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**SC Court of Appeals**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY COURT OF COMMON PLEAS

R. LAWTON MCINTOSH, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2019-001290

Debbie Bannister, individually and as Personal Representative of  
the Estate of Hazel L. Clerk,.....Respondents

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and  
The Resting Place, LLC,.....Appellants

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**AMENDED  
RECORD ON APPEAL**

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September 9, 2020

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

v.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

2017-CP-04-00432

2017-CP-04-00431

**ORDER**

This matter is before the Court upon the motion of the Defendants Mary Sims Touchton, Faith Hope and Charity Retirement, LLC, and the Resting Place, LLC, for Dismissal of the entities Faith, Hope and Charity Retirement, LLC and The Resting Place, LLC, a judgment notwithstanding the verdict, a new trial absolute, and *Remittitur* of the jury's award of punitive damages.<sup>1</sup> This Court heard oral arguments of the parties and offered each party the opportunity to brief the matters before the Court. After considering carefully the arguments of counsel and the pleadings submitted to this Court, the Defendants' motions are hereby DENIED.

**I. Motion for Dismissal Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC**

Defendants argue that they are entitled to a dismissal of the two Limited Liability Corporation, (hereafter "LLC"), entities because they were not in existence at the time of Mrs. Clark's residency. Additionally, Defendants argue that because the entities are so entangled, that a dismissal of those entities would require a new trial. This Court disagrees.

As an initial matter, the Defendants raised the issue of the LLC entities being improper parties at the

<sup>1</sup> The Plaintiff's Motion for *Nisi Additur* was withdrawn.

conclusion of the case.<sup>2</sup> The date of the creation of these entities was known to the Defendants at all times since their creation. Plaintiff should not be prejudiced by the Defendants failure to disclose the information known to them at all times.

Mrs. Touchton testified that she operates the two facilities as a sole proprietorship and the only function of the LLC was to hold the DHEC license. The ownership of the buildings, the receipt of revenues from both facilities, the purchase of supplies, the payment of wages to employees, and every other operation is performed by Defendant Touchton in her individual capacity. Furthermore, because Mrs. Touchton is the sole member of both of the LLC's in this case, there is no prejudice in allowing the verdict and caption to stand with the named parties.

South Carolina has established that successor entities will be liable for the obligations of their predecessor entities in four situations:

- (1) When an agreement exists regarding assumption of debts;
- (2) Circumstances of the transaction equate to a consolidation or merger of the two entities;
- (3) The successor is a mere continuation of its predecessor (evidence of continuity of ownership *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc. No. 2016-UP-168, 2016 S.C. App. Unpub. LEXIS 204 (Ct. App. Apr. 6, 2016)* ; or
- (4) The transaction was fraudulent or intended to wrongfully defeat the creditors' claims.

*See Simmons v. Mark Lift Indus., Inc. 366 S.C. 308, 622 S.E.2d 213 (2005).*

The evidence presented at the trial of this case shows clearly that exceptions, 2, 3, and 4 exist here. This Court finds that Faith, Hope and Charity Retirement, LLC, and The Resting Place, LLC, are the successor entities of the previous d/b/a or sole proprietorship of Defendant Touchton and are liable for the obligations of the

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<sup>2</sup> Plaintiff pled that "at the time of the incidents giving rise to the Plaintiff's Complaints" Faith Hope and Charity Retirement, LLC and The Resting Place, LLC (collectively referred to as "Facility") were the entities to which Mrs. Clark was admitted and lived until her hospitalization. These allegations were admitted by the Defendants.

same. Therefore, this Court declines to dismiss the LLC entities or grant a new trial on this basis.

## II. Motion for Judgment Not Withstanding the Verdict

Defendants argue that they are entitled to a judgment notwithstanding the verdict, (hereafter "JNOV"), a new trial *nisi remittitur*, or new trial absolute based on the excessiveness of the jury's verdict. This Court disagrees.

"In ruling on motions for directed verdict or JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. See *Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 187-89, 617 S.E.2d 125, 129-30 (Ct. App. 2005). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Steinke v. South Carolina Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). If the evidence as a whole is susceptible of more than one reasonable inference, a jury issue is created and the motion should have been denied. See *Jinks v. Richland County*, 355 S.C. 341, 345, 585 S.E.2d 281, 283 (2003); *Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995). A motion for directed verdict may be granted only when the evidence raises no issue for the jury as to liability. See *Carolina Home Builders, Inc. v. Armstrong Furnace Co.*, 259 S.C. 346, 358, 191 S.E.2d 774, 779 (1972). In deciding whether to grant or deny a directed verdict motion, this Court is concerned only with the existence or nonexistence of evidence. See *Pond Place Partners, Inc.*, 351 S.C. at 15, 567 S.E.2d at 888.

In considering the evidence in a light most favorable to the Plaintiff, there was ample evidence presented at trial on each of the Plaintiff's claims on the issues of both liability, causation, and damages. The Defendants' Motion for JNOV is denied.

## III. Motion for New Trial Absolute and *Nisi Remittitur*

A new trial absolute should be granted only if the verdict is so grossly excessive that it shocks the

conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. *McCourt v. Abernathy*, 318 S.C. 301, 457 S.E.2d 603 (1995); *Rush v. Blanchard*, 310 S.C. 375, 426 S.E.2d 802 (1993). The jury's determination of damages is entitled to substantial deference. *McCourt, supra; Rush, supra*. "When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." See *Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530–31, 431 S.E.2d 557, 558 (1993) (citing *Easler v. Hejaz Temple*, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985)). "When the verdict indicates that the jury was unduly liberal or conservative in its view of the damages, the trial judge alone has the power to [alter] the verdict by the granting of a new trial nisi." *Id.* at 531, 431 S.E.2d at 558 (citing *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)). "However, when the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge and this Court to set aside the verdict absolutely." *Id.* (citing *Easler*, 285 S.C. at 356, 329 S.E.2d at 758). However, to grant such relief, the trial judge must state compelling reasons for invading the province of the jury. *Krepps v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996). DISCRETION

There was undisputed evidence presented at trial that Mrs. Clark's economic damages were \$134,860.55. The jury awarded the exact amount of Plaintiff's economic damages. There was undisputed evidence introduced at trial regarding Mrs. Clark's suffering including the medical records of Mrs. Clark and the testimony of witnesses including, but not limited to, the Plaintiff, Chrissy Shortridge, Dr. Rajiv Joglekar, and Dr. Brett Woodard.

Recoverable damages in a wrongful death action include pecuniary loss, mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship. See *Ballard v. Ballard*, 314 S.C. 40,

443 S.E.2d 802 (1994). There was undisputed evidence presented at trial that Mrs. Clark's family had suffered grief and sadness at the loss of Mrs. Clark. This Court finds that \$100,000 awarded by the jury for wrongful death damages is not so grossly excessive as to shock the conscience of the court.

Therefore this Court finds that the damages awarded by the jury for the Survival Action and Wrongful Death Action are not grossly excessive, were not based on any improper motive of the jury and were consistent with evidence presented at trial.

The Defendants have argued that the punitive damages awarded by the jury are so grossly excessive as to shock the conscience. This Court has applied the factors set forth in *Gamble v. Stevenson* in considering the appropriateness of the jury's award. 305 S.C. 104, 111-12, 406 S.E.2d 350, 354-55 (1991). This Court has considered the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) "other factors" deemed appropriate. "The amount of damages, actual or punitive, remains largely within the discretion of the jury, as reviewed by the trial judge." *Fennell v. Littlejohn*, 240 S.C. 189, 125 S.E.2d 408 (1962). The *Fennell* court stated that its review was limited. *Id.*

Defendants have argued that the jury's award exceeds their ability to pay. A defendant's inability to pay does not prohibit a jury from awarding punitive damages. "The ability of the defendant to pay the punitive damages awarded is only one of eight factors. "[T]he trial court shall conduct a post-trial review and may consider the following..." *Id.* (emphasis added). *Gamble supra*. The word "may" signifies that the *Gamble* factors are to provide guidance, not "hard and fast" requirements. *Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004). Moreover, the South Carolina Supreme Court has consistently held that an award of punitive damages "will not be overturned because a defendant is unable to pay. While a defendant's wealth is a relevant factor in assessing punitive damages, it is not necessarily controlling." *Hicks v. Herring*, 246 S.C.

429, 144 S.E.2d 151 (1965). There is "no requirement that the defendant be a man of means before the jury is justified in awarding punitive damages." *Norton v. Ewaskio*, 241 S.C. 557, 565, 129 S.E.2d 517, 521 (1963). A jury may consider a defendant's financial worth in determining the amount of punitive damages to award, but a jury is not required to make this consideration before it may award punitive damages. *Rogers, supra*.

The United States Supreme Court has held that "the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." See *State Farm Mut. Ins. Co. v. Campbell*, 123 S. Ct. 1513, 1521 (2003) (citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 116 S. Ct. 1589, 1598, 134 L. Ed. 2d 809 (1996)). The "economic bankruptcy" of a defendant "is not an absolute bar to the imposition of punitive damages in South Carolina under *Gamble, Hicks, Rogers, Charles, and Norton*. In a proper case, the jury may be instructed to consider "economic bankruptcy" as one factor in awarding punitive damages." *Welch v. Epstein*, 342 S.C. 279, 309, 536 S.E.2d 408, 424 (Ct. App. 2000).

Mrs. Touchton may or may not have the ability to pay a judgment. This Court finds that evidence was submitted to the jury that the Defendants were disingenuous about revenues and/or ability to pay. Moreover, the Defendants have attempted to transfer any meaningful assets in an effort to avoid liability to the Plaintiff.

The clear and convincing evidence presented at a trial of this case regarding the Defendants' conduct included, but is not limited to, the following:

- (1) Negligent hiring of untrained, unsupervised women with drug problems and criminal convictions – making them unsuitable to work around a population of vulnerable adults;
- (2) Failing to provide meaningful training in violation of clear DHEC regulations requiring training to occur annually;
- (3) Blatant and repeated violation of DHEC regulations with repeat offenses for violations regarding adequate staffing and training;

- (4) Blatant refusal to provide staffing consistent with DHEC regulations in an effort to cut costs;
- (5) Payment of wages below that which is required by law in an effort to cut costs and instruction of employees to be deceitful to DHEC inspectors if asked about staffing; and
- (6) Blatant and long-term efforts to minimize expenses at the cost of patient care and safety.

The clear and convincing evidence before the Court supports the modest punitive damage award that was awarded by the jury in this case. This Court finds that the punitive damage award is not grossly excessive, was not based on any improper motive of the jury and is consistent with evidence presented at trial. The Defendants' Motion for a new trial absolute or a new trial *nisi remittitur* is denied.

#### **IV. Conclusion**

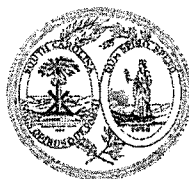
For the reasons set forth above, this Court DENIES the Defendants' Motions for (1) Dismissal of the entities Faith, Hope and Charity Retirement, LLC and The Resting Place, LLC; (2) a judgment notwithstanding the verdict; (3) a new trial absolute; and (4) a new trial *Nisi Remittitur* of the jury's award of damages.

IT IS SO ORDERED.

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**R. Lawton McIntosh, Circuit Court Judge**

July \_\_\_\_\_, 2019  
Anderson, South Carolina



Anderson Common Pleas

**Case Caption:** Debbie Bannister , plaintiff, et al VS Mary Sims Touchton ,  
defendant, et al  
**Case Number:** 2017CP0400432  
**Type:** Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

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STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

C.A. NO. 2017-CP-04-\_\_\_\_\_

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

v.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC

Defendants.

**COMPLAINT**

**(SURVIVAL ACTION)**

**JURY TRIAL DEMANDED**

The Plaintiff, complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

**Jurisdictional Allegations**

1. The Plaintiff, Debbie Bannister, is the duly appointed and acting Personal Representative of the Estate of her Mother, Hazel L. Clark, ("Mrs. Clark") within the meaning of South Carolina Code Ann. § 62-3-203. Ms. Bannister is a citizen and resident of the State of Georgia.
2. At the time of the incidents giving rise to the Plaintiff's Complaints, Mrs. Clark was a resident at the Community Residential Care Facility known as "Faith, Hope & Charity Retirement" which is located at 101 Coe Street in Anderson, the County of Anderson, State of South Carolina.
3. Debbie Bannister has the authority to pursue a claim on behalf of the Estate of her Mother pursuant to South Carolina Code Ann. § 62-3-203.
4. Upon information and belief, the Defendants, Faith, Hope and Charity Retirement, LLC, and The Resting Place, LLC, (collectively "Facility") are corporations organized and existing under the laws of the State of South Carolina, doing business in the County of Anderson and operating as a community residential care

facility.

5. Upon information and belief, Facility is a Community Residential Care Facility as defined by the Department of Health and Environmental Control Regulation 61-84.

6. At the time of the incidents giving rise to the Plaintiff's Complaint, Facility acted by and through its agents, contractors, and employees, for the purpose of carrying on its business as a Community Residential Care Facility and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.

7. Upon information and belief, the Defendant Mary Sims Touchton is a citizen and resident of the County of Anderson, State of South Carolina. Upon further information and belief, this Defendant owns, operates, directs, controls, leases, provides management and/or consulting services to, and otherwise maintains Facility. In particular, it is believed that this Defendant controls or directs the budget of Facility, including but not limited to the staffing of Facility.

8. At the time of the incidents giving rise to the Plaintiff's Complaint, this Defendant acted by and through its agents, contractors, and employees, for the purpose of carrying on its business as an Community Residential Care Facility and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.

9. The facts and circumstances alleged herein and giving rise to the Plaintiff's Complaint occurred in the County of Anderson, State of South Carolina.

10. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.

11. The Plaintiff asserts that the provisions of South Carolina Code Ann. § 15-36-100 do not apply in that the Defendants operate a Community Residential Care Facility, not covered by the applicable provision.

12. The Plaintiff asserts that the provisions of South Carolina Code Ann. §15-79-110 et seq. do not apply, in that §15-79-110(7) expressly excludes assisted living facilities, independent living facilities, and community residential care facilities.

13. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).

### Facts

14. Mrs. Clark was admitted to the Facility on or about July 10, 2015.

15. At the time Mrs. Clark was admitted to Facility, Facility promised her family that they would provide the care and treatment to Mrs. Clark which her conditions required, that they were able to meet her needs, that she was an appropriate candidate for the type of services they provided, and that they would provide a safe environment.

16. It appears that, in fact, despite the Facility's promises to Mrs. Clark's family, she was not an appropriate candidate for the care provided at the Facility. Physician assessment at admission reveals that Mrs. Clark was not able to enter and exit the facility without assistance and that she required the daily care of a registered or licensed nurse.

17. Upon admission, Mrs. Clark was known to have the following diagnoses: dementia, used a walker at all times for ambulation and needed monitoring during ambulation, fall risk and history of falls, COPD, hypertension, DVT, sleep apnea, and seasonal allergies.

18. Upon information and belief, Mrs. Clark verbally and physically neglected or abused by one or more of the employees or agents of the Defendants.

19. Upon information and belief, Facility failed to assess adequately Mrs. Clark's risk of falling and failed to adequately implement interventions to prevent falls.

20. Upon information and belief, Facility failed to transfer Mrs. Clark to a higher level of care when it became apparent that her needs so required.
21. Mrs. Clark suffered numerous falls and resulting injuries during her short stay at Facility.
22. Upon information and belief, Mrs. Clark suffered falls and injuries but was not provided immediate access to acute medical care.
23. Mrs. Clark suffered a contusion to the right eye orbit and forehead; fracture of the left wrist; and a fracture of her neck at C1, C5, C6, and C7.
24. Mrs. Clark was transferred to the ER by ambulance on August 27, 2015. At the time EMS responded to the scene, EMS reported that a staff member was "cursing" at the patient when EMS arrived.
25. Mrs. Clark was admitted to Anmed Health on or about August 27, 2015.
26. At the time of her admission to Anmed, she reported verbal abuse by staff.
27. Mrs. Clark was not a candidate for surgical intervention for her injuries and continued to deteriorate.
28. Mrs. Clark developed pneumonia and sepsis as a direct result of the injuries sustained at the Facility.
29. On or about September 7, 2015, the difficult decision was made to transfer Mrs. Clark to the Rainey Hospice House. She passed away five hours after transfer.
30. The Anderson County Coroner was contacted, an autopsy was performed, and the cause of death was determined to be thromboemboli following blunt force trauma.
31. Upon information and belief, the Defendants failed to report the abuse and neglect of Mrs. Clark to the South Carolina Long Term Care Ombudsman or the Department of Health and Environmental Control as they are so required.

**First Cause of Action  
(Negligence as to all Defendants)**

32. The relevant and consistent allegations contained in the above Paragraphs are incorporated by

reference as if stated verbatim herein.

33. During all times relevant, the Defendants' acts and omissions amounted to negligence, recklessness and a willful and wanton disregard for the health and well-being of Mrs. Clark.

34. As a direct and proximate result of the willful and wanton and reckless acts, as well as the gross negligence of the Defendants, Mrs. Clark sustained severe injuries, suffering, and death.

35. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover compensatory damages from the Defendants in an amount to be proven at trial.

36. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover punitive damages from the Defendants in an amount as to be determined by this Court.

37. Defendants were under a continuing duty both under the statutory and common law of South Carolina, to exercise reasonable care in their treatment of Mrs. Clark in light of her known conditions.

38. The Defendants were negligent, willful, wanton, reckless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Mrs. Clark in the following particulars:

- a. Failing to provide a safe environment for Mrs. Clark;
- b. Failing to prevent abuse and neglect of Mrs. Clark;
- c. Failing to protect Mrs. Clark from falling;
- d. Failing to recognize and provide an appropriate level of care for Mrs. Clark;
- e. Failing to use reasonable care with Mrs. Clark;
- f. Failing to train staff to meet the needs of patients such as Mrs. Clark;
- g. Failing to hire staff knowledgeable in the appropriate manner in which to care for patients such as Mrs. Clark;
- h. Failing to have appropriate nursing oversight for the care provided to patients, including Mrs. Clark;
- i. Failing to have appropriate oversight of employees to prevent abuse and neglect of patients such as Mrs. Clark;
- j. Failing to report abuse and neglect to state agencies when required to do so;
- k. Failing to provide acute care to Mrs. Clark when her condition so required it; and
- l. By other negligent or grossly negligent acts and/or omissions yet to be determined or defined; and,
- m. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

39. As a direct and proximate result of the negligence, recklessness, and gross negligence of the Defendants, as set forth above, Mrs. Clark, suffered emotional and physical pain, mental pain, mental anguish, emotional distress, and death.

40. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover damages, as set forth herein, from the Defendants in an amount as to be determined by this Court.

**Second Cause of Action  
(Gross Negligence)**

41. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

42. During all times material to the claims herein, the Defendants' acts and omissions amounted to gross negligence, recklessness, and a willful and wanton disregard for the safety and well-being of Mrs. Clark. The reckless, willful and wanton acts of the Defendants include, but are not limited to those set forth in the foregoing paragraphs.

43. As a direct and proximate result of the willful and wanton acts, as well as the gross negligence of the Defendants, Mrs. Clark sustained severe injuries, damages, and death.

44. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Mrs. Clark suffered damages as more fully set forth in the following paragraphs.

**Third Cause of Action  
(Negligence Per Se)**

45. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

46. In addition to the aforementioned negligent acts, the Defendants violated the South Carolina statutes and regulations, which establish the minimum standard of care to be followed by Community Residential Care Facilities, such violations being negligent and negligent *per se*.

47. These legislative and administrative regulations are designed to prevent injury to a class of persons to which Mrs. Clark belonged.

48. These violations by Defendants were the proximate cause of Mrs. Clark's injuries, damages, and death.

### **Damages**

49. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

50. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Mrs. Clark suffered numerous painful, severe, and grievous injuries to her body.

51. As a direct result of the Defendants' negligence and gross negligence, Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, has incurred the following:

- a. Medical, surgical, and hospital expenses;
- b. Conscious pain, suffering, and mental distress experienced by Mrs. Clark; and
- c. Punitive damages.

52. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover actual and punitive damages from the Defendants in an amount as to be determined by this Court.

### **Punitive Damages**

53. The relevant and consistent allegations contained in the above Paragraphs are incorporated by

reference as if stated verbatim herein.

54. The acts and/or omissions of the Defendants, as stated above, were willful, wanton, and/or in reckless disregard for the safety, well-being, and life of Mrs. Clark.

55. As a direct and proximate result of the willful, wanton, and/or reckless acts and omissions of the Defendants, Mrs. Clark suffered severe injuries and death.

56. The conduct of the Defendants as set forth above justifies an award of punitive damages for each and every claim of the Plaintiff as set forth herein.

**WHEREFORE**, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and prays for judgment against the Defendants, for actual and punitive damages in an amount to be determined by the jury which Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000.00) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP, for the costs of this action, and for such other and further relief as this court may deem just and proper.

{signature page follows}

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March 5, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431

**ANSWER**

The Defendants above named, answering the Complaint of the Plaintiff herein, would respectfully show unto the Court as follows:

1. Each and every allegation not admitted is denied.
2. Paragraphs 1 through 5 of the Plaintiff's Complaint are admitted.
3. Paragraph 6 states legal conclusions and is therefore denied.
4. Paragraph 7 is admitted.
5. Paragraph 8 states a legal conclusion and is therefore denied.
6. Paragraph 9 is admitted.
7. Paragraph 10 states a legal conclusion and is therefore denied.
8. Paragraphs 11 through 14 are admitted.
9. Paragraph 16 is denied.
10. So much of Paragraph 17 is admitted which alleges Mrs. Clark was known to have use of a walker, risk of falling if she did not use a walker, and allergies. She was approved by a physician for the level of care offered by Defendants.
11. Paragraphs 18 through 20 are denied.

12. Paragraph 21 is admitted to the extent Mrs. Clark fell due to not using her walker.
13. Paragraphs 22 through 24 are denied.
14. Paragraph 25 is admitted.
15. Paragraphs 26 through 28 are denied.
16. Upon information and belief, Paragraph 29 is admitted.
17. Paragraph 30 is admitted to the extent that decedent's cause of death was blunt force thromboembolic. Pneumonia was another cause.
18. Paragraphs 31 through 36 are denied.
19. Paragraph 37 is admitted.
20. Paragraphs 38 through 46 are denied.
21. Paragraph 47 calls for a legal conclusion and is denied.
22. Paragraphs 48 through 56 are denied.

**FOR A SECOND DEFENSE**

23. Defendants reallege all prior allegations as if fully repeated herein.
24. Hazel Clark and Debbie Bannister waived responsibility for injuries for falls and such waiver bars recovery.

**FOR A THIRD DEFENSE**

25. Defendants reallege all prior allegations as if fully repeated herein.
26. Defendants assert the doctrine of comparative negligence as an absolute bar or in the alternative a reduction in recovery by the Plaintiff.

**FOR A FOURTH DEFENSE**

27. Defendants reallege all prior allegations as if fully repeated herein.

28. Defendants will show that any damage sustained by Mrs. Clark at the hands of the Defendants, which is denied, was the result of additional intervening causes.

WHEREFORE, the Defendants above-named, having answered the Complaint of the Plaintiff herein, respectfully requests the Court to dismiss the Plaintiff's Complaint, to assess any damages based on comparable negligence, and for such other and further relief as the Court may deem just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister

O. W. Bannister (SC Bar No. 506)

401 Pettigru Street (29601)

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*Attorney for Defendants*

Greenville, South Carolina

May 13, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

v.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. NO. 2017-CP-04-\_\_\_\_\_

**COMPLAINT**

**(WRONGFUL DEATH)**

**JURY TRIAL DEMANDED**

The Plaintiff, complaining of the Defendants herein, would respectfully show unto the Court and allege as follows:

**Jurisdictional Allegations**

1. The Plaintiff, Debbie Bannister, is the duly appointed and acting Personal Representative of the Estate of her Mother, Hazel L. Clark, ("Mrs. Clark") within the meaning of South Carolina Code Ann. § 62-3-203. Ms. Bannister is a citizen and resident of the State of Georgia.
2. At the time of the incidents giving rise to the Plaintiff's Complaints, Mrs. Clark was a resident at the Community Residential Care Facility known as "Faith, Hope & Charity Retirement" which is located at 101 Coe Street in Anderson, the County of Anderson, State of South Carolina.
3. Debbie Bannister has the authority to pursue a claim on behalf of the wrongful death beneficiaries pursuant to South Carolina Code Ann. § 15-51-20.
4. Upon information and belief, the Defendants, Faith, Hope and Charity Retirement, LLC, and The Resting Place, LLC, (collectively "Facility") are corporations organized and existing under the laws of the State of South Carolina, doing business in the County of Anderson and operating as a community residential care

facility.

5. Upon information and belief, Facility is a Community Residential Care Facility as defined by the Department of Health and Environmental Control Regulation 61-84.

6. At the time of the incidents giving rise to the Plaintiff's Complaint, Facility acted by and through its agents, contractors, and employees, for the purpose of carrying on its business as a Community Residential Care Facility and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.

7. Upon information and belief, the Defendant Mary Sims Touchton is a citizen and resident of the County of Anderson, State of South Carolina. Upon further information and belief, this Defendant owns, operates, directs, controls, leases, provides management and/or consulting services to, and otherwise maintains Facility. In particular, it is believed that this Defendant controls or directs the budget of Facility, including but not limited to the staffing of Facility.

8. At the time of the incidents giving rise to the Plaintiff's Complaint, this Defendant acted by and through its agents, contractors, and employees, for the purpose of carrying on its business as an Community Residential Care Facility and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.

9. The facts and circumstances alleged herein and giving rise to the Plaintiff's Complaint occurred in the County of Anderson, State of South Carolina.

10. This action is brought for damages and other appropriate relief pursuant to the statutory and common law of the State of South Carolina.

11. The Plaintiff asserts that the provisions of South Carolina Code Ann. § 15-36-100 do not apply in that the Defendants operate a Community Residential Care Facility, not covered by the applicable provision.

12. The Plaintiff asserts that the provisions of South Carolina Code Ann. §15-79-110 et seq. do not apply, in that §15-79-110(7) expressly excludes assisted living facilities, independent living facilities, and community residential care facilities.

13. Jurisdiction and venue are proper in this judicial circuit pursuant to South Carolina Code Ann. § 15-7-30(B).

### Facts

14. Mrs. Clark was admitted to the Facility on or about July 10, 2015.

15. At the time Mrs. Clark was admitted to Facility, Facility promised her family that they would provide the care and treatment to Mrs. Clark which her conditions required, that they were able to meet her needs, that she was an appropriate candidate for the type of services they provided, and that they would provide a safe environment.

16. It appears that, in fact, despite the Facility's promises to Mrs. Clark's family, she was not an appropriate candidate for the care provided at the Facility. Physician assessment at admission reveals that Mrs. Clark was not able to enter and exit the facility without assistance and that she required the daily care of a registered or licensed nurse.

17. Upon admission, Mrs. Clark was known to have the following diagnoses: dementia, used a walker at all times for ambulation and needed monitoring during ambulation, fall risk and history of falls, COPD, hypertension, DVT, sleep apnea, and seasonal allergies.

18. Upon information and belief, Mrs. Clark verbally and physically neglected or abused by one or more of the employees or agents of the Defendants.

19. Upon information and belief, Facility failed to assess adequately Mrs. Clark's risk of falling and failed to adequately implement interventions to prevent falls.

20. Upon information and belief, Facility failed to transfer Mrs. Clark to a higher level of care when it became apparent that her needs so required.
21. Mrs. Clark suffered numerous falls and resulting injuries during her short stay at Facility.
22. Upon information and belief, Mrs. Clark suffered falls and injuries but was not provided immediate access to acute medical care.
23. Mrs. Clark suffered a contusion to the right eye orbit and forehead; fracture of the left wrist; and a fracture of her neck at C1, C5, C6, and C7.
24. Mrs. Clark was transferred to the ER by ambulance on August 27, 2015. At the time EMS responded to the scene, EMS reported that a staff member was "cursing" at the patient when EMS arrived.
25. Mrs. Clark was admitted to Anmed Health on or about August 27, 2015.
26. At the time of her admission to Anmed, she reported verbal abuse by staff.
27. Mrs. Clark was not a candidate for surgical intervention for her injuries and continued to deteriorate.
28. Mrs. Clark developed pneumonia and sepsis as a direct result of the injuries sustained at the Facility.
29. On or about September 7, 2015, the difficult decision was made to transfer Mrs. Clark to the Rainey Hospice House. She passed away five hours after transfer.
30. The Anderson County Coroner was contacted, an autopsy was performed, and the cause of death was determined to be thromboemboli following blunt force trauma.
31. Upon information and belief, the Defendants failed to report the abuse and neglect of Mrs. Clark to the South Carolina Long Term Care Ombudsman or the Department of Health and Environmental Control as they are so required.

**First Cause of Action  
(Negligence as to all Defendants)**

32. The relevant and consistent allegations contained in the above Paragraphs are incorporated by

reference as if stated verbatim herein.

33. During all times relevant, the Defendants' acts and omissions amounted to negligence, recklessness and a willful and wanton disregard for the health and well-being of Mrs. Clark.

34. As a direct and proximate result of the willful and wanton and reckless acts, as well as the gross negligence of the Defendants, Mrs. Clark sustained severe injuries, suffering, and death.

35. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover compensatory damages from the Defendants in an amount to be proven at trial.

36. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover punitive damages from the Defendants in an amount as to be determined by this Court.

37. Defendants were under a continuing duty both under the statutory and common law of South Carolina, to exercise reasonable care in their treatment of Mrs. Clark in light of her known conditions.

38. The Defendants were negligent, willful, wanton, reckless and grossly negligent and deviated from the expected standards of skill, care, and learning in their treatment of Mrs. Clark in the following particulars:

- a. Failing to provide a safe environment for Mrs. Clark;
- b. Failing to prevent abuse and neglect of Mrs. Clark;
- c. Failing to protect Mrs. Clark from falling;
- d. Failing to recognize and provide an appropriate level of care for Mrs. Clark;
- e. Failing to use reasonable care with Mrs. Clark;
- f. Failing to train staff to meet the needs of patients such as Mrs. Clark;
- g. Failing to hire staff knowledgeable in the appropriate manner in which to care for patients such as Mrs. Clark;
- h. Failing to have appropriate nursing oversight for the care provided to patients, including Mrs. Clark;
- i. Failing to have appropriate oversight of employees to prevent abuse and neglect of patients such as Mrs. Clark;
- j. Failing to report abuse and neglect to state agencies when required to do so;
- k. Failing to provide acute care to Mrs. Clark when her condition so required it; and
- l. By other negligent or grossly negligent acts and/or omissions yet to be determined or defined; and,
- m. In such other particulars as may be ascertained through discovery procedures undertaken pursuant to the South Carolina Rules of Civil Procedure.

39. As a direct and proximate result of the negligence, recklessness, and gross negligence of the Defendants, as set forth above, Mrs. Clark, suffered emotional and physical pain, mental pain, mental anguish, emotional distress, and death.

40. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover damages, as set forth herein, from the Defendants in an amount as to be determined by this Court.

**Second Cause of Action  
(Gross Negligence)**

41. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

42. During all times material to the claims herein, the Defendants' acts and omissions amounted to gross negligence, recklessness, and a willful and wanton disregard for the safety and well-being of Mrs. Clark. The reckless, willful and wanton acts of the Defendants include, but are not limited to those set forth in the foregoing paragraphs.

43. As a direct and proximate result of the willful and wanton acts, as well as the gross negligence of the Defendants, Mrs. Clark sustained severe injuries, damages, and death.

44. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Mrs. Clark suffered damages as more fully set forth in the following paragraphs.

**Third Cause of Action  
(Negligence Per Se)**

45. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

46. In addition to the aforementioned negligent acts, the Defendants violated the South Carolina statutes and regulations, which establish the minimum standard of care to be followed by Community Residential Care Facilities, such violations being negligent and negligent *per se*.

47. These legislative and administrative regulations are designed to prevent injury to a class of persons to which Mrs. Clark belonged.

48. These violations by Defendants were the proximate cause of Mrs. Clark's injuries, damages, and death.

### Damages

49. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

50. As a direct and proximate result of the negligence, gross negligence, recklessness, willfulness and wantonness of the Defendants herein, Mrs. Clark suffered numerous painful, severe, and grievous injuries to her body.

51. As a direct result of the Defendants' negligence and gross negligence, Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, has incurred the following:

- a. Grief and sorrow;
- b. Loss of companionship;
- c. Mental shock and suffering;
- d. Deprivation of the use and comfort of Hazel Clark's society;
- e. Loss of Hazel Clark's experience, knowledge, and judgment in managing her affairs;
- f. Funeral and burial expenses; and
- g. Punitive damages.

52. Debbie Bannister, as Personal Representative of the Estate of Hazel L. Clark, is entitled to recover actual and punitive damages from the Defendants in an amount as to be determined by this Court.

### Punitive Damages

53. The relevant and consistent allegations contained in the above Paragraphs are incorporated by reference as if stated verbatim herein.

54. The acts and/or omissions of the Defendants, as stated above, were willful, wanton, and/or in reckless disregard for the safety, well-being, and life of Mrs. Clark.

55. As a direct and proximate result of the willful, wanton, and/or reckless acts and omissions of the Defendants, Mrs. Clark suffered severe injuries and death.

56. The conduct of the Defendants as set forth above justifies an award of punitive damages for each and every claim of the Plaintiff as set forth herein.

**WHEREFORE**, the Plaintiff demands a trial by jury pursuant to Rule 38(b) of the South Carolina Rules of Civil Procedure (SCRCP), and prays for judgment against the Defendants, for actual and punitive damages in an amount to be determined by the jury which Plaintiff alleges to be in excess of One Hundred Thousand and No/100 (\$100,000.00) Dollars actual damages, such allegation being made for the purpose set forth in Rule 30(h) of the SCRCP, for the costs of this action, and for such other and further relief as this court may deem just and proper.

{signature page follows}

s/ Jennifer Spragins Burnett

Jennifer Spragins Burnett, Esq. (SC Bar 69617)

**Harbin & Burnett, LLP**

2124 North Highway 81 (29621)

P.O. Box 35

Anderson, SC 29622-0035

(864) 964-0333

(864) 964-0930 (Facsimile)

*Attorneys for the Plaintiff*

s/Steven B. LeFevre

Steven B. LeFevre, Esq. (SC Bar No. 72822)

**Krause Moorhead & Draisen, PA**

207 E. Calhoun Street

Anderson, South Carolina 29621

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(864) 964-0788 facsimile

*Attorneys for the Plaintiff*

Anderson, South Carolina  
March 5, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

Debbie Bannister, individually and as Personal  
Representative of the Estate of Hazel L. Clark,

C.A. No.: 2017-CP-04-00432

Plaintiff,

**ANSWER**

vs.

Mary Sims Touchton; Faith, Hope and Charity  
Retirement, LLC; and The Resting Place, LLC,

Defendants.

The Defendants above named, answering the Complaint of the Plaintiff herein, would respectfully show unto the Court as follows:

1. Each and every allegation not admitted is denied.
2. Paragraphs 1 through 5 of the Plaintiff's Complaint are admitted.
3. Paragraph 6 states legal conclusions and is therefore denied.
4. Paragraph 7 is admitted.
5. Paragraph 8 states a legal conclusion and is therefore denied.
6. Paragraph 9 is admitted.
7. Paragraph 10 states a legal conclusion and is therefore denied.
8. Paragraphs 11 through 14 are admitted.
9. Paragraph 16 is denied.
10. So much of Paragraph 17 is admitted which alleges Mrs. Clark was known to have use of a walker, risk of falling if she did not use a walker, and allergies. She was approved by a physician for the level of care offered by Defendants.
11. Paragraphs 18 through 20 are denied.

12. Paragraph 21 is admitted to the extent Mrs. Clark fell due to not using her walker.
13. Paragraphs 22 through 24 are denied.
14. Paragraph 25 is admitted.
15. Paragraphs 26 through 28 are denied.
16. Upon information and belief, Paragraph 29 is admitted.
17. Paragraph 30 is admitted to the extent that decedent's cause of death was blunt force thromboembolic. Pneumonia was another cause.

18. Paragraphs 31 through 36 are denied.
19. Paragraph 37 is admitted.
20. Paragraphs 38 through 46 are denied.
21. Paragraph 47 calls for a legal conclusion and is denied.
22. Paragraphs 48 through 56 are denied.

**FOR A SECOND DEFENSE**

23. Defendants reallege all prior allegations as if fully repeated herein.
24. Hazel Clark and Debbie Bannister waived responsibility for injuries for falls and such waiver bars recovery.

**FOR A THIRD DEFENSE**

25. Defendants reallege all prior allegations as if fully repeated herein.
26. Defendants assert the doctrine of comparative negligence as an absolute bar or in the alternative a reduction in recovery by the Plaintiff.

**FOR A FOURTH DEFENSE**

27. Defendants reallege all prior allegations as if fully repeated herein.

28. Defendants will show that any damage sustained by Mrs. Clark at the hands of the Defendants, which is denied, was the result of additional intervening causes.

WHEREFORE, the Defendants above-named, having answered the Complaint of the Plaintiff herein, respectfully requests the Court to dismiss the Plaintiff's Complaint, to assess any damages based on comparable negligence, and for such other and further relief as the Court may deem just and proper.

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister

O. W. Bannister (SC Bar No. 506)

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*Attorney for Defendants*

Greenville, South Carolina

May 13, 2017

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Debbie Bannister, individually and as Personal  
Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity  
Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

**2017CP0400432**  
**2017CP0400431**

MOTION FOR NISI ADDITUR

The Plaintiff, Debbie Banister, individually and as Personal Representative of the Estate of Hazel Clark, moves this Court for an Order *Nisi Additur*

"When a party moves for a new trial based on a challenge that the verdict is either excessive or inadequate, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." *See Allstate Ins. Co. v. Durham*, 314 S.C. 529, 530–31, 431 S.E.2d 557, 558 (1993) (citing *Easler v. Hejaz Temple*, 285 S.C. 348, 356, 329 S.E.2d 753, 758 (1985)). "When the verdict indicates that the jury was unduly liberal or conservative in its view of the damages, the trial judge alone has the power to [alter] the verdict by the granting of a new trial nisi." *Id.* at 531, 431 S.E.2d at 558 (citing *O'Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993)). "However, when the verdict is so grossly excessive or inadequate that the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury was moved or actuated by passion, caprice, prejudice, or other considerations not found in the evidence, it becomes the duty of the trial judge and this Court to set aside the verdict absolutely." *Id.* (citing *Easler*, 285 S.C. at 356, 329 S.E.2d at 758). However, to grant such relief, the trial judge must state compelling reasons for invading the province of the jury. *Krepps*

*v. Ausen*, 324 S.C. 597, 607, 479 S.E.2d 290, 295 (Ct. App. 1996).

In the case of *Riey v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (SC 2015), the trial court granted the plaintiff's request for *nisi additur* on the basis that the jury verdict of \$300,000 included \$228,000 in economic damages and therefore contained an inadequate award of noneconomic damage. In his order granting the motion, the trial judge gave a thorough recitation of the "uncontested, and emotionally compelling" evidence, including testimony and supporting exhibits that demonstrated both the pecuniary losses suffered by the Riley family and also the noneconomic compensable elements of loss that are recoverable in a wrongful death action. See *Garner v. Houck*, 312 S.C. 481, 488, 435 S.E.2d 847, 850 (1993) (finding damages for mental shock and suffering, wounded feelings, grief, sorrow, and loss of society and companionship are recoverable in a wrongful death action) (citing *Smith v. Wells*, 258 S.C. 316, 188 S.E.2d 470 (1972)). "[T]he trial judge found the jury's verdict to be inadequate, yet not shockingly so, such that a new trial absolute would be warranted. In light of the trial judge's correct application of the law and the extensive evidence on the proper elements of damages in a wrongful death action, the trial court did not abuse its discretion in granting the *nisi additur*." *Id.*

The Court of Appeals reversed the trial judge's order, on the basis that a *nisi additur* is not available where any amount of noneconomic damages is awarded. See *id.* The Supreme Court found this to be an error of law. See *id.* "While the presence of some amount of noneconomic damages may be a factor mitigating against the granting of a new trial *nisi additur*, there is no categorical rule prohibiting a *nisi additur* where a jury verdict includes some measure of noneconomic damages. The court of appeals' new *nisi additur* categorical rule formulation would remove the discretion vested in trial court judges. Here, the trial court judge was well aware that the jury verdict included an award of noneconomic damages, yet he articulated compelling circumstances that he believed warranted the *nisi additur*. Under this record, we cannot say the trial judge abused his discretion. We reverse the court of appeals and reinstate the trial court's grant of the

*new trial nisi additur." Id.*

In the case at hand, the undisputed evidence was that Mrs. Clark's economic damages were \$134,860.55. See Damages Summary attached as Exhibit A entered into Evidence as Exhibit 13 and without objection by the Defendants. The jury awarded the exact amount of Plaintiff's economic damages. See *Verdict Form*, attached as Exhibit B. Therefore, it is an unavoidable conclusion that the jury awarded no damages to Mrs. Clark for her physical and mental pain and suffering. There was undisputed evidence introduced at trial regarding Mrs. Clark's suffering including the medical records of Mrs. Clark and the testimony of witnesses including the Plaintiff, Mandy Wright, Chrissy Shortridge, Dr. Joglekar, and Dr. Woodard. The failure by the jury to make an award for noneconomic damages constitutes a compelling reason to invade the jury's province.

For the reasons set forth above, the Plaintiff respectfully requests that the Court issue an Order for *Nisi Additur*, setting forth the compelling reasons for the same; and make a finding of noneconomic damages in favor of Mrs. Clark's Estate.

s/ Jennifer Burnett

Jennifer Spragins Burnett, Esq.  
Harbin & Burnett, LLP  
2124 North Highway 81 (29621)  
P.O. Box 35  
Anderson, SC 29622-0035  
(864) 964-0333  
*Attorney for Plaintiff*

Anderson, SC  
April 15, 2019

**Damages Summary**

**Armed Health**

**\$131,179.52**

**Hospice of the Upstate**

**\$1,481.68**

**Medshore Ambulance Service**

**\$569.35**

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**\$134,860.55**

**Sosebee Mortuary and Crematory Expenses**

**\$6,271.70**

**Molina Direct Memorials**

**\$1,500.00**

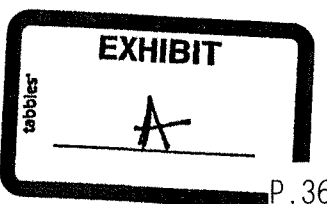
**McDougald Cemeteries**

**\$285.00**

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**\$8,056.70**

**Total: \$142,917.25**



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431 and  
2017-CP-04-00432

**NOTICE OF MOTION AND MOTION  
FOR JUDGMENT NOTWITHSTANDING  
THE VERDICT AND MOTION FOR NEW  
TRIAL**

**TO: DEBBIE BANNISTER INDIVIDUALLY AND AS PR OF THE ESTATE OF HAZEL L. CLARK, PLAINTIFF, IN CARE OF HER ATTORNEYS JENNIFER SPRAGINS BURNETT, ESQ., STEVEN B. LeFEVRE, ESQ. and ANTHONY L. HARBIN, ESQ.:**

**YOU WILL PLEASE TAKE NOTICE** that the Defendants Faith, Hope and Charity Retirement, LLC and The Resting Place, LLC, by and through their undersigned counsel, hereby moves this Court, for Judgment Notwithstanding the Verdict or New Trial pursuant to S.C.R.C.P. Rule 50(b).

Defendant Touchton moves pursuant to Rule 59, S.C.R.C.P., for an order setting aside the verdict and judgment in this action and granting a new trial.

This motion will be based on all pleadings, evidence presented at trial, testimony provided in trial and the attached Memorandum in support incorporated herein by reference.

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister

O. W. Bannister

SC Bar No. 506; Fed. ID No. 1184

401 Pettigru Street (29601)

P. O. Box 10007 (29603)

Greenville, South Carolina

Phone: (864) 298-0084; Fax: (864) 298-0146

*Attorney for Defendants*

April 20, 2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431 and  
2017-CP-04-00432

**MOTION FOR *NISI REMITTITUR***

**TO: DEBBIE BANNISTER INDIVIDUALLY AND AS PR OF THE ESTATE OF HAZEL L. CLARK, PLAINTIFF, IN CARE OF HER ATTORNEYS JENNIFER SPRAGINS BURNETT, ESQ., STEVEN B. LeFEVRE, ESQ. and ANTHONY L. HARBIN, ESQ.:**

**YOU WILL PLEASE TAKE NOTICE** that the Defendants, without waiving their rights under their Motion for Judgment Notwithstanding the Verdict and For a New Trial, move this Court for an Order *Nisi Remittitur* and for the Court to conduct a due process hearing on the punitive damages award.

Grounds for the motion for an Order *Nisi Remittitur* are that the \$300,000 combined award of punitive damages was so grossly excessive that it should shock the conscience of the Court and clearly indicates the award was the result of caprice, passion, prejudice or other corrupt motives.

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister

O. W. Bannister

SC Bar No. 506; Fed. ID No. 1184

401 Pettigru Street (29601)

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Phone: (864) 298-0084; Fax: (864) 298-0146

*Attorney for Defendants*

April 20, 2019

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431 and  
2017-CP-04-00432

**MEMORANDUM IN SUPPORT OF  
MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT  
AND MOTION FOR NEW TRIAL**

Mary Touchton (“Touchton”) was the licensed administrator of two licensed community residential care facilities, “The Resting Place” and the other named “Faith, Hope and Charity”. In July, 2015, Hazel Clark (“Clark”) became a resident of Faith, Hope and Charity.

On August 25, 2015, Clark suffered a fall at Faith, Hope and Charity from which she was hospitalized and later died in September, 2015.

In July, 2016, Touchton incorporated The Resting Place and Faith, Hope and Charity as limited liability companies. (Attachment A)

In November, 2017, Debbie Bannister, the duly appointed Personal Representative of the Estate of Clark filed two lawsuits, a wrongful death action and a survival action. She named as defendants The Resting Place, LLC, Faith, Hope and Charity, LLC, and Touchton. These suits were consolidated and came up for trial on April 8, 2019.

Both suits have nearly identical allegations which included the following:

Upon information and belief, the Defendants Faith, Hope and Charity Retirement, LLC, and The Resting Place, LLC, (collectively “Facility”) are corporations organized and existing under the laws of the State of South Carolina and doing business in the County of Anderson and operating as a Community Residential Care Facility. (Paragraph 4)

This allegation was admitted.

Paragraph 6 of both Complaints alleged:

At the time of the incidents giving rise to the Plaintiff's Complaint, Facility acted by and through its agents, contractors, and employees, for the purpose of carrying on its business as a Community Residential Care Facility and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.

Defendants denied the allegation of Paragraph 6 of each Complaint.

The Plaintiff called Touchton as a witness in their case in chief. In questioning Touchton as to her assets to respond to a punitive damage claim, the Plaintiff brought out that Touchton had incorporated The Resting Place, LLC, and Faith, Hope and Charity, LLC, in July of 2016 which was ten months after the death of Clark.

Out of the presence of the jury Touchton moved to have The Resting Place, LLC and Faith, Hope and Charity, LLC, dismissed from the lawsuit. The Court did not remove these Defendants from the lawsuit.

The Defendants moved for a directed verdict at the close of the Plaintiff's case and the close of all evidence.

In a charge conference, Defendants moved to have separate verdict forms for each Defendant. The Plaintiff resisted that request and the Court ruled that there was an amalgamation of interests between Faith, Hope and Charity, LLC, The Resting Place, LLC and Touchton, that made it appropriate to find that a general verdict form against all three would be proper.

Next, the Court charged the jury and after deliberation the jury found all Defendants liable and awarded damages in the survival action and wrongful death action as well as punitive damages in each action.

As a matter of law the Defendants Faith, Hope and Charity, LLC and The Resting Place, LLC, cannot be held liable for tort claims that happened prior to coming into existence. Hansen v. Fields Co., 409 S.C. 541, 763 S.E.2d 31 (2014). Both LLC's are entitled to a judgment notwithstanding the verdict. The Hansen court held:

... the rule among those jurisdictions that have considered the issue is that a "corporation is not liable for torts that its promoters committed before it came into existence." [citations omitted] (rejecting the plaintiff's tort claim against a corporation for the acts of its promoters on the basis of the rule that a corporation is not liable for the tortious acts of its promoters)...

Touchton is entitled to a new trial because the jury was allowed to consider the evidence against these Defendants collectively, two Defendants of which were improper parties.

Stated another way, the jury may have found one or both LLC's negligent but not Touchton. To let the verdict stand against Touchton for torts a jury may not have found would be improper. The only proper way to fairly resolve this matter is to grant Touchton a new trial.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC

s/ O. W. Bannister  
O. W. Bannister  
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*Attorney for Defendants*

April 20, 2019

# Business Entities Online

File, Search, and Retrieve Documents Electronically

ELECTRONICALLY FILED - 2019 Apr 20 1:59 PM - ANDERSON - COMMON PLEAS - CASE#2017CF0400431

## FAITH HOPE AND CHARITY RETIREMENT LLC

### Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

### Important Dates

Effective Date: 07/01/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

### Registered Agent

Agent: MARY SIMS TOUCHTON

Address: 4130 HWY 24  
ANDERSON, South Carolina 29624

### Official Documents On File

| Filing Type  | Filing Date |
|--------------|-------------|
| Organization | 07/01/2016  |

For filing questions please contact us at 803-734-2158

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# Business Entities Online

File, Search, and Retrieve Documents Electronically

ELECTRONICALLY FILED - 2019 Apr 20 1:59 PM - ANDERSON - COMMON PLEAS - CASE#2017CPD0400431

## RESTING PLACE LLC THE

### Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

### Important Dates

Effective Date: 07/01/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

### Registered Agent

Agent: MARY SIMS TOUCHTON

Address: 4130 HWY 24  
ANDERSON, South Carolina 29624

### Official Documents On File

| Filing Type  | Filing Date |
|--------------|-------------|
| Organization | 07/01/2016  |

For filing questions please contact us at 803-734-2158

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal  
Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity  
Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431 and  
2017-CP-04-00432

**MEMORANDUM**

The jury awarded \$134,860.55 to the Plaintiff in the survival action and \$100,000.00 in the wrongful death action for a total of \$234,860.55. The jury then awarded \$100,000 punitive damages in the survival action and \$200,000 punitive damages in the wrongful death action for a total of \$300,000 in punitive damages. Thus, the total verdict is \$534,860.55.

The United States Supreme Court has held that excessive punitive damage awards violate due process. The South Carolina Supreme Court responded to the due process issue by listing factors a judge may consider when reviewing a punitive damage award. These factors are known as “Gamble” factors. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991). The factors are: 1) defendant’s degree of culpability; 2) duration of the conduct; 3) defendant’s awareness or concealment; 4) the existence of similar past conduct; 5) likelihood the award will deter the defendant or others from like conduct; 6) whether the award is reasonably related to the harm likely to result from such conduct; 7) defendant’s ability to pay; and 8) “other factors” deemed appropriate.

1. As to the degree of culpability, the pleadings and evidence presented was that the deceased was verbally and physically abused by one of the employees of the Defendant, not

adequately assessed for risk of falling, not prevented from falling, and finally not transferred to a higher care facility.

Any physical abuse was not by Mary Touchton and Mary Touchton fired the employee on learning of verbal abuse.

The court should weigh the fact that the deceased's level of care was determined by a doctor and social worker, not Mary Touchton. In addition, the deceased was at the Defendant's facility for only six weeks. She suffered three falls during that period, two were at the facility and the third was with her daughter off the premises.

2. As to the duration of the conduct, the verbal abuse was stopped as soon as Mary Touchton learned of it. There was no evidence of verbal abuse except that one incident. No incident of physical abuse by Mary Touchton was presented.

3. As to awareness, Mary Touchton became aware of the fall risk on admitting the deceased. Precautions were taken to prevent falls by placing a walker next to the deceased's bed and placing a sign to use the walker in a prominent place. Staff was instructed to remind the deceased to use her walker.

While Mary Touchton admitted she knew one employee used foul language, she fired that employee upon learning that employee used foul language toward a resident.

Nothing was done to conceal any facts.

4. As to the existence of past conduct, there was no evidence of other physical or verbal abuse of other residents. There was no evidence of inadequate prevention of falling of other patients. There was no evidence that other patients were not transferred to a higher level of care.

5. As to the likelihood the punitive damages will deter Mary Touchton or other defendants from similar conduct, it is submitted that the jury award will most likely put Mary Touchton out of business.

6. As to the award being reasonably related to the harm likely to result from such conduct, no one, including Mary Touchton, wanted the deceased to fall or be verbally or physically abused.

7. As to Mary Touchton's ability to pay, her affidavit reflects she will be near bankruptcy.

8. As to other factors the court shall consider, Mary Touchton's facilities were at the bottom end of affordable residential care facilities. One would expect a sparse environment for \$1,380 a month that furnished meals, personal hygiene, sleeping quarters, prescription drug supervision, and clean clothing.

Finally, as the pleadings and evidence reflect, the deceased was in failing health due to old age and other factors not attributed to Mary Touchton.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC



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*Attorney for Defendants*

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431 and  
2017-CP-04-00432

**MEMORANDUM IN SUPPORT OF  
MOTION FOR JUDGMENT  
NOTWITHSTANDING THE VERDICT  
AND MOTION FOR NEW TRIAL**

Mary Touchton (“Touchton”) was the licensed administrator of two licensed community residential care facilities, “The Resting Place” and the other named “Faith, Hope and Charity”. In July, 2015, Hazel Clark (“Clark”) became a resident of Faith, Hope and Charity.

On August 25, 2015, Clark suffered a fall at Faith, Hope and Charity from which she was hospitalized and later died in September, 2015.

In July, 2016, Touchton incorporated The Resting Place and Faith, Hope and Charity as limited liability companies. (Attachment A)

In November, 2017, Debbie Bannister, the duly appointed Personal Representative of the Estate of Clark filed two lawsuits, a wrongful death action and a survival action. She named as defendants The Resting Place, LLC, Faith, Hope and Charity, LLC, and Touchton. These suits were consolidated and came up for trial on April 8, 2019.

Both suits have nearly identical allegations which included the following:

Upon information and belief, the Defendants Faith, Hope and Charity Retirement, LLC, and The Resting Place, LLC, (collectively “Facility”) are corporations organized and existing under the laws of the State of South Carolina and doing business in the County of Anderson and operating as a Community Residential Care Facility. (Paragraph 4)

This allegation was admitted.

Paragraph 6 of both Complaints alleged:

At the time of the incidents giving rise to the Plaintiff's Complaint, Facility acted by and through its agents, contractors, and employees, for the purpose of carrying on its business as a Community Residential Care Facility and therefore, is liable for the negligent acts of its agents, contractors, and employees under the theories of non-delegable duty and *respondeat superior*.

Defendants denied the allegation of Paragraph 6 of each Complaint.

The Plaintiff called Touchton as a witness in their case in chief. In questioning Touchton as to her assets to respond to a punitive damage claim, the Plaintiff brought out that Touchton had incorporated The Resting Place, LLC, and Faith, Hope and Charity, LLC, in July of 2016 which was ten months after the death of Clark.

Out of the presence of the jury Touchton moved to have The Resting Place, LLC and Faith, Hope and Charity, LLC, dismissed from the lawsuit. The Court did not remove these Defendants from the lawsuit.

The Defendants moved for a directed verdict at the close of the Plaintiff's case and the close of all evidence.

In a charge conference, Defendants moved to have separate verdict forms for each Defendant. The Plaintiff resisted that request and the Court ruled that there was an amalgamation of interests between Faith, Hope and Charity, LLC, The Resting Place, LLC and Touchton, that made it appropriate to find that a general verdict form against all three would be proper.

Next, the Court charged the jury and after deliberation the jury found all Defendants liable and awarded damages in the survival action and wrongful death action as well as punitive damages in each action.

As a matter of law the Defendants Faith, Hope and Charity, LLC and The Resting Place, LLC, cannot be held liable for tort claims that happened prior to coming into existence. Hansen v. Fields Co., 409 S.C. 541, 763 S.E.2d 31 (2014). Both LLC's are entitled to a judgment notwithstanding the verdict. The Hansen court held:

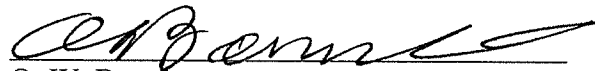
... the rule among those jurisdictions that have considered the issue is that a "corporation is not liable for torts that its promoters committed before it came into existence." [citations omitted] (rejecting the plaintiff's tort claim against a corporation for the acts of its promoters on the basis of the rule that a corporation is not liable for the tortious acts of its promoters)...

Touchton is entitled to a new trial because the jury was allowed to consider the evidence against these Defendants collectively, two Defendants of which were improper parties.

Stated another way, the jury may have found one or both LLC's negligent but not Touchton. To let the verdict stand against Touchton for torts a jury may not have found would be improper. The only proper way to fairly resolve this matter is to grant Touchton a new trial.

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC



O. W. Bannister

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Phone: (864) 298-0084; Fax: (864) 298-0146

*Attorney for Defendants*

April 20, 2019

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

2017CP0400432  
2017CP0400431

PLAINTIFF'S POST TRIAL MEMORANDUM

The Plaintiff, Debbie Banister, individually and as Personal Representative of the Estate of Hazel Clark, respectfully submits this Memorandum in Support of its Motion for *Nisi Additur* and in Opposition to Defendants' Motion for a New Trial, Dismissal of Faith, Hope and Charity Retirement, LLC and The Resting Place, LLC, and *Remittitur* of the jury's award of punitive damages. For the reasons stated below, as well as the reasons set forth in the Plaintiff's Motion as well as the arguments made at the hearing, both of which are incorporated by reference here, the Plaintiff requests that the Court grant her request for *additur* and deny the Defendants' Motions.

I. Nisi Additur

Plaintiff is entitled to an *additur* for all the reasons set forth in her Motion. However, in the event that the Court is inclined to provide the option of *additur* or a new trial absolute, consistent with *Vinson v. Hartley*, 324 S.C. 389, 477 S.E.2d 215 (Ct. App. 1996), the Plaintiff withdraws her Motion for *Additur* and will accept the finding of the jury.

## II. Dismissal of LLC Entities

Defendants argue that they are entitled to a dismissal of the two Limited Liability Corporation entities because they were not in existence at the time of Mrs. Clark's residency. Additionally, Defendants argue that because the entities are so entangled, that a dismissal of those entities would require a new trial. This is preposterous.

As an initial matter, the Defendant only raised the issue of the LLC entities being improper parties at the conclusion of the case.<sup>1</sup> The date of the creation of these entities was known to the Defendants at all times since their creation. However, Defendants apparently chose to withhold that information from their counsel. Plaintiff should not be prejudiced by the Defendants failure to disclose the information known to her at all times.

Moreover, South Carolina Rule of Civil Procedure 17 provides that "[n]o action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest." Because Mrs. Touchton testified that she operated the two facilities as sole proprietorships and the only function of the LLC was to hold the DHEC license, there could be no prejudice to Mrs. Touchton to substitute "Mary Touchton d/b/a Faith, Hope, and Charity" and "Mary Touchton d/b/a The Resting Place" as Defendants in this case. The ownership of the buildings, the receipts of revenues from both facilities and essentially every operation is performed by Defendant Touchton in her individual capacity.

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<sup>1</sup> Plaintiff pled that "at the time of the incidents giving rise to the Plaintiff's Complaints" Faith Hope and Charity Retirement, LLC and The Resting Place, LLC (collectively referred to as "Facility") were the entities to which Mrs. Clark was admitted and lived until her hospitalization. These allegations were admitted by the Defendants.

Furthermore, because Mrs. Touchton is the sole member of both of the LLC's in this case, there is no prejudice in allowing the verdict and caption to stand with the named parties.

South Carolina has established that successor entities will be liable for the obligations of their predecessor entities in four situations:

- (1) When an agreement exists regarding assumption of debts;
- (2) Circumstances of the transaction equate to a consolidation or merger of the two entities;
- (3) The successor is a mere continuation of its predecessor (evidence of continuity of ownership *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.* No. 2016-UP-168, 2016 S.C. App. Unpub. LEXIS 204 (Ct. App. Apr. 6, 2016) ; or
- (4) The transaction was fraudulent or intended to wrongfully defeat the creditors' claims.

*See Simmons v. Mark Lift Indus., Inc.* 366 S.C. 308, 622 S.E.2d 213 (2005).

The evidence presented at the trial of this case shows clearly that exceptions, 2, 3, and 4 exist here. Therefore, the Plaintiff asserts that she is entitled to an Order finding that Faith, Hope and Charity Retirement, LLC, and The Resting Place, LLC, are the successor entities of the previous d/b/a or sole proprietorship entities and are liable for the obligations of the same.

### III. Application of the Gamble Factors

Defendants have inexplicably submitted an Affidavit of Mrs. Touchton that sets forth her assets. This evidence is not properly submitted at this stage of the case. The Defendants were well aware that evidence was being admitted regarding Mrs. Touchton's net worth during the trial of this case.<sup>2</sup> The Defendants were

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<sup>2</sup> "[S]ince information as to his worth was a matter peculiarly within the defendant's possession, he should not be heard to complain that the jury made its award without such information, where he himself testified and did not offer it." *See Rogers v. Florence Printing Co.*, 233 S.C. 567, 575, 106 S.E.2d 258, 262 (1958).

well aware that punitive damages were being requested during the trial. The Defendants put forth evidence in their case in chief regarding Mrs. Touchton's assets and net worth. It would be improper for the Court to now consider an Affidavit submitted after the close of evidence in the case. The Defendants had ample opportunity to put forth any evidence they determined was necessary during the trial of this case. If Plaintiff were to attempt to put forth additional evidence at this time, it should be correctly excluded and stricken from the record.

The Plaintiff agrees that the factors set forth in *Gamble v. Stevenson* would apply to a post-trial consideration regarding the appropriateness of an award. 305 S.C. 104, 111-12, 406 S.E.2d 350, 354-55 (1991). Those factors that may be considered by a court include (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) "other factors" deemed appropriate. "The amount of damages, actual or punitive, remains largely within the discretion of the jury, as reviewed by the trial judge." *Fennell v. Littlejohn*, 240 S.C. 189, 125 S.E.2d 408 (1962). The *Fennell* court stated that its review was limited. *Id.*

A defendant's inability to pay does not prohibit a jury from awarding punitive damages. "The ability of the defendant to pay the punitive damages awarded is only one of eight factors. As part of its holding in *Gamble*, this Court opined, "the trial court shall conduct a post-trial review and may consider the following..." *Id.* (emphasis added). The word "may" signifies that the *Gamble* factors are to provide guidance, not "hard and fast" requirements. *Frazier v. Badger*, 361 S.C. 94, 603 S.E.2d 587 (2004). Moreover, the South Carolina Supreme Court has consistently held that an award of punitive damages "will not be overturned because a defendant is unable to pay. While a defendant's wealth is a relevant factor in assessing punitive damages, it is not necessarily controlling." *Hicks v. Herring*, 246 S.C. 429, 144 S.E.2d 151 (1965). There is "no

requirement that the defendant be a man of means before the jury is justified in awarding punitive damages." *Norton v. Ewaskio*, 241 S.C. 557, 565, 129 S.E.2d 517, 521 (1963). A jury may consider a defendant's financial worth in determining the amount of punitive damages to award, but a jury is not required to make this consideration before it may award punitive damages. *Rogers, supra*.

The United States Supreme Court has held that "the most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant's conduct." See *State Farm Mut. Ins. Co. v. Campbell*, 123 S. Ct. 1513, 1521 (2003) (citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575, 116 S. Ct. 1589, 1598, 134 L. Ed. 2d 809 (1996)). The "economic bankruptcy" of a defendant "is not an absolute bar to the imposition of punitive damages in South Carolina under *Gamble, Hicks, Rogers, Charles, and Norton*. In a proper case, the jury may be instructed to consider "economic bankruptcy" as one factor in awarding punitive damages." *Welch v. Epstein*, 342 S.C. 279, 309, 536 S.E.2d 408, 424 (Ct. App. 2000).

Mrs. Touchton may or may not have the ability to pay a judgment. The Plaintiff asserts that the Defendant has been dishonest in many ways regarding her assets and ability to pay. Moreover, the Defendant has attempted, fraudulently, to transfer any meaningful assets in an effort to avoid liability to the Plaintiff. The Defendants have violated repeatedly and in several different ways the South Carolina Fraudulent Conveyance Statute (Statute of Elizabeth), codified at S.C. Code Ann. § 27-23-10 (2007).

The clear and convincing evidence presented at a trial of this case regarding the Defendants' conduct included, but is not limited to, the following:

- (1) Negligent hiring of untrained, unsupervised women with drug problems and criminal convictions – making them unsuitable to work around a population of vulnerable adults;
- (2) Failing to provide meaningful training in violation of clear DHEC regulations requiring training to occur annually;

- (3) Blatant and repeated violation of DHEC regulations with repeat offenses for violations regarding adequate staffing and training;
- (4) Blatant refusal to provide staffing consistent with DHEC regulations in an effort to cut costs;
- (5) Payment of wages below that which is required by law in an effort to cut costs and instruction of employees to be deceitful to DHEC inspectors if asked about staffing; and
- (6) Blatant and long-term efforts to minimize expenses at the cost of patient care and safety.

The clear and convincing evidence before the Court supports the modest punitive damage award that was given by the jury in this case. The Plaintiff alleges that the Defendants' Motion for *Remittitur* should be denied.

#### IV. Conclusion

For the reasons set forth above and in her previous pleadings, the Plaintiff respectfully requests that the Court issue an Order for *Nisi Additur*, and an Order denying the Defendants' Post Trial Motions.

s/ Jennifer Burnett

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Harbin & Burnett, LLP  
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(864) 964-0333  
*Attorney for Plaintiff*

Anderson, SC  
May 14, 2019

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Debbie Bannister, individually and as Personal  
Representative of the Estate of Hazel L. Clark,

Plaintiff,

v.

Mary Sims Touchton; Faith, Hope and Charity  
Retirement, LLC; and The Resting Place, LLC

Defendants.

IN THE COURT OF COMMON PLEAS

2017-CP-04-00432

2017-CP-04-00431

PLAINTIFF'S FIRST INTERROGATORIES TO  
DEFENDANTS

**TO: OSCAR W. BANNISTER, ESQ., ATTORNEY FOR THE ABOVE NAMED DEFENDANTS**

The Plaintiff, Debbie Banister, hereby submits the following Interrogatories pursuant to Rule 33(b) of the South Carolina Rules of Civil Procedure and requests that you serve upon the undersigned counsel within thirty (30) days of service, answers thereto:

1. Indicate whether the Plaintiff has correctly named these Defendants. Without regard to liability, indicate whether the entities identified by the Plaintiff are the correct legal entities with respect to the allegations of the Plaintiff's Complaints. In the event that a change of ownership of the facility has occurred, set forth the correct legal entities with respect to the allegations of the Plaintiff's Complaints.
2. Provide the full names and last known addresses and telephone numbers of all persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements. For each witness identified, indicate whether the individual is or was an employee of the Defendant(s). This Interrogatory should be deemed to include, but not be limited to, the identity of every caregiver, including agents and employees of the Defendants, known to have provided care and treatment to Hazel Clark and/or who has signed Mrs. Clark's chart as having provided care and treatment to Mrs. Clark during her residency at Defendant's facility.
3. For each such person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses or provide a copy of any written or recorded statements taken from such witnesses.
4. Identify all witnesses, including experts and physicians, you intend to subpoena or otherwise present at the trial in this case.

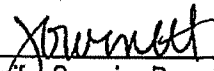
5. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relates to the defense in the case.
6. Identify by bates number or description, every document you intend to admit into evidence at the trial in this case.
7. Provide the names and addresses for the persons employed by or working at any of Defendants' facilities during the residency of Hazel Clark in the following capacities: Medical Director; Director or Supervisor of Nurses; Assistant Director or Supervisor of Nurses; Nurse; caregiver; CNA; or Med Tech; or any other title of employees of these Defendants.
8. Provide the name and address for any entity providing management or consulting services to the Defendants' facilities during the residency of Hazel Clark.
9. Provide the full names and last known addresses and telephone numbers of all persons responsible for any investigation regarding the care and treatment of Hazel Clark. This Interrogatory should be deemed to include, but not be limited to, any individual participating in an internal investigation, a quality assurance review or study, peer review, Sentinel Event investigation, an investigation by any governmental agency, and a response to a complaint or licensure survey related to Hazel Clark. For each witness identified, indicate whether the individual is or was an employee of the Defendant(s).
10. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in this case.
11. Provide the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.
12. Provide a list of all data provided to any expert retained by the Defendant(s) in reaching any opinions intended to be offered at trial. Indicate which of the data provided to any expert was relied upon in reaching opinions intended to be offered at trial.
13. Set forth a summary of the opinions which the expert(s) identified above is expected to render at a trial of this case.
14. Set forth the corporate structure of the Defendants and any entity or individual with ownership in the Defendant.
15. Set forth the following information regarding each of the Defendants:
  - a. Social Security number;
  - b. Marital status;

- c. Spouse's name;
- d. Current address;
- e. Names, ages and gender of children, if any; and
- f. Driver's license number and issuing state.

16. Indicate whether either of the Defendants have ever been a party to any lawsuit. If so, please set forth the full caption of the lawsuit, the county and state of jurisdiction, the docket/civil action number of the lawsuit and a summary sufficient to inform the plaintiff of the dispute which was the subject of the lawsuit.
17. Set forth a summary sufficient to inform the Plaintiff of each of the Defendants' educational background, including schools attended, dates of attendance and diplomas or degrees awarded.
18. Set forth any criminal charges, including any traffic violations, of which the Defendant has been charged, date of said charge, nature of charge, disposition of charge, and the court in which said charge was handled.
19. Set forth a list of any financial statements, bank records and statements, investment records, stocks or bonds, IRA's, retirement funds which Defendants had in their possession, custody, or control during the period of time beginning January 1, 2014, through the present.
20. Provide the name, address, and telephone number for any accountant, accounting firm, wealth management firm, or financial advisor providing services to (1) either of the Defendants or their spouses, or (2) any entity owned or controlled by the Defendants during the period of time beginning January 1, 2015, through the present.
21. Provide the name of any financial institution with which the Defendants, any spouse of the Defendants, or any entity owned or controlled by the Defendants have done any financial business during the period of time beginning January 1, 2014, through the present. This Interrogatory should be deemed to include institutions which provide, but not be limited to, the following services: checking, savings, or investment accounts; personal or auto loans; mortgage loans; stock accounts; IRA, pension, or retirement accounts; and trust services. For each, provide name in which the account is held and the account number.
22. Set forth a list of all insurance companies having liability, excess liability or other coverage in this action, the amount of any deductible or self-insured retention, the amounts of each policy and/or policies, and the numbers of said policies.

The Interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to Interrogatories have been submitted, shall be promptly transmitted to the other party.

Harbin & Burnett, L.L.P.

  
\_\_\_\_\_  
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*Attorneys for Plaintiff*

Anderson, South Carolina  
June 7, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Debbie Bannister, individually and as Personal  
Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity  
Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C.A. No.: 2017-CP-04-00431 & 00432

**DEFENDANTS' ANSWERS TO  
PLAINTIFF'S FIRST SET OF  
INTERROGATORIES**

**TO: DEBBIE BANNISTER, INDIVIDUALLY AND AS PR OF THE ESTATE OF  
HAZEL L. CLARK, PLAINTIFF, AND HER ATTORNEYS JENNIFER  
SPRAGINS BURNETT, ESQ. AND STEVEN B. LeFEVRE, ESQ.:**

The Defendants Mary Sims Touchton, Faith, Hope and Charity Retirement, LLC, and  
The Resting Place, LLC, (hereinafter collectively "Defendant"), by and through their  
undersigned attorney, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure,  
responds to the Plaintiff's Interrogatories as follows:

1. Indicate whether the Plaintiff has correctly named these Defendants. Without  
regard to liability, indicate whether the entities identified by the Plaintiff are the correct legal  
entities with respect to the allegations of the Plaintiff's Complaints. In the event that a change of  
ownership of the facility has occurred, set forth the correct legal entities with respect to the  
allegations of the Plaintiff's Complaints.

**ANSWER**

Yes.

2. Provide the full names and last known addresses and telephone numbers of all  
persons known to the parties or counsel to be witnesses concerning the facts of the case and  
indicate whether or not written or recorded statements have been taken from the witnesses and  
indicate who has possession of such statements. For each witness identified, indicate whether  
the individual is or was an employee of the Defendant(s). This Interrogatory should be deemed  
to include, but not be limited to, the identity of every caregiver, including agents and employees  
of the Defendants, known to have provided care and treatment to Hazel Clark and/or who has  
signed Mrs. Clark's chart as having provided care and treatment to Mrs. Clark during her  
residency at Defendant's facility.

ANSWER

- a. Mary Sims Touchton  
4130 Hwy. 24  
Anderson, SC 29625  
.864-933-7137
- b. Linda Kilmer  
205 Simpson Dr.  
Anderson, SC 29624  
864-245-4874
- c. Kim Savage  
4130 Hwy. 24, Apt. A  
Anderson, SC 29625  
864-720-0877
- d. Catheline Bolleta  
Address and phone number unknown
- e. Linda McMahan  
Address and phone number unknown

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

ANSWER

Linda Kilmer was a caregiver for Hazel L. Clark and will testify to the condition of Ms. Clark and the facts surrounding this case.

Mary Sims Touchton will testify to the circumstances of Hazel Clark being at the facility and the care given her.

Kim Savage is a nurse who attended to Hazel L. Clark and will testify to Ms. Clark's condition and to the care given her.

Catheline Bolleta was a caregiver for Hazel Clark and will testify to her condition and the care given to her provided she can be located.

Linda McMahan was a caretaker and will testify to the condition of Hazel Clark and to the care given her.

4. Identify all witnesses, including experts and physicians, you intend to subpoena or otherwise present at the trial in this case.

ANSWER

None at present. Defendant reserves the right to name an expert.

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

ANSWER

Photograph of Hazel Clark

6. Identify by bates number or description, every document you intend to admit into evidence at the trial in this case.

ANSWER

Defendant cannot answer this interrogatory at present as counsel for Defendant has not determined what evidence will be admitted at trial.

7. Provide the names and addresses for the persons employed by or working at any of Defendants' facilities during the residency of Hazel Clark in the following capacities: Medical Director; Director or Supervisor of Nurses; Assistant Director or Supervisor of Nurses; Nurse; caregiver; CNA; or Med Tech; or any other title of employees of these Defendants.

- a. Medical Director – none.
- b. Director or Supervisor of Nurses – none.
- c. Assistant Director or Supervisor of Nurses – none.
- d. Nurse – Kim Savage
- e. Caregiver – Linda Kilmer, Catheline Bolleta
- f. CNA – none.
- g. Med Tech – none.
- h. Maintenance – Todd Dennis, 3709 Centerville Rd., Anderson, SC 29625

8. Provide the name and address for any entity providing management or consulting services to the Defendants' facilities during the residency of Hazel Clark.

ANSWER

Genex did quarterly rounds to inspect medication for proper use and storage. Fire Marshall inspected on an annual basis for safety.

9. Provide the full names and last known addresses and telephone numbers of all persons responsible for any investigation regarding the care and treatment of Hazel Clark. This Interrogatory should be deemed to include, but not be limited to, any individual participating in an internal investigation, a quality assurance review or study, peer review, Sentinel Event investigation, an investigation by any governmental agency, and a response to a complaint or licensure survey related to Hazel Clark. For each witness identified, indicate whether the individual is or was an employee of the Defendant(s).

ANSWER

None.

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

ANSWER

None.

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

ANSWER

None at present.

12. Provide a list of all data provided to any expert retained by the Defendant(s) in reaching any opinions intended to be offered at trial. Indicate which of the data provided to any expert was relied upon in reaching opinions intended to be offered at trial.

ANSWER

None.

13. Set forth a summary of the opinions which the expert(s) identified above is expected to render at a trial of this case.

ANSWER

None.

14. Set forth the corporate structure of the Defendants and any entity or individual with ownership in the Defendant.

ANSWER

Mary Sims Touchton is the sole proprietor.

15. Set forth the following information regarding each of the Defendants:
- a. Social Security number;
  - b. Marital status;
  - c. Spouse's name;
  - d. Current address;
  - e. Names, ages and gender of children, if any; and
  - f. Driver's license number and issuing state.

ANSWER

Mary Sims Touchton:

- a. SSN: xxx-xx-7017
- b. Widow
- c. N/A
- d. see Answer to Interrogatory No. 2
- e. Carol Dennis, 64, female; Debbie Cummings, 62, female; Larry Sims, Jr., 53, male; Tori Meeks, 33, female
- f. SC, 003274855 (in the name of Sims)

16. Indicate whether either of the Defendants have ever been a party to any lawsuit. If so, please set forth the full caption of the lawsuit, the county and state of jurisdiction, the docket/civil action number of the lawsuit and a summary sufficient to inform the plaintiff of the dispute which was the subject of the lawsuit.

ANSWER

Mary Sims Touchton was sued in the early 90's for personal injury by a name not recalled. The case was settled out of court.

17. Set forth a summary sufficient to inform the Plaintiff of each of the Defendants' educational background, including schools attended, dates of attendance and diplomas or degrees awarded.

ANSWER

Defendant has a high school education, several semesters of real estate at Nova Institute, a university in Florida, and receives 18 hours of continuing education each year through her current employment. Defendant had annual training in the 60's for life insurance.

18. Set forth any criminal charges, including any traffic violations, of which the Defendant has been charged, date of said charge, nature of charge, disposition of charge, and the court in which said charge was handled.

ANSWER

None. Cannot recall date of traffic tickets.

19. Set forth a list of any financial statements, bank records and statements, investment records, stocks or bonds, IRA's, retirement funds which Defendants had in their possession, custody, or control during the period of time beginning January 1, 2014, through the present.

ANSWER

Financial Statement to Regions Bank. Defendant banks with Regions Bank, has no

investments, no stocks or bonds, no IRA or no retirement.

20. Provide the name, address, and telephone number for any accountant, accounting firm, wealth management firm, or financial advisor providing services to (1) either of the Defendants or their spouses, or (2) any entity owned or controlled by the Defendants during the period of time beginning January 1, 2015, through the present.

ANSWER

Robert Carvan  
South McDuffie St.  
Anderson, SC  
Prepares tax returns for various entities.

21. Provide the name of any financial institution with which the Defendants, any spouse of the Defendants, or any entity owned or controlled by the Defendants have done any financial business during the period of time beginning January 1, 2014, through the present. This Interrogatory should be deemed to include institutions which provide, but not be limited to, the following services: checking, savings, or investment accounts; personal or auto loans; mortgage loans; stock accounts; IRA, pension, or retirement accounts; and trust services. For each, provide name in which the account is held and the account number.

ANSWER


Defendants have an account with Regions Bank which is a checking account. She has an equity line with that account.

22. Set forth a list of all insurance companies having liability, excess liability or other coverage in this action, the amount of any deductible or self-insured retention, the amounts of each policy and/or policies, and the numbers of said policies.

ANSWER

None.

BANNISTER, WYATT & STALVEY, LLC

  
O. W. Bannister  
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401 Pettigru Street (29601)  
P. O. Box 10007 (29603)  
Greenville, South Carolina  
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*Attorney for Defendants*

August 9, 2017

1           She would go -- if there was anything going on  
2           with the grandchildren, she's always involved in  
3           going and watching them with whatever activity they  
4           were in. She was probably closer to Dale's kids  
5           because Dale's kids were smaller and they're here in  
6           Anderson. And so she knew every time Brittany and  
7           Brea and all of them were doing anything. She  
8           was -- she was right there with them.

9           Q. Did your mother have any health problems in the  
10          years prior to her death?

11          A. Prior to her death?

12          Q. I mean, in the years leading up to these  
13          events, did she have health problems?

14          A. She had COPD, but she -- she'd had it for a  
15          long time.

16          Q. Was -- was she a smoker?

17          A. She was not a smoker, but she had COPD. She  
18          was getting early signs of dementia. She had back  
19          problems simply because in her earlier years, she  
20          had -- had an accident in the car. And her  
21          orthopaedic had told her that she'd probably never  
22          really be a hundred percent. That didn't stop her  
23          from doing things, but it did put limitations on  
24          her.

25          Q. During the years that you were living in

1 Q. So then what happened when she left North  
2 Pointe? Where'd she go?

3 A. She went back home.

4 Q. Okay.

5 A. And so she -- she wasn't -- couldn't -- that  
6 was one of the things. She said, "I think I can do  
7 this," she says, "so I'm going -- I'm going to go  
8 back to my house."

9 She did. She went back to the house and most  
10 of us, you know, in and out of there just taking  
11 care of her, making sure that she had what she  
12 needed.

13 And then, you know, so she -- she went there up  
14 until the last trip to the hospital, which was not  
15 anything but my son-in-law went over there to check  
16 on her. And her dementia, she just -- she wasn't  
17 sure. She wasn't sure where -- you know, what was  
18 going on.

19 And Brad called me, he said -- he said, "I  
20 don't think your mother is just really aware of  
21 what's going on." And he says -- he said -- and so  
22 he had called EMS and they took her to the hospital  
23 and just to check her out. She wasn't hurt or  
24 anything, just wanted to make sure. We weren't sure  
25 if she was overmedicating herself or what because we

1 weren't sure what was going on.

2 Q. Okay. And when was that?

3 A. That was probably -- that was July the -- July  
4 the 10th.

5 Q. Okay. And so what -- ultimately, was what  
6 decided at -- during that brief visit to the  
7 emergency room?

8 A. So at the emergency room, I got -- when I got  
9 there, you know, they said that she checked out  
10 fine. They were concerned about her going back home  
11 by herself, and that she just really needed  
12 somewhere where she could just, you know, have  
13 some -- somebody that's kind of over -- supervise  
14 her over the -- and just kind of take -- be there  
15 for her should she need anything. She had a lot of  
16 her own independence, but she still had times where  
17 she just needed somebody there.

18 Q. Okay. And so then how did you become  
19 acquainted with the defendant's facility?

20 A. So somebody there had mentioned that there was  
21 a facility that they could call and see if they had  
22 room.

23 And later on is when Ms. Touchton came into the  
24 room. And she told me that she had a place that she  
25 could -- you know, mother could probably feel

1 comfortable with, that they could take care of her,  
2 and she says, "I think we can really take care of  
3 your mom."

4 And so they -- she said -- so I was okay. That  
5 was all I knew. And she said, "Well, the hospital  
6 released her," and I followed Ms. Touchton over to  
7 her facility with Mother in the car.

8 Q. Okay. So Ms. Touchton actually visited you at  
9 the hospital?

10 A. She came to the hospital.

11 Q. Okay. And -- and do you recall anything that  
12 she told you about the facility?

13 A. Just that it was -- they only had -- in both of  
14 her facilities, it was only women and they only had  
15 ten people per house. Told me about where they were  
16 located off of Shockley Ferry Road. Told me a  
17 little bit about how long she'd been in business,  
18 and, you know, she understood.

19 I explained the kind of care that I felt like  
20 Mother needed. She wasn't -- she didn't need  
21 100 percent care, but she just needed somebody to be  
22 there to make sure that she took her medicine  
23 correctly. Yes. Mother used a walker every now and  
24 then, but other than that, Mother was -- she cooked  
25 her own meals at the house. And I just felt

1 comfortable just having somebody that knew what --  
2 what was going on with her.

3 Q. Okay. Did she talk to you at all about what  
4 activities would be provided?

5 A. Yes. She said that they keep them busy and she  
6 said the center's always something going on. They  
7 get three meals a day. She'd have a room, probably  
8 have a roommate. She said, you know, said the  
9 caregiver, you know, been with her awhile, would  
10 take good care of Mother. And just -- just almost  
11 reassured me that I didn't have anything to worry  
12 about. They had a facility that was capable of  
13 taking care of her.

14 Q. All right. And did you ever know while your  
15 mother was there that any of the workers had  
16 criminal histories?

17 A. I didn't know anything.

18 Q. And did you ever know while your mother was  
19 there that any of these workers had a history of  
20 drug or alcohol abuse?

21 A. No. I did not.

22 Q. If that was something that had been shared with  
23 you, would you have allowed your mother to go there?

24 A. I would not.

25 MR. BANNISTER: Your Honor, I'm going to object

1 wear adult diapers?

2 A. None whatsoever, but it was a regulation there  
3 at the facility that Mother had to wear Depends.  
4 And that day that I put her out there, they had me  
5 to go and get Mother Depends.

6 And she said that, you know, "We don't want  
7 them to have an accident." And I -- Mother has  
8 never wore Depends, and she acted like it was a  
9 requirement and I went and bought Depends. And  
10 mother didn't like it, and I don't blame her, but...

11 Q. All right. And so at the time your mother was  
12 admitted, was she 78 years old?

13 A. Yes.

14 Q. Okay. And was she admitted that day -- that  
15 very day that you went there?

16 A. Yes.

17 Q. Okay. What was that? Was July the 10th?

18 A. July the 10th.

19 Q. Okay. While your mother was there, who were  
20 the workers that you talked to the most?

21 A. Linda and Cathy.

22 Q. Okay. And did you have any interactions or did  
23 the family have interactions with Wendy also?

24 A. I did not know Wendy.

25 Q. Okay. And did you ever see Ms. Touchton there

1 when you were visiting?

2 A. Not after the first day of getting -- getting  
3 Mother registered in.

4 Q. Okay. How often would you visit?

5 A. Usually every week and sometimes more because I  
6 was responsible for coming and picking mother up and  
7 taking her for any of her doctor's appointments. So  
8 we'd go and go visit family. I was just trying to  
9 get her out as much as possible, so at least on a  
10 minimum once a week.

11 Q. Okay. When, if you know the date, was the  
12 first time that your mother fell?

13 A. July the 11th.

14 Q. The day after admission?

15 A. The day after.

16 Q. Did you -- was -- did you -- were you aware of  
17 any injuries?

18 A. Linda had called me and told me that Mother had  
19 fallen and had bumped her head. And she says, "We  
20 contacted EMS. They picked her up."

21 By this time, EMS had brought her back to the  
22 facility. And I said, "Do I need to come?"

23 And she said, "No. I think she's fine." And  
24 she says, "She's back here and everything's okay."

25 Q. Okay. So when you visited, I know you

1 mentioned that you would take your mother to  
2 doctor's visits. And what other sort of things  
3 would you do?

4 A. We'd go shopping or we'd go see relatives  
5 sometimes. Keep Mother in her routine of things  
6 that she enjoyed doing. And we'd go over to Dale's  
7 beauty shop so she could see Dale and the grandkids.  
8 And if Shannon and Jay were home, just visiting and  
9 always out to eat, you know.

10 Q. Okay.

11 A. Bojangles' and Burger King were two on her  
12 list.

13 Q. Okay. All right. Tell me about the visit that  
14 you had with your mother on August the 21st. Now, I  
15 understand, you had other visits with her prior to  
16 that?

17 A. Oh, yeah.

18 Q. Okay. Between July the 10th and August the  
19 21st, there were other visits?

20 A. There were other visits.

21 Q. Okay. All right. Tell me about the visit on  
22 August the 21st?

23 A. So August 21st, I had come and was just a  
24 visit. And we were out visiting and she did have  
25 some prescriptions that she needed to get filled,

1 parking lot.

2 EMS came and I followed them. My daughter and  
3 I -- I had called Shannon. So we went to the  
4 hospital, and they checked her out. She was  
5 scratched -- scratched up. It's a good thing that's  
6 all it was. They did several tests and everything,  
7 and nothing -- nothing else was wrong. And by ten  
8 o'clock, they -- they released her.

9 But I had called the Faith, Hope and Charity,  
10 and at that time Cathy was working. And I told her,  
11 I says, "Mother is at the hospital. She had fallen  
12 getting out the car." I said, "They're checking her  
13 out here at the hospital." I said, "It's going to  
14 be late when I get there. If it's going to be too  
15 late or do you want me to just take her, you know,  
16 to Dale's or somewhere?"

17 She said, "No. Just bring her on." She said,  
18 "Just whenever you leave there, just bring her on."

19 So about 10:30 -- 10:00, 10:30 is when I got  
20 her back up to the facility.

21 Q. 10:30 at night?

22 A. Uh-huh.

23 Q. Yes?

24 A. Yes.

25 Q. Okay.

1 A. She didn't. She continued to go downhill.

2 Q. And so tell me about how the decision is about  
3 that she's going to go to Hospice?

4 A. The day that Dr. Cassidy came in there and she  
5 basically told me. And she said, "There -- there's  
6 really nothing we can do here to continue to make  
7 her comfortable. Hospice would be the best place  
8 for her to -- whatever time she had left to make her  
9 comfortable." And so they -- I signed the papers  
10 and we moved her over to Hospice about noontime on  
11 September the 7th.

12 Q. And how long was she there?

13 A. For five hours. A little after six o'clock,  
14 she passed on.

15 Q. How did it come about that you requested an  
16 autopsy?

17 A. I went into Hospice to get -- get her room and,  
18 you know, the doctors and the medical staff meets  
19 with the family. And I just felt like that from the  
20 way they were talking, that it was important for me  
21 to know what -- what really caused her death. I was  
22 not -- I wasn't sure. I didn't -- I wanted to know  
23 if there was truly some physical abuse, and that's  
24 what -- what caused her to have such a shortened  
25 life.

1 demonstrative aid there of your -- of your -- your  
2 note there. What did your history of Ms. Clark show  
3 you?

4 A. Showed me that this was an elderly lady who I  
5 was told had recently had a changing of living  
6 situation and had gone to an assisted living  
7 facility.

8 And from there, was coming to the -- to our  
9 care after having sustained a fall. She had  
10 slipped. The floor was hard like a linoleum --  
11 linoleum. It didn't have carpet on the floor.

12 She was on her way to the bathroom. And during  
13 that circumstance, she had fallen. She had, I  
14 recollect, and big large hematoma that looked  
15 very -- like a swelling with collection of blood  
16 underneath. And I was afraid that -- was there a  
17 connection inside, was the bone broken, so we  
18 ordered CAT scans. And because it was so large, we  
19 obviously automatically also ordered a CAT scan of  
20 the neck.

21 Q. All right, sir. Now, in the history there, I  
22 note the first sentence is what you just said. She  
23 fell slipping on a linoleum floor. Do you see the  
24 second sentence in that -- in that report?

25 A. Yes, I do. I -- yes, sir, I do.

1 Q. What does that say?

2 A. It says, "Report was she was startled by staff  
3 who was yelling at her."

4 Q. All right, sir. Is there anything else in the  
5 history and present illness, specifically at the  
6 bottom about EMS that you learned from your history  
7 of Ms. Clark?

8 A. As per the nursing report, the emergency  
9 medical services were present at the residence. I  
10 assume that was the assisted living facility and saw  
11 the staff member cursing the patient.

12 Q. All right, sir. Now -- so, Doctor, after you  
13 received the history and physical from Ms. Clark,  
14 you ordered -- you said you ordered some tests.  
15 What did those tests reveal?

16 A. They showed that thankfully there was no  
17 internal bleeding, but there was a large blood  
18 collection called a hematoma that was surrounding  
19 her right eye. There was a -- a left wrist  
20 fracture. There were multiple fractures of her neck  
21 vertebrae.

22 The first cervical vertebrae, the C1, had a  
23 fracture. And then the C5, 6, and 7 had fractures.

24 Q. Okay. To your recollection, was Ms. Clark in a  
25 lot of pain?

1 A. Oh, yes, sir.

2 Q. And how could you tell that she was in a lot of  
3 pain?

4 A. She was in visible discomfort. Her blood  
5 pressures were high. Her pulse was high. All of  
6 those things tell you that pain -- pain produces  
7 people to have high blood pressure and visible  
8 discomfort you can tell.

9 Q. All right. So with -- with the multiple  
10 injuries that you just testified to, what was --  
11 what was the treatment plan? What could be done for  
12 Ms. Clark?

13 A. So immediately we called the necessary  
14 consultants on the case because the vertebrae were  
15 shattered. She needed to be placed in a collar, a  
16 neck collar, a protective collar that doesn't allow  
17 the neck to move.

18 And we called neurosurgery, Dr. Davidson, was  
19 on-call. He came by that day and self-evaluated --  
20 that day and self-evaluated the patient.

21 Dr. Jessie Wilson, who's an orthopedic surgeon,  
22 was called for the wrist fracture.

23 And I believe Dr. Woodard was called. He was a  
24 gastroenterologist, and I don't recall the exact  
25 reason why he was called.

1 side that had been surgically closed. She also had  
2 bruises up and down her body, which are typical of  
3 people placing their hands on your body and  
4 squeezing against the skin of your body, especially  
5 in an older person who's somewhat frail.

6 Q. Okay. And in your review -- well, did  
7 Ms. Clark have some fractures?

8 A. She had fractures of her cervical spinal  
9 column, the fifth through the seventh vertebrae,  
10 what we call crushed or collapsed. And the first  
11 vertebrae was cracked, but it was in place.

12 This, at the time of her death, had caused  
13 pressure to be placed on her spinal cord, which  
14 would've limited the function of her respiration and  
15 limited her mobility.

16 Q. Okay. All right. And so I want to come back  
17 to the August 21st fall once we talk a little bit  
18 more about the 27th. Okay.

19 A. All right. So we're speaking of the 27th,  
20 please?

21 Q. Yes.

22 A. Okay.

23 Q. Yes. All right. Can you tell me what the most  
24 probable source of Ms. Clark's injuries were of the  
25 August 27th fall?

1           A.    Well, clearly the one to the left arm, which  
2           resulted in a tearing of the left skin, is  
3           consistent with a fall where the arm is stretched  
4           out to brace the person from falling.  It produced  
5           what we call a displaced fracture where the ends of  
6           bones were moved, in this case, toward the thumb  
7           side.  And this would've been one fall event.

8                    The ones to the knee and the ankle on the left  
9           side would've been a separate fall event where she  
10          fell to her knees primarily.  Probably ran her ankle  
11          or feet into something and lost her balance.

12                   Then on the right side, we had bruises going up  
13          the right side of her body, which were consistent  
14          with a fall to the right side, and that resulted in  
15          the fracture to the spinal column and produced  
16          significant bleeding into the soft tissues of her  
17          body.

18                   She also had the bruises to her extremities,  
19          which were consistent with someone having placed  
20          their hands on them and firmly gripped with their  
21          hands on her as an individual.

22          Q.    Okay.  I've got there a document that I believe  
23          depicts those.  Is this the bruising that you're  
24          discussing?

25          A.    Yeah.  You can see it down below the IV.  You

1 see little round bruised areas? Those wouldn't be  
2 in an area where you could pass those off. If  
3 somebody who dealt with dependent patients would  
4 place their arms under their armpit and lift them  
5 up, they were too heavy to get a second person.

6 Sometimes when they do that, the second person,  
7 they place them on the bicep or shoulder area, the  
8 hand, and could produce the bruises, but these were  
9 seen on the forearms or the lower portion. And so  
10 they wouldn't be in a way that any trained  
11 individual would try and move someone.

12 Q. All right. Can you explain please just based  
13 on your review of Ms. Clark's medical records what  
14 her course was after being admitted to the emergency  
15 room?

16 A. She was admitted in the emergency room, and she  
17 initially was stabilized and then she was placed in  
18 the hospital. And because of her immobility and her  
19 underlying medical conditions, developed pneumonia.

20 The doctors didn't feel that they could do any  
21 kind of surgical repair of the spinal column, so  
22 they left her in a rigid collar to try and keep the  
23 spinal column in its proper position and give her  
24 the best opportunity not to suffer a spinal cord  
25 injury.

1           Unfortunately, she followed a downhill course  
2           and was transferred to Hospice where she ultimately  
3           became more short of breath, uncommunicative, and  
4           ultimately died.

5           Q.    And how -- and how does the situation that  
6           Ms. Clark was in on August 27th, how does that  
7           result in, you know, the development of pneumonia?

8           A.    She becomes immobile.  Immobility in elderly  
9           people, especially people with a mild degree of  
10          congestive heart failure, that sets up a culture  
11          media where the germs can congregate.  We're all  
12          contaminated with germs.  They can't clear their  
13          airway as well as we can, so germs find a way into  
14          the lungs and they begin to develop infection.

15          In her case, because of all the tissue damage,  
16          all the bruising that she had, factors that lead to  
17          blood clotting were released.  She was in such a  
18          condition they couldn't have coagulated her safely,  
19          so they chose not to anticoagulate her or keep her  
20          from clotting.  And that led to blood clots going to  
21          her lungs.

22          Q.    So Ms. Clark had -- had she been on  
23          anticoagulation therapy?

24          A.    She'd taken an aspirin for arthritic  
25          complaints.

1 she becomes incapacitated. She's laying in bed.  
2 She has extra fluid in the air spaces of her lungs  
3 and she can't clear her secretions, and germs find  
4 their way into those lungs.

5 Q. And would Ms. Clark have been a candidate for  
6 anticoagulation therapy for the thromboemboli?

7 A. No. The dictum in medicine is do no harm and  
8 anticoagulation would've come with an extreme risk  
9 of harming her.

10 Q. All right. If Ms. Clark had not suffered the  
11 second fall on August the 27th that resulted in the  
12 fractures to her spine, do you have an opinion about  
13 what her life expectancy would've been?

14 A. Well, she had significant underlying  
15 conditions, but she could've lived several more  
16 years. Congestive heart failure can be managed, and  
17 she clinically had mild dementia. She didn't have  
18 severe dementia, so, you know, maybe up to five  
19 years, maybe only a few years.

20 Q. Okay. And would it be fair to say that the  
21 hospitalization of August the 27th through  
22 September 7th proximately resulted from the falls  
23 that she sustained?

24 A. Yes, it did.

25 Q. And would it be also fair to say that the

1 sitting on her bed.

2 Q. All right. So had she already been -- had she  
3 already been removed from the floor?

4 A. Yes, ma'am.

5 Q. Okay. All right. And were you told anything  
6 about the circumstances of the fall?

7 A. Just that she had got up and slid once she was  
8 trying to go to the bathroom, and that was it.

9 Q. Okay. Did they tell you anything about the  
10 mechanism of the fall?

11 A. No, ma'am. It was just she slid down. When I  
12 asked Ms. Clark, she said that she slid down, fell  
13 over, and she bumped her head.

14 Staff had informed us that she had multiple  
15 hematomas on her head from previous incidents.

16 Q. Okay. Did they tell you when those incidents  
17 had occurred?

18 A. No, ma'am.

19 Q. Okay. All right. So did I understand you  
20 correctly. You said they told you that she had slid  
21 down?

22 A. Yes, ma'am.

23 Q. Okay. All right. And so why is it important  
24 for you to know the circumstances related to the  
25 fall?

1 at Ms. Clark saying how nasty she was for doing  
2 that, why didn't she let her know, and stuff like  
3 that.

4 Q. Okay. And so was she raising her voice?

5 A. Yes, ma'am.

6 Q. All right. And so were you concerned about  
7 that?

8 A. Yeah. I -- I wouldn't want my -- my mom or  
9 grandma to be getting yelled at for having an  
10 accident.

11 Q. Did you report that event -- those events to  
12 someone at the emergency room?

13 A. Yes, ma'am.

14 Q. Okay. And have you on other occasions seen --  
15 have you been to that location before?

16 A. Numerous times.

17 Q. And had you on other occasions seen incidents  
18 where you felt the residents or patients weren't  
19 being treated with respect?

20 MR. BANNISTER: Your Honor, I would object.

21 THE COURT: Just one second. Madam forelady,  
22 would you go to the jury room for one moment,  
23 please, ma'am?

24 (At 11:51 a.m., jury left the courtroom.)

25 THE COURT: Alright, sir.

1 to follow-up on that incident, not one person  
2 followed up with me, none. Not them, not the  
3 hospital, not -- not the Sheriff's Department,  
4 nobody.

5 It was a misunderstanding and I've explained  
6 that to -- and that's the only thing I can say.

7 Q. Well, you're here now under oath, so you can  
8 explain it to the jury. What were you doing? Were  
9 you cussing Ms. Clark?

10 A. No. I was venting to them about why she  
11 shouldn't even have been here.

12 Q. She shouldn't have been where?

13 A. In that facility. I was venting to the EMT  
14 guys, and they -- they misunderstood and went to  
15 the -- to the hospital and told them that I was  
16 cursing. Okay. So where is my -- where's my  
17 investigation of that whole thing, because there  
18 wasn't. It was -- it was ---

19 Q. But you agree that you were yelling? You were  
20 venting?

21 A. Yes, I was.

22 Q. And you were -- you were using cuss words?

23 A. I used a couple curse words.

24 Q. All right. What did you say?

25 A. Probably bullshit a lot -- a couple times.

1 Q. All right.

2 A. That's it. Maybe twice.

3 Q. I'm going to show you what's in evidence ---

4 A. Okay.

5 Q. --- as Plaintiff's Exhibit 21. It's the regs  
6 again. And it's 61-84, part two, psychological  
7 abuse.

8 And it says, Ms. Bellotti, "The deliberate use  
9 of any oral, written, or gestured language or  
10 depiction that includes disparaging or derogatory  
11 terms to a resident or within the resident's hearing  
12 distance, regardless of the resident's age or  
13 ability to comprehend, including threats or  
14 harassment or other forms of intimidating behavior  
15 causing fear, humiliation, degradation, agitation,  
16 confusion, or other forms of serious and mental  
17 distress and psychological abuse."

18 So even if you would believe that you weren't  
19 cussing Ms. Clark directly, you were saying it when  
20 she was present; is that correct?

21 A. Correct.

22 Q. And under the regs, that's psychological abuse;  
23 is that correct?

24 A. According to this, it's correct, but that ---

25 Q. And so the other -- the other times when you

1 A. She told me the medication management.

2 Q. All right. At all times you supervise these  
3 facilities?

4 A. Yes.

5 Q. Okay. All right. At any time you wanted to  
6 look at any of the recordkeeping, that was available  
7 to you at any time, was it not?

8 A. Yes, ma'am. It was in my office.

9 Q. Okay. All right. Let's look at these  
10 regulations. If you'll look with me at page 2.

11 A. (Complying.)

12 Q. Okay. Your facility is a community residential  
13 care facility, true?

14 A. That's correct.

15 Q. All right. And this guideline here sets out  
16 what is required, does it not?

17 A. Right.

18 Q. Okay. And it indicates that the -- that the  
19 facility will provide assistance to the patients,  
20 correct?

21 A. Right.

22 Q. All right. And it says these facilities may be  
23 referred to as assisted living if they meet the  
24 above definition of community residential care  
25 facility?

1           A.    But we -- but we didn't meet -- meet the  
2           conditions to be an assisted living. We were a  
3           residential care facility. One step above a  
4           boarding house.

5           Q.    Okay. All right. Did -- did you meet this  
6           requirement of community residential care facility  
7           that I'm -- that we're looking at on page 2?

8           A.    Yeah. Community residential care, yes, but not  
9           assisted living.

10          Q.    All right. Did you provide assistance?

11          A.    We did on certain -- certain instances, yes ---

12          Q.    Okay.

13          A.    --- but that didn't make us an assisted living.  
14          Our license says residential care.

15          Q.    Okay. You think there's a difference?

16          A.    Yes, ma'am.

17          Q.    Okay. All right. And so the facility that you  
18          ran, you understand that DHEC was still the entity  
19          that had authority over you, correct?

20          A.    Sure they did. They come every year, sometimes  
21          even twice a year.

22          Q.    Okay.

23          A.    Three times a year if they had complaints.  
24          Even when they did their inspections, and they knew  
25          that the people slept.

1           that what I've given you?

2           A.    Yes.

3           Q.    Okay. All right. Now the people off the  
4           street that we're talking about, these people that  
5           came off the street, all these people had history of  
6           drug and alcohol problems, didn't they?

7           A.    Not -- not all of them. Some of them.

8           Q.    Okay. And some of them have significant  
9           criminal histories, do they not?

10          A.    Some of them, but some of them were four and  
11          five years ago before they were hired.

12          Q.    Okay. Is it wise to have employees with  
13          substance abuse problems administering controlled  
14          substances?

15          A.    Maybe not, but can I say something, Judge?

16                THE COURT: Yes, ma'am. Again, as long as it's  
17          responsive to the questions asked.

18                THE WITNESS: Okay. I -- I'm a minister and we  
19          have church, and these people are -- this is an  
20          outreach ministry for is. This church -- these  
21          facilities were an outreach ministry, both of them.  
22          And these people came for help to get off of what  
23          they were -- wanting to rehabilitate themselves. I  
24          reached out to them and I help them to get back and  
25          give them a second chance to get back on their feet.

1 BY MS. BURNETT:

2 Q. Okay. Ms. Clark also came ---

3 MR. BANNISTER: Your Honor ---

4 THE COURT: Well, just one second. Just one  
5 second. We're going to go back to what I told  
6 everyone before. She asks the questions; you  
7 respond. If you want to explain it, you can and you  
8 are overruled. Okay.

9 Now, you understand the rules and that is, she  
10 asked the questions.

11 THE WITNESS: Yes.

12 THE COURT: If you want to explain it, you may  
13 as long as it's responsive to the question being  
14 asked. Okay?

15 THE WITNESS: Okay.

16 THE COURT: Now go ask your question and listen  
17 to it and make a response.

18 BY MS. BURNETT:

19 Q. All right. You've had medication go missing,  
20 haven't you?

21 A. Sure.

22 Q. Okay. And -- and you -- Ms. Clark came to you  
23 for help, did she not?

24 A. Sure.

25 Q. Your residents, your patients, they came to you

- 1 Q. All right. And your son lives there or he did?
- 2 A. Yeah, he did. Yeah, he's between houses.
- 3 Q. Okay. And he don't pay rent there, right?
- 4 A. No.
- 5 Q. Okay. You pay your grandson \$500 a week?
- 6 A. Pay my what?
- 7 Q. Does your grandson work for you?
- 8 A. Yes.
- 9 Q. All right. And I believe you told me that you  
10 take \$60,000 a year approximately for your personal  
11 expenses?
- 12 A. Well, I don't really take it. I just use it  
13 out of expenses. And you asked me to make a figure  
14 on how much it was, and that's what I did.
- 15 Q. Okay.
- 16 A. So I don't really add it up and say that's what  
17 I'm taking. That's my salary because that's what --  
18 I just take what I need out of the business.
- 19 Q. Okay. You have one account that you work out  
20 of, right?
- 21 A. Yes.
- 22 Q. Okay. And that account is in the name of the  
23 Resting Place?
- 24 A. Yes.
- 25 Q. All right. And out of that account, you pay

1 personal expenses and business expenses?

2 A. Yes.

3 Q. All right. You pay your grandson's child  
4 support from that account?

5 A. That's part of his salary.

6 Q. Okay. You take cash out with that account for  
7 your -- your personal needs?

8 A. Yes.

9 Q. Okay. You pay for insurance for Tori. Is that  
10 your granddaughter?

11 A. Yes.

12 Q. Is that insurance you pay for her?

13 A. Yes.

14 Q. You pay for insurance for Larry, your son?

15 A. Yes.

16 Q. Okay. You pay -- you pay for other personal  
17 expenses out of that same account also, don't you?

18 A. Well, it depends on what you call personal.

19 Q. Well, your son's health insurance is a personal  
20 expense, right?

21 A. Yeah, \$71 a year.

22 Q. Okay. And your -- and your granddaughter's  
23 health insurance, that's -- that's a personal  
24 expense, right?

25 A. Yeah, \$71 a year. Yes.

1 Q. Oh, that's not something that is related at all  
2 to your business?

3 A. Right.

4 Q. Okay. And you pay for going to the beauty  
5 salon out of that account, right?

6 A. Sometimes.

7 Q. Okay. Angie, is that the woman that does your  
8 hair?

9 A. No.

10 Q. Okay. You write a check -- or you write in the  
11 memo line "hair care" and it's \$31. Is that  
12 something you do?

13 A. Sometimes.

14 Q. Okay. All right. I want to show you a  
15 checking account statement that you provided to me.  
16 Now, what was the total -- what month was this?

17 A. July 2015.

18 Q. Okay. And so that was when Ms. Clark was in  
19 your facility, right?

20 A. Yes.

21 Q. All right. And all of these deposits are  
22 deposits related to your patients, right?

23 A. I can't say all of them are, but, I mean, just  
24 by looking at them, I can't say that all of them is  
25 related to my patients.

1 Q. Okay. Well, we know there's in the name --  
2 what is the name of this account? Who is this  
3 account name in?

4 A. The Resting Place.

5 Q. Okay. And you operate the Resting Place and  
6 Faith, Hope and Charity as one business, do you not?

7 A. No. I have two separate licenses there from  
8 DHEC. They're treated -- they're treated equally,  
9 but I just have one checking account that I use for  
10 all -- both -- both facilities.

11 Q. Okay. Well, DHEC has a license because they're  
12 actually separated, correct?

13 A. Yes.

14 Q. Okay. But, otherwise, for your purposes, you  
15 run them together?

16 A. Right.

17 Q. All right. And in this checking account in the  
18 name of the Resting Place, deposit is made here on  
19 the first section for both the Resting Place and  
20 Faith, Hope and Charity, true?

21 A. Right.

22 Q. And then down below, you make tax payments for  
23 you personally out of the same checking account,  
24 right?

25 A. No. That's -- that's a 441 taxes. That's the

1 A. Yes.

2 Q. And you have 20 total beds?

3 A. Not all the time.

4 Q. Okay. That's how many are available?

5 A. Yes.

6 Q. All right. If they're full, that's about --  
7 somewhere between 25- or 30- to \$35,000 a month,  
8 right?

9 A. No. No way. I never deposit that much into my  
10 account. This is the highest that goes there. You  
11 can go back through that and see.

12 Q. Okay. So you're saying that July of 2015 just  
13 happens to be the highest that it ever was?

14 A. No. I'm just saying that's about as high as it  
15 goes is 31,000.

16 Q. Okay.

17 A. But that doesn't that that's all a big -- that  
18 didn't come from all the residents between that.

19 Q. Okay. What other sources of income do you  
20 have?

21 A. I have rental.

22 Q. Your rental properties? Is that what you said?

23 A. Yes.

24 Q. Okay. Now, you transferred your house into a  
25 life estate after Ms. Clark had passed away, did you

1 not?

2 A. Yes.

3 Q. Why did you do that?

4 A. Because that was part of my retirement plan.  
5 I'm 85 years old.

6 Q. At the time -- in fact, at the time you  
7 transferred the property into the life estate, the  
8 lawsuit had already been filed, had it not?

9 A. When did it happen?

10 Q. Pardon me?

11 A. I said when did that happen?

12 Q. When -- when did you make this transfer?

13 A. I'm trying to figure it out.

14 Q. There's a date stamp when they filed it with  
15 register of deed at the top of the page, very top.

16 A. Okay. It says 9/26/17.

17 Q. Okay. And it looks like the notary signed it  
18 on August the 29th of 2017?

19 A. Okay.

20 Q. I'm going to show her this. All right. So  
21 August and September of 2017, was when you made that  
22 transfer, right? And what is that document I just  
23 handed you?

24 A. (No response.)

25 Q. What is this?

1 A. This is a -- this is a -- this is something I  
2 faxed to your attorney, right?

3 Q. This is something you filed with the Clerk of  
4 Court's office in Anderson ---

5 A. Oh, yeah.

6 Q. --- right?

7 A. Yeah, that's right.

8 Q. Okay. On April the 17th, 2017?

9 A. Right.

10 Q. All right. And so you say all allegations in  
11 the complaint are denied, right? And so by that  
12 time, April the 17th, the lawsuit had been filed  
13 because you're answering it, right?

14 A. Sure. What do you mean the lawsuit had been  
15 filed? Your lawsuit?

16 Q. Yes, ma'am.

17 A. I suppose.

18 Q. Okay. And so five months later when you  
19 transfer this property into a life estate, you  
20 already knew the lawsuit had been filed, true?

21 A. True.

22 Q. Okay.

23 A. That shouldn't have any effect -- effect on my  
24 retirement.

25 Q. All right. You transferred some other property

1 on Highway 187 that we hadn't yet talked about to  
2 your grandchildren around the same time, right?

3 A. I think it was part of that. That was part of  
4 my retirement.

5 Q. Okay. And at some -- at some point around that  
6 time, you paid \$50,000 in cash to pay off a house  
7 for your grandson, Todd, true?

8 A. Right.

9 Q. All right. All these transfers were made after  
10 you knew that Ms. Clark's family had a lawsuit that  
11 was pending against you, right?

12 A. I didn't think -- I didn't think that it made a  
13 difference.

14 Q. Now, the Resting Place, you operated the  
15 Resting Place and Faith, Hope and Charity like a  
16 sole proprietorship, don't you?

17 A. Yes.

18 Q. All right. And, in fact, the time Ms. Clark  
19 had -- was in your facility and when she died, you  
20 didn't have an LLC?

21 A. Not -- not then, no.

22 Q. You did that later?

23 A. Yeah.

24 Q. Why'd you do that?

25 A. Because I figured I needed it.

1 Q. Why?

2 A. Because all these years, I hadn't had anybody  
3 sue me. So when I got this message that somebody  
4 was suing me for money, I figured I needed it.

5 Q. Okay. But at the time when Ms. Clark was  
6 there, you were still just a sole proprietorship.  
7 You were Mary Sims doing business as Faith, Hope and  
8 Charity and the Resting Place, right?

9 A. Right.

10 Q. And so you didn't -- nobody paid any rent to  
11 you for the buildings?

12 A. Why would they pay rent? I was operating them.

13 Q. Right. That's right. Okay. And you don't  
14 file any tax returns on behalf of the business?

15 A. Yes, I do. Every year.

16 Q. Okay. You did not do that prior to becoming an  
17 LLC?

18 A. Yes, ma'am. Every year I file a tax return.

19 Q. Okay. What assets do the entities own?

20 A. You can check with my accountant.

21 Q. Okay. Well, ma'am, I don't have your  
22 accountant here. I do have you, so what assets are  
23 you aware of that the LLC of Faith, Hope and Charity  
24 and the Resting Place own?

25 A. Just -- just the two facilities.

1 Q. And they -- So they own the -- the license?

2 A. Only the business.

3 Q. Okay. I'm sorry. I don't understand only the  
4 business. I'm saying you -- you now have an LLC,  
5 right?

6 A. Right.

7 Q. You didn't have that in 2015?

8 A. No.

9 Q. Okay. And so at that time, you owned the  
10 building. You owned the facility. You owned the  
11 business. You received all the profits. You did  
12 everything. It was all you?

13 A. Right.

14 Q. Okay. Did you, at that time, have to file a  
15 tax return for an entity that had no legal status?

16 A. No. But I filed tax returns for the Resting  
17 Place every year.

18 Q. Okay. All right. And so -- and in your LLC,  
19 you're the only member, right?

20 A. Right.

21 Q. There's no other board members, true?

22 A. No. But I have -- I have the liability now  
23 too.

24 Q. Okay. You don't have any -- the LLCs don't  
25 have any assets other than the license itself?

1 A. That's it.

2 Q. All right. You have one set of paperwork that  
3 you use for the facilities?

4 A. Yes.

5 Q. Okay. And we've seen some that say the Resting  
6 Place. Ms. Clark wasn't at the Resting Place?

7 A. Right.

8 Q. Okay. And we've seen her incident report.  
9 Some of them say the Resting Place, right?

10 A. One says the Resting Place and one says Faith,  
11 Hope and Charity.

12 Q. Okay. And the checking account says the  
13 Resting Place?

14 A. Yes.

15 Q. And that's the account that you would use to  
16 pay all the employees ---

17 A. Right.

18 Q. --- right? Some of the employees go in between  
19 the two facilities?

20 A. Yes.

21 Q. Okay. Your grandson?

22 A. Yes.

23 Q. The woman that does the baths?

24 A. No.

25 Q. She don't go in between?

1 A. No.

2 Q. Did she in 2015?

3 A. No. She doesn't. They're separate facilities.

4 Q. I'm saying, does she go in between? Does that  
5 woman do the baths at the Resting Place and also at  
6 Faith, Hope and Charity?

7 A. At one point in time, but I can't tell you  
8 exactly when.

9 Q. Okay. You -- you share a bus between the  
10 facilities?

11 A. I do.

12 Q. Okay. The taxes on this land, you paid it  
13 yourself out of this checking account?

14 A. On what land?

15 Q. The -- the -- the land where 101 Coe Street and  
16 East Shockley Ferry Road. Those taxes that have to  
17 be paid, you paid it out from this checking account?

18 A. Yes.

19 Q. Okay. Now, have you -- did you sell these  
20 buildings, ma'am?

21 A. Did I sell what?

22 Q. Did you sell 207 East Shockley Ferry Road and  
23 101 Coe Road?

24 A. I took on a partner.

25 Q. Okay. What do you mean you took on a partner?

1 A. I took on a partner. He bought into the  
2 facility.

3 Q. How much did he pay?

4 A. I don't know if I have to give that  
5 information.

6 THE COURT: Yes, you do.

7 BY MS. BURNETT:

8 Q. How much did he pay, ma'am?

9 A. He didn't pay me. He has to pay by the month.  
10 I'm holding the mortgage.

11 Q. Okay. \$600,000 is the number, isn't it?

12 A. Yes.

13 Q. And you did that in November, right?

14 A. Yes. As part of my retirement plan.

15 Q. How much is he paying you monthly?

16 A. It says it right there, doesn't it?

17 Q. Can you answer the question, please, ma'am?

18 A. Well, I have to see the number. I don't see  
19 the exact figure. Do you have it?

20 Q. You don't know how much he's paying you  
21 monthly?

22 A. Not exactly, no. I could say one thing, and it  
23 be another.

24 Q. All right. Well, how much do you think you're  
25 getting from him?

1 A. 4,600.

2 Q. Okay. And that -- is it -- is there some  
3 amount that's due to you of the conclusion of this  
4 transaction?

5 A. Twelve years from now, yes.

6 Q. Okay. All right. And -- and, again, that  
7 transfer that you made of this property for \$600,000  
8 was in November of 2018, was it not?

9 A. Yes.

10 MS. BURNETT: One moment, please. I don't have  
11 any other questions.

12 THE COURT: Let me see the attorneys up here,  
13 please.

14 (Sidebar discussion.)

15 THE COURT: All right. Madam forelady, ladies  
16 and gentlemen, I'm going to go ahead and break  
17 today. We'll be back -- any reason why anyone can't  
18 be in the jury room at 9:30 so we can begin at 9:30  
19 in the morning?

20 THE JURORS: (No responses.)

21 THE COURT: Okay. If you would leave your  
22 notepads in the jury room, I'll see you in the  
23 morning. Have a nice evening.

24 (At 5:07 p.m., jury left the courtroom.)

25 THE COURT: You can step down.

1 have you done in your lifetime?

2 A. I was in the insurance business in Florida. We  
3 lived there for 30 years.

4 Q. When you say "we," were you married?

5 A. Yes.

6 Q. To whom?

7 A. Larry Sims.

8 Q. And what happened to that marriage?

9 A. He's deceased.

10 Q. And did you have children by him?

11 A. Yes.

12 Q. How many?

13 A. One son.

14 Q. All right. And when did you come to South  
15 Carolina?

16 A. 1981.

17 Q. And what was the purpose of coming to South  
18 Carolina?

19 A. We -- we came here to establish a church.

20 Q. And are you a minister?

21 A. I am.

22 Q. When did you become a minister?

23 A. In 1981. I was ordained -- I was an ordained  
24 minister in Florida.

25 Q. And what church did you come to establish?

1 A. The Full Gospel Lighthouse Outreach.

2 Q. And where is it located?

3 A. 1214 New Hope Road, Anderson.

4 Q. And some questions have been asked, but do you  
5 own the building, the church building?

6 A. It was -- it belongs to the church.

7 Q. Is the church a corporation or institution?

8 A. It just has three trustees, if that's what  
9 you're asking.

10 Q. Okay. And do you have a full-time preacher  
11 now?

12 A. No. No. I have one there, yeah.

13 Q. All right. And how is he paid?

14 A. He's paid on a weekly basis.

15 Q. And where do the funds come from?

16 A. From the Faith, Hope and Charity building, most  
17 of it.

18 Q. So does Faith, Hope and Charity support the  
19 church?

20 A. Yes. Yes, sir. That building was established  
21 to help support the church, Faith, Hope and Charity  
22 building.

23 Q. Do you draw any money from the church itself?

24 A. I do not.

25 Q. Now, when was the Resting Place established?

1 A. 1988.

2 Q. And what exactly is it?

3 A. It's a residential care facility that was  
4 established for -- to be an outreach from our  
5 church.

6 Q. All right. And where is it located?

7 A. 207 East Shockley Ferry Road.

8 Q. That's right here in Anderson?

9 A. Here in Anderson.

10 Q. Would you describe it for us? Is it a house, a  
11 building, a home?

12 A. It was -- it was a renovated house. It was a  
13 house that we purchased, and we renovated it and cut  
14 it up into different rooms. It has five rooms and  
15 we have ten residents there, and they're all women.

16 Q. And does it have a kitchen?

17 A. Pardon?

18 Q. Kit -- does it have a kitchen?

19 A. Oh, yes. Yes. Has its own dining room; own  
20 kitchen.

21 Q. Does it have a recreational area?

22 A. Yes. The dining room.

23 Q. Okay.

24 A. Inside, yeah.

25 Q. Now, there are regulations regarding your

1 facility by DHEC; is that correct?

2 A. Yeah. Yes. Yes. We're licensed by DHEC.

3 Q. All right. What do you do to get licensed?

4 A. I just renew them every year.

5 Q. What did you do to initially get a license?

6 A. Oh, I had -- I had to go take training courses  
7 and -- and pass the courses. And, of course, this  
8 has been back in '88. A lot more things are  
9 required today, but I had to take some training  
10 courses and pass them and make an application to the  
11 state for the license and they issued them.

12 Q. All right. And then did the state inspect your  
13 facilities?

14 A. They did. They did.

15 Q. Now, what levels of care, to your knowledge,  
16 are licensed by the state for this -- this  
17 particular group of people?

18 A. We are a community residential care facility.  
19 We're one step above a boarding home.

20 Q. And what activities or help do you give  
21 residents?

22 A. What DHEC requires of me.

23 Q. Yes. But what do they require you to do?

24 A. You mean in the way of what I furnish for them?

25 Q. Yes.

- 1 A. Room, board, and care, of course. We're  
2 supposed to furnish their meals. We're supposed to  
3 do their laundry. We're supposed to cart them to  
4 the doctor if -- if they don't have anyone to do  
5 that. And just watch after them, take them shopping  
6 when they need to go shopping.
- 7 Q. What is the next highest level of care?
- 8 A. Assisted living facility is required nurse.
- 9 Q. Are you required to have a nurse?
- 10 A. No.
- 11 Q. And what is above assisted living facility that  
12 requires a nurse?
- 13 A. The nursing home.
- 14 Q. And is there one above that?
- 15 A. I'm not -- I'm not sure.
- 16 Q. Have you ever heard of acute care?
- 17 A. Acute care. Yes, that's right. You're right.
- 18 Q. So you are required or you offer meals?
- 19 A. Three meals a day and three -- and two snacks.
- 20 Q. Who determines or how determines what -- what  
21 the people eat, what the meals are?
- 22 A. We have -- we have a registered dietitian. She  
23 makes the menus and we -- and we serve them to her  
24 specifications.
- 25 Q. Is that approved by DHEC?

1 A. It's approved by DHEC.

2 Q. You do the laundry?

3 A. We do the laundry.

4 Q. And is that personal clothes as well as  
5 bedsheets and ---

6 A. Yes. Yes.

7 Q. --- other things?

8 A. Yes. All of it.

9 Q. And, of course, you have shelter there, so it's  
10 warm in the winter and cool in the summer?

11 A. That's correct.

12 Q. Transportation for medical care?

13 A. Right.

14 Q. And do you take them shopping?

15 A. Yes. We have a bus. We have a big -- a big  
16 15-passenger bus that we take them shopping and take  
17 them to the doctor here and there and transport them  
18 to church.

19 Q. And one big item is that you control their  
20 medication; is that correct?

21 A. Yes. Yes.

22 Q. Do you have activities for them?

23 A. Yes. Yes, we do. It's posted on a -- on the  
24 bulletin board monthly and the staff follows it.

25 Q. And what are some of the activities that you

1 provide?

2 A. Well bingo; crafts. They do puzzles. Excuse  
3 me. They do games, of course; take walks in the  
4 yard.

5 Q. And that's all supervised by your ---

6 A. All supervised by my staff.

7 Q. What are you required by DHEC to have in terms  
8 of staff?

9 A. In terms of staff?

10 Q. Staff. Yes.

11 A. Oh, yeah. Okay. We're -- we're required to  
12 have one person at nighttime which would be 8:00 at  
13 night to 8:00 in the morning. Excuse me. And two  
14 people in the daytime.

15 Q. And did you fulfill that requirement?

16 A. Yes, I did.

17 Q. Now, you've been -- you are subject to being  
18 inspected by DHEC; is that correct?

19 A. Oh, yes. Yes. They come -- they can an --  
20 annually every year, but sometimes if there's a  
21 complaint or something, they come.

22 Q. Are they announced inspections or not?

23 A. Unannounced.

24 Q. Okay. And if you don't make the corrections or  
25 deficiencies, if any are found, what happens?

1 A. We're liable for a fine.

2 Q. Have you been fined?

3 A. Not at all. Not for 31 years.

4 Q. And do you renew your license every year?

5 A. Every year.

6 Q. Okay. Now, there's a lot of discussion about  
7 if the employees are allowed to sleep on their  
8 shifts. At the time Ms. Clark was there, what was  
9 the schedule shifts?

10 A. Twenty-four hours a day, and they work three  
11 days a week. Not three consecutive days, but three  
12 days out of a one-week period.

13 Q. Were they allowed during that 24-hour period to  
14 sleep?

15 A. Yes. Five hours.

16 Q. And was that approved by DHEC?

17 A. Yes.

18 Q. Okay.

19 A. Also by the labor board.

20 Q. Now, you're limited to how many beds?

21 A. Ten beds in each facility.

22 Q. Are you required to have -- are you the  
23 administrator?

24 A. I am.

25 Q. And that's different from the staff?

1 A. Pardon?

2 Q. That's different from your staff?

3 A. Yes. Yes. Yes.

4 Q. Are you required to take any annual  
5 training ---

6 A. Yes.

7 Q. --- as the administrator?

8 A. Yes. I take 18 hours of continuous education  
9 every year.

10 Q. Are you tested on that continuous education?

11 A. Yes. Yes.

12 Q. Now, I want to ask you about the employees,  
13 that is your staff. How do you obtain employees for  
14 your facility?

15 A. Well, years ago I used to advertise in the  
16 newspaper, but it got so expensive till -- and, you  
17 know, things picked up and we've become well known  
18 around town, so it's usually word of mouth anymore.  
19 We don't use -- we don't have to advertise. We just  
20 have our known -- our name in the phonebook and  
21 people pick our name out of the phonebook and call.

22 Q. All right. Do you -- are you required to have  
23 references for your employees?

24 A. Yes, sir.

25 Q. How many?

1 A. Three.

2 Q. Do you have a SLED check?

3 A. Yes.

4 Q. Did you have SLED checks on these employees ---

5 A. Yes, I did.

6 Q. --- staffs?

7 A. Yes, I did.

8 Q. Is the fact that there's some record, criminal  
9 record, disqualifying according to DHEC? Does DHEC  
10 disqualify anybody that has a criminal record?

11 A. No. We put that in the file. When they come  
12 out, they check it out. And so far, they've allowed  
13 everything.

14 Q. You've never had DHEC tell you to get rid of  
15 any employee you've had?

16 A. No.

17 Q. Now, what training does your staff have to have  
18 or other tests in order to be employed?

19 A. They have to have medication administration up  
20 front. And they have to have -- I train them  
21 myself. The whole 31 years I've been there, I train  
22 myself. I go there with them and I work all night  
23 long, all day long, however they're there for  
24 24 hours at this particular time.

25 And I stay with them three days and make sure

1           that they were aware of everything that each person  
2           needed, make sure how the medication was supposed to  
3           be given, make sure how the food was supposed to be  
4           cooked, and to make sure -- I wanted everything to  
5           be cleaned and everything. And I made sure that  
6           they were capable of doing that before I left them  
7           alone.

8           Q.     That's by your own personal observation?

9           A.     That's my -- that's my own personal thing.

10          Q.     Did you ever check back to see that they were  
11          performing correctly?

12          A.     Yes.   Yes.

13          Q.     How often?

14          A.     Every week.

15          Q.     Now, as part of your compensation for staff,  
16          did they get free meals while they're there?

17          A.     Yes.   They get three meals a day.

18          Q.     Do they eat the same thing that the residents  
19          eat?

20          A.     Yes.

21          Q.     All right. You have to have any particular  
22          uniform?

23          A.     Yes.   They wear smocks and they can wear a  
24          skirt, but I prefer them to wear a smock top.

25          Q.     Do they have to pass any health tests?

- 1 A. Pardon?
- 2 Q. Do they have to pass any health tests?
- 3 A. Oh, yeah. They go to the doctor and get  
4 admission medical from the doctor, and they have to  
5 be cleared from the doctor before they can come.  
6 They can't have any contagious diseases and have a  
7 TB test -- two-step TB test.
- 8 Q. All right. And what training are they given in  
9 the administration of drugs?
- 10 A. The nurse has to come -- the RN nurse has to  
11 come and do medication management.
- 12 Q. And who is your nurse that did that?
- 13 A. I believe at that time it was Fran Elrod.
- 14 Q. All right. So Ms. Elrod is a registered nurse?
- 15 A. She is.
- 16 Q. And she would give the training on medication?
- 17 A. Right.
- 18 Q. Now, let me go back. There was testimony about  
19 opening mail. Do you open private letters?
- 20 A. No. We do not open private letters. We do  
21 open boxes that come into our facility because we  
22 have -- we have a no-smoke facility. We had a fire  
23 in one of our facilities in the past, maybe 15 years  
24 ago. Fire marshal came. He band smoking from both  
25 facilities, so we have no smoking. But the family

1 sometimes tries to sneak cigarettes through the  
2 mail, so we have to check the boxes to make sure  
3 that there's no cigarettes.

4 And so we have diabetics also, and they like to  
5 sneak bags of candy in for the diabetics, and we  
6 have to control what they eat. So that's why we  
7 check the boxes.

8 Q. Now, you also were questioned about diluting  
9 milk.

10 A. Yes.

11 Q. Why would you dilute milk?

12 A. Well, you know, sometimes when the end of the  
13 week was coming before the delivery man came, we  
14 took Carnation milk, which says on the back of the  
15 can which is condensed milk, to add three cans of  
16 water to that and we just mix it with them. It's  
17 all milk, so it's milk.

18 Q. Was that done to save money or because ---

19 A. Because we're running out of milk.

20 Q. Now, I want to ask you, you've operated the  
21 first community assisted living facility since 1988?

22 A. 1988 in November.

23 Q. And then you acquired a second one?

24 A. Yes.

25 Q. And that's the Faith, Hope and Charity?

1 A. No. That was 2303 South McDuffy Street. That  
2 was Resting Place II.

3 Q. Okay. And then what happened to that?

4 A. That -- my husband passed in '95, and I had  
5 three -- three -- three facilities at the time, and  
6 it just got to be too much and I had to close one.  
7 So I chose to close the one on McDuffy Street  
8 because the other two buildings were on the same  
9 piece of property. It was easy for me.

10 Q. All right. And does the Faith, Hope and  
11 Charity that you left open is located where in  
12 relationship?

13 A. No. It was the Resting Place II.

14 Q. Okay.

15 A. It's on McDuffy Street, 2303 South McDuffy.  
16 It's about a block and a half from the other two  
17 facilities.

18 Q. All right. Well, I'm referring specifically to  
19 the Faith, Hope and Charity building that Ms. Clark  
20 occupied.

21 A. Are you asking me when we opened it?

22 Q. Yes.

23 A. Okay. 1984.

24 Q. And it was operated since then as a second  
25 facility?

1 A. Yes. And it was opened. It was established to  
2 help fund our church.

3 Q. Where is it in relation -- in relationship to  
4 the original Resting Place?

5 A. It's on the same piece of property.

6 Q. How far apart are they?

7 A. About 150 feet.

8 Q. Do you have -- is it fenced in?

9 A. All fenced in.

10 Q. Is there any fence separating the two pieces of  
11 property?

12 A. There is not.

13 Q. What other offices do you have on the -- on the  
14 property now?

15 A. What other offices?

16 Q. Yes. Do you have an office there?

17 A. Yes. My office is in the rear of the building,  
18 right next toward Faith, Hope and Charity, yes.

19 Q. Now, let me go to when Ms. Clark came,  
20 Ms. Hazel Clark.

21 A. Uh-huh.

22 Q. How were you contacted or were you contacted  
23 about Ms. Clark as a potential resident?

24 A. The social worker from AnMed hospital called  
25 me.

1 Q. And what did you do in regards to that call?

2 A. They asked me if I would come and look at this  
3 lady that they had there. They thought she might be  
4 appropriate for our facility, would I please come  
5 and do an assessment.

6 Q. Is that the first time you received a call from  
7 AnMed?

8 A. Oh, no. No. No. No. They call me all the  
9 time. Since then, 20 times.

10 Q. Do you take residents from AnMed?

11 A. I do.

12 Q. And so this was nothing out of the unusual? I  
13 mean, it's not unusual?

14 A. That's right.

15 Q. All right. So you -- did you interview  
16 Ms. Clark?

17 A. I interviewed Ms. Clark. I did.

18 Q. Who else was there during the interview?

19 A. Debbie -- I believe Debbie was there and the  
20 nurse, of course.

21 And I talked to Ms. Clark, and she got up and  
22 walked for me. And I talked to her a little bit and  
23 she seemed appropriate for the facility, so I told  
24 Debbie that we would take her.

25 Q. Did you also receive any documentation from a

1 doctor regarding Ms. Clark?

2 A. Yes. I told Debbie what I had to have to admit  
3 her and the social worker what I needed for the  
4 medical admission form be filled out and signed by  
5 the doctor, and she had to have a TB test -- two TB  
6 tests. And they got that ready.

7 I'm not sure -- I didn't look at the file, but  
8 I'm not sure that she didn't have an x-ray, so they  
9 wanted to move her right away. If you have a TB  
10 test, you have to wait for several days -- or a  
11 couple days. So I believe she had an x-ray of the  
12 chest and came on.

13 Q. All right. And did the doctor's notes find  
14 Ms. Clark was a suitable resident for your facility?

15 A. Yes.

16 Q. All right. Now, did Ms. Clark come with a  
17 walker?

18 A. No.

19 Q. All right. Now, this is an issue, but I want  
20 to go into what you charge people or residents that  
21 come to your facility.

22 A. At that point in time, I believe it was a  
23 little over \$1200. I'm not sure. I'd have to look  
24 at the file.

25 Q. All right. But your best recollection is

1           \$1200?

2           A.    Yes.

3           Q.    And for that, they got meals, the laundry,  
4           supervision, medicine given them, whatever  
5           entertainment or travel, they got that?

6           A.    Yes.

7           Q.    Do you recall Ms. Clark, what sources she knew  
8           drew on to pay for her care there at the Faith, Hope  
9           and Charity?

10          A.    Yes.

11          Q.    And what were they?

12          A.    Her -- her charges?

13          Q.    Yes.  What was she charged and how'd she pay  
14          for it?

15          A.    I believe Debbie wrote me a check.

16          Q.    All right.  Did Ms. Clark draw any monthly  
17          funds to your knowledge?

18          A.    No.  I only bill my patients if their family's  
19          handling the money.  I just bill them for what they  
20          owe me.  I don't bill them for their spending money.  
21          The family handles their spending money.

22          Q.    All right.  Do you get any state aid or any  
23          other aid?

24          A.    Yes.  If they qualify for Medicaid, we make an  
25          application.  They had already made the application

1 I believe in this case. And we have to wait a  
2 couple of months, sometimes more than that. And the  
3 state pays a small supplement check, depending on  
4 what their social security is.

5 Q. Is the social security paid directly to you?

6 A. It's paid to whoever the payee is. I believe  
7 Debbie was the payee in this case, and it was paid  
8 to her.

9 Q. And then does the state supplement come  
10 directly to you?

11 A. The state supplement comes to me in a blanket  
12 coverage for all the residents that qualify for  
13 Medicaid.

14 Q. Do you know how much that would be for each  
15 individual?

16 A. It's -- it's based on their social security, so  
17 each one would be different.

18 Q. Okay. What is the maximum for the state's  
19 supplement?

20 A. Oh, I don't know. I've seen \$600, a little  
21 over 600.

22 Q. All right. Your recollection is, it was \$1200  
23 for Ms. Clark?

24 A. It was a little over 12 I think, but I couldn't  
25 be sure about the amount now.

1 Q. In your facility, do you have different spaces  
2 or beds and different rooms?

3 A. Yes. We have two beds per room. They're  
4 semiprivate rooms, but we use them as Medicaid beds,  
5 as well.

6 Q. All right. And do you have single beds?

7 A. That's what they are, single beds.

8 Q. But do you have a single room for a single  
9 person?

10 A. Oh, yes. Right now we do. We have two single  
11 rooms, but at that point in time we only had one.

12 Q. Okay. And Ms. Clark was in a double room. She  
13 had a roommate?

14 A. She was.

15 Q. All right. Now, these rooms have beds. What  
16 other furniture do they have?

17 A. Dressers and maybe nightstands. And each one  
18 has a dresser and a bed, and they have a big long  
19 closet that they share.

20 Q. And how many bathrooms do you have in these  
21 facilities?

22 A. Three.

23 Q. And are they DHEC inspected and DHEC approved?

24 A. Yes, they are.

25 Q. They have handrails?

1 A. Yes, they do.

2 Q. Now, on the floors, what are the floors that  
3 you have in your facilities?

4 A. They're tile.

5 Q. Can you have rugs?

6 A. No rugs. We're not allowed to have throw rugs  
7 because that's -- that's a fall hazard.

8 Q. Okay. And do you have handrails from each room  
9 to the bathroom?

10 A. Yes. Down the hall there's handrails.

11 Q. All right. Now, Ms. Clark came without a  
12 walker?

13 A. Yes.

14 Q. And she was there how long before she suffered  
15 her first fall?

16 A. She wasn't even there 24 hours. She came in  
17 the afternoon. I can't remember when exactly it  
18 was, but I believe it was around four -- four or  
19 five o'clock. So the very next morning she had a  
20 fall at 6:00.

21 Q. All right. And as a result of that fall, what  
22 did you do to ensure her safety?

23 A. I -- I had a walker that we -- we have walkers  
24 that we furnish to people that don't have them, and  
25 I pulled the walker out of my storage. And I

1 brought her a walker there, and I put a big note up  
2 at the foot of her bed that said, "Don't forget your  
3 walker. Please, Ms. Clark, don't forget your  
4 walker."

5 Q. Did you instruct any of your staff ---

6 A. Absolutely.

7 Q. --- regarding Ms. Clark?

8 A. Yes. All the staff was told and they know what  
9 happened, and we -- we were all in this together.

10 Q. All right. What did you tell your staff  
11 specifically?

12 A. That they had to pay close attention to  
13 Ms. Clark because she had fallen and she had this  
14 big hole in her head. And Ms. Clark kept pulling it  
15 and picking at it and caused it to bleed. And we  
16 finally had to come to some kind of conclusion in  
17 what -- on how we could take her from continuing  
18 that so she wouldn't get an infection.

19 So we tried several things. Finally, we wound  
20 up with a stocking cap. Put a stocking cap on her  
21 head, and she wore that pretty much.

22 Q. Now, I want you to tell me from the period that  
23 Ms. Clark got there, which was July 10th ---

24 A. Right.

25 Q. --- of 2015 ---

1 A. Right.

2 Q. --- until 27th of August, did Ms. Bannister and  
3 other family members of Ms. Clark visit her?

4 A. Yes, they did. And they praised us on what a  
5 good job we were doing with their mother.

6 Q. Did they take Ms. Clark away from the facility?

7 A. I don't know how many times they took her away,  
8 but I do know they took her on the 21st, either to  
9 the doctor, shopping, or wherever Debbie took her  
10 riding or something. And then they -- that was the  
11 day she fell at the CVS.

12 Q. In the -- in those days from July the 10th,  
13 2015, to the 27th of August, was there any complaint  
14 made to you, your knowledge, or to any of your staff  
15 about the care that Ms. Clark was receiving?

16 A. None whatsoever. We just got -- she praised  
17 our -- my staff for taking a good job -- doing a  
18 good job with her mother. And when I saw Debbie,  
19 she did the same thing to me.

20 Q. All right. Now, on the morning that Ms. Clark  
21 fell, Ms. Bellotti was on duty?

22 A. Right.

23 Q. Now Ms. Bellotti had applied to you for a job?

24 A. Right.

25 Q. Ms. Touchton, you hired some people that have

1 had problems in the past with drugs, alcohol, and  
2 the -- and law?

3 A. Yes.

4 Q. Why would you hire those people?

5 A. Well, because it's an outreach ministry from  
6 our church, and I -- and I just gave them a second  
7 chance.

8 Q. Were you trying to help them?

9 A. Yes. And over the years, there's been about  
10 three or four ladies that's come out of that  
11 situation they were in, and now they're living  
12 normal lives, going to church.

13 Q. Can you name one or two of those?

14 A. Linda Kelmer; Kim Savage; Angie Miller.

15 Q. Did you have a nurse there named Elrod at that  
16 time?

17 A. No. Fran Elrod is a nurse from mental health.

18 Q. Okay. And what does she do for you?

19 A. She does medication administration, and she  
20 does our annual training. Sometimes we go beyond  
21 the medication administration and go into other  
22 areas, and she handles that for me.

23 Q. How long has she been doing that?

24 A. Probably six years.

25 Q. Okay.

1 A. Because I had someone else doing it before her.

2 Q. Now, medical administration, tell the jury what  
3 that is, what you mean by that.

4 A. Well, can I use this, sir?

5 THE COURT: Yes, ma'am.

6 THE WITNESS: This is our MAR sheet. This is  
7 how we administer medication. And each -- each time  
8 the medication is given, it's signed on this sheet  
9 by the staff member. And they have to know exactly  
10 how to sign it, what medicine to give, the proper  
11 dosage to give, the right person to give it to, and  
12 they have to know a lot about this medication before  
13 I can leave them by themselves when I'm training  
14 them.

15 So I have to have somebody that's more  
16 knowledgeable about it than I am to come in and do  
17 that, and that is required by DHEC.

18 Q. And that's what Ms. Elrod did?

19 A. That's what Ms. Elrod does.

20 Q. Okay. And you did that according to the DHEC  
21 regulations?

22 A. Yes.

23 Q. Now, how is the medicine administered  
24 physically?

25 A. Well, the medicine's -- we get our medicine

1 from Omnicare in Spartanburg. They deliver to our  
2 facility on a daily basis and we need it done that  
3 way. Otherwise, we get our -- our turnaround, which  
4 we call a turnaround, once a month, and they deliver  
5 all the medicine at one time.

6 In the meantime, you've got other people coming  
7 in, then people going out, so definitely we have  
8 to -- we have to have them deliver some extra.

9 And then we get the medicine in the facility.  
10 We have a big medi-cart, just like a hospital has.  
11 And we lock all the medication up. All the  
12 medication that's narcotics has to have a double  
13 lock. So we have a double lock inside this big  
14 cart, then we double lock all the narcotics.

15 And then when it comes time for the medication,  
16 the staff member takes these little cups and she  
17 pulls the medicine out and she puts it in a cup for  
18 each resident. And -- and we have people that maybe  
19 don't like to take their medicine, will spit their  
20 medicine out. They'll go to the bathroom and spit  
21 it out in the toilet, or they'll hide it in their  
22 bedroom. So, naturally, we have to watch the  
23 residents take their medication, so we do it  
24 hospital-style.

25 Q. And how is that?

1 A. We take the cup and put the medicine in it and  
2 we stand before the resident. We go all at once,  
3 and we put it in their mouth and make sure she  
4 swallows it and makes sure it goes down.

5 Q. And you do that generally in the morning?

6 A. In the morning, at noontime, five o'clock, and  
7 eight o'clock at night.

8 Q. All right. And that's one of the  
9 responsibilities that you have?

10 A. Of the staff, yes.

11 Q. Now, there was some questioning about the fact  
12 that Ms. Bellotti marked the medicine given on  
13 Ms. Clark -- before Ms. Clark fell. Is that  
14 permitted?

15 A. That is not permitted and she's -- they've been  
16 told that by Fran Elrod, who's the one who gives  
17 the testing and me over and over and over. You do  
18 not mark medication charts until the medication has  
19 been given.

20 Q. All right. Now, on the morning of August 27,  
21 2015, when Ms. Clark fell, did you receive a call  
22 from Ms. Bellotti?

23 A. I did.

24 Q. And what did you tell Ms. Bellotti?

25 A. I can't remember. She'd already called 911, I

1 think she had. But I -- but I -- I encouraged her  
2 to call 911 and send her to the hospital, if she  
3 hadn't already done that, because that's what my  
4 norm is.

5 Q. Is that normal practice?

6 A. That is what my norm is. That's what I do.  
7 Send them to the hospital. Even if they've just  
8 fallen, we send them to the hospital to make sure  
9 that they have no broken bones so we'll have no  
10 problem in the future.

11 Q. So you have at maximum 20 elderly residents in  
12 your facilities now or then?

13 A. Yes.

14 Q. And these residents, if they have an injury or  
15 sickness, you call 911?

16 A. If it's an accident. Sometimes I don't call  
17 911 for the sickness because we have a doctor that's  
18 on call. We usually call the doctor.

19 Q. Okay. But if they have an accident with  
20 apparent injuries, you would call 911?

21 A. Yes. And we make an accident report and put it  
22 in the file, so DHEC, when they come by, they can  
23 review it.

24 Q. Would it be a fair statement, Ms. Touchton,  
25 that most of your residents have fragile health

1 problems?

2 A. Somewhat. Yes.

3 Q. Was Ms. Clark an exception?

4 A. No. She -- she was -- can I speak? She was on  
5 13 medications when she come to me, 13. Out of  
6 those 13 medications, she was on four very hardcore  
7 medications, very -- that had side effects of  
8 dizziness.

9 And when Ms. Clark would stand up, she would  
10 become dizzy sometimes. So I'm sure this is the  
11 result of her falls is because of this medication.  
12 Like she was taking hydrocodone medication six times  
13 a day if necessary, six times a day.

14 Q. And that's for pain?

15 A. That's a very strong medication. She was  
16 taking gabapentin, which are 800 milligrams. She  
17 was taking that three times a day. That's a lot of  
18 medication, especially for an older person. So the  
19 doctor, he's the one that put her on all this  
20 medication. I mean, if anybody's being sued, it  
21 should be him.

22 Q. All right. Now, you heard testimony that  
23 Ms. Bellotti had a critical comment to make to  
24 Ms. Clark at the time she fell on the 27th. You  
25 heard that. The loud noise Ms. Bellotti said to

1 Ms. Clark. I can't remember, but words to the  
2 effect, "I can't believe you messed yourself."

3 A. Yeah, she said that.

4 Q. All right. Was that reported to you?

5 A. Yes. Because she was fired that day.

6 Q. All right. How did you first learn of this  
7 comment?

8 A. The hospital called me.

9 Q. And advised you that ---

10 A. And told me that -- that Ms. -- Ms. Bellotti  
11 was using foul language, and I thanked them for  
12 calling me because I want to know that. I didn't  
13 know that someone had said, yes, that it was very  
14 offensive. That was not true. I -- I -- I need to  
15 know what's going on. So I -- I thanked her for  
16 calling me, and I said, "I'll certainly take care of  
17 that."

18 Q. And as a result of learning that Ms. Bellotti  
19 had said something to a patient, what did you do  
20 with Ms. Bellotti?

21 A. I fired her.

22 Q. Did she subsequently apply to come back and  
23 work for you?

24 A. Yes. Yes. I heard her say something about the  
25 pay was not good. If the pay wasn't good, why did

1 she want to come back?

2 Q. How many times did she approach you about  
3 coming back?

4 A. About three or four.

5 Q. And you refused to hire her back?

6 A. Yes.

7 Q. Can you think of any way that Ms. Bellotti was  
8 advancing your interest as her employee in saying  
9 these words to Ms. Clark?

10 A. Say that again.

11 Q. Can you think of any way Ms. Bellotti was  
12 advancing your interest as her employer in saying to  
13 Ms. Clark, "I can't believe you messed yourself"?

14 A. No. That's just how Ms. Bellotti was. She  
15 was -- she just had a way about her. She had a loud  
16 mouth for one thing, and she did have a little knack  
17 for saying ugly things. I had already reprimanded  
18 her once, and I moved her from one house to the  
19 other as a matter of fact. And then I told her it  
20 wasn't appropriate, and I wasn't going to put up  
21 with it.

22 Q. On the other occasion that Ms. Bellotti used  
23 offensive language, was it to any resident?

24 A. To any resident?

25 Q. Yes.

1 A. No. No. No. She wasn't really -- I didn't  
2 believe she spoke that to the resident. She was  
3 talking about the situation when she was talking  
4 about -- about what she did. She -- I don't think  
5 she was yelling at her. She said I -- "I just can't  
6 believe you did this."

7 Q. But you don't put up with that either?

8 A. No. No.

9 Q. Now, you had -- you described the contact you  
10 had with Debbie Bannister after Ms. Clark fell on  
11 the 27th of August?

12 A. I did what now?

13 Q. Contact you had with Debbie Bannister.

14 A. None. None except they come to take  
15 Ms. Clark's belongings out of the facility, and I  
16 had called Debbie on three occasions, and she did  
17 not -- not return my call.

18 And when she come, she was there. And I said,  
19 "I'm so sorry about your mother." I thought she was  
20 still in the hospital. So she didn't -- she didn't  
21 acknowledge what I said to her. I said, "I'm really  
22 sorry about your mother." So I think I said that  
23 three times to her, and she turned around and looked  
24 at me and she said, "She's dead."

25 Q. Was that the first time you knew Ms. Clark had

1 expired?

2 A. Yes.

3 Q. Have you been questioned by any authorities  
4 about Ms. Clark's death, Sheriff's Department or  
5 ombudsman?

6 A. No one. No one. No one. They said the  
7 ombudsman was called at the hospital. I had a  
8 personal friend in that office up there. If the  
9 ombudsman was called at the hospital, she would've  
10 definitely got ahold of me.

11 Q. As part of her duties?

12 A. Yes. As part of her duties to do that.

13 Q. So now you were sued some time later. You  
14 delivered the complaint that we're here on today; is  
15 that correct?

16 A. (No response.)

17 Q. The lawsuit was instituted?

18 A. Today? Yes.

19 Q. No. When you first learned that Ms. Bannister  
20 was suing you.

21 A. Oh, okay.

22 Q. Do you recall that date?

23 A. No, I can't.

24 Q. It's been more than a year though?

25 A. It's been more than a year. Yes.

1 Q. And are you planning to retire and to get out  
2 of this business?

3 A. Yes.

4 Q. Is that because of age or health or both?

5 A. I guess both.

6 MR. BANNISTER: Okay. All right. Answer any  
7 questions?

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MS. BURNETT:

11 Q. Ms. Touchton, did you ever ask a doctor to take  
12 Ms. Clark off the medication that she was on?

13 A. Did I ever ask the doctor to take her off the  
14 medication?

15 Q. Yes, ma'am. Did you ever say, "I am concerned  
16 about all these medications. Please let's  
17 discontinue some." You could've done that, right?

18 A. No. But I did tell Debbie.

19 Q. Okay. And where was that documented in your  
20 chart?

21 A. That I told Debbie?

22 Q. Yes, ma'am.

23 A. I probably didn't document it.

24 Q. Okay. All right. But you knew at all times --  
25 I'm sorry. You knew at all times that Ms. Clark was

1 on whatever medication she was on, correct?

2 A. She came with the 13 medications. Yes.

3 Q. And so you knew that on the very first day and  
4 you knew it every day until she was discharged,  
5 right?

6 A. Yeah, which was six weeks on.

7 Q. Okay. All right. And so if you were concerned  
8 about the medication and its effects on her, that  
9 was something you would've been concerned about on  
10 July the 10th, right?

11 A. Ms. Clark had been a -- can I speak?

12 Q. Yes.

13 A. Ms. Clark had been in an automobile accident in  
14 the past. She had a lot of issues that I wasn't  
15 told about. I didn't -- I didn't know what each  
16 medication was for, and I realize she was in a lot  
17 of pain, but I -- I never thought she should be  
18 taking that much hydrocodone.

19 But the other -- other medication, I didn't  
20 know what the doctor had given all to her for. So  
21 it was really her daughter's place to go to the  
22 doctor after we discussed it and talk to the doctor  
23 about taking her off the medication.

24 Q. Okay. Earlier when Mr. Bannister was asking  
25 you questions, he was asking you about the church

1 building, and I think you said that building belongs  
2 to the church. Is that what you said?

3 A. Right.

4 Q. Okay. Well, have you sold that building too  
5 recently?

6 A. No, honey. It's been the same -- it's been the  
7 same all along.

8 MS. BURNETT: Okay. May I see the Court  
9 exhibit of Ms. Touchton's deposition, please?

10 THE REPORTER: (Complying.)

11 MS. BURNETT: Thank you very much.

12 BY MS. BURNETT:

13 Q. Okay. If you could open that, please, ma'am,  
14 to page 86. Oh, gosh. I'm sorry. To page 86.

15 A. (Complying.)

16 Q. And I'm going to read from line 7, and I'm  
17 going to get you to read your answer. Okay. Did  
18 you tell me where the church is located? What did  
19 you say?

20 A. 1214 New Hope Road, Anderson.

21 Q. Who owns the property where the church is?  
22 What'd you say?

23 A. Well, I built the church if that's what you're  
24 asking. I built the church and I own the property,  
25 but we turned it over to the church back when we

1 done a -- when we did a -- when we did a change  
2 after my husband passed.

3 Q. Okay. Can you just -- I mean, I took your  
4 deposition. I think we talked about this yesterday,  
5 but January 24th of 2018. So a little more than a  
6 year ago from today, right? And at that time, I  
7 said, "Who owns the property where the church is  
8 located?" and what did you say?

9 A. I do. And I do own the property.

10 Q. Okay. All right. So the church doesn't own  
11 the property, you do. All right. Now, the checks  
12 that go to -- is it Mr. Witt?

13 A. Yes.

14 Q. Okay. Other people -- you write those checks  
15 out of the Resting Place account, right?

16 A. Yes. Because it's all ministry. He was -- he  
17 was the pastor for our outreach ministry. And he  
18 goes to that church -- to those homes all the time  
19 and ministers to those residents on a -- on a weekly  
20 basis, so it's all ministry.

21 Q. Okay.

22 A. So his check comes out of that.

23 Q. Okay. So he's -- he's an employee just like  
24 your other employees?

25 A. No.

1 Q. Okay. So you testified that you are required  
2 to have one person between 8:00 p.m. and 8:00 a.m.;  
3 is that what you said?

4 A. At nighttime.

5 Q. Yes, ma'am.

6 A. Yes.

7 Q. Okay. But peak hours are actually 7:00 p.m. --  
8 7:00 a.m. to 7:00 p.m., right?

9 A. Well, it looks like we got 8:00 to 8:00. It's  
10 been -- it's been okayed by DHEC. I mean, they've  
11 not said anything about that ---

12 Q. Okay. This ---

13 A. --- because our medication has to be given at  
14 certain hours, so we had to break the time up into  
15 the hours the medication has to be given by the  
16 doctor, so that's why we did that.

17 Q. Okay. So the DHEC regulations that we looked  
18 at yesterday that says "peak hours." Those hours  
19 from 7:00 a.m. to 7:00 p.m. or as otherwise approved  
20 in writing by the department, that doesn't apply to  
21 you?

22 A. I -- I explained to you why we changed it.

23 Q. Okay. So it's not a document that you have  
24 here today that shows that you got different hours  
25 than what's in the regs, right?

1 A. Because of the medication.

2 Q. Okay. All right. Now, have you been cited by  
3 DHEC for not having two workers, two caregivers,  
4 during peak hours?

5 A. I think so.

6 Q. Okay. Why would DHEC cite you if they had told  
7 you that it was fine to have what you have?

8 A. Told me that it was fine about what?

9 Q. If DHEC approved your schedule of having one  
10 person at certain times, why would you be cited?

11 A. I said we have two people in the daytime.

12 Q. Okay. And my question to you, ma'am, is: Have  
13 you been cited for failing to have enough people  
14 working during peak hours?

15 A. In the past maybe.

16 Q. Okay. How many times?

17 A. I can't remember.

18 Q. More than one?

19 A. I can't remember that.

20 Q. All right. Have you been cited by DHEC for  
21 failing to have a SLED check in your file for one or  
22 more of your employees?

23 A. That might be possible in 30 years.

24 Q. In fact, Ms. Clark's admission agreement  
25 provides that she will be paying \$1,351 to be in

1 your facility; isn't that right, not 1200.

2 A. Yeah, okay. It's been four years, so, you  
3 know.

4 Q. Okay. Well, let me let you look at it.

5 A. You don't always -- you don't always remember  
6 that.

7 Q. Okay.

8 A. That's correct.

9 Q. Okay. Now, you have testified, I believe,  
10 multiple times that you hire folks with a criminal  
11 background as an outreach. Is that what you said?

12 A. I have -- I have done that. Not everybody, but  
13 I have done that.

14 Q. Okay. Well, what's -- wouldn't it be safer to  
15 hire those who don't have substance abuse problems  
16 and criminal history when you're dealing with a  
17 population of vulnerable adults?

18 A. You don't have people knocking your door down  
19 out there wanting a job to work with older people.

20 Q. Okay.

21 A. So you have to take what comes.

22 Q. All you can find is people with drug and  
23 alcohol problems and criminal histories; is that  
24 right?

25 A. That's not all I have.

1 Q. Okay. Now, Ms. Elrod, isn't it true that  
2 Ms. Elrod actually worked for Larry, your son, at  
3 his adult daycare administering medication since  
4 2012?

5 A. I don't know how long she's worked there.

6 Q. Okay. Isn't it true that she started doing  
7 training for your employees at Faith, Hope and  
8 Charity and the Resting Place last year in 2018?

9 A. No. That's not true.

10 Q. All right. Ms. Elrod did not train Wendy  
11 McMahan, right?

12 A. If there was train -- if she was there at that  
13 period of time, she trained Wendy McMahan.

14 Q. Okay. Well, we don't have any kind of document  
15 that reflects that training, do we?

16 A. Should be in her file.

17 Q. Okay. Well, we don't -- it's not something  
18 that we have here today, correct?

19 A. (No response.)

20 Q. Yes or no?

21 A. The file is over there. If it's -- it's in the  
22 file.

23 Q. Okay. Well, part of this lawsuit ---

24 A. We do have it here today.

25 Q. Okay. All right. So -- and Catherine Bellotti

1 was not trained by Ms. Elrod?

2 A. She must've been trained by the nurse before  
3 Ms. Elrod come.

4 Q. Okay. And who is that?

5 A. Sally Sanders.

6 Q. Sally Sanders. All right. Ms. -- so when did  
7 Ms. Elrod begin training?

8 A. I -- I can't remember that.

9 Q. Okay. All right. Now, this medication issue  
10 that you are instructing people to do medications in  
11 the appropriate way, and they just won't do it. Is  
12 that what you said? You can tell them over and  
13 over, and they won't do it?

14 A. About setting up the medication ahead of time?

15 Q. Uh-huh. Yes, ma'am.

16 A. Yes. Yes.

17 Q. All right. You could fire them?

18 A. Oh, yeah. We work on a point system. When  
19 they -- when they use that 15 points, they're fired.

20 Q. How many points do they get charged for ---

21 A. On medication, it's -- on medication, it's  
22 always five.

23 Q. Okay. How many points do they get charged for  
24 cursing at a resident?

25 A. I don't have anybody cursing at a resident.

1 Q. How many points do they get charged for cursing  
2 in front of residents?

3 A. Ms. -- Ms. Cathy, she got five points.

4 Q. All right. At the time Cathy was working for  
5 you on August the 26th and the 27th, you would agree  
6 that she was working at your facility at Faith, Hope  
7 and Charity that day, right?

8 A. I don't know. You mean on the 27th?

9 Q. Of August. Yes, ma'am.

10 A. I'm sorry. Yes, ma'am.

11 Q. Okay. She was at Faith, Hope and Charity at  
12 all times during all these incidents that -- in  
13 which Ms. Clark fell, right?

14 A. No. Because the first fall, Linda Kelmer was  
15 there.

16 Q. Okay. Let me back up. On August the 26th and  
17 27th, it appears that Ms. Bellotti was there at all  
18 times during that -- during that 24-hour period?

19 A. Yes. That's correct.

20 Q. Okay. And that would've been her normal  
21 working time?

22 A. Yes.

23 Q. Okay. And she was providing -- other than some  
24 incident that resulted in her termination, she was  
25 providing all the care and services that you

1 expected her to?

2 A. That morning? You're talking about the morning  
3 it happened?

4 Q. The night or the morning, yes.

5 A. Yes. Yes.

6 Q. Okay. She was cleaning? She was cooking? She  
7 was monitoring patients, right?

8 A. Yes.

9 Q. Okay. And that was her job?

10 A. Correct.

11 Q. All right. And all -- and you have no  
12 evidence, do you, that she left or did anything  
13 other than what you're asking her to do, except that  
14 she lost her temper with Ms. Clark?

15 A. She didn't lose her temper. She just made a  
16 statement.

17 Q. Okay. Well, she -- whatever she said that  
18 resulted in you terminating her, everything else she  
19 was doing was just like you asked her to do, right?

20 A. Right.

21 MS. BURNETT: All right. I don't have any  
22 other questions.

23 THE COURT: Thank you, ma'am. You may step  
24 down.

25 (Witness excused.)

1 THE COURT: Call your next witness, please.

2 MS. BURNETT: The plaintiff rests, Your Honor.

3 THE COURT: Very good. All right. Madam  
4 forelady, ladies and gentlemen of the jury, the  
5 plaintiff advises that she rests, which means  
6 they've presented their case in chief. I have some  
7 administrative matters that I need to take up now.  
8 If you'd go back to your jury room, we'll continue  
9 in just a few minutes.

10 (At 10:39 a.m., jury left the courtroom.)

11 THE COURT: Mr. Bannister, motions?

12 MR. BANNISTER: Yes, Your Honor. I would move  
13 for a directed verdict as to the Resting Place,  
14 which is an LLC that's defendant's. That's on the  
15 basis that Ms. Clark was not a resident there.

16 On the morning of her fatal fall, the employee  
17 of the Resting -- she was not being supervised by an  
18 employee of the Resting Place, and there's no --  
19 since they're independent businesses, there's no  
20 connection that the Resting Place should be held  
21 reliable for or responsible for Ms. Clark's  
22 injuries.

23 MS. BURNETT: Your honor, the plaintiff would  
24 disagree strenuously with that position in that  
25 there has been a complete amalgamation of interest

1           between whatever these entities are, that they share  
2           other -- they share one officer. They share, you  
3           know, the same real property, location, everything  
4           is overseen by the same person, they share a  
5           checking account, there are personal financial  
6           transactions that come from that account and enter  
7           that for both business entities.

8           There is a completely blurred distinction as  
9           between Ms. Touchton individually, Faith, Hope and  
10          Charity and the Resting Place, and they certainly  
11          are acting for a common business purpose. There's  
12          quite a bit of evidence, I believe, before the Court  
13          that there's been an intermingling of profits and  
14          revenues that has extends and that sort of thing.

15          And, of course, to the extent that there may be  
16          assets of any entity, which is -- it's not -- it's  
17          not known, you know, we believe that it would be,  
18          you know, with some of the wrongdoing that has been  
19          alleged that without finding amalgamation that an  
20          injustice would be served.

21          THE COURT: All right. Anything in response,  
22          Mr. Bannister?

23          MR. BANNISTER: Judge, the fact they use a  
24          common checking account, we would contend it's not  
25          sufficient to make them liable for negligence and

1 wrongful conduct that took place on the presence --  
2 in the presence of and on another -- in an another  
3 LLC.

4 THE COURT: All right.

5 MS. BURNETT: May I add one thing, Your Honor?

6 THE COURT: Yes, ma'am.

7 MS. BURNETT: It -- it also appears that the  
8 LLC entities did not even exist at the time of these  
9 incidents, that they were created later, likely in  
10 an attempt to escape some liability. So we would  
11 add that to our previous witness.

12 THE COURT: All right. Thank you. I'm going  
13 to deny the motion, viewing the light in the most  
14 favorable to the plaintiff. It is co-mingling of  
15 accounts with the Rest -- the Resting Place being  
16 paid for expenses and deposits from revenues into  
17 the Resting Place into the Faith, Hope and Charity  
18 account which is sole owner.

19 They were not incorporated at the time this  
20 action or this event occurred, plus they're located  
21 within the single fence and the same property, which  
22 would make them virtually indistinguishable. So  
23 I'll deny your motion on that ground.

24 What is the next one?

25 MR. BANNISTER: Your Honor, I would make the

1 same motion for Faith, Hope and Charity in that  
2 there's nothing that is done by the LLC that would  
3 make them liable for an accident that occurred --  
4 there was nothing wrong with the physical  
5 facilities, the plan there. There was nothing that  
6 would make it negligent or violate any duty toward  
7 Ms. Clark in terms of not meeting the requirements  
8 of DHEC's physical requirements.

9 THE COURT: Mr. Bannister, let me ask you this:  
10 Do you agree with the contention that Faith --  
11 Faith, Hope and Charity was not an LLC at the time  
12 of her falling on July 27, 2015?

13 MR. BANNISTER: It was alleged, I believe, in  
14 the pleadings as an LLC, and I think we admitted  
15 that it was. So I am not -- it was subsequent to  
16 that. I'm not in knowledge, but I don't recall  
17 that. There's not been an issue that's been ---

18 THE COURT: Right.

19 MS. BURNETT: Judge ---

20 MR. BANNISTER: --- raised.

21 THE COURT: Well, again, to the extent that it  
22 was a corporation, a limited liability company can  
23 only act through its members or employees. And to  
24 the extent that the actions arose from employees or  
25 members of the LLC, it would be responsible. So I

1 deny that on the basis to the extent that it was not  
2 in existence, the assets from those who would be  
3 responsible if the jury comes back against  
4 Ms. Touchton would transfer into it it appears;  
5 therefore, it would be a responsibility there as  
6 well in my view. I may be incorrect on that, but I  
7 think it's correct.

8 MS. BURNETT: May I respond just for the  
9 record?

10 THE COURT: Yes.

11 MS. BURNETT: The -- we would renew all our  
12 same arguments that we just made about amalgamation  
13 as it relates to Faith, Hope and Charity.

14 Additionally, the license of DHEC, of course is  
15 in the name of the facility, so their very existence  
16 is only guaranteed by the license. However ---

17 THE COURT: Let me ask you this: Was the  
18 license in effect in -- on August 27, 2015, in the  
19 name of Faith, Hope and Charity, LLC?

20 MS. BURNETT: No, I don't believe so. I  
21 believe it was Faith, Hope and Charity and it  
22 would've been a sole proprietorship. I have only  
23 recently discovered the Secretary of State allows  
24 you to download original articles of corporation.

25 THE COURT: Sure.

1 MS. BURNETT: So the -- the weekend before this  
2 trial began, I only then realized that these LLCs  
3 were created June -- June 28th of 2016. Of course,  
4 I didn't enter them into evidence, but I did  
5 question Ms. Touchton ---

6 THE COURT: She admitted it.

7 MS. BURNETT: --- and she admitted it.  
8 Correct.

9 THE COURT: I recall that. I'm going to deny  
10 your motion. I find ---

11 MR. BANNISTER: Judge ---

12 THE COURT: --- that the parties are  
13 responsible.

14 Any other motions, Mr. Bannister?

15 MR. BANNISTER: Could I just get a  
16 clarification on that, when they were made LLCs?  
17 The reason I say that, Judge, is because the  
18 pleading allege they were LLCs would be admitted,  
19 but they are LLCs parties to it if they were not  
20 LLCs at the time.

21 MS. BURNETT: This occurred in 2015.

22 MR. BANNISTER: Judge, they did not exist as  
23 LLCs in 2015, so they would not be proper parties to  
24 these lawsuits because they did not come into  
25 existence until after the fall -- I mean, after

1 Ms. Clark had her fall in 2015. So I would move  
2 that they be dismissed as parties because they  
3 weren't in existence.

4 THE COURT: Let me say this: I'm going to take  
5 that under advisement; however, it appears to me,  
6 Mr. Bannister, from the testimony that was elicited  
7 yesterday to the jury, that Ms. Touchton engaged in  
8 a pattern of trying to prepare for judgment to be  
9 give -- to be rendered against her, that she was by  
10 transferring assets, incorporating, doing things  
11 that were brought out in her testimony, including  
12 the corporation of this Faith, Hope and Charity,  
13 which I think would make it potentially subject for  
14 payment of this judgment, in the event there's a  
15 judgment rendered.

16 I'm not ruling that right now. I'm taking it  
17 under advisement, but I think that probably would be  
18 responsible. That's just my gut feeling.

19 MS. BURNETT: I'd like to add for the record  
20 that -- that Mr. Bannister had at all times access  
21 to his client who had knowledge of this -- of  
22 this -- you know, this attempt to create an LLC and  
23 admitted in his own pleading. That certainly is not  
24 on the plaintiff, but the defendant admitted a  
25 pleading which was believed by the plaintiff to be

1 true based on the fact that by a search of the  
2 Secretary of State website reveals simply that  
3 there's an LLC. It doesn't provide -- at that time  
4 it was un -- you were unable to get the documents  
5 without ---

6 THE COURT: I don't think that's actually  
7 correct. I mean, I searched the Secretary of State  
8 for years and years and years, and you have a legend  
9 at the bottom that has the history and amendment and  
10 all that.

11 But be that as it may, I still think by, what  
12 is the fraudulent, the conveyances of the statute or  
13 whatever ---

14 MS. BURNETT: Oh, the Statute of Elizabeth?

15 THE COURT: Elizabeth. Thank you. --- and  
16 specific code section, seems to me that's what she  
17 was doing, if, in fact, it was not an LLC, which  
18 apparently it was not.

19 I'm not ruling on anything on that. I'm going  
20 to go over it and I'm going to look at it a little  
21 further, but my gut she's responsible. What's your  
22 other motion, Mr. Bannister?

23 MR. BANNISTER: Judge, I confess that this  
24 caught me a bit by surprise, so I would move for a  
25 nonsuit as to Faith, Hope and Charity, LLC, and

1 Resting Place, LLC, as being non-parties in  
2 existence at the time of the alleged negligent acts.  
3 I would like, if I can, to make these a part of ---

4 THE COURT: Make it a Court exhibit.

5 MR. BANNISTER: Yes, sir.

6 THE COURT: Yes, sir. That'll be good. Those  
7 are -- when you say "these," those are the Articles  
8 of Corporation for the Faith, Hope and Charity?

9 MR. BANNISTER: They are certificates of  
10 existence making them limited liability companies as  
11 of July 1, 2016.

12 THE COURT: Okay. Yes, sir. If you'd just  
13 make those the next, madam court reporter, the next  
14 Court exhibits? And Again, I'm taking that under  
15 advisement.

16 MR. BANNISTER: Judge, I don't have an  
17 objection to make it one exhibit.

18 THE COURT: You want it one of your exhibits,  
19 or you want it ---

20 MR. BANNISTER: Just as a Court exhibit.

21 THE COURT: That would be good.

22 MR. BANNISTER: I don't think it should go to  
23 the jury.

24 THE COURT: You think it should go to the jury?

25 MR. BANNISTER: I don't think it should.

1 THE COURT: I don't think it should go to the  
2 jury either.

3 (Court Exhibit No. 5 was marked for  
4 identification.)

5 THE COURT: Any other basis for your directed  
6 verdict motion, Mr. Bannister?

7 MR. BANNISTER: No, sir. But I would include  
8 Ms. Touchton in the directed verdict in that there's  
9 no evidence -- not sufficient evidence of anything  
10 that she did that did not meet her requirements  
11 under the DHEC licensing for a community -- or a  
12 residential care facility.

13 THE COURT: I deny that motion. I think the  
14 record's replete with evidence that she did not.  
15 That being said, do you intend to call any  
16 witnesses, Mr. Bannister?

17 MR. BANNISTER: Could I have just a ---

18 THE COURT: Let's take about a five or  
19 ten-minute break.

20 MS. BURNETT: Your Honor, the plaintiff has a  
21 few motions.

22 THE COURT: Oh, that's right.

23 MS. BURNETT: I'm so sorry.

24 THE COURT: I'm sorry.

25 MS. BURNETT: And you may deny them, but I want

1 probably going to excuse you for lunch. I'm not  
2 doing it yet because I want to talk to them. After  
3 lunch, we'll come back with closing arguments. I'll  
4 charge you on the law, and then you will begin your  
5 deliberations after the law. But if you'll go back  
6 to your jury room, and I'll bring you back here as  
7 quickly as I can.

8 (At 11:38 a.m., jury left the courtroom.)

9 THE COURT: All right. Motions?

10 MR. BANNISTER: Yes, sir. We would move again  
11 for directed verdict for Faith, Hope and Charity,  
12 Resting Place as not being in existence at the time  
13 of the incident that took place and, therefore, they  
14 could not be held liable for it.

15 Also, renew it for Ms. Touchton on the same  
16 basis for both and just adopt that.

17 THE COURT: All right. Sir, any additional  
18 grounds, besides renewing your previous motion?

19 MR. BANNISTER: No, sir.

20 THE COURT: All right. Thank you very much.

21 MS. BURNETT: Your Honor, the plaintiff renews  
22 all its previous motions, except obviously the one  
23 that you granted on comparative negligence. And if  
24 you'd like me to respond in any way, I will.  
25 Otherwise, we just renew them for the record.

1 THE COURT: No. Thank you.

2 All right. What will be your poison as far as  
3 going over these requested charge, closing  
4 arguments? How do y'all want to do that?

5 I know that there was come communication over  
6 Ms. Burnett's objection to closing and charging  
7 tomorrow. I don't care. It doesn't matter to me  
8 since you're on the trial. We can do it this  
9 afternoon.

10 I do hesitate to give the jury a case after  
11 four o'clock. Judge Miller kind of showed me that.  
12 They kind of rush to judgment, but I'm happy to do  
13 whatever y'all want to do.

14 I think this -- this charge conference will  
15 probably take about an hour. Well, maybe -- I think  
16 it's going to be more than just a pro forma. See if  
17 we got a bunch of readings things to go over. What  
18 do you think?

19 Let me -- let me do this: Do a charge  
20 conference. It should take us up to about 1:00.  
21 Let you come back 2:15 or so, and then close then,  
22 or any ideas? I'm certainly open to suggestions.

23 MR. HARBIN: Your Honor, I'm going to do the  
24 closing. I don't think -- it's probably -- it's not  
25 terribly long, but there's a lot of witnesses. It's

1           made during Ms. Touchton's examination about, "I  
2           have this. I have that. It's here," or whatever  
3           and obviously not, you know, produced in discovery  
4           and not -- you know, not ---

5           THE COURT: Yeah, but I don't know if it's  
6           material or not. I mean, I just don't think that's  
7           appropriate. I'm sorry.

8           MS. BURNETT: Okay. All right. Thank you,  
9           Your Honor.

10          THE COURT: Let's make -- let's make that a  
11          Court exhibit in case I'm wrong.

12          (Court Exhibit No. 6 was marked for  
13          identification.)

14          THE COURT: All right. You -- any additional  
15          questions or comments, Mr. Bannister?

16          MR. BANNISTER: Judge, I have one that I -- and  
17          that involves the verdict form. I would request  
18          that the -- to have an individual verdict form for  
19          each defendant -- the three defendants, and lumping  
20          them all together would mean that you have a  
21          judgment against one defendant who is not negligent  
22          or not involved. So I would ask that -- that we  
23          have an individual verdict form for each individual  
24          defendant since they have different roles or  
25          different contacts in this case.

1 MS. BURNETT: I was going to -- and on that, I  
2 would just renew my previous arguments about single  
3 business enterprise amalgamation interest as it  
4 relates to these ---

5 THE COURT: And I don't think I'm going to do  
6 it. I note your objection, but I'm going to read it  
7 altogether, Mr. Bannister.

8 Now, other than your request for separate  
9 verdict forms, have you seen the new verdict form  
10 that she sent in?

11 MR. BANNISTER: I have not.

12 THE COURT: Let me -- let me let you look at  
13 that.

14 MR. BANNISTER: She may have sent it to me,  
15 Judge. (Reading.) I've seen it ---

16 THE COURT: Sir?

17 MR. BANNISTER: I said I've seen it now, Judge.

18 THE COURT: Other than the separate verdict  
19 form, is that okay?

20 MR. BANNISTER: Yes, sir.

21 THE COURT: Thank you. All right. Are you  
22 going to use any technical devices in your closing?

23 MR. HARBIN: No. I'm gray headed. I'm going  
24 to use the boards.

25 THE COURT: All right. Let's get them working

# Business Entities Online

File, Search, and Retrieve Documents Electronically

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## FAITH HOPE AND CHARITY RETIREMENT LLC

### Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

### Important Dates

Effective Date: 07/01/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

---

### Registered Agent

Agent: MARY SIMS TOUCHTON

Address: 4130 HWY 24  
ANDERSON, South Carolina 29624

---

### Official Documents On File

| Filing Type  | Filing Date |
|--------------|-------------|
| Organization | 07/01/2016  |

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For filing questions please contact us at 803-734-2158

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# Business Entities Online

File, Search, and Retrieve Documents Electronically

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## RESTING PLACE LLC THE

### Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

### Important Dates

Effective Date: 07/01/2016

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

---

### Registered Agent

Agent: MARY SIMS TOUCHTON

Address: 4130 HWY 24  
ANDERSON, South Carolina 29624

---

### Official Documents On File

| Filing Type  | Filing Date |
|--------------|-------------|
| Organization | 07/01/2016  |

---

For filing questions please contact us at 803-734-2158

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STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Debbie Bannister, individually and as Personal Representative of the Estate of Hazel L. Clark,

Plaintiff,

vs.

Mary Sims Touchton; Faith, Hope and Charity Retirement, LLC; and The Resting Place, LLC,

Defendants.

IN THE COMMON PLEAS

2017CP0400432

2017CP0400431

VERDICT FORM

1. Was the negligence of any of the Defendants at least one of the proximate causes of any injury to, damages sustained by, or death of Hazel L. Clark?

Yes: \_\_\_\_\_

No: \_\_\_\_\_

(If "Yes," go to Question 2.)

2. What is the amount of damages that Hazel L. Clark has sustained as a result of the negligence of the Defendants (Survival Action)?

\_\_\_\_\_ \$ \_\_\_\_\_  
 (Actual Damages)

3. What is the amount of damages that Mrs. Clark's beneficiaries have sustained as a result of the death of Mrs. Clark (Wrongful Death Action)?

\_\_\_\_\_ \$ \_\_\_\_\_  
 (Actual Damages)

4. Did the Defendants act in a reckless, wilful, or grossly negligent manner?

Yes: \_\_\_\_\_

No: \_\_\_\_\_

(If "Yes" go to Question 5 on the next page.)

5. What is the amount of Punitive Damages for the Survival Action?

\_\_\_\_\_ \$ \_\_\_\_\_

AND

6. What is the amount of Punitive Damages for the Wrongful Death Action?

\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON

April \_\_\_\_\_, 2019

**Certificate of Counsel**

The undersigned certifies that this Record on Appeal complies with Rule 209(b), *SCACR*, and further, complies with Supreme Court Order dated April 15, 2014, regarding personal identifiers and sensitive information.

BANNISTER, WYATT & STALVEY, LLC



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**Sep 09 2020**

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