintained, managed and controlled the budget, staff, employees, facilities, funding, billing and many other aspects of the business of Palmetto Faith Operating, all of which affected and impacted resident care and treatment.

34. Palmetto Health Care, LLC, Palmetto Faith Operating, 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, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and their affiliates shall hereinafter be collectively referred to as "Palmetto Faith".

SUMMARY OF FACTS

35. On or about May 29, 2006, Mary Brinson was admitted to Carolinas Hospital System. She remained a patient there until June 2, 2006.

36. On June 2, 2006, Mary Brinson was admitted to Faith Health Care Center for skilled nursing care, supervision, and the care which should be provided by a Nursing Home.

37. Upon her admission to Faith Health Care Center on June 2, 2006, Mary Brinson was fully ambulatory with no paralysis or contractures, was able to fully bear her own weight and had no skin breakdown.

38. While at Faith Health Care Center, Mary Brinson developed contractures of her lower extremities and developed bed sores or pressure ulcers to her buttocks/sacrum as a result of the failure of Defendant Faith Health Care Center properly caring for Mary Brinson.

39. On September 16, 2006, while still at Faith Health Care Center, Mary Brinson was noted to have brown stringy necrotic tissue with very malodorous brown drainage from her sacral wound. At the insistence of Ann Coleman, Mary Brinson was transferred to McLeod Regional Medical Center for evaluation.

40. Upon arrival at McLeod Regional Medical Center, it was noted that Mary Brinson had a stage IV decubitus ulcer to her sacrum with foul brownish drainage. A culture of this wound revealed a *Providencia stuartii* infection. Furthermore, at McLeod it was noted that Mary Brinson had severe bilateral knee contractures and bilateral hip contractures and that she seemed to be in significant pain. Additionally, while At McLeod, it was found that Mary Brinson suffered with dysphagia, a condition which went unnoticed at Faith Health Care Center and which resulted in malnutrition and dehydration.

41. During this time, Mary Brinson's health continued to decline due to the injuries she received while a patient at Faith Health Care Center.

42. Mary Brinson eventually returned to Faith Health Care Center/Palmetto Faith on December 13, 2006.

43. Incidentally, on September 29, 2006, the ownership and operation of Faith Health Care Center was effectively transferred from GranCare South Carolina to Palmetto Faith. The property housing the facility was also transferred at this time from Premier Properties of South Carolina to SC Faith.

44. While at Faith Health Care Center/Palmetto Faith, Mary Brinson developed a urinary tract infection, pneumonia, and sepsis due to the debilitated state the Defendants had caused. On December 26, 2006, Mary Brinson was found unresponsive, with audible congestion, labored respirations, and a temperature of 103.3. She was transferred to McLeod Regional Medical Center where she was admitted and underwent treatment until January 5, 2007.

45. Mary Brinson continued to suffer and decline from her injuries caused by the Defendants until she was unable to recover and died on April 30, 2007.

46. Mariner Health Care, Mariner Health Group, MHC Holding, MHC MidAtlantic, GranCare South Carolina, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Harry Grunstein, Premier Properties, Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, SC Faith, and Faith Health Care Center were aware of such failures to provide adequate care as described both above and below and were aware of residents such as Mary Brinson and knew that the failures resulted from decisions made by them to purposely understaff and underfund GranCare South Carolina and Palmetto Faith Operating in a way that would maximize corporate profits for Defendants rather than providing adequate and

proper care. Furthermore, the acts and decisions of Mariner Health Care, Mariner Health Group, MHC Holding, MHC MidAtlantic, GranCare South Carolina, Sava Management, SavaSeniorCare, Oaktree Capital Management, LLC, Foothill Capital, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Harry Grunstein, Premier Properties, Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, SC Faith, and Faith Health Care Center directly affected resident care such as that of Mary Brinson. The acts of these Defendants were willful, wanton, and in reckless disregard for the safety and well being of patients such as Mary Brinson.

47. As a direct and proximate result of GranCare South Carolina's, Palmetto Faith Operating's, and Faith Health Care Center's acts and/or omissions, Mary Brinson suffered the following injuries and damages:

- a. Dehydration;
- b. Malnutrition;
- c. Anemia;
- d. Numerous Decubitus/Pressure ulcers/Bed sores;
- e. Unresponsiveness;
- f. Urinary Tract Infections;
- g. Difficulty breathing;
- h. Infection;
- i. Hospitalizations;
- j. Pneumonia;
- k. Sepsis;

- l. Septicemia;
- m. Electrolyte imbalances;
- n. Contractures;
- o. Injuries to her circulatory system;
- p. Injuries to her lower extremities;
- q. Decreased levels of cognition, health and consciousness;
- r. Injuries about her body;
- s. Underwent medical procedures which she would not have otherwise had to undergo;
- t. Pain, suffering, humiliation, embarrassment, stress, and anxiety;
- u. Loss of dignity;
- v. Loss of enjoyment of life;
- w. Medical expenses;
- x. Death; and
- y. In such other and further ways as Discovery and trial shall prove.

48. Plaintiff would show that this action is brought pursuant to the Statutory Provisions for the Survival Actions pursuant to the South Carolina Code of Laws and Common Laws of the State of South Carolina and is brought on behalf of the beneficiaries of the Estate of the deceased, Mary Brinson.

FOR A FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

49. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

50. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton, and fell below the applicable standard of care in the following particulars:

- a. In failing to provide adequate staffing, adequately paid staff, and adequately trained staff at their facilities to care for residents such as Mary Brinson, with the full knowledge that such inadequate staffing practices would place patients such as Mary Brinson at risk for injury;
- b. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- c. In failing to provide proper comprehensive and timely assessments and evaluation outlining all risk factors for Mary Brinson and in failing to properly design, adhere to, or modify an appropriate plan of care;
- d. In failing to timely evaluate and treat Mary Brinson.
- e. In failing to timely and appropriately monitor Mary Brinson's nutritional and hydration status;
- f. In failing to timely and appropriately implement intervention in a patient and a resident with obvious nutritional and hydrational decline;
- g. In failing to provide and properly administer therapeutic activities ordered by Mary Brinson's treating physicians;
- h. In creating and then failing to recognize Mary Brinson's risk for skin breakdown;

- i. In failing to properly prevent contractures;
- j. In failing to provide proper skincare, both to prevent bedsores or decubitus ulcers and to manage bedsores or decubitus ulcers once they occurred;
- k. In failing to properly monitor, evaluate, and treat Mary Brinson's skin conditions and skin wounds and failing to timely notify her physicians and family about such wounds;
- l. In failing to have in place and follow an adequate skin management protocol to address bed sores or decubitus ulcers;
- m. In failing to provide and implement proper care plans that would adequately meet Mary Brinson's needs, including her risk for malnutrition or dehydration, risk of developing bedsores or decubitus ulcers, risk for contractures, risk for infections, risk for alteration of mental status, risk for anemia, and other risks which Mary Brinson encountered while a patient at Defendants' facility;
- n. In failing to provide a safe and clean environment;
- o. In failing to have and/or implement adequate and effective policies, procedures, staff and equipment to adequately monitor, supervise and treat Mary Brinson;
- p. In failing to follow and comply with the Defendants' own policies and procedures directed at the care and treatment of patients;
- q. In failing to timely and appropriately recognize, diagnose, and treat bedsores or decubitus ulcers;

- r. In failing to provide services and activities to attain or maintain the highest practical physical, mental and psycho-social well being of Mary Brinson in accordance with a written plan of care;
- s. In failing to accurately and truthfully record Mary Brinson's conditions in her medical records;
- t. In failing to consult a physician in a timely manner;
- u. In failing to properly follow the care plan;
- v. In failing to appropriately and properly act upon Mary Brinson's significant weight loss and obvious decline of condition;
- w. In failing to timely request and obtain a registered dietician and speech pathology consult;
- x. In failing to timely evaluate, treat, and diagnose infections;
- y. In failing to recognize or act upon Mary Brinson's change of condition;
- z. In failing to timely, properly, and accurately monitor intake and output on each shift;
- aa. In failing to provide timely and appropriate monitoring for urinary tract infection in a resident with increased risk for developing a urinary tract infection;
- bb. In failing to timely and appropriately treat a urinary tract infection;
- cc. In failing to have and/or follow proper policies, procedures, and protocol to address Mary Brinson's dehydration, malnutrition,

weight loss, decubitus ulcers, contractures, urinary tract infection and deterioration;

- dd. In failing to timely diagnose dehydration, malnutrition, skin breakdown, contractures, decubitus ulcers, urinary tract infection, urosepsis, or pneumonia;
- ee. In failing to properly fund, operate, and manage the facility to the extent that resident care was affected and caused injuries to the Plaintiff;
- ff. In negligently administering and operating the Defendants' Nursing Home Facility;
- gg. In failing to comply with applicable Federal and State Statutes and Regulations designed to protect persons such as Mary Brinson;
- hh. In failing to act and provide care as a reasonably prudent nursing home would do under the same or similar circumstances; and
- ii. In such other and further ways as Discovery and trial shall prove.

FOR A SECOND CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

51. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

52. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, the Bill of Rights of Long Term Care Facilities at South Carolina Code §4-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-17, *et seq*, as well as similar

protective Federal Regulations and Statutes by 42 U.S.C. §1396(r), *et seq.*, and 42 C.F.R. §483, *et seq.*

53. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Mary Brinson was a member at all times relevant to this action. The Defendants violated these Statutes and Regulations in their failure to properly care for Mary Brinson and other similarly situated patients at their facility.

54. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitute negligence *per se*, Mary Brinson suffered injuries and damages as set forth above.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to All Defendants)

55. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

56. Defendants had a contract with Mary Brinson and/or her representatives which required Defendants to provide nursing home and rehabilitative care to Mary Brinson that met acceptable professional standards.

57. Defendants breached this contract and failed to act in good faith and fair dealing by failing to provide such care as to disclose to Mary Brinson or her Representative or both that the Defendants' facility was inadequately staffed, underfunded, and in failing to provide care to Mary Brinson within these acceptable professional standards.

58. As a direct and proximate result, Mary Brinson suffered injuries and damages as set forth above.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation as to All Defendants)

59. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

60. Prior to, and around the time of Mary Brinson's admission to Defendants' facility, agents of the facility made untrue statements to Mary Brinson and to her family about the quality of care that Mary Brinson would receive at the Defendants' facility, where such statements were intended by those making them to be relied upon by Mary Brinson and her family and upon which they did rely.

61. The Defendants represented to Mary Brinson and her family that she would receive appropriate care within the professional standards of care, that the facility had adequate staffing, and adequate funding, that Mary Brinson would be carefully monitored, that Mary Brinson would receive adequate nutrition, hydration, therapies, and preventative interventions, that Mary Brinson would be safe and secure, and that problems or insufficiencies that Defendants' facility may have had in the past had been corrected.

62. These statements were untrue and intended to be relied upon by Mary Brinson and her family and the family did rely upon them in choosing to admit Mary Brinson to the facility.

63. These representations were careless, negligent, grossly negligent, reckless, willful, and wanton in that the Defendants knew or should have known they would not be able to meet these representations for Mary Brinson and in failing to meet these representations for Mary Brinson.

64. As a direct and proximate result of Defendants' misrepresentation, Mary Brinson has suffered injuries and damages as set forth above.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy as to All Defendants)

65. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

66. The Defendants participated in a civil conspiracy in that they agreed and conspired to provide inadequate care in order to maximize profits over patient care. Moreover, the Defendants have demonstrated consciousness of their actions and conspiracy in taking calculated and elaborate steps to attempt to obscure the true ownership of the corporations which hold control of the facility and to hide their involvement. The wrongful acts identified hereinabove were carried out by the Defendants pursuant to the conspiracy and for this they are jointly and severally liable.

67. As a direct and proximate result of the joint conspiracy and wrongful acts, Plaintiff has suffered injuries and damages as set forth above.

WHEREFORE, the Plaintiff prays for judgment against the Defendants in the following particulars:

- a. For actual and punitive damages in an amount to be determined by the trier of fact;
- b. For the costs and disbursements of this action;
- c. For attorneys' fees; and
- d. For such other and further relief as this Court deems just and proper.

[signature page to follow]

Plaintiff respectfully requests a Jury Trial.

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Attorney for Plaintiff

Greenville, South Carolina
Date: July ____, 2009

Lake City, South Carolina
Date: July ____, 2009

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

C.A. No.: 2009-CP-21-

Ann Coleman, Individually, and as
Personal Representative of the Estate
of Mary Brinson,

Plaintiff,

v.

**PLAINTIFF'S ANSWERS TO
STANDARD INTERROGATORIES
PURSUANT TO THE SOUTH
CAROLINA RULES OF
CIVIL PROCEDURE, RULE 33**

Mariner Health Care, Inc., Mariner
Health Care Management Company,
Mariner Health Central, Inc., Mariner
Health Group, Inc., MHC Holding
Company, MHC MidAtlantic Holding
Company, GranCare South Carolina,
Inc., Individually and d/b/a Faith
Health Care Center, SavaSeniorCare
Management, LLC, SavaSeniorCare
Administrative Services, LLC,
SavaSeniorCare, LLC,
SavaSeniorCare, Inc., Oaktree Capital
Management, LLC, Wells Fargo
Foothill, Inc., as successor to Foothill
Capital Corporation, Highland Capital
Management, LP, Greenlight Capital,
LLC, National Senior Care, Inc.,
Harry Grunstein, an Individual,
Premier Properties of South Carolina,
LLC, 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 Shavlsion
a/k/a A. Shawson a/k/a Abraham
Shawson, an Individual, Avi Klein, an
Individual, SC Property Holdings,
LLC, and SC Faith, LLC.,

Defendant(s).

000483

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Plaintiff hereby answers the Standard Interrogatories as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of this case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

**Ann Coleman
925 W. Marion Street
Florence, SC 29501**

Ms. Coleman is the Plaintiff and the sister of the decedent. Upon information and belief, she has made no written or recorded statements regarding this matter. It is anticipated that this witness will testify as to her knowledge and observation of the events as alleged in Plaintiff's Complaint.

**Joseph Walters
2206 Pamplico Highway, Apartment 1B
Florence, SC 29501**

Mr. Walters is the decedent's son. Upon information and belief, he had made no written or recorded statements regarding this matter. It is anticipated that this witness will testify as to his knowledge and observation of his mother's health, death, and other issues addressed in Plaintiff's Complaint.

**Physician/Medical Staff
Nursing Staff
Radiology Physicians/Staff
Therapy Staff
Laboratory Personnel
Carolinas Hospital System
805 Pamplico Highway
Post Office Box 100550
Florence, SC 29501-0500**

Upon information and belief, these witnesses have prepared written statements regarding the injuries suffered by the Plaintiff as well as treatment provided. These statements are in the form of Plaintiff's medical records. The knowledge possessed by these witnesses may be assessed through review of the records they prepared, and it is anticipated that these witnesses will testify as to same.

Physician/Medical Staff
Nursing Staff
Radiology Physicians/Staff
Therapy Staff
Laboratory Personnel
McLeod Regional Medical Center
555 E. Cheves Street
Post Office Box 100551
Florence, SC 29501-0051

Upon information and belief, these witnesses have prepared written statements regarding the injuries suffered by the Plaintiff as well as treatment provided. These statements are in the form of Plaintiff's medical records. The knowledge possessed by these witnesses may be assessed through review of the records they prepared, and it is anticipated that these witnesses will testify as to same.

Physician/Medical Staff
Nursing Staff
Radiology Physicians/Staff
Therapy Staff
Laboratory Personnel
Faith Health Care Center
617 W. Marion Street
Florence, SC 29501

Upon information and belief, these witnesses have prepared written statements regarding the injuries suffered by the Plaintiff as well as treatment provided. These statements are in the form of Plaintiff's medical records. The knowledge possessed by these witnesses may be assessed through review of the records they prepared, and it is anticipated that these witnesses will testify as to same.

Physician/Medical Staff
Nursing Staff
Radiology Physicians/Staff
Therapy Staff
Laboratory Personnel
Regency Hospital (RHC) Florence
121 E. Cedar Street
Florence, SC 296501

Upon information and belief, these witnesses have prepared written statements regarding the injuries suffered by the Plaintiff as well as treatment provided. These statements are in the form of Plaintiff's medical records. The knowledge possessed by these witnesses may be assessed through review of the records they prepared, and it is anticipated that these witnesses will testify as to same.

**Physician/Medical Staff
Nursing Staff
Radiology Physicians/Staff
Therapy Staff
Laboratory Personnel
Honorage Nursing Center
1207 North Cashua Road
Florence, SC 29501**

Upon information and belief, these witnesses have prepared written statements regarding the injuries suffered by the Plaintiff as well as treatment provided. These statements are in the form of Plaintiff's medical records. The knowledge possessed by these witnesses may be assessed through review of the records they prepared, and it is anticipated that these witnesses will testify as to same.

Physicians, nursing staff and other medical personnel employed, contracted or otherwise authorized by Carolinas Hospital System, McLeod Regional Medical Center, Faith Health Care Center, Regency Hospital (RHC) Florence, Honorage Nursing Center, or any other healthcare provider who observed, assisted, or treated Plaintiff Mary Brinson.

Any witness as identified by any other party.

Any emergency personnel or other medical treatment providers listed in these or any subsequent answers to Interrogatories or Responses to Requests for Production, or any staff member who may have had reason to come into contact with Plaintiff Mary Brinson may be called as fact witnesses. Furthermore, Plaintiff reserves the right to supplement and amend this list.

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

ANSWER:

Medical Records of Carolinas Hospital System, McLeod Hospital, Faith Health Care Center, Regency Hospital (RHC) of Florence, Honorage Nursing Home, and Records of SC DHHS and SC DHEC.

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

ANSWER:

See Plaintiff's Answer to Interrogatory 1.

Statement of Medical Costs involved will be supplemented.

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

ANSWER:

Not applicable. This is information within the possession and control of the Defendants.

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

ANSWER:

To be supplemented.

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

ANSWER:

Plaintiff has not identified an expert to testify at trial at this time. Plaintiff has consulted with the expert identified in the Notice of Intent for the purposes of filing same and reserves the right to later identify this witness as an expert for use at trial.

Any medical providers identified in any of Plaintiff's Answers to Interrogatories.

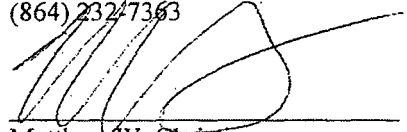
Plaintiff reserves the right to identify additional experts regarding this matter and will supplement same.

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

ANSWER:

See Plaintiff's Answer to Interrogatory 1.

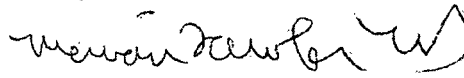
CHRISTIAN & DAVIS
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Attorney for Plaintiff

Greenville, South Carolina
Date: July 14, 2009

FOWLER LAW FIRM, PC
Attorney at Law
Post-Office Box 1719
Lake City, South Carolina 29560
(843) 374-4444



Marion S. Fowler, III, MD
S.C. Bar No.: 11816
Attorney for Plaintiff

Lake City, South Carolina
Date: July 15, 2009

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually and as Personal
Representative of the Estate of Mary Brinson

Plaintiff(s)

vs.

Mariner Health Care, Inc., Mariner Health Care Management company, Mariner Health Central, Inc., Mariner Health Group, Inc., MHC Holding Company, MHC MidAtlantic Holding Company, GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., Oaktree Capital Management, LLC, Wells Fargo Foothill, Inc., as successor to Foothill Capital Corporation, Highland Capital Management, LP, Greenlight Capital, LLC, National Senior Care, Inc., Harry Grunstein, an Individual, Premier Properties of South Carolina, LLC, 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 Shavison a/k/a A. Shawson a/k/a Abraham Shawson, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, and SC Faith, LLC

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009-CP - 21-

1397

CERTIFIED: A TRUE COPY
Clerk of Court
FLORENCE COUNTY, SC

2009 JUL 16 AM 11:30
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

(Please Print)

Submitted By: Marion Fowler/ Matthew Christian
Address: 800 W. Main St, Ste 200, Lake City, SC 29560/
1007 E. Washington St., Greenville, SC 29601

SC Bar #: 11816/ 70516
Telephone #: 843-374-4444/ 864-232-7363
Fax #: 843-374-4445/ 864-370-3731
Other:
E-mail: fowlerlaw@ftc-i.net /
mchristian@christiananddavis.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 | 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) | ☒ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |

000489

- Inmate Petitions**
- ☐ PCR (500)
 - ☐ Mandamus (520)
 - ☐ Habeas Corpus (530)
 - ☐ Other (599)

- Judgments/Settlements**
- ☐ Death Settlement (700)
 - ☐ Magistrate's Judgment (720)
 - ☐ Minor Settlement (730)
 - ☐ Transcript Judgment (740)
 - ☐ Lis Pendens (750)
 - ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
 - ☐ Relief (820)
 - ☐ Permanent Injunction (830)
 - ☐ Forfeiture-Petition (840)
 - ☐ Forfeiture—Consent Order (850)
 - ☐ Other (899)

- Appeals**
- ☐ Arbitration (900)
 - ☐ Magistrate-Criminal (920)
 - ☐ Municipal (930)
 - ☐ Probate Court (940)
 - ☐ SCDOT (950)
 - ☐ Worker's Comp (960)
 - ☐ Zoning Board (970)
 - ☐ Administrative Law Judge (980)
 - ☐ Public Service Commission (990)
 - ☐ Employment Security Comm (991)
 - ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
 - ☐ Automobile Arb. (610)
 - ☐ Medical (620)
 - ☐ Other (699)
 - ☐ Pharmaceuticals (630)
 - ☐ Unfair Trade Practices (640)
 - ☐ Out-of State Depositions (650)
 - ☐ Sexual Predator (510)

Submitting Party Signature: _____

Date: _____

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

FOR MANDATED ADR COUNTIES ONLY

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

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 FLORENCE

Ann Coleman, Individually and as Personal
Representative of the Estate of Mary Brinson,

Plaintiff(s)

vs.

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 Shavlon 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)

(Please Print)

Submitted By: Matthew Christian/Marion Fowler
Address: 1007 E. Washington St., Greenville, SC 29601/
800 W. Main St., Ste 200, Lake City, SC 29560

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 21- 835

FILED
FLORENCE COUNTY, SC
JAN 22 PM 3:21

SC Bar #: 70516/ 11816
Telephone #: 864-232-7363/ 843-374-4444
Fax #: 864-370-3731/ 843-374-4445
Other:
E-mail:

mchristian@christiananddavis.com/ fowlerlaw@fjc-i.net

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)

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- ☒ 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.
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- ☐ 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/Label (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 # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 2009-CP-21-1396 | ☐ Products Liability (340) | ☐ Partition (440) |

SCCA / 234 (11/09)

Page 1 of 3

000492

- | | | | |
|--|---|---|--|
| ☐ Other (199) | ☐ e/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
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| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
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| | ☐ 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) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| | | | ☐ Public Service Commission (990) |
| Special/Complex /Other | | | ☐ Employment Security Comm (991) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Other (999) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | |
| ☐ Medical (620) | ☐ Out-of-State Depositions (650) | | |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: 3-19-10

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

FOR MANDATED ADR COUNTIES ON
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

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2. The initial ADR conference must be held within 300 days after the filing of the action.
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 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
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 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
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Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
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 Shavison 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).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21- 835

SUMMONS

(Wrongful Death Action)

JURY TRIAL REQUESTED

FILED
FLORENCE COUNTY, S.C.
JAN 22 PM 3:21

CERTIFIED: A TRUE COPY

Connie Beal Stearns

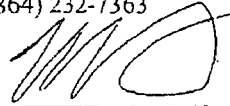
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

000495

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Plaintiff upon the subscriber, at his office at 1007 East Washington Street, Greenville, 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 the Complaint.

CHRISTIAN & DAVIS
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Marion S. Fowler, III, MD of
FOWLER LAW FIRM, PC
S.C. Bar No.: 11816
Attorneys for Plaintiff

Greenville, South Carolina
Date: March 19, 2010

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Ann Coleman, Individually, and as
Personal Representative of the Estate of
Mary 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 Shawson 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).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21- 835

COMPLAINT
(Wrongful Death Action)
JURY TRIAL REQUESTED

CERTIFIED: A TRUE COPY

Connie Reel Shearin

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

000497

The Plaintiff would show this Honorable Court the following:

PARTIES

1. That the Plaintiff Ann Coleman (hereinafter "Ann Coleman") is a citizen and resident of Florence County, South Carolina. At all times relevant herein, Ann Coleman was the sister of Mary Brinson (hereinafter "Mary Brinson") and is the duly appointed Personal Representative of the Estate of Mary Brinson, deceased. At the time of her death, Mary Brinson was a citizen and resident of Florence County, South Carolina.

2. Defendant Mariner Health Care, Inc., f/k/a Mariner Post-Acute Network, LLC (hereinafter "Mariner Health Care"), is a business organized and existing under the laws of the State of Delaware. At all times relevant herein, this Defendant is and was a business which employs and/or contracts for the employment of physicians, nurses, and related staff to provide healthcare services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Mary Brinson. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and in concert with its affiliated and/or parent entities Mariner Health Care Management Company and Mariner Health Central, Inc. as Mariner Health Group, Inc. (hereinafter collectively "Mariner Health Group"). At all times relevant herein, agents, employees, servants, and apparent agents of Mariner Health Care, Mariner Health Group, 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., and GranCare of South Carolina, Inc., Individually and d/b/a Faith Health Care Center acted on behalf themselves and on behalf of Mariner Health Care.

3. Defendant MHC Holding Company (hereinafter "MHC Holding") is a business organized and existing under the laws of the State of Delaware. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through those of its subsidiaries. Upon information and belief, MHC Holding is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Holding is and was a wholly owned subsidiary of Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Holding acted on behalf of themselves and MHC Holding.

4. Defendant MHC Florida Holding Company (hereinafter "MHC Florida") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC Florida is an entity related to and engaged in the operation of Faith Health Care Center. At all times

relevant herein, MHC Florida is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Florida acted on behalf of themselves, MHC Florida, and MHC Holding.

5. Defendant MHC Gulf Coast Holding Company (hereinafter "MHC Gulf Coast") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent companies or subsidiaries. Upon further information and belief, MHC Gulf Coast is an entity related to or engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Gulf Coast is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Gulf Coast acted on behalf of themselves, MHC Gulf Coast, and MHC Holding.

6. Defendant MHC MidAmerica Holding Company (hereinafter "MHC MidAmerica") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions

and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC MidAmerica is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC MidAmerica is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC MidAmerica is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC MidAmerica acted on behalf of themselves, MHC MidAmerica, and MHC Holding.

7. Defendant MHC Rocky Mountain Holding Company (hereinafter "MHC Rocky Mountain") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC Rocky Mountain is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Rocky Mountain is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all

times relevant herein, agents, employees, servants, and apparent agents of MHC Rocky Mountain acted on behalf of themselves, MHC Rocky Mountain, and MHG Holding.

8. Defendant MHC Northeast Holding Company (hereinafter "MHC Northeast") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent companies or subsidiaries. Upon further information and belief, MHC Northeast is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Northeast is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Northeast acted on behalf of themselves, MHC Northeast, and MHC Holding.

9. Defendant MHC West Holding Company (hereinafter "MHC West") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC West is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care

Center. At all times relevant herein, MHC West is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of MHC West acted on behalf of themselves, MHC West, and MHC Holding.

10. Defendant MHC Texas Holding Company (hereinafter "MHC Texas") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial revenue therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC Texas is an entity related to and engaged in the operation of Faith Health Care Center, either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Texas is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Texas acted on behalf of themselves, MHC Texas, and MHC Holding.

11. Defendant MHC MidAtlantic Holding Company (hereinafter "MHC MidAtlantic") is a business organized and existing under the laws of the State of Delaware. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South

Carolina, both through its individual actions and through those of its subsidiaries. Upon information and belief, MHC MidAtlantic is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC MidAtlantic is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC MidAtlantic acted on behalf of themselves, MHC MidAtlantic, and MHC Holding.

12. Defendant Living Centers-Southeast, Inc. (hereinafter "SE Living Centers"), is a business organized and existing under the laws of the State of North Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing homes and rehabilitation facilities for persons such as Mary Brinson in Florence County, South Carolina. Upon information and belief, SE Living Centers is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. Upon further information and belief, at all times relevant herein, SE Living Centers is and was a wholly owned subsidiary of MHC MidAtlantic and acted on behalf of itself and as agent for Defendants MHC MidAtlantic Holding Company, MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent

agents of SE Living Centers acted on behalf of themselves, SE Living Center, and MHC MidAtlantic.

13. Defendant GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center (hereinafter "GranCare South Carolina"), is a business organized and existing under the laws of the State of South Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson in Florence County, South Carolina. At all times relevant herein, GranCare South Carolina is and was a wholly owned subsidiary of MHC MidAtlantic and acted on behalf of itself and as agent for Defendants MHC MidAtlantic Holding Company, MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of GranCare South Carolina acted on behalf of themselves and GranCare South Carolina.

14. Defendant SavaSeniorCare Management, LLC (hereinafter "Sava Management") is a business organized and existing under the laws of the State of Delaware providing payroll, general accounting, accounts payable, accounts receivable, nursing home management, and purchasing services as well as oversight in the hiring and firing of suppliers and vendors for Mariner Health Care and its subsidiary facilities and which represents itself to contracting agencies and to the public at large as being highly capable and skilled in providing oversight and management for nursing home and rehabilitation facilities such as those operated by SE Living Centers, GranCare South Carolina, Mariner Health Care, and Palmetto Faith Operating, LLC. Further, this

Defendant managed and oversaw the nursing home facilities operated by SE Living Centers, GranCare South Carolina, Mariner Health Care, and Palmetto Faith Operating, LLC. This Defendant, through its provision of services for Mariner Health Care, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina.

15. SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Management, LLC, are businesses organized and existing under the laws of the State of Delaware which are authorized to transact business in the State of South Carolina. Upon information and belief, through their individual actions and in concert with each other and with their affiliated and/or subsidiary companies, these companies engaged in oversight, management, direction, and operation of nursing home facilities in Florence County, South Carolina, deriving substantial business therefrom. At all times relevant herein, agents, employees, servants, and apparent agents of SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative, LLC, and SavaSeniorCare Management, LLC, acted on behalf of themselves and on behalf of SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative, LLC, SavaSeniorCare Management, LLC, and their affiliate and/or parent companies.

Furthermore, Defendants SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Management, LLC (hereinafter collectively "SavaSeniorCare"), are businesses organized and existing under the laws of the State of Delaware which, upon information and belief, have acquired and are successors to Mariner Health Care and, as such, are vested with the rights, duties, and liabilities which previously fell to Mariner Health Care.

16. Defendant National Senior Care, Inc., is a business organized and existing under the laws of the State of Delaware and which, upon information and belief, is authorized to transact and conduct business in Florence County, South Carolina. National Senior Care, Inc., is an entity which was formed for the purpose of completing the transactions contemplated by the Merger Agreement with Mariner Health Care, Inc.. The sole agent/actor/shareholder of National Senior Care, Inc. is Harry Grunstein, who assumed the role of President of Mariner Health Care, Inc. following said merger. Harry Grunstein is also, upon information and belief, the Chief Executive Officer of SavaSeniorCare, LLC, which is a successor entity to Mariner Health Care, Inc. Upon information and belief, National Senior Care, Inc. is a shell corporation whose true purpose is to shield the individual Defendants and other owners or persons from personal liability arising from potential claims against Mariner facilities. Upon further information and belief, any acts and/or omissions committed by National Senior Care, Inc. were done at the instruction, direction, and with the approval of Harry Grunstein or the other named individual Defendants.

At all times relevant herein, National Senior Care, Inc. and/or Mariner Health Care, Inc. and/or SavaSeniorCare, LLC and their parent corporation, affiliated and/or successor entities acted on behalf of themselves or National Senior Care, Inc, Mariner Health Care, Inc., SavaSeniorCare, LLC and their parent corporations, affiliated and/or successor entities which conducted business in Florence County, South Carolina. Further, Harry Grunstein or the other named individual Defendants directed the operations and management of these companies.

17. Defendant Palmetto Health Care, LLC (hereinafter "Palmetto Health Care") is a business organized and existing under the laws of the State of Delaware. At

all times relevant herein, this Defendant is and was a business which employs and/or contracts for the employment of physicians, nurses, and related staff to provide health care services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Mary Brinson. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and by and through its subsidiary, Palmetto Faith Operating, LLC. Furthermore, at all times relevant herein, Defendant holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operation and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents of Palmetto Health Care and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center acted on behalf of themselves and Palmetto Health Care. The decisions and actions by this company and its agents affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

18. Defendant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center (hereinafter "Palmetto Faith Operating"), is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to conduct business in the State of South Carolina and indeed does so by employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing home and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. At all times relevant herein,

Palmetto Faith Operating is and was a wholly owned subsidiary of Palmetto Health Care and acted on behalf of itself and as agent for Defendant Palmetto Health Care. At all times relevant herein, agents, employees, servants, and apparent agents of Palmetto Faith Operating, acted on behalf of themselves and Palmetto Faith Operating, Ask Holdings, LLC, Palmetto Health Care, and Leonard Grunstein.

19. Defendant Ask Holdings, LLC (hereinafter "Ask Holdings"), is a business organized and existing under the laws of the State of Florida. At all times relevant herein, Defendant Ask Holdings holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. As such, Defendant Ask Holdings transacted business and maintained agents or servants in Florence County, South Carolina. At all times relevant herein, agents, employees, servants, and apparent agents of Ask Holdings acted on behalf of themselves and of Ask Holdings. The decisions and actions by this company and its agents affect the funding, staffing and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

20. Upon information and belief, Defendant Leonard Grunstein (hereinafter "Leonard Grunstein") is a citizen and resident of Bergen County, New Jersey. At all times relevant herein, Leonard Grunstein holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. Furthermore, Leonard Grunstein holds management/member interests and rights to Palmetto Health Care, LLC and SC Property Holdings, LLC, and is a beneficial owner of and, upon information and belief, the Chairman of SavaSeniorCare, LLC, all of which, upon information and belief, accepted the rights, duties, and liabilities as successor to Mariner Health Care, Inc., and its affiliated entities. Upon information

and belief, Leonard Grunstein has been involved in directing operations and/or management of these companies. At all times relevant herein, Leonard Grunstein acted on behalf of himself and on behalf of Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, SC Property Holdings, LLC, and SavaSeniorCare, LLC. The decisions and actions of this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Leonard Grunstein directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

21. Upon information and belief, Defendant Murray Forman (hereinafter "Murray Forman") is a citizen and resident of Queens County, New York and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Murray Forman has ownership/stockholder/membership interest in SC Property Holdings, LLC, Palmetto Health Care, LLC, and SavaSeniorCare, LLC, and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates. At all times relevant herein, Murray Forman has acted on behalf of himself and on behalf of Palmetto Faith Operating, Palmetto Health Care, LLC, SC Property Holdings, and SavaSeniorCare, LLC, all of which, upon information and belief, accepted the rights duties, and liabilities as successor to Mariner Health Care, Inc., and its affiliated entities. The decisions and actions by this individual affect the funding, staffing and care at Palmetto Faith Operating, LLC, d/b/a Faith Health Care Center. In addition to the above, because Murray Forman directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

22. Upon information and belief, Defendant Boyd P. Gentry (hereinafter "Boyd Gentry") is a citizen and resident of Fulton County, Georgia and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Boyd Gentry is or was at all times relevant, the Vice President, Treasurer and Chief Financial Officer of Mariner Health Care, Inc., and has used his position to exercise direction or control over the operations and/or fiscal decisions of the entities to which he is party. At all times relevant herein, Boyd Gentry has acted on behalf of himself and on behalf of Palmetto Faith Operating and Mariner Health Care, Inc., and its affiliated entities. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Boyd Gentry directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

23. Upon information and belief, Defendant Abraham Shaulson a/k/a Abraham Shavlsion a/k/a A. Shawson a/k/a Abraham Shawson (hereinafter "Abraham Shaulson") is a citizen and resident of Dade County, Florida and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Abraham Shaulson has ownership/stockholder/membership interest in SC Property Holdings, LLC and Ask Holdings, LLC and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates, all of which affect the funding, staffing and care at Faith Health Care Center and Palmetto Faith Operating. At all times relevant herein, Abraham Shaulson has acted on behalf of himself and on behalf of Palmetto Faith Operating, SC Property Holdings, LLC and Ask Holdings, LLC. The decisions and actions by this individual affect the funding, staffing, and care at

Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Abraham Shaulson directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

24. Upon information and belief, Defendant Avi Klein (hereinafter "Avi Klein") is a citizen and resident of Dade County, Florida and hold partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Avi Klein has ownership/stockholder/membership interest in Palmetto Health Care, LLC and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates, all of which affect the funding, staffing and care at Faith Health Care Center and Palmetto Faith Operating. At all times relevant herein, Avi Klein has acted on behalf of himself and on behalf of Palmetto Faith Operating and Palmetto Health Care, LLC. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Avi Klein directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

25. Defendant SC Property Holdings, LLC (hereinafter "SC Property Holdings") is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to do business in and owns property in Florence County, South Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing nursing and physician services and operating nursing home and rehabilitation facilities for persons such as Mary Brinson.

This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through its subsidiary, SC Faith, LLC. At all times relevant, agents, employees, servants, and apparent agents of SC Property Holdings and SC Faith, LLC, acted on behalf of themselves and on behalf of SC Property Holdings. Furthermore, SC Property Holdings acted on behalf of itself and Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, LLC, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein.

26. Defendant SC Faith, LLC (hereinafter "SC Faith") is a business organized and existing under the laws of the State of Delaware which owns property in and which is licensed and authorized to conduct business in Florence County, South Carolina, and does so by employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina. At all times relevant herein, SC Faith is and was a wholly owned subsidiary of SC Property Holdings and acted on behalf of itself and as agent for Defendants SC Property Holdings, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein. At all times relevant herein, agents, employees, servants, and apparent agents of SC Faith and SC Property Holdings acted on behalf of themselves and on behalf of SC Faith.

27. Upon information and belief, at all times relevant herein which occurred prior to September 29, 2006, Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC Mid America, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, Sava Management, SavaSeniorCare, National Senior Care, and SE Living Centers, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, owned, operated, and managed GranCare South Carolina in its operation of the facility identified to the public as Faith Health Care in Florence, South Carolina, or, as successors accepted the duties, rights and liabilities for Faith Health Care Center.

28. At all times relevant to this Complaint which occurred prior to September 29, 2006, GranCare South Carolina was owned, managed, and operated by MHC MidAtlantic, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC Holding, SE Living Centers, Mariner Health Care, Mariner Health Group, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, whose operations were directed and/or ordered by the entities themselves directly or by and through the services of Sava Management and/or SavaSeniorCare Administrative. At all times relevant herein, policies, procedures, and guidelines at GranCare South Carolina d/b/a Faith Health Care Center were promulgated and controlled by Mariner Health Care, Mariner Health Group, MHC MidAtlantic, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC Holding, SE Living Centers, Sava Management, National Senior Care and/or SavaSeniorCare, independently and by

and through their agents/actors Harry Grunstein and the other named individual Defendants.

29. All acts and/or omissions of GranCare South Carolina d/b/a Faith Health Care Center were authorized, approved and/or ratified by Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants.

30. All acts and/or omissions by GranCare South Carolina and its respective employees, agents, servants, or apparent agents were authorized, approved, or ratified by Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants.

31. Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, Sava Management, SavaSeniorCare, and/or National Senior Care independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, maintained, managed, and controlled the budget, staff, employees, facilities, funding, billing and many other aspects of the business of GranCare South Carolina, all of which affected and impacted resident care and treatment.

32. Mariner Health Care, Inc., Mariner Health Care Management, Mariner Health Group, Inc., MHC Holding Company, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, GranCare South Carolina, Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative Services, LLC, SavaSeniorCare, Inc., National Senior Care, all independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, and their affiliates shall hereinafter be collectively referred to as "Faith Health Care".

33. Upon information and belief, at all times relevant herein which occurred after September 29, 2006, Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and SC Faith own, operate, and manage Palmetto Faith Operating in its operation of the facility identified to the public as Faith Health Care Center in Florence, South Carolina.

34. At all times relevant to this Complaint which occurred after September 29, 2006, Palmetto Faith Operating is owned by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and/or SC Faith whose operations were directed and/or ordered by the entities and/or individuals themselves. At all times relevant herein, policies, procedures, and guidelines at Faith Health Care Center, Palmetto Faith Operating, and Palmetto Health Care were promulgated and controlled by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and/or SC Faith.

35. All acts and omissions by Palmetto Faith Operating and its respective employees, agents, servants, or apparent agents were authorized, approved, or ratified by

Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings and/or SC Faith.

36. Palmetto Health Care, under the direction and supervision of and in concert with Leonard Grunstein, Murray Forman, and Avi Klein, SC Property Holdings, under the direction and supervision of and in concert with Leonard Grunstein, Murray Forman, and Abraham Shaulson, Palmetto Faith Operating, under the direction and supervision of and in concert with Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein, and Ask Holdings, under the direction and supervision of and in concert with Abraham Shaulson, all collectively and together maintained, managed, and controlled; the budget, staff, employees, facilities, funding, billing, and many other aspects of the business of Palmetto Faith Operating, all of which affected resident care and treatment.

37. Palmetto Health Care, LLC, Palmetto Faith Operating, 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, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC Faith, LLC, and their affiliates shall hereinafter be collectively referred to as "Palmetto Faith".

38. John Does 1-26 are corporations and/or entities whose structure, organization, and whereabouts are currently unknown and who are successors or assigns in interest to the corporations named herein. Plaintiff is informed and believes that the corporate entities named herein have likely been restructured, merged, or otherwise renamed in an effort to obscure their identity. John Does 1-26 have benefitted at Plaintiff's expense and at the expense of Plaintiff's decedent through its predecessor entities and/or affiliates, and their acts and/or omissions as alleged herein.

SUMMARY OF FACTS

39. On or about May 29, 2006, Mary Brinson was admitted to Carolinas Hospital System. She remained a patient there until June 2, 2006.

40. On June 2, 2006, Mary Brinson was admitted to Faith Health Care Center for skilled nursing care, supervision, and the care which should be provided by a Nursing Home.

41. Upon her admission to Faith Health Care Center on June 2, 2006, Mary Brinson was fully ambulatory with no paralysis or contractures, was able to fully bear her own weight and had no skin breakdown.

42. While at Faith Health Care Center, Mary Brinson developed contractures of her lower extremities and developed bed sores or pressure ulcers as a result of the failure of Defendant Faith Health Care Center to properly care for Mary Brinson.

43. On September 16, 2006, while still at Faith Health Care Center, Mary Brinson was noted to have brown stringy necrotic tissue with very malodorous brown drainage from her wounds. At the insistence of Ann Coleman, Mary Brinson was transferred to McLeod Regional Medical Center for evaluation.

44. Upon arrival at McLeod Regional Medical Center, it was noted that Mary Brinson had a stage IV decubitus ulcer to her sacrum with foul brownish drainage. A culture of this wound revealed that it was infected. Furthermore, at McLeod it was noted that Mary Brinson had severe bilateral knee contractures and bilateral hip contractures and that she seemed to be in significant pain. Additionally, while at McLeod, it was found that Mary Brinson was malnourished and dehydrated.

45. During this time, Mary Brinson's health continued to decline due to the injuries she received while a patient at Faith Health Care Center.

46. Mary Brinson eventually returned to Faith Health Care Center/Palmetto Faith on December 13, 2006.

47. Incidentally, on September 29, 2006, the ownership and operation of Faith Health Care Center was effectively transferred from GranCare South Carolina to Palmetto Faith. The property housing the facility was also transferred at that time from Premier Properties of South Carolina, LLC, who is, upon information and belief, an arms-length property owner, to SC Faith.

48. While at Faith Health Care Center/Palmetto Faith, Mary Brinson developed a urinary tract infection, pneumonia, and sepsis due to the debilitated state the Defendants had caused. On December 16, 2006, Mary Brinson was found unresponsive, with audible congestion, labored respirations, and a temperature of 103.3. She was transferred to McLeod Regional Medical Center where she was admitted and underwent treatment until January 5, 2007.

49. Mary Brinson continued to suffer and decline from all of her injuries caused by the Defendants until she was unable to recover and died on April 30, 2007.

50. Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, GranCare South Carolina, Sava Management, SavaSeniorCare, National Senior Care, Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, SC Faith, Faith Health Care Center, and John Does 1-26 were aware of such failures to provide adequate care as described both above and below and were aware of residents such as Mary Brinson and knew that the failures resulted from decisions made by them to purposefully

understaff and underfund GranCare South Carolina and Palmetto Faith Operating in a way that would maximize corporate profits for Defendants rather than provide adequate and proper care to residents. Furthermore, the acts and decisions of Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, GranCare South Carolina, Sava Management, SavaSeniorCare, National Senior Care, Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, SC Faith, Faith Health Care Center, and John Does 1-26 directly affected resident care such as that of Mary Brinson. The acts of these Defendants were negligent, willful, wanton, and in reckless disregard for the safety and well being of patients such as Mary Brinson.

51. As a direct and proximate result of GranCare South Carolina, Palmetto Faith Operating, and Faith Health Care Center's acts and/or omissions, Mary Brinson suffered the following injuries and damages:

- a. Dehydration;
- b. Malnutrition;
- c. Anemia;
- d. Numerous Decubitus/Pressure ulcers/Bed sores;
- e. Unresponsiveness;
- f. Urinary Tract Infections;
- g. Difficulty breathing;
- h. Infections;
- i. Hospitalizations;

- j. Pneumonia;
- k. Sepsis;
- l. Septicemia;
- m. Electrolyte imbalances;
- n. Contractures;
- o. Injuries to her circulatory system;
- p. Injuries to her lower extremities;
- q. Decreased levels of cognition, health, and consciousness;
- r. Injuries about her body;
- s. Underwent medical procedures which she would not have otherwise had to undergo;
- t. Pain, suffering, humiliation, embarrassment, stress, and anxiety;
- u. Loss of dignity;
- v. Loss of enjoyment of life;
- w. Medical expenses;
- x. Death; and
- y. In such other and further ways as Discovery and Trial shall prove.

52. As a direct and proximate result of Mary Brinson's death, the statutory beneficiaries have and will continue to suffer the loss of companionship, mental shock and suffering, wounded feelings, grief and sorrow, and deprivation of the use and comfort of the decedent's society, loss of her experience, knowledge and judgment, as well as her love and affection. Further as a result of Mary Brinson's injuries and death, medical and funeral expenses were incurred. The statutory beneficiaries include Ann Coleman. Upon

information and belief, Joseph Walters, the son of Mary Brinson, is also a statutory beneficiary.

53. Plaintiff would show that this action is brought pursuant to the Wrongful Death Provisions of the South Carolina Code of Laws and pursuant to the South Carolina Tort Claims Act and Common Law of South Carolina. Further, this action is brought on behalf of the statutory beneficiaries of the estate of the deceased, Mary Brinson, pursuant to the laws of this state.

FOR A FIRST CAUSE OF ACTION
(Negligence as to All Defendants)

54. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

55. Defendants were negligent, careless, reckless, grossly negligent, willful, and wanton, and fell below the applicable standard of care in the following particulars:

- a. In failing to provide adequate staffing, adequately paid staff, and adequately trained staff at their facilities to care for residents such as Mary Brinson, with the full knowledge that such inadequate staffing practices would place patients such as Mary Brinson at risk for injury;
- b. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- c. In failing to provide proper comprehensive and timely assessments and evaluation outlining all risk factors for Mary Brinson and in failing to properly design, adhere to, or modify an appropriate plan of care;

- d. In failing to timely evaluate and treat Mary Brinson;
- e. In failing to timely and appropriately monitor Mary Brinson's nutritional and hydrational status;
- f. In failing to timely and appropriately implement intervention in a patient and a resident with obvious nutritional and hydrational decline;
- g. In failing to provide and properly administer therapeutic activities ordered by Mary Brinson's treating physicians;
- h. In creating and then failing to recognize Mary Brinson's risk for skin breakdown;
- i. In failing to properly prevent contractures;
- j. In failing to provide proper skincare, both to prevent bedsores or decubitus ulcers and to manage bedsores or decubitus ulcers once they occurred;
- k. In failing to properly monitor, evaluate, and treat Mary Brinson's skin conditions and skin wounds and failing to timely notify her physicians and family about such wounds;
- l. In failing to have in place and follow an adequate skin management protocol to address bedsores or decubitus ulcers;
- m. In failing to provide and implement proper care plans that would adequately meet Mary Brinson's needs, including her risk for malnutrition or dehydration, risk of developing bedsores or decubitus ulcers, risk for contractures, risk for infections, risk for

alteration of mental status, risk for anemia, and other risks which Mary Brinson encountered while a patient at Defendant's facility;

- n. In failing to provide a safe and clean environment;
- o. In failing to have and/or implement adequate and effective policies, procedures, staff and equipment to adequately monitor, supervise and treat Mary Brinson;
- p. In failing to follow and comply with the Defendants' own policies and procedures directed at the care and treatment of patients;
- q. In failing to timely and appropriately recognize, diagnose, and treat bedsores or decubitus ulcers;
- r. In failing to provide services and activities to attain or maintain the highest practical physical, mental, and psycho-social well being of Mary Brinson in accordance with a written plan of care;
- s. In failing to accurately and truthfully record Mary Brinson's conditions in her medical records;
- t. In failing to consult a physician in a timely manner;
- u. In failing to properly follow the care plan;
- v. In failing to appropriately and properly act upon Mary Brinson's significant weight loss and obvious decline of condition;
- w. In failing to timely request and obtain a registered dietician and speech pathology consult;
- x. In failing to timely evaluate, treat, and diagnose infections;
- y. In failing to recognize or act upon Mary Brinson's change of condition;

- z. In failing to timely, properly, and accurately monitor intake and output on each shift;
- aa. In failing to provide timely and appropriate monitoring for urinary tract infection in a resident with increased risk for developing a urinary tract infection;
- bb. In failing to timely and appropriately treat a urinary tract infection;
- cc. In failing to have and/or follow proper policies, procedures, and protocol to address Mary Brinson's dehydration, malnutrition, weight loss, decubitus ulcers, contractures, urinary tract infection and deterioration;
- dd. In failing to timely diagnose dehydration, malnutrition, skin breakdown, contractures, decubitus ulcers, urinary tract infection, urosepsis, or pneumonia;
- ee. In failing to properly staff, fund, operate, and manage the facility to the extent that resident care was affected and caused injuries to the Plaintiff;
- ff. In negligently administering and operating the Defendants' nursing home facility;
- gg. In failing to comply with the applicable Federal and State Statutes and Regulations designed to protect persons such as Mary Brinson;
- hh. In failing to act and provide care as a reasonably prudent nursing home would do under the same or similar circumstances; and
- ii. In such other and further ways as Discovery and Trial shall prove.

FOR A SECOND CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

56. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

57. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, The Bill of Long Term Care Facilities at South Carolina Code §4-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-17, *et seq*, as well as similar protective Federal Regulations and Statutes by 42 U.S.C. §1396(r), *et seq*, and 42 C.F.R. §483, *et seq*.

58. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Mary Brinson was a member at all times relevant to this action. The Defendants violated these Statutes and Regulations in their failure to properly care for Mary Brinson and other similarly situated patients at their facility.

59. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitute negligence *per se*, Mary Brinson suffered injuries and damages as set forth above.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to All Defendants)

60. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

61. Defendants had a contract with Mary Brinson and/or her representatives which required Defendants to provide nursing home and rehabilitative care to Mary Brinson that met acceptable professional standards.

62. Defendants breached this contract and failed to act in good faith and fair dealings by failing to provide such care as to disclose to Mary Brinson or her Representative or both that the Defendants' facility was inadequately staffed, underfunded, and in failing to provide care to Mary Brinson within these acceptable professional standards.

63. As a direct and proximate result, Mary Brinson suffered injuries and damages as set forth above.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation as to All Defendants)

64. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

65. Prior to, and around the time of Mary Brinson's admissions to Defendants' facility, agents of the facility made untrue statements to Mary Brinson and to her family about the quality of care that Mary Brinson would receive at the Defendants' facility, where such statements were intended by those making them to be relied upon by Mary Brinson and her family and upon which they did rely.

66. The Defendants represented to Mary Brinson and her family that she would receive appropriate care within the professional standards of care, that the facility had adequate staffing, and adequate funding, that Mary Brinson would be carefully monitored, that Mary Brinson would receive adequate nutrition, hydration, therapies, and preventative interventions, that Mary Brinson would be safe and secure, and that problems or insufficiencies that Defendants' facility may have had in the past had been corrected.

67. These statements were untrue and intended to be relied upon by Mary Brinson and her family and the family did rely upon them in choosing to admit Mary Brinson to the facility.

68. These representations were careless, negligent, grossly negligent, reckless, willful, and wanton in that the Defendants knew or should have known they would not be able to meet these representations for Mary Brinson and in failing to meet these representations for Mary Brinson.

69. As a direct and proximate result of Defendants' misrepresentation, Mary Brinson has suffered injuries and damages as set forth above.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy as to All Defendants)

70. Plaintiff restates and re-alleges each paragraph previously pled as if repeated verbatim.

71. The Defendants deliberately and knowingly participated in a civil conspiracy in that they agreed and conspired to provide inadequate care in order to maximize profits over patient care. Moreover, the Defendants have demonstrated consciousness of their actions and conspiracy in taking calculated and elaborate steps to obscure the true ownership of the corporations which hold control of the facility and to hide their involvement. The wrongful acts identified hereinabove were carried out by the Defendants pursuant to the conspiracy and for this they are jointly and severally liable.

72. As a direct and proximate result of the conspiracy as alleged herein, Mary Brinson suffered the following special damages:

- a. Injury to her body;
- b. Loss of dignity;

- c. Pain, suffering, and humiliation;
- d. Severe physical injury and other damages as outlined herein above;
- e. Loss of her life; and
- f. In such other and further ways as Discovery and Trial shall prove.

73. As a further direct and proximate result of the conspiracy alleged herein, Ann Coleman and the statutory beneficiaries of Mary Brinson have suffered and will in the future continue to suffer the following special damages:

- a. Mental, emotional, and psychological distress over witnessing the suffering to which Mary Brinson was subjected;
- b. Loss of their family member; and
- c. In such other and further ways as Discovery and Trial shall prove.

74. As a result, Plaintiff is entitled to an award of actual, special, and punitive damages in an amount to be determined by a jury.

WHEREFORE, Plaintiff prays for judgment against all Defendants in the following particulars:

- a. For actual, punitive, and special damages in an amount to be determined by the trier of fact;
- b. For the costs and disbursements of this action;
- c. For attorneys' fees; and
- d. For such other and further relief as this Court deems just and proper.

Plaintiff respectfully requests a Jury Trial.

{signature page to follow}

CHRISTIAN & DAVIS
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Marion S. Fowler, III, MD of
FOWLER LAW FIRM, PC
S.C. Bar No.: 11816
Attorneys for Plaintiff

Greenville, South Carolina
March 19, 2010

STATE OF SOUTH CAROL. A)

COUNTY OF FLORENCE)

Ann Coleman, Individually and as Personal Representative of the Estate of Mary Brinson,

Plaintiff(s))

vs.)

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 Shavison a/k/a Abraham Shavison 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))

(Please Print)

Submitted By: Matthew Christian/Marion Fowler

Address: 1007 E. Washington St., Greenville, SC 29601/
800 W. Main St., Ste 200, Lake City, SC 29560

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 21- 836

SC Bar #: 70516/ 11816
Telephone #: 864-232-7363/ 843-374-4444
Fax #: 864-370-3731/ 843-374-4445
Other:
E-mail:

mchristian@christianandd
avis.com/ fowlerlaw@ftc-i.net

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 | ☐ Torts - Professional Malpractice | ☐ Torts - Personal Injury |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) |
| ☐ Employment (120) | ☒ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) |
| ☐ General (130) | ☐ Previous Notice of Intent Case # | ☐ Premises Liability (330) |
| ☐ Breach of Contract (140) | ☐ 20 09-CP-21-1397 | ☐ Products Liability (340) |
- CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

SCCA / 234.(11/09)

Page 1 of 3

000531

- | | | | |
|--------------------------------------|---|--|--|
| ☐ Other (199) | ☐ / File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ 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) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| | | | ☐ Public Service Commission (990) |
| | | | ☐ Employment Security Comm (991) |
| | | | ☐ Other (999) |
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|--|--|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) |
| | ☐ Sexual Predator (510) |

Submitting Party Signature: _____

Date: 3-19-10

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

MANDATED ADR COUNTIES OF
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

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 FLORENCE

Ann Coleman, Individually, and as Personal
Representative of the Estate of Mary
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 Shavison 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).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-21-836

SUMMONS
(Survival Action)
JURY TRIAL REQUESTED

FILED
FLORENCE COUNTY, SC
JAN 22 PM 5:53

CERTIFIED: A TRUE COPY

Cynthia R. Gentry

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

000534

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Plaintiff upon the subscriber, at his office at 1007 East Washington Street, Greenville, 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 the Complaint.

CHRISTIAN & DAVIS
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Marion S. Fowler, III, MD of
FOWLER LAW FIRM, PC
S.C. Bar No.: 11816
Attorneys for Plaintiff

Greenville, South Carolina
March 19th, 2010

000535

Defendant(s).

100-10172-11333
 100-10172-11333
 100-10172-11333

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

000536

The Plaintiff would show this Honorable Court the following:

PARTIES

1. That the Plaintiff Ann Coleman (hereinafter "Ann Coleman") is a citizen and resident of Florence County, South Carolina. At all times relevant herein, Ann Coleman was the sister of Mary Brinson (hereinafter "Mary Brinson") and is the duly appointed Personal Representative of the Estate of Mary Brinson, deceased. At the time of her death, Mary Brinson was a citizen and resident of Florence County, South Carolina.

2. Defendant Mariner Health Care, Inc., f/k/a Mariner Post-Acute Network, LLC (hereinafter "Mariner Health Care"), is a business organized and existing under the laws of the State of Delaware. At all times relevant herein, this Defendant is and was a business which employs and/or contracts for the employment of physicians, nurses, and related staff to provide healthcare services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Mary Brinson. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and in concert with its affiliated and/or parent entities Mariner Health Care Management Company and Mariner Health Central, Inc. as Mariner Health Group, Inc. (hereinafter collectively "Mariner Health Group"). At all times relevant herein, agents, employees, servants, and apparent agents of Mariner Health Care, Mariner Health Group, 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., and GranCare of South Carolina, Inc., Individually and d/b/a Faith Health Care Center acted on behalf themselves and on behalf of Mariner Health Care.

3. Defendant MHC Holding Company (hereinafter "MHC Holding") is a business organized and existing under the laws of the State of Delaware. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through those of its subsidiaries. Upon information and belief, MHC Holding is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Holding is and was a wholly owned subsidiary of Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Holding acted on behalf of themselves and MHC Holding.

4. Defendant MHC Florida Holding Company (hereinafter "MHC-Florida") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its

parent company or subsidiaries. Upon further information and belief, MHC Florida is an entity related to and engaged in the operation of Faith Health Care Center. At all times relevant herein, MHC Florida is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Florida acted on behalf of themselves, MHC Florida, and MHC Holding.

5. Defendant MHC Gulf Coast Holding Company (hereinafter "MHC Gulf Coast") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent companies or subsidiaries. Upon further information and belief, MHC Gulf Coast is an entity related to or engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Gulf Coast is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Gulf Coast acted on behalf of themselves, MHC Gulf Coast, and MHC Holding.

6. Defendant MHC MidAmerica Holding Company (hereinafter "MHC MidAmerica") is a business organized and existing under the laws of the State of

Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC MidAmerica is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC MidAmerica is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC MidAmerica is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC MidAmerica acted on behalf of themselves, MHC MidAmerica, and MHC Holding.

7. Defendant MHC Rocky Mountain Holding Company (hereinafter "MHC Rocky Mountain") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC Rocky Mountain is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which

directly operates Faith Health Care Center. At all times relevant herein, MHC Rocky Mountain is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Rocky Mountain acted on behalf of themselves, MHC Rocky Mountain, and MHG Holding.

8. Defendant MHC Northeast Holding Company (hereinafter "MHC Northeast") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent companies or subsidiaries. Upon further information and belief, MHC Northeast is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Northeast is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC Northeast acted on behalf of themselves, MHC Northeast, and MHC Holding.

9. Defendant MHC West Holding Company (hereinafter "MHC West") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains

agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC West is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC West is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of MHC West acted on behalf of themselves, MHC West, and MHC Holding.

10. Defendant MHC Texas Holding Company (hereinafter "MHC Texas") is a business organized and existing under the laws of the State of Delaware. Upon information and belief, this Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial revenue therefrom, in Florence County, South Carolina, either through its individual actions and/or through those of its parent company or subsidiaries. Upon further information and belief, MHC Texas is an entity related to and engaged in the operation of Faith Health Care Center, either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC Texas is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees,

servants, and apparent agents of MHC Texas acted on behalf of themselves, MHC Texas, and MHC Holding.

11. Defendant MHC MidAtlantic Holding Company (hereinafter "MHC MidAtlantic") is a business organized and existing under the laws of the State of Delaware. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through those of its subsidiaries. Upon information and belief, MHC MidAtlantic is an entity related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. At all times relevant herein, MHC MidAtlantic is and was a wholly owned subsidiary of MHC Holding and acted on behalf of itself and as agent for Defendants MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of MHC MidAtlantic acted on behalf of themselves, MHC MidAtlantic, and MHC Holding.

12. Defendant Living Centers-Southeast, Inc. (hereinafter "SE Living Centers"), is a business organized and existing under the laws of the State of North Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing homes and rehabilitation facilities for persons such as Mary Brinson in Florence County, South Carolina. Upon information and belief, SE Living Centers is an entity

related to and engaged in the operation of Faith Health Care Center either directly or by its association with one of the entities which directly operates Faith Health Care Center. Upon further information and belief, at all times relevant herein, SE Living Centers is and was a wholly owned subsidiary of MHC MidAtlantic and acted on behalf of itself and as agent for Defendants MHC MidAtlantic Holding Company, MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants, and apparent agents of SE Living Centers acted on behalf of themselves, SE Living Center, and MHC MidAtlantic.

13. Defendant GranCare South Carolina, Inc., Individually and d/b/a Faith Health Care Center (hereinafter "GranCare South Carolina"), is a business organized and existing under the laws of the State of South Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson in Florence County, South Carolina. At all times relevant herein, GranCare South Carolina is and was a wholly owned subsidiary of MHC MidAtlantic and acted on behalf of itself and as agent for Defendants MHC MidAtlantic Holding Company, MHC Holding Company, Mariner Health Care, Inc., Mariner Health Management, Inc., and Mariner Health Group, Inc.. Furthermore, at all times relevant herein, agents, employees, servants and apparent agents of GranCare South Carolina acted on behalf of themselves and GranCare South Carolina.

14. Defendant SavaSeniorCare Management, LLC (hereinafter "Sava Management") is a business organized and existing under the laws of the State of Delaware providing payroll, general accounting, accounts payable, accounts receivable, nursing home management, and purchasing services as well as oversight in the hiring and firing of suppliers and vendors for Mariner Health Care and its subsidiary facilities and which represents itself to contracting agencies and to the public at large as being highly capable and skilled in providing oversight and management for nursing home and rehabilitation facilities such as those operated by SE Living Centers, GranCare South Carolina, Mariner Health Care, and Palmetto Faith Operating, LLC. Further, this Defendant managed and oversaw the nursing home facilities operated by SE Living Centers, GranCare South Carolina, Mariner Health Care, and Palmetto Faith Operating, LLC. This Defendant, through its provision of services for Mariner Health Care, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina.

15. SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Management, LLC, are businesses organized and existing under the laws of the State of Delaware which are authorized to transact business in the State of South Carolina. Upon information and belief, through their individual actions and in concert with each other and with their affiliated and/or subsidiary companies, these companies engaged in oversight, management, direction, and operation of nursing home facilities in Florence County, South Carolina, deriving substantial business therefrom. At all times relevant herein, agents, employees, servants, and apparent agents of SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare

Administrative, LLC, and SavaSeniorCare Management, LLC, acted on behalf of themselves and on behalf of SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative, LLC, SavaSeniorCare Management, LLC, and their affiliate and/or parent companies.

Furthermore, Defendants SavaSeniorCare, LLC, SavaSeniorCare, Inc., SavaSeniorCare Administrative Services, LLC, and SavaSeniorCare Management, LLC (hereinafter collectively "SavaSeniorCare"), are businesses organized and existing under the laws of the State of Delaware which, upon information and belief, have acquired and are successors to Mariner Health Care and, as such, are vested with the rights, duties, and liabilities which previously fell to Mariner Health Care.

16. Defendant National Senior Care, Inc., is a business organized and existing under the laws of the State of Delaware and which, upon information and belief, is authorized to transact and conduct business in Florence County, South Carolina. National Senior Care, Inc., is an entity which was formed for the purpose of completing the transactions contemplated by the Merger Agreement with Mariner Health Care, Inc.. The sole agent/actor/shareholder of National Senior Care, Inc. is Harry Grunstein, who assumed the role of President of Mariner Health Care, Inc. following said merger. Harry Grunstein is also, upon information and belief, the Chief Executive Officer of SavaSeniorCare, LLC, which is a successor entity to Mariner Health Care, Inc. Upon information and belief, National Senior Care, Inc. is a shell corporation whose true purpose is to shield the individual Defendants and other owners or persons from personal liability arising from potential claims against Mariner facilities. Upon further information and belief, any acts and/or omissions committed by National Senior Care,

Inc. were done at the instruction, direction, and with the approval of Harry Grunstein or the other named individual Defendants.

At all times relevant herein, National Senior Care, Inc. and/or Mariner Health Care, Inc. and/or SavaSeniorCare, LLC and their parent corporation, affiliated and/or successor entities acted on behalf of themselves or National Senior Care, Inc, Mariner Health Care, Inc., SavaSeniorCare, LLC and their parent corporations, affiliated and/or successor entities which conducted business in Florence County, South Carolina. Further, Harry Grunstein or the other named individual Defendants directed the operations and management of these companies.

17. Defendant Palmetto Health Care, LLC (hereinafter "Palmetto Health Care") is a business organized and existing under the laws of the State of Delaware. At all times relevant herein, this Defendant is and was a business which employs and/or contracts for the employment of physicians, nurses, and related staff to provide health care services to patients and operates nursing home facilities in the State of South Carolina. This business holds itself out as being capable and highly skilled in providing physician services, nursing services, long term care, and rehabilitative services to the public at large and persons such as Mary Brinson. This Defendant owns and/or leases property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and by and through its subsidiary, Palmetto Faith Operating, LLC. Furthermore, at all times relevant herein, Defendant holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operation and/or fiscal decisions. At all times relevant herein, agents, employees, servants, and apparent agents

of Palmetto Health Care and Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center acted on behalf of themselves and Palmetto Health Care. The decisions and actions by this company and its agents affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

18. Defendant Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center (hereinafter "Palmetto Faith Operating"), is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to conduct business in the State of South Carolina and indeed does so by employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing home and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. At all times relevant herein, Palmetto Faith Operating is and was a wholly owned subsidiary of Palmetto Health Care and acted on behalf of itself and as agent for Defendant Palmetto Health Care. At all times relevant herein, agents, employees, servants, and apparent agents of Palmetto Faith Operating, acted on behalf of themselves and Palmetto Faith Operating, Ask Holdings, LLC, Palmetto Health Care, and Leonard Grunstein.

19. Defendant Ask Holdings, LLC (hereinafter "Ask Holdings"), is a business organized and existing under the laws of the State of Florida. At all times relevant herein, Defendant Ask Holdings holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. As such, Defendant Ask Holdings transacted business and maintained agents or servants in Florence County, South Carolina. At all times relevant herein, agents,

employees, servants, and apparent agents of Ask Holdings acted on behalf of themselves and of Ask Holdings. The decisions and actions by this company and its agents affect the funding, staffing and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center.

20. Upon information and belief, Defendant Leonard Grunstein (hereinafter "Leonard Grunstein") is a citizen and resident of Bergen County, New Jersey. At all times relevant herein, Leonard Grunstein holds or held a direct or indirect ownership interest in Palmetto Faith and exercised direction and control over its operations and/or fiscal decisions. Furthermore, Leonard Grunstein holds management/member interests and rights to Palmetto Health Care, LLC and SC Property Holdings, LLC, and is a beneficial owner of and, upon information and belief, the Chairman of SavaSeniorCare, LLC, all of which, upon information and belief, accepted the rights, duties, and liabilities as successor to Mariner Health Care, Inc., and its affiliated entities. Upon information and belief, Leonard Grunstein has been involved in directing operations and/or management of these companies. At all times relevant herein, Leonard Grunstein acted on behalf of himself and on behalf of Palmetto Health Care, LLC, Palmetto Faith Operating, LLC, SC Property Holdings, LLC, and SavaSeniorCare, LLC. The decisions and actions of this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Leonard Grunstein directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

21. Upon information and belief, Defendant Murray Forman (hereinafter "Murray Forman") is a citizen and resident of Queens County, New York and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Murray Forman has ownership/stockholder/membership interest in SC Property Holdings, LLC, Palmetto Health Care, LLC, and SavaSeniorCare, LLC, and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates. At all times relevant herein, Murray Forman has acted on behalf of himself and on behalf of Palmetto Faith Operating, Palmetto Health Care, LLC, SC Property Holdings, and SavaSeniorCare, LLC, all of which, upon information and belief, accepted the rights duties, and liabilities as successor to Mariner Health Care, Inc., and its affiliated entities. The decisions and actions by this individual affect the funding, staffing and care at Palmetto Faith Operating, LLC, d/b/a Faith Health Care Center. In addition to the above, because Murray Forman directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

22. Upon information and belief, Defendant Boyd P. Gentry (hereinafter "Boyd Gentry") is a citizen and resident of Fulton County, Georgia and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Boyd Gentry is or was at all times relevant, the Vice President, Treasurer and Chief Financial Officer of Mariner Health Care, Inc., and has used his position to exercise direction or control over the operations and/or fiscal decisions of the entities to which he is party. At all times relevant herein, Boyd Gentry has acted on behalf of himself and on behalf of Palmetto Faith Operating and Mariner Health Care, Inc., and its

affiliated entities. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Boyd Gentry directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

23. Upon information and belief, Defendant Abraham Shaulson a/k/a Abraham Shavlsion a/k/a A. Shawson a/k/a Abraham Shawson (hereinafter "Abraham Shaulson") is a citizen and resident of Dade County, Florida and holds partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Abraham Shaulson has ownership/stockholder/membership interest in SC Property Holdings, LLC and Ask Holdings, LLC and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates, all of which affect the funding, staffing and care at Faith Health Care Center and Palmetto Faith Operating. At all times relevant herein, Abraham Shaulson has acted on behalf of himself and on behalf of Palmetto Faith Operating, SC Property Holdings, LLC and Ask Holdings, LLC. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Abraham Shaulson directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

24. Upon information and belief, Defendant Avi Klein (hereinafter "Avi Klein") is a citizen and resident of Dade County, Florida and hold partial ownership interest in Palmetto Faith Operating. Furthermore, upon information and belief, Avi

Klein has ownership/stockholder/membership interest in Palmetto Health Care, LLC and has used his position to exercise direction or control over the operations and/or fiscal decisions of these entities and their affiliates, all of which affect the funding, staffing and care at Faith Health Care Center and Palmetto Faith Operating. At all times relevant herein, Avi Klein has acted on behalf of himself and on behalf of Palmetto Faith Operating and Palmetto Health Care, LLC. The decisions and actions by this individual affect the funding, staffing, and care at Palmetto Faith Operating, LLC d/b/a Faith Health Care Center. In addition to the above, because Avi Klein directed management and operations at the facility doing business as Faith Health Care Center, directly or indirectly, he transacted business in Florence County, South Carolina.

25. Defendant SC Property Holdings, LLC (hereinafter "SC Property Holdings") is a business organized and existing under the laws of the State of Delaware which is licensed and authorized to do business in and owns property in Florence County, South Carolina, employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and to the public at large as being highly capable and skilled in providing nursing and physician services and operating nursing home and rehabilitation facilities for persons such as Mary Brinson. This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina, both through its individual actions and through its subsidiary, SC Faith, LLC. At all times relevant, agents, employees, servants, and apparent agents of SC Property Holdings and SC Faith, LLC, acted on behalf of themselves and on behalf of SC Property Holdings. Furthermore, SC Property Holdings acted on behalf of itself and Palmetto Health Care,

Palmetto Faith Operating, Ask Holdings, LLC, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein.

26. Defendant SC Faith, LLC (hereinafter "SC Faith") is a business organized and existing under the laws of the State of Delaware which owns property in and which is licensed and authorized to conduct business in Florence County, South Carolina, and does so by employing physicians, nurses, and related staff to provide health care services to patients and which represented itself to the Plaintiff and the public at large as being highly capable and skilled in providing nursing and physician services and operated nursing home and rehabilitation facilities for persons such as Mary Brinson. This Defendant owns property, advertises, maintains agents, and transacts business, deriving substantial business therefrom, in Florence County, South Carolina. At all times relevant herein, SC Faith is and was a wholly owned subsidiary of SC Property Holdings and acted on behalf of itself and as agent for Defendants SC Property Holdings, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein. At all times relevant herein, agents, employees, servants, and apparent agents of SC Faith and SC Property Holdings acted on behalf of themselves and on behalf of SC Faith.

27. Upon information and belief, at all times relevant herein which occurred prior to September 29, 2006, Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC Mid America, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, Sava Management, SavaSeniorCare, National Senior Care, and SE Living Centers, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants,

owned, operated, and managed GranCare South Carolina in its operation of the facility identified to the public as Faith Health Care in Florence, South Carolina, or, as successors accepted the duties, rights and liabilities for Faith Health Care Center.

28. At all times relevant to this Complaint which occurred prior to September 29, 2006, GranCare South Carolina was owned, managed, and operated by MHC MidAtlantic, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC Holding, SE Living Centers, Mariner Health Care, Mariner Health Group, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, whose operations were directed and/or ordered by the entities themselves directly or by and through the services of Sava Management and/or SavaSeniorCare Administrative. At all times relevant herein, policies, procedures, and guidelines at GranCare South Carolina d/b/a Faith Health Care Center were promulgated and controlled by Mariner Health Care, Mariner Health Group, MHC MidAtlantic, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC Holding, SE Living Centers, Sava Management, National Senior Care and/or SavaSeniorCare, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants.

29. All acts and/or omissions of GranCare South Carolina d/b/a Faith Health Care Center were authorized, approved and/or ratified by Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE

Living Centers, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants.

30. All acts and/or omissions by GranCare South Carolina and its respective employees, agents, servants, or apparent agents were authorized, approved, or ratified by Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants.

31. Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, Sava Management, SavaSeniorCare, and/or National Senior Care, independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, maintained, managed, and controlled the budget, staff, employees, facilities, funding, billing and many other aspects of the business of GranCare South Carolina, all of which affected and impacted resident care and treatment.

32. Mariner Health Care, Inc., Mariner Health Care Management, Mariner Health Group, Inc., MHC Holding Company, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, GranCare South Carolina, Individually and d/b/a Faith Health Care Center, SavaSeniorCare Management, LLC, SavaSeniorCare Administrative

Services, LLC, SavaSeniorCare, Inc., National Senior Care, all independently and by and through their agents/actors Harry Grunstein and the other named individual Defendants, and their affiliates shall hereinafter be collectively referred to as "Faith Health Care".

33. Upon information and belief, at all times relevant herein which occurred after September 29, 2006, Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and SC Faith own, operate, and manage Palmetto Faith Operating in its operation of the facility identified to the public as Faith Health Care Center in Florence, South Carolina.

34. At all times relevant to this Complaint which occurred after September 29, 2006, Palmetto Faith Operating is owned by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and/or SC Faith whose operations were directed and/or ordered by the entities and/or individuals themselves. At all times relevant herein, policies, procedures, and guidelines at Faith Health Care Center, Palmetto Faith Operating, and Palmetto Health Care were promulgated and controlled by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, and/or SC Faith.

35. All acts and omissions by Palmetto Faith Operating and its respective employees, agents, servants, or apparent agents were authorized, approved, or ratified by Palmetto Health Care, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings and/or SC Faith.

36. Palmetto Health Care, under the direction and supervision of and in concert with Leonard Grunstein, Murray Forman, and Avi Klein, SC Property Holdings,

under the direction and supervision of and in concert with Leonard Grunstein, Murray Forman, and Abraham Shaulson, Palmetto Faith Operating, under the direction and supervision of and in concert with Murray Forman, Boyd Gentry, Abraham Shaulson, and Avi Klein, and Ask Holdings, under the direction and supervision of and in concert with Abraham Shaulson, all collectively and together maintained, managed, and controlled, the budget, staff, employees, facilities, funding, billing, and many other aspects of the business of Palmetto Faith Operating, all of which affected resident care and treatment.

37. Palmetto Health Care, LLC, Palmetto Faith Operating, 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, an Individual, Avi Klein, an Individual, SC Property Holdings, LLC, SC-Faith, LLC, and their affiliates shall hereinafter be collectively referred to as "Palmetto Faith".

38. John Does 1-26 are corporations and/or entities whose structure, organization, and whereabouts are currently unknown and who are successors or assigns in interest to the corporations named herein. Plaintiff is informed and believes that the corporate entities named herein have likely been restructured, merged, or otherwise renamed in an effort to obscure their identity. John Does 1-26 have benefitted at Plaintiff's expense and at the expense of Plaintiff's decedent through its predecessor entities and/or affiliates, and their acts and/or omissions as alleged herein.

SUMMARY OF FACTS

39. On or about May 29, 2006, Mary Brinson was admitted to Carolinas Hospital System. She remained a patient there until June 2, 2006.

40. On June 2, 2006, Mary Brinson was admitted to Faith Health Care Center for skilled nursing care, supervision, and the care which should be provided by a Nursing Home.

41. Upon her admission to Faith Health Care Center on June 2, 2006, Mary Brinson was fully ambulatory with no paralysis or contractures, was able to fully bear her own weight and had no skin breakdown.

42. While at Faith Health Care Center, Mary Brinson developed contractures of her lower extremities and developed bed sores or pressure ulcers as a result of the failure of Defendant Faith Health Care Center to properly care for Mary Brinson.

43. On September 16, 2006, while still at Faith Health Care Center, Mary Brinson was noted to have brown stringy necrotic tissue with very malodorous brown drainage from her wounds. At the insistence of Ann Coleman, Mary Brinson was transferred to McLeod Regional Medical Center for evaluation.

44. Upon arrival at McLeod Regional Medical Center, it was noted that Mary Brinson had a stage IV decubitus ulcer to her sacrum with foul brownish drainage. A culture of this wound revealed that it was infected. Furthermore, at McLeod it was noted that Mary Brinson had severe bilateral knee contractures and bilateral hip contractures and that she seemed to be in significant pain. Additionally, while at McLeod, it was found that Mary Brinson was malnourished and dehydrated.

45. During this time, Mary Brinson's health continued to decline due to the injuries she received while a patient at Faith Health Care Center.

46. Mary Brinson eventually returned to Faith Health Care Center/Palmetto Faith on December 13, 2006.

47. Incidentally, on September 29, 2006, the ownership and operation of Faith Health Care Center was effectively transferred from GranCare South Carolina to Palmetto Faith. The property housing the facility was also transferred at that time from Premier Properties of South Carolina, LLC, who is, upon information and belief, an arms-length property owner, to SC Faith.

48. While at Faith Health Care Center/Palmetto Faith, Mary Brinson developed a urinary tract infection, pneumonia, and sepsis due to the debilitated state the Defendants had caused. On December 16, 2006, Mary Brinson was found unresponsive, with audible congestion, labored respirations, and a temperature of 103.3. She was transferred to McLeod Regional Medical Center where she was admitted and underwent treatment until January 5, 2007.

49. Mary Brinson continued to suffer and decline from all of her injuries caused by the Defendants until she was unable to recover and died on April 30, 2007.

50. Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, GranCare South Carolina, Sava Management, SavaSeniorCare, National Senior Care, Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, SC Faith, Faith Health Care Center, and John Does 1-26 were aware of such failures to provide adequate care as described both above and below and were aware of residents such as Mary Brinson and knew that the failures resulted from decisions made by them to purposefully understaff and underfund GranCare South Carolina and Palmetto Faith Operating in a

way that would maximize corporate profits for Defendants rather than provide adequate and proper care to residents. Furthermore, the acts and decisions of Mariner Health Care, Mariner Health Group, MHC Holding, MHC Florida, MHC Gulf Coast, MHC MidAmerica, MHC Rocky Mountain, MHC Northeast, MHC West, MHC Texas, MHC MidAtlantic, SE Living Centers, GranCare South Carolina, Sava Management, SavaSeniorCare, National Senior Care, Palmetto Health Care, Palmetto Faith Operating, Ask Holdings, Leonard Grunstein, Murray Forman, Boyd Gentry, Abraham Shaulson, Avi Klein, SC Property Holdings, SC Faith, Faith Health Care Center, and John Does 1-26 directly affected resident care such as that of Mary Brinson. The acts of these Defendants were negligent, willful, wanton, and in reckless disregard for the safety and well being of patients such as Mary Brinson.

51. As a direct and proximate result of GranCare South Carolina, Palmetto Faith Operating, and Faith Health Care Center's acts and/or omissions, Mary Brinson suffered the following injuries and damages:

- a. Dehydration;
- b. Malnutrition;
- c. Anemia;
- d. Numerous Decubitus/Pressure ulcers/Bed sores;
- e. Unresponsiveness;
- f. Urinary Tract Infections;
- g. Difficulty breathing;
- h. Infections;
- i. Hospitalizations;

- j. Pneumonia;
- k. Sepsis;
- l. Septicemia;
- m. Electrolyte imbalances;
- n. Contractures;
- o. Injuries to her circulatory system;
- p. Injuries to her lower extremities;
- q. Decreased levels of cognition, health, and consciousness;
- r. Injuries about her body;
- s. Underwent medical procedures which she would not have otherwise had to undergo;
- t. Pain, suffering, humiliation, embarrassment, stress, and anxiety;
- u. Loss of dignity;
- v. Loss of enjoyment of life;
- w. Medical expenses;
- x. Death; and
- y. In such other and further ways as Discovery and Trial shall prove.

52. Plaintiff would show that this action is brought pursuant to the Statutory Provisions for the Survival Actions pursuant to the South Carolina Code of Laws and Common Laws of the State of South Carolina and is brought on behalf of the beneficiaries of the Estate of the deceased, Mary Brinson.

FOR A FIRST CAUSE OF ACTION

(Negligence as to All Defendants)

53. Plaintiff restates and re-alleged each paragraph previously plead as if repeated verbatim.

54. Defendants were negligent, careless, reckless, grossly negligent, willful, and wanton, and fell below the applicable standard of care in the following particulars:

- a. In failing to provide adequate staffing, adequately paid staff, and adequately trained staff at their facilities to care for residents such as Mary Brinson, with the full knowledge that such inadequate staffing practices would place patients such as Mary Brinson at risk for injury;
- b. In negligently hiring, retaining, and supervising staff at Defendants' facility;
- c. In failing to provide proper comprehensive and timely assessments and evaluation outlining all risk factors for Mary Brinson and in failing to properly design, adhere to, or modify an appropriate plan of care;
- d. In failing to timely evaluate and treat Mary Brinson;
- e. In failing to timely and appropriately monitor Mary Brinson's nutritional and hydrational status;
- f. In failing to timely and appropriately implement intervention in a patient and a resident with obvious nutritional and hydrational decline;

- g. In failing to provide and properly administer therapeutic activities ordered by Mary Brinson's treating physicians;
- h. In creating and then failing to recognize Mary Brinson's risk for skin breakdown;
- i. In failing to properly prevent contractures;
- j. In failing to provide proper skincare, both to prevent bedsores or decubitus ulcers and to manage bedsores or decubitus ulcers once they occurred;
- k. In failing to properly monitor, evaluate, and treat Mary Brinson's skin conditions and skin wounds and failing to timely notify her physicians and family about such wounds;
- l. In failing to have in place and follow an adequate skin management protocol to address bedsores or decubitus ulcers;
- m. In failing to provide and implement proper care plans that would adequately meet Mary Brinson's needs, including her risk for malnutrition or dehydration, risk of developing bedsores or decubitus ulcers, risk for contractures, risk for infections, risk for alteration of mental status, risk for anemia, and other risks which Mary Brinson encountered while a patient at Defendant's facility;
- n. In failing to provide a safe and clean environment;
- o. In failing to have and/or implement adequate and effective policies, procedures, staff and equipment to adequately monitor, supervise and treat Mary Brinson;

- p. In failing to follow and comply with the Defendants' own policies and procedures directed at the care and treatment of patients;
- q. In failing to timely and appropriately recognize, diagnose, and treat bedsores or decubitus ulcers;
- r. In failing to provide services and activities to attain or maintain the highest practical physical, mental, and psycho-social well being of Mary Brinson in accordance with a written plan of care;
- s. In failing to accurately and truthfully record Mary Brinson's conditions in her medical records;
- t. In failing to consult a physician in a timely manner;
- u. In failing to properly follow the care plan;
- v. In failing to appropriately and properly act upon Mary Brinson's significant weight loss and obvious decline of condition;
- w. In failing to timely request and obtain a registered dietician and speech pathology consult;
- x. In failing to timely evaluate, treat, and diagnose infections;
- y. In failing to recognize or act upon Mary Brinson's change of condition;
- z. In failing to timely, properly, and accurately monitor intake and output on each shift;
- aa. In failing to provide timely and appropriate monitoring for urinary tract infection in a resident with increased risk for developing a urinary tract infection;

- bb. In failing to timely and appropriately treat a urinary tract infection;
- cc. In failing to have and/or follow proper policies, procedures, and protocol to address Mary Brinson's dehydration, malnutrition, weight loss, decubitus ulcers, contractures, urinary tract infection and deterioration;
- dd. In failing to timely diagnose dehydration, malnutrition, skin breakdown, contractures, decubitus ulcers, urinary tract infection, urosepsis, or pneumonia;
- ee. In failing to properly staff, fund, operate, and manage the facility to the extent that resident care was affected and caused injuries to the Plaintiff;
- ff. In negligently administering and operating the Defendants' nursing home facility;
- gg. In failing to comply with the applicable Federal and State Statutes and Regulations designed to protect persons such as Mary Brinson;
- hh. In failing to act and provide care as a reasonably prudent nursing home would do under the same or similar circumstances; and
- ii. In such other and further ways as Discovery and Trial shall prove.

FOR A SECOND CAUSE OF ACTION
(Negligence *per se* as to All Defendants)

55. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

56. The conduct of the Defendants is governed by The Adult Protection Act of South Carolina Code §43-35-5, *et seq*, The Bill of Long Term Care Facilities at South

Carolina Code §4-81-10, *et seq*, South Carolina Department of Health and Environmental Control Regulations at Regulation 61-17, *et seq*, as well as similar protective Federal Regulations and Statutes by 42 U.S.C. §1396(r), *et seq*, and 42 C.F.R. §483, *et seq*.

57. The Statutes and Regulations set out above were enacted for the benefit and protection of a class of the public, of which Mary Brinson was a member at all times relevant to this action. The Defendants violated these Statutes and Regulations in their failure to properly care for Mary Brinson and other similarly situated patients at their facility.

58. As a direct and proximate result of the violation of these Statutes and Regulations by the Defendants, which constitute negligence *per se*, Mary Brinson suffered injuries and damages as set forth above.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract as to All Defendants)

59. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

60. Defendants had a contract with Mary Brinson and/or her representatives which required Defendants to provide nursing home and rehabilitative care to Mary Brinson that met acceptable professional standards.

61. Defendants breached this contract and failed to act in good faith and fair dealings by failing to provide such care as to disclose to Mary Brinson or her Representative or both that the Defendants' facility was inadequately staffed, underfunded, and in failing to provide care to Mary Brinson within these acceptable professional standards.

62. As a direct and proximate result, Mary Brinson suffered injuries and damages as set forth above.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation as to All Defendants)

63. Plaintiff restates and re-alleges each paragraph previously plead as if repeated verbatim.

64. Prior to, and around the time of Mary Brinson's admissions to Defendants' facility, agents of the facility made untrue statements to Mary Brinson and to her family about the quality of care that Mary Brinson would receive at the Defendants' facility, where such statements were intended by those making them to be relied upon by Mary Brinson and her family and upon which they did rely.

65. The Defendants represented to Mary Brinson and her family that she would receive appropriate care within the professional standards of care, that the facility had adequate staffing, and adequate funding, that Mary Brinson would be carefully monitored, that Mary Brinson would receive adequate nutrition, hydration, therapies, and preventative interventions, that Mary Brinson would be safe and secure, and that problems or insufficiencies that Defendants' facility may have had in the past had been corrected.

66. These statements were untrue and intended to be relied upon by Mary Brinson and her family and the family did rely upon them in choosing to admit Mary Brinson to the facility.

67. These representations were careless, negligent, grossly negligent, reckless, willful, and wanton in that the Defendants knew or should have known they would not be

able to meet these representations for Mary Brinson and in failing to meet these representations for Mary Brinson.

68. As a direct and proximate result of Defendants' misrepresentation, Mary Brinson has suffered injuries and damages as set forth above.

FOR A FIFTH CAUSE OF ACTION
(Civil Conspiracy as to All Defendants)

69. Plaintiff restates and re-alleges each paragraph previously pled as if repeated verbatim.

70. The Defendants deliberately and knowingly participated in a civil conspiracy in that they agreed and conspired to provide inadequate care in order to maximize profits over patient care. Moreover, the Defendants have demonstrated consciousness of their actions and conspiracy in taking calculated and elaborate steps to obscure the true ownership of the corporations which hold control of the facility and to hide their involvement. The wrongful acts identified hereinabove were carried out by the Defendants pursuant to the conspiracy and for this they are jointly and severally liable.

71. As a direct and proximate result of the conspiracy as alleged herein, Mary Brinson suffered the following special damages:

- a. Injury to her body;
- b. Loss of dignity;
- c. Pain, suffering, and humiliation;
- d. Severe physical injury and other damages as outlined herein above;
- e. Loss of her life; and
- f. In such other and further ways as Discovery and Trial shall prove.

72. As a further direct and proximate result of the conspiracy alleged herein, Ann Coleman and the statutory beneficiaries of Mary Brinson have suffered and will in the future continue to suffer the following special damages:

- a. Mental, emotional, and psychological distress over witnessing the suffering to which Mary Brinson was subjected;
- b. Loss of their family member; and
- c. In such other and further ways as Discovery and Trial shall prove.

73. As a result, Plaintiff is entitled to an award of actual, special, and punitive damages in an amount to be determined by a jury.

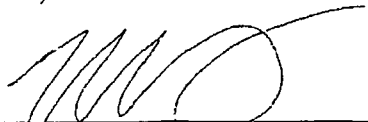
WHEREFORE, Plaintiff prays for judgment against all Defendants in the following particulars:

- a. For actual, punitive, and special damages in an amount to be determined by the trier of fact;
- b. For the costs and disbursements of this action;
- c. For attorneys' fees; and
- d. For such other and further relief as this Court deems just and proper.

Plaintiff respectfully requests a Jury Trial.

[signature page to follow]

CHRISTIAN & DAVIS
Attorneys at Law
Post Office Box 332
Greenville, South Carolina 29602
(864) 232-7363



Matthew W. Christian
S.C. Bar No.: 70516
Marion S. Fowler, III, MD of
FOWLER LAW FIRM, PC
S.C. Bar No.: 11816
Attorneys for Plaintiff

Greenville, South Carolina
March 19th, 2010



CT Corporation

**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457423

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: Mariner Health Care, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including Mariner Health Care, Inc., Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company

PER: Scott LaScala

ADDRESS: 1209 Orange Street
Wilmington, DE 19801

TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000571



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457371

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: Mariner Health Care Management Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including Mariner Health Care Management Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

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000572



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457308

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: Mariner Health Central, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including Mariner Health Central, Inc., Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000573



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457365

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: Mariner Health Care, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltff. vs. Mariner Health Care, Inc., et al. including Mariner Health Group, Inc., Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: According to the Delaware Secretary of State Mariner Health Group, Inc merged into Mariner Healthcare, Inc. on 02/18/2010 // Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023



CT Corporation

**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457387

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including MHC Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457321

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: **Process Served in Delaware**

FOR: MHC Florida Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including MHC Florida Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

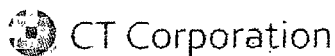
ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000576



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457397

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc.
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served In Delaware

FOR: MHC Gulf Coast Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including MHC Gulf Coast Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

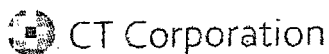
APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023



CT Corporation

**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457550

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC MidAmerica Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltff. vs. Mariner Health Care, Inc., et al. including MHC MidAmerica Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification; Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company

PER: Scott LaScala

ADDRESS: 1209 Orange Street
Wilmington, DE 19801

TELEPHONE: 800-592-9023



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457434

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC Rocky Mountain Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including MHC Rocky Mountain Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000579



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457406

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC Northeast Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including MHC Northeast Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

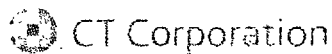
ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000580



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457412

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC West Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including MHC West Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case #2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000581



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457583

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC Texas Holding Company, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, PLLC, vs. Mariner Health Care, Inc., et al. including MHC Texas Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023



CT Corporation

**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457580

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: MHC MidAtlantic Holding Company (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pttf. vs. Mariner Health Care, Inc., et al. including MHC MidAtlantic Holding Company, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000583



CT Corporation

**Service of Process
Transmittal**

04/12/2010

CT Log Number 516455866

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in North Carolina

FOR: Living Centers - Southeast, Inc. (Domestic State: NC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually, and as Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including Living Centers-Southeast, Inc, Dfts.

DOCUMENT(S) SERVED: Cover Sheet (2 sets), Summons (2 sets), Complaint (2 sets), Pltf's First Interrogatories, Pltf's First Request for Production

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-835

NATURE OF ACTION: Wrongful Death - Improper care and treatment resulting in Pltf's death on 4/30/2007

ON WHOM PROCESS WAS SERVED: C T Corporation System, Raleigh, NC

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 15:50

APPEARANCE OR ANSWER DUE: Within 30 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Matthew W. Christain
Christain & Davis
PO Box 332
Greenville, SC 29602
864-232-7363

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: C T Corporation System
PER: Ronnie Strickland
ADDRESS: 150 Fayetteville St.
Box 1011
Raleigh, NC 27601
TELEPHONE: 919-821-7139

Page 1 of 1 / PA

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000584



**Service of Process
Transmittal**

04/15/2010

CT Log Number 516475022

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: **Process Served in South Carolina**

FOR: GranCare South Carolina, Inc. (Domestic State: SC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including GranCare South Carolina, Inc., etc., Dfts.

DOCUMENT(S) SERVED: Coversheet, Summons, Complaint, First Interrogatories, First Request for Production

COURT/AGENCY: Florence County: Court of Common Pleas, SC
Case # 2010-CP-21-835

NATURE OF ACTION: Medical Injury - Improper Care and Treatment - On or about June 2, 2006 Mary Brinson was admitted to Faith Health Care Center, where due to defendants negligent, careless and wanton standard of care, Mary Brinson suffers serious and severe physical injuries and unable to recover and died on April 30, 2007

ON WHOM PROCESS WAS SERVED: CT Corporation System, Columbia, SC

DATE AND HOUR OF SERVICE: By Process Server on 04/15/2010 at 10:06

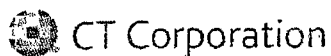
APPEARANCE OR ANSWER DUE: Within 30 days after service, exclusive of the day of service

ATTORNEY(S) / SENDER(S): Matthew W. Christian
Christian & Davis
Post Office Box 332
1007 E. Washington Street
Greenville, SC 29602
864-232-7363

REMARKS: Please note that the process server has underline/marked the entity name on documents prior serving to CT

ACTION ITEMS: CT has retained the current log, Retain Date: 04/15/2010, Expected Purge Date: 04/20/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: CT Corporation System
PER: Divya Peter
ADDRESS: 2 Office Park Court
Suite 103
Columbia, SC 29229
TELEPHONE: 800-528-8790



CT Corporation

**Service of Process
Transmittal**

04/15/2010

CT Log Number 516474635

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in South Carolina

FOR: GranCare South Carolina, Inc. (Domestic State: SC)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individual and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including GranCare South Carolina, Inc., etc., Dfts.

DOCUMENT(S) SERVED: Coversheet, Summons, Complaint, Request for Production

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-836

NATURE OF ACTION: Medical Injury - Improper Care and Treatment - Medical Malpractice - On or about June 2, 2006 Mary Brinson was admitted to Faith Health Care Center she was unable to recover and died on April 30, 2007

ON WHOM PROCESS WAS SERVED: CT Corporation System, Columbia, SC

DATE AND HOUR OF SERVICE: By Process Server on 04/15/2010 at 10:06

APPEARANCE OR ANSWER DUE: Within 30 days after service, exclusive the day of service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
Post Office Box 332
Greenville, SC 29602
864-232-7363

REMARKS: Please take note that process server has underlined or highlighted the party being served

ACTION ITEMS: CT has retained the current log, Retain Date: 04/15/2010, Expected Purge Date: 04/20/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: CT Corporation System
PER: Divya Peter
ADDRESS: 2 Office Park Court
Suite 103
Columbia, SC 29229
TELEPHONE: 800-528-8790

Page 1 of 1 / SK

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000586



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457524

TO: Melita Hobby, Administrative Assistant
SavaSeniorCare, LLC
One Ravinia Drive, Suite 1500
Atlanta, GA 30346

RE: Process Served in Delaware

FOR: SavaSeniorCare Administrative Services, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including SavaSeniorCare Administrative Services, LLC, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Melita Hobby mlhobby@savasc.com
Email Notification, Wynn Sims wgsims@savasc.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023



CT Corporation

**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457555

TO: Melita Hobby, Administrative Assistant
SavaSeniorCare, LLC
One Ravinia Drive, Suite 1500
Atlanta, GA 30346

RE: Process Served in Delaware

FOR: SAVASENIORCARE, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pltf. vs. Mariner Health Care, Inc., et al. including SavaSeniorCare, LLC, Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log, Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Melita Hobby mlhobby@savasc.com
Email Notification, Wynn Sims wgsims@savasc.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

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000588



**Service of Process
Transmittal**

04/12/2010

CT Log Number 516457511

TO: Kristy Prince, Litigation Manager
Mariner Health Care, Inc
5300 W. Sam Houston Parkway North, Suite 200
Houston, TX 77041

RE: Process Served in Delaware

FOR: National Senior Care, Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: Ann Coleman, Individually and as the Personal Representative of the Estate of Mary Brinson, Pllf. vs. Mariner Health Care, Inc., et al. including National Senior Care, Inc., Dfts.

DOCUMENT(S) SERVED: Coversheet(s), Attachment, Summons (s), Complaint(s), Plaintiff's First Interrogatories, Plaintiff's First Request

COURT/AGENCY: Florence County Court of Common Pleas, SC
Case # 2010-CP-21-00835 & 2010-CP-21-00836

NATURE OF ACTION: Medical Injury - Medical Malpractice - Improper care and treatment - Wrongful Death (Mary Brinson died on April 30, 2007)

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 04/12/2010 at 16:00

APPEARANCE OR ANSWER DUE: Within 30 days after the service hereof, exclusive of the day of such service

ATTORNEY(S) / SENDER(S): Matthew W. Christian, Esquire
Christian & Davis
P.O. Box 332
Greenville, SC 29602
864 232-7363

REMARKS: Please take notice that process was served showing two case numbers, processed accordingly

ACTION ITEMS: CT has retained the current log. Retain Date: 04/12/2010, Expected Purge Date: 04/17/2010
Image SOP
Email Notification, Kristy Prince KPrince@MarinerHealthCare.com

SIGNED: The Corporation Trust Company
PER: Scott LaScala
ADDRESS: 1209 Orange Street
Wilmington, DE 19801
TELEPHONE: 800-592-9023

Page 1 of 1 / DS

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000589

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2010-CP-21-00835
	)	2010-CP-21-00836
	)	
	)	
Ann Coleman, et. al.	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Mariner Health Care, Inc., et.)	)	
al.	)	January 6, 2011
DEFENDANTS	)	Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

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

MATTHEW W. CHRISTIAN, ESQ.
MARION FOWLER, ESQ.
Attorneys for the Plaintiffs

W. MCELHANEY WHITE, ESQ.
MARY GEORGIE, ESQ.
CHRIS NETTLES, ESQ.
SCOTT TAYLOR, ESQ.
Attorneys for the Defendants

KESHIA REED
Official Court Reporter

000590

I N D E X

(WHEREUPON, there were no witnesses called.)

1 THE COURT: The next case is Ann Coleman vs.
2 Mariner Health Care, Inc., 2010-CP-21-835 and 836. I
3 might be mistaken; but I don't believe I've heard anything
4 concerning this matter, so I'll be glad to hear from the
5 moving party to just give us some background for the
6 record. I'll be glad to hear from the moving party.

7 MR. WHITE: Your Honor, may it please the Court?

8 THE COURT: Yes, sir.

9 MR. WHITE: I'm glad to be here. I'm Mack
10 White, I'm from Spartanburg, and here representing many of
11 the Defendants in this case, Your Honor.

12 Your Honor, there's two motions before you
13 today. It, certainly, makes sense to argue these one at a
14 time, so I'll just address the first one that we filed.
15 Actually, these were filed together.

16 Back in August of this year, we filed our
17 motions to dismiss for lack of personal jurisdiction. And
18 kind of in the alternative -- well, not in the
19 alternative, but for any Defendants who are not dismissed
20 based on lack of personal jurisdiction, we move to stay
21 the action and to compel arbitration in the case.

22 Your Honor, by way of background, this is a
23 nursing home negligence case. The Plaintiff in this case,
24 Ann Coleman, is the sister of Mary Brinson, the decedent.
25 As you will note from looking at the case caption in this

1 case, it's pretty lengthy. We've got a lot of people in
2 there. And I think what I will be able to show to the
3 Court today, not only from my argument, but also the memos
4 that we filed in this case is that most of these
5 Defendants don't belong in the case. Now, setting aside
6 issues of liability, I'm just talking about even any
7 connection with South Carolina. So forgive me if I'm -- I
8 tried to whittle this down and I've tried not to go into
9 every aspect of our memos because, Lord knows, we filed
10 enough memos in this case. Two by me, two by Defense
11 counsel, so Your Honor has plenty to review as a part of
12 this, but I do want to highlight a few issues.

13 First of all, Your Honor, the Defendants --
14 unless you want me to go through -- the plea in our
15 motion, clearly, indicates who we represent in this case
16 and who's moving under this particular motion. I can read
17 all 22 names if you want me to --

18 THE COURT: I don't think that will be
19 necessary.

20 MR. WHITE: Okay. Good, I hoped that wouldn't
21 be necessary.

22 And Ms. Georgie, who is to my right here,
23 represents, I think, one Defendant at this point?

24 MS. GEORGIE: Correct.

25 MR. WHITE: And then Sonny Barnes --

1 THE COURT: Your full name, please, ma'am?

2 MS. GEORGIE: Mary Georgie with Gallagher &
3 Lloyd. And I represent it's Palmetto Faith Operating,
4 LLC, doing business as Faith Health Care Center. And our
5 motion is, essentially, the same as Mr. White's, so I'll
6 have some brief comments whenever you want to take them,
7 but I will not rehash his arguments for you.

8 MR. NETTLES: Chris Nettles, I'm here on behalf
9 of Sonny Barnes. We've got four of the remaining
10 Defendants in the case, that's ASK Holdings, Palmetto
11 Health Care, LLC, South Carolina Property Holdings and
12 South Carolina Care, LLC. And we don't have a position on
13 the motions. We're just here as observers today.

14 THE COURT: Very good.

15 MR. WHITE: Your Honor, Mr. Christian, of
16 course, represents the Plaintiff. I think he'll be
17 arguing this motion today as well as Mr. Fowler.

18 Your Honor, the basis of this lawsuit, Ms.
19 Brinson became the resident of a nursing home called Faith
20 Health Care Center, which is a nursing home here in
21 Florence, back in June of 2006, June 2nd, to be exact. At
22 that time, as Your Honor is probably aware in dealing with
23 nursing home cases, nursing homes are operated by
24 companies that are licensed to operate them. In other
25 words, if you want to operate a nursing home, you have to

1 apply to DHEC, DHEC has to give you a license to operate a
2 nursing home.

3 At the time Ms. Brinson was a resident at the
4 Faith Health Care Center, the operating institute, the
5 licensed institute was Grand Care of South Carolina, Inc.,
6 a South Carolina corporation. It was the only licensed
7 operator of the facility. Ms. Brinson was a resident
8 there from June 2nd, 2006, until September 16th, 2006,
9 when she left, she went to the hospital. And wound up
10 coming back to the same facility in December of 2006.

11 Now, between the time she left the facility and
12 when she came back, during that couple-month interim, the
13 ownership and operation of the facility changed hands. It
14 was conveyed or was changed from Grand Care of South
15 Carolina, Inc. to Palmetto Faith Operating, LCC, who is
16 Ms. Georgie's client. So that's why we're both here
17 today.

18 The Plaintiff has filed a nursing home
19 negligence case against not only the licensed operators of
20 the facilities, that being Grand Care and Palmetto Faith
21 Operating, but also against a host of other companies
22 under various theories.

23 And, Your Honor, just for the record, there's,
24 actually, two cases. When the Plaintiff filed the action,
25 we filed survival and wrongful death case separately, so

1 we're moving under both cases. The numbers are 835 and
2 836.

3 The applicable law, of course, as Your Honor is
4 well aware -- and I'm not going to go through a full
5 recitation of personal jurisdiction law in South Carolina,
6 Your Honor, certainly, knows it better than I do. But,
7 essentially, there's two types. There's general
8 jurisdiction, which says the defendant has such an
9 enduring relationship with a state that the Court can
10 exercise jurisdiction over it. And then you have a
11 specific jurisdictional statute which says that if you
12 fall into one of eight categories or if you commit one of
13 these eight acts and it causes harm and you have minimum
14 contacts, then the Court can exercise jurisdiction over
15 them. Your Honor is well aware of that and we've briefed
16 that in detail.

17 The question here is, of course, to what extent
18 did these Defendants have -- to what extent that they had
19 a connection to South Carolina. Now, I should point out
20 that of the 22 Defendants that I represent, I've moved on
21 behalf of 19. I have not moved on behalf of Grand Care
22 South Carolina, Inc. on the basis that it was a South
23 Carolina corporation and it was the operating entity.
24 Obviously, this Court has personal jurisdiction over it.
25 There are two other entities as well that I did not move

1 on behalf of. Those entities, Your Honor, are Mariner
2 Health Care Management Company and Mariner Health Central,
3 Inc. Both of those companies are qualified to do business
4 in South Carolina, so I did not move on their behalf
5 either. The only companies and individuals I moved on
6 behalf of are those who don't have a connection to South
7 Carolina.

8 And, Your Honor, if I can, what I'd like to do
9 is hand up -- I will provide Plaintiff's counsel. This is
10 nothing more than a very, very brief summary of the
11 companies I'm moving on behalf of. Can I approach?

12 THE COURT: Yeah.

13 MR. WHITE: And everything that's in this
14 document and, in fact, a whole lot more is contained in
15 our memorandum in this case. I did this just to kind of
16 highlight for the Court and the Plaintiff's counsel what
17 type of entities we're talking about, what they do, what
18 they don't do. Now, again, our memorandums in the
19 attached affidavits, for which we've submitted many, it
20 goes into a lot more detail than that. And I'll just go
21 through a few of these just to highlight for the Court.
22 I, certainly, don't need to go through all 19 of them.

23 But, Your Honor, for instance, number one, MHC
24 Florida Holding Company, that's a Delaware corporation
25 with its principle place of business in Atlanta. It owns

1 companies that at one time were operators of nursing homes
2 in Florida. It's never had any operations or offices in
3 South Carolina. So that's as a for instance. There's no
4 reason that that company should be in this case.

5 Skipping down, number six, MHC Texas Holding
6 Company. It's a Delaware LLC with principle place of
7 business in Atlanta. It owned a company that at one time
8 operated nursing homes in Texas. It's never had
9 operations or offices in South Carolina. Skipping down,
10 number 12, Living Center Southeast, Inc., a North Carolina
11 corporation with its principle place of business in
12 Atlanta was at one time the operator of nursing homes in
13 North Carolina, never had operations or offices in South
14 Carolina.

15 So there are a number of Defendants in this
16 case, Your Honor -- and, again, I'm not going to go
17 through all them now because it would take all day and
18 Your Honor, certainly, can see this in our memos. There
19 are just -- all of these Defendants that have been named
20 in this case do not have a connection to South Carolina.
21 Or if they do have some tenuous connection, it's,
22 certainly, not sufficient that this Court should exercise
23 jurisdiction. And, again, this list, I think, will just
24 be helpful as kind of a cheat sheet, if you will, to
25 what's in our memo in terms of these companies' lack of

1 connection to South Carolina.

2 Your Honor, the Plaintiff in this case, and as
3 you will see in his memo, the Plaintiff alleges that these
4 corporations and LLC's that have been set up by these
5 Defendants are, essentially, a scheme to try and hide
6 ownership, move the ball, shell game, you'll see all those
7 terms in their memo.

8 I want to start with the proposition, I think
9 the Court will accept this proposition that there's
10 nothing legally wrong with having holding companies. You
11 see it all the time in large organizations. You may have
12 a top tier company and then from there, you break down to
13 various holding companies until you get down to the
14 individual operating companies. And that's, essentially,
15 what you have here. Each individual nursing home where
16 they had nursing homes in the State, in various states,
17 were licensed -- were operated by licensed operators of
18 those nursing homes. From there, you would go up the
19 chain and these are mainly just holding companies. Not
20 all of them, but most of them are. Many of them don't
21 have employees. I don't know what -- I assume these are
22 all for tax-related purposes, but there's nothing wrong
23 with the way these organizations are set up. So to
24 suggest initially that well, it's confusing the way you've
25 got it set up, therefore, it's wrong. I think it's just a

1 fallacy, it's not a fair argument.

2 What the Plaintiff also seems to do is the
3 Plaintiff pulls bits and pieces from various documents,
4 whether they be governmental filings or other pleadings or
5 other things and creates kind of a mish-mash, just kind of
6 takes all these names, jumbles them up, throws them in a
7 memo and then wants to convince everyone, including the
8 Court, that this whole thing is a scheme, all these people
9 are related to these organizations, all these people and
10 companies are involved in operating nursing homes in South
11 Carolina and that's just not the case. And we have gone
12 through painstaking detail in our affidavits and our two
13 memos, which Your Honor will see, which have, of course,
14 already been filed with the Court, to show the lack of
15 connection these companies have with South Carolina.

16 The other thing that the Plaintiff relies on --
17 and their expert does the same thing. It's a gentleman
18 named Bruce Ingstrom. I think he's out of Little Rock,
19 Arkansas. He's a forensic CPA and he makes his living
20 looking into corporate structures of nursing homes and
21 probably some other accounting-related work. But we've
22 seen him in various nursing home cases over the years.
23 And what he does is he looks for governmental filings. He
24 tries to piece together how these things are organized and
25 then he submits affidavits to help defeat motions just

1 like this. Bruce Ingstrom does nothing more than take the
2 same documents that you and I can look at and repeats what
3 they say. He doesn't provide anything more than that. In
4 addition to that, as I will point out in a moment, I have
5 some serious concerns with some of the things he alleges
6 in this affidavit. And it's very clear that he's clearly
7 crossed the line into advocacy because some of the things
8 he says just simply are not true.

9 Your Honor, I do want to point out just a few
10 examples of things that I'm talking about and this may
11 help highlight why some of these Defendants are in the
12 case. Let me hand up if I can -- and Plaintiff's counsel
13 already has these documents.

14 These are, Matt, disclosure of ownership and
15 control interest statements.

16 Your Honor, these are already attached to our
17 memo, but rather than have you go bleed through a bunch of
18 documents, I thought I would just hand these up. This is
19 one example of what I'm battling against here. In front
20 of you is a disclosure to ownership and control interest.
21 There's, actually, two of them. The first one in your
22 stack on the second page indicates that it was dated
23 March 21st, 2002. The second one indicates it was dated
24 November 17th, 2003.

25 Now, this seems to be the basis for the addition

1 of several of these Defendants in this case. And I
2 understand that, perhaps, Plaintiff's counsel or his
3 expert was confused by this, but what we're trying to do
4 is clearly show through affidavit testimony what these
5 documents show. And I think they will make perfect sense
6 and will justify the dismissal of many of these Defendants
7 from the case.

8 If Your Honor will first look at the one dated
9 2002, you will see on the first page, there's a section
10 3A, where it says list names, addresses for individuals or
11 the EIN for organizations having a direct or indirect
12 ownership or controlling interest in the entity. If Your
13 Honor flips over two pages, you will come to a page that
14 says ownership of provider. And in ownership of provider,
15 it describes Grand Care is owned by MHC Mid-Atlantic
16 Holding Company, which is owned by MHC Holding Company,
17 which is owned by Mariner Post Acute Network, which
18 changed its name to Mariner Health Care. So that shows
19 the ownership structure. It shows you've got Grand Care
20 on the bottom and you've got three more levels above it,
21 that's what this shows.

22 Then if you go to the first page again and you
23 go to section 3C, it says if the disclosing entity is a
24 corporation, list names, addresses of the directors and
25 the EIN for corporations under remarks. If go back and

1 flip to the fourth page of this document, you'll see
2 something called proposed officers. And you'll see
3 Mariner Health Care, which was listed as the top entity
4 here. And it list officers and directors -- or, actually,
5 just list officers. If you flip to the next page, it says
6 proposed officers and directors and it list several
7 companies. Now, many of these companies, as I mentioned
8 and as I showed you in my little cheat sheet there, had
9 absolutely nothing to do with this entity in South
10 Carolina. And I'll explain why they're on there in a
11 minute.

12 Then you flip over one more page and you see
13 proposed officers and directors from Mariner Health Care
14 Company. Then you flip over a couple more pages and you
15 see proposed officers and directors from Living Center
16 Southeast and Grand Care South Carolina. The purpose of
17 this document, as explained in our memo, is when this
18 company filed these -- apparently, states require you to
19 file these and disclose who the operating entity is and
20 who owns it and who the directors are. When they filed
21 this, they filed it in several different states.

22 And the first attachment, which shows the
23 ownership of the provider, clearly shows who is up the
24 chain in terms of ownership. The next few pages were
25 attached to this -- and probably going back to do it

1 again, in fact, we'll see in the next one, they didn't do
2 it this way. Out of convenience, because they were filing
3 this in several states, they just attached the same pages
4 for submissions for various states.

5 So, for instance, if this were submitted to
6 Florida or to Texas, then this same schedule would be
7 attached because they shared some of the same officers and
8 directors. And I think what happened and what's clear to
9 me from Bruce Ingstrom's affidavit is that he took this
10 and he's reading this as indicating that all of these
11 companies listed are in the ownership structure of this
12 one particular entity. And that's not the case.

13 And, in fact, it's not the case and it's proven
14 not to be the case because if you look at the next
15 disclosure of ownership form that I've given you, the one
16 that was done in November of 2003. When you look at the
17 same schedules to it, schedule 3A, where you list the
18 companies having an ownership interest, you see it list
19 the same four companies, Grand Care, Mid-Atlantic Holding
20 and Mariner, okay. Then you flip to the next page and it
21 shows, if the entity is a corporation, list the names and
22 addresses of the directors. And again, it just list Grand
23 Care, MHC Mid-Atlantic, MHC Holding and Mariner Health
24 Care.

25 So what happened, apparently, is instead of

1 doing it that way in 2002, they lumped them together in
2 2002 and it created confusion. So I understand that may
3 have been an honest confusion on Bruce Ingstrom's part,
4 but it's confusion. It's very clear from this one that
5 was filed the next year that that is not -- that was not
6 the intent because other companies have nothing to do with
7 it. So that's why they're in this case and those
8 Defendants should be dismissed. Because other than that,
9 there's no evidence that these other companies that are
10 listed there actually had any operations or connections to
11 South Carolina.

12 Your Honor, the next thing I wanted to mention,
13 one of the things that -- another concern I have -- and
14 some of these things, I'm just telling you because I know
15 that you're going to read the memos and so I just want to
16 highlight a few points on what we're working against.
17 There are certain misconstructions of the documents that
18 are attached as exhibits to the Plaintiff's memo.

19 And, for instance, one of them is the actual
20 resident admission agreement, the agreement or the
21 arbitration agreement that is part of Ms. Brinson's
22 residency. That agreement says, in part, that the nursing
23 home, the facility is an affiliate -- or one of the
24 affiliates of Mariner Health Care, which is kind of the
25 top company. What it does not say is that that -- that

1 Mariner Health Care is the operator of this nursing home.
2 And when you look at the Plaintiff's memo, that's exactly
3 what he says. He says. See, here it is, it's got the
4 name Mariner in it, therefore, Mariner Health Care and its
5 affiliates operate this nursing home. That's not what has
6 happened. It's Grand Care that's operating the nursing
7 home, which is an affiliate of Mariner Health Care. So
8 that's one example of a misconstruction of what's being
9 said.

10 Your Honor, there's other parts --

11 THE COURT: The ones that you maintain are
12 legitimately there's jurisdiction over which ones again?

13 MR. WHITE: Grand Care South Carolina, Mariner
14 Health Care Management Company, and Mariner Health
15 Central, Inc.

16 THE COURT: All right. I didn't mean interrupt.

17 MR. WHITE: That's fine, Your Honor.

18 And, again -- and I don't want to keep harping
19 on these things because it's covered in our memos, but
20 you've also got things like a statement in his memo that
21 says the Defendants, we're talking about all the
22 Defendants here, own, at a minimum, five skilled nursing
23 facilities within the State of South Carolina and have
24 done so for years. So you've got statements like that.
25 I'm not sure how we defend that other than submit

1 affidavits to say no, they don't. This is what they do.
2 They don't own nursing facilities. So my point is, when
3 Your Honor reads the memo, read it with -- and I know you
4 will, with a careful eye to exactly what's being said.
5 Because these blanket statements that all of these
6 Defendants are involved in South Carolina and involved in
7 these nursing homes is simply not true.

8 Now, Bruce Ingstrom's affidavit, there are a
9 number of concerns with it, Your Honor. For one, in his
10 affidavit, he offers that Mariner Health Care, Inc., that
11 the ultimate parent company purchased property in the
12 State of South Carolina. In fact, says they purchased the
13 property where this facility is located. Now, I assume he
14 did that because he understood that to the extent that he
15 could show that somebody owns property in South Carolina,
16 perhaps, that strengthens the argument for personal
17 jurisdiction. What he also said, but then stops short of,
18 actually, fully explaining is that the contract to buy
19 that property was assigned by Mariner Health Care to some
20 other entity. So Mariner Health Care, Inc. never
21 purchased the property in South Carolina. That's clear,
22 that's in our affidavits. He doesn't go that far. He
23 doesn't want to give that. He just says they signed a
24 contract to get it and, by the way, this contract was
25 assigned, but he never did say Mariner Health Care did not

1 purchase the property.

2 He refers to articles from Counsel to Counsel
3 E-Magazine, which are clearly hearsay and which are
4 inadmissible. He also seems to rely on the definitions of
5 direction and control from something called the Medicare
6 Services Publication. And I understand that he's an
7 accountant. I understand that he reads these Medicare
8 regulations, I assume. But the definitions in a
9 publication which is really for Medicare reimbursement
10 issues has nothing to do with what direction and control
11 this Court might find or might not find.

12 Essentially, what Mr. Ingstrom does is he
13 examines -- as I mentioned, he examines these documents.
14 He reaches conclusions, which, quite frankly, are not
15 supported by the documents. And we have tried to point
16 out many of those inconsistencies in our memo. But,
17 again, to go through it and nail every one of them in
18 argument or in the memos themselves would probably be too
19 cumbersome.

20 So, Your Honor, in conclusion our position is
21 that the only entities that operated or controlled this
22 particular nursing home are Grand Care of South Carolina,
23 Inc. and Palmetto Faith Operating, LLC. None of these
24 other Defendants provided any direction or control in the
25 daily operations of the nursing home. None of these

1 Defendants employed any persons involved in the care and
2 treatment of this resident. None of the Defendants
3 employed anyone working at Faith Health Care Center. None
4 of these Defendants were involved in hiring, firing,
5 management or control of persons involved with Faith
6 Health Care Center. You know, Plaintiff, presents no
7 proof these Defendants were, actually, involved in the
8 operation of this nursing home or in any nursing home in
9 South Carolina. They merely discuss corporate structures
10 and base it on that.

11 Your Honor, the last thing I want to say on this
12 before I sit down is there are four -- excuse me, three
13 individuals that I represent in this case, Bernie Foreman,
14 Leonard Grunstein and Boyd Gentry. Those gentlemen --
15 obviously, they're individuals. Those guys, one lives in
16 New Jersey, one lives in New York and one lives in
17 Georgia. As you will see from their affidavits, they have
18 either no ties or for the most part, no ties to South
19 Carolina. And, in fact, I think there are no ties to
20 South Carolina involving those three individuals. And,
21 you know, naming individuals, I understand that they
22 contend and it is true that these individuals have some
23 ownership interest in upper tier companies which then flow
24 down in lower tier companies, but the point is these
25 individuals have nothing to do with the care to this

1 resident. These individuals have no individual operations
2 in the State of South Carolina and there's no reason for
3 these individuals to be in this case as well as any of the
4 corporate Defendants. In fact -- and I know Your Honor is
5 not bound by what any other judge does, but Judge Seals
6 has already heard a similar motion on behalf of some of
7 the other Defendants in the case, which Sonny Barnes
8 filed, and that involved the same thing. A couple
9 individuals who were owners in these companies and Judge
10 Seals cut them loose, said there's no evidence that they
11 did anything in South Carolina. The fact that they own
12 companies doesn't subject them to jurisdiction here.

13 So on all those bases, Your Honor, we
14 respectfully request that this Court dismiss the
15 Defendants that have filed this motion. And, Your Honor,
16 again, I know this has been somewhat of a difficult
17 rambling argument, but there are just so many issues and
18 so many inconsistencies that I only wanted to highlight a
19 few and just respectfully request the Court to review our
20 memos carefully and based your decision on that. Thank
21 you, Your Honor.

22 THE COURT: Yes, sir.

23 MR. CHRISTIAN: Thank you, your Honor.

24 My name is Matt Christian and I'm here with
25 co-counsel, Marion Fowler. I'm from Greenville and we're

1 here on behalf of the Plaintiff. Your Honor, I have just
2 a couple hand-outs that have some of the law that we've
3 discussed. If I might approach and hand those to you.

4 Your Honor, what I'd like to do to start out
5 with is maybe provide a little bit of a different
6 background and a little different perspective on kind of
7 how we got here and what's going on. This is a -- we
8 contend that this is not just a single act of medical
9 malpractice, but, rather, that our client's injuries
10 occurred because of the way the facility was operated, the
11 way the facility was run. It was understaffed, it was
12 underfunded. There was inappropriate hiring and firing,
13 inappropriate supervision of the employees. And that it
14 was systemically operated in a way that would promote the
15 corporate profits at the risks of the residents and the
16 patients of the facility.

17 And just as evidence of that this isn't
18 something that Matt Christian from Greenville came up
19 with, we have attached to our supplemental memorandum some
20 testimony from the office of the inspector general where
21 he talks about the fact that one of the problems now with
22 the nursing home industry is that there are numerous shell
23 corporations and holding companies that are set up and
24 design solely for the purpose of avoiding liability and
25 hiding the ownership. And one of the problems that

1 plaintiffs encounter in these type of cases, not only with
2 these Defendants, but in the nursing home industry, in
3 general, is that -- and I'm sure Mr. White probably would
4 not deny this, that many times what we encounter is they
5 say oh, well, we have no assets, we have no insurance,
6 and, sorry, there's nothing you can do.

7 THE COURT: That's one question that comes to my
8 mind. Of course, I don't know a lot about this case. But
9 of the three Defendants who are -- who they maintain are
10 properly before this Court, is there insurance and, if so,
11 how much?

12 MR. CHRISTIAN: Your Honor, we haven't been able
13 to obtain any discovery. Based on my understanding of
14 these facilities and from my colleagues in dealing with
15 these facilities in the past is that we get generally told
16 no, there's not.

17 And what I might like to go on and discuss is
18 the reason that these other entities are here and that we
19 know that they are setting up these shell corporations,
20 one of the other memorandums that we submitted to the
21 Court in the past showed that their former counsel had
22 sued them for unpaid legal fees and they alleged the shell
23 corporation, their own former counsel. So this is just
24 simply not something that we're drumming up. We didn't
25 come up with these individual Defendants and with these

1 named Defendants just off the top of our head. It was
2 something that we did in conjunction with our expert,
3 Bruce Ingstrom from CFO, who we believe is a qualified
4 expert in this area. Also, in conjunction with verified
5 statements and documents that were submitted by the
6 Defendants to the state governments and to federal
7 governments.

8 In fact, in Sumter, some of the Defendants' own
9 employees, we can see -- excuse me, from some of their own
10 affidavits that they've submitted in this motion and in
11 other motions, they stated that many -- or several to many
12 of these companies have no employees and transact no
13 business in any state. So I'm not real sure what purpose
14 they would serve other than to be a shell corporation.

15 And we can also look at Boyd Gentry's testimony,
16 that's been submitted. His whole deposition has been
17 submitted and filed with the Court. He testified in
18 another case. And in that case, he had been designated as
19 a 30(b)(6) designee to speak on behalf of all the Mariner
20 entities and the knowledge that he had about their
21 organizational structure and their corporate structure.

22 And one of the things, among many things that he
23 testified to, was that not only did they have a sweep
24 account, Mariner has a sweep account where they sweep all
25 the assets out of the facility on a daily basis and take

1 all those assets. And we contend and we believe we'll be
2 able to show that they charge exorbitant rent from the
3 real estate investment trust that these very same people
4 own and then suck the assets out of the facility. We also
5 believe that we will be able to prove that they charge
6 exorbitant management fees to the companies who are on up
7 this chain. And then another way of affecting the assets
8 from the facility, so that when somebody like my client
9 who has 15 pressure ulcers and dies later from it has no
10 recourse against this individual facility. And, again, we
11 believe that part of the reason, or if not the entire
12 reason this occurred, is not just because of bad care
13 there, but because of decisions by the corporate folks who
14 have made the decision to intentionally underfund and
15 understaff the facility. And that that's tortuous acts by
16 those people that would subject them to jurisdiction here
17 in South Carolina.

18 Mr. Gentry also testified in his deposition that
19 the facilities are -- and this corporate structure was
20 rarely organized in the traditional legal form. So I
21 think that that's even admitted in their depositions and I
22 think that we can -- that we've pointed that out in our
23 memos.

24 Murray Foreman, who is one of the other
25 Defendants, testified in another case in Colorado

1 involving one of these entities, the Sava Senior Care
2 entities, one of their facilities, he testified that he
3 and Mr. Grunstein were the only owners and managers of
4 Sava Senior Care all the way down to the facility,
5 including 23 operating companies. And so we know that the
6 only human beings -- that this is flowing straight up to
7 the top and they're the ones who are making the decisions.

8 So we believe these companies and these
9 individuals are subject to the jurisdiction of this Court,
10 not only by virtue of the fact that they transacted
11 business here, and I think that I can show that, but,
12 also, because of their tortuous acts in the decisions that
13 they made which caused injury to our client here at the
14 Faith Health Care facility here in Florence.

15 And one of the things that the Defendants keep
16 talking about is that we can't prove this and we can't
17 prove that. And I think one of the things that I would
18 like to remind the Defendants of is that this is not a
19 summary judgment motion. The standard is only that we
20 show prima facie evidence through either allegations in
21 the complaint or other documents that would connect the
22 Defendants to this state sufficiently, either through the
23 specific jurisdictional statute or general jurisdiction,
24 to allow this Court to have jurisdiction over them. And I
25 believe that we, certainly, have done that.

1 And what I'd like to do, Your Honor, is to refer
2 to some of the exhibits that we attached to our original
3 memorandum. I know that we submitted a supplemental
4 memorandum as well as the original memorandum that had
5 already been filed some time ago before this hearing got
6 continued the first time. And in Exhibit No. -- I believe
7 it's Exhibit No. 2, Your Honor, is a letter from Leonard
8 Grunstein, who was an attorney at Trowton and Sanders, who
9 is also one of the members and managers of all of these
10 companies all the way down, which I'll show to you here in
11 a little bit. And his firm was responsible for setting up
12 this corporate transactional scheme, which has been called
13 one of the most complex transactional schemes in history.

14 And in his letter, he, in fact, states in
15 Exhibit No. 2 that this skilled nursing facility, Sava
16 Senior Care, LLC, is managed by the former Mariner Health
17 Care executive team. So Mariner and Sava have some of the
18 same people managing them and running them and operating
19 their nursing homes. And it says Sava operates 173
20 skilled nursing facilities and has about 20,000 employees.
21 And, of course, Sava Senior Care, LLC is one of the
22 Defendants that's moving for dismissal in this case, yet,
23 there's a letter from Mr. Grunstein, one of the
24 Defendants, that they operate the facilities.

25 Also, in this letter, it says that Sava is a

1 first class operator, referring to the nursing homes, and
2 that Sava -- again, he's referring to Sava Senior Care,
3 LLC, has achieved the necessary regulatory approval in the
4 state. So Sava Senior Care, which is moving for
5 dismissal, obtained a regulatory approval in the states
6 and maintains operational health care compliance in the
7 states.

8 As we continue to look at the exhibits, Your
9 Honor, we can see that he also says that Mariner operated
10 facilities in his letter. He discusses in his memorandum
11 to Mr. Reuben Shrom, one of his co-investors, who they're
12 now suing each other over this investment, how they had to
13 set up this scheme, and it's in Exhibit No. 4, that they
14 set up these transactions in such a way that they could
15 defend against attack by plaintiff lawyers.

16 And then, I think, if we turn to Mr. Gentry's,
17 Boyd Gentry's deposition, we can really gain a lot of
18 perspective about all of these Defendants and exactly what
19 was going on.

20 THE COURT: Why you're looking for that, you
21 indicated that you don't know which ones of these
22 Defendants that are here have insurance.

23 Do you know which ones have insurance and how
24 much?

25 MR. WHITE: Your Honor, I don't. I mean, I

1 could find that out, but I don't know the answer.

2 Standing here today, I have no idea.

3 MR. CHRISTIAN: Thank you, Your Honor.

4 THE COURT: Are you being -- I assume, you're
5 being paid by these individual corporations and not an
6 insurance company?

7 MR. WHITE: That's correct. Yes, sir.

8 THE COURT: That might be a good indication they
9 don't have insurance.

10 MR. WHITE: Well, I say that --

11 THE COURT: Or they might be self-insured, I
12 don't know.

13 MR. WHITE: I'm not sure how it works, frankly.
14 Because I know some -- and we represent a number of
15 insurance clients -- I mean, nursing home clients, some
16 are insured and some are not. I just don't know. If it's
17 important for the purpose of determining --

18 THE COURT: I was just asking from a common
19 sense standpoint. I just wanted to know.

20 MR. WHITE: Right. And, again, what I'm
21 offering is if it's relevant for personal jurisdiction
22 purposes --

23 THE COURT: Well, it's not. I just was curious.

24 MR. CHRISTIAN: Your Honor, on page 78 of Mr.
25 Gentry's deposition, he talks about how Mariner Health

1 Care Management was, essentially -- that's one of the
2 entities that's not moving to be dismissed. It was,
3 essentially, a bank or an account that was a collection
4 fund where all the facilities, including all the
5 facilities in South Carolina and every other facility,
6 their bank account and their revenues would be taken
7 directly into this central cash management system that
8 Mariner Health Care Management had. And it would then pay
9 all the employees, including the employees of Mariner
10 Health Care, Inc. out of this cash management system, so
11 it's, clearly, all flowing up to the top.

12 The -- we also see in Mr. Gentry's deposition
13 that -- and he's not 100 percent clear whether or not it's
14 Mariner Health Care Management Company or Mariner Health
15 Care, Inc., but I think that if you read both pages, the
16 inference is that it's Mariner Health Care, Inc.
17 promulgated the policies and procedures that took place at
18 the facility.

19 I think that if we continue to go through his
20 deposition, he talks, again, about -- on page 86, about
21 the fact that these entities were -- all the employees
22 were paid out of this Mariner Health Care Management fund.
23 And that, again, on page 96, he says -- he's talking about
24 services to the facilities that Mariner continued to
25 operate. He talks continuously about Mariner operating

1 facilities. He talks on page 97 that Sava -- and I don't
2 know which Sava entity he's talking about, whether he's
3 talking about Sava Senior Care, Inc. or Sava Senior Care,
4 LLC, but he's referring to Sava operated those facilities.
5 He then says, again, on line 16, so Mariner ended up
6 running facilities until they could, actually, be
7 relicensed to Sava. So we know that they're running these
8 facilities.

9 He then goes on at the bottom of the page, page
10 98, and says once the licensure changes were done, during
11 that period before licensure change, Mariner remained the
12 operator of those facilities, but once the licensure was
13 done, they were at Sava. And, again, my client was there
14 both pre-sale and post-sale, while it would have been
15 Mariner and or Sava. And, of course, delineating exactly
16 who owned when is not clear to us because we haven't been
17 able to participate in discovery. But I do believe what
18 this deposition shows is that they were both operating
19 facilities. And, again, he says, on page 98, Mariner
20 operated facilities until the license changed.

21 And then on page 100, he says the bulk of
22 Mariner's employees -- the question was, The bulk of
23 Mariner's employees went with Sava as well, correct?
24 Answer, They were hired by some sort of senior Sava Senior
25 Care entity. And then he says, And the buildings went

1 with the employees that went with Sava? Yes, sir. And
2 all the patients that were in the facilities that Sava
3 leased went with Sava? Yes, sir. And those formerly
4 residents of Mariner, now they became residents of Sava
5 when the license transferred. Sava is headquartered at 1
6 Ravenia Drive? Yes, sir. Which is where Mariner has been
7 headquartered historically? Yes, sir. So even though
8 they try to maintain that Sava Senior Care and Mariner are
9 separate entities, they both have their licenses and
10 operations at the same address in Atlanta.

11 And then he talks about, But in any event, that
12 money that was accessible at Mariner Health Care
13 Management, even if it was paid to Mariner Health Care
14 Management was accessible to Mariner Health Care, Inc.?
15 And Mr. Gentry's answer was, As a parent company consumed
16 in all activities of its subsidiaries. So Mariner Health
17 Care, Inc. controlled and had access to all the money that
18 went into Mariner Health Care Management Company, which
19 was the account collection company for this facility. So
20 Mariner Health Care has the control of the money which
21 controls everything that's going on all the way down the
22 chain of these facilities. And so then Mr. Gentry
23 testifies that he has served as an officer of Mariner
24 Health Care, Inc., and has also served as an officer of
25 every one of the subsidiaries during his tenure. He's,

1 again, a named Defendant, Your Honor.

2 And I think as we get back here later in the
3 latter part of Mr. Gentry's deposition, this is where it
4 really becomes, I believe, difficult for Mariner Health
5 Care, Inc. to contend that it transacts no business in
6 South Carolina and has no management over its facilities
7 because of poor care and billing issues that Mariner's
8 facilities had, they entered into an agreement with the
9 OIG office, the Office of the Inspector General. And this
10 was, again, because of poor care.

11 And this agreement with the government that
12 Mariner had and is reflected in Mr. Gentry's deposition
13 testimony on page 142 was talking about Mariner Health
14 Care, Inc. And it says that due to this agreement that
15 Mariner Health Care, Inc. was required to conduct internal
16 audits and reviews and make findings. And that they had
17 to make findings on whether the patients and residents at
18 Mariner facilities are receiving the quality of care and
19 quality of life consistent with basic care, treatment and
20 protection from harm. And Mr. Gentry's answer was, Yes,
21 sir. So he is confirming that Mariner Health Care, Inc.
22 pursuant to an agreement with the government is going to
23 ensure quality care at the nursing home facilities that
24 Mariner Health Care, Inc. has.

25 And so to say or suggest that they have no

1 control over what's going on at these facilities, it
2 doesn't seem to be in agreement with what the Office of
3 Inspector General is that they have with the government.
4 And, also, this agreement says that they have to conduct
5 an annual minimum data set billing review of all claims
6 submitted by Mariner's long term care facilities. And,
7 again, Mr. Gentry's testimony was, That's correct. That's
8 on pages 142 and 143.

9 And on page 144, Mr. Gentry says that Mariner
10 had a complaint committee to make sure that it carried out
11 its obligations under this corporate integrity agreement
12 with the government. And then he went on to state in his
13 deposition that Mariner Health Care, Inc. created an
14 environment, tools and a culture that would be used at the
15 local level to help make decisions. And he also went on
16 later in his deposition to talk about the fact that he
17 believed Mariner Health Care, Inc. had a responsibility to
18 ensure quality care to the residents at the facilities.
19 So there's no doubt through these documents that I've
20 shown so far that Sava Senior Care, LLC, Mariner Health
21 Care, Inc. were operating nursing homes and had management
22 and control over these nursing homes.

23 Mr. Gentry also talks about the fact that -- and
24 I believe Mr. Foreman talked about it in his deposition as
25 well that Sava Senior Care Administrative Services, LLC,

1 provided clinical care and -- not clinical care, but
2 clinical services to these facilities and the nursing
3 homes in the states that they were operating them in.

4 With regards to the disclosure of ownership and
5 control interest statement that Mr. White referred to,
6 we've got one of those, tab No. 6, and we can see that on
7 page two that it says is this facility chain related, yes.
8 The name of the chain is Mariner Health Care, Inc. And
9 then we know at a very minimum that the direct or indirect
10 ownership or controlling interest in this entity is Grand
11 Care, MHC Mid-Atlantic Holding Company, MHC Holding
12 Company, Mariner Health Care, Inc.

13 And I believe that Mr. Ingstrom has done a good
14 job in his affidavit of demonstrating that even if you
15 have indirect ownership that you can have -- exercise
16 control into and over certain companies by virtue of
17 indirect ownership. And he delineates that pretty well in
18 his affidavit.

19 We know that one of the named individuals, Boyd
20 Gentry, was a director of MHC Holding Company, which is,
21 again, directly in line with the companies or individuals
22 with direct or indirect ownership or controlling interest
23 in the facility. And I will go on -- and I will be able
24 to show the Court here in just a few minutes that Mr.
25 Gentry had much more of an active participation in this

1 facility than that.

2 At the disclosure of ownership and control
3 interest statement at that same tab from the one that
4 Mr. White referred to from November -- excuse me, from
5 March of 2002. And the reason we refer to these some
6 period of time ago is these were some of the last
7 disclosure of ownership statements that were filed with
8 this facility -- or for this facility before my client was
9 injured. Mr. Gentry is identified as being the director,
10 vice-president and treasurer of Mariner Health Care, Inc.
11 Mr. Gentry is also identified as being the director and
12 president of Mariner Health Care Management Company,
13 which, again, is the company where all the money flows
14 into, but I believe he identified in his deposition that,
15 actually, Mariner Health Care Management Company really
16 doesn't have any money because it just pays all the
17 expenses, so all the money flows in and then flows right
18 out to go pay all the expenses.

19 Mr. Gentry is also identified as being the
20 director, vice-president and treasurer of Grand Care South
21 Carolina, Inc., which is, actually, the licensed name of
22 the facility that was being operated here. Yet, the
23 Defendants contend he didn't do anything here in South
24 Carolina when he was the director, vice-president and
25 treasurer of Grand Care, which is, actually, again, the

1 licensed operator of this facility.

2 Your Honor, at Exhibit No. 7, we have the
3 application to Medicare to enroll for Medicare payments
4 for this facility. And what this does is this not only
5 provides information about the ownership of this facility,
6 but it also indicates who the payment is going to from
7 Medicare for the care of the individuals. And on page 12
8 of this exhibit, it says that -- it says furnish the
9 address where payment should be sent for services rendered
10 at the practice location, which would be the nursing home.
11 It says pay to Mariner Health Care. So we know that by
12 virtue of their own verified application to Medicare,
13 they're directing that all the revenue that's being paid
14 by Medicare at this facility go directly to Mariner Health
15 Care, Inc., but we're supposed to believe that Mariner
16 Health Care, Inc. didn't transact business in South
17 Carolina and has no ties here.

18 On that same application, they identify MHC
19 Mid-Atlantic Holding Company as having more than a five
20 percent ownership interest in this facility. They
21 identify MHC Holding Company as having an ownership
22 interest in this facility. They identify Mariner Health
23 Care, Inc. as having an ownership interest in this
24 facility. They identify Mariner Health Care Management
25 Company as having an ownership interest in this facility.

1 Then they identify the individuals that have greater than
2 a five -- well, they, actually, have ownership interest in
3 the facility have another role. And, again, in this
4 facility, Boyd Gentry is identified as being an officer
5 with this facility -- well, actually, he's identified as
6 being an officer with MHC Holding Company, Mariner Health
7 Care Management Company, MHA Mid-Atlantic Holding Company
8 and Mariner Health Care, Inc. And he's also being
9 identified as being an officer for the facility.

10 And then if we keep going through the
11 application to Medicare that the Defendants submitted to
12 the federal government, they identify that the name of the
13 home office is Mariner Health Care, Inc. And then we also
14 have attachments at that exhibit from the IRS that were
15 directed to the actual licensee of the facility, Grand
16 Care South Carolina, Inc. And the mailing address is
17 identified as 2 Ravenia Drive address in Atlanta. Letters
18 to the Department of Health and Environmental Control by
19 the Defendant were on Mariner Health Care letterhead. The
20 actual fee for the license that was submitted to DHEC for
21 this facility here in Florence, South Carolina, came from
22 a check from Mariner Health Care, Inc., doing business as
23 Faith Health Care Center. The resident admission and
24 financial agreement, which Mr. White referenced, at the
25 bottom says Mariner admission and financial agreement,

1 dash, South Carolina.

2 THE COURT: While you're looking for that and
3 I'm paying attention to what you're saying, but let me ask
4 some practical questions.

5 You, obviously, have done this on a number of
6 occasions. Let me ask you about the other cases you had
7 mentioned with Judge Seals, that didn't have to do with
8 this case, but a similar case; is that what you're saying?

9 MR. WHITE: That was this case, Your Honor.

10 THE COURT: This case?

11 MR. WHITE: Yes, sir.

12 THE COURT: And he has dismissed a number of
13 Defendants?

14 MR. WHITE: He dismissed -- if I recall
15 correctly --

16 And, Matt, correct me if I'm wrong.

17 There were two corporate defendants and two
18 individuals who were involved with those defendants who
19 moved to be dismissed for lack of personal jurisdiction.
20 Judge Seals denied the motion as to the two entities, but
21 granted it as to the two individuals.

22 MR. CHRISTIAN: Right. The corporate defendants
23 remained in and he let the two individuals out.

24 THE COURT: Okay. All right. That's what --
25 you weren't very clear on that and I wanted to clarify

1 that.

2 Let me ask both of you -- and I'll hear from
3 both of you. If this were to go to trial, how do you
4 envision, as a practical matter, this matter being tried?
5 We've got an underlying medical malpractice, then you've
6 got all these financial wranglings. And I can't imagine
7 how long that would take to do that and the practicalities
8 of it. You, apparently, do this, more than once. If this
9 case were to go to trial, how do you envision this taking
10 place?

11 MR. WHITE: We've never had to, actually, go
12 through and try one of these. We've resolved them before
13 we got there.

14 THE COURT: I just wondered how it would
15 operate..

16 MR. WHITE: I think if we did have to try it --

17 THE COURT: Can you imagine the jury being
18 called upon to determine the liability between the joint
19 torte-sers? How could you do that?

20 MR. WHITE: I think that would be very
21 difficult, but I also believe -- and a number of my
22 colleagues have tried -- have, actually, tried these cases
23 in similar jurisdictions and it has gone to jury verdict
24 where the jury was able to apportion fault and where they
25 were able to -- where they, actually, in many cases -- I

1 don't know about all --

2 THE COURT: How long did it take for them to try
3 it?

4 MR. WHITE: That I do not know, Your Honor.

5 THE COURT: It would be nice for you to ask. I
6 was just thinking about it and, you know, it almost seems
7 like that y'all could try the underlying liability aspect
8 of it and then afterwards, as a matter of law, try to
9 figure out what -- who's responsible for what thereafter.
10 But I imagine part of your claim is going to be the
11 misdealing of all these financial things and how that
12 contributes to the injury, I assume.

13 MR. CHRISTIAN: Yes, sir, that's correct. And,
14 honestly, Your Honor, as we go through discovery, it may
15 very well be that we pare down many of these Defendants
16 and some of them get out, but at this juncture, we have
17 been provided with no discovery and are unable to
18 determine much of the ownership and exact control issues
19 in the case. We know that what they represented to the
20 government and we know what they filed under oath and we
21 know what they said in their depositions, but it may very
22 well be that some of the other Defendants we end up
23 letting out and pare it down. And I know that, normally,
24 through 30(b)(6) and there's -- obviously, there's been
25 some officers and corporate folks associated with these

1 Defendants been deposed in similar cases before for the
2 very same reasons. And I believe that one or two of those
3 depositions is sufficient to get across what we need to
4 get across to the jury. So while I do think it would be a
5 long trial, I don't think it's going to end up being a
6 three-to-four-week trial.

7 THE COURT: What's your ideas on the
8 practicalities of trying this case with this many
9 Defendants and how it proceeds? Have you ever done that?

10 MR. WHITE: No, sir, and I'm, certainly, hoping
11 we're not going to have to after today for two reasons.
12 Number one, I hope we can pare down this case at this
13 point. Number two, the next motion is a motion to compel
14 arbitration.

15 THE COURT: You know, it kind of gives me a
16 little pause with this thing when I asked you who's paying
17 you and you said you didn't know.

18 MR. WHITE: Well, Your Honor, we have a billing
19 system --

20 THE COURT: I was picking on you.

21 MR. WHITE: I'm being paid, okay. Whether
22 that's through an insurance company through the client, I
23 don't handle that part. So I don't know.

24 But the next motion is a motion to compel
25 arbitration, so we need to deal with that issue as well.

1 So we've got two issues that could potentially help us
2 avoid a trial with this number of defendants.

3 THE COURT: All right. I didn't mean to
4 interrupt you, but I was kind of in the flow. I just
5 wanted to ask some of those things that come to mind.

6 MR. CHRISTIAN: I understand, Your Honor.

7 Exhibit No. 14, Your Honor, is the application
8 for the license to DHEC here and to operate facility --
9 this is one of the other licenses that occurred while my
10 client was a resident at this facility. And the name of
11 the licensee is Palmetto Faith Operating. And in this
12 application for licensure, the question is asked who is
13 the complete title of the licensee's governing body.
14 That's important because federal law over regulations,
15 which is at -- I believe is provided in the list that we
16 gave to you at 42 CFR 483, required that there be a
17 governing body for each and every nursing home that
18 accepts Medicare or Medicaid. That governing body is in
19 charge of creating and implementing the policies and
20 procedures, appointing the administrator at the nursing
21 home, has a number of responsibilities. At this exhibit
22 and in the application to DHEC, Palmetto Faith Operating
23 is identified as being member managed and is the governing
24 body.

25 The only member of Palmetto Faith Operating is

1 found in the operating agreement that we have attached to
2 our exhibits for Palmetto Faith Operating. And that is --
3 let me find the exhibit number. Anyway, Your Honor, at
4 this point, that point -- exactly what tab it's at, I'm
5 not sure what matters, but nonetheless, we include the
6 operating agreement for Palmetto Faith Operating, which is
7 designated as the governing body. In that operating
8 agreement, it says Palmetto Health Care, LLC is the only
9 member of Palmetto Faith Operating, which is the governing
10 body. So you would have to presume that Palmetto Health
11 Care by virtue of that is the governing body.

12 And we can see at Exhibit No. 11 that for
13 Palmetto Health Care, the operating entity owners are
14 Murray Foreman, Leonard Grunstein and ASK Holdings, which
15 Judge Seals has already determined shall remain a
16 Defendant. And so these individuals, as the owners of
17 Palmetto Health Care, LLC, would, in essence, be the
18 governing body charged with by federal regulation
19 implementing the policies and procedures of the facility
20 and appointing the administrator as well as other
21 responsibilities.

22 You are correct, Mack, it was at Exhibit No. 12.

23 And at Exhibit No. 12 is the operating agreement
24 for Palmetto Faith Operating where it identifies the
25 member is Palmetto Health Care, LLC, and I just identified

1 those owners.

2 And then there is Faith Health Care Centers
3 facility operator and costs report, which we've attached
4 at Exhibit No. 13. These are, again, documents that must
5 be filed with the government to talk about where the money
6 is going from this facility. Any facility that receives
7 Medicare or Medicaid funding has to account for that money
8 to the government about where their money is going. And,
9 of course, the name of the facility is Palmetto Faith
10 Operating. And they identify, number one, that the real
11 property is owned by South Carolina Property Holdings.
12 I'll get to that in just a second. And that they
13 participate in related transactions with related entities,
14 which is Palmetto Health Care and South Carolina Property
15 Holdings. And, again, Palmetto Health Care is Murray
16 Foreman, Leonard Grunstein and ASK Holdings.

17 South Carolina Property Holdings, which they
18 maintain in their application to Medicare -- are in the
19 costs reports to Medicare, owns the property. And I'm
20 not -- it's either South Carolina Property Holdings or
21 Mariner because there's a contract for the sale of real
22 estate to Mariner and then they assign their interest in
23 the property South Carolina Property Holdings. But South
24 Carolina Property Holdings, which owns the actual real
25 estate where the facility does business, has managing

1 members of Abraham Scholson, Leonard Grunstein and Murray
2 Foreman. So the managing members of the LLC that,
3 actually, own the property and own the facility are Mr.
4 Scholson, Mr. Grunstein and Murray Foreman, yet, they
5 maintain that they have no interest here in South Carolina
6 and transact no business here and no ties with this
7 facility. And they also charged the facility, which is
8 reflected in the costs reports substantial rent. And they
9 also charged the facility substantial management fees,
10 which is reflected in the costs reports.

11 And then the disclosure of ownership and
12 interest statement that we have at Exhibit No. 16, they
13 identify the individuals who have direct or indirect
14 ownership in the actual facility. In addition to Palmetto
15 Health Care and ASK Holdings is Mr. Leonard Grunstein,
16 Murray Foreman, Boyd Gentry, Abraham Scholson and Avie
17 Kline. And their ownership interest, Your Honor, is
18 reflected further in documents submitted to the government
19 at tab No. 18 -- or 17, rather.

20 And then, Your Honor, at tab No. 20 is reflected
21 the contract for the purchase of property -- and this is
22 for, actually, for all these -- there's about five nursing
23 home facilities that they purchased here in South
24 Carolina. And it's between Premier Properties of South
25 Carolina, LLC and Mariner Health Care, Inc. It's signed

1 and dated by Boyd Gentry -- it's, actually, not dated, but
2 it's signed and I believe -- yes, it is dated. It's dated
3 May 31st of 2006. My client, again, was there during
4 June, July, September and came back in the fall. So
5 Mariner Health Care is contracting here with the signature
6 by Boyd Gentry to purchase the actual real estate of
7 several nursing homes here in the State of South Carolina.
8 And then they entered into an assignment agreement that
9 Boyd Gentry and Murray Foreman signed to assign their
10 interest in that real estate after they entered into the
11 contract to purchase the property.

12 So, Your Honor, by virtue of all of these
13 documents, we submitted to the Court in our memorandums,
14 particularly, our supplemental memorandum, numerous cases
15 that suggest and state that officers, directors,
16 shareholders, parent companies can all be held liable for
17 their acts, for their negligent acts, for direct
18 negligence that they had involved with an injury or a
19 claim which occurs at an underlying company. And we
20 believe that through the affidavit of our expert and
21 through all these documents, we have evidenced that
22 there's more than sufficient authority for the Court to
23 determine there's prima facie case here for us to be able
24 to move forward with discovery as to whether or not these
25 individuals A, were, actually -- already did enough

1 business for this Court to have jurisdiction over them; or
2 B, whether or not they had the ability to exert control or
3 influence which resulted in injuries to my client and,
4 therefore, they would have committed tortuous acts in this
5 state submitting them to the jurisdiction of this Court.

6 So for those reasons, we would ask the Court to
7 deny the Defendant's motion to dismiss.

8 MR. WHITE: Your Honor, if I could respond very
9 briefly?

10 THE COURT: Yes.

11 MR. WHITE: I know there were a lot of points
12 raised and I do want to be brief. Your Honor, I,
13 certainly, don't envy Your Honor. I know that all this is
14 a heck of a lot being thrown at you. And I know you're
15 going to have to look at the memos to sort all this out.
16 But that's -- you know, we submitted a lot of documents
17 that say a lot of things. And the question is what do
18 these documents show?

19 Your Honor, some of the documents that have been
20 submitted that Mr. Christian made reference to just simply
21 aren't relevant or are not admissible to the case. And it
22 goes to the overarching theory of the Plaintiff's case
23 that because there are companies out there that have a
24 complex ownership structure -- if they're complex. I
25 mean, I would certainly submit they're not. But if

1 they're confused by it, then there must be a scheme or a
2 fraud.

3 Your Honor, for instance, this report by the
4 officer of inspector general with this testimony before
5 this U.S. -- the House subcommittee. Your Honor, that's
6 just pure hearsay. It doesn't even relate to our clients.
7 It doesn't even say our clients' names, so it has nothing
8 to do with this case. This is why I keep harping back to
9 the memos. You've got statements in the memos -- and Mr.
10 Christian made reference to this. For instance, in this
11 reply memo, it says, In fact, Defendant Murray Foreman has
12 given prior deposition testimony in a case involving
13 several nursing homes in Colorado that he and Leonard
14 Grunstein were the only two human beings with an ownership
15 interest in Sava Senior Care, LLC, and over 23 other
16 operating companies for nursing homes. Now, if I were to
17 take that statement at face value, I would believe that
18 Murray Foreman and Leonard Grunstein were the members of
19 Sava Senior Care, LLC, and the members of 23 other
20 operating nursing homes, that's what I would take it on
21 face value.

22 Let's look at the deposition. The question is,
23 The way this shakes out is that Canyon Suiter Partners
24 owns SV Care Holdings, correct? And just for the Court's
25 understanding, Canyon Suiter Partners is at the very top.

1 It says, It does. This is Murray Foreman, by the way,
2 this same deposition we referred to. And SV Care Holdings
3 owned Sava Senior Care, LLC, correct? Yes. And Sava
4 Senior Care, LLC, owns SSC Equity Holdings, correct? Yes.
5 And SSC Equity Holdings owns SSC Submaster Holdings,
6 correct? I believe so. And SSC Submaster Holdings then
7 owns 23 separate operating institutes? Yes, correct, yes.
8 Now, the whole chain of companies that we just went
9 through, you and Leonard Grunstein are the sole equity
10 owners of those companies, correct? He says, We're the
11 sole equity owners of Canyon Suiter Partners. And then
12 the question, And since Canyon Suiter Partners is the sole
13 owner of SV Holdings, there are no other human beings that
14 have the financial interest in SV Care Holdings, correct?
15 He said, Yes.. Okay. And you and Leonard Grunstein are
16 the only two human beings that have any financial
17 interest, either directly or indirectly of Sava Senior
18 Care, LLC, correct? He says, No. The lawyer says, What
19 other human beings apart from you and Mr. Grunstein have
20 any direct or financial interest in Sava Senior Care, LLC?
21 And the answer, Again, I don't know. I can't tell you the
22 exact, but at varying levels, there are debt holders,
23 there are employees, there are, you know, various
24 subsidiaries. There are, clearly, other people that have
25 interest in other subsidiaries. Then he says, I'm talking

1 about ownership interest. Does anyone either directly or
2 indirectly own any part of Sava Senior Care, except for
3 you and Mr. Grunstein. No. And he says, The same will be
4 true for the whole line of boxes on the right-hand side.
5 There are no other human beings that have any ownership
6 interest, either direct or indirect of these companies
7 apart from you and Mr. Grunstein, correct? And here he
8 says again, Leonard Grunstein and I own Canyon Suiter
9 Partners. And Canyon Suiter Partners owns the rest of it.

10 And so the point is, if you take -- again, if
11 you take what's represented in the memo at face value, it
12 indicates that these two individuals individually own all
13 these companies and that's not what's happening. They own
14 a top company, which, in turn, branches out from there and
15 are owned by various companies. As Your Honor well knows,
16 every company has to be owned by something. It either has
17 to be owned by another entity or it has to be owned by
18 another individual. But just because a company is owned
19 by someone else doesn't mean that someone else is involved
20 in the operation, the management or whatever to the extent
21 that it is subject to jurisdiction in South Carolina.

22 Exhibit 15 was one of the exhibits to the
23 Plaintiff's memorandum that he was making reference to.
24 And I just use this as another for instance. He pointed
25 out that South Carolina Property Holdings, LLC, is an

1 entity that has some ownership interest in property in
2 South Carolina. Then he says the names of the managing
3 members are Abraham Scholson, Leonard Grunstein and Murray
4 Foreman. Abraham Scholson is one of the Defendants that
5 Judge Seals let out of the case.

6 My point is this, just because you own something
7 in South Carolina doesn't mean you're transacting business
8 in South Carolina. In fact, he doesn't own anything in
9 South Carolina. He may own a company, which, in turn,
10 owns something in South Carolina, but that's it. So,
11 again, to suggest that there's some immediate tie to South
12 Carolina, I think is not true.

13 Your Honor, just a couple more things. In the
14 reply memo that the Plaintiff submitted attached as an
15 exhibit, there's what appears to be a summary of what
16 Bruce Ingstrom would say. That's nothing more, I assume,
17 than a summary. I don't think that that qualifies as
18 testimony from Mr. Ingstrom, so I don't think that should
19 be considered.

20 One of the things that you will see a lot in the
21 memo is a lot of the use of the term Mariner and Sava in a
22 general sense. You don't see it necessarily tied to
23 corporate entities with an Inc. or an LLC on the end.
24 Again, it's just an effort to try and mash all these cases
25 in together.

1 I also want to point out one thing about
2 discovery. When we filed these motions -- because Mr.
3 Christian has made a couple of references to this, so I
4 don't want the Court to think we have not tried to work
5 with him on some issues. When he made reference to they
6 haven't been able to conduct any discovery. When we filed
7 this motion, we objected -- filed this motion and the
8 motion to compel arbitration, we objected to engaging in
9 discovery on the basis that we had these motions pending
10 and that we would engage in discovery later on if the case
11 were to continue. Mr. Christian asked us if we would be
12 willing to answer some discovery on the arbitration issue
13 before that motion was heard. We did engage in that. We
14 willingly engaged in that. We were never asked to engage
15 in any discovery as to the personal jurisdiction motion
16 for the purposes of these motions. We never were.

17 And so I just don't want the Court left with the
18 impression that we were asked to do something, we said
19 absolutely not and then we're trying to sabotage him. He
20 has relied entirely in this case so far in being able to
21 show what he says is a prima facie case of establishing
22 personal jurisdiction. And that's what he's done. He's
23 got all these documents. He's had all these documents.
24 And that's what he's presenting. So that's what I think
25 is before the Court at this point.

1 THE COURT: Let me ask both of you, do you think
2 that further discovery with regard to personal
3 jurisdiction is warranted?

4 MR. WHITE: Well, Your Honor, my personal
5 feeling is based on Mr. Christian's -- what he's been able
6 to gather so far and what he's also to gather from other
7 counsel, other Plaintiff's counsel in other cases who have
8 cases with these Defendants that I'm assuming he's gotten
9 what he felt comfortable getting because in term of
10 providing some more discovery prior to this hearing, I
11 hadn't been asked for it. So that's my response.

12 THE COURT: Mr. Christian?

13 MR. CHRISTIAN: I would disagree a little bit
14 with that, Your Honor, because the discovery that we
15 served with the summons and complaint, which would have
16 been about three or four months before they ever filed the
17 motion to compel arbitration asked numerous questions
18 about ownership, control, corporate and management
19 agreements and things of that nature. And when we sought
20 that discovery, we received a letter from Mr. White
21 stating that he was objecting to producing that discovery
22 to us and in conducting discovery because they thought
23 that they might file a motion to compel arbitration, which
24 was finally filed some three to four months later. And
25 so, those documents that we did seek that would be

1 relevant to this issue, we received a letter saying that
2 they were objecting to producing it, so we presumed that
3 they were not going to produce that.

4 When they then filed a motion to compel
5 arbitration, we asked them and they agreed in the presence
6 of Judge Seals and he conferred also, that we would be
7 allowed to conduct discovery, exchange paper discovery
8 with regards to the pending arbitration motion. So we've
9 not been able to conduct any discovery with regards to the
10 jurisdiction matters with regards to the documents and
11 interrogatories which we served with our summons and
12 complaint.

13 MR. WHITE: And, Your Honor, I can't -- I hate
14 to belabor the point, but I can't be any more clear than
15 this. After we filed both motions -- because the motions
16 were filed together. It's the same thing, notice of a
17 motion to dismiss for personal jurisdiction, insufficient
18 search of process and stay action to compel arbitration.
19 After we filed this motion, Mr. Christian came to us and
20 said can we engage in some discovery on the arbitration
21 issue because I think I need some of that before I can
22 respond to the motion. We agreed to that and we agreed to
23 it before we were ever in front of Judge Seals.

24 THE COURT: I don't think we really need to cast
25 stones about --

1 MR. WHITE: Okay. I just --

2 THE COURT: I don't get that impression at all.
3 My question is that these are very substantial matters
4 about whether or not there is -- whether or not you have
5 personal jurisdiction on each of these. There's so many
6 of them. And I think he has an idea as to his theory.
7 I'm not real sure he's had an opportunity to get the
8 necessary documentation for us to do that. I don't know.
9 That's why I'm asking both of y'all. And I'm not
10 throwing -- you know, this case really isn't that old. It
11 was filed, what, six or eight months ago maybe?

12 MR. WHITE: Yes, sir, it was filed, I believe,
13 in March of this year.

14 THE COURT: It's going to, obviously, take a
15 while to do it. But these are some threshold questions
16 that need to be resolved.

17 Mr. Christian, do you feel as though you need
18 some more time to gather documentary evidence to establish
19 personal jurisdiction on these Defendants?

20 MR. CHRISTIAN: Your Honor, I do believe that
21 that would be helpful. I think that we've provided enough
22 documents to show that, certainly, most of the Defendants,
23 particularly, Sava Senior Care Defendants and the Mariner
24 Health Care, Inc. and those Defendants that are seeking to
25 be dismissed, I think we've presented enough documents to

1 show that they either had control to have potentially
2 committed a tortuous conduct here or did conduct business
3 here.

4 But, certainly, the opportunity to conduct
5 discovery about that and these issues with all these
6 Defendants would be invaluable to us and would help us in
7 determining even if some of these -- we might be able to
8 agree that some of these Defendants don't belong, but
9 we've not been able to obtain any of that documentation.
10 And I do have some concern that there may be objections to
11 producing much of that information from the Defendants to
12 enable us to make those determinations about the level of
13 control and their activity that they had and relation that
14 they had with this facility. But that was, certainly, all
15 issues that we asked for in our initial discovery which
16 were served with the summons and complaint to help us move
17 forward in determining all these issues that the Court
18 just addressed.

19 And, Your Honor, I would like to add one other
20 thing. There was a motion to dismiss Sava Senior Care,
21 Inc. for insufficient service of process. Mr. White
22 argued at that hearing that they had to transact business
23 in South Carolina in order for the Secretary of State to
24 be the registered agent. Judge Seals heard that motion.
25 And Mr. White argued that Sava Senior Care, Inc. did not

1 transact business in South Carolina so that the Secretary
2 of State could not be their agent of service. And Judge
3 Seals has since issued an order and found in our favor and
4 stated that Sava Senior Care, Inc. did, in fact, transact
5 business in South Carolina such that the Secretary of
6 State could be their agent of service.

7 Since that time, Mr. White has filed a motion to
8 alter or amend the judgment or motion for reconsideration,
9 which was just recently filed and I believe he's filing
10 another reply and providing additional information to
11 Judge Seals. But I did want to let the Court know that
12 Judge Seals has already determined by virtue of his order,
13 which is still being considered, that -- but which has
14 been executed and filed, that Sava Senior Care, Inc. does
15 business here.

16 MR. WHITE: Your Honor, in terms of further
17 discovery, I think, perhaps, what needs to happen is --
18 again, I can't help but believe that based on all the
19 evidence that we've put before you, the two memos and
20 the -- probably, literally, thousands of documents before
21 you, you know, if Your Honor reviews that and believes
22 that additional time is needed for discovery, then that's
23 the Court's ruling. But our position is that given the
24 amount of information -- I mean, to be frank, Mr.
25 Christian has more information than I do. That's not to

1 suggest that he's got more than my clients, but it is to
2 tell the Court that he's been able to amass a lot of
3 information on various subjects through his own expert and
4 through, probably, his own repository of documents. So
5 for what that's worth.

6 THE COURT: I tell you what I am going to do
7 is -- are there -- have you had an opportunity to look at
8 the discovery requests that he provided with the
9 complaint?

10 MR. WHITE: Your Honor, I'm sure I did back in
11 April or May, probably not since then.

12 THE COURT: I was hoping that maybe we could
13 take a look at it and see if there's anything that -- if
14 there are any clear objections, that we might resolve
15 those here today and, at least, get some of those
16 documents taken care of. But I assume you probably have
17 to confer with each of your clients in that regard?

18 MR. WHITE: Yes, sir.

19 THE COURT: I'm going to take this weekend, I'm
20 going to review all the memos and I'm going to study it.
21 And then I'll be back in touch with y'all Monday to
22 determine whether or not we're going to engage in some
23 discovery with regard to this specific issue.

24 I'll be glad to hear from you concerning the
25 matter of arbitration.

1 MR. WHITE: Thank you, Your Honor.

2 If I can just have time to shift gears?

3 THE COURT: You can.

4 While they're shifting gears, Ms. Georgie, would
5 you like to say anything?

6 MS. GEORGIE: No, I don't have anything to say
7 on this matter. I will only have something to say on this
8 one.

9 THE COURT: Okay. Very good.

10 Mr. Fowler, you have anything you'd like to say?

11 MR. FOWLER: Your Honor, just very quickly, I
12 echo Mr. White's comments about not envying you on some of
13 these issues. But our challenge as Plaintiff's attorneys
14 are to identify the correct corporate Defendants and we
15 secured a forensic accountant to help us with that. The
16 Defendants that we identified were based on his review of
17 governmental and state regulatory records and Medicare.

18 And I think your question to Mr. White regarding
19 the three entities that he agreed should be still in this
20 case that they have insurance coverage. Mr. White's an
21 excellent attorney, that's very evident, but I think it's
22 very enlightening and telling that he was unable to answer
23 that question. And that's part of our challenge was to
24 make sure that we named the correct corporate Defendants
25 where a later date the Defense was well, we don't have any

1 insurance coverage, you did not name the correct
2 Defendant. We would welcome discovery on the personal
3 jurisdiction issue because we're interested in paring down
4 the Defendants to the correct Defendants and get this case
5 moving. So I think your observation that discovery on the
6 personal jurisdiction issue, we would welcome that.

7 THE COURT: Okay.

8 MR. WHITE: Your Honor, I can only say that in
9 terms of what levels of insurance these various people
10 have, we're new to this client, within the last year or
11 so, so I just don't know that we've had a case that's
12 gotten that far so we haven't been down that road yet. I
13 think we've only got two. One with Mariner, which is what
14 this facility is and one with a Sava entity, which is
15 another facility in the state. So I don't know the answer
16 the question yet.

17 THE COURT: Seems like -- it's a very common
18 sense approach to it, but seems like to me that would be
19 the very first thing you want to look at because, I
20 assume, they want to be able to be paid for any negligence
21 that the jury might find. And if, indeed, there's
22 insurance coverage for these three or if they're
23 self-insured to whatever extent, then seems to me that
24 that would resolve a lot of these difficulties. I don't
25 know, I might be mistaken in that regard.

1 MR. WHITE: Well, you know, I think when I say
2 we've got one case of Mariner here, one Sava here, you
3 know, again, we're talking about individual operating
4 companies. You've got kind of a bifurcation of ownership
5 between different types of facilities. And when he's
6 talking about Sava Senior Care, LLC, and these other
7 companies that he's named in his suit, they don't even
8 have a direct ownership structure as to this facility.
9 This is -- you know, Mariner's at the top, not Sava. So
10 that's just part of the dynamic. But, Your Honor, in
11 terms of -- well, I'll leave it at that.

12 THE COURT: Mr. Christian, is that correct then,
13 that you need to know what coverage is available in the
14 event of a recovery? Would that assist you in your
15 personal jurisdiction predicament we're in?

16 MR. CHRISTIAN: Your Honor, I do believe that
17 that would certainly be helpful to know that. As I
18 indicated before, with a lot of these owners and entities
19 and our history with them and my colleagues is when we end
20 up in settlement discussions, that's a big point of
21 leverage that they use, is we don't have any insurance or
22 assets in any of these entities that you sued. So that
23 would, certainly, be helpful. While we, certainly, do
24 believe that the corporate aspect of the case is still
25 very important and is important to the jury for them to

1 understand why these injuries happened, that it was
2 underfunded and undercapitalized, but that would also be
3 very helpful to us.

4 And as Mr. White has pointed out, I believe we
5 have demonstrated that Sava Senior Care entities and the
6 Mariner Health Care entities do, in fact -- the corporate
7 entities exercise control all the way down and do operate
8 nursing home facilities, such that they could have
9 committed tortuous conduct or have jurisdiction here in
10 South Carolina. We still don't know because we haven't
11 been provided with any documents as to whether this is a
12 Sava entity or a Mariner entity.

13 And I like Mr. White and I appreciate him: I
14 think he's a good lawyer, but I'm not just going to take
15 his word as to whether I should just go dismiss all these
16 entities -- or dismiss these entities without seeing any
17 documents that identify which facility it actually was,
18 whether it was a Sava -- because the people at the top,
19 Mr. Grunstein, Mr. Foreman and Mr. Gentry, they're all the
20 same whether it's Sava Senior Care or Mariner entity.
21 That doesn't change. Mariner is still at the top, that
22 doesn't change. But as we get down to the bottom, it
23 starts bifurcating and Mariner operates the facilities
24 that it leased the real property from previously and Sava
25 operates all the entities where Mariner used to own the

1 real property where the nursing homes were located. But
2 they're still all under the Mariner bubble, and Mr.
3 Grunstein, Mr. Gentry and Mr. Foreman bubble. And so,
4 potentially, we could let out the Sava entities if they
5 were, in fact, and we could prove and could see that they
6 had no relation whatsoever to the direction of this
7 particular facility. We don't have any documents to tell
8 us that one way or the other.

9 THE COURT: All right.

10 MR. CHRISTIAN: But, I mean, we've still got the
11 issue with the number of Mariner companies involved, which
12 we think we've shown, but that is an issue that I think
13 was recently brought to light by what Mr. White's comment
14 was about there's a bifurcation under the Mariner
15 umbrella.

16 MR. WHITE: And, Your Honor, I mean, I just feel
17 like I really almost have to go on record about this. In
18 terms of the insurance issue, I know that that is an issue
19 that Matt and I will have to discuss at some point, but
20 for purposes of the personal jurisdiction motion,
21 obviously, who's carrying insurance, for how much, where
22 it's carrying it isn't relevant.

23 THE COURT: I don't think it is, I'm just
24 saying --

25 MR. WHITE: Okay. I just wanted to make sure.

1 THE COURT: Certainly, it has nothing to do with
2 it, though, as a practical matter, if they were convinced
3 that they had coverage, then they wouldn't have -- it
4 might be to some extent, they wouldn't be naming 22 to 30
5 Defendants.

6 MR. WHITE: And he and I can talk about that.
7 Absolutely.

8 THE COURT: And I would suggest -- I don't --
9 I'm, certainly, not trying the case, but I would suggest
10 that you file a request, admit which ones he agrees has
11 personal -- that is properly in this case with personal
12 jurisdiction and what insurance is available and any
13 assets that are available. Seems like that would be
14 relevant for you to know.

15 MR. CHRISTIAN: I agree, Your Honor. And I,
16 certainly, intend to do that if we can ever get to the
17 point where they will answer discovery as to the insurance
18 issues and asset issues. And that's been something that
19 we've not been able to do so far.

20 THE COURT: Can you agree to do that?

21 MR. WHITE: What's that, Your Honor?

22 THE COURT: Can you agree to respond to a
23 request to admit with regard to which ones you agree here
24 today -- you've already put on the record which ones you
25 agree are properly before this Court with regard to

1 personal jurisdiction?

2 MR. WHITE: What I'll do, Your Honor, is I will
3 go back to my client and I will ask my client in terms of
4 the entities who have been named who has insurance and who
5 doesn't. Or -- I don't know if that's the right way to
6 say it. Do the entities which I have not argued -- or the
7 three entities that I've said are subject to personal
8 jurisdiction in this state, I will find out to what extent
9 those three entities have insurance.

10 THE COURT: And assets, some degree of assets.

11 MR. WHITE: Okay. Yeah. I mean, I don't know
12 that I'll have -- I'll be able to get an accounting of all
13 that, but I'll do my best.

14 THE COURT: If there's any entity on this earth
15 that has a ready access to accounting, it would be a
16 nursing home, I would think.

17 MR. WHITE: Oh, absolutely.

18 THE COURT: I think they have to keep a
19 running -- I think that is something they can get.

20 MR. WHITE: I'm just going to jot this down.

21 MR. CHRISTIAN: I think the amount of insurance
22 would be very important as well because if -- I've run
23 into some entities that just have a \$100,000 in coverage
24 or \$50,000 in coverage and then tell me it's a wasting
25 policy and that they eroded it all away on defense cost

1 and there's nothing left. So I wouldn't want to just know
2 if there is insurance coverage, I'd like to know the
3 amount.

4 MR. WHITE: Of course, I understand that, Your
5 Honor.

6 THE COURT: All right.

7 MR. WHITE: And, Your Honor, just so we're clear
8 on the record, it will be Mariner Health Care Management
9 Company, Mariner Health Central, Inc., and Grand Care
10 South Carolina, Inc. Those are the three that I've not
11 moved to dismiss personal jurisdiction.

12 THE COURT: Obviously, that would help us in
13 some regard. And could you prepare -- would y'all --
14 would you prepare an order stating that's going to be
15 provided within 30 days?

16 MR. CHRISTIAN: Yes, Your Honor, I'll be happy
17 to do that.

18 THE COURT: Also, how long do you think --
19 anticipate it would take to get an idea about the assets
20 of these particular corporations?

21 MR. WHITE: Why don't we do this, just as a
22 suggestion, let me go back and ask my clients the
23 question. I may have an answer in a day from that, even
24 before you would need to sign an order. Let us have until
25 next week to alert you to where we are on that.

1 THE COURT: Very good.

2 MR. WHITE: We may not even need an order on
3 that.

4 MR. CHRISTIAN: Are you going to let me know
5 next week so that I know whether to prepare --

6 MR. WHITE: Oh, absolutely, yes. I'm going to
7 let you know whether we -- number one, whether we can get
8 the information immediately. If not, you can submit an
9 order and we can handle it that way.

10 MR. CHRISTIAN: Okay. Good.

11 THE COURT: Very good.

12 MR. WHITE: Your Honor, the next issue before
13 the Court is the motion to compel arbitration. Your
14 Honor, we have filed a memorandum in support of that
15 motion. Plaintiff, a couple days ago, sent us a reply
16 memorandum, so I'd like to hand up to the Court for
17 filing -- excuse me.

18 THE COURT: Go ahead. I'm sorry.

19 MR. WHITE: If I can hand it to the Court for
20 filing. This is a response to his reply memorandum, which
21 was just kind of hot off the press and I grabbed it and
22 ran from Spartanburg to get here on time. So if I could
23 file it through Your Honor, I would appreciate that.

24 THE COURT: Very good.

25 MR. WHITE: Your Honor, the Defendants, which I

1 represent in this case, 22 Defendants, which, of course,
2 are listed in our motion to stay the action to compel
3 arbitration. We're moving on behalf of all the Defendants
4 for this. Now, we're moving in the sense to the extent
5 Your Honor doesn't dismiss any of the parties that we,
6 previously argued should be dismissed for lack of personal
7 jurisdiction. To the extent you don't dismiss certain or
8 any of those Defendants, then they're part of this motion.
9 This is -- but it also includes the other three entities
10 that I mentioned, and that's Grand Care South Carolina,
11 Mariner Health Care Management Company, Mariner Health
12 Central, Inc.

13 Your Honor, as Your Honor is aware, June 2nd
14 2006, as we alluded to earlier, is when Ms. Brinson was
15 admitted to this residence. The day before she was
16 admitted, on June 1st, 2006, her sister, Ann Coleman, who
17 is the Plaintiff in this case, the personal representative
18 in this case, brought -- excuse me, came to the facility
19 and executed admission paperwork.

20 Now, Ms. Coleman, the Plaintiff in this case and
21 the personal representative in this case and the person
22 who signed this admission paperwork; was, actually, an
23 employee of this facility. I think she was an LPN there,
24 so she was very familiar with the facility. She came in
25 and signed the paperwork. And there are two things -- two

1 documents I'd like to hand up. Again, these are already
2 attached to the motions, but I think it will help the
3 Court to have this at your fingertips.

4 And, Matt, this is the admission agreement and
5 the arbitration agreement.

6 If I can approach, Your Honor?

7 THE COURT: Yes, sir.

8 MR. WHITE: There were some documents signed
9 that day and these are two of the documents, Your Honor.
10 These are the two that we'll be focusing on in this
11 argument, I think. The first one is the resident
12 admission and financial agreement. And that goes through
13 and, basically, explains the services and other things
14 that will be provided, what the facility's
15 responsibilities are, what the patient's responsibilities
16 are, privacy issues and other housekeeping items. The
17 second document I've handed up is the agreement for
18 arbitration, which is, of course, the most important
19 document for purpose of this motion. As Your Honor will
20 see, both of these documents were signed by Ann Coleman on
21 June 1st, 2006.

22 The arbitration agreement itself, I just want to
23 point out a few things about this arbitration agreement.
24 And it's not that long, so I know the Court will read it.
25 But on the second page of the arbitration agreement, the

1 first full paragraph, I first want to address what claims
2 are -- you know, one of the preliminary questions the
3 Court always has to consider is what claims are covered by
4 this arbitration agreement because sometimes not all
5 claims are prevalent. This, though, clearly covers the
6 claims that have been asserted in this case. It says the
7 parties agree that they shall submit to binding
8 arbitration all disputes against each other and their
9 representatives, affiliates, et cetera arising out of or
10 in any way related or connected to the admission agreement
11 and all matters related thereto, including any matters
12 involving the resident's stay and care provided at the
13 facility, including, but not limited to any disputes
14 concerning -- I'm skipping down, allegations of medical
15 malpractice, any disputes concerning whether any statutory
16 provisions relating to the resident's rights under South
17 Carolina law were violated. Then it goes on and says
18 based on contract tort statute misrepresentation, et
19 cetera, et cetera. So the claims which have been asserted
20 in this case are covered by this arbitration agreement.

21 One of the next things the Court has to consider
22 is, you know, what statute are we moving -- what's the
23 applicable law. We are not moving under the South
24 Carolina Arbitration Act, we're moving under the Federal
25 Arbitration Act. So, of course, the question is well,

1 does this transaction -- or this nursing home, is it
2 involved in interstate commerce. And we've shown that in
3 two ways in this motion. Number one, we had an affidavit
4 of the administrator of the facility, who's still the
5 administrator of the facility, where she, in good detail,
6 goes through an outline and presents to the Court clear
7 evidence that this facility is involved in interstate
8 commerce. I don't think the Court would have any real
9 concerns with that.

10 Nevertheless, in this agreement, on the first
11 page under Roman Numeral II agreement, about halfway down,
12 it say, The resident and the facility further acknowledge
13 that said admission agreement evidences a transaction
14 involving interstate commerce. And then flipping over to
15 the second page in the first partial paragraph, it says,
16 in part, The parties expressly agree that this agreement
17 will be covered by the Federal Arbitration Act.

18 So the parties have agreed up front that this
19 involves interstate commerce and the Federal Arbitration
20 Act applies. Now, I don't know if Plaintiff's taking
21 issue with that or not. I don't think it's been briefed
22 by the Plaintiff, so that may not be an issue in dispute.

23 In terms of consideration for this agreement, of
24 course, if you'll look back on the first page in the last
25 paragraph, it says the facility agrees to pay the fees of

1 the arbitrators and up to \$5,000 of reasonable and
2 appropriate attorney's fees and costs for the resident in
3 any claims against the facility. So when she files the
4 claim against the facility in arbitration, she doesn't
5 have to pay the arbitrators and \$5,000 of her attorney's
6 fees and costs are paid. And she also has the right to
7 choose the location of any arbitration under this
8 agreement.

9 Now, I've read a lot of arbitration agreements
10 for lots of different clients and this is one that, to me,
11 at least, for what it's worth, seems to be a very fair
12 arbitration agreement in terms of costs, where it's going
13 to be had and all that.

14 Importantly, and this is an issue which
15 Plaintiff raises and which we will discuss in a moment.
16 The entering into this arbitration agreement was not a
17 condition of her admission to the facility. If Your Honor
18 will look on the signature page, which is the third page
19 of this document, the very top under acknowledgments, it
20 says, The execution of this agreement is not a
21 precondition to receiving medical treatment or for
22 admission to the facility. In fact, if you skip down a
23 few paragraphs to the next to the last paragraph, it says,
24 The resident and or legal representative understands that
25 this agreement may be rescinded by giving written note to

1 the facility within 30 days of signature. So here, the --
2 you know, not only is it not a precondition to admission,
3 she also has the right to rescind the agreement within 30
4 days if she chooses to do so.

5 Now, the -- what I want to do is turn your
6 attention briefly, Your Honor, to the admission agreement,
7 which is the other agreement I handed up. And at the
8 bottom of the document, it's got page numbers and I would
9 ask that Your Honor turn to page 7 of 11. At the bottom
10 of that section under miscellaneous, the second item,
11 entirety of agreement, it says, This agreement, including
12 all exhibits hereto and the arbitration agreement between
13 the facility and the resident if the parties signed one
14 supercede all other agreements either oral or in writing
15 between the parties and contain all of the promises and
16 agreements between the parties.

17 As Your Honor is, I'm sure, aware, when
18 contracts and agreements are signed at the same time for
19 the same transaction, the Court construes all of this as
20 one overall global agreement. And the fact that these
21 documents as well as other ones were signed all at the
22 same time, essentially, constitutes one agreement between
23 the parties, especially since this is incorporated by
24 reference here.

25 Your Honor, our arguments are pretty simple.

1 Number one, our argument is that this arbitration
2 agreement by its plain language binds this Plaintiff to
3 arbitrate her claims. She signed -- if we look back at
4 the agreement, at the arbitration agreement, she signed as
5 the legal representative, that's the title under her name,
6 of Ms. Brinson, and she's also the duly appointed personal
7 representative of Ms. Brinson.

8 Incidentally, Your Honor, and Ms. Georgie will
9 get to this, I'm sure, in a moment, you'll recall that she
10 had one residency with Grand Care and there was a split --
11 a time where she was not a resident. Ownership of the
12 facility changed hands and went to Ms. Georgie's client,
13 Palmetto Faith Operating. When she took Ms. Brinson back
14 for admission to Palmetto Faith Operating, she signed a
15 second arbitration agreement, went through the same
16 process, but with a different company, so the documents
17 were a little bit different, but went through the same
18 process and signed another arbitration agreement. So we
19 would contend that clearly evidences her intention and
20 willingness to enter into these agreements.

21 Our second argument, Your Honor, is that she
22 should be equitably estopped from denying this agreement.
23 The law is very clear in South Carolina that if a party
24 wants to enforce one term of a contract, he or she cannot
25 then repudiate other terms of the same contract. And

1 that's what you've got here. All of her claims derive
2 under the admission agreement and her admission to the
3 facility. In fact, there's a breach of contract claim in
4 this case. And so equitable estoppel, essentially,
5 prevents her from enforcing portions of the agreement by
6 saying you breached the contract and at the same time
7 saying I don't like this part of the agreement so I'm
8 going to not agree to arbitrate the case.

9 And so equitable estoppel -- in fact, if I could
10 quote from Fourth Circuit case U.S. vs. Bankers Insurance
11 Company, the Fourth Circuit said no parties suing on a
12 contract should be able to enforce certain contract
13 provisions while simultaneously attempting to avoid the
14 terms of an arbitration provision therein. So, again, I
15 think the law is very clear that she brings action on this
16 contract, she signed this agreement, she cannot now
17 repudiate and say I don't want to abide by that portion of
18 it.

19 Of the questions in this case -- or in this
20 motion is what authority did she have to sign this on
21 behalf of her sister? Your Honor, we have not been
22 provided with and Plaintiff has represented to us, which
23 we believe, that Ms. Coleman did not have a power of
24 attorney for Ms. Brinson. So we don't have that. The
25 question is are there other theories under which she could

1 be deemed to have bound her sister to this agreement and
2 to the arbitration. We believe there is.

3 First of all, under the South Carolina Adult
4 Health Care Consent Act, it said a party may consent to
5 health care on behalf of a patient if a patient is deemed
6 unable to consent on her own. Now, there's no question in
7 this case that when Ms. Brinson came, the medical records
8 indicate that she was unable to make health care decisions
9 for herself. We admitted that in response to our request
10 to admit. Plaintiff's counsel has attached, I think, the
11 doctor's reports to that effect. So I don't think there's
12 any dispute about that. But under the South Carolina
13 Consent Care Act -- or Care Consent Act, it defines health
14 care. And, again, remember, a party may consent to health
15 care on behalf of a patient if a patient is deemed unable
16 to consent on her own.

17 So let's look at the definition of health care,
18 what does it include? Well, it includes a lot of things,
19 but as a part of it, it includes the term skilled nursing
20 care and, also, includes, quote, the placement in or
21 removal from a facility that provides these forms of care.
22 So the South Carolina Adult Health Care Consent Act
23 specifically allows someone under that act -- and,
24 incidentally, the adult sibling is one of the people who
25 is listed in the act as being able to act. It allows the

1 placement in or removal from a facility. Well, obviously,
2 as a part of doing that in any facility, we all know from
3 going into doctors' offices, hospitals, nursing homes or
4 whatever, you've got to sign contracts. And so this
5 specifically allows her to do this.

6 Now, nowhere in the Adult Care Consent Act does
7 it specifically say that you can or cannot sign
8 arbitration agreements, but I think implicit in that act
9 is that if it gives you the power to put them in a nursing
10 home -- in a skilled nursing facility, it also allows you
11 to sign documents on their behalf to do that.

12 The next issue is the South Carolina bill of
13 rights for residents of long term care facility.
14 Incidentally, Your Honor, we've briefed all this.
15 Plaintiff, Ms. Coleman, was her representative under the
16 Bill of Rights Act. Representative includes the
17 resident's legal guardian, committee, next of kin or other
18 person acting as agent for the resident. In fact, the ill
19 of rights for nursing homes requires that this person get
20 certain notices and other things. And that's exactly what
21 happened. So, again, if you look at the arbitration
22 agreement, she signs as the legal representative. Well, I
23 think that's entirely consistent with this bill of rights
24 for resident of long term care facilities.

25 The next issue is apparent authority. And the

1 question there is was the nursing home reasonable in
2 believing that Ms. Coleman had authority to sign on Ms.
3 Brinson's behalf this paperwork. And what I would do is
4 commend this Court to the Caraway case, which we described
5 in our memo which has facts very similar to the facts of
6 this case.

7 And one thing I do want to point out because I
8 think I was clear about this in the memo, but judging from
9 Mr. Christian's response on this one issue, I'm afraid
10 that, perhaps, we could have been clearer, but I think we
11 were clear. One of the issues in the Caraway case was
12 there was no power of attorney to the person who signed in
13 the person into the facility. After she was in the
14 facility, a power of attorney was executed. In our case
15 she did not have a power of attorney, but some months
16 later, there was a probate court proceeding where Ms.
17 Coleman was appointed, I believe, as the conservatory and
18 guardian. And that's been attached to the memos. So that
19 will be clear to the Court. I did describe in the memo
20 that all that happened after her admission, but I just
21 wanted to make sure we were all clear on that point.

22 Your Honor, the next issue is third party
23 beneficiary. And Ms. Brinson, who is the resident, was,
24 clearly, a third party beneficiary of these agreements.
25 She was the one that received the care, the services. And

1 on that basis, in fact, we described the Trinity Mission
2 vs. Estate of Scott case. Her personal representative is
3 bound to arbitrate these claim under that theory.

4 Now, as Your Honor, I'm sure, hears all the time
5 in arbitration motions, the Federal Arbitration Act has
6 these strong policies in favor of arbitration and
7 disputes. In fact, if there's any dispute as to the
8 arbitrability of the claim, the dispute is decided in
9 favor of arbitration. I've already mentioned -- in terms
10 of the interstate commerce issue, I've already described
11 that. I commend Your Honor to the affidavit of the
12 administrator, it goes through that.

13 Now, to save myself some time in responding to
14 Mr. Christian, I want to go ahead and address what I see
15 as being his primary positions that I have concerns with.
16 Number one, he contends and he submitted the affidavit of
17 Ann Coleman. Keep in mind, of course, Your Honor, that
18 Ann Coleman was a resident -- excuse me, was an employee
19 of this facility. He presented an affidavit on her behalf
20 in which she testified to various things, but one of them
21 was, essentially -- and I'm paraphrasing, she was
22 overwhelmed by the situation, overwhelmed by the paperwork
23 and didn't really understand what she was signing.

24 There are a host of cases in South Carolina.
25 I'll just mention the Munyos vs. Greentree case that say

1 if you don't read a contract and you sign it, you're still
2 bound to it. I mean, that's black letter law. And so,
3 the fact that she may or may not have taken the time to
4 read the agreement is of no moment. She's bound to the
5 contract that she signed. It's just like if I decide to
6 go into a Toyota dealership and I don't read all the fine
7 print and I don't read the contract, I'm still bound to
8 it. I still have to make my payments and I still have to
9 do what they tell me to do. I don't know whether she read
10 any of this or not. I don't know whether she took a copy
11 home with her or not and decided not to rescind in 30
12 days. What I do know is that she signed this and then a
13 few months later, she signed another one.

14 So the law is very clear that -- in fact, the
15 Munyos case says a plaintiff's failure to read an
16 arbitration provision did not render it unconscionable
17 even though Plaintiff's claim they were not advised of its
18 terms. Also, how a party feels at the time of signing the
19 contract does not excuse the duty to read it. So if
20 you're going to sign a contract, you've got to read it.
21 Again, I don't know whether she read it or not, but if she
22 had read it, she would have seen right on the signature
23 page portions I've already pointed out about it not being
24 a precondition to her entering into the facility and also
25 have a 30-day right of rescision.

1 Also, Your Honor, in terms of her testimony that
2 she either wasn't advised as to what was in it or she was
3 told she had to sign it or whatever, all of that -- while
4 we certainly contend it's not true, all of that is parole
5 evidence and all of that is inadmissible parole evidence.
6 The question is is the contract on its terms ambiguous or
7 not. And we would, certainly, submit to the Court that
8 this agreement is not ambiguous. It is as clear as a bell
9 on these issues. And, therefore, whatever she says she
10 talked about or didn't have time to talk about, all that's
11 admissible parole evidence and none of that is admissible
12 for the purposes of this motion or at trial.

13 Your Honor, the next argument that Plaintiff
14 makes is that the Defendants have in some way waived their
15 rights to compel arbitration based on the timing of the
16 motion. The Plaintiff argues that it was back in 2009
17 when notice of intent was filed, that the parties engaged
18 in pre-suit mediation at some point, which, if I recall
19 correctly, it was just a very brief, maybe, telephone
20 mediation where the parties, basically, agreed to
21 disagree. They knew that there was no way they were going
22 to be able to get too far down the line.

23 And then the lawsuit was filed in March. The
24 lawsuit was served from April -- I guess, my part was
25 served from April to July of 2010. Our answers were filed

1 from May to July of 2010. And we moved to compel the stay
2 of arbitration in August of 2010. So, at most, from the
3 first Defendants who answered in April, we may be talking
4 three or four months, and for a couple, I'm only
5 talking -- or maybe one of them, we're only talking about
6 a month, month and a half. So I think Your Honor's
7 probably aware of the cases that are out there in South
8 Carolina and we've addressed them in our memo, that that
9 is certainly not enough be considered a waiver of a right
10 to compel arbitration. The case law talks in terms of
11 months passing, engaging in discovery, doing a number of
12 things that we've not done.

13 And, frankly, that's part of -- Your Honor,
14 that's part of the catch 22 the Defense attorneys are
15 caught in. I don't know why defense attorneys, it will
16 probably be on everybody's deaf ears. But when you file a
17 motion to compel arbitration, a lot of plaintiff's
18 attorneys engaging in discovery take the position well,
19 you engaged -- and I'm not saying Matt would do that and
20 I'm not saying he ever intimated he was going to do that.
21 But I have run into a situation where people say well, you
22 engaged in discovery and therefore you've waived your
23 right to compel arbitration. So that's just another
24 reason to suggest that we did not waive our right to
25 arbitration, we did not wait too long.

1 Another issue that Matt raised, which I think
2 is, frankly, an interesting argument. And I have not seen
3 another plaintiff's attorney raise this issue, so he's to
4 be commended for that. But he raised the issue of whether
5 the arbitration agreement is enforceable against both the
6 Plaintiff, Ann Coleman, and against the statutory
7 beneficiaries. Because, of course, we have a wrongful
8 death claim, which, of course, is on behalf of the
9 statutory beneficiaries, then we have a survival claim,
10 which is on behalf of the estate.

11 My arguments to this are several. Number one --

12 THE COURT: That is a right interesting
13 argument, though, isn't it?

14 MR. WHITE: It is. It is. I mean, there's case
15 law out there dealing with it and I'm going to address
16 that. But the case -- first of all, if you just look at
17 the plain language of the agreement and in the next to the
18 last paragraph on page two of this agreement, it says it
19 is the intention of the facility and the resident that
20 this agreement shall enure to the benefit of and bind --
21 and I'm going to skip down, the resident, his or her
22 successors, heirs and representatives, including personal
23 representative or executor of his or her estate. And I
24 skipped over some irrelevant parts. But my point is, this
25 agreement by Ms. Coleman, not only being the signator to

1 this agreement, but also being the personal
2 representative, clearly, she has bound herself and
3 argument is she has bound the estate and statutory
4 beneficiaries as well.

5 Mr. Christian relies on a case that I want to
6 address briefly, and this is out of the State of
7 Washington. It's the Whitall vs. Avalon Care Center case
8 and it's cited in his memo. And what the Whitall case
9 involved was there was a resident who entered a nursing
10 home out there in Washington State. And that resident in
11 this case, actually, signed his own arbitration agreement.
12 It was not someone signing on his behalf. He died and the
13 son and daughter -- I think the son or the daughter; I
14 can't recall which was the personal representative, they
15 brought claims against the nursing home. Same thing,
16 survival action, wrongful death action. The nursing home
17 moved to compel arbitration. And the Court did something
18 interesting. The Court said, I'm going to require you to
19 arbitrate the survival claims because when he died these
20 were claims of his estate and the estate is bound by this
21 arbitration agreement, so I'm going to make you arbitrate
22 that. But I'm going to split the wrongful death claims
23 because these statutory beneficiaries did not sign the
24 arbitration agreement and, therefore, they're not bound to
25 it.

1 Now, if we stop right there, it would seem to
2 support what Mr. Christian is saying, but if you go on and
3 look at the reasoning of the Court, the Court, in
4 discussing why it's doing what it's doing, refers to two
5 other cases, one a Ballard vs. Southwest Detroit Hospital
6 case out of Texas and one called In re: Labot Food Service
7 out of Michigan, I believe -- excuse me, Ballard's
8 Michigan, Labot is Texas.

9 And what the Court says -- and Your Honor, I
10 don't have an extra copy of this, but I'll be happy to
11 send it. The Court says that these cases are not
12 persuasive, both the Michigan Court of Appeals and Supreme
13 Court of Texas relied on the language of their state's
14 wrongful death statutes, which expressly condition
15 beneficiaries' claims on the decedent's right to maintain
16 his or her suit for injuries. The Michigan wrongful death
17 act, quote, establishes a cause of action where the
18 defendant's negligence or wrongful act would, quote, if
19 defendant had not ensued -- if death had not ensued had
20 entitled the party injured to maintain an action and
21 recover damages. The Texas statute had an equivalent
22 provision. Both Courts stated that the right to bring an
23 action under these statutes was derivative of the
24 decedent's right to have sued for his or her own injuries
25 immediately prior to death.

1 So the Court is saying in Washington, our
2 wrongful death statute is different than what they've got
3 in Texas and Michigan. They've got statutes that,
4 essentially, say that it's a derivative claim using this
5 quoted language. It then goes on to say the Michigan
6 Court of Appeals decided that an appointed PR, quote, is
7 bound by the arbitration agreement to the same extent the
8 decedent would have been bound had she survived. And then
9 it goes on to say that the Supreme Court of Texas held
10 that the beneficiaries were required to arbitrate the
11 wrongful death action because the decedent would have been
12 compelled to defend -- arbitrate his claims under the
13 agreement immediately prior to his death. And then the
14 critical language is, unlike the statutes that issue in
15 Ballard and In re: Labot, Washington's wrongful death
16 statutes do not express a condition if beneficiaries'
17 wrongful death claims on the decedent's right to maintain
18 a suit for injuries. In view of that difference, wrongful
19 death claims in Washington are not, quote, derivative, in
20 the same sense as was discussed in those cases.

21 What's important is if you compare the language
22 quoted from the Michigan wrongful death act to the South
23 Carolina wrongful death act, you find that they match.
24 The South Carolina wrongful death act -- and I'm just
25 quoting a portion of it, Whenever death of a person shall

1 be caused by the wrongful act, neglect or the fault of
2 another and the act, neglect or fault is such as would if
3 death had not ensued had entitled the party injured to
4 maintain an action and recover damages in respect thereof.
5 The person who would have been liable if death had not
6 ensued shall be liable to an action for damages. So the
7 Michigan case says if death had not ensued, had entitled
8 the party injured to maintain an action and recover
9 damages.

10 It's exactly the same thing. The case he's
11 relying on in Washington says hey, those are based on
12 those states' wrongful death statutes, which are different
13 from ours. And if you look at portions quoted from this,
14 they are exactly the same -- or that's the exact same
15 language from South Carolina's wrongful death statute. So
16 my contention is while it's an interesting argument and
17 while it would probably prevail in Washington, it's still
18 an interesting argument here, but it should not prevail in
19 South Carolina.

20 And I want to quote -- not quote, I just want to
21 reference one other case. It's a Florida case, Lazur vs.
22 Avonte. It's 44 S.E.3rd 1254. Essentially, held the same
23 thing under Florida's wrongful death statute as well. So
24 on that basis, Your Honor, I don't think the Whitall case
25 supports the position that he makes that the statutory

1 beneficiaries are not bound to this agreement. I think
2 that they are and I think our Court of Appeals agree.
3 Now, there's no Court of Appeals case on this in South
4 Carolina that I'm aware of or, apparently, the Plaintiff's
5 counsel is aware of so we have to look at these other
6 states. And, again, I think we prevail on that issue.

7 The other issue that Plaintiff's counsel raised
8 is the other Defendants who are not parties to the
9 arbitration agreement, their standing to enforce the
10 agreement. In other words, the only party who signed this
11 agreement was Grand Care acting as Faith Health Care
12 Center. The question is how about these other Defendants?
13 Are they allowed to enforce this as well? And the answer
14 to that is yes.

15 The American Bankers vs. Long, it's a Fourth
16 Circuit case, held a non-signatory could enforce the
17 arbitration provisions of the contract since the
18 Plaintiff's claims relied on the terms thereof. And a
19 non-signatory can enforce the terms of an arbitration
20 agreement when a signatory to the agreement relies upon
21 the terms of the agreement to assert its claims against a
22 non-signatory.

23 So, again, what we're dealing with here is we've
24 got a case that is underpinning as its contract and its
25 agreement between the nursing home facility and Ms.

1 Coleman. There's a breach of contract claim asserted.
2 All of this arises from this agreement between the parties
3 because the Plaintiff's had chosen to sue under these
4 agreements against all of these Defendants. The law is
5 very clear that these non-signatories do have standing to
6 assert arbitration.

7 Your Honor, the Plaintiff also raises the
8 statute of frauds in this case. The statute of frauds, in
9 my opinion, at least, is inapplicable. We've got a
10 written contract, so I don't think the statute of frauds
11 applies.

12 Another issue that the Plaintiff brings up is
13 that there are a handful of -- I guess counsel for some of
14 the Defendants has already left. I guess he isn't here to
15 speak up on this. But that some of the Defendants have
16 not moved to compel arbitration. I'm not aware that
17 there's any Defendants in the case -- and there's only, I
18 guess, a handful represented by Mr. Sonny Barnes, that any
19 of them oppose this. In fact, I sent Sonny an e-mail some
20 time ago that said I see that you're withdrawing this
21 motion. If you oppose to it, let me know. And I've never
22 heard anything. So it's my understanding that none of the
23 Defendants oppose moving this case to arbitration. And,
24 obviously, Ms. Georgie and I, our clients, have moved to
25 compel arbitration.

1 The Plaintiff relies in this context on a case
2 called Burrell vs. Heritage Care, LLC. And Burrell vs.
3 Heritage Care, LLC is a California case. In that case,
4 this Mr. Burrell was treated by a number of different
5 people. He went to a hospital, he went to a nursing home.
6 He went back to a different -- or he went back to the
7 hospital, he went to a different nursing home. He went to
8 two or three nursing homes and one or two hospitals and
9 was treated by a number of doctors. Ultimately, the
10 Plaintiff brought a case against all these folks alleging
11 negligence.

12 The Court in that case -- I don't believe this
13 case is relevant for purposes of this hearing. The Court
14 in that case was looking at this case, looking at the
15 idea, okay, you've got a nursing home that's got an
16 arbitration agreement. You've got some -- I think one of
17 the parties had an arbitration agreement. He had a number
18 of defendants with no arbitration agreements. And so the
19 Court -- the nursing home that moved in this case asked
20 that certain claims against it be moved to arbitration.
21 Didn't even ask that all the claims against it be moved to
22 arbitration, just asked that certain claims. And so what
23 the Court was left with was we've got a number of
24 defendants here, some of whom have arbitration agreements,
25 some of whom do not. You've got the person who's moving

1 to compel arbitration, actually, only moving to move
2 certain causes of action to arbitration, not all of them.
3 And so the Court is left with deciding does that make
4 sense to do that.

5 And the Court, in considering this, actually,
6 looks at it from a statutory perspective, something that
7 I'm not aware that we have in South Carolina. And the
8 statute in California provides that when there's a written
9 arbitration agreement, the trial courts order the parties
10 to arbitrate the controversy unless determines impertinent
11 part as follows: Quote, a party to the arbitration
12 agreement who's also a party to a pending court action or
13 a special proceeding with the third party arising out of
14 the same transaction or series of related transactions and
15 there's a possibility of conflicting rulings on common
16 issues of law and fact. So the Court here was construing
17 a California statute and reached the conclusion that hey,
18 there's a list as noted in that statute of running up
19 against time issues of law and fact that might be decided
20 differently. So the Court said no, we're not going to
21 allow you to take those certain claims to arbitration.
22 Again, that case is clearly distinguishable from ours in
23 that this case in South Carolina doesn't have a similar
24 statute and all the Defendants can move to arbitration.

25 THE COURT: Very good.

1 We're going to take a recess for just one
2 moment.

3 (WHEREUPON, a brief recess was taken.)

4 MR. WHITE: The last point I want to make
5 addresses one more case that Mr. Christian cited to in his
6 memo and that is a North Carolina case, Munn vs. Haymount
7 Rehabilitation and Nursing Center. Your Honor, this case
8 was cited by Mr. Christian for the proposition that -- or
9 I think the proposition that the South Carolina Health
10 Care consent act that I referred to earlier does not
11 support the fact that Ms. Coleman was properly signing in
12 her sister into the facility and the arbitration
13 agreement.

14 And, Your Honor, I would only point out very
15 briefly that in this North Carolina case, similar to the
16 same facts, personal representative signed an arbitration
17 agreement for, in this case, a mother into a nursing home.
18 And the question was what authority did the Plaintiff have
19 to sign the arbitration agreement on behalf of her mother.
20 The Court went through several arguments I don't think --
21 or several issues that I believe are relevant for our
22 case.

23 But one the Plaintiff cites to is a statute in
24 North Carolina called informed consent to health care
25 treatment or procedure. And I think Plaintiff tries to

1 draw a parallel and say well, in North Carolina -- and, in
2 fact, this Court said under their informed consent to
3 health care or treatment procedure, that was not
4 sufficient, that didn't give the daughter the right to
5 sign the arbitration agreement on behalf of her mother.
6 And I would simply point out that the distinguishing
7 factor between the North Carolina statute and the South
8 Carolina statute that I referred to earlier is the South
9 Carolina statute specifically provides for the placement
10 of a person into a skilled nursing facility. The North
11 Carolina statute doesn't address that. This statute is
12 pretty short and, basically, says that these are the
13 people who can make health care decision for people when
14 they are not able to make their own health care decisions.
15 And it doesn't say health care like we do in South
16 Carolina. So on that basis, it's distinguishable.

17 So in closing, Your Honor, we would respectfully
18 ask that, again, to the extent any of the Defendants are
19 not dismissed from personal jurisdiction, whatever
20 Defendants are left in the case that we be -- that the
21 case be stayed and that you compel arbitration.

22 THE COURT: Very good.

23 Mr. Christian.

24 MR. CHRISTIAN: Your Honor, if it's okay with
25 the Court, I would let Ms. Georgie go ahead because I

1 think that our responses may be the very same to both
2 motions. That way, we don't have to be redundant.

3 THE COURT: Ms. Georgie, be happy to hear from
4 you.

5 MS. GEORGIE: May I approach?

6 THE COURT: You can.

7 MS. GEORGIE: This is part of our motion that we
8 filed. It's the second exhibit, but it's the arbitration
9 agreement that I'll be referencing, just for you to follow
10 along.

11 As we noted, I represent Palmetto Faith
12 Operating, LLC, doing business as Faith Health Care, which
13 I'll just refer to as Faith Health Care for the purpose of
14 argument. But I will note for the Court that we filed a
15 motion and a memo in support, but that was on behalf of my
16 client Faith Health Care as well as Palmetto Health Care,
17 LLC. Since we have filed this, Palmetto Health Care, LLC,
18 has withdrawn their motion, so I'm just arguing on behalf
19 of the facility Faith Health Care, just for clarification
20 purposes for the Court.

21 Also, like Mr. White has said, the issues that
22 refers back to the two arbitration agreements are
23 essentially the same, so I will not rehash it with the
24 Court, I'll just briefly mention it. I want to frame the
25 issues with respect to my client as well as any that seem

1 are parallel. We have also fully briefed it with the
2 Court motion and memo and includes all of our arguments.

3 Like Mr. White pointed out, Ms. Brinson was a
4 resident at Faith Health Care from June 2nd, 2006, to
5 September 25th, 2006. And that was when his client, Grand
6 Care of South Carolina, was the licensed owner and
7 operator. And she signed an arbitration agreement prior
8 to admission during that period. Ms. Brinson was then
9 subsequently taken to the hospital until December 13th,
10 when she was readmitted to Faith on December 13th, 2006,
11 and she stayed there about 13 days. During the December
12 residency, my client, Palmetto Faith Operating was the
13 licensed owner and operator. And before her residency in
14 the December period, she also signed an arbitration
15 agreement. And that's the one I'll focus on today. But
16 just, you know, to frame it, there were two separate
17 admissions. Ms. Coleman was presented with two
18 arbitration agreements. She was explained the terms of
19 those two arbitration agreements and she made the decision
20 to sign those on two separate occasions.

21 Looking at our arbitration agreement, which was
22 signed on December 13th, 2006, it refers to -- it covers
23 all the claims that Plaintiff has made in this case. That
24 is shown through the second paragraph of this document
25 that says the facility of resident and/or resident

1 authorized representative understand and agree that any
2 legal dispute, controversy, demand or claim that arises
3 out of or relates to the resident admission agreement or
4 is any way connected to the resident's stay at the
5 facility shall be resolved exclusively by binding
6 arbitration and not by lawsuit or resort to other court
7 process.

8 The following paragraph kind of flushes out what
9 those any related to claims could encompass. That says
10 this agreement shall arbitrate -- this agreement to
11 arbitrate shall include, but not limited to any claim
12 based on payment, nonpayment, refund of services, breach
13 of contract, breach of fiduciary duty, fraud,
14 misrepresentation, common law or statutory negligence,
15 gross negligence, malpractice or claim based on departure
16 from accepted terms of medical or nursing home care. So
17 this agreement encompasses all the claims that Plaintiff
18 is making against my client, Palmetto Faith Operating.

19 Further, the following paragraph is -- kind of
20 leaves out who this agreement binds. And that states this
21 agreement shall be binding upon and shall include any
22 claims brought by or against the party's representatives,
23 agents, heirs, assigns, employees, managers, director,
24 shareholders, management companies, parent companies,
25 subsidiary companies or related business entities.

1 So as Mr. White pointed out, Ms. Coleman, as the
2 signatory, is bound by her claims -- or bound by this
3 agreement to arbitrate her claims. And even if there's an
4 argument Plaintiff raised in his response brief that, you
5 know, this agreement only is enforceable with respect to
6 Ms. Brinson because her name is at the top and she's the
7 one that's designated as the resident or resident's
8 agreement and that must be the party to this agreement,
9 Ms. Coleman is the one that signed the agreement. She's
10 the signatory, so her claims are covered by this
11 agreement.

12 Finally, the last point that I will kind of
13 bring out of this agreement is in bold capital letters
14 right before the signatory block, there is a provision
15 that states that parties understand and agree that by
16 entering into this arbitration agreement they are giving
17 up and waiving their constitutional right to have any
18 claim or dispute that falls within the scope of this
19 agreement decided in a court of law before a judge and
20 jury. So this is quite apparent to Ms. Coleman that any
21 claims that she makes that fall under the agreement which
22 we previously discussed would be arbitrated.

23 The intent of this agreement is clear. All
24 claims should be arbitrated. We feel that, you know,
25 based on South Carolina's authority of following the

1 Supreme Court and following their philosophy of enforcing
2 arbitration agreements, that this Court should compel
3 arbitration in this matter.

4 Two other things to bring up, Plaintiff argues
5 in his response brief that contrary to our policy that we
6 didn't explain the agreement to Plaintiff. I want to
7 restate the fact that this was the second arbitration
8 agreement as well as there's a document that is an exhibit
9 to our memo, Exhibit A, Bates number page 37, which Ms.
10 Ann Coleman signed again, basically, stating that I
11 received the arbitration agreement and it was explained to
12 me.

13 On the issue -- as Mr. White previously stated,
14 there is an issue of authority to sign on behalf of Ms.
15 Brinson, apparent authority or actual authority. We think
16 she has both. First, actual authority under the Adult
17 Health Care Consent Act, which states that -- basically,
18 provides the authority to certain people, including an
19 adult sister, that where a person is unable to consent to
20 health care decisions. And that includes the placement in
21 a nursing home. So we feel that she had actual authority.

22 Notwithstanding that, we think she had apparent
23 authority. In a case that was cited by Plaintiff, WDI
24 Meredith and Company vs. American Telethesis,
25 Incorporated, that test is -- one important piece of that

1 test is there's apparent authority that the principal
2 should realize its conduct that could create such a
3 belief. Our director of marketing and admissions for
4 Faith, she was the one that admitted Ms. Brinson during
5 the December residency. She submitted an affidavit in
6 support of our motion, which is included, which is
7 attached thereto. She stated that Plaintiff's executed
8 the agreement on behalf of Brinson. She believed
9 Plaintiff had the authority and Brinson did not object to
10 Ms. Coleman executing those documents on her behalf.

11 With respect to Plaintiff's argument, we would
12 agree, as Mr. White said, that she had the duty to read it
13 and now she can't come back to say that I didn't know what
14 was in the agreement because I didn't read it. On that
15 same kind of -- in that same vein is the equitable
16 estoppel argument. The Plaintiff can't have it both ways.
17 They can't bring a breach of contract claim based on her
18 residency at Faith Health Care and then say but I don't
19 like a piece of that.

20 Again, we're bringing this under the federal
21 arbitration act and we can go through the interstate
22 commerce issue if that needs to be addressed. I'm not
23 sure if that's going to be an issue.

24 And our final point is one that Mr. White also
25 touched on, but I also want to address because it was a

1 significant part of Plaintiff's response to our memo, it
2 was waiver. In South Carolina, citing two cases, Evans
3 vs. Accident Manufactured Homes and General Equipment &
4 Supply Company vs. Keller Rigging and Construction. The
5 test is that the person seeking to establish waiver has to
6 show prejudice through the undue burden caused by the
7 delay. Mere inconvenience is not enough. Two lines of
8 cases have bound waiver and non-waiver.

9 In one case, the found waiver, the Plaintiffs --
10 or, sorry, the parties litigated the case for two and a
11 half years, more than two and a half years, extensive
12 discovery, went to the Court over 40 times asking for the
13 Court to decide issues for them. That was -- they found
14 waiver in that instance. Another case, the General
15 Equipment & Supply Company found no waiver when the party
16 merely engaged in litigation for eight months and they did
17 engage in some limited discovery.

18 I don't think here we even rise to the level of
19 the General Equipment case because our first instance to
20 ask to compel arbitration was our answer. And we did
21 that. And we have not engaged in any discovery other than
22 limited discovery that Judge Seals requested on specific
23 arbitration issue and we have not used the Court's
24 resources other than this issue here to compel
25 arbitration.

1 We thank the Court for considering our motion
2 and I will definitely gladly answer questions that you may
3 have.

4 THE COURT: Thank you.

5 Mr. Christian.

6 MR. CHRISTIAN: If I may approach. More reading
7 material.

8 THE COURT: All right.

9 MR. CHRISTIAN: Your Honor, we've got several
10 arguments about this arbitration agreement, why we don't
11 think it's applicable here. The number one, the
12 overarching reason is that it's a basic tenant of contract
13 law that whoever enters into the contract has to have the
14 authority to enter into that contract. This arbitration
15 agreement is no doubt a contract. It's no different than
16 any other contract. In fact, I believe the agreement
17 itself says it's a contract and the admission documents
18 indicate that it's a contract.

19 So the whole issue is whether or not Ms. Coleman
20 had the authority and the power to enter into that
21 contract on behalf of Ms. Brinson. And if she didn't,
22 then it's null and void. She can't enter into that
23 contract on behalf of Ms. Brinson.

24 The Palmetto entities that Ms. Georgie
25 represents, I believe had been admitted in their answers

1 to request to admit that there was no power of attorney.
2 Mr. White's clients, I believe, have indicated -- while
3 they denied it in their request to admit, I think, in
4 essence, through the interrogatories and request for
5 production, you can see that there's not a power of
6 attorney. I believe they indicated that they're not aware
7 of one or some response like that. And, in fact, the
8 admission documents themselves reflect that there's no
9 power of attorney.

10 If we look at the admission documents -- and I
11 believe that Your Honor has the whole packet, which Mr.
12 White submitted to you. They were also at Exhibit No. 9
13 in response to the Defendant's motions to dismiss for lack
14 of personal jurisdiction. But if we go to page eight of
15 11, also bait stamped M. Brinson 704, there's a signature
16 there. It's say for the facility, then it says for the
17 responsible -- it says for the resident. That's left
18 blank. And for the responsible party, signed Ann Coleman.
19 Underneath that, it says if an individual other than the
20 resident signs on behalf of the resident, indicate the
21 relationship to the resident and obtain copies of relevant
22 documentation at the time of admission. The check mark
23 for conservatory guardian is not checked. Check mark for
24 medical or health care power of attorney is not checked.
25 Surrogate decision maker not checked. Relative,

1 obviously, she was a relative, but that wasn't identified
2 either.

3 And then if we go through the admissions
4 documents, there's a consent to treatment form. And it's
5 got the name of the resident, Mary Brinson, got the
6 facility representative's signature, legal representative,
7 it says, i.e. guardian, nobody signed. It says agent,
8 agent through health care power of attorney or surrogate
9 decision maker, there's no signature. And then finally,
10 responsible party, example, family member, that's where
11 she signed.

12 The nursing home was well aware that Ann Coleman
13 did not have a power of attorney. The nursing home is,
14 obviously, familiar with and deals with these issues on a
15 daily basis. They deal with arbitration agreements on a
16 daily basis. They deal with power of attorneys on a daily
17 basis. And they're, obviously, sophisticated business
18 folks that understood there was no power of attorney in
19 this case. And without a power of attorney, there's
20 absolutely no authority for her to enter into a contract
21 for Ann Coleman.

22 THE COURT: I'm sorry, go ahead.

23 MR. CHRISTIAN: That's okay. There's absolutely
24 no authority for her to enter into a contract for Ann
25 Coleman without a power of attorney.

1 Mr. White relies upon -- or both Defendants rely
2 upon the Adult Health Care Consent Act of South Carolina.
3 And in that act, it says that if there's no power of
4 attorney, et cetera, then the decision-maker for consent
5 to health care and treatment can be the next of kin. And
6 health care is defined in that act and -- let me find that
7 definition. It says health care is a procedure to
8 diagnose or treat a human disease, ailment, defect,
9 abnormality or complaint whether physical or mental
10 origin. It also includes provision of intermediate or
11 skilled nursing care, services for the rehabilitation of
12 the injured, disabled or sick persons and the placement or
13 removal from a facility that performs these forms of care.

14 So what health care, clearly, is is the ability
15 to put somebody into a hospital or a nursing home, the
16 ability to consent to health care treatment, but it is not
17 the ability to contract for someone in a separate legal
18 document that removes a constitutional right and a right
19 that they have at common law to a jury trial. She didn't
20 have the power to enter into an arbitration agreement on
21 behalf of her sister any more than she had the power to go
22 out and contract to sell her house or sell her car or do
23 anything of that nature.

24 In fact, I've been involved in cases where I
25 have a client that is a power of attorney for an

1 incompetent individual and we seek to get the medical
2 records for that incompetent individual and we forgot to
3 send a copy of the power of attorney with that request for
4 records and the facilities refused to provide the records.
5 Ann Coleman didn't even have a right to get her sister's
6 records in this case without a power of attorney, much
7 less enter into a contract for it.

8 The nursing home bill of rights that the
9 Defendants rely upon, that says that -- all that does,
10 Your Honor, is grant rights to the nursing home resident.
11 It says that they can consent to treatment. It in no way
12 authorizes the removal of rights, particularly,
13 authorizing someone else to take away their right to a
14 jury trial or their right to a trial at law and to remove
15 all their other rights that you would receive through a
16 trial.

17 The case that we cited, Your Honor, the Munn vs.
18 Haymount Rehab and Nursing Center, it is a very recent
19 North Carolina Court of Appeals case that just came out
20 very similar to the case that we're dealing with today.
21 They decided in the very same way and said that the Health
22 Care Consent Act only allows them to consent to health
23 care, not enter into a separate legal contract that takes
24 away their right to a jury trial.

25 The Defendants also argue that there was a

1 parent agency by virtue of Ms. Coleman signing the
2 admission documents. Well, the cases that they cite,
3 actually, support our position because what they say is
4 that for a parent agency to exist, that depends on the
5 intent of the principal. And in this case, the Defendants
6 have admitted that Ms. Brinson, the patient, was
7 incompetent at the time. So not only did she not exhibit
8 any action that could be construed as allowing Ms. Coleman
9 to hold herself out, there's no evidence that she did
10 that, but even if she did, she was incompetent and was
11 unable to do that. And so by virtue of their own
12 agreement that she was incompetent, there's no way that
13 she could exhibit any intent to allow Ms. Coleman to be
14 her agent. And, in fact, the Munn case says the same
15 thing that when you've got an incompetent person like
16 that, they can't exhibit and they're not exhibiting any
17 intent, that it depends on what the agent purports to
18 allow to happen. In this case, Mary Brinson indicated
19 nothing to indicate that Ann Coleman was her agent.

20 And the Defendants cite the Caraway case. And
21 that's the only case that I'm aware of, Your Honor, where
22 any Court has held that somebody that does not have a
23 power of attorney and enters into an arbitration agreement
24 that that's an enforceable agreement. And the difference
25 in the Caraway case, in addition to being -- kind of

1 standing alone in that regard, but the difference in the
2 Caraway case and in this particular case was, obviously,
3 in Caraway, the resident was competent because she later,
4 shortly thereafter, executed a power of attorney to the
5 person -- to the resident -- I mean, to the relative that
6 signed her in. She wouldn't have been able to execute a
7 power of attorney if she was not competent at that time.
8 Furthermore, the execution of that power of attorney, in
9 some sense, ratifies the fact that she was her agent.

10 And in this case, Ann Coleman was not appointed
11 conservator until nine months later, obviously, appointed
12 by the probate court with the submission of many documents
13 and the proof that she was incompetent. That was not any
14 ratification by the principal herself, Mary Brinson. So
15 it's significantly different from this case and not really
16 in standing with any of the other law that I'm aware of
17 that exist on this issue.

18 And so, Your Honor, based upon that, the fact
19 that there's no power of attorney or any other authority
20 for Ann Coleman to enter into this agreement for Mary
21 Brinson, we would submit that there's not a binding
22 arbitration agreement here.

23 But I will move on to our other issues, Your
24 Honor, and that would be that we don't believe that this
25 is enforceable against the statutory beneficiaries. The

1 Defendants have said that the arbitration agreement says
2 well, this binds everybody else, but it doesn't really
3 matter what the contract says. Because what matters is
4 whether or not she had the authority to sign on behalf of
5 those beneficiaries. And if she doesn't have the
6 authority to bind those beneficiaries, then she can't
7 enter into a contract for those beneficiaries. There's no
8 indication that she had authority to enter into a contract
9 for the beneficiaries and they're not parties to the
10 contract. And so we believe that, as this Court is fully
11 aware, the wrongful death action belongs to those
12 statutory beneficiaries.

13 And to suggest that Ms. Coleman as signing Mary
14 Brinson in and signing all these documents that are put in
15 front of her face telling her to sign each document as she
16 goes through, and that her signature to the arbitration
17 agreement binds all the statutory beneficiaries for whom
18 she has no authority to sign and she really has no
19 authority to sign for Mary Brinson in the first place, the
20 arbitration agreement exist for Mary Brinson, not the
21 statutory beneficiaries she doesn't have the authority to
22 waive that claim. And we believe that the Whitall case
23 out of Washington that Mr. White addressed supports that.
24 And it's my understanding, that I just recently learned
25 within the last two days, that Ohio case law has the same

1 very principle, that you can't waive the rights for the
2 wrongful death beneficiaries.

3 And so, then, Your Honor, I would move to the
4 third reason that we believe that the arbitration
5 agreement is invalid and void, and that is because it was
6 unconscionable. The Defendants say that we can't rely
7 upon the affidavits because it's parole evidence. I would
8 submit that we can use parole evidence to prove that it's
9 unconscionable and it was a void contract. But if we
10 can't, then we can't rely on the Defendants' affidavit
11 either because then they would be parole evidence as well.

12 In addressing the unconscionability aspect of
13 this, I would like to discuss two issues. Number one,
14 Your Honor, we submitted Ann Coleman's affidavit for this
15 hearing. And her affidavit, I believe, is clear that when
16 she entered into the arbitration agreement, number one,
17 she had been an employee of Faith Health Care Center
18 previously. She had never been involved in the admissions
19 process, did not know what an arbitration agreement was.
20 She said that she was told that she needed to sign all
21 these documents for her sister's admission to the
22 facility, which, assuming that is true, that's, actually,
23 illegal. It says that a facility cannot require
24 additional consideration from a patient or their family
25 for their admission to the facility. But she says that

1 they told her she had to sign all the documents for the
2 admission to the facility, that this was hurriedly gone
3 through. That the arbitration agreement was never
4 explained to her, that she didn't know what it was, and
5 that she was, essentially, emotionally and personally
6 upset about her sister's condition at this time. She had
7 no idea that she was giving up her rights to a jury trial,
8 that she was waiving her rights to discovery, that she was
9 waiving her sister's right to subpoena power and any other
10 rights that go along with having the right to a jury
11 trial.

12 And so, by virtue of that, the Defendants' own
13 policies and procedures, I believe, Your Honor, illustrate
14 that they were required to provide an informative
15 environment that would reduce the fears and anxieties of
16 the resident. And they admitted that this was a piece of
17 fundamental information, the arbitration agreement. So,
18 clearly, this should have been something that would have
19 been explained to her and something that she should have
20 received further explanation for. And because of the
21 manner in which it was presented to her, we believe that
22 it's procedurally unconscionable in the way that it was
23 executed.

24 We also believe that the arbitration agreement
25 is unconscionable because, as already noted, some of the

1 Defendants are not moving to compel arbitration. In fact,
2 as Ms. Georgie noted, one of the Defendants has withdrawn
3 their motion to compel arbitration. So not only has that
4 Defendant withdrawn their motion, other Defendants have
5 not filed a motion to compel arbitration, not part of
6 these motions. And it would be impossible to try the
7 arbitration matter on the very same case at the very same
8 time we're litigating in a separate form the case in front
9 of a jury. And even if one of those cases was stayed, it
10 would be very possible to have differing opinions and
11 different rulings on the very same issue. So not only is
12 it an impossibility, but that difficulty of litigating in
13 two separate forms was never explained to Ms. Coleman.
14 She was never aware and never explained that she might
15 have to arbitrate some of her claims over here and that
16 she might have to go spend money over here to litigate her
17 other claims and go to a separate trial. And so for that
18 reason, not only is it impossible, but it's also
19 unconscionable.

20 And the case that we cited, Burrell vs. Heritage
21 Care stands for that very same principle and that very
22 same issue and says because there's some defendants that
23 are trying to enforce arbitration and other defendants are
24 not going to arbitration, we're going to strike the whole
25 arbitration clause because it makes it an impossibility

1 and unconscionable. And we believe for that very reason
2 and the procedure on unconscionability that this
3 arbitration agreement is unconscionable and shouldn't be
4 valid.

5 And then, Your Honor, we also believe that the
6 Defendants have waived their right to arbitration by
7 virtue of their delay. As we indicated in our memorandum,
8 we requested all the documents concerning Mary Brinson's
9 admission to this facility when we first got this case
10 several years ago. And we were never provided with an
11 arbitration agreement or admissions agreements. Then we
12 moved and we filed the notice of intent to sue in July of
13 2009, about a year and a half ago, and the arbitration
14 issue was never raised. We mediated the notice of intent
15 for the medical malpractice case in January of 2010,
16 arbitration was never raised. The Defendants answered in
17 their complaint in May of 2010 and as a defense, they put
18 arbitration, but never moved to enforce or compel
19 arbitration until August 23rd, months later. And this, of
20 course, is, obviously, after we prepared for numerous
21 other motions. We spent substantial expense in serving
22 the Defendants for the actual lawsuit that was filed after
23 the notice of intent, after they had an opportunity to
24 raise arbitration. Yet, arbitration was never raised
25 until August 23rd of 2010. So we believe based upon

1 that -- we know that the FAA recognizes abandonment. We
2 know the South Carolina case law recognizes abandonment.
3 And we believe that based on that, the Defendants have
4 abandoned their claim to arbitration in this case.

5 And then finally, Your Honor, the last reason
6 that we believe that there's no arbitration is because of
7 the Defendants' differing positions in this case.
8 Numerous Defendants that are moving to compel arbitration
9 are also moving to be dismissed for lack of personal
10 jurisdiction. If these Defendants transacted no business
11 in South Carolina, if they never entered into a contract
12 in South Carolina, then there is no way they could be
13 party to this arbitration agreement. Or on the flip side,
14 if they are parties to the arbitration agreement, then
15 there, certainly, should be jurisdiction over them because
16 they entered into a contract in the State of South
17 Carolina regarding Ms. Brinson. And so for this reason,
18 we believe that due to their differing positions, the
19 arbitration agreement would be invalid.

20 So for all those reasons, we believe that the
21 Court could find that this arbitration agreement is
22 invalid and void. But, primarily, Your Honor, because
23 there is no power of attorney and no authority whatsoever
24 for Ms. Coleman to have entered into this agreement on
25 behalf of -- enter into this contract on behalf of her

1 sister, we would ask the Court to find that it's void and
2 to strike the arbitration provision and deny the
3 Defendants' motion to compel arbitration.

4 THE COURT: Anything further?

5 MR. WHITE: Very briefly, Your Honor. Your
6 Honor, very briefly, I think it is interesting in Ms.
7 Coleman's affidavit, the last paragraph of her affidavit,
8 she says if I would have known the facility and these
9 Defendants were going to cause the injuries which my
10 sister suffered which led to her death, I would never have
11 signed the arbitration agreement. Your Honor, she knew
12 she signed these things. She signed it once. She signed
13 it twice. She now has submitted an affidavit said, well,
14 if I had known it would have turned out this way, I never
15 would have signed that. That's why we have the parole
16 evidence rule, so people don't get to come in and play
17 fast and loose with discussions that were had three or
18 four years ago.

19 In terms of the -- Mr. Christian not finding out
20 about the arbitration agreement, I don't know why Ms.
21 Coleman never told him about that. She, obviously, signed
22 two of them. I assume she got copies when she signed it
23 along with the other admission paperwork, I don't know.
24 But, clearly, his client -- there was no question she knew
25 that she signed an arbitration agreement.

1 So in terms of the timing, when we had to file
2 our first pleading in response to the summons and
3 complaint, we, and Ms. Georgie's clients, asserted
4 arbitration as a defense. So I think the timeliness was
5 appropriate.

6 Your Honor, in terms of the splitting up of the
7 Defendants, again, I don't think that's an issue. The
8 other Defendants know that we have moved to compel
9 arbitration. They have not entered any objection, so I
10 don't see that they really have any basis on which to come
11 in -- or I don't think they're going to come in now and
12 say hey, we don't have to go to arbitration. I think they
13 would have done that by now if they had intended to.

14 Secondly, we are dealing with two separate
15 residencies separated by a couple of months. My clients
16 were involved in the first residency. I don't see how --
17 and I, certainly, support and agree with Ms. Georgie's
18 position that her clients are entitled to arbitration as
19 well, but I don't see how my clients, all of whom have
20 been sued as a result of that first residency, how they
21 should be hamstrung by other Defendants who were not a
22 part of that -- were not in any way related to that first
23 residency. So for that basis, I think that my clients
24 are, certainly, entitled to arbitration. I think hers
25 are, too, but I'm just saying there's a divide there.

1 Finally, Your Honor, there were a couple cases
2 that I referenced or that I described in this Whitall case
3 from foreign jurisdictions. The Ballard case, which is
4 327 Northwest 2nd 270, the Labot case, which is 279
5 Southwest 3rd 640, and the Lazur vs. Avonte case, 44
6 Southern 3rd 1254. I'm happy to make copies of those and
7 submit it to the Court if you need me to. Would you like
8 me to do that?

9 THE COURT: That would be good.

10 MR. WHITE: Thank you, Your Honor. Nothing
11 further.

12 MR. CHRISTIAN: Your Honor, just one more issue.
13 Mr. White stated that -- apparently, he's inferring, at
14 least, that Ms. Coleman knew what she was signing when she
15 signed the arbitration agreement. I think her affidavit
16 is clear that she did know that and it was never explained
17 to her and it was in a stack of papers as they went
18 through the admissions process, the stack of admissions
19 agreement and all the paperwork that she had to sign where
20 she was required to sign in numerous other places. But
21 even so, I really don't even think that affidavit even
22 matters to our first defense of arbitration. It might be
23 applicable to the remaining issues that I stated as to why
24 there should be no arbitration, but there really should be
25 no arbitration because she didn't have the authority to

1 enter into that. It doesn't matter really what she
2 thought or what she said. If she doesn't have the
3 authority to sign a contract on behalf of her sister, she
4 can't do it and it's null and void. And for those
5 reasons, we believe that it should be struck down.

6 And one other thing --

7 THE COURT: What do you think about the -- I
8 assume in your complaint you are alleging breach of
9 contract. What do you think about the general proposition
10 of law about not relying upon the contract and then
11 deleting out the arbitration clause?

12 MR. CHRISTIAN: Well, I think, first of all,
13 Your Honor, that there are terms that talk about if the
14 arbitration agreement is struck down and how there's a
15 separate contract. I don't believe that it is all one
16 contract. I believe the fact that our complaint of the
17 breach of contract of Ms. Brinson being admitted to this
18 facility and by virtue of being admitted and them
19 accepting payment for her admission and that they would
20 provide standard -- you know, adequate, quality care,
21 that's the breach of contract. There's nothing in
22 particular in the admissions agreement that we're saying
23 is a breach of contract. The breach of contract is that
24 she was admitted to the facility. They're receiving
25 payment to properly care for her and they didn't do that.

1 So that is the breach of contract. There's nothing
2 particular in the admissions agreement.

3 And I believe that the arbitration agreement is,
4 indeed, a separate contract. It's not required to be
5 entered into for admission to a facility. And over a
6 federal regulation specifically state that it cannot be a
7 condition -- that you can't require additional
8 consideration for admission to a facility. And for those
9 reasons, that is a separate contract and a separate
10 agreement --

11 THE COURT: How about an agreement merger
12 clause?

13 MR. CHRISTIAN: The merger clause?

14 THE COURT: Yeah, where it says that all the
15 documents relating to this transaction are put in one?

16 MR. CHRISTIAN: I'm aware of that, Your Honor,
17 but it also -- I think there's also a severability clause
18 in there as well. And to that extent, I don't believe
19 that the Defendants can claim estoppel because they were
20 aware that she didn't have a power of attorney. In order
21 for them to claim estoppel, they would have to say that
22 they were not aware that there was no power of attorney.
23 And they were, clearly, aware that there was no power of
24 attorney. They're not comparing apples and apples. The
25 elements of estoppel would be that they're not aware of

1 the existence of no power of attorney or the lack of
2 existence of a power of attorney and they were, clearly,
3 aware of that. It's indicated in the admissions documents
4 and they indicate that by virtue of no signature there.

5 THE COURT: With regards to the arbitration
6 matter, I'm -- would it be too much to put y'all to work
7 and get y'all to submit proposed orders?

8 MR. WHITE: Not at all, Your Honor.

9 MR. CHRISTIAN: No problem, Your Honor.

10 MS. GEORGIE: You want those orders three
11 separate ones, like me separate from Mr. White or can we
12 do that jointly?

13 THE COURT: I think they are two separate
14 agreements. I think probably it would be best for us to
15 have three different proposed orders.

16 MS. GEORGIE: We can easily do that.

17 MR. WHITE: And, Your Honor, forgive me, but in
18 terms of the Defendants who are not present here today,
19 how do you want to deal with them?

20 THE COURT: I'm not real sure that I can. I
21 think I respond to whatever is brought before me. I
22 imagine that if I ruled that the arbitration falls as void
23 because of the fact that they didn't have a power of
24 attorney and all the other reasons that we've talking
25 about for the past hour, then the other Defendants might

1 get an idea of what my inclinations are if I sign that
2 order either way, I assume. Am I not addressing your
3 question?

4 MR. WHITE: You are, Your Honor. I mean, it is
5 a --

6 THE COURT: I don't think I can -- I don't think
7 anybody's moved for it. I think if I do void the
8 arbitration agreement, I think it becomes clear where
9 we're at.

10 MR. WHITE: Right, but if you grant the motion,
11 if you submit it to arbitration, then are you saying it's
12 then incumbent upon the remaining Defendants to move and
13 make their arguments as well?

14 THE COURT: I think so, yes, sir.

15 MR. WHITE: All right.

16 MR. CHRISTIAN: And, Your Honor, just for the
17 record so it's clear, I just wanted to make sure that it's
18 clear on the record that my arguments and our defenses
19 would apply to both arbitration agreements and not just
20 Mr. White's and Ms. Georgie's.

21 THE COURT: Yeah, I think that is very clear.

22 MR. CHRISTIAN: Thank you.

23 THE COURT: And I haven't had an opportunity to
24 study the two agreements. They strike me as being pretty
25 much the same, but they are different, though, aren't

1 they?

2 MR. CHRISTIAN: Yes, Your Honor, there are two
3 different agreements. And we briefed the issue pretty
4 much very detailed. There's a brief for each of the
5 Defendants. Very similar, but just some very slight
6 differences based upon the different discovery responses,
7 slightly different policies and procedures and slightly
8 different agreement..

9 THE COURT: The only other thing that I want to
10 ask is that my computer -- I'm having some difficulties
11 with it. And I'm going to ask if each of y'all could
12 e-mail to my law clerk -- I'm having difficulties with my
13 computer. And I know I've got a lot of these memorandums,
14 I've read some of them. I'm, obviously, going to read all
15 of them before I make any of my rulings. But I would like
16 for, if you could -- would it be too difficult for y'all
17 to e-mail to my law clerk every memorandum that y'all have
18 submitted? That wouldn't take too much time, would it?

19 MR. WHITE: No, Your Honor.

20 MR. CHRISTIAN: No, Your Honor. You want the
21 attachments as well?

22 THE COURT: Do you have that in the format
23 where -- do you have to additionally scan that?

24 MR. CHRISTIAN: They should already be scanned
25 in our office, I would hope.

1 THE COURT: Well, very good. Let's send
2 everything that you've got. And that would be
3 mnettleslc@sccourts.org. And that's in the lawyers desk
4 book. And that way I'll be sure to get it. I think the
5 IT people are working on mine.

6 MR. WHITE: Your Honor, do you want these just
7 in the arbitration or other motions as well?

8 THE COURT: I want all of them.

9 MR. WHITE: Does it matter to you if we send by
10 e-mail to your law clerk or would you rather us -- does it
11 matter if we send it on a disk? If we're sending e-mails,
12 we have to send multiple to get it to come through.

13 THE COURT: I think disks would probably be
14 better --

15 MR. WHITE: I do, too.

16 THE COURT: That probably will delay me somewhat
17 in my decision-making process, but, certainly, by Monday
18 of the following week, I would probably be in the position
19 to make a ruling.

20 MR. CHRISTIAN: Your Honor, one little last
21 housekeeping issue. We filed as an exhibit to our most
22 recent supplemental memorandum in response to the
23 Defendants' motion to dismiss for lack of personal
24 jurisdiction. One of the -- no, actually, it was in
25 response to the arbitration issue, our memorandum in

1 opposition to their motion for arbitration. They had
2 provided to us policies and procedures under a
3 confidentiality agreement. We mistakenly forgot to file
4 those under seal. Those policies and procedures should be
5 filed under seal. They've got water marks all over them
6 that say void and we copied them. So I don't know what we
7 need to do from a housekeeping standpoint to correct that.

8 THE COURT: What do you have to say about it?

9 MR. WHITE: We would just ask that they be
10 placed under seal, Your Honor. I think Ms. Georgie has
11 some policy as well that were marked confidential, so same
12 thing. I mean, Your Honor, obviously, can view them, but
13 we just ask that those be under seal.

14 THE COURT: Madam Clerk, are you in a position
15 to do that?

16 THE CLERK: Yes, sir.

17 MR. CHRISTIAN: Thank you.

18 MR. WHITE: Thank you, Your Honor. And, Your
19 Honor, I also want to -- I think all of us want to thank
20 you for staying late. I know it's been a long afternoon.

21 MR. CHRISTIAN: Yes, sir. Thank you for your
22 time and we apologize for the torture.

23 THE COURT: Riveting arguments. That takes a
24 lot of time to prepare all that. Y'all have done a very
25 fine job.

END OF REQUESTED TRANSCRIPT

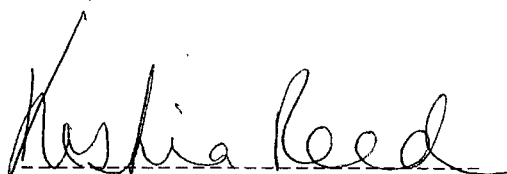
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 126, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Florence
County, South Carolina, on the 6th day of January, 2011.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 18th
day of October 2011.


Keshia Reed, Court Reporter

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
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FLORENCE
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MYRTLE BEACH

Carmelo B. Sammataro

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April 19, 2012

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Ann Coleman v. Mariner Health Care, Inc. et al.
Case Nos.: 2010-CP-21-835 and 836
TPGL File No.: 11034.101

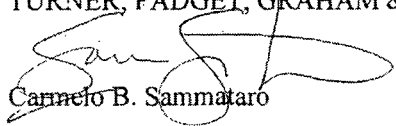
Dear Ms. Kitchings:

Please be advised that Appellant Palmetto Faith Operating, LLC, individually and d/b/a Faith Health Care Center, wishes to join in the Initial Brief and Designation Of Matter To Be Included In The Record On Appeal that were submitted by co-Appellants on March 20, 2012, and, therefore, will not be filing a separate Initial Brief or Designation of Matter. Thank you for your attention to this matter, and please do not hesitate to contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

CBS/tj

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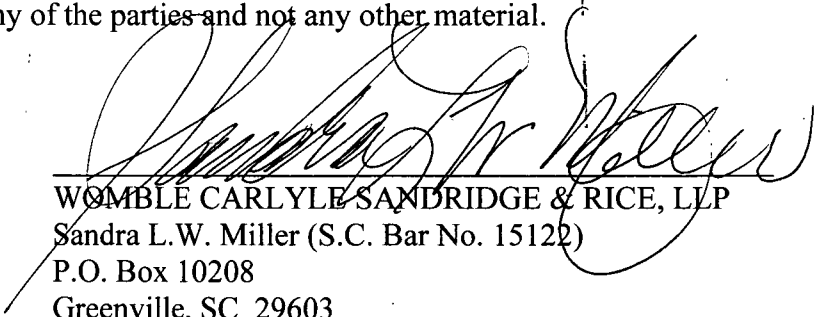
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

January 30, 2013



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Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Florence County
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case Nos. 2010-CP-21-00835 & -00836

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FEB 01 2013

SC Court of Appeals

Ann Coleman, individually, and as Personal Representative of the Estate of Mary Brinson,

Respondent,

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 Shavlsion 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,

Defendants,

Of whom 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 Administrative Services, LLC, SavaSeniorCare, LLC, SavaSeniorCare, Inc., National Senior Care, Inc., Palmetto Faith Operating, LLC, Individually and d/b/a Faith Health Care Center, Leonard Grunstein, an Individual, Murray Forman, an Individual, and Boyd P. Gentry, an Individual, are

Appellants.

PROOF OF SERVICE

I, Sandra L. W. Miller, of Womble Carlyle Sandridge & Rice, LLP, do hereby certify that a copy of the **RECORD ON APPEAL** was served on all other parties to this matter by depositing a copy of the same in the United States Mail, postage prepaid, on January 30, 2013, addressed as follows to counsel of record:

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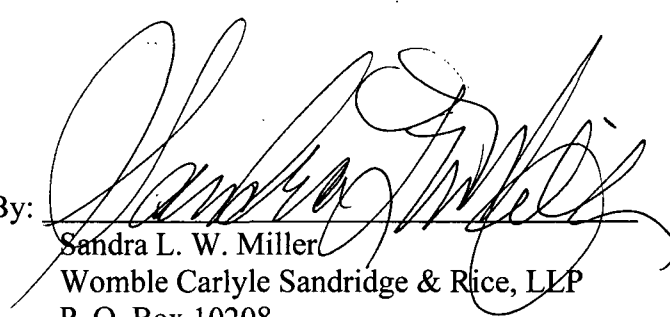
SC Court of Appeals

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