

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-001643
Circuit Court Case No. 2016-CP-10-05379

The Estate of Delila Parrott,

Respondent

v.

Sandpiper Independent and Assisted Living-Delaware, LLC,

Appellant.

AMENDED RECORD ON APPEAL
VOLUME 2
435-789

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1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT
 2 COUNTY OF CHARLESTON) OF COMMON PLEAS
 3) NINTH JUDICIAL CIRCUIT
 4 THE ESTATE OF DELILA) CASE NO.
 PARROTT,) 2016-CP-10-5379
 5)
 6 Plaintiff,) Transcript of Record
 7 vs.) Non-Jury Trial Day 3
 8 SANDPIPER INDEPENDENT AND)
 ASSISTED LIVING-DELAWARE,) Date: Sept. 10, 2020
 9 LLC,)
 10 Defendant.)

11 * * * * *

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13 B E F O R E:

14 The Honorable Bentley Price

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17 Krista Nicole Carney, Stenographic
 18 Court Reporter, transcribed by a
 19 Stenographic Court Reporter

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2 (The following proceedings were held
3 9/10/2020, Charleston General Session Trial, Judge
4 Price)

5 THE COURT: All right. I hope y'all
6 had a good evening.

7 MR. DAVIS: Yes, sir.

8 THE COURT: So I don't know how
9 extensively we need to get into this. I'm happy to
10 hear from y'all. But I went through all of the
11 phone records, obviously, to try to determine
12 whether, in fact, I could figure it out, I was.
13 But, unfortunately, then I came -- not
14 unfortunately, I went through all that effort y'all
15 gave Amiee the emails. And that resolved my
16 problem.

17 So I got the emails here. The one from
18 Paul says, good morning, you sent me an email
19 requesting that we agree to waive any objection of
20 authenticity. And a need records' custodian in any
21 of the documents exchanged in discovery.

22 I replied, I did not object to your
23 request. However, I think I only referenced
24 medical records. Please allow me to clarify. I
25 agree to waive any objection to the authenticity

1 documents we have exchanged in discovery, no need
2 for record's custodian.

3 I hope this clarifies any potential for
4 any confusion. Please confirm.

5 All right. So, I mean, that boils down
6 to admissibility. So, I mean, y'all made arguments
7 as to whether it's relevant under 403 versus
8 discrimination of value. I'm happy to hear you
9 out. So, I mean, y'all can make arguments to
10 whether it's relevant under 403 versus this
11 probative value. I'm happy to hear you out. I am
12 going to tell you it's not going to be some of the
13 probative information in this case. Any other
14 arguments?

15 MR. REEVES: None from the Plaintiffs.

16 MR. DAVIS: Just the same argument that
17 we raised yesterday, Your Honor, I think it would
18 take a witness with specialized knowledge to really
19 do the analysis of those phone records.

20 I do think, given the fact that I am
21 being denied to cross-examine or talk to a witness
22 about the contents of those records, that you'd be
23 asked to speculate the contents and the
24 definitions. I think it would be highly
25 prejudicial to us to act in that process.

1 THE COURT: Well, for the record, I
2 don't speculate as to what the information is
3 contained. And I was able to decipher the
4 information. I didn't speculate at all, and was
5 able to do it.

6 MR. DAVIS: I take your word. I
7 obviously do.

8 THE COURT: All right. So it's the
9 Plaintiff's case. Call your next witness.

10 MR. REEVES: Your Honor, we have
11 concluded our preservation of evidence. We have an
12 exhibit book. There have been two objections, one
13 of which you just resolved. We will withdrawal any
14 medical bills from that exhibit book, and there may
15 be a couple of more medical records that will go in
16 based off on cross-examination, their experts
17 today. Otherwise, that is what we plan to
18 introduce, less the medical bills, and I think
19 there's actually a page from Ms. Carrington's
20 deposition that stuck in there, Page 941. I'll
21 withdrawal that, because that's probably cumulative
22 and whatever else you call it.

23 THE COURT: All right. So just to
24 be -- make sure we are doing it correctly. You're
25 just going to make the Plaintiff's Exhibit Book

1 just Number 1, and that will be it for the record?

2 MR. REEVES: That's correct; Your
3 Honor.

4 THE COURT: You okay with that?

5 COURT REPORTER: Yes, sir.

6 MR. DAVIS: I agree with everything
7 that he just said. But what I would propose is
8 that on a break that Mr. Reeves and I get together
9 and we'll mark and identify, specifically, what we
10 can send, and go through the record. And get that
11 in an agreement and put it along with her. I just
12 want to look through the actual book.

13 MR. BOSWELL: And, Your Honor, there's
14 a bunch of junk in there. And you probably don't
15 want to go through it. So mainly what we can do is
16 cut out a bunch of stuff that we don't -- that we
17 haven't talked about and we don't think you'll need
18 to look and just make it easier. Can do that
19 during a break.

20 THE COURT: Okay. I looked at most of
21 the stuff already, though.

22 MR. REEVES: I will confer with him.
23 What I don't want to do is if he comes up -- maybe
24 he has an objection he hasn't thought about, or
25 whatever, then I want to have a chance to address

1 that. Otherwise, I think we have an agreement.

2 MR. DAVIS: We do. And I'm not
3 aware -- I think we've argued about everything that
4 we need to argue about. Again, if there's some
5 issue, we'll obviously give you a chance to rule on
6 it.

7 THE COURT: We don't need to put the
8 email in as a Court's exhibit?

9 MR. DAVIS: Actually, yeah. I think we
10 want to put both emails in on that.

11 THE COURT: As a Court's exhibit.

12 Just make that Court's exhibit.

13 COURT REPORTER: Composite?

14 THE COURT: Yes.

15 (Plaintiff's Exhibit 1 was marked
16 Court's Exhibit 1.)

17 MR. REEVES: I'll just confirm we're
18 done. We rest.

19 We'll go ahead and hear your motion for
20 summary motion.

21 MR. DAVIS: Your Honor, Rule 41(d)
22 which I believe governs the Court -- or gives the
23 Court power to dismiss matters where the evidence
24 has failed to recover some matter of law. It's not
25 really an evidentiary evaluation, by my

1 understanding. But, basically, Judge, if the
2 evidence as presented does not support recoveries,
3 as a matter of law, then I'm entitled to have those
4 claims dismissed.

5 For purposes of this motion, Judge, I'm
6 going to zero in on -- there's a pending UTPA,
7 Unfair Trade Practice Claim. I have some grounds
8 on the unlawful death allegations.

9 As to grounds on the failure that we
10 assume the duty is alleged. I have some grounds on
11 the failure that we assume the duty is alleged, and
12 that the punitive damages allegations -- the
13 evidence specifically there has not risen to the
14 proper levels.

15 So I'll take these one at a time, Your
16 Honor. The first one is the UTPA claim. Your
17 Honor, it's well settled law that you cannot bring
18 an Unfair Trade Practice claim in a representative
19 capacity. The case for that purpose is Faircloth
20 v. Jackie Fine Arts. Here the question before the
21 Court is, does a claim under the South Carolina
22 Unfair Trade Practice Act survive the death of an
23 injured party, which is what we have exactly.

24 And the Court said, the same
25 counter-claims, the defendants are guilty of unfair

1 practices and violation of the act.

2 The Statute itself seems to provide the
3 answer to this for liability questions. The
4 Statute provides that any person suffering any
5 action in law, money, et cetera, et cetera, cannot
6 bring this in a representative capacity to recover
7 actual damages. The Court ruled the language of
8 the Statute provides the UTPA action by Plaintiff
9 who actually was the representative capacity.

10 The evidence in this case, obviously,
11 have been brought as a wrongful death and survivor
12 case, which is a classic representative in its
13 capacity, as well as the Statute itself, Your
14 Honor. I have that case here.

15 If for any reason the Court wants to
16 hear me further on why I think the elements fail
17 over this special issue, I'm happy to explain that,
18 as well, Your Honor.

19 THE COURT: Let me hear from the
20 Plaintiffs as to that.

21 MR. REEVES: Judge, he may be correct
22 as to the wrongful death aspect. I do not believe
23 he's correct as to the pain and suffering.

24 And, Your Honor, I'll just respond to
25 that, if he wants to respond to that something

1 else.

2 THE COURT: Well, I mean, these are not
3 economical damages, as to that, which is what your
4 position is; is that correct?

5 MR. DAVIS: That is absolutely correct.
6 This warrants representative capacity both of
7 survival and wrongful death. There's no
8 distinction. That is the type of damages. But it
9 is still brought as a representative capacity.

10 This specific case addresses that very
11 issue. They brought both. And it was tossed.
12 This is a very well settled law, Your Honor.

13 THE COURT: All right. I'll take a
14 look at it.

15 MR. DAVIS: If you don't find that, for
16 some reason, we also don't think there's any
17 evidence from this case that they presented that we
18 did, the Defendants did, that was offensive of the
19 policy, immoral or oppressive. We don't think that
20 they have proven that the public somehow was
21 adversely affected by these actions, Your Honor.

22 And certainly with respect to the
23 troubled provision in the Statute, there's been no
24 evidence that anything that our staff did in this
25 case was intentional of any nature.

1 The best they've done in this case is
2 show that we didn't check somebody off Wednesday
3 and from their prospective they made a negligent
4 decision on Wednesday night to fail to go in.

5 So I don't think the evidence, at least
6 that I've seen, would warrant any punitive award
7 under the UTPA that we knowingly or willingly
8 violated had provisions of the Act. That would be
9 it for the UTPA.

10 THE COURT: Okay.

11 MR. DAVIS: Judge, I'm disappointed on
12 what was mentioned. Burbach vs. Investors
13 Management Corporation. It says, residential
14 leases are things of value, which directly affect
15 the citizens of the state. The fact that our
16 legislator's regulated landlord/tenant relationship
17 enacting South Carolina RLTA, support system
18 conclusion. While landlord/tenant relationships
19 are frequently governed by a contract, landlords
20 have certain statutory duties, as do tenants.
21 These duties protect the public interest that
22 create a framework that governs landlord/tenant
23 relationships, regardless of the private
24 arrangement the parties have made. And that case
25 held that the UTPA was applicable to a

1 landlord/tenant dispute.

2 And, Judge, that doesn't in any way
3 address the fact that this is a residential setting
4 -- representative setting. So it doesn't address
5 that at all. And it's been -- all of the testimony
6 that you've heard in this case is the shield
7 regulations implied in this entity. But that was
8 addressing but I.

9 As to whether or not on the UPTA. This
10 was a heavily regulated industry. So it's
11 completely opposite to the facts in this case.

12 THE COURT: All right. I'll take it
13 into consideration.

14 All right, what's your second?

15 MR. DAVIS: Yes, sir. So the next one
16 goes to the allegations of the wrongful death, Your
17 Honor. And the testimony that you have heard,
18 which I think as a matter of law to reach the
19 burden.

20 So, Your Honor, if you will bear with
21 me for a minute. In any unlawful death case it
22 requires medical expert testimony, to a reasonable
23 degree of medical certainty, that the action --
24 accident has caused the death. That is the black
25 letter law. That's the standard.

1 And, in this case, Your Honor, we don't
2 believe they've met the standard. Just to go
3 through some of the case law on this. The first
4 case that I will cite, Your Honor, is Bowman vs.
5 American AT&T, 410 S.E. 2d 537. Under
6 well-established case law in South Carolina, a
7 medical expert testifying as to causation must
8 testify to that. After taking into consideration
9 on the death, it is his or her professional opinion
10 that the result in question most probably came from
11 the cause alleged.

12 So what you heard a lot of, Judge, was
13 it contributed. There's some respond to language
14 like that or some real possibility. And I'll get
15 into that in a minute. And there's case law that
16 governs you in that context as well. It says,
17 further, when expert testimony is the only evidence
18 that is relied upon to establish proximate cause,
19 the testimony must provide a significant call
20 between the alleged negligence and the Plaintiff's
21 injury, rather than continuous or hypothetical
22 connections. That is the Roper Hospital.

23 The next authority that I would cite
24 for the wrongful death, is when expert opinion is
25 the only evidence a proximate cause relied upon, it

1 must provide a significant causal relation between
2 the alleged negligence and Plaintiff's injuries.
3 That is Ellis vs. Oliver 473 S.E. 2d 793. The
4 testimony regarding showing a call of connection
5 must be the most probable rule. It is not
6 sufficient that the question, possibility or could
7 have or might have, resulted in the injury.

8 The medical expert must go further and
9 testify to take into consideration all the facts,
10 it is his professional opinion that a result of the
11 question most probably caused the alleged death in
12 this case.

13 So, Your Honor, as I listened to the
14 testimony -- and I've heard a lot of testimony over
15 the years -- were these experts struggling to meet
16 that standard. If it was easy, he would have stood
17 up and said, to a reasonable degree of medical
18 certainty, the time on the ground caused the death.
19 Yes, sir. You never heard that testimony. All
20 right.

21 And the reason that you didn't hear
22 that testimony is because they struggled with the
23 time issue. They struggled with the idea that some
24 period of time between zero and 36 hours, which is
25 an acceptable, even under their theory, and 36 to

1 72 hours more probably than not caused her death
2 eight months later. They couldn't say it.

3 And the reason they can't say it, as
4 Dr. Mills admitted on cross-examination to this
5 question, do you intend to offer an opinion in
6 trial in this case, to a reasonable degree of
7 medical certainty, that had Ms. Parrott fell and
8 fractured her hip in multiple places, remained on
9 the floor for 24 to 36 hours and not a longer
10 period of time, that she would not have died nine
11 months later. Answer from Dr. Mills, I can't say
12 that. And would you agree with me that the reason
13 you can't say that is because it is inherently
14 speculative; correct? Answer, yes.

15 So then in the trial of the case, we
16 try to clean that. We had to get around that
17 testimony. So they got him to say, well, it was
18 significant, the longer the time she's on the
19 ground the worse it is.

20 And on cross-examination he was asked,
21 what does significant mean? He said, well, I can't
22 say 25 percent, 50 percent, 75 percent. All I can
23 say is, the longer she's on the ground, the worse
24 it is.

25 And the other thing, too, which caught

1 my attention -- it reminded me of some old law. He
2 never said cause of death. What he said was, it
3 would have shortened her life. Do you remember
4 there were questions about, oh, well, she's got
5 eight years left on her life expectancy. And he
6 said, well, I can't tell you how much longer or
7 shorter she would have lived. Is that four years,
8 is that eight years? I can't say that to any
9 reasonable certainty.

10 What that really was -- and let me
11 address Dr. Bergmann too before I skip to this next
12 part. The question of Dr. Bergmann was, do you
13 intend to provide an opinion at trial that her
14 decline in death would not have occurred, but for
15 some alleged delay in finding her. His answer was,
16 I don't think there's anybody that can say that.
17 And then what he said is, I think it's a real
18 possibility.

19 Now, possibilities are not enough. And
20 on cross-examination he said, well, no, I can't say
21 49 or 51 percent. A, he said its speculative.
22 And, B, he says he can't say that.

23 So, as I'm sitting here listening to
24 that testimony from my view what it actually is to
25 me. And the Court may agree or not, it's loss of

1 chance; right? I can't say it probably caused her
2 death, but she lost the chance to survive a little
3 bit longer. Now, Your Honor, the loss of chance in
4 particular has been soundly rejected in this case,
5 as I'm sure you're aware.

6 And regardless I think it's
7 interesting -- this is the case of Jones v. Owings,
8 Your Honor. And it really sheds some light on the
9 reasoning of why you can't come into Court and say,
10 well, I think it's possible or probable, or I think
11 it shortened her life. Because I can't say how
12 long it shortened her life, but it didn't kill her,
13 but it shortened the amount of years that she was
14 to live.

15 And in rejecting the loss of chance,
16 doctrine, our Supreme Court said lesser standards
17 of proof are understandably attractive in a
18 malpractice case. It goes to physical well being
19 and life itself were the subject of litigation.
20 The strong intuitive sense of humanity tends to
21 emotionally direct us towards a conclusion that an
22 action for wrongful death injured person should be
23 compensated for the loss of any chance of survival,
24 regardless its remoteless. However, we have
25 trepidation that says the rule would be solely

1 more. Even though for a law recovering group not
2 meeting the standard of probability.

3 And, really, I think that's what you
4 heard here. And more importantly, when they
5 couldn't tell you more probably than not that death
6 was caused by some specific period of time on the
7 ground, this cause of action failed as a matter of
8 law, respectfully, Your Honor.

9 THE COURT: All right. Who would like
10 to argue for the Plaintiff?

11 MR. REEVES: Judge, that's a very
12 innovative, well-written argument. It's not
13 relative. Both experts said, the trauma of being
14 on the floor gave her conscious pain and suffering.
15 And it contributed to her death. You were here,
16 just as I was.

17 THE COURT: And you had a third one,
18 Mr. Davis?

19 MR. DAVIS: I do, Your Honor.

20 THE COURT: All right.

21 MR. DAVIS: So, Your Honor, this whole
22 case has been from the beginning of whether or not
23 we have assumed a duty of some nature. Because
24 everybody agrees that there's a lease in place,
25 which set forth a duty between the parties, a

1 contract between the parties.

2 Now, they have tried to assert that we
3 assumed a duty outside the lease under the
4 statement of torts. And the duties, as I see it,
5 is that we agree daily to keep residents safe by
6 checking on their wellbeing. That's the duty.

7 Now, what they're trying to do in this
8 case, Your Honor, is take a system, a check-in
9 system, and call that the breach. But if the
10 breach of how you do the job does not define the
11 system -- in other words, you breach your system,
12 but the duty is if you breach it, what's the duty
13 that you owe me in implementing that system.

14 And that's just the duty here that they
15 say we assume is to keep them safe and check their
16 wellbeing daily. Now, that assumption of duty that
17 they argue to you runs square into the terms of the
18 lease. And I read you the terms of the lease. It
19 basically said, and the witnesses testified about
20 it. It said, all right, we have a contract. You
21 are assuming the risk of your ability and freedom
22 to make decisions as you come into our unit. And
23 with that assumption -- or with that freedom comes
24 the assumption of that risk. So our contract
25 expressly disavows the very duty that they say we

1 assumed.

2 Now, what's interesting to me, Judge,
3 is there is -- and in addition, too, Judge, even if
4 we assume that duty, the way they say, the lease
5 itself says they waive all liability with respect
6 to any breaches of duties or any damages caused by
7 these failures.

8 And I can read you the language, but in
9 context if you assume the risk of freedom, you
10 assume the risk of your actions. And if you're
11 hurt, you waive any liability related to that.

12 And that's really what we have here.
13 So those are contractual rights that we think are
14 blocked by any assumption -- expert contractual
15 assumption of the duty.

16 Because, in essence, Judge, what they
17 want you to do is disregard contractual rights
18 completely, disregard contract law completely. And
19 say, hey, they assumed it, despite the fact in the
20 very lease agreement between us, we say, you are
21 assuming the risk of freedom of making decisions in
22 living.

23 And so for that reason, Your Honor, we
24 think that they have failed to prove that either we
25 assume the duty, or even if we did, that they say

1 liability is blocked, because they waived liability
2 under the terms of the lease.

3 THE COURT: All right. Mr. Reeves.

4 MR. REEVES: I think the testimony
5 yesterday about the lease clearly indicated that
6 the lease was left open to the certain policies and
7 procedures. And, Judge, you heard about this
8 point.

9 But what they're asking you to do today
10 is take the policy they say does not exist. And
11 the Defense to this policy does not exist. But, by
12 the way, if it does exist, it does not create a
13 duty in the case we cited in our pretrial brief.

14 THE COURT: I was just thinking about
15 it. This is kind of odd in the sense that in jury
16 trials, the jury isn't in here to hear any of these
17 arguments. And so whatever I say it doesn't
18 matter, because the jury makes the decision. But
19 what I say now tips the hand as to where we're
20 headed, right, a little bit?

21 MR. REEVES: Yes, sir.

22 MR. DAVIS: Well, when you say it like
23 that.

24 I think these -- in all seriousness,
25 Your Honor, these are legal questions that you have

1 to decide.

2 THE COURT: That's true.

3 MR. DAVIS: They've also, Your Honor,
4 asserted a claim for punitive damages. And I don't
5 -- respectfully, Your Honor, you know punitive
6 damages. This is the highest burden the Plaintiff
7 faces. There is no doubt about it. It's got to be
8 clear and convincing. That's by statute. This is
9 an incredibly high burden. Your Honor, there's
10 been no evidence in this case that Corrine, Beth,
11 or Rebecca, or that the company did anything
12 repeatedly intentionally, recklessly.

13 You know, I get it. If they came in
14 and said, well, Judge, we've proven to you over
15 time they didn't check anybody off. If they would
16 have proven to you that Rebecca said, oh, I don't
17 give a damn, I'm going home.

18 What this case really is in front of
19 you, Your Honor, is potentially about a dispute
20 about Wednesday night, whether we made a reasonable
21 decision there, and then do you believe about Beth
22 Auld seeing her.

23 And for the life of me, I see zero
24 evidence that the people involved with
25 Ms. Parrott's case deserve to be punished by the

1 Court for intentional, reckless, wanton behavior.

2 You heard those folks, we have better
3 things to do. Really what you heard is they made a
4 judgment call, but at the end of the day this still
5 remains a negligence case, respectfully what I
6 believe the evidence to be. And, again, I don't
7 see how this meets the high burden.

8 THE COURT: All right.

9 MR. REEVES: If it please the Court,
10 Your Honor.

11 Two things, I asked Rebecca was it
12 Ms. Parrott's (sic) fault that she didn't go back
13 and get the key? Yes, it was. These folks have
14 adopted that particular position, that is a
15 conscious disregard for Ms. Parrott's rights.

16 They lost the most critical piece of
17 evidence they had that would have helped clear up
18 what happened on Thursday. But we don't have it.

19 And the two people who are responsible
20 for filing those document are the very ones who
21 were on the scene. There is sufficient evidence
22 that if the Court wishes to, clear and convincing,
23 it can award punitive damages.

24 Now, I'm not saying you will. I don't
25 know what you're going to do. I'm not sure you

1 are. But the evidence is here for you to consider
2 that.

3 THE COURT: Anything further?

4 MR. DAVIS: I want to address one
5 thing. The default question, the critical
6 discussion he said, was it her fault. And in
7 answer she said yes. But that was the idea, right,
8 that she changed the locks. And that particular
9 witness didn't know about that evening, the key.
10 So when I corrected that she said, oh gosh, I'm not
11 blaming her, we had the key. So, again, that's the
12 clear and convincing evidence of that.

13 And I do want to talk about this lost
14 document. I'm amazed, frankly, that we are still
15 worrying about this. A document written by Corrine
16 Carrington, right, the day after the event, their
17 star witness, she is the one who said there is a
18 policy. You have to take the good with the bad,
19 don't you, Judge.

20 What she said, under oath, I looked at
21 it, I saw it. Wednesday wasn't checked. Thursday
22 was checked. And you know what, if you're going to
23 argue conspiracy, Judge, we aren't very good at it
24 because we should have fixed Wednesday.

25 But, from my prospective, I don't think

1 that the idea that somehow this missing record
2 creates punitive damages, with context of that
3 document. I feel like I'm doing closing arguments
4 to a jury.

5 THE COURT: That's all right.

6 Well, for your closing arguments, I
7 don't put a whole lot pretexts or exfoliation,
8 if that helps y'all to condense it a little
9 quicker.

10 All right, anything further?

11 MR. DAVIS: Do you have any idea when
12 you'll be able to rule on those? It might help in
13 some way.

14 THE COURT: Now?

15 MR. DAVIS: You had made a mention --

16 THE COURT: You mean as to these?

17 MR. DAVIS: Yeah. As to these legal
18 issues.

19 THE COURT: If that's what you want me
20 to do, and continue with the Defense's case. I
21 don't know if you need to take a call? Do you have
22 your witnesses ready?

23 MR. DAVIS: I would like to hear the
24 ruling, honestly -- I don't mean in any to push
25 you.

1 MR. REEVES: Nothing further from the
2 Plaintiff, Your Honor.

3 MR. DAVIS: Not yet. Still waiting.

4 THE COURT: All right. So as for the
5 Unfair Trade Privacy Act. I do want to read the
6 case law that you have passed up, which is
7 Faircloth versus Jackie Fine Arts before I make a
8 ruling as to that one to determine whether, in
9 fact, if it can be brought as a civil action.

10 And as to the wrongful death, I agree
11 with the Plaintiffs that that cause of action
12 should proceed forward, based on the testimony of
13 both doctors.

14 The assumption of the duty, obviously,
15 that's what the whole case is about. Was there a
16 duty? Was it an understood duty? And was it
17 breached? And I agree with the Defense in that
18 sense, in that this is a negligence case. If
19 there's duty, did they assume the duty, did they
20 breach the duty. And that's what I have to
21 determine.

22 And as to punitive damages, I'm not
23 going to award it at this point in time. I'm just
24 going to allow it to go forward.

25 All right. Are you prepared to call

1 your first witness?

2 MR. DAVIS: We are, Your Honor.

3 THE COURT: Do y'all need a break
4 briefly?

5 MR. REEVES: Your Honor, one thing for
6 the record, we agreed --

7 And, Mr. Davis, correct me if I'm
8 wrong.

9 They have a net worth of information.
10 But if that's something that you need to decide
11 later on, then they will give that information to
12 you.

13 THE COURT: Correct, for the company,
14 for the basis of punitive damage.

15 MR. DAVIS: Correct.

16 THE COURT: I would have to get that in
17 consideration.

18 MR. DAVIS: It's probably a little bit
19 more than that.

20 THE COURT: All right. That's fair
21 enough.

22 Okay. So in that sense, once the case
23 is over, if we are going to go down that road, do
24 you want to bifurcate that portion of it, or no?

25 MR. REEVES: Judge, I'll do whatever

1 you want to do. Whatever is the easiest for the
2 record, and your decision making.

3 THE COURT: All right.

4 MR. RIDDLE: Your Honor, we call Dr.
5 Scott Davidson, our expert witness.

6 THE COURT: Please raise your right
7 hand.

8 Do you swear or affirm the testimony
9 you are about to give will be the truth, the whole
10 truth, and nothing but the truth?

11 THE WITNESS: Yes.

12 DR. SCOTT DAVIDSON,

13 DIRECT EXAMINATION

14 MR. RIDDLE: Your Honor, I'm going to
15 try to use the trial pad. And I might need to pull
16 the podium over here. Is that okay?

17 THE COURT: Whatever you'd like to.

18 BY MR. RIDDLE:

19 Q. Dr. Davidson, good morning.

20 A. Good morning.

21 Q. Can you tell us your full name, please.

22 A. Scott Conrad Davidson.

23 Q. And, Dr. Davidson, where do you live?

24 A. Isle Of Palms, South Carolina.

25 Q. And can you tell the Court about your

1 education, beginning with college.

2 A. I went to -- I graduated from
3 University of Virginia in 1978. I went to medical
4 school at the University of Virginia and graduated
5 in 1994. Then I did my internship and residency at
6 the Medical University of South Carolina, finishing
7 in 1997.

8 MR. BOSWELL: The Plaintiffs are happy
9 to stipulate to his qualifications as an emergency
10 room doctor.

11 THE COURT: All right. Were you going
12 to qualify him as an expert?

13 MR. RIDDLE: Yes, Your Honor. But I
14 would like for him to talk about his work
15 experience, because I think it's relative to our
16 issues in the case.

17 THE COURT: All right. Do you have any
18 objection to him being qualified as an expert?

19 MR. RIDDLE: No, sir.

20 THE COURT: All right. Without
21 objection.

22 MR. RIDDLE: And we're offering him to
23 be qualified in internal medicine and hospital
24 medicine.

25 THE COURT: Okay. Without objection.

1 BY MR. RIDDLE:

2 Q. And so, Doctor, along those lines, can
3 you explain for us what types of practice that
4 you're involved in?

5 A. I work -- well, I'm board certified in
6 internal medicine, and I've worked as a hospitalist
7 since 2006.

8 Q. And you mentioned that you are board
9 certified. Can you explain to the Court what that
10 means?

11 A. There are various organizations that
12 correspond to the type of practice. And I practice
13 concentration in The American Board of Internal
14 Medicine, who is recognized throughout the country.

15 You achieve board certification by
16 taking an examination. And since I became a
17 physician, there's a requirement for
18 recertification ongoing education. And my last
19 certification was internal medicine with a
20 concentration in hospital medicine, which is a new
21 subsection they developed in the past five years or
22 so.

23 MR. RIDDLE: And, Your Honor, I forgot
24 to mention earlier, we'd also like for Dr. Davidson
25 to be qualified as an expert in emergency medicine.

1 I just needed to add that for the record.

2 THE COURT: Without objection?

3 MR. BOSWELL: Yes.

4 THE COURT: All right. He's qualified
5 without objection.

6 BY MR. RIDDLE:

7 Q. Doctor, can you describe the nature of
8 your practice and sort of your experience working
9 in hospitals and your job titles and job duties in
10 those areas?

11 A. Sure. With regard to hospitalized
12 medicine?

13 Q. Yes, sir.

14 A. So in 2006 I joined Roper hospitals.
15 Their Hospice program in 2007 I became a code
16 medical director of it. Through October of last
17 year, I was also chief of medicine for Roper
18 Hospital for about 10 years.

19 Since October of last year, I left
20 Roper Hospital. I worked for a company in
21 Charleston and traveled around the country doing
22 the same thing, primarily, for the past year in
23 Kansas City. I was in New Jersey for about nine
24 days in April, but all doing hospitalist medicine.

25 Q. And, in your practice as a hospitalist,

1 is it common for you to examine patient's lab
2 results and evaluate those lab results and assess
3 the implications of those lab results?

4 A. Yes. In fact, if a patient comes into
5 the emergency department, the emergency department
6 physician feels -- or is of the opinion that the
7 patient needs to be admitted to the hospital for
8 further evaluation of treatment, I've seen the
9 patient. I admit the patient and follow the
10 patient, at least, through my rotation, which is
11 typically seven days.

12 There will be cases where I pick up the
13 patient, that I begin a rotation. The patient is
14 already a patient. My practice is to review
15 everything pertaining to that admission, including
16 the evaluation of the emergency department. So I'm
17 very familiar with the full scope of a
18 hospitalization.

19 Q. And, Doctor, have you reviewed the
20 medical records that we sent you in regard to this
21 case?

22 A. Yes.

23 Q. Did you also review the depositions
24 that we sent to you?

25 A. Yes, I have.

1 Q. Have you reviewed any other documents?

2 A. Just the ones that were provided
3 pertaining to this case. There was the article
4 that I reviewed. That was forwarded to me.

5 Q. And have you developed some opinions
6 about the issues in this case?

7 A. Yes, I have.

8 Q. Can I ask you some questions about
9 those opinions?

10 A. Yes.

11 Q. First of off, Doctor, do you believe
12 that the Roper Hospital records are consistent with
13 Ms. Parrott having been on the ground for 24 hours
14 after the fall?

15 A. For 24 hours, yes.

16 Q. Is it your opinion that Ms. Parrott's
17 time on the ground after the fall did not cause her
18 decline in death?

19 A. Correct. I don't think her time had
20 anything to do with her demise.

21 Q. And in your opinion, Doctor,
22 considering Ms. Parrott's age and medical history,
23 would she likely have had the same outcome, if she
24 was found earlier?

25 A. Yes.

1 Q. And, Doctor, to reiterate, are the
2 objective medical evidence, the objective medical
3 records consistent with Ms. Parrott having been on
4 the ground for 24 hours, after the fall?

5 A. Yes.

6 Q. Are the objective medical records
7 consistent with Ms. Parrott having been on the
8 ground for 72 hours after her fall?

9 A. No.

10 Q. Do you hold these opinions within a
11 reasonable degree of medical certainty?

12 A. I do.

13 Q. And I'll ask you --

14 MR. RIDDLE: A lot of questions here
15 today -- but not too many, Your Honor.

16 BY MR. RIDDLE:

17 Q. Some questions today about your --
18 about these opinions. And can we assume that all
19 of your opinions are stated within a reasonable
20 degree of medical certainty?

21 A. Yes.

22 Q. First, quickly I want you to take a
23 look at some lab results.

24 MR. RIDDLE: I do have some hard
25 copies. This isn't working. In the meantime, I'll

1 use the hard copies.

2 And, Judge, I have to ask my paralegal.
3 She's not here. I'll be right back.

4 THE COURT: Take all the time. No
5 problem.

6 MR. RIDDLE: All right. So I have
7 three copies here.

8 THE COURT: Use the ELMO.

9 BY MR. RIDDLE:

10 Q. All right. Doctor, first there was
11 some discussion yesterday about Ms. Parrott's BUN
12 level and creatinine level and BUN creatine ratio.

13 Can you explain for us, again, briefly
14 what that is referring to?

15 A. Okay. The BUN is the acronym for blood
16 urine nitrogen. It's a medical byproduct that is
17 excreted in the urine. Creatinine is also a
18 metabolic byproduct excreted in the urine.

19 Creatinine is considered sort of a
20 surrogate measure of renal function. It's not
21 perfect. But, in general, lower is better. And
22 higher indicates renal impairment.

23 So, for instance, with untreated
24 end-stage renal disease would have a creatinine of
25 seven, eight. I've seen it as high of 16. In this

1 case it's perfectly normal.

2 Now, when you have a diversion between
3 the BUN and creatinine that is suggestive of
4 dehydration. So you might say that there are many
5 causes of renal failure, untreated hypertension,
6 and various things.

7 But it said, in the case of what we
8 have here, this is suggestive of dehydration
9 without impairment of renal function. Creatinine
10 creatine level is normal.

11 Q. And would you expect to see someone
12 with normal creatinine levels, after having been on
13 the ground for 72 hours?

14 A. No.

15 Q. And would that be because that person
16 would start to exhibit some level of kidney
17 impairment?

18 A. Yes. For two reasons: One, is the
19 severity for dehydration would progress to the
20 point that it would affect the renal function
21 directly. The other thing is we had to -- the CPK
22 would be markedly elevated from someone being down.
23 And that can also affect renal failure.

24 Q. Now, Mrs. Parrott's BUN was elevated in
25 this case; is that correct?

1 A. That's correct.

2 Q. And I think if we look here on this
3 record, we see the BUN here. And this would have
4 been the date of omission, 6/6; is that right?

5 A. That's correct.

6 Q. And so her BUN would have been 40; is
7 that correct?

8 A. Yes.

9 Q. Would a BUN of 40 be something that you
10 would expect to see with someone having been on the
11 ground without food or water for several days?

12 A. I would expect it to be -- for several
13 days, I would expect it to be higher.

14 Q. What's the normal range for BUN?

15 A. Well, it depends on the lab. And if
16 you reference, they put their range is 7 to 22.
17 More or less that's typical of different
18 hospitalists, different chemists.

19 Q. 7 to 22, you said?

20 A. Yes. Specifically, for this lab. But
21 that's the general range.

22 Q. And hers was 40, so it's elevated;
23 right?

24 A. Yes.

25 Q. Isn't that bad, Doctor?

1 A. It's not bad. It indicates that the
2 patient is dehydrated. So when you, in terms of --
3 in certain circumstances in certain laboratories,
4 they're not normal or they catch-drop it, do they
5 indicate that something is horribly wrong or
6 there's an aberration of perturbation. In this
7 case, it's like it's a perturbation for which the
8 patient was appropriately treated with IV fluids.
9 But it's not a harming of renal failure or any
10 untoward consequence.

11 Q. And is it your opinion that your level
12 of elevated BUN would indicate that someone had
13 been dehydrated, as a result of not having access
14 to food or water for 24 hours?

15 A. Exactly.

16 Q. And is it possible that someone could
17 have -- with regard to the creatinine level, is it
18 possible that someone could have a normal
19 creatinine level, after going without food or water
20 for several days?

21 A. No.

22 Q. You mentioned the CPK. Can you explain
23 to the Court what CPK is.

24 A. It's an enzyme that's found in muscle
25 tissue. It used to be used also in the diagnosis

1 of heart attacks, myocardial function. It's
2 another marker -- another type of enzyme. But
3 that's exclusively to muscle tissue.

4 But the relevance is when muscle tissue
5 is damaged, it could be for a variety of cases. It
6 could be for drugs. In this case, it's that
7 immobility in causing muscle breakdown, and spills
8 into the blood stream. And it can be measured.

9 Its significance is that higher levels
10 can be deleterious to renal function. What goes
11 with the CPK is also called myoglobin. It's what
12 makes red meat red. And that's a toxin to the
13 kidneys.

14 So the significance of an elevated of a
15 CPK is that when it's high, you need to take action
16 to prevent renal damage.

17 Q. All right. Doctor, here on this lab
18 result we see the reference range of 26 --

19 A. 26.

20 Q. To 193; is that right?

21 A. Yes.

22 Q. And does this cardiac markers report
23 indicate that Ms. Parrott's CPK on June 6th was
24 650?

25 A. Right. I think or 656, close enough.

Ty

1 Q. So she did have an elevated CPK?

2 A. She did.

3 Q. And that indicated that there had been
4 some muscle breakdown?

5 A. Yes.

6 Q. What do you believe was the cause of
7 the elevated CPK?

8 A. Being down and immobile.

9 Q. Would a hip fracture contribute to an
10 elevated CPK?

11 A. In and of itself, I think it's
12 possible, and depending on the severity. But
13 probably not in this case.

14 If you had trauma where it was --
15 falling down, probably not. I was thinking more of
16 trauma if you had been hit by a car and you had a
17 hip fracture, and it causes the bone fragments into
18 muscle tissue, something like that. But
19 essentially to your question, no.

20 Q. So laying on the ground, development of
21 skin breakdown --

22 A. Muscle breakdown.

23 Q. Muscle breakdown would contribute to
24 the CPK?

25 A. Yes.

1 Q. Would you expect to see that level of
2 CPK for someone that had been on the ground for 48
3 to 72 hours?

4 A. No.

5 Q. Can you give us a range of what you
6 would expect to see for a CPK in those
7 circumstances?

8 A. Thousands. Thousands. 2-, 3-, 4-,
9 5,000.

10 Q. Are there any other lab results that
11 you would look at to determine the time someone has
12 been on the ground after a fall like this, that
13 would it be helpful for you to determine that?

14 A. Yes. To get back to the previous one,
15 which had the creatinine -- well, for here, this is
16 another one. It says the urine specific gravity
17 which shifted -- five lines down.

18 Q. I'm sorry. I'll ask about that in a
19 minute. Can you tell me the one for creatinine on
20 it?

21 A. Yes. I would expect other differences
22 in the chemistries. Typically, people you can get
23 actually high or low. But much more severe
24 perturbations. Four lines down, the CO2, the
25 bicarb, usually people would become acidotic,

1 meaning that number would be lower.

2 Again, you just find, derangement, much
3 more significant derangements in the blood
4 chemistries, which is what this panel is for people
5 who are down for 48 to 72 hours.

6 Q. So, Doctor, is there any doubt in your
7 mind that Ms. -- based on these lab results, that
8 Ms. Parrott was down for sometime less than
9 72 hours?

10 A. There's no doubt in my mind that it was
11 less than 72 hours.

12 Q. And is it more likely than not that it
13 was close to 24 hours, as far as the time on the
14 ground after the fall --

15 A. Yes.

16 Q. -- based on the lab results?

17 A. Yes.

18 Q. Doctor, there's been some discussion
19 about the EMS reports. And that's the document
20 that I will show you here. This is the first page
21 of that report. And I will show you the section at
22 the bottom, actually.

23 Do you see where the EMS technician
24 determined the length of time Ms. Parrott -- it had
25 been or transpired since Ms. Parrott's fall and hip

1 fracture?

2 A. Yes.

3 Q. And what does this report indicate?

4 A. One day.

5 Q. If we look at the next page of this

6 report, we can see where the EMS technician

7 obtained that information. And starting right

8 here, I'll just ask you to read this sentence.

9 A. Patient states she has been on the

10 floor since Tuesday, but neighbors stated that they

11 saw her walking around yesterday.

12 Q. So did the EMS technician just make up

13 the one day that the technician put in this report?

14 A. I don't know why an EMS technician or a

15 paramedic would fabricate.

16 Q. Does it appear in the report that

17 someone hold the EMS technician --

18 A. That's what it states.

19 Q. That Ms. Parrott had been seen the day

20 before the fall?

21 A. Correct.

22 Q. In your view of that report, is there

23 anywhere it said that the EMS technician told Ms.

24 Parrott, no, no, you have been on the ground since

25 Thursday?

1 A. There's nothing to that effect.

2 Q. Doctor, I just want to ask you a couple
3 of questions about skin breakdown that's been
4 referenced in the Roper Hospital. And there's
5 reference to a blister on Ms. Parrott's right hip
6 an abrasion. Did you see those in the hospital
7 records?

8 A. Yes.

9 Q. Can you tell us what this blister is
10 that's referenced in those hospital records?

11 A. It appears to be a minor skin wound.

12 Q. And what would cause a development of a
13 blister, such as referenced in the hospital
14 records?

15 A. Well, in this circumstance?

16 Q. Yes, sir.

17 A. It could be from being down.

18 Q. And is that a pressure wound on her
19 right hip?

20 A. It's related to that. It's not a
21 decubitus ulcer, per se, but it's a wound, yes.

22 Q. Is it evidence of early skin breakdown?

23 A. Yes.

24 Q. So what is a decubitus ulcer --

25 A. Well, a decubitus ulcer is or pressure

1 ulcer is the consequence of immobility. That if
2 you pinch the skin, you peak the provision from the
3 capillaries. And also just the influx of plasma
4 from the blood that goes through tissue and
5 provides nourishment.

6 When you have that impairment of
7 profusion you start -- you will get devitalized
8 tissue and it will start breaking down and causing
9 an ulcer, where the tissue becomes necrotic
10 starting with the skin and then going to the dermis
11 and then going to the connective tissue, and
12 sometimes to the muscle underneath.

13 Q. And, Doctor, in your experience, as a
14 hospital physician, are there protocols for seniors
15 for hospital staff who prevent -- hospital staff
16 who prevent patients from developing pressure
17 ulcers?

18 A. Yes, absolutely. In the hospital the
19 procedure is to turn patients that are immobile,
20 for whatever reason, they're paralyzed or comatose,
21 is to turn them every two hours, 24 hours a day, to
22 prevent the development of pressure ulcers.

23 Q. So, again, a pressure ulcer begins to
24 develop if someone is immobile for more than two
25 hours?

1 A. Yes.

2 Q. Would you expect to see a blister, such
3 that Ms. Parrott presented to the hospital with for
4 someone who had been on the floor for 24 hours?

5 A. Yes.

6 Q. What would you expect to see, as far as
7 a pressure area or pressure wound, if Ms. Parrott
8 had been on the ground since Tuesday, as the
9 Plaintiff alleges in this case?

10 A. In simple terms, much more severe --
11 well, an actual ulcer with necrotic tissue going
12 down to the deeper levels.

13 Q. And what kind of medical treatment is
14 required for that pressure ulcer?

15 A. It depends. The typical -- at Roper
16 Hospital and the hospitals that I've worked with,
17 the various places, the typical thing -- the
18 typical procedure is that they're photographed
19 immediately upon presentation to the hospital.
20 Most hospitals have a wound care team, who will
21 make an assessment that can it be treated with
22 basic packing and all the different modalities that
23 the wound care nurses have, or they'll make a
24 recommendation that it needs surgical measures
25 where they actually cut out the necrotic tissue,

1 which is at risk for infection and in removing,
2 allowing the fresh tissue. So, again, it's a very
3 aggressive posture for those type of wounds.

4 Q. Did Ms. Parrott require any type of
5 treatment in this case?

6 A. No.

7 Q. Do you recall, from your review of the
8 medical records, what treatment was provided for
9 the blister on her right hip, and the abrasion?

10 A. Sometimes they put a cream on it. I
11 mean, it was open to air. They really didn't do
12 too much other than look at it and occasionally put
13 some cream on it.

14 Q. What does open air mean?

15 A. That means that there's no bandage.

16 Q. They didn't have to put a bandage on
17 it.

18 A. Apparently not.

19 Q. Was it a closed blister?

20 A. Well, I think it was in the course
21 of -- will evolve and they will drain usually,
22 usually you leave that on there, as well. But
23 yeah.

24 Q. And, Doctor, is it your understanding,
25 from the review of the medical records, that Ms.

1 Parrott, after her hip surgery, developed
2 postoperative delirium?

3 A. Yes.

4 Q. And is that something that you've seen
5 before in your practice, working in a hospital?

6 A. Yes. It's not uncommon for someone her
7 age, in that circumstance.

8 Q. What is -- what are the records
9 referring to when it says post-operative
10 complications of acute delirium?

11 A. Some people -- or older people get
12 acutely confused and agitated coming out of general
13 anesthesia. And that appeared to be her
14 circumstance. Not so much to the procedure itself.
15 It's usually the general anesthesia that's involved
16 in the procedure.

17 Q. And is there any significance for you,
18 with regard to that finding of post-operative acute
19 delirium relative to Ms. Parrott's condition after
20 she was discharged from the hospital?

21 A. I mean, it's hard to say. However,
22 looking at the records from her -- from the rehab
23 facility to which she was discharged, she did not
24 appear to be delirious there. So it seemed like it
25 began to improve for a period of time.

1 Q. You mentioned Ms. Parrott having been
2 discharged to the rehab facility. Can you describe
3 for us what type of care and treatment she would be
4 receiving at a skilled rehab facility, after a hip
5 fracture and surgery?

6 A. Well, what's involved in a skilled
7 nursing facility is comprehensive care in the form
8 of medical oversight, physical therapy,
9 occupational therapy, usually conducted twice a
10 day. Depending on the circumstances, speech
11 therapy more apply to stroke patients, which was
12 not her case. But, particularly, the vigorous
13 physical occupational therapy.

14 Q. And at the rehab facility where
15 Ms. Parrott spent 90 days after her surgery, was
16 she receiving constant nursing care and attention?

17 A. That was my impression, yes.

18 Q. And I believe you mentioned that she
19 improved during that 90-day period that she was in
20 skilled rehab?

21 A. Yes.

22 Q. I'm going to show you the final note
23 from Ms. Parrott's physical exam while she was in
24 Sandpiper Rehab after her hip surgery. Can you
25 describe for me what you see in this report?

1 A. She seems to be doing well. So, she's
2 alert, NAD, at the top line of no acute distress.
3 That's the abbreviation. Blind heart exam is
4 unremarkable. Neurologically there are no gross
5 deficits. She seemed grossly intact.

6 MR. BOSWELL: Your Honor, I can't
7 really read that. Can you zoom in a little bit or
8 ask the Doctor what the date is. There's a bar at
9 the top.

10 BY MR. RIDDLE:

11 Q. What's the date on this report, Doctor?

12 A. September 17th, 2016.

13 Q. 2014?

14 A. '14, sorry.

15 Q. Is there any reference here blocked any
16 to any type of neurological deficit?

17 A. No.

18 Q. Is there any reference in the doctor's
19 narrative, subjective notes at the top, to
20 psychological trauma related to the time on the
21 ground after the fall?

22 A. There is no such reference.

23 Q. Doctor, do you recall, based on your
24 review of the medical records, that Ms. Parrott,
25 after she spent 90 days in the skilled nursing

1 facility, was transferred to an assisted living
2 facility, Ashley River Plantation?

3 A. I'm sorry. Could you repeat the
4 question?

5 Q. Do you recall that Ms. Parrott was
6 transferred from the skilled rehab facility to
7 Ashley River Plantation Assisted Living facility?

8 A. Yes, I do.

9 Q. And I'll show you a report. It's got a
10 date at the bottom of September 18, 2014. This
11 appears to be an assessment that was prepared at
12 the time Ms. Parrott was admitted to Ashley River
13 Plantation; is that correct, Doctor?

14 A. That's correct.

15 Q. And can you read the title at the top?

16 A. Clinical science, symptoms of
17 depression in the elderly checklist.

18 Q. Are there any abnormalities noted here
19 with regard to clinical signs and symptom of
20 depression?

21 A. None.

22 Q. So I'll show you one other document
23 here. And this would have been on admission to
24 Ashley River Plantation. And it's a little hard to
25 read. But at the top of this document it says,

1 resident services level of care program. Did I
2 read that correctly?

3 A. Yes.

4 Q. And it says the review date is
5 September 17th, 2014. Did I read that correctly?

6 A. Yes.

7 Q. And there's a couple of items on here.
8 For instance, Number 9 orientation of behavior.
9 This indicates that Ms. Parrott is oriented and
10 alert. Did I read that correctly?

11 A. You did.

12 Q. Is there anything on this report -- and
13 this is Page 1 of 2 -- is there anything on this
14 assessment that indicates that Ms. Parrott was
15 exhibiting psychological trauma at the time she
16 appeared at Ashley River Plantation 90 days or so
17 after her hip fracture?

18 A. There's nothing in here that would
19 indicate that.

20 Q. And this is Page 2 of this report. It
21 has a signature line at the bottom. And, Doctor,
22 it may be difficult to read Joan Acosta on the
23 signature line?

24 A. It appears so, yes.

25 Q. Regardless, that confirms here that the

1 resident or the resident's responsible party signed
2 off on this level of care program or review, as
3 being an accurate assessment of the resident's
4 condition at the time of Ashley River Plantation?

5 A. Yes.

6 Q. So did Ms. Parrott appear to have any
7 problems at the time that she was discharged from
8 Sandpiper Rehab facility and admitted to Ashley
9 River Plantation Assisted Living, other than what
10 you would normally expect for an 80-year-old
11 person?

12 A. She did not appear to have any problems
13 of that sort.

14 Q. Doctor, did your review of the medical
15 records indicate that Ms. Parrott exhibited a
16 precipitous decline very soon after she was
17 admitted to the assisted living facility?

18 A. Yes.

19 Q. What I'm showing you here is a document
20 titled, Physician Visit Summary. And I'll
21 represent to you this is from the Ashley River
22 Plantation Assisted Living record. It says, Delila
23 Parrott is a resident of Ashley River Plantation
24 Assisted Living. Did I read that correctly?

25 A. Yes.

1 Q. And there's a visit summary that
2 indicates that Ms. Parrott was confused and
3 paranoid at that time?

4 A. Yes.

5 Q. And that Ms. Parrott believes the staff
6 is planning to harm her. Did I read that
7 correctly?

8 A. Yes.

9 Q. And down at the bottom from under
10 physician comments, it states hip fracture
11 completely healed, ambulate that as tolerated; is
12 that correct?

13 A. Yes.

14 Q. And under that it says, dementia slash
15 confusion. Informed patient's daughter as soon as
16 possible?

17 A. That's correct.

18 Q. And so, again, the date on this
19 physician visit summary is October 2nd, 2014.

20 And do you recall the admission
21 assessment to Ashley River Plantation, where we
22 just looked at, dated September 18th, I believe?
23 So this would have been somewhere around two weeks
24 after she came to the assisted living facility; is
25 that right?

1 A. Correct.

2 Q. So after she saw the doctor at Ashley
3 River on October the 2nd, I want to show you --
4 well, first of all, Doctor, was there any reference
5 to trauma from time on the ground and then October
6 2nd, 2014?

7 A. No. There was no such reference.

8 Q. So soon after she saw that doctor at
9 Ashley River Plantation, she was admitted to Mount
10 Pleasant Hospital on October 11th, 2014. And this
11 is the admission record from that October 11th
12 admission. Do you see that, Doctor?

13 A. Yes.

14 Q. And, actually, I'm showing the
15 discharge report. And it says that she was
16 admitted on October 11th and discharged on
17 October 15th; is that correct?

18 A. Correct.

19 Q. And it references her primary
20 physician, Dr. Mills. What was the principal
21 discharge diagnosis on that date?

22 A. Delirium and paranoia.

23 Q. And this report references a CT scan.
24 Can you read what this report says about the CT
25 scan?

1 A. Yes. CT of the head without contrast.
2 Contrast refers to an intravenous contrast case.
3 On October 11th, 2014, showed no imminents of acute
4 intracranial abnormality. Diffuse chronic
5 microangiopathic changes.

6 Q. And when it states no evidence of acute
7 intracranial abnormalities, does that mean that she
8 had had a stroke, basically?

9 A. It means that there's no evidence of a
10 mass, a bleed, or an acute stroke.

11 Q. What are diffuse chronic
12 microangiopathic changes?

13 A. They're characteristics on imaging that
14 suggest small vessel disease, that the terminal
15 arteries in the cerebrum that sort of serve -- I
16 don't want to get too complicated here.

17 But, basically, you'll see changes
18 around just below the cortex, which is suggestive
19 of small vessels that become excluded over time and
20 it's correlated with dementia and/or impaired
21 cognitive function.

22 The emporium function, it's sort of an
23 old term. Like a moon, these little spots that
24 correspond to small fargics, also, small vessels a
25 little bit bigger than what's refereed to

1 microangiopathic changes.

2 But little infarctions, which may not
3 be clinically evident, at the time it happened. We
4 have large vessel calculations, the change in
5 subject matter that usually prompt an evaluation at
6 the time, such as you can't speak, or you have
7 weakness, or paralysis. But that, in essence, that
8 she has cerebral matter disease.

9 Q. Is that consistent with, I believe, you
10 said dementia?

11 A. Yes.

12 Q. And decreased cognitive function?

13 A. Correct.

14 Q. And, in this case, do you believe that
15 a CT scan results are consistent with impaired
16 cognitive function for Ms. Parrott?

17 A. Yes.

18 Q. I want to refer you to the hospital
19 course section of this report. I'll just read this
20 and you can tell me if I've read it correct.

21 Doctor, it says, Ms. Parrott is a
22 patient with a known psychiatric history and known
23 cognitive decline, who presented declined over the
24 procedure of two weeks, with worsening cognitive
25 function. Did I read that correctly?

1 A. Correct.

2 Q. And so would that preceding two weeks
3 be consistent with the time period that she was
4 transferred from the rehab facility to assisted
5 living?

6 A. Yes.

7 Q. Where she was receiving more constant
8 at the rehab facility to a place where she wasn't
9 receiving as much attention at the assisted living
10 facility?

11 A. Yes.

12 Q. All right. So that was October 2014.

13 I'm going to fast forward to
14 December 23, 2014. And this is another physician
15 visit summary at the assisted living facility.
16 Again, that's dated 12/23/14.

17 And, Doctor, can you just take a look
18 at this report and describe what you see here.

19 A. So, apparently, the patient was
20 complaining of RLQ. That's right lower quadrant.
21 They reference the urinalysis of UA, and a culture
22 that was obtained, I think it looks like the 17th,
23 which should have had more blood.

24 And the culture of 40,000 at CFU, you
25 mixed in they had have bacteria likely

1 contamination, in general, most likely -- little
2 commentary that's when you have mixed bacteria
3 usually considering that is a contaminate. And,
4 therefore --

5 Well, anyway it said, will elect to
6 face all symptoms of UTI. So even thought they
7 thought it may be contamination is that still that
8 she had these symptoms and treated and see what
9 happens. Her treatment was Cipro. It's an
10 antibiotic.

11 So then AP, is Assessment Plan, UTI
12 treatment of Cipro hypertension control of mental
13 stable for muscular weakness.

14 Q. Thank you, Doctor. So in this report,
15 the physician who examined Ms. Parrott, I believe
16 she might have a urinary tract infection?

17 A. Yes.

18 Q. And is that a common condition for a
19 patient who had loss of mobility who's
20 80-years-old?

21 A. Yes.

22 Q. Is there any records here to any kind
23 of psychological trauma or anything related to the
24 time on the ground?

25 A. Nothing to that affect.

1 Q. And I believe under -- what's marked as
2 Number 3 on this assessment, on the right of this
3 report, it says dementia is stable?

4 A. Correct.

5 Q. And so she had a diagnosis of dementia;
6 correct?

7 A. Correct.

8 Q. Is there anything in that report that
9 you would expect to see for someone who was
10 80-years-old and suffered a hip fracture?

11 A. There's nothing unusual with that.

12 Q. I'll show you the first page of a
13 report. And, again, we are sort of fast
14 forwarding. We were just on December 23rd. Now,
15 we're going to about 30 days or so to January 20th,
16 2015?

17 A. Uh-huh.

18 Q. Do you see that?

19 A. Yes.

20 Q. And this is a progress note of
21 Dr. Mills; is that right?

22 A. Yes.

23 Q. And it says here, under the symptoms
24 section, that the patient is weak on the left side,
25 somewhat stooped appearing, frail appearing,

1 according to staff she had declined. Will need to
2 check for urinary tract infection. Did I read that
3 correctly?

4 A. Correct.

5 Q. So does this report indicate that she
6 just further declined while she was at the assisted
7 living facility?

8 A. Yes.

9 Q. Is there anything here in Dr. Mill's
10 report that references psychological trauma?

11 A. Nothing.

12 Q. Or any trauma that was associated with
13 having been on the ground after the fall?

14 A. Nothing to that affect.

15 Q. Now, I want to show you this one
16 report. It's going to be difficult to read. It's
17 just for one line here.

18 If you can look like right here,
19 Doctor. Does that appear to say multiple
20 decubitus, currently on Levaquin?

21 A. That's what it appears to say.

22 Q. And would that surprise you for a
23 person like Ms. Parrott who is 80-years-old and had
24 lost mobility because of a hip fracture, begin to
25 develop decubitus ulcers, and as a result of that

1 loss of mobility?

2 A. That's not unusual.

3 Q. And is that just further evidence of
4 her overall decline, as a result of the hip
5 fracture and loss of mobility?

6 A. Correct.

7 Q. Is there anything regarding those
8 decubitus ulcers that she would have developed from
9 loss of mobility that you would associate with the
10 trauma from time on the ground, after her fall?

11 A. Nothing.

12 Q. The next report I'll show you, Doctor,
13 is dated January 27th, 2015; is that correct?

14 A. Correct.

15 Q. So this would have been about seven
16 days after that last assessment we looked at with
17 Dr. Mills?

18 A. Yes.

19 Q. Can you just tell us what you see here
20 in this report?

21 A. Well, do you want me to read it, or
22 give just my overall impression?

23 Q. I would like your overall impression.

24 A. Well, it's an 80-year-old person who
25 has really declined significantly since that she

1 can't even speak to the emergency department
2 physician.

3 Q. Does this report describe a tremendous
4 decline over the last two weeks?

5 A. Yes.

6 Q. Do you see in this report reference to
7 a concern for developing pneumonia?

8 A. Yes.

9 Q. Is that something that you would expect
10 to see for someone who's 80-years-old, lost
11 mobility, as a result of a hip fracture?

12 A. Yes.

13 Q. Is there reference here, Doctor, in
14 this report from Roper Hospital of a trauma-induced
15 decline that's associated with the time on the
16 ground?

17 A. There is no such reference.

18 Q. The next report I'll show you, Doctor,
19 is a consultation at Roper Hospital dated
20 January 28th, 2015. Do you see that?

21 A. Yes.

22 Q. And this appears to be a report of Dr.
23 Livingston; is that right?

24 A. Dr. Livingston is the front physician
25 by Lisa Moore. It's with the Palliative Medicine

1 Service.

2 Q. And the reason I wanted to show you
3 this report is the second paragraph, Doctor. It
4 says, the patient has underlying history of
5 schizophrenia. And there's been some discussion
6 about whether she was ever actually diagnosed with
7 schizophrenia in this case. I don't think it's
8 relevant to the question that I will have for you
9 here.

10 But going on, again, the patient's
11 daughter, Joan, provides all the history. The
12 patient was residing at Sandpiper Independent
13 Living last year and, unfortunately, suffered a
14 fall and fractured her hip. After surgery she went
15 to a skilled nursing facility for 100 days. From
16 there went to Ashley River Plantation for assisted
17 living.

18 Due to her underlying schizophrenia,
19 the patient's daughter stated she had trouble
20 adjusting with an increase in paranoia and
21 ideation. Did I read that correctly?

22 A. You did.

23 Q. And in that section of the report
24 anywhere in this report dated January 28th, 2015,
25 is there any reference to a psychological trauma

1 from the time on the ground after Ms. Parrott's
2 fall?

3 A. There is none.

4 Q. Is there anything in that description
5 of Ms. Parrott's decline that you would not expect
6 to see for an 80-year-old woman who fell and
7 suffered a hip fracture, with a preexisting history
8 of mental health issues?

9 A. This is all fairly typical.

10 Q. And I have one more report for you to
11 look at, Doctor. This is dated January 30th, 2015
12 from Roper Hospital; is that correct?

13 A. Correct.

14 Q. And this is labeled, discharge summary
15 that includes a list of diagnoses on Ms. Parrott's
16 discharge from the hospital on January 30th?

17 A. Yes.

18 Q. All right. And included on this list
19 is debility and failure to thrive. Did I read that
20 correctly?

21 A. Yes.

22 Q. Can you describe for us, Doctor, what
23 that psychosis is referring to?

24 A. Failure to thrive?

25 Q. Yes, sir.

1 A. Failure to thrive is a term to describe
2 a decline in physiological status without one
3 specific predominate diagnosis such as -- you can
4 take a case like a pneumonia, but pneumonia wasn't
5 driving wasn't driving Ms. Parrott's overall
6 decline. That was just really a consequence of the
7 decline.

8 So where a variety of things intervene
9 to cause people to start losing physiological
10 status, they stop eating, they stop moving around.
11 And the consequence of that is death.

12 Q. Do you recall, from your review of the
13 medical records that Ms. Parrott had stopped eating
14 not long before this report?

✓ 15 A. Correct.

16 Q. And, in your opinion, is that a common
17 event that's associated with a general failure to
18 thrive?

19 A. Yes.

20 Q. That happens naturally at the end of
21 life?

22 A. Yes.

23 Q. And, again, failure to thrive,
24 debility, the diagnosis that we see on this report,
25 is this the type of decline that you would expect

1 to see for someone Ms. Parrott's age, the history
2 of mental health issues, who suffers a hip
3 fracture, and a loss of mobility?

4 A. Yes.

5 Q. Was this the cause, in your opinion, by
6 Ms. Parrott's time on the ground after the fall?

7 A. It was unrelated.

8 MR. RIDDLE: Doctor, I don't have any
9 other questions for you. Thank you.

10 THE COURT: If you have more than two
11 questions, we're going to take a break.

12 MR. BOSWELL: Your Honor, I was going
13 to ask if we could take a break.

14 THE COURT: Let's do that.

15 You're still under oath. Don't speak
16 with anyone about your testimony.

17 (A brief recess was taken.

18 THE COURT: Are you ready to go?

19 COURT REPORTER: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BOSWELL:

22 Q. Dr. Davidson, I'm John Boswell. You
23 gave a deposition in this case. I wasn't there.
24 We didn't meet. I represent, along with Mr.
25 Reeves, who you did meet, the Estate of Ms. Parrott

1 and her family.

2 So I want to ask you a couple of just
3 general questions first, before I get into any
4 specifics about Ms. Parrott.

5 By, in large, if somebody is injured,
6 suffers an injury of trauma, physical trauma, the
7 healthier they are and more fit they are before
8 they go into that situation, more than likely is
9 better the outcome on the other side of it; do you
10 agree with that?

11 A. I agree.

12 Q. So, you know, where you end up, in
13 large measure, kind of depends on where you start,
14 psychically. Do you agree with that?

15 A. I agree with that.

16 Q. I mean, that's pretty clear.

17 And do you know Dr. Mills?

18 A. Yes. I'm acquainted with him.

19 Q. You guys aren't golfing buddies, but
20 you do know of him?

21 A. Yes.

22 Q. Do you know his reputation?

23 A. Yes.

24 Q. Is his reputation as a good doctor?

25 A. Yes.

1 Q. Do you understand that his primary
2 practice is with an older population of patients?

3 A. I didn't know that.

4 Q. Let me say it, he has a very
5 significant part of his practice with older
6 patients. Did you know that?

7 A. I didn't know that as versus the
8 general demographics of Mount Pleasant.

9 Q. Did you know that he is -- he was
10 Ms. Parrott's treating physician for many, many
11 years before her fall and then was the doctor who
12 sort of managed and treated her and saw her after
13 her fall through those last eight months of her
14 life?

15 A. Yes.

16 Q. Were you aware of that?

17 A. Yes.

18 Q. You saw his name kind of all over the
19 medical records?

20 A. Yes.

21 Q. Now, the -- in your direct examination
22 there was bits and pieces of the medical that was
23 pointed out to you, and that you testified about.
24 Do you remember that part?

25 A. Yes.

1 Q. I mean, it certainly there was an
2 effort by pointing to certain things and not
3 addressing other things to sort of reaching a
4 conclusion that Ms. Parrott couldn't have been on
5 the ground as long as we believe she was on the
6 ground; is that fair to say?

7 A. Yes.

8 Q. Now, a minute ago I said a lot of how
9 you end up depends on where you start physically?

10 A. Yes.

11 Q. And, in your opinion, is that before
12 Ms. Parrott was found on the ground, she was a
13 frail lady?

14 A. Yes.

15 Q. That's your opinion?

16 A. Yes.

17 Q. So, let me explore that for just a
18 second.

19 You based that opinion on the fact that
20 she had frequent falls, prior to the fall where we
21 found her on the ground; is that right?

22 A. Yes.

23 Q. What do you consider frequent falls?

24 A. More than the isolated fall or similar
25 in missteps. I don't know if it's -- I can't

1 really come up with an exact threshold.

2 Q. I mean, it could be a fall every month
3 or every couple of months, or certainly at least
4 every year?

5 A. No. I would put it as several months,
6 at least. Put it this way, when people say or
7 reference a loved one as frequent falls, it's an
8 issue, as opposed to the isolated stumble.

9 Q. Sure. Right. And part of this is, you
10 have -- you never laid eyes on Ms. Parrott; is that
11 correct?

12 A. No.

13 Q. Now, you worked at Roper when she went
14 there; right?

15 A. No. I was not involved in her care.

16 Q. Right. So she showed up in the
17 emergency room, somebody took care of her, and then
18 she was turned over to Dr. Mills, but you weren't
19 involved in any part of that?

20 A. Correct.

21 Q. Right. So you got your opinion that
22 she was frail, because of frequent falls, from your
23 review of the medical records?

24 A. Correct.

25 Q. And this is also going to be an obvious

1 question, but have you ever run into medical
2 records that just wasn't accurate?

3 A. It happens.

4 Q. It probably happens a fair amount, too;
5 wouldn't you think?

6 A. Yes.

7 Q. Now, if -- so you -- there's was two
8 things in your deposition you said. But I'm going
9 to ask you specifically. First, you said that you
10 thought Ms. Parrott was frail because she had a
11 frequent falls, and also because she couldn't do
12 her activities of daily living. That's ADL. You
13 see it a lot in ADL, the activities of daily
14 living?

15 A. Yes.

16 Q. And the activities of daily living
17 we're talking about the stuff we all do, you know,
18 get in and out of bed, wash your hair, clean
19 yourself, go to the grocery store, go to eat lunch,
20 all that stuff; right?

21 A. Yes.

22 Q. So, your opinion was Ms. Parrott was
23 frail because she fell a lot and she had trouble
24 with her ADLs.

25 So, let me ask you, if the facts were

1 that she only, prior to her being on the ground,
2 there was only two times that she fell, one was in
3 2007 at Wal-Mart when she slipped on something, and
4 the other was in 2013 at Sandpiper when there was a
5 traffic jam of carts that you put your mail in and
6 stuff and she tripped over one of those carts.
7 Would you consider that frequent falls?

8 A. No, I wouldn't consider that frequent
9 falls. In the record, it indicated that there was
10 a notation that I think it was her daughter put
11 frequent falls, as opposed to two falls separated
12 by it.

13 Q. To be fair, her daughter didn't write
14 anything in the medical records; correct?

15 A. Correct.

16 Q. Somebody interpreted something that
17 might have said and wrote it in the medical
18 records?

19 A. Correct.

20 Q. And you were then reading that?

21 A. Correct.

22 Q. So, I mean, it's kind of like --

23 A. That's a better characterization.

24 Q. Let me ask you a question: This is an
25 80-year-old lady. Did you notice her weight?

1 A. I don't recall her weight.

2 Q. She was right at 149 pounds.

3 A. Correct.

4 Q. That's how much I weigh. And in the
5 time that she fell, do you know what she was doing?
6 She had stepped up on a chair and took a bar and
7 stepped up on a chair and was trying to hang a
8 curtain. And the curtain that she -- you know, she
9 was in a cushion chair.

10 Now, admittedly, that's a stupid thing
11 to do. But does that seem like a frail lady who
12 can do that, less than 150 pounds up with one foot
13 and put her hands over her head to hang a curtain
14 rod?

15 A. That would be unusual for a frail
16 person.

17 Q. Yeah. That doesn't feel like a frail
18 person; does it?

19 A. (Witness moves head up and down.)

20 Q. And if the evidence in this case is
21 that she could do all of her ADLs -- you know, the
22 weekend before she was shopping at the open-air
23 market -- I know that you don't have any of this
24 information, because it's not in the medical
25 record. But were you aware that she could do all

1 her ADLs?

2 A. No.

3 Q. And so when you're looking at these
4 medical records and making an analysis of, well how
5 would she have gone -- you know, how would she have
6 survived or dealt with this long lie, knowing where
7 she started is a factor?

8 I'm not going to say it's the only
9 factor, but it is the only factor. Do you agree
10 with that?

11 A. I agree.

12 Q. So you talked earlier about the BUN.
13 And that is an accumulation of bad stuff in your
14 blood, because your kidneys aren't working right.
15 Or did I get that wrong? I know it's the urine and
16 nitrogen.

17 A. I wouldn't agree with that exactly.

18 Q. And I'm not trying to put words in your
19 mouth. Tell me what -- the accumulation the toxins
20 in the blood that happens over time, it tends to
21 get worse -- as you are getting dehydrated, you get
22 worse over time; is that fair?

23 A. Yeah.

24 Q. And does it tend to get worse and tend
25 to get better at roughly the same rate?

1 A. I'm sorry?

2 Q. So if you're dehydrated and you're on
3 the ground and you're accumulating the toxins in
4 your blood, and then you get bags of fluid and, you
5 know, start urinating and you get whatever you
6 need.

7 So it sort of goes up and then it goes
8 back down once she starts to get treated; right?

9 A. Yes.

10 Q. And another thing that you talk about
11 in your deposition that you didn't talk about here
12 is, it's something called tachycardia. That's
13 really just a fast heart rate?

14 A. Correct.

15 Q. Not related to exercise?

16 A. Correct.

17 Q. If I'm running and my heart is up --

18 A. Hopefully your heart rate is up.

19 Q. Hopefully my heart rate is up.

20 But if there's no reason for my heart
21 rate to be up, that would be considered
22 tachycardia?

23 A. Yeah. I mean -- correct. Yes.

24 Q. Trust me, I'm not trying to act like I
25 know more about this than you do. So, if you don't

1 agree with something I'm saying, please say no, no,
2 that's right, and then explain it to me.

3 A. Okay.

4 Q. I was doing some research and
5 tachycardia is generally considered 100 in an
6 adult?

7 A. You mean as the threshold?

8 Q. Yes.

9 A. Yes.

10 Q. Something like that?

11 A. Yes.

12 Q. Does tachycardia have anything to do
13 with your resting heart rate is?

14 A. Probably.

15 Q. So, if somebody had a resting heart
16 rate of 75, if they got to a 100, would that be
17 tachycardia? Or would they have to go up to like
18 120 or something like that?

19 A. Well, strictly speaking, 100 is
20 tachycardia. Now, as many things that there's --
21 101, 102, 105, is that clinically significant, but
22 depending on the context.

23 Q. Sure. But if somebody is also at like
24 95, they're close tachycardia?

25 How do you say it?

1 A. Tachycardia, yes.

2 Q. Tachycardia?

3 A. Tachycardia. I may be saying it wrong
4 all these years.

5 Q. So at 95 you're close to tachycardia;
6 correct?

7 A. Yes.

8 Q. And so one of the things that you
9 indicated -- you guys didn't talk about it. But
10 one of the things you indicated was an indication
11 that she couldn't have been down on the ground that
12 long and she didn't have tachycardia?

13 A. Well, I'm talking about many different
14 elements. So it's just not one criteria. That was
15 just one of many.

16 Q. Right. So, if I had -- let's say I had
17 a normal BUN rate of 8, and I had a big meal today,
18 and then, how then I didn't eat or drink anything
19 until tomorrow, how high would you expect my BUN
20 rate to have gone?

21 A. So you would -- let me make sure I
22 understand the question.

23 Q. I'm eating lunch today. And I'm eating
24 and drinking, and I'm fully hydrated, fully fed,
25 and I go sit in a chair, and I'm going to read a

1 book for the next 24 hours, and I don't eat or
2 drink anything for the day, where would my BUN rate
3 be tomorrow?

4 A. I would expect it to be double.

5 Q. 16, 18?

6 A. Yeah.

7 Q. Now, in your deposition, you made this
8 point -- and you said it wasn't clear whether she
9 had a decubitus ulcer, because it could have been a
10 scrape on her leg. Do you remember talking about
11 that?

12 A. Yes.

13 Q. Have you changed your opinion about
14 that since then?

15 A. Not really. I think when you look at
16 the record, it's a little bit ambiguous at times to
17 refer to it as an abrasion, which -- I mean,
18 without the benefit to all of us of having a
19 picture of it, an abrasion would -- would I think
20 of an abrasion would not -- in its characteristic.
21 It decubitus or pressure ulcer.

22 But it certainly, for presentation, she
23 could have the beginning of a breakdown from the
24 pressure.

25 Q. Do nurses deal with decubitus ulcers

1 all the time?

2 A. Yes.

3 Q. I mean, that's sort of something that
4 they deal with all the time?

5 A. Yes.

6 Q. So when the nurse who's actually
7 looking at the injury be in the best position to
8 decide whether there's a decubitus ulcer or not?

9 A. Possibly.

10 Q. Okay.

11 A. I mean, the issues then is going to
12 be -- the extremes are going obvious.

13 Now, for things that I familiar in many
14 circumstances where what they see -- they consider
15 minor and therefore their documentation isn't
16 precise, because they figure it's minor, it doesn't
17 matter.

18 Q. But if they took the time to measure
19 something, that is an indication that it was
20 significant to them?

21 A. Possibly.

22 Q. And, again, the problem is that we're
23 sitting here trying to interpret what other people
24 meant when they wrote stuff, et cetera?

25 A. In my experience, they call the wound

1 care team and they document it with photographs.

2 Q. Got it.

3 I meant to ask you this question a
4 second ago: The tachycardia -- if you're giving
5 pain killers, does that tend to also slow your
6 heart rate down?

7 A. Yes.

8 Q. All right. I'm going to zip through a
9 few other things real quick. Dr. Mills testified
10 in this case, and he had the benefit of actually
11 treating Ms. Parrott right after her fall and saw
12 her conditions and all that sort of stuff.

13 And I'm not going to ask you to opine
14 his opinions. We heard that. But you and he
15 agreed on a couple of things. And I want to
16 confirm, that. Ms. Parrott really came through her
17 hip surgery beautifully; didn't she?

18 A. Well, the delirium is an issue. But
19 aside, I guess, beautiful to me would be in someone
20 who did have delirium. By the time she got to the
21 rehab, she was doing as well as expected.

22 Q. Actually, the term you used is she
23 healed wonderfully. Do you agree with that?

24 A. Yes.

25 Q. I mean, honestly we're talking about an

1 80-year-old lady?

2 A. Correct.

3 Q. But she healed wonderfully for somebody

4 who broke her hip?

5 A. Correct.

6 Q. And she had no complications from the

7 surgery?

8 A. Correct.

9 Q. And so -- and you and Dr. Mills both

10 agree about that. And you said that you didn't

11 think the anesthesia that she had would have been

12 any sort of a long-term complication for her

13 either; did you?

14 A. Long term, no.

15 Q. Once she starts to get it out of your

16 system?

17 A. Yes.

18 Q. You do, however, agree that during the

19 period of time, however long it was, that she was

20 on ground, she would have been in tremendous pain?

21 A. From the moment she fell and fractured

22 her hip.

23 Q. Right. So assume for me that she

24 wasn't fragile. You know, that she was strong

25 enough to do something stupid in a chair and that

1 she could do all of her ADLs and stuff like that.
2 It wouldn't be unreasonable to expect that she
3 would have recovered beautifully from the fractured
4 hip and been able to continue -- get back to the
5 independent living and continue her life?

6 If that would had been the outcome,
7 that wouldn't have surprised you; would it?

8 A. No.

9 Q. Now, you are absolutely not giving an
10 opinion in anyway as to the psychological affect of
11 her lying on the ground had on her?

12 A. That's correct.

13 Q. Right. And you made that point a
14 couple of times, and it wasn't asked of you here.
15 So we can say that Dr. Davidson had no opinion
16 about the psychological affect of her being on the
17 ground?

18 A. Correct.

19 Q. And you are firmly of the opinion that
20 the reason that she failed to thrive and the reason
21 that she died prematurely is because she lost the
22 will to live?

23 A. Yeah, I guess it's conceivable that she
24 would have had another recurrence infarction, I
25 don't know.

1 Q. You don't know anything like that.

2 But in your deposition -- and let me
3 make sure -- the thing that really killed her is
4 she lost the will to live?

5 A. Correct.

6 Q. Because there wasn't anything about the
7 hip that would have killed her?

8 A. The hip didn't kill her.

9 Q. Right.

10 A. But when the mortality rate associated
11 with hip fractures, which is not related to a hip
12 fracture with most of those patients anyway.

13 Q. And you're not expressing an opinion
14 whether or not the long lie, it contributed or
15 caused her to lose the will to live? You don't
16 have an opinion about that?

17 A. Correct.

18 Q. I want to cover very quickly a couple
19 of things in the medical records. So on the issue
20 of tachycardia, do you see that when the EMS first
21 hooked her up to the electric monitor, her heart
22 rate was 95?

23 A. Yes.

24 Q. And that's just short of tachycardia?

25 A. Yes.

1 Q. And then she got 100 micrograms of
2 fentanyl?

3 A. I've got the exact amounts.

4 Q. I mean, she was in a lot of pain and
5 they gave her two shots of pain medicine to get her
6 under control?

7 A. Right.

8 Q. That would have had an affect of
9 bringing down her heart rate?

10 A. Yes.

11 Q. Because when she got to the hospital,
12 her heart rate was still at 86?

13 A. Yes.

14 Q. Do you know what her resting heart rate
15 was?

16 A. I do not.

17 Q. Would it surprise you that it was 57?

18 A. When was that?

19 Q. That was when she got to the -- this is
20 when she got admitted. And we'll talk about that
21 in a second.

22 But this is the document when she was
23 admitted into Roper Hospital.

24 MR. RIDDLE: Well, would you mind
25 identifying that document for me, the date of it?

1 MR. BOSWELL: Yeah. I think you
2 actually pulled it up, too.

3 MR. RIDDLE: I don't believe I used it.
4 Well, I used it yesterday with Dr.
5 Mills.

6 MR. REEVES: Further Sandpiper Rehab.

7 MR. BOSWELL: So this is after
8 discharge from the hospital?

9 BY MR. BOSWELL:

10 Q. So this would have been after she was
11 discharged from the hospital and when was admitted
12 to Sandpiper?

13 A. Yes.

14 Q. And you see the pictures there of the
15 human being and the nurses wrote circles. Do you
16 see that?

17 A. Yeah.

18 Q. And you see they drew a picture, and
19 it's Number 4, and it's a 20 centimeter by 20
20 centimeter fluid-filled blister?

21 And that would be consistent with the
22 skin breakdown from pressure on the right hip?

23 A. Yes.

24 Q. Is that what that seems like?

25 There's a nurse's note here I want to

1 show you. And this is on 6/6. You can see here,
2 it's a nurse's note. And down here at the
3 bottom -- earlier Sandpiper's lawyer asked you to
4 read something about -- they said, that there was a
5 neighbor that they said her walking around?

6 A. Yes.

7 Q. And let's be clear. All you know about
8 that is what you read?

9 A. Yes.

10 Q. Do you see here that when the nurses
11 were talking to her after she was -- you know, when
12 they were assessing, she said her, I fell down on
13 Tuesday and have been laying on the floor and just
14 hoping someone would find me. I think I broke my
15 hip. Did you read that?

16 A. Yes.

17 Q. A minute ago we were talking about the
18 BUN level. And here is a date of 10/14. So that's
19 four months, roughly, after her fall. And her BUN
20 level was at eight. These two documents line up to
21 one another. You know, they sort of go like that.
22 So you have to kind of look at two pages.

23 Do you see what I'm talking about
24 there? The date is 10/14 and you go down and you
25 see that on 6/8 she had a BUN -- so a couple days

1 after she had a BUN of 33 and then 6/9 it went down
2 to 22, and many months later it went down at 8.

3 Does that suggest to you that her
4 normal BUN ratio would be about 8; right?

5 A. You mean the ratio, which is the BUN
6 itself?

7 Q. No. I mean the BUN ration itself.

8 A. Could be. It could also. It would
9 also be deformative would be to substantiate that
10 is to what the lab valley that might be in
11 Dr. Mill's records.

12 Q. Yeah. It probably is. But I'm not
13 going to --

14 It's not going to be dramatically
15 different than that; is it?

16 A. I don't know.

17 Q. We do see, however, that if you look at
18 this, she came into the hospital and her BUN level
19 was 40, and the next day it went down 38 and 36.
20 And the next day it went down to 33, and then it
21 went to 22, and then went down to 16.

22 So over five days it went down, you
23 know, like that?

24 A. Yes.

25 MR. BOSWELL: Doctor, thank you very

1 much. Wait a minute.

2 BY MR. BOSWELL:

3 Q. Was there anything in the medical
4 record that you saw that suggested that she had
5 ever had any previous deliriums before her fall?

6 A. No.

7 MR. BOSWELL: Thank you.

8 MR. RIDDLE: I just have one or two,
9 Your Honor, if that's all right.

10 THE COURT: Okay.

11 FURTHER DIRECT-EXAMINATION

12 BY MR. RIDDLE:

13 Q. Doctor, I'm going to show you the
14 nursing report from Roper Hospital that
15 Mr. Boswell just showed you. I believe he directed
16 your attention to this comment from Ms. Parrott, I
17 fell down on Tuesday and I've been laying on the
18 floor. Did I read that correctly?

19 A. Yes.

20 Q. On this same note, there's another
21 comment it says, presenting complaint for patient.
22 Patient was found on the floor by a neighbor who
23 checked on her, unknown how long she was on the
24 floor. Did I read that correctly?

25 A. Correct.

1 Q. So, is it fair to say that the medical
2 records are inconsistent about the time of the
3 fall?

4 A. Correct.

5 Q. And, as far as the narrative medical
6 reports, would you rely on what's in the objective
7 medical records, as in the lab results, more than
8 what's in the narrative reports that are
9 inconsistent, about the time of the fall, when
10 assessing the time of the fall and the length at
11 the time on the ground?

12 A. Well, the laboratory evaluation,
13 barring error is fact. And then narrative, at
14 times, is -- so you put all together what you think
15 is the most logical sequence of events.

16 Q. You mentioned in response to
17 Mr. Boswell's question that Ms. Parrott didn't have
18 any complications from surgery. Would you consider
19 the post-operative delirium a complication from
20 surgery?

21 A. Well, it was a moderate complication.
22 I guess, meaning that it -- that's why I'm saying,
23 it wasn't beautiful, so to speak, which I would
24 characterize as someone who didn't have any
25 delirium and could have some people get discharged

1 within 24 hours of that, or 36 hours.

2 So it was a complication. It wasn't a
3 major complication.

4 Q. And you also testified today that you
5 believe that delirium cleared up when she was
6 admitted to Sandpiper Rehab; is that correct?

7 A. Yes.

8 Q. Would you defer to a cognitive expert
9 or a psychologist with regard to psychological
10 issues or the impact of the delirium on her
11 pre-existing mental condition?

12 A. Sure. Absolutely.

13 Q. Mr. Boswell asked you a question about
14 your own BUN and what you think it would be, if he
15 eat a meal yesterday and didn't eat for 24 hours.
16 Is your assessment different for each patient,
17 about what you'd expect to see for a BUN?

18 A. Yeah. Everyone is different than --
19 you know, as a rule of thumb, as to opposed to a
20 absolute predictive of measure. Part of it would
21 depend on --

22 Well, for instance, as I recall
23 that Ms. Parrott was taking a diuretic as part of
24 her pre-admission medications. And that will make
25 you urinate more frequently and it could draw to

1 dehydration faster -- or elevated BUN factor than
2 someone who's not taking a diuretic.

3 Q. Sure. So, Ms. Parrott was an
4 80-year-old woman -- and this is in response to Mr.
5 Boswells' questions about your assessment about
6 that Ms. Parrott was frail.

7 And I understand that your comments in
8 that regard in your deposition were based on some
9 of the references in the medical records of
10 frequent falls; right?

11 A. Right. There's also an office visit to
12 Dr. Mills, I think maybe a year before, where she
13 came in requesting a handicapped parking sticker,
14 because of impaired gait. And so, I mean, that
15 factored into my overall impression of someone that
16 had some impairment and mobility and was frail.

17 And, again, the handicapped parking
18 sticker.

19 Q. Right. And do you agree that
20 Ms. Parrott was an 80-year-old woman.

21 MR. BOSWELL: Your Honor, we'll
22 stipulate to the fact that she --

23 BY MR. RIDDLE:

24 Q. Do you agree that she had macular
25 degeneration?

1 A. Well, that's what the records say too,
2 yes.

3 Q. And she had a history of delusions,
4 depression, and anxiety?

5 MR. BOSWELL: Your Honor, I didn't
6 cover any of this stuff in my cross.

7 MR. RIDDLE: I would say that this goes
8 to Dr. Davidson's assessment of her condition
9 before the accident, how that factored into his
10 opinion with regard to how she recovered from her
11 hip fracture. And that was addressed on cross, I
12 think.

13 THE COURT: He's testified as to that.

14 MR. RIDDLE: Well, in that case --

15 THE COURT: I mean, I think he said he
16 had nothing to do with it, and that her will to
17 live was probably the cause. Correct?

18 THE WITNESS: Correct.

19 BY MR. RIDDLE:

20 Q. And with regard to the frequency of
21 falls, is there anything about the frequency of
22 falls, before this accident, impact your opinion
23 about her recovery from the hip fracture and the
24 impact on her decline of that?

25 A. I'm sorry, could you restate that one

1 more time, so I understand the question?

2 Q. Is this idea of the frequency of her
3 fall an important aspect of your opinion with
4 regard to how she recovered from the hip fracture
5 and its impact of her decline and death?

6 A. It's sort of complicated in the sense
7 that she seemed to do fairly well in the rehab with
8 the exception that she seemed to prefer using the
9 wheelchair at rehab at time of discharge, even
10 though that the physical therapist documented that
11 she could be one assist, and could use the walker.
12 But she preferred to use the wheelchair to
13 ambulate.

14 And I thought that is somewhat ominous.
15 Because you had the physical capability of walking
16 without the wheelchair or ambulating without the
17 wheelchair. That your preferences. And that, to
18 me, that's an ominous sign.

19 MR. RIDDLE: Your Honor, I would like
20 to address the will to live comments that he made.

21 THE COURT: Yes.

22 BY MR. RIDDLE:

23 Q. So we talked about how Ms. Parrott's
24 fractured hip, and loss of mobility. You just
25 described that she was primarily using a

1 wheelchair. And we talked about how she developed
2 decubitus ulcers and frequent urinary tract
3 infections. All those things stem from the hip
4 fracture and her loss of mobility; is that correct?

5 A. Correct.

6 Q. And is it common for you to see older
7 patients, in those conditions, experience what you
8 describe as a loss of a will to live and that's
9 what contribute to the decline in death?

10 A. Right. Depending on what kind of
11 study. Because every population is a little bit
12 different. But there's a substantial one-year
13 mortality from the hip fracture related to just
14 functional decline and will to live, so to speak,
15 that people don't ambulate as much as they could.
16 And then they stop eating.

17 Q. So in this case, with regard to
18 Ms. Parrott, what you describe as a loss of will of
19 will live, do you believe that that's related to
20 any type of trauma from being on the ground after
21 the fall?

22 MR. BOSWELL: Your Honor, I think this
23 was covered ad nauseam. And I didn't cross him
24 about that.

25 THE COURT: All right.

1 MR. RIDDLE: And I just want to clarify
2 with regard to th loss of will to live, Your Honor,
3 but I'll sit down.

4 THE COURT: I've got my head wrapped
5 around it.

6 MR. RIDDLE: Thank you, Your Honor.

7 THE COURT: You may be excused. Thank
8 your so very much. I hope you have a wonderful
9 day.

10 All right. Ladies and gentlemen, I
11 have hearings over lunch. So we have got to go and
12 break down. It's 12:07. Try to be back here at
13 1:30. There may be somebody in your seat. You can
14 leave your stuff there. So it there are, just
15 don't come in.

16 MR. DAVIS: We're defiantly going to
17 finish. I'm waiting with you. We have two more to
18 go.

19 MR. REEVES: We're going to be really
20 brief. We'll be ready to go.

21 THE COURT: See you at 1:30.

22 (A lunch recess was had.)

23 (Court resumed at 1:45 p.m.)

24 THE COURT: All right. You ready to
25 go?

1 MR. DAVIS: We are.

2 THE COURT: Do you swear of affirm that
3 the testimony you are about to give will be the
4 truth, the whole truth, and nothing but the truth.

5 DIRECT EXAMINATION

6 DR. MARK WAGNER,

7 BY MR. RIDDLE:

8 Q. Dr. Wagner?

9 A. Yes.

10 Q. Can you tell me your full name,
11 Dr. Wager?

12 A. My name is Dr. Wagner.

13 Q. Where do you live, Dr. Wager?

14 A. I live here in Charleston.

15 Q. Can you quickly give us a rundown of
16 your education, starting with college.

17 A. Sure. I went to college in Denver. I
18 got a Master's Degree in California, my Ph.D is in
19 clinical neuropsychology from the University of
20 Memphis.

21 I first joined the faculty at the
22 University of Rochester Medical Center in physical
23 medicine rehabilitation where I practiced for the
24 past 10 years. And the last 25 to 30 years I've
25 been here at Medical University of South Carolina

1 in the Department of Psychiatry, and then
2 neurology.

3 MR. DAVIS: I'll stipulate that he's a
4 qualified expert.

5 THE COURT: All right. You'll be an
6 expert without objection.

7 MR. RIDDLE: And we would like to
8 identify him as expert in neuropsychology.

9 MR. DAVIS: No objection.

10 THE COURT: Without objection.

11 BY MR. RIDDLE:

12 Q. Can you explain to the Court what
13 neuropsychology is.

14 A. Neuropsychology is -- perhaps the best
15 way to understand it is the psychologic
16 manifestations of neurologic disease. So, when I
17 say psychologic manifestations, I mean cognition,
18 memory, language, perceptual function,
19 psychologic functioning.

20 Q. Doctor, have you, in your capacity as a
21 neuropsychologic, reviewed the medical records that
22 we sent you in this case?

23 A. Yes, I have.

24 Q. Have you reviewed the depositions --
25 some if the depositions taken in this case?

1 A. Yes, I have.

2 Q. And have you developed opinions about
3 the circumstances of this case regarding
4 Ms. Parrott's fall at Sandpiper Village and her hip
5 fracture, and her subsequent time on the ground
6 after the fall?

7 A. Yes, I have.

8 Q. Dr. Wagner, in your opinion, did
9 Ms. Parrott sustain a trauma-induced cognitive
10 decline, as a result of any time at any time on the
11 ground?

12 A. Yes.

13 Q. And there's been some discussion of her
14 loss to will to live. Doctor, did she have a loss
15 of will to live that was directly caused by a
16 psychological decline that could be associated with
17 the time on the ground after the fall?

18 A. No. I believe her loss of will to live
19 occurred very late in the course of October, before
20 her untimely end.

21 Q. And, Doctor, do you hold these opinions
22 within a reasonable degree of medical certainty?

23 A. Yes, I do.

24 Q. I'm going to have some more detail
25 questions for your today. Can we assume that all

1 of your opinions stated here today are stated
2 within a reasonable degree of medical certainty?

3 A. Yes.

4 Q. What is the basis for your opinion that
5 she didn't have a psychological trauma, resulting
6 from the time on the ground after the fall?

7 A. She was evaluated by a psychiatrist a
8 couple weeks after that event. And there was no
9 diagnosis of a PTSD-related trauma.

10 Q. What would you have expected to see in
11 the medical records if Ms. Parrott did have a
12 psychological trauma related to the time on the
13 time ground?

14 A. Most likely psychologic trauma that she
15 would have had relating to laying on the ground
16 would have been posttraumatic stress disorder. I
17 use the term PTSD to refer to that.

18 Q. And what would we see in the medical
19 records, if Ms. Parrott had PTSD?

20 A. Individuals who have had PTSD have
21 terrible recurring nightmares, daymares,
22 flashbacks. There's a tremendous amount of
23 avoidance of any discussion related to traumatic
24 events. Those types of things that are
25 characteristic of PTSD.

1 These problems are so severe that
2 they're just symptoms, but they're symptoms that
3 result in interference with daily life. So in
4 order to reach the level of psychiatric diagnosis,
5 those symptoms have to interfere significantly with
6 daily life.

7 Q. Now, Ms. Parrott had talked to social
8 services workers presents at Sandpiper about how
9 bad the experience was when she was on the ground
10 after her fall. And have you reviewed those
11 records?

12 A. I have.

13 Q. How many references in those social
14 services records were there to this time on the
15 ground after the fall?

16 A. I think there was one, possibly two,
17 references.

18 Q. All right. Was there anything
19 reflected in the psychiatrist's notes about trauma
20 related to the time on the ground?

21 A. The psychiatrist that came in - I
22 actually know her, and value her opinion. She's a
23 geriatric psychiatrist. Those records did not
24 reflect in the PTSD related to time on the ground.

25 Q. And, again, Doctor, explain to us what

1 you would expect to see, for instance, in these
2 Sandpiper Rehab Records, for someone who had PTSD.
3 What would you expect to see in the medical record?
4 How would that look?

5 A. I used to work on a rehabilitation
6 floor in New York at the University of Rochester
7 Medical Center. Many of our patients that had
8 falls where they had a hip fracture or a stroke,
9 would struggle with phycologic issues.

10 Often times manifestation of serious
11 phycologic problems related to an accident, such as
12 a fall or a stroke result in not participating in
13 rehabilitation.

14 Patients often give up on. They refuse
15 to attend their therapies. When they attend their
16 therapies, they don't participate. The gains from
17 rehabilitation are really minimal. That would be
18 the kind of thing that I would expect to see, if
19 there was a psychiatric trauma.

20 Q. What about -- would there be repeated
21 references to the traumatic events within the
22 medical records?

23 A. Yes, of course. So this is something
24 that the nurses may witness. People waking up in
25 the middle of the night, screaming about, you know,

1 recurring dream of laying on the ground, comments
2 may appear throughout the daytime of the traumatic
3 event.

4 There may be avoidance. These would
5 all be symptoms that would be on the surface
6 observable to any and all that are that are
7 involved in someone's care.

8 Q. And is that what you have seen here,
9 Doctor?

10 A. That's my experience.

11 Q. Is that what you have seen in this
12 case?

13 A. No, I didn't see any reference to any
14 of that.

15 Q. Other than what we just talked about
16 with regard to the social services records?

17 A. That's correct. She seemed to be in
18 isolation.

19 Q. Did Ms. Parrott have any diagnosis -- I
20 believe you already said this she was not diagnosed
21 with PTSD; correct?

22 A. That is correct.

23 Q. Did she have any other diagnosis that
24 could be associated with the trauma from time of
25 her fall.

1 A. There was none.

2 Q. If she did have trauma from the time on
3 the ground after the fall, is there any way that
4 she wouldn't be -- wouldn't have been diagnosed
5 with?

6 A. I believe that if she had that, it
7 would have been found -- there are the people that
8 evaluated were experts in their field.

9 Q. Including the psychiatrist who saw her?

10 A. Yes.

11 Q. Doctor, was it your impression, from
12 reviewing the Sandpiper records -- and I'm talking
13 about the Sandpiper Rehab records during the
14 90 days after she was discharged from the
15 hospital -- was it your impression that Ms. Parrott
16 steadily improved during that time she was in
17 rehab?

18 A. Yes. I was impressed by the progress
19 that she had made when she entered the
20 rehabilitation program. She was wheelchair
21 dependent. She was described as moderate assist,
22 meaning moderate to help her stand to get around,
23 to take care of her basic ADLs.

24 She consistently progressed to the
25 point where she was independent ambulated where she

1 left the Sandpiper Rehab Facility.

2 Q. But Ms. Parrott was not able to return
3 to her previous level of function; right?

4 A. She made tremendous gains, but not back
5 to her normal baseline. The implication of that
6 was pretty significant. So, she was unable to
7 return to her previous level of care, which was her
8 target, her personal target.

9 Q. Do you believe that that loss of
10 immobility impacted her Mr. Parrott's psychological
11 condition?

12 A. Yes.

13 Q. In your experience, will a hip fracture
14 and resulting loss of mobility significantly impact
15 a patient's psychological condition?

16 A. Oh, absolutely. So in the elderly, hip
17 fracture and resulting changes are life breaking
18 events.

19 Q. Can you describe what you mean by that,
20 Doctor?

21 A. A life breaking event is a hip
22 fracture, where an individual is forever changed.
23 A life breaking event following a hip fracture
24 would result in individuals not being able to
25 return to their previous level of independent

1 living where they could have good quality of life.

2 Often times following a hip fracture
3 there's improvement. But in the elderly often not
4 back to normal baseline, such that they need
5 additional assistance in daily living in the form
6 of some sort of institutional care.

7 Q. And how does that impact a person
8 psychologically?

9 A. Terribly. So, it's a drastic change in
10 quality of life. So much so that hip fractures in
11 the elderly are a very feared event.

12 Q. Now, do you understand that Ms. Parrott
13 had a preexisting mental health and psychological
14 issues?

15 A. Yes.

16 Q. She had a history of psychosis and
17 delusional care psychosis?

18 A. Delusional disorder, yes.

19 Q. She also was depressed and had anxiety;
20 is that correct?

21 A. Yes. She had been treated for
22 depression for many years. Her symptoms I think
23 dated back to her '40s.

24 Q. Now, there's been evidence that she had
25 an intense period of this delusional disorder in

1 2009. And she received some medication and
2 treatment and that stabilized her. Are you
3 familiar with those records?

4 A. Yes. Those are the Baptist Psychiatric
5 records.

6 Q. And based on your review in the medical
7 records, does she continue to stay on medications
8 to address her mental health issues and
9 psychological issues from that time until the time
10 her of fall?

11 A. Yes. Those were chronic medicines that
12 she had been on for years.

13 Q. An she wasn't on this Seroquel, I think
14 is what was prescribed in 2009, if I'm not
15 mistaken; is that right?

16 A. That's correct.

17 Q. But she was on some other medications
18 that seemed to maintain her condition, at least to
19 where she wasn't having these intense delusions; is
20 that correct?

21 A. That's correct.

22 Q. A person in that condition, Doctor,
23 would a hip fracture and loss of mobility, having
24 greater psychological impact on this person for
25 someone who's in good health, who has a baseline of

1 normal mental?

2 However, you would phrase it, where she
3 wasn't suffering from depression and anxiety?

4 A. Yes, that's possible.

5 Q. It's possible that she would be
6 particularly vulnerable to the affects of the hip
7 fracture and loss of mobility?

8 A. Yes.

9 Q. And it's for all of the reasons that
10 you described with regard to the impact of loss of
11 mobility on an older person and how that impacts
12 them psychology?

13 A. Yes, it is.

14 Q. Now, there's been evidence that the hip
15 fracture itself, Doctor, was not the direct cause
16 of death for Ms. Parrott. Is that your
17 understanding, based on your review of the medical
18 records?

19 A. It was not the direct cause. But hip
20 fractures are known to increase the risk of
21 mortality and morbidity.

22 Q. Why is that?

23 A. Mostly it relates to mobility. So
24 individuals that have had hip fractures often spend
25 less time walking around. Walking is an important

1 component of blood circulation. And then there's
2 the issue of deconditioning.

3 So if you -- this happens to astronauts
4 demand on their physical system they become
5 deconditioned. These are both major problems in
6 the elderly that probably risk their increase of
7 death, or stroke, or things like that.

8 Q. And, of course, you've already talked
9 about the psychological impact of those conditions;
10 correct?

11 A. Yes.

12 Q. Particularly, for a person like
13 Ms. Parrott who already had fragile mental health?

14 A. Yes.

15 Q. Does pain medication impact someone's
16 psychological condition?

17 A. A little bit.

18 Q. Doctor, did Ms. Parrott have post-op
19 delirium after her surgery for the hip fracture?

20 A. Yes, she did.

21 Q. Can you describe what post-operative
22 delirium is.

23 A. Post-operative delirium is a form of
24 brain damage. It's a transient brain damage. It's
25 a waxing and waning in mental status. It's

1 something that sometimes treatable. It's a very
2 negative prognostic indicator for outcome.
3 Delirium is the leading cause of death in medical
4 hospitals.

5 Q. Did Ms. Parrott's delirium appear to
6 clear, after she was transferred to Sandpiper
7 Rehab?

8 A. Her delirium cleared, but she suffered
9 from damage to her brain that did not.

10 Q. I'm going to show you a medical record
11 here from Mount Pleasant Hospital, dated October
12 11th, 2014. And there's reference to a CT scan
13 here of Ms. Parrott's head that showed diffuse
14 chronic micrognathic changes, including several
15 previous lactentium infarction. Can you explain
16 what that is?

17 A. That's physical evidence of brain
18 damage. These are -- for lack of a better term are
19 ministrokes that have occurred. It's a lack of
20 blood supply to the tissue and it results in the
21 tissue death or permanent brain change.

22 Q. And is that associated with dementia
23 and loss of cognitive function?

24 A. Yes.

25 Q. And is that something that progresses

1 over time in a chronic fashion?

2 A. Yes.

3 Q. Have you reviewed the CT scan before in
4 this case?

5 A. I've not seen the actual images, but
6 I've read the reports. I've seen the actual
7 reports.

8 Q. And were you able to compare that to
9 prior studies that were done on Ms. Parrott?

10 A. Yes.

11 Q. Was there any difference between this
12 CT scan and the ones that were done earlier?

13 A. Yes. There were two scans. I believe
14 one was in 2009 the other one is this 2014 scan.
15 It looks to me, from the two reports, that there's
16 been a progression of the surgical vascular disease
17 or ministrokes that have occurred in the brain.

18 Q. When you say a progression --

19 A. Meaning there's more of it.

20 Q. And is the progression of the cerebral
21 vascular disease consistent with decreasing
22 cognitive function?

23 A. Yes. So damage to the brain results in
24 decreases cognitive function, probably losing ties
25 with reality.

1 Q. Does that have anything to do with
2 trauma, from lying on the ground after the fall?

3 A. No.

4 Q. Doctor, to the extent -- and I don't
5 think you would disagree, Doctor, that it was, to
6 say the least, unpleasant for -- it was unpleasant
7 for someone to be on the ground for a long period
8 of time after the fall?

9 A. Of course. It was a verbal experience.

10 Q. And to the extent that it was
11 unpleasant for Ms. Parrott, do you see that it
12 somehow was the cause of her psychological decline?

13 A. No.

14 Q. And we talked about the hip fracture
15 and the loss of mobility that impacted the
16 postoperative delirium and just the general
17 progression of her cerebral vascular disease;
18 right?

19 A. Right.

20 Q. Are those all things that are
21 contributing to her decline?

22 A. Yes. The time on the ground was a bad
23 event. But the hip fracture was many times worse.

24 So the hip fracture resulted -- like I
25 said before, the hip fracture is a life-breaking

1 event in the elderly. It forever changes the
2 nature of life. For many individuals there's a
3 high risk of mortalities.

4 For many people, a hip fracture results
5 in death. For this that survive, it's the rare
6 individual that gets back to their normal baseline.
7 And instead the individuals, especially the elderly
8 have long chronic problems in taking care of --
9 just the basic things, such as getting around,
10 walking, talking, caring for themselves. They're
11 in need of assistance.

12 And it often results in a high level of
13 dependent on others, sometimes to the extent to
14 having to live in an extended care facility.

15 Q. So you said, Doctor, that Ms. Parrot
16 did not have PTSD; is that right?

17 A. That's correct.

18 Q. And I'll represent to you that the
19 Plaintiff's expert has testified to the same thing,
20 she did not have diagnosable PTSD.

21 A. And I would add that Dr. Craig didn't
22 diagnosis PTSD either.

23 Q. And that was the physiatrist at
24 Sandpiper Rehab during the 90 days after she was
25 discharged from the hospital?

1 A. Yes. Yes.

2 Q. Is there any other condition -- I may
3 have asked this before, Doctor. But is there
4 anything else, short of PTSD, that she's been
5 diagnosed with that could be associated with this
6 time on the ground after the fall?

7 A. No.

8 Q. So in light of all the things that
9 we've just talked about, without question,
10 according to all of the medical evidence and all
11 the experts who testified in this case, contribute
12 to Ms. Parrott's decline and ultimate death, is it
13 possible for anyone to say that this period of time
14 on the ground after the fall was the direct cause
15 of her death?

16 A. Absolutely not. It was a bad
17 experience. But, like I said before, the hip
18 fracture is the straw that broke the back.

19 Q. Is that your opinion, within a
20 reasonable degree of medical certainty?

21 A. Yes, it is.

22 Q. Is there any doubt in your mind about
23 that?

24 A. No doubt whatsoever.

25 MR. RIDDLE: I don't have any other

1 questions. Answer any questions that the
2 Plaintiff's attorney might have for you.

3 CROSS-EXAMINATION

4 BY MR. REEVES:

5 Q. The last question that you were asked
6 is, can anybody have an opinion that these things
7 she went through contributed to her death or cause
8 or aggravate her death? And you said no one can
9 know that; is that correct?

10 A. Yes.

11 Q. Well, then how can the reverse be true?
12 How do you know what somebody else can't know?

13 A. I'm not sure I understand your
14 question.

15 Q. I'm not sure I understand your answer.
16 How can you say that nobody can know
17 and have an opinion that they can't know when you
18 say somebody can know?

19 A. Nobody can know?

20 Q. Yes.

21 A. What?

22 Q. That this long lie -- this traumatic
23 experience she had could not have contributed,
24 aggravated, or caused her death?

25 A. I don't think the long lie contributed

1 to her problems. It was a bad experience. The hip
2 fracture was much, much worse. That was a
3 life-breaking event.

4 She went through a period of recovery.
5 She had some expected frustrations with her
6 rehabilitation program. But she rallied to the
7 challenge. She got progressively better.

8 Her course over the period of time from
9 when she had the hip fracture until she was
10 discharged to the Ashley River Plantation was one
11 of dramatic improvement.

12 When she was admitted to the Ashley
13 River Plantation, the admission note referenced
14 that her self esteem was fine. She was doing okay
15 with concentration. She was not talking about
16 death. Hopelessness was not a problem. She didn't
17 express feelings that she wanted to die. There was
18 no particular somatic problems.

19 So by the time that she had gotten to
20 the Ashley River Plantation, she was doing well,
21 but not back to her baseline.

22 Q. First of all, I appreciate you going
23 through that very comprehensive list of your facts.

24 Do you have an answer to my question?

25 My question is this: Simple question,

1 yes or no, how can you say what somebody else can't
2 know? How can you have an opinion about somebody
3 else not having an opinion, about this issue? I
4 just don't understand that.

5 A. I don't know that that's a yes or no
6 question.

7 Q. Well, can you try to answer it yes or
8 no?

9 A. Can you rephrase it?

10 Q. Can you have an opinion about what you
11 claim someone else can't know?

12 A. Yes.

13 Q. All right. Very good. Doctor, you
14 just mentioned that the psychiatrist that you had
15 significant respect for had seen Ms. Parrott and
16 did not diagnose her with PTSD; is that correct?

17 A. That's correct.

18 Q. But you told me in your deposition that
19 one didn't need a diagnosis, one didn't need a
20 diagnosis of PTSD to suffer trauma; isn't that
21 true?

22 A. That's correct.

23 Q. And you didn't tell the Court when you
24 were giving your opinion just a moment ago. But it
25 doesn't matter if you've a diagnosis.

1 If the trauma occurs, then it can be
2 traumatic; correct?

3 A. Yes, that's correct. Trauma is a bad
4 memory. But in order for this to be significant
5 and rise to the level of psychiatric problems that
6 would have functional implications, that would
7 result in a psychiatric diagnosis.

8 There's no question that the event was
9 traumatic for Ms. Parrott.

10 Q. Well, you know, you told us the
11 psychiatrist that you have significance for her.
12 Her notes says that she has received Valium. I'm
13 assuming Valium is to calm anxiety?

14 A. Yes.

15 Q. This is in July, about a month after
16 she was removed from the hospital, where she was
17 taken after the long lie. It says that chart
18 reviews shows patient confused, stated people
19 coming from the woods and leaving things in my
20 room. She had received Valium. She seemed tearful
21 and expressed wishes that she would be better off
22 dead.

23 And a moment ago -- well, first of all,
24 is that the same record that you reviewed before
25 your testimony today?

1 A. I've looked at that records.

2 Q. And this is the record of the
3 psychiatrist with whom you have great respect for;
4 is that correct?

5 A. Yes.

6 Q. Then she says this, Ms. Parrott recalls
7 the fall, her fear and banging on the floor at the
8 wall for two days.

9 Now, you said a moment ago she didn't
10 have flashbacks. What is that?

11 A. That's a desperation trying to alert
12 others to her situation. She wanted to be saved.
13 She wanted to live. She was banging on the floor
14 in hopes that somebody would discover her.

15 Q. In that effort of situation she's
16 recalling that particular circumstance on July 7th,
17 a month later.

18 Would you classify or would you agree
19 with me that that's a flashback?

20 A. No. I would disagree in the sense that
21 you're using that in the psychiatric sense. I
22 think you're using that in -- that's a bad memory.

23 So flashback, bad memory -- of course,
24 she remembered the event. And it was a bad memory.

25 Q. And the bad memory would come up again;

1 wouldn't it?

2 A. I'm sorry?

3 Q. The bad memory would come up again and
4 again; wouldn't it?

5 A. If she had PTSD, yes, that would be a
6 recurring problem.

7 Q. Are you telling me that because she
8 didn't have PTSD she would not recall banging on
9 the floor and waiting for someone to come save her?

10 A. No. I'm sure she would remember that
11 for the rest of her life.

12 Q. And you described in your deposition
13 that scenario -- I think you used the very phrase
14 of intrusive memory; is that right?

15 A. That's how it's phrased in the DSM
16 psychiatric manual, yes.

17 Q. Well, I wouldn't know all that, but you
18 would I'm sure.

19 Well, let me ask you this: Intrusive
20 means that it kind of comes and goes without
21 warning; doesn't it?

22 A. Yes.

23 Q. So you would agree with me that from
24 the time that she was rescued on the floor until
25 the time that she passed away, she had intrusive

1 memories of this horrific event in June of 2014;
2 correct?

3 A. I don't know the frequency of which she
4 experienced those intrusive memories.

5 Q. Can we agree that she did?

6 A. No. The intrusive memories were very
7 infrequent. She did remember the event, but it was
8 not haunting her in the sense of constantly
9 recurring.

10 Q. If she told her daughter that, I just
11 don't want to live anymore, would you relate that
12 juw5 to the hip or the long lie?

13 A. I would relate that to the hip.

14 Q. And, in fact, the long lie issue, in
15 your opinion, cleared up as soon as EMS picked her
16 up and took her to the hospital? That was the end
17 of impact or effect of the long lie; is that
18 correct?

19 A. No. It was a memory that persisted,
20 because of that memory that she had.

21 Q. We did agree, in your deposition, that
22 the long lie, however long it was caused Ms.
23 Parrott hopelessness?

24 A. Yes.

25 Q. Caused her helplessness?

1 A. Yes.

2 Q. She thought about that?

3 A. Yes.

4 Q. She thought about maybe nobody is
5 coming to get her?

6 A. Yes.

7 Q. You also told me that she thought
8 someone should have to get her at a certain time,
9 that the failure of that occurrence would have
10 aggravated or increased her frustration about being
11 helpless and hopeless; correct?

12 A. I would agree.

13 Q. And that while you didn't agree that
14 she had been on the floor for 72 hours, you do
15 agree that she was on the floor for some period of
16 time; is that correct?

17 A. Yes.

18 Q. And, in fact, your whole deposition was
19 premised on your belief that she had fallen on
20 June 7th; isn't that correct?

21 A. There was a confusing history of how
22 long she was on the ground. Some people had said
23 24 hours, others had said 72, but...

24 Q. Well, you have the wrong history,
25 though, based on your deposition testimony because

1 you told me you fell on July 2nd. That not
2 correct; is it?

3 A. She fell on July 6th -- or June 6th,
4 excuse me.

5 Q. And at the time you had not reviewed
6 the depositions where there had been testimony
7 about when she had fallen and how she was found; is
8 that correct?

9 A. No.

10 Q. You mentioned a moment ago that this
11 event of her lying in her waste, and no food and
12 water, the physical pain, the emotional pain, had
13 no impact upon her death about eight months later?

14 A. Had no impact on her what?

15 Q. On her death? It did not cause her
16 death?

17 A. No, it did not.

18 Q. I asked you about The New England
19 Medical Journal arguments that have been
20 circulating here. Mr. Mills talked about it. I
21 think Dr. Bergmann talked.

22 And I think I asked you about it. You
23 said before your deposition when you rendered all
24 your opinions, that you had not reviewed any
25 articles about long lie; is that correct?

1 A. That's correct, right.

2 Q. The New England Journal article does
3 say that people on the floor for 70 hours have a 67
4 percent mortality; is that correct?

5 A. That's correct. For that sample that
6 they studied.

7 Q. Right.

8 A. That sample consisted of people that
9 had fallen, that had strokes, that had tried to
10 commit suicide, and had alcohol-related problems.

11 Q. Right. But the longer the lie, the
12 less likely you are to survive it or at least
13 survive it without traumatic results?

14 A. And the lie time, in that particular
15 article, was estimated by the EMS staff.

16 Q. I understand that. I'm just simply
17 asking you the longer you're on the floor, the
18 worst your results are; isn't that correct?

19 A. That's correct.

20 Q. Now, when I asked you about her
21 recovery, you indicated that she had a very good
22 recovery. And then I asked you about whether that
23 recovery would have impacted about the long lie.
24 And your response was, what doesn't kill you makes
25 you stronger; is that right?

1 A. That was tongue to cheek, yes.

2 Q. Tongue and cheek?

3 A. It's not a medical diagnosis that I was
4 giving. We were talking about hypothetical
5 situations there.

6 Q. We were talking about an 80-year-old
7 woman who was left on the floor from Tuesday night
8 to Friday night without one single person cared
9 her, and you the audacity to tell me that that's
10 tongue and cheek, sir? Isn't that true?

11 A. We were debating about hypotheticals
12 that --

13 Q. That's what you said?

14 A. Yes.

15 MR. DAVIS: Judge, it's argumentative.
16 He's been interrupting. And he needs to give the
17 witness an opportunity to answer the questions.

18 THE COURT: On cross-examination,
19 Doctor. He'll ask you a question. And you have to
20 say yes no and, fully explain. Okay.

21 THE WITNESS: Okay.

22 BY MR. DAVIS:

23 Q. Were you being tongue and cheek in your
24 deposition, when I asked you the question as to
25 whether or not it caused Ms. Parrott to feel bad

1 when she peed on herself? And you said, no, it,
2 probably made her feel better. Was that tongue and
3 cheek?

4 A. No, it was not.

5 MR. REEVES: I no further questions.

6 RE-DIRECT EXAMINATION

7 BY MR. RIDDLE:

8 Q. Doctor, you weren't talking about
9 Ms. Parrott in response to Mr. Reeves'
10 hypotheticals about when you said what doesn't kill
11 you makes you stronger; did you?

12 A. We were not.

13 Q. And in this case Ms. Parrott did
14 demonstrate a good recovery at Sandpiper Rehab
15 after she was discharged from the hospital and she
16 plateaued and then declined; is that correct?

17 MR. REEVES: Object. That's improper
18 recross.

19 THE COURT: Stick to it, please.

20 BY MR. RIDDLE:

21 Q. Now, Ms. Reeves -- well, he didn't show
22 it to you, but he asked you about what he referred
23 to as the psychiatrist notes.

24 And I believe, if I'm not mistaken,
25 that he was actually referring to comments from the

1 social service assistant from Sandpiper Rehab?

2 A. We didn't look at the actual record.

3 MR. REEVES: I have the -- that's the
4 incorrect record. It's the one that he relied on
5 on direct.

6 BY MR. RIDDLE:

7 Q. So these comments were to the social
8 services person at Sandpiper Rehab?

9 A. Yes.

10 Q. And I'll show you the -- and the social
11 services system is not a person who is a qualified
12 diagnosis psychological condition; is that right?

13 A. That's correct.

14 Q. And there are two references here on --
15 on these social services records on 6/2014?

16 MR. REEVES: Objection, improper
17 recross.

18 THE COURT: What are you getting at?

19 MR. RIDDLE: I'm getting at the fact
20 that asked Dr. Wagner about the times that she had
21 recurring memories on the time on the ground.

22 BY MR. RIDDLE:

23 Q. And my question for Dr. Wager is, that
24 there are two references here. Are there any other
25 references in the entire medical record, besides

1 those two and what is repeated here in the
2 psychiatrist report that was taken from the
3 comments of the social services?

4 THE COURT: You can answer the
5 question.

6 THE WITNESS: Those are the only
7 references.

8 BY MR. REEVES:

9 Q. And if there are any others, would you
10 like to see them, Doctor?

11 A. Yes.

12 Q. And would you render opinions on them,
13 if there are other references to recurring dreams
14 and thoughts, at the time of the fall?

15 A. Yes.

16 Q. And I believe you testified on direct
17 that if someone had PTSD there would recurring
18 thoughts, and dreams, and nightmares, and daymares
19 about this incident, over the course of time
20 repeatedly again and again for months; correct?

21 A. Absolutely.

22 Q. Is that what we see here, Doctor?

23 A. It is not.

24 Q. Is that why you think she did not have
25 a trauma-induced cognitive decline from the time on

1 the ground?

2 A. That's correct.

3 Q. And, in fact, when Ms. Parrott
4 described these things to the psychiatrist, as Paul
5 mentioned, the psychiatrist did not diagnosis her
6 with PTSD?

7 A. She did not.

8 Q. What were the diagnosis from the
9 psychiatrist?

10 A. Preexisting delusional disorder,
11 delirium resulting.

12 Q. Did the psychiatrist identify signs and
13 symptoms that were consistent with dementia?

14 A. There was a test that was administered.
15 It's called the Blessed Test. And the findings
16 from that test were consistent with mild dementia.

17 Q. And is that consistent with what we
18 were just looking with regard to the CT scan to the
19 head that showed that vascular changes?

20 A. That would be entirely consistent with
21 that.

22 Q. And it that related at all to the time
23 of the ground to the fall?

24 A. Absolutely no relationship.

25 Q. Mr. Reeves asked you about the New

1 England Journal Medicine article. Was that article
2 about --

3 Well, first of all, did that article
4 change your opinion at all with regard to this
5 case?

6 A. It does not. I don't think it really
7 relates to this case.

8 Q. Why doesn't it relate to this case?

9 A. That was a random sample of individuals
10 that had fallen on the floor. The cause of the
11 fall was -- there were multiple kinds of cases.
12 There were a handful of cases that were hip
13 fractures, like the one that they we're talking
14 about here.

15 But there were other cases that were
16 aid's related falls. There were of alcohol-related
17 falls. There were cases of just frail elderly
18 falling without any kind of fracture, not being
19 able to get up. In fact I think, that was a good
20 percentage of the cases.

21 So the findings on that particular
22 study are not specifically relevant for this
23 particular case.

24 Q. Mr. Reeves also ask you some questions
25 about the period of time on the ground. And he

1 referenced your comment about June 7th being the
2 date of the fall.

3 Doctor, in your opinion, is there any
4 difference between the psychological -- actually,
5 let me rephrase my question.

6 Does it impact your opinion at all
7 whether or not Ms. Parrott was on the ground
8 24 hours versus 48 hours or more?

9 A. From a psychologic prospective, no.

10 Q. Is your opinion based on the diagnoses
11 and description of Ms. Parrott's symptoms that are
12 contained in the medical records?

13 A. Yes.

14 Q. Is there anything else that is
15 motivating anything your opinion, with regard to
16 the fact that Ms. Parrott's -- that psychological
17 trauma did not impact her decline and death?

18 A. No. I'm basing my opinion on all of
19 the medical record facts that I had before me.

20 MR. RIDDLE: Thank you, Doctor.

21 MR. REEVES: No, sir. Thank you very
22 much. You may be excused. I hope you have a
23 wonderful day. And thank you for being here.

24 MR. COURT: All right. Call your next
25 witness.

1 MR. DAVIS: The defense would call
2 Dr. Brian Lancense.

3 THE COURT: Put your hand of the bible.
4 Do you swear or affirm that testimony
5 you are about to give will be the truth, the whole
6 truth, and nothing but the truth?

7 THE WITNESS: Yes, sir.

8 DR. BRIAN LANCENSE,
9 DIRECT EXAMINATION

10 BY MR. DAVIS:

11 Q. May I call you Brian?

12 A. Yes.

13 Q. Brian, congratulations, you're the last
14 witness. If I'm not quick I have a big feeling I
15 may be in trouble with the judge.

16 So, do me a favor, tell the Judge a
17 little bit about your education and background, and
18 kind of what you do.

19 A. Graduated premed, went on to get two
20 MBAs; one in health administration, one in national
21 business. So I worked in pharmaceutical industry
22 as a research biologist and also as a research
23 chemist.

24 What got into long-term care through
25 hospitals, I worked with a company where the

1 hospitals asked us to manage their centers. Been
2 in the industry for a long time. I've left several
3 times. I have left to start an impairment
4 administrative program for Northwestern. And then
5 left, again, to work in a hospital setting. I
6 managed ambulances, helicopters, health flight,
7 that type of stuff social work discharge.

8 THE COURT: All right.

9 BY MR. DAVIS:

10 Q. Do you hold any license or skills?

11 A. I do I have a license as a skilled
12 nursing administrator in Virginia.

13 MR. DAVIS: All right. Your Honor, at
14 this time, we would offer him an expert in the
15 expert senior living, and skilled as it applies to
16 nursing administrator.

17 MR. REEVES: No objection, Your Honor.

18 THE COURT: Without objection.

19 BY MR. DAVIS:

20 Q. Now, Brian, you have reviewed a lot of
21 things in this case; correct?

22 A. Yes, sir.

23 Q. You read all the depositions, to your
24 knowledge, and after you the documents. And after
25 reviewed all that, have you reached an opinion to a

1 reasonable degree of certainty within your of
2 field, as to whether or not Sandpiper's employees
3 in the case met the proper standard -- industry
4 standards and how they responded to the facts of
5 this case?

6 A. Yes. It does it seem -- from reading
7 all that information that within each circumstance
8 they responded reasonably.

9 Q. Can you hold that opinion to a
10 reasonable degree of certainty?

11 A. Yes, sir.

12 Q. Now, the Judge has heard a lot about
13 independent living. Would you give me him a
14 thirty-second explanation of why independent living
15 is different from the heavily regulated areas of
16 skilled assisted and those kinds of things?

17 A. Sure. The major difference between
18 independent living, assisted live, and skilled
19 nursing, which would typically be CCRC campus is
20 independent living is going by landlord/tenant law.

21 It has no care component. Assisted
22 living has a care component also that is regulated
23 by the State. Skilled nursing has a much larger
24 care component regulated by state and federal.

25 From what I was understand, I was not

1 able to find any documentation that Sandpiper
2 Center, the Independent Living was part of a CCRC
3 in the State of South Carolina.

4 Q. Meaning it doesn't have regulations?

5 A. No.

6 Q. All right. So you had an
7 opportunity -- I'm not going to pull the lease out,
8 but you've had the opportunity to review the lease;
9 is that correct?

10 A. Yes.

11 Q. And from an industry's perspective, an
12 independent living -- independent senior facility,
13 is that generally the source, duties, and
14 responsibilities between the parties?

15 A. Yes.

16 Q. And do you recall seeing in this
17 section seeing in this section, a specific
18 section -- and I'm going to try to pull it up here
19 momentarily -- that deals with -- I think it's
20 called assumption --

21 A. Assumption of risk.

22 MR. REEVES: Judge, I'm going to object
23 to him making comments on the wall. That's your
24 job.

25 MR. DAVIS: Judge, he's an expert in

1 the area and he can explain why that might appear
2 from a contract from an industry prospective.

3 THE COURT: What's the last thing you
4 said?

5 MR. DAVIS: He's going to explain to
6 you why it appears a contract in an industry
7 prospective and to why that term of provision is in
8 there. Not legally, but why they have it in the
9 industry.

10 BY MR. DAVIS:

11 Q. So do you recall in that particular
12 paragraph -- and this is on Sandpiper 5, Page 5.
13 So I really just want to direct your attention to
14 the -- read the first sentence to the Judge for us,
15 please.

16 A. Both Sandpiper and --

17 COURT REPORTER: I'm sorry can you
18 speak up and speak a little slower when you are
19 reading.

20 THE WITNESS: Both Sandpiper and you
21 agree that your freedom to make personal health and
22 non-health-related decisions, the freedom to
23 travel, to come and go as you please, the decisions
24 that affect and control your day-to-day activities
25 should all remain within your sole decision, so

1 long as as it does not adversely affect other
2 occupants.

3 Q. And read the second sentence, please.

4 A. As such, both Sandpiper and you
5 understand and realize that such decision-making
6 ability carries an inherent possibility of
7 adversity that may directly or indirectly affect
8 you as an occupant.

9 Q. And the last sentence.

10 A. Therefore, you and your representative,
11 if appropriate, agree to assume such risk and
12 related consequences, and as it relates to
13 Sandpiper and its agents --

14 Q. Okay. That's fine.

15 Why would there be in a lease -- why
16 would there be a discussion about freedom and if
17 there's a risk that come associated with -- in
18 senior with that freedom that you have, and if
19 something happens you're responsible? Why is that
20 in there?

21 A. In independent living, you're bound by
22 the landlord/tenant laws. And so the person living
23 in that apartment or complex has the ability to
24 make their own decisions that is typically involved
25 in this, unless it's delineated in the lease.

1 Q. Now, you mentioned the standard of
2 care. Is there any medical standard of care in
3 this context of independent living?

4 A. Not independent living.

5 Q. Is there any regulatory standard of
6 care in this context?

7 A. Not in independent living.

8 MR. DAVIS: Can you pull up Sandpiper
9 123.

10 BY MR. DAVIS:

11 Q. So the Judge has seen this. This is
12 the daily check sheet, receptionist's duties and
13 procedures, referencing the daily check sheet. You
14 saw this?

15 A. Yes, sir.

16 Q. Now, with respect to this document --
17 and in particular what it says there, would that
18 constitute -- again, from an industry prospective a
19 fall policy?

20 A. No, it wouldn't necessarily be a
21 policy. It may be a procedure that they adopted.

22 Q. And if it's a procedure that they
23 adopted, would you expect them to perform it
24 reasonably?

25 A. Yes, sir.

1 Q. Now, I'm going to ask you some specific
2 questions about this. Do you see anything in here
3 about the family being required to be called if
4 they can't get in?

5 A. No, sir.

6 Q. Do you see anything in here about call
7 911 if you can't get in?

8 A. No, sir.

9 Q. Does it say anything about what
10 happened if the master key doesn't work, if the
11 locks have been changed?

12 A. No, sir.

13 Q. So, what if anything, does that leave
14 to the staff in terms of decision making and
15 discretion and things like that?

16 A. It allows them the ability to have some
17 discretion in decision making when it comes to
18 implementing this procedure.

19 Q. And you understand, I guess, that this
20 was created by a receptionist to help folks do
21 their job; right?

22 A. Yes, I do.

23 Q. And with respect to a practice, is
24 there anything unusual about the way this is
25 written? Would you expect anything more or less?

1 A. No, not really. I think this is pretty
2 standard again independent living, that they do
3 daily check sheets.

4 Q. Now, from your prospective, one of the
5 arguments in this case is that this created a duty
6 to check daily the wellbeing and ultimate safety of
7 every resident every day.

8 From your prospective, as an expert in
9 the industry, is that what the daily check system
10 was ever designed for?

11 A. So in each community it may be a little
12 bit different. But in general an independent
13 living daily check sheets are in place for the
14 staff to -- a lot of times monitor activities.
15 It's not typically set in place as a safety
16 mechanism.

17 Q. And from your experience, working in
18 the industry, what is the -- really the safety
19 system that facilities rely on to respond to
20 residents who may have issues?

21 A. Most have something very similar to
22 what Sandpiper had, which was a safety pendent or
23 some sort of a call bracelet that if somebody needs
24 immediate interaction or immediate assistance they
25 can push that pendent.

1 Q. And why from -- as an expert in the
2 industry, why is that a system for responding to
3 emergencies or residents who have fallen and hit
4 themselves?

5 A. The daily check sheet would be very
6 inadequate as a safety measure.

7 Q. Why is that?

8 A. It would be an extended period of time
9 before somebody would be checked. Again, the
10 safety monitor or the pennant, a lot of times are
11 monitored by security professional.

12 In this case, it was monitored by the
13 staff. And they had pretty specific things that
14 they needed to do once that was alerted.

15 Q. Assuming that there was some obligation
16 to be daily safety, would a combination of those
17 things be a reasonable thing to put in place?

18 A. Oh, definitely.

19 Q. All right. Now, I'm going to skip and
20 move ahead. I'm going to just right to Wednesday.
21 The Judge is very familiar to what transpired on
22 Wednesday. So I'm going to ask you focus really
23 one thing.

24 We know -- at least so far that Rebecca
25 Munoz goes to the door, she tries the key, and

1 can't get in. And she phones her mother, right,
2 and talks to her. Is not told that there's a
3 spare --

4 MR. REEVES: Judge, he's leading this
5 witness. And I would just ask him to stop, please.

6 THE COURT: Just ask him what he knows.

7 MR. DAVIS: I'm laying a foundation.

8 THE COURT: I understand.

9 BY MR. DAVIS:

10 Q. So with respect to what she knew at the
11 time, would one reasonable option in this case,
12 with your opinion as an expert, be to go check the
13 box for the extra key?

14 A. Yes, it would. So she -- it would be a
15 reasonable expectation to do that.

16 Q. And based on your understanding of the
17 facts, would she have been able to do that if she
18 had that key?

19 MR. REEVES: Objection, Your Honor.
20 How is he supposed to know that?

21 MR. DAVIS: Because he's an expert and
22 he's reviewed all the depositions.

23 MR. REEVES: That is an improper
24 opinion --

25 MR. DAVIS: And also --

1 THE COURT: Hold on. Hold on. Ask the
2 question again.

3 BY MR. DAVIS: Based on his review of
4 the evidence and testimony in this case, I'm asking
5 him --

6 THE COURT: You asked him whether
7 her -- I think you said her actions. And then you
8 something like whether it was appropriate. And he
9 objected, saying she wouldn't what her actions
10 were.

11 MR. DAVIS: So in response to the
12 objection as an expert he's read all the testimony
13 and considered that in rendering his opinion.

14 MR. REEVES: Judge, to save some time,
15 he can answer.

16 THE COURT: Just give me your opinion
17 on. If you feel as though this course of action
18 that she took, based on the information that she
19 had, that she didn't realize that the locks had
20 been changed, do you think it was appropriate that
21 she went, tried, she thought she had the master
22 key, she didn't. She didn't try again. She called
23 her mom and left.

24 THE WITNESS: I think that when she
25 went to open that door, she fully expected to able

1 to get in, using a master key.

2 When that key she not available, she
3 went back and she called her mother, who happened
4 to be a long-time employee, who knew the situation,
5 and did this training for the receptionist.

6 When she was told that there was no
7 master key, I think that -- well, in my opinion,
8 she felt like she had passed it off to the right
9 person, who was going to check the next day. And
10 she made a very reasonable assumption to that.

11 BY MR. DAVIS:

12 Q. And do you hold that opinion to a
13 reasonable degree of certainty in your field of
14 expertise?

15 A. Yes.

16 Q. Now, let's talk a little bit about
17 Thursday. Now, do you have an opinion to
18 reasonable degree of medical certainty within your
19 field of expertise as to whether or not the staff
20 that the response on Thursday was appropriate,
21 given your understanding of the facts in this case,
22 as from your review of the depositions?

23 A. Absolutely. The information that had
24 been shared the night before, the next day when her
25 mother came in to do her duties, she saw Ms.

1 Parrott. She marked the sheet that she had been
2 seen, and everybody went about their business.

3 Q. And from your review of the records,
4 how do you know that, in fact, Ms. Auld, checked
5 the sheet? Do you recall?

6 A. Actually, I think it was pretty
7 apparent from the investigation that was done
8 during -- it was all done in the same day. When
9 Ms. Corrine came in, she checked the sheet.

10 It's pretty apparent that she looked at
11 the sheet. She noticed that Wednesday was not
12 checked. She noticed Thursday was checked. She
13 then verified with Ms. Auld that she had actually
14 seen Ms. Parrott.

15 She verified that verbally with her.
16 So I feel certain it had been done correctly.

17 Q. And based on your review of the
18 evidence, have you reached an opinion to a
19 reasonable degree of certainty, in your field of
20 expertise, as to whether or not if, in fact, she
21 saw Ms. Parrott, as you believe that was in
22 compliance with the check system as it's been
23 articulated here?

24 A. Yes. Yes, sir.

25 Q. I'm going to ask you the same question

1 to Friday. From your review of the evidence and
2 testimony in this case, did you reach an opinion to
3 a reasonable degree of certainty, in your field of
4 expertise, as to whether or not the staff complied
5 with their duties on Friday?

6 A. Yes. When she went to open the door --
7 at some point she had been informed about the
8 separate key to open the door for Ms. Parrott.

9 Q. And there's been some testimony from
10 Lila Watters that there was no response on Thursday
11 and Friday. Have you seen that testimony, in your
12 review of materials?

13 A. Yes. In my review she seemed like she
14 was --

15 MR. REEVES: Objection, Your Honor. He
16 can talk about what she said.

17 THE COURT: All right. Do you want to
18 rephrase the question?

19 THE DAVIS: Yes, sir.

20 BY MR. DAVIS:

21 Q. From what you reviewed in the
22 deposition testimony, what was your impression of
23 the testimony that you reviewed?

24 A. She appeared to be a poor historian.

25 Q. And with respect to your opinions in

1 this case, do you believe that the staff applied on
2 Friday, why do you think --

3 Or have you reached an opinion as to
4 whether or not the staff failed to respond to
5 Ms. Watters' reply to Ms. Parrott no being at Bingo
6 that evening?

7 A. Reading through everything, it didn't
8 appear that Ms. Watters had spoken to the staff
9 about that.

10 Q. Do you recall whether Corrine
11 Carrington said she spoke to Ms. Watters or she
12 came up to her?

13 A. I didn't see that.

14 Q. And with respect to Ms. Rebecca Munoz,
15 did you see any evidence that she said, yes,
16 Ms. Watters came up to me and I didn't respond?

17 MR. REEVES: Objection, Your Honor.

18 THE COURT: On what basis?

19 MR. REEVES: He's using this witness to
20 testify about other witnesses, what they did or did
21 not do. He's bolters witnesses. And that
22 improper.

23 MR. DAVIS: He's been classified as an
24 expert.

25 THE COURT: All right. I'll allow it.

1 BY MR. DAVIS:

2 Q. Now, I want to -- we covered all
3 three days quickly. Now, I want to ask you a
4 question in terms of --

5 You know what, I actually think I do.
6 I appreciate your time. I'm going to get you out
7 of here.

8 Have all of the opinions you've
9 rendered today within a reasonable degree of
10 certainty?

11 A. Yes.

12 MR. REEVES: The Plaintiff has no
13 questions of these witness.

14 THE COURT: What's your full name.

15 THE WITNESS: Brian Joseph Lancenese,
16 L-A-C-E-N-E-S-E.

17 THE COURT: I've asked this question of
18 several witnesses. I would be interested to get
19 your take on it. This facility had a policy in
20 which they call it a practice that they implemented
21 whereby, obviously, there are certain steps that
22 are taken to ensure that each resident is seen each
23 day. I agree that there is a difference of opinion
24 as to why that was done. Some people indicate to
25 keep up with their -- what they do, their routines.

1 How many people are going to be at bingo.

2 But the fact remains is that there are
3 steps that are taken. All right. Why or what is
4 the policy or what is the practice if, in fact,
5 someone has not checked off during the day?
6 Because the point is to check off 50 off in a day.
7 If you don't check off one in a day and you come
8 back into work the next day, what is the practice
9 to what ensure that what happened to that person,
10 why was it not checked off. Do you have any
11 opinion as to that?

12 THE WITNESS: I do, actually. In my
13 experience, in independent living, because of the
14 independence and the ability to do what they want
15 to do and go where they want to go, there are often
16 times when somebody was not necessarily seen that
17 day, but the staff should pass that information
18 along, to the next group coming on saying, hey, I
19 didn't see -- in this case -- Ms. Parrott today,
20 you want to make sure to look for her tomorrow.

21 THE COURT: Okay. That's the common
22 practice?

23 THE WITNESS: Yes.

24 THE COURT: Anything as to that?

25 MR. DAVIS: No, sir.

1 THE COURT: You are free to go. Thank
2 you so very much for being here.

3 All right. Real briefly, how long do
4 you think you need for closing, Mr. Reeves.

5 MR. REEVES: 12 to 15 minutes.

6 MR. DAVIS: 15 minutes on this side.

7 THE COURT: Let's take five minutes to
8 get composed and we'll come back.

9 MR. REEVES: I will withdrawal the
10 medical bills in the exhibit book --

11 MR. DAVIS: I just want to make sure --

12 MR. REEVES: -- and the records that we
13 talked about today should go in the notebook.

14 THE COURT: We just need to go through
15 the formal process.

16 COURT REPORTER: I marked them already.

17 THE COURT: You get two bites at the
18 apple. You want both bites?

19 MR. REEVES: Yes, sir.

20 (A brief recess was taken.)

21 CLOSING ARGUMENT

22 MR. REEVES: Your Honor, if it please
23 the Court.

24 THE COURT: Yes, sir.

25 MR. REEVES: Ms. Parrott was promised

1 that she would be checked on everyday. She was
2 not. As a result of that, she laid on the floor,
3 with a broken -- fractured hip, in conditions that
4 we can talk about all day long.

5 It's hard for me to understand how
6 horrific it must have been in the condition that
7 she was in. On top of which she was in consistent
8 and constant pain from the fracture.

9 And going through this left her marked,
10 undermine, and it took her life years earlier than
11 her expectancy was to be.

12 Your Honor, my opposing counsel are
13 good lawyers, but the defense in this case is that
14 they had no duty to come to her aid. And we've
15 spent three days talking about something -- in
16 fact, the last witness here is called a procedure.
17 I don't know what the difference is.

18 I do know this, there were definitive
19 steps. There was a goal. And I never heard the
20 word privacy exception until opposing counsel
21 brought that up.

22 Your Honor, we have spent years
23 litigating this issue. And on Friday they came up
24 with this thing, which says check-off policy. And
25 I heard what you said about records, but I find it

1 coincidentally. That every record that could hurt
2 Ms. Parrott was readily available. And the only
3 record that could have hurt them is not.

4 It seems to be the point has gotten
5 away from the Defense, because they now say, that
6 well, if we don't have a policy and the staff comes
7 in and testifies that they did. Well, plan B is,
8 well, you know we saw her on Thursday so it doesn't
9 matter anyway.

10 And I want to ask the Court to consider
11 the evidence, that a vibrant and self-sufficient
12 woman, very smart, very reasonable, described by
13 everyone, was perfectly capable of remembering of
14 what day she fell.

15 The only people that were, quote, in
16 controversy about the day of the fall, was medical
17 staff. And, quite frankly, I'm surprised that they
18 don't have any number of days on there.

19 If you're going to find for the
20 Defendants then you are going to have to accept the
21 following coincidences. First of all, that
22 Ms. Parrott didn't know when she fell. And,
23 coincidentally, it just so happens that the exact day
24 she fell, she magically stopped answering her
25 phone. And if you look back over those records

1 before, Your Honor, there's not a single 24-hour
2 period in those previous two months where she
3 didn't use a cell phone or a landline.

4 Coincidentally, at that same time, her
5 best friend is looking for her, because she hadn't
6 seen her on Thursday. And she can't find her. And
7 it's not noteworthy, Your Honor, there's not a
8 single bit of testimony from anybody in this trial
9 that Ms. Watters was known to make up stories and
10 cry wolf and fabricate. The best they could do is
11 say, she was confused.

12 Coincidentally, when Ms. Parrott alleged
13 that she was on the floor, everyone agrees that she
14 was missing on Wednesday. Coincidentally, on
15 Thursday Beth Auld says, if I marked her down, she
16 was there. I saw her. But, coincidentally, it can't
17 just happen. Coincidentally, Lila Watters called for
18 her on Thursday afternoon. No answer.

19 Coincidentally, the Defendant's next
20 position is that it's Ms. Parrott's fault. To have
21 said that with a straight face is bothersome. To
22 even say it period is bothersome.

23 Because all Ms. Parrott did was rely on
24 what she believed to be the policy. That was
25 straightforward. Everybody in this room knew it.

1 Everybody in this room admitted that it was there.

2 And Ms. Parrott expected somebody to
3 find her. And that time came and went.

4 Your Honor, Dr. Mills did as good a job
5 as any physician in explaining what to some degree
6 is common sense. But, more importantly, what is
7 extremely well-founded, using labs. And in a twist
8 of irony that can only come about in a trail,
9 Dr. Davidson said today when asked about how your
10 BUN goes up and down. He said they generally go up
11 and down in the same manner.

12 And this is critical, Your Honor. He
13 said in response to John's question about, well, if
14 I eat today and I don't eat tomorrow and my BUN
15 is 8 today and I've done the normal eating and
16 drinking. And I go then for 24 or the next day, is
17 what he said, what would you expect my BUN to be,
18 he said about 16.

19 Your Honor, if you look at all of the
20 numbers on the labs that all of us have introduced
21 and talked about, on June 6th, when she's admitted
22 to the hospital is void. Her normal is about 8 to
23 10.

24 And, Judge, if you could just use some
25 simple math, to get to 40 it took about three days.

1 And if you look at those labs, she came
2 back to normal in about three days. And as
3 Dr. Davidson said, the labs don't lie.

4 Your Honor, the Defendants spent a lot
5 of time about asking our experts about percentages
6 of and this and 24 hours, and 12 hours, and
7 46 hours. And every conceivable manner in which
8 they could bring these numbers up.

9 But, again, everybody agrees, including
10 Dr. Wagner. It was traumatic for her, while she
11 was on the floor. And I wish I better words to say
12 that, because trauma seems a little bit
13 insufficient on what she went through.

14 She went from being a reasonably
15 healthy 80-year-old woman, who did a lot of things,
16 to declining. And it is the Defendant's position
17 today and throughout this trial, has not even
18 entered the hemisphere of responsibility.

19 It is, we didn't have a policy. It is,
20 quote, if we had one, it really wasn't a policy.
21 And if we had one, it had a privacy exception.

22 And if all that fails, then she didn't
23 fall on Tuesday. And if all else fails, it was a,
24 quote, bad dream.

25 Judge, Dr. Mills who knew Ms. Parrott,

1 known her for years, was as well prepared to answer
2 the questions for this Court. And while the
3 Defendants dispute this issue about causation, both
4 he and Dr. Bergmann said more likely than not that
5 this long lie, that this being in the condition
6 that she was in, caused her conscious pain and
7 suffering. It caused her to be vulnerable. It
8 caused her to think about dying alone. It caused
9 her make decisions during those three days that no
10 human being should have to make.

11 And, judge, if it is true, what the
12 Defendant's expert say, that somehow when she got
13 off the floor and it all became a memory, we
14 wouldn't have war veterans with problems. Once the
15 thing is done, you should be better.

16 And, Judge, you do have to rely on the
17 medical and professional experts in those opinions,
18 but it doesn't also just make common sense, to lie
19 there like she did, it impacted her.

20 And, Judge, before I came, I looked at
21 the charge, had this been a jury trial, on what
22 juries can consider as far as damages when
23 someone's been injured. And, Judge, I think
24 there's about 21 different things, including pain
25 and suffering, anxiety, fear, frustration, loss of

1 quality of life, loss of enjoyment of life, loss of
2 fellowship. The list just goes on.

3 And, Judge, I don't know of any of
4 those that have been excluded these that dispar
5 against the other. And both sides have taken
6 medical records out of a record that is extremely
7 wrong. And we both tried to put forth our best
8 position about the fact that she suffered after it.

9 But you know who knows best about
10 Ms. Parrott is her daughter. And I don't think
11 anybody can claim that Joan Acosta got up here and
12 exaggerated.

13 It is also noteworthy what Ms. Watters
14 said that after she saw Ms. Parrott, she just gave
15 up. And those people know her. Dr. Mills said, I
16 saw her decline. I would offer that the decline
17 that led up to her death eight months later was
18 caused -- aggravated or contributed to the long
19 lie. And I point out that there's sufficient
20 evidence more likely than not that is a given.

21 Judge, when she was finally rescued, I
22 wish it were true that she could have forgotten.
23 That it was just something that happened. But she
24 had an anticipation and expectation that Sandpiper
25 will be a place where she could grow older. She

1 could remain relevant and safe.

2 Your Honor, I want to address one thing
3 about the issue with the panic button. I believe
4 the issue of comparative negligence comes off the
5 table, that Ms. Parrott's claim of damages starts
6 at the moment that Rebecca Munoz inserted the key.

7 Because, at that point, Your Honor, it
8 didn't matter what the panic button did or did not
9 do. Because if you follow the logic of the
10 Defense, had Rebecca Munoz or anybody else had
11 gotten the panic alert, the response would have
12 been she changed her locks, don't worry about it.

13 It's also important to note not
14 everybody there wore those, nobody everybody pushed
15 them.

16 However, again, Your Honor, if we grant
17 to Sandpiper, which I don't know that we should, it
18 seems to me the facts support -- if Rebecca Munoz
19 wasn't going to check on her until Wednesday
20 afternoon, let that start with where the damages
21 are. And, at that point, Your Honor, there's no
22 excuse for not going in.

23 You've heard enough -- there's dead
24 fish all over this courtroom regarding how many
25 times we've talked about keys and policy.

1 In fact, the last witness whose name I
2 cannot pronounce, Brian said that it was reasonable
3 for Ms. Munoz to do what she did with the key.
4 Apparently, somebody told her the key was there.
5 That's just simply not true. She said or agreed in
6 her deposition testimony is correct, I just
7 happened to go look for the key again.

8 Your Honor, I think the evidence
9 supports the fact that this Defendant has
10 vigorously contested every evidence in this case.
11 And I don't know that you would call what we did or
12 we didn't do during this litigation is trying to
13 teach somebody a lesson. But I can tell you this,
14 here we are this far down the road and they're
15 still denying the policy that's obvious.

16 And there's splitting hairs ten ways to
17 Sunday about what that means. And they're coming
18 up with exceptions that don't exist. And I want
19 you to know, Judge, that unless you take a stand
20 for community where we all live and work, that I
21 don't believe this Defendant is ever going to get.

22 Because after three days of trial, they
23 still don't get it. And you have the opportunity
24 to stand up and say, you know what, if you don't
25 want to take responsibility for this case, I

1 understand that. If you don't want to admit that
2 you did something wrong, I understand that. If you
3 are going to hide behind something that's obvious,
4 I understand that.

5 But there is a day of reckoning. And
6 it needs to be today. Your Honor, the damages in
7 this case are extensive and beyond anything that I
8 have ever had any experience about.

9 And, Judge, I know that it's very
10 difficult to put numbers on anything like this. In
11 fact, some people would say, you couldn't pay me
12 enough to do this. But this Court only has one
13 remedy and that is to award damages. And I'm going
14 to humbly ask you that based on the facts of this
15 case, a motion that you award to Ms. Parrott's
16 Estate of \$500,000. And I'm going to respectfully
17 humbly ask you to award for her wrongful death
18 \$500,000. And I'm going to ask you to place
19 punitive damages on this case, as you see fit.

20 Because somebody needs to send a
21 message, that you can't ask lie to somebody. You
22 can say to Ms Parrott, here's what you have to go
23 through; you're going to fall and you're doing
24 something really stupid and we're not really care
25 about it, and we are going to leave you for there

1 days, and you're going to have to get in touch with
2 your mortality, you're going to have to get in
3 touch with your vulnerability, and you're going to
4 have lose all bodily function and control. And
5 you're going then have to be sick, in your mind,
6 for the rest of your born days. And you're going
7 to lose about eight years off your life. And, by
8 the way, Ms. Parrott, how much would that be worth
9 to you? I think she would tell us what she said, I
10 think I just want to die.

11 We have met the burden. Any smaller
12 verdict will send the wrong message. I ask this
13 Court to find for the Plaintiff. And, Your Honor,
14 I also at this time withdraw the Plaintiff's cause
15 of action in the Unlawful Fair Practice.

16 I'm going to leave it in your capable
17 hands for the wrong death. I'm going to ask you to
18 find for the Plaintiff and award the damages.

19 THE COURT: All right.

20 CLOSING ARGUMENT

21 MR. DAVIS: May it please the Court.

22 THE COURT: Yes, sir.

23 MR. DAVIS: I want to express my
24 appreciation to both the Court, court
25 administration, Aimee. I just appreciate the

1 opportunity to be in here again. It's been a long
2 time. I also want to compliment opposing counsel.
3 I think they've done an admirable job trying the
4 case. I think they've been professional and
5 respectful. And it's just been a pleasure working
6 with everyone over the week, Your Honor.

7 You know, Judge, it's interesting when
8 I started this case I told you I thought they had
9 the burden to prove to you some things. The burden
10 of proof is a funny thing. This is an important
11 case. There's no doubt it's an important case to
12 Ms. Acosta. I know that. And I know how hard this
13 is for her. And I don't enjoy being here, being in
14 front of her, and talking about wrongful death, and
15 things like that.

16 But, you know, Your Honor it's equally
17 important to Beth Auld and Eric Hadley who have
18 been accused of wrongful death. Okay. And so this
19 is a big issue for both sides, who have spent a lot
20 of time and energy in their positions.

21 And, you know, Counsel said that we
22 were hiding. We're not hiding from anywhere.
23 We're here to answer for the charges, which have
24 been rendered against us, Your Honor. And whether
25 or not -- you know, it's interesting, there's been

1 a giant disconnect between both sides in this case
2 about whether this damn thing was a policy or a
3 practice. That's an industry term.

4 Lawyers can screw stuff up. And we
5 screwed that up. Because you heard from Mr. Hadley
6 that policy to them is a whole other thing. The
7 question is, was the practice going, which it was.
8 We didn't hide from that. We didn't say it wasn't.
9 That's exactly what we said. We do dispute about
10 what that practice was designed for.

11 The practice was part of a bigger
12 system. And, no, we don't think that we had an
13 obligation to keep people safe, daily under all
14 circumstances. But we do agree that we took steps
15 to ensure, the best that we could, that residents
16 were seen. And that if there was an emergency, we
17 had a system in place to respond.

18 And here's something to me really
19 interesting about the panic button. At the end of
20 the day, Your Honor, you heard one witness tell you
21 what the industry standards are. You have no other
22 evidence to consider. But you have one expert who
23 told you that the exact system that we have is the
24 proper system. He also told you the check system
25 is not designed for the safety goals, the wellbeing

1 goals that you have. That's what the industry
2 standard is.

3 So when you start thinking about it,
4 you say, okay, what evidence that I'm going to
5 point to? It isn't that. You don't have one set
6 of expert testimony. Respectfully, we believe that
7 should control, at least, what that was in place
8 for, and how it's supposed to work.

9 Now, I did tell you, Your Honor -- I
10 hope I've got it right -- I felt for them to come
11 into here and get an award to you, the first thing
12 they're going to have to prove to you is that
13 Ms. Parrott fell on Tuesday. And they have to
14 prove that to you.

15 And really the only evidence that they
16 have -- and really they're stuck with Tuesday is
17 because that's the statement Ms. Parrott made.

18 And it was interesting. I just heard
19 Mr. Reeves just say, well, there's been no
20 inconsistency about her own testimony about what
21 she said and what she believed.

22 I think want to draw the Court's
23 attention to really some key elements. So the
24 patient states that she's been on the floor since
25 Tuesday, but neighbors said they saw her walking

1 about yesterday.

2 Now, Judge, from the very first moment
3 that the EMS people arrived, there's inconsistency
4 right there. And not only that, they go and ask
5 the neighbors, and the neighbors stated that they
6 saw her the next day. I'm not picking on
7 Ms. Parrott.

8 But what I am saying is you have --
9 according to the Plaintiffs, you have an elderly
10 lady who's been through a traumatic experience that
11 so bad that it's caused her to have undiagnosed
12 PTSD. And the inconsistencies starts here. And it
13 actually continues.

14 Matt, will you pull up the 66 nurse's
15 note for me, please.

16 So within hours of this happening --
17 and let's assume that she's now recovered some from
18 her EMS, when she has her faculties back.

19 When you look at the nurse's notes in
20 the emergency room, the first entry from a nurse,
21 who has zero interest in this dispute, presenting
22 complaint per patient. Per patient, is what she
23 told me. Patient was found on the floor by a
24 neighbor who checked, unknown how long she was on
25 the floor.

1 Go down to the next this document.

2 The very same day I fell on Tuesday.

3 Inconsistencies right out of the box. EMS saying
4 she was seen. That is -- to say that she knew
5 exactly when she fell in the face of inconsistencies
6 and records taken right in those days, I think
7 that's a huge hurdle on the Tuesday question.

8 Now, Your Honor, you've seen in the
9 medical records two days repeated, sometimes three
10 times, but mostly you see fell two days ago. Well,
11 Your Honor, does two days mean I'm on the ground
12 all day Thursday, I'm on the ground all day Friday.
13 Is that two days? From my perspective, it could
14 be.

15 Is it Wednesday, Thursday, Friday?
16 That ain't two days. So if you assume, all right,
17 Thursday is a separate, Wednesday is a separate
18 day. Guess what, the farthest you get back in
19 these medical records is Wednesday. You never get
20 to Tuesday. And the reason you don't get to
21 Tuesday, Your Honor, is because we don't believe
22 the evidence has shown that she fell Tuesday.

23 Certainly -- I mean, they bare the
24 burden of proving that to you, that it was Tuesday.
25 Because if it ain't Tuesday, and they can't prove

1 it to you, you find that it's equal, you can't find
2 against us.

3 Now, Your Honor, this is June 12th,
4 five days, she comes back to us, and she tells
5 Corrine Carrington she tells me she was on the
6 Wednesday. That's within five days.

7 So now, within five days, you've heard
8 Tuesday, you've heard Wednesday, you've heard, I
9 don't know how long. And I am no way being
10 critical of Mrs. Parrott. But what I am being
11 critical of is the credibility of this evidence.

12 And for you to render a verdict for a
13 million dollars, which he's just asked for, in the
14 face of this evidence, that's a huge hurtle,
15 respectfully, to me, Your Honor.

16 Now, I want to touch a little bit on
17 Wednesday. Because really, Your Honor, the whole
18 point of this, the whole point of the expert, the
19 whole point of our defense is that we had an
20 employee who was faced with two options -- what we
21 believe to be reasonable options.

22 But one of them is theirs. One of them
23 is theirs, go look for the key. I get it. But one
24 of them is also ours, which is in this
25 circumstance, on these facts -- and Beth Auld, in

1 particular, having been the single -- you heard
2 her. Goodness gracious, not a nicer, more honest
3 person in the world on the stand. She has been for
4 25 years taking care of these folks. And she says,
5 I think it's reasonable, let's just check on her in
6 the morning.

7 We believe, Your Honor, that this
8 option is reasonable. I'm not saying their option
9 isn't reasonable. But what I am saying is
10 negligence is picking an option that nobody would
11 pick.

12 Now, in this case, Your Honor, we
13 believe you could pick either option and meet the
14 standard. There's also something that I think
15 permeates this case. It permeates the passion of
16 the case. It permeates everything that they have
17 put together for you. And it's hindsight.

18 And if I take the fact away from you
19 that she might be injured on the ground, with a
20 broken hip, in an awful condition, and you were to
21 think to yourself, okay, knock, knock, knock. I
22 want to go in. She's not there. Hey, we can't get
23 in, let's just check her in the morning.

24 There's no evidence of an emergency.
25 There's no evidence that the panic alarm went off.

1 She's not hollering. She's not screaming. And if
2 you take that back off the table and somebody says,
3 you know what, let's check on her in the morning.
4 I've been here 25 years. Everybody says, let's do
5 that.

6 In this case, it would have worked
7 fine. But if you think about that choice, is it
8 really right to say, that's a choice that nobody
9 would make. And that's what they're arguing to
10 you.

11 You may remember that I asked a
12 question of Ms. Acosta on the stand about -- this
13 is directly related to Wednesday. Well, do you
14 remember your mother telling me about the
15 housekeeper, who checked on her Friday.
16 Ms. Watters, who we know looked on her. And she
17 said, I heard her and it was awful.

18 You know what struck me about that, is
19 that if she could hear both of those people on
20 Friday, why couldn't she hear on Wednesday? We
21 heard this idea that she was hard of hearing. But
22 if she could here that on Friday, why can't she
23 hear it on Wednesday, if she's in that condition.
24 It doesn't make any sense.

25 We also heard that she had a shoe and

1 she was able to bang. So she could hear two people
2 knock. And she is not able to hear Rebecca when
3 she goes there. I think, Your Honor, that's a very
4 difficult hurdle evidentiary-wise to get over.

5 Now, I'm going to give you a hindsight
6 fact, is that Thursday she's checked off and seen.
7 So if you consider that to be a fact in the case
8 because it's on a document. And because Beth Auld
9 believes it to be the case, isn't it more likely
10 that was either asleep.

11 We believe, collectively, the evidence
12 is much more supportive than that, in that context,
13 Your Honor.

14 Now will you put up Sandpiper 36,
15 please.

16 This to me, Your Honor -- I heard
17 counsel stand up and say that every record that
18 favors them is available, and everything that hurts
19 them isn't available.

20 You know what, Your Honor, respectfully
21 this piece of evidence is the evidence they cannot
22 get around. And for two reasons -- for three
23 reasons, it's incredibly reliable. One, the date.
24 Two, Ms. Carrington, who has zero reason to make
25 anything up. And, three, it has both good

1 information and bad information.

2 Wednesday, no check. Thursday, she's
3 checked off. And that's not all it tells you.
4 And, Judge, this is before any lawsuit. This is
5 before the emotion of this case has comes to life.
6 This is done with nobody looking at you saying,
7 you're in trouble. This is actually the person
8 who's supposed to be looking in her mind to see if
9 there's anybody that should be in trouble.

10 So she's collecting the information.
11 What does this show you? She was checked off.
12 That was not enough for Corrine Carrington. What
13 she did is she called Beth and said that she was
14 adamant that she would not sign off anyone unless
15 she had seen them.

16 You combine that with the lady who you
17 heard here, and you determine that that can't
18 possibility be true and you ignore all of that,
19 that is the Court's prerogative.

20 Respectfully, I believe that evidence,
21 they can't get around. They've tried desperately
22 to get around it. Do you remember the grey-hair
23 questions. There's a lot of people with grey hair,
24 you must have confused people. Well, Beth Auld
25 worked there for 25 years. Corrine Carrington told

1 you -- again she was their star witness. She's the
2 one that establishes the policy. Corrine
3 Carrington say, I wanted to double check.

4 I went to her, I looked at her, and she
5 saw me right in the eye. I saw her. I saw her at
6 lunch. And she said, good morning, Beth.

7 And, you know, the funny is if that
8 statement had come out of Beth Auld's mouth --
9 maybe if there would have been some reason for her
10 to make it up, because she might in trouble in this
11 case.

12 But Corrine Carrington, no motivation
13 than the truth. She's the one that said it. She's
14 the one who backed up Beth. Beth, to her credit,
15 said, we've talked about it so much, I don't
16 remember whether I saw her or whether it's this
17 case.

18 But that series of events, Judge, to me
19 on Thursday stops the case. Because all the
20 questions, all the questions of Tuesday and
21 Wednesday, did she hear her, did she not, they end
22 right there. Because she is seen. And nobody
23 contends that if she was seen Thursday we did
24 anything wrong, under the check-in system.

25 You know, it's interesting -- you know

1 my position on the phone records, so I'm not going
2 to address it. Because I heard counsel say that
3 she never went any period of time within 24 hours
4 without making a call. So I have tried to make my
5 way through those records. And I've identified
6 three different time periods, one 57 hours, where
7 she went without making or answering a call one,
8 another one she went 49 hours without making or
9 answering a call. And I agree that information is
10 probative, assuming we know what it means. And
11 respectfully I don't believe we have enough
12 information.

13 I'm challenged. I'm going to give you
14 an example of where it happened, where she went 59
15 hours without picking up the phone. So you might
16 say to yourself, what's the response to that
17 objection. I actually think that's very
18 speculative.

19 You heard Dr. Davidson today tell you
20 that in his opinion there's no way that she was
21 in that condition for 72 hours. You know what's
22 consistent with that? Thursday's check-off sheet
23 with Beth Auld. He said, yeah, it's obvious that's
24 been in there 24 hours. You know that's consistent
25 with she fell Thursday night and Ms. Watters

1 ultimately went and found her with Rebecca on
2 Friday.

3 I mean, to me, Your Honor, this case
4 fails at Thursday. I have to disregard a mountain
5 of evidence on that.

6 Now, I want to talk a little bit about
7 Ms. Watters and her testimony.

8 Do we have the ability to play some of
9 her tape?

10 MR. RIDDLE: I can try.

11 MR. DAVIS: So here's what I understand
12 they're trying to do with Ms. Watters. And maybe
13 I'm wrong. I think it's two things. I think one
14 is Ms. Watters, well, was asking for help on
15 Thursday, asking for help on Friday. And then
16 Beth, and this crowd, they just ignored her.
17 That's one thing. But that is evidence that nobody
18 saw her Thursday and Friday.

19 Now, Your Honor, I hope that this case,
20 and a million dollar request for damages, doesn't
21 turn on the testimony of Ms. Watters, who is age 82
22 and obviously very confused.

23 Can you play some of her testimony.

24 (Partial playback of Ms. Watters
25 deposition testimony was played.)

1 MR. DAVIS: Think about that, Your
2 Honor. She lives one minute away. They called her
3 every single day. And what she remembers is
4 Rebecca said, I don't have her name and number.

5 She has -- to rely on this testimony on
6 this case from Thursday and Friday ignoring us, I
7 just don't think it's reasonable. But looking at
8 this, that is testimony that is not reliable, from
9 my prospective.

10 (Partial playback of Ms. Watters
11 deposition testimony was played back.)

12 MR. DAVIS: On Thursday she asked the
13 manager and she asked Rebecca to go. Thursday is
14 all about Beth Aud. You heard Corrine -- I asked
15 her, did y'all go. No, she never came to me.

16 She's completely confused. It's not
17 reliable testimony, Your Honor. And just even
18 assuming it was true, wouldn't it be easier for her
19 to just go down and walk one minute and check.
20 Wouldn't Rebecca have done that? Let's assume that
21 she has Beth confused. Beth can walk one minute
22 check on her. This testimony is not, respectfully
23 is not reliable. And it's a huge part of their
24 case.

25 (Partial playback of Ms. Watters'

1 deposition testimony was played.)

2 MR. DAVIS: We did the same routine
3 Friday, Rebecca and I. Rebecca didn't work
4 Thursday. Bless her heart, she's confused, Your
5 Honor.

6 Next one.

7 (Partial playback of Ms. Watters'
8 deposition testimony was played back.)

9 MR. DAVIS: Probably she would have.
10 You know, the point of that testimony, Your Honor,
11 is she said Corrine didn't go on Friday. I asked
12 Corrine to go and she said, it's okay, she's with
13 her family, don't worry about it. That didn't
14 happen. Corrine said it didn't happen.

15 She's obviously confused and the fact
16 that this case is built on her testimony to me,
17 Your Honor, is a very, very weak link, and,
18 respectfully, don't believe that her testimony
19 about the events of Thursday or Friday should be
20 considered in the context of your final decision,
21 Your Honor.

22 Your Honor, so counsel wanted to
23 mention comparative narratives. Your Honor, I want
24 to be clear about one thing, is that Mrs. Parrott
25 was free to live and as she wanted to live. She

1 was free to live independently. She was free to
2 make the decisions that she wanted to make.

3 You know what, she made a series of
4 decisions in this case which, in hindsight were
5 mistakes. And they're not mistakes that have
6 anything do with us. Because she lived
7 independently. She was free to do. But it
8 directly impacted her being on the ground for as
9 long as it was.

10 The first one is quite obvious, is the
11 panic button. And I didn't understand a word
12 what -- at least the argument -- I just didn't
13 understand the argument that somewhat the panic
14 button wouldn't matter from the moment that they
15 put the key in. It the exact opposite of that. If
16 you put a key in and she hears somebody trying to
17 get a key in, trying to jiggle the door, knocking
18 on the door, you hit the button.

19 And that's what the industry expert
20 told you. That's what Mr. Hadley told you. And,
21 Your Honor, isn't it common sense to sit here in
22 this courtroom and tell you that the panic button
23 is irrelevant, respectfully, I don't believe that's
24 a reasonable position to take.

25 Had she had worn the button that day --

1 if she didn't get on the chair -- I saw Ms. Acosta
2 getting up -- I got nervous nerves when I saw her
3 getting on this chair.

4 But the panic button or even call us.
5 You know, one of the things that I want to point
6 out to you is the lease -- I don't care what the
7 lease says, if an 80-year-old lady had called Beth
8 Auld and said I need some help with my curtains,
9 they would have helped her.

10 So if this Court is inclined to award a
11 million dollars, a million dollars, based on
12 Ms. Watter's testimony and ignoring the testimony,
13 that Beth Auld saw her, and ignoring all of this,
14 and you come to that conclusion, then you're
15 absolutely right.

16 But if you come to that conclusion, is
17 it not also fair to really ask the question of how
18 much did those decisions really directly cause the
19 time period on the ground. Is it 50 percent,
20 51 percent. I don't know.

21 But I know this, there were important
22 decisions and they directly contributed to how much
23 time it took to locate her. And I can't -- I'm
24 trying to remember a case where I have to bring
25 this up in the context of a liability, but there's

1 no choice. There's just no choice.

2 So, Your Honor -- I can't help myself.
3 I'm going to too dang long. But when you get to
4 the question about wrongful death, I respectfully
5 am going to ask you to look at the testimony from
6 these experts. Because it does not meet the
7 standard.

8 The law is very clear. You must
9 testify that it most probably caused the death in
10 this case. And the reason every one of those
11 witnesses struggled is because nobody can say the
12 difference between 24 hours, 36 hours, or 72 hours
13 caused this death eight months ago, eight months
14 later. It just can't.

15 So that's why you heard the convoluted
16 questions and answers. And I heard counsel argue
17 that he didn't really understand why were asking
18 percentage questions. I'll answer that directly.
19 Because the law requires me to ask it. And had
20 they said the answer, more probably than not, I
21 wouldn't even be talking about it. But they did
22 not.

23 We could spend hours listening to
24 testimony. So I have a whole bunch of arguments on
25 that. I am not going to ask the Court to consider

1 something that was testified to by Mr. Wagner.
2 This was life-threatening event, and it was related
3 to the hip.

4 And you heard two doctors tell you
5 there's a one-year mortality related who had fallen
6 and broke their hips. It's like 70 percent. But
7 it's real. And Your Honor knows that. When
8 elderly fall and break their hip it is a very
9 natural chain of events. One-year mortality. She
10 passed away eight months later. It's consistent
11 with what makes the most sense. But what it is not
12 consistent with, respectfully, Your Honor, is this
13 argument about how many hours she was on the
14 ground. It's okay to be on the ground for 24 to
15 36, but if you're on the ground 36 to 72, it must
16 have killed to you. And, respectfully, that's just
17 not a medical reason position to take. And that's
18 why the doctors struggled with it so hard. And why
19 our expert had no trouble saying no, to a
20 reasonable degree of medical certainty, it does
21 not.

22 And we gave you an explanation. It was
23 a life-breaking event. That's related to the hip,
24 Your Honor.

25 So Mr. Reeves is an excellent lawyer.

1 But make no mistake, he's asked you to punish
2 Sandpiper, which is a facility of people and
3 employees who take care of elderly people in this
4 community.

5 And you met Beth Auld, one of the
6 people who's dedicated 25 years to taking care of
7 elderly people. If you come to the conclusion that
8 she made a mistake, I understand it. I get it,
9 Your Honor.

10 But for Mr. Reeves and Mr. Boswell to
11 come in here and tell you that you should punish
12 these people for intentional reckless disregard,
13 respectfully, Your Honor, that is not Beth Auld and
14 it ain't Eric Hadley.

15 I don't think by any stretch of the
16 imagination what the law required and what the law
17 demands for punitive damages was met in this case.

18 I told you 20 minutes and it's probably
19 too dang long. And I appreciate the opportunity to
20 be in front of you. It's my first time. It was a
21 pleasure. And I appreciate everybody's work. And
22 I just thank you for your time.

23 THE COURT: All right. Thank you so
24 very much.

25 MR. DAVIS: I would ask that you bring

1 a verdict back to us.

2 THE COURT: Understood.

3 All right, Mr. Reeves.

4 FURTHER CLOSING ARGUMENT

5 MR. REEVES: I'd like to address the
6 argument that only the Defendant has provided
7 testimony about the industry standard. The case
8 law in this State regarding the applicability of
9 policies and procedures, as it relates to
10 establishing a duty, does not require an industry
11 standard. It says that a company can develop a
12 policy or procedure. And if does so, that it must
13 carry out that policy and procedure in a reasonable
14 manner. Industry standard is irrelevant.

15 Number two, I find it helpful that
16 opposing counsel brought up the decision by
17 Ms. Parrott, and because of that decision she ended
18 up in bad shape.

19 There was some other decisions made,
20 too, Your Honor. Rebecca Munoz said I made a
21 decision to not go in. I made the decision to not
22 get the key that was there. A lot of lawyers made
23 a decision to ask about Ms. Parrott (sic). And
24 those little things they played certainly show an
25 older woman who three years later is doing the best

1 that she can, to consider the facts.

2 But there's two things that she never
3 wavered on. I didn't see her Wednesday, Thursday,
4 or Friday. The other thing that she didn't waver
5 on, Your Honor, is they gave me the key to go find
6 her. And if we are to put as much credibility on
7 Ms. Carrington's report then we should, as
8 Mr. Davis we should, and that report says that
9 Ms. Watters was given a key and she found
10 Ms. Parrott.

11 Opposing counsel made a comment about
12 the neighbors saying that she had been seen. Well,
13 apparently the Defendants have forgotten the
14 testimony from Ms. Munoz, who said the only two
15 people in the room were Ms. Watters, myself, and
16 Ms. Parrott.

17 I know where the information came from
18 that she was seen on Thursday. That's Rebecca
19 Munoz.

20 And, Your Honor, I would also remind
21 this Court that we are basing factual scenarios in
22 this case on Ms. Watters, just like we are
23 Dr. Bergmann, just like we are Joan Acosta, the
24 Defendant's experts. Because there is one thing in
25 this case, and that is she suffered.

1 And, Your Honor, I would close by
2 saying that I don't know what Ms. Watters has to
3 gain about making this stuff up. I don't know what
4 Dr. Mills has to gain about testifying they way he
5 did. I don't know what Dr. Bergmann has to gain
6 about testifying the way he did. Well, Joan Acosta
7 does have something gain.

8 But every witness who provided an
9 opinion said that to a reasonable degree of
10 professional certainty, these are my opinions. I
11 just wish at some point the Defendants would have
12 said, we really did have a policy.

13 Thank you, Your Honor.

14 THE COURT: All right. Thank y'all so
15 very much. Just for the record, I don't know if
16 you caught it earlier, but Mr. Davis said at the
17 appropriate time, I want to renew my motions. I
18 thought he did. But just for the record, make sure
19 we get that done.

20 MR. DAVIS: I appreciate that. I don't
21 think I did. I made myself a note. I want to, at
22 this time, renew the motions that I made that I
23 believe these claims failed to meet the law under
24 the UTA. I renew all of the motions and grounds of
25 motions that I made prior with regard to wrongful

1 death and punitive damages.

2 THE COURT: And my previous ruling
3 stands. However, I did take the Unfair Trade
4 Practices under advisement. So, for the record,
5 that has been withdrawn and therefore it's moot.

6 From the Plaintiff, anything further.

7 MR. REEVES: No, sir.

8 THE COURT: All right. So, I know this
9 has been a long time coming for everybody. And,
10 obviously, I want to have a little bit of time to
11 deliberate. And I know that everybody wants to
12 have some type of verdict today.

13 But I'm going to give it -- give me
14 some time. I want to read some stuff. If I feel
15 like it's going on, I may come back and ask you
16 what your opinion, obviously, is about hanging in
17 here a little bit longer. If not, then I'll come
18 back and give you my ruling. We'll be in recess.

19 (Court was in recess at 3:58 p.m.,
20 resuming at 4:50 p.m.)

21 THE COURT: Thank you very much.
22 Please be seated. All right.

23 So, first off, it was a unique
24 experience for me to enjoy the lawyers. That's, by
25 the way, not a common thing. So I really

1 appreciate y'all working together. I can't tell
2 y'all how often it is that I have to make a
3 decision on everything.

4 And, you know, for y'all have to agreed
5 on most everything 99 percent of the time -- I was
6 just telling Aimee, you're going to see a lot of
7 bad lawyers and you'll see a lot of bad trials and
8 you're going to see a lot of good ones.

9 Unfortunately, your first one was a
10 good one. Because sometimes in a bad cases you
11 know they don't agree on anything. And they object
12 to everything.

13 And I just want to thank y'all so for
14 very much for doing because it made my life so much
15 more enjoyable, and Aimee got to see good lawyers
16 really do a good job, which obviously makes this so
17 difficult.

18 Ms. Acosta, I would be remiss if I
19 didn't say I know this still weighs heavy on you,
20 so I'm sorry for that. I know it's tough on you.
21 I've watched you throughout the trial. And I know
22 that this had made you very upset. So I commend
23 you for hanging in here. I do this everyday. We
24 see this stuff everyday. So I commend you for
25 staying in here and participating as well as you

1 did.

2 As most of you know, this is a bench
3 trial. And so things are different. My role in a
4 non-jury trial is different in the sense that I get
5 to determine the credibility of the witnesses. I
6 get to take direct evidence and give it the weight
7 that I want give.

8 I believed some of the witnesses in
9 this cases. Sometimes I don't believe any of this
10 testimony in this case. And that's my right to do
11 that. I've given certain weight to certain amounts
12 of evidence in this case. And I have given very
13 little weight to certain amounts of evidence in
14 this case. And I have given very little weight to
15 some people's credibility. So that's the other
16 thing that I get to take into consideration is with
17 witness' credibility and the way that they present
18 themselves on the stand or on the videos.

19 So I want to start by certain findings
20 of fact. Number one, I found for the Plaintiff.
21 So the concern or the finding of facts as to policy
22 and procedure, I don't care what they call it. If
23 Sandpiper wants to call it a policy, they can call
24 it a policy. If they want it a procedure, it's a
25 procedure.

1 But two things happened. So, it was
2 relied upon by Ms. Acosta. I assume -- Ms. Parrott
3 she was very intelligent. She was also a nurse.
4 But she also understood that she wanted some
5 substance of independence, which everyone has
6 discussed. But I think she also wanted some sense
7 of solace for her daughter, to say I'll be okay. I
8 can live independently. They have these policies
9 set. They have these procedures set. And so I
10 think she did that for her daughters as well. And
11 I think it was the right thing to do. And I would
12 want the same.

13 The fact that -- because of that
14 policy, I asked over and over and over -- and I
15 asked it as quickly on maybe the second witness.
16 What's the point of having a policy if you're not
17 going to follow it. Why is every single resident
18 not checked off everyday. That's the point. What
19 if somebody had fallen the night day and you didn't
20 find them that day. And then the next day you go
21 back.

22 The whole point of the policy is that
23 if you're going to have it, you better follow it.
24 And I find that Sandpiper didn't do that.

25 Unfortunately, I don't blame the fact

1 that there was a separate key and that she went
2 back -- and did not go back that night. Obviously,
3 if she had done that we wouldn't be here. But she
4 didn't. And I find that to be negligent.

5 And in doing so, you have to determine
6 whether there was a duty owed to Ms. Parrott, based
7 on that policy that they had. And I find that
8 there was. I find that they had a policy, that was
9 a written policy. It was a known policy. It was
10 part of their selling to the residents, a selling
11 point, I guess, to the residents. And they should
12 adhere to the policy. And they didn't. And they
13 had a duty to Ms. Parrott and they breached it.
14 And, unfortunately, Ms. Parrott suffered very
15 greatly.

16 As to the second issue that seems to be
17 a contested issue, is how long do we think that Ms.
18 Parrott sat there. I believe, based upon the
19 testimony -- I and don't give a whole lot of
20 credence to Ms. Watters, other than I agree with
21 Ms. Reeves. She always had a routine with
22 Ms. Parrott. And for those three days, she never
23 her. I don't think that can be disputed. I agree
24 that the Defense that Ms. Watters she may have a
25 slippery memory on certain things, but I don't

1 think she does on that. And here's why, the phone
2 records back that up. All right. I agree that if
3 you want to talk about 54 hours prior to it not
4 getting a call. But I think Ms. Parrott was a very
5 active person and she stayed on her phone. She
6 called people. I think that was a big issue, the
7 fact that there was no phone calls made or
8 anything.

9 And had it been 24 hours, I would have
10 felt differently. 48 hours, maybe not. But for
11 all those days she didn't make one single call. I
12 find that evidence that she had already been
13 injured.

14 Also, the medical testimony was very
15 convincing. The BUN numbers, the fact that it went
16 from -- it basically went down in half. So the
17 fact that a normal is 8, and we started at 40, and
18 we didn't down almost half every single time, if
19 you do the math, that's 4 days. That's how long
20 she sat there.

21 The fact that Ms. Parrott gave
22 conflicting accounts, I don't find a whole lot of
23 weight in that at all, based on the fact she has
24 had some psychological issues and she just laid,
25 unfortunately, on the floor in the dark for 5 days

1 not knowing whether she would be rescued. And,
2 unfortunately, had some issues, meaning she
3 defecated herself. And that's awful.

4 And, also, I find the medical testimony
5 to very convincing as to the blisters and the sores
6 on the her side, and the level of dehydration also
7 to be very convincing, as to the doctors and so
8 forth.

9 So I find that she was there from
10 Tuesday until Friday when they found her that
11 night.

12 One of the most concerning things that
13 I -- that get me is, I can't image the kind of pain
14 that this lady sat in. I find that she sat there
15 for 5 days. I can't remember -- I mean, every
16 doctor has said not only is it the one painful
17 things in the world, it kills people. And she sat
18 there and survived it for 5 days.

19 MR. BOSWELL: It was 3 days.

20 THE COURT: With no food, no water, and
21 again, you know, being concerned about whether or
22 not anybody was going to come and get her.

23 So I find that her damages are pain and
24 suffering, certainly extensive mental suffering.
25 And then as to the loss and enjoyment of life, I

1 was really taken aback by the fact that I told you
2 that I took the book home and reviewed it pretty
3 much every night.

4 And I looked at her credit card
5 receipts. Nobody really talked about those. But I
6 did hear it in opening. I went back and took a
7 look. She spent money everyday. She went to
8 thrift stores. And for some reason she liked
9 McDonald's. And so she would go there a lot.

10 And then after the injury, nothing.
11 She never spent another dime. She never got the
12 chance to go do any of those things, without
13 someone either taking her, participating with her,
14 or something along those lines.

15 A lot of this, I couldn't agree more
16 with the Defense's position, that this is extremely
17 difficult in the sense that this is all happened.
18 I mean, the fact that we know all this stuff is in
19 hindsight, because we now know, in my opinion, that
20 she was down for 3 days.

21 And so as to that, the other things
22 that pursued the Court was what I discussed earlier
23 today. I had the opportunity to take into account
24 the credibility of witnesses. And I can give what
25 weight what I want to their testimony. And I can

1 accept some in part. I can disregard some in part.
2 I can take it all or taken known of it. And that's
3 what I've done.

4 I find Ms. Acosta to be extremely
5 credible. I find that the evidence that
6 Ms. Carrington told her that there's a 24
7 visualization of every resident, and that there was
8 a policy in place. As I explained earlier, there's
9 no exception to that policy. Ms. Acosta testified
10 to that. She testified that that's why she was
11 allowing her mom to live there.

12 I think Ms. Carrington was very
13 credible and reliable. She admitted that there was
14 a policy for each resident on a daily basis. She
15 went through the checklist of everything that they
16 were to do. And, obviously, we have seen that
17 exhaustively for the past three days.

18 She also testified that the staff had
19 been informed about of key change. And that she
20 was very comfortable and that they informed and
21 knew about the change, and that was in the lockbox.
22 Now, whether that trickled down to all staff
23 members, we just don't know, but that's what she
24 testified to.

25 Ms. Auld, the Defense even -- was very

1 gracious and understanding that she testified that
2 it had been so long that maybe she had a mental
3 illness. But she told Ms. Carrington that she may
4 have seen here.

5 And I understand the Plaintiff's
6 position that there's a lot of grey hairs and we
7 don't know who seen who, what, when and how. But
8 the answer is, we don't know. I indicated earlier
9 I was not going to put that much emphasis on the
10 which exfoliation of all that evidence.

11 But something that was extremely,
12 extremely concerning to the Court, and it kind of
13 took be aback when it was first said, was that
14 policy was just found on Friday. We've litigated
15 this thing for four years. The fact that that just
16 popped up is extremely, extremely -- probably one
17 of the most telling parts of my decision. I think
18 they hid the decision. Now, I can't say that. I
19 can't prove that. But the fact that that was just
20 produced after however many thousands of documents,
21 depositions were taken, emails were sent, and the
22 Friday before trial they find it.

23 I agree with Mr. Davis in the sense
24 that Ms. Watters does seem confused. And
25 Mr. Reeves does point out something very telling,

1 and I believe it, and give some weight to
2 Ms. Watters, not all, to her testimony. She did
3 seem confused. And certainly my decision is not
4 based off of Ms. Watters at all -- her testimony.

5 But she had really one thing. That's
6 her routine and Ms. Parrott. She's not going to
7 forget that. And there's no real dispute and she
8 goes and addresses her concerns with that front
9 desk that she hadn't seen her. So I believe her to
10 that extent.

11 I found Mr. Hadley to be extremely
12 intelligent, extremely knowledgeable for someone in
13 his field, certainly very credibility. The only
14 issue, of course, is that Mr. Hadley's position was
15 that -- or his testimony was basically to infer and
16 insinuate that it was not a policy. And he
17 couldn't get away from the fact that it was a
18 practice. So I believe that. I think he knew it
19 was there.

20 Again, I spoke earlier about Dr. Mills
21 and his findings. I found him to be extremely
22 credible. He's got no motive whatsoever to lie or
23 misrepresent information. And the fact that he
24 testified about her mental capacity and the things
25 that he see, basically all his experience in

1 elderly patients in their 80s and 90s. I found him
2 to be extremely convincing and found him to be very
3 credibility, and also with Dr. Bergmann.

4 Those are my findings. As y'all are
5 fully aware, there has to be a submitted order.
6 I'm going to ask that counsel for the Plaintiff,
7 that you prepare the order. However, be prepared
8 that it's probably going to get chopped up pretty
9 good, because this is my order. You are going to
10 do the front legwork. I'll do all the back
11 legwork.

12 I find that there is no evidence
13 whatsoever to award any punitive damages in this
14 case. However, as a survival action, I'm awarding
15 \$500,000 and wrongful death \$500,000. That's my
16 finding.

17 Anything further from the Plaintiff?

18 MR. REEVES: Nothing at this time.

19 THE COURT: Anything from the Defense?

20 MR. DAVIS: Posttrial review just
21 10 days.

22 THE COURT: 100 percent absolutely.

23 (The court proceedings concluded at
24 5:03 p.m.)

25

1

2 State of South Carolina)

3)

4 County of Charleston)

5

6 I, Krista Nicole Carney, Official Court
7 Reporter for the Ninth Judicial Circuit of the
8 State of South Carolina do hereby certify that the
9 foregoing is a true, accurate and complete
10 Transcript of Record in the Court of General
11 Sessions for Charleston County, South Carolina, on
12 the 10th of August, 2020.

13 I do further certify that I am neither of
14 kin, counsel, nor interest to any party hereto.

15

16 March 4, 2021

17

18

19

Krista nicole carney

20

Krista Nicole Carney,

21

Official Stenographic Court Reporter

22

23

24

25

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2016-CP-10-5379
	)	
	)	
ESTATE OF DELILA PARROTT	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
PREMIER SENIOR LIVING, LLC,	)	
et al	)	
	)	
Defendants	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

November 4, 2020
Charleston, South Carolina

B E F O R E:

THE HONORABLE BENTLEY PRICE, JUDGE

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No exhibits were introduced

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PROCEEDINGS

THE COURT: All right. We are here today on the defendant's post-trial motion for relief under Rule 52 and 59. All right. I'll be happy to hear from you.

MR. DAVIS: May it please the Court, Your Honor?

THE COURT: Yes, sir?

MR. DAVIS: Again, Jay Davis on behalf of the defendants. Your Honor, I appreciate the opportunity to be before you today; the opportunity to be heard on it. I'm not going to go through every argument and every authority recited in the briefs; of course I'm happy to answer any specific questions you have as to the issues we raised in our motions.

I really just for purposes of argument today I want to focus in on two primary arguments and areas; again unless the Court wants further clarification on any specific point.

THE COURT: All right.

MR. DAVIS: So the first one, Your Honor, is we think that the Court's finding of a legal duty in this case to conduct a wellness check is incorrect under the law respectfully.

We believe that the evidence in the case is that this was a pure landlord tenant relationship as we've talked about. That relationship is controlled legally by

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1 a lease and the Residential Landlord Tenant Act. And in
2 this case there is no allegation that any of those
3 standards were violated. And we know this was a -- it's
4 undisputed that this was independent living and Ms.
5 Parrott lived independently by choice and right. And
6 that she executed a lease, and that lease Your Honor
7 defined the legal relationship between the parties.

8 And Ms. Parrott, it's undisputed, signed the lease
9 and agreed to the terms in the lease. Specifically we
10 know based on the lease itself and the evidence in this
11 case this was not assisted living. The only services
12 that were to be provided were contained in the lease.

13 We know the wellness checks as alleged by the
14 plaintiffs and as found by the Court were not contained
15 within the lease. There was no consideration of that
16 service. And we know specifically from the lease itself,
17 Your Honor that Ms. Parrott assumed the risk of living
18 independently and she waived all liability for a decision
19 she made with respect to her day-to-day activities.

20 Now, Your Honor, to me and this has been an issue
21 from the beginning of this case between the two sides we
22 think the Court has decided that this internal policy
23 that we had created a legal duty. And we think, Your
24 Honor, what has happened is there is a conflation of the
25 policy itself verses the duty itself. So a violation of

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1 a policy the Court is absolutely correct can be evidence
2 of negligence. But the policy itself, the violation of a
3 policy, doesn't create a legal duty. It can only be used
4 as evidence to show a breach of a legal duty.

5 We think in this case that the Court has found that
6 the policy created the duty and we don't think that's
7 appropriate under the law. The threshold question of is
8 there a duty has to be answered in the negative
9 respectfully Your Honor in this case because under the
10 Carson case, 486 S.E.2d 3 cited in I think the order and
11 even in our filings.

12 The question for the Court is is there some basis
13 for the duty itself. And under that case there needs to
14 be a statutory basis for the duty, contractual basis for
15 the duty, some special relationship, some special
16 property interest, some special circumstance.

17 And in this case, Your Honor, respectfully there is
18 no evidence to support the finding of a duty. And that
19 duty is different than the policy that the Court found
20 was violated. And for purposes of this case there
21 really is no credible evidence to support it.

22 Not in the lease there were no statutes presented to
23 the Court that were violated. There was no expert
24 testimony presented to the Court saying we violated a
25 legal duty. And as the Court is well aware the common

1 law imposes no duty to act. And what has happened in
2 this case, and the plaintiffs have done a very good job
3 of conflating an internal policy with a legal duty. And
4 so it's like we have skipped to whether or not there was
5 a breach of a particular duty based on the policy itself
6 without actually finding a proper legal duty.

7 I do think, Your Honor, also important to this
8 analysis is the fact that there was really only one
9 expert who testified in this case to the Court talking
10 about what the proper standards are for responding to the
11 preventing harms like occurred in this case, which is a
12 fallen resident.

13 And the evidence in this case was clearly the only
14 evidence the Court heard was that the panic button system
15 itself; that's how you complied and dealt with any duty
16 to respond to the call, and the wellness check according
17 to the industry and the experts is not designed for that.

18 And that evidence, I mean that opinion makes sense
19 because under the theory of this case and what has been
20 found is it would be okay for Ms. Parrott to lay on the
21 ground for 36 hours.

22 And that's why the expert told you or told the Court
23 and argued to the Court and I've argued to the Court is
24 that's why it can't be a duty; it's an internal policy
25 that may be relevant on the breach of a duty assuming the

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1 duty exists. And really, Your Honor, there is no
2 evidence that the Court heard from anybody with any real
3 experience or really any experience in the industry to
4 say that duty is tied, the duty of a wellness check is
5 somehow tied to this residency.

6 So, the other area that I want to touch on, Your
7 Honor is the Court's finding with respect to wrongful
8 death. Respectfully, Your Honor, we believe that the
9 evidence in this case failed to meet the stringent
10 requirements of the law on proving wrongful death.

11 And not only the legal, I guess the legal bases Your
12 Honor, but if you look at it and you could kind of
13 aggregate everything together what we have is a
14 speculative determination that a fall which occurred,
15 which we're not responsible for; we didn't cause eight
16 months prior to Ms. Parrott's death was most probably the
17 cause of her death.

18 But even more importantly Your Honor to tie that
19 death to this case the Court has to distinguish in the
20 number of hours that she was on the ground causing the
21 death.

22 So respectfully there really is no, we know from the
23 plaintiff's case that a long time as they describe it is
24 anything beyond an hour. We know that she was on the
25 ground for -- let me back up. So anything longer than

1 one hour is a long time. We know, and the plaintiff's
2 don't challenge that for the first 24 hours that's okay.
3 And so what the Court has been asked to do and has found
4 is that without really adequate scientific or medical
5 evidence to assess the distinction between being on the
6 ground more than ten hours eight months prior to her
7 death being on the ground 12 to 15 hours, 15 to 24, 25 to
8 36 which one of those most probably caused the death.

9 And respectfully that analysis is not supported by
10 the expert testimony. In fact, the expert testimony that
11 the Court heard was very, very clear. And I want to
12 point out to just two quotes from the case that we heard
13 both in deposition testimony and from the stand that I
14 think, Your Honor, really confirm which, if you step back
15 and look at it make a lot of sense is that this is
16 speculation because it is hard to say medically well, you
17 know she would have been fine if she was on the ground 24
18 hours but the moment she hit 25 hours she is going to die
19 eight months later.

20 That to me is pure speculation and it wasn't just
21 me, Your Honor, I'll read you the testimony from cross-
22 examination with Doctor Mills, and this was elicited by
23 my co-counsel:

24 Question: Do you intend to offer an opinion at the
25 trial of this case to a reasonable degree of medical

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1 certainty that had Ms. Parrott fallen and fractured her
2 hip in multiple places and remained on the floor for 24
3 to 36 hours or a longer period of time that she would not
4 have died nine months later.

5 And Doctor Mills, who is the sole basis and sole
6 medical opinion that the Court has based its decision on
7 wrongful death Your Honor said: I cannot say that.

8 Next question: And would you agree with me that the
9 reason you can't say that is because it is inherently
10 speculative. And the answer was: Correct.

11 Doctor Lawrence Bergman the other plaintiff's
12 expert, medical expert, he cannot quantify. He said,
13 look I think the fall contributed. I think the mini
14 strokes contributed. I think the trauma from some period
15 of time on the ground contributed.

16 But he could not testify to any degree of reasonable
17 certainty or amount how much any of those three impacted
18 the outcome in this case. I'll give you another quote
19 from again, elicited from the stand:

20 Do you intend to provide an opinion at trial that
21 her decline in death would not have occurred but for some
22 alleged delay in finding her? He said: I don't think
23 there is anybody that could say that.

24 So respectfully, Your Honor, the wrongful death case
25 is really founded on speculative testimony. It does not

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1 meet the standard of care, the standard required in this
2 state.

3 And as we know from Long v American Telegraph --
4 AT&T the medical expert testifying to causation must
5 testify that after taking into consideration all the data
6 it is his or her professional opinion that the result in
7 question most probably came from the cause alleged.

8 And you will remember they really struggled with
9 that question. The experts couldn't say it, incredibly
10 they couldn't say it, because if you really drill down on
11 it Judge, how in the world can you reach out eight months
12 and say you know what she had a terrible time in the
13 first 24 hours but it was much worse later or different
14 amounts. It was testimony that if it was beyond eight
15 hours that could be enough.

16 So the Court has been asked and found respectfully
17 to have based the wrongful death decision on what is
18 clearly speculative opinions by the experts. I want to
19 touch on a couple of other admissions that I think go to
20 this question of speculation, Your Honor.

21 First Doctor Richard Mills he never referred the
22 plaintiff for a psychological evaluation during the eight
23 months after her fall. He never diagnosed her with
24 trauma induced, psychological decline. He's not a
25 psychiatrist. He's not a psychologist. He deferred to

1 those expertises and in particular deferred to a
2 neurocognitive expert to diagnose trauma induced
3 cognitive decline.

4 I'm not going to touch on the defense experts and
5 the sufficiency of that testimony, Your Honor. But I do
6 want to just point out to the Court the one thing that
7 all the medical experts agreed on is that trying to tie
8 this death eight months later to some particular time
9 period on the floor, which was traumatic for Ms. Parrott,
10 is just speculative. And that is what all of them said.
11 When pressed they couldn't testify to a reasonable degree
12 of medical certainty that in fact that caused her death.

13 So for that reason, Your Honor, respectfully we
14 believe the wrongful death cannot stand under the
15 stringent standards of the law. We believe the duty
16 analysis is flawed because it doesn't arise to the
17 standard required to create the duty. And because the
18 violation of policy can only be used to evaluate whether
19 there was a breach of a specific duty and does not create
20 the duty itself.

21 So those are the two areas Your Honor I really
22 wanted to focus in on. I am happy to address anything
23 specific that we've raised in our pleadings or the Court
24 has any concerns about.

25 THE COURT: All right. For the record I have read

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1 your submittals for today's hearing. So I'm apprised of
2 everything you've argued along with those two issues as
3 well. All right. I'll give you an opportunity to
4 respond.

5 MR. REEVES: May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 MR. REEVES: Thank you for your patience with you
8 today.

9 THE COURT: Not a problem.

10 MR. REEVES: Your Honor, I will address as best I
11 can what Mr. Davis has brought to your attention. But I
12 would ask the Court to consider this. A lower Court is
13 not required to set up findings on all the myriad facts
14 and circumstances that arise in trial in a particular
15 case.

16 The findings must be sufficient to allow an
17 appellate court in its capacity as reviewer to ensure the
18 law is faithfully executed below. Your Honor, without
19 waiving any objections to any issues that were not raised
20 at the DV or not raised before this trial, I'm going to
21 address the defendant's position.

22 I could not tell from my notes whether all these
23 issues were raised at the appropriate time or they were
24 simultaneous and appropriate objections but I will
25 address them without waiving that objection. Your Honor,

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1 as to the lease verses the policy the Court's order more
2 than sufficiently addresses that issue. What I am
3 surprised at is the attempt to divert the Court's
4 attention at trial and here today to the lease without
5 regard to the policy. The lease has nothing to do with
6 what Sandpiper decided to do about helping out people who
7 were going to rent from them and go and live in this
8 community.

9 They had no problem taking their money. They had no
10 problem making promises up front that we're going to
11 check on you once a day. And Your Honor if this was such
12 a straight-forward event why did we not receive the
13 policy until the Friday before trial? I still am
14 somewhat confused about that.

15 But in any event the law is clear. Once you
16 undertake a duty, and they did, all their staff testified
17 they did, you have to exercise that duty in a reasonable
18 manner. And the fact that an expert testified that in
19 his opinion the industry standard regarding reliance on a
20 panic button was the appropriate way to check for
21 wellness does not negate nor extend in any manner to the
22 company if it chooses to do its own policy.

23 And that's what Sandpiper did and your order found
24 appropriately that that's what happened and therefore
25 that issue was appropriately decided by this Court with

1 appropriate supporting evidence from the testimony of the
2 staff. And I would also point out that the policy in
3 writing was exactly what we said it was for the four
4 years and including at trial.

5 Your Honor, the defendants raised the issue that the
6 plaintiff provided insufficient evidence to support the
7 contention that Ms. Parrott suffered on the ground and
8 ultimately that suffering and that long line of traumatic
9 experience and exposure to that caused her death.

10 They had raised issues about 24 verses 27 verses 48
11 verses 32 verses whatever you want to choose. But here's
12 what they need to realize and here's what's in the
13 evidence is both experts, and I believe even their
14 expert, testified the longer you're on the floor the
15 worse off you are. Nobody denied that.

16 Whatever complaints the defendant has about Doctor
17 Mills' testimony because he did say, Your Honor, clearly
18 do you have an opinion to a reasonable medical certainty
19 that the long line caused, aggravated or contributed to
20 her death. Yes. What is that opinion? That it did.
21 That's all he's got to say.

22 The Court has the ability to determine the
23 sufficiency of that evidence based on testimony given.
24 Your Honor, Doctor Bergman's testimony that has presented
25 here today is completely taken out of context because

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1 they have to admit that he did say in the deposition not
2 only did that particular traumatic experience lead to her
3 pain and suffering but also to her death his testimony
4 was 49, 51 I don't know but I do know this, it had a
5 significant impact and he testified that more likely than
6 not that impact caused harm to her while she was living
7 and contributed to her death.

8 Your Honor, the defendants have raised but not
9 brought to your attention today the issue that this Court
10 did not make a finding on comparative negligence. I
11 don't pretend to know if you should or not. But I would
12 address that issue and I would address the issue by
13 respectfully requesting the Court simply make a finding
14 that Ms. Parrott was not comparatively negligent.

15 Let me suggest why the evidence supports that
16 without contravention ---

17 THE COURT: --- well, let me stop you there just
18 for one second and I don't mean to interrupt. It's funny
19 you brought that up because when I read his memorandum
20 how does he know if I did it or not in my deliberation?
21 Or how does anybody know whether I determined it because
22 maybe I did. Maybe I was going to give her two million
23 and found it to be civil comparative. Who knows? Nobody
24 knows what I considered and what I didn't in my
25 deliberation, correct?

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1 MR. REEVES: That is correct, Your Honor. And it
2 was a challenge to bring this up because you did not
3 provide that information in the request for the order. I
4 only bring it up here in the event that it needs to be
5 addressed.

6 And based on what you -- I didn't mean that the
7 Court didn't address it. I just simply want to point out
8 this fact. In order for someone to be comparatively
9 negligent there has to be some duty that they violated.

10 Now Your Honor you've heard today and you heard it
11 at trial all we got here is a landlord and tenant act --
12 a tenant agreement. What we also don't have is there is
13 no evidence to support the fact that Sandpiper had a
14 mandatory rule that Ms. Parrott use the emergency button.
15 In fact the testimony was we give them out. Some use
16 them, some don't. A lot of them don't even wear them and
17 you're not required to.

18 So the question I would just point out to the Court
19 assuming it's relevant is this; how could she be
20 comparatively negligent when she had no duty to do
21 anything? And Your Honor respectfully please don't take
22 offense. I just brought that up because you did not ask
23 for that in your order.

24 Your Honor, the order is sufficient on all fours.
25 The order sufficiently covers the fact that a policy can

Estate of Delila Parrott v Premier Senior Living, LLC, et al
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November 4, 2020

1 set the duty of a corporation. And it doesn't matter if
2 it's for courtesy or for pay the case law is clear
3 gratuitously or otherwise. If you take, undertake to act
4 and you don't do that action reasonably then you are
5 liable for any damages that flow from that and the
6 plaintiff proved those damages at trial. Thank you, Your
7 Honor.

8 THE COURT: All right. Yes, sir?

9 MR. DAVIS: Your Honor, I don't have anything
10 unless you just want me to address any particular points.

11 THE COURT: No. Give me one second.

12 [Whereupon, the Court reviews documents]

13 MR. DAVIS: Let me check...

14 THE COURT: Sure.

15 [Whereupon, Mr. Davis reviews documents]

16 MR. DAVIS: I think I said this Your Honor but just
17 we rely on our original filings if you would be good
18 enough to read and consider we would appreciate that.
19 Thank you, Your Honor.

20 THE COURT: All right.

21 [Whereupon, the Court reviews documents]

22 THE COURT: I was just going back through because
23 you had specifically enumerated certain issues that you
24 had and I was just making sure whether I had any
25 questions concerning them. I had written some questions

Estate of Delila Parrott v Premier Senior Living, LLC, et al
Defendant's Post-trial Motion for Relief
November 4, 2020

1 out to the margin but I believe y'all have answered them
2 all. So if there is nothing further as usual you will
3 have my answer by the end of the day.

4 MR. DAVIS: Thank you, Your Honor.

5 MR. REEVES: Thank you, Your Honor.

6 MR. LYLE: Thank you, Your Honor.

7 MR. RIDDLE: Thank you, Your Honor.

8 *****END OF TRANSCRIPT OF RECORD*****
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 4th day of November, 2020.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

January 4, 2021

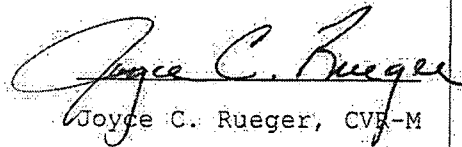
Joyce C. Rueger, CVR-M
Court Reporter

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counsel, nor interest to any party hereto.

January 4, 2021


Joyce C. Rueger, CVR-M

Court Reporter

1	STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
		)	NINTH JUDICIAL CIRCUIT
2	COUNTY OF CHARLESTON	)	C.A. NO.: 2016-CP-10-5379
3			
4			
5	THE ESTATE OF DELILA PARROTT,	)	
6		)	
	PLAINTIFF,	)	VIDEOTAPED DEPOSITION OF
7		)	LILA WATTERS
	VS.	)	FEBRUARY 2, 2017
8		)	
	SANDPIPER INDEPENDENT &	)	
9	ASSISTED LIVING-DELAWARE, LLC,	)	
		)	
10	DEFENDANT.	)	
11		)	
12			
13			
14			
15	Videotaped Deposition on oral examination of Lila		
16	Watters, reported by Laura S. DeCillis, Certified Court		
17	Reporter and Notary Public in and for the State of South		
18	Carolina; said deposition taken at Sandpiper Village, 1224		
19	Village Creek Lane, Mount Pleasant, South Carolina, on		
20	Thursday, the 2nd day of February 2017, scheduled for		
21	10:00 a.m. and commencing at the hour of 10:02 a.m.		
22			
23			
24			
25			

APPEARANCES

Representing the Plaintiff:

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Mount Pleasant, South Carolina 29464

Also present:

Kevin O'Quinn, Videographer
Kristina Strickler

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EXHIBITS

(None were proffered)

1 This deposition is taken in accordance with the
2 South Carolina Rules of Civil Procedure.

3 It is agreed and stipulated by the deponent and
4 respective counsel that the reading and signing of the
5 deposition by the deponent is expressly waived.

6 VIDEOGRAPHER: We are now on the record at
7 10:02 a.m. on February 2nd, 2017. This is the video
8 deposition of Lila Watters, taken by the plaintiff in
9 the matter of the Estate of Delila Parrot versus
10 Sandpiper Independent and Assisted Living Delaware,
11 LLC, in the Court of Common Pleas, case number
12 2016-CP-10-5 -- or, excuse me, 10-5379.

13 This video deposition is being held at 1224
14 Village Creek Lane in Mount Pleasant. Today the court
15 reporter is Laura DeCillis representing Garber Court
16 Reporting, office located in Columbia, South Carolina.
17 And currently speaking, my name is Kevin O'Quinn. I'm
18 the legal videographer representing Legal Media of
19 Charleston with an office located in North Charleston,
20 South Carolina.

21 Counsel, please state your appearances for the
22 record.

23 MR. REEVES: My name is Paul Reeves and I
24 represent the Estate of Delila Parrott.

25 MR. BUCKNER: My name is Perry Buckner and I

1 represent Sandpiper.

2 MR. REEVES: Ms. Watters, he's going to swear
3 you in.

4 Whereupon:

5 Lila Watters, having been duly sworn
6 and cautioned to speak the truth, the whole truth and
7 nothing but the truth, testified as follows:

8 EXAMINATION BY MR. REEVES:

9 Q. Well, Ms. Watters, I'm sorry I called you by the
10 wrong last name. Would you state your full name for the
11 record, please.

12 A. Lila Watters.

13 Q. Ms. Watters, would it be okay if I called you
14 Ms. Lila for this deposition?

15 A. That's fine.

16 Q. Okay. What is your address where you live
17 today?

18 A. REDACTED --

19 Q. Okay.

20 A. REDACTED.

21 MR. BUCKNER: Paul, I don't want to interrupt,
22 and I know I should have done this before and I apologize,
23 but I just want to make sure that we've got on the record
24 your and my discussion about the arbitration agreement.

25 MR. REEVES: Sure.

1 MR. BUCKNER: And, obviously, my concern was
2 that if you are going to argue a waiver of our arbitration
3 rights by conducting this deposition today and I was going
4 to move for a protective order and to quash the deposition,
5 you indicated you would not do that and you were kind enough
6 to consent to that. I've sent you a letter and you may have
7 already sent it back, but I just wanted to put that on the
8 record before we get going. And I'm sorry to wait until 15
9 seconds in. Was that agreeable to you?

10 MR. REEVES: That's agreeable.

11 MR. BUCKNER: Thank you.

12 MR. REEVES: We're not creating or extinguishing
13 any rights by this deposition.

14 BY MR. REEVES:

15 Q. Ms. Watters, how long have you lived here?

16 A. July will be five years.

17 Q. Okay. And do you live alone?

18 A. Yes.

19 Q. And did you grow up in Charleston?

20 A. Yes.

21 Q. All right. And before you retired what did you
22 do for a living, if you did work?

23 A. A housewife mostly.

24 Q. Mostly?

25 A. A receptionist.

1 Q. And do you have any family living in Charleston
2 County?

3 A. I have a brother.

4 Q. All right. And when did you first meet
5 Ms. Parrott?

6 A. I thought it was when she came in, but then I
7 found out she'd been here like a couple of months before me
8 but I had not seen her. So a couple of months after she
9 moved in.

10 Q. All right. And do you recall about when that
11 was, Ms. Watters?

12 A. No.

13 Q. Okay. How did you meet her, or how did you come
14 to know her?

15 A. Well, we ate together and we just liked each
16 other and we were together Saturdays and Sundays. We'd play
17 Bingo together, we did everything together.

18 Q. Is it correct then that before you moved here
19 and before she moved here, you did not know Ms. Parrott?

20 A. No.

21 Q. Okay. Ms. Lila, did Ms. Delila have a car here,
22 to your knowledge?

23 A. She did, but she sold it.

24 Q. Okay. Did she drive much, if you know?

25 A. We both drove weekends.

1 Q. All right. You said you all became friends.
2 Where would you all -- how would you all normally meet up?
3 Did you have dinners together --
4 A. In the activity room.
5 Q. Okay. All right. Did you all have a routine
6 with each other?
7 A. Did we what?
8 Q. Did you have a routine with each other? Did you
9 all do things on a normal routine every day?
10 A. Not every day. But mostly weekends we went
11 places together.
12 Q. Okay. Did you normally eat together?
13 A. Yes.
14 Q. Okay.
15 A. For one meal.
16 Q. Which meal was that usually?
17 A. A lot of times she didn't come for dinner.
18 Q. Right. Okay. What meal would you all usually
19 eat together?
20 A. Lunch.
21 Q. Okay. And so you would see her at other times
22 during activities in the community room?
23 A. Oh, yes.
24 Q. Okay. Did Ms. Delila keep a normal schedule as
25 to when she would do certain things, activities or eat or

1 **anything like that?**

2 A. More or less. Sometimes she would not play
3 Bingo with me because she told me she couldn't see too well.

4 Q. **Okay.**

5 A. But she -- she played every time she could on
6 Tuesday and Friday night and also other days.

7 Q. **Ms. Lila, at some point there was a circumstance**
8 **where she did not show up for dinner for a couple of days.**

9 MR. BUCKNER: Object to the form of the
10 question.

11 BY MR. REEVES:

12 A. I mean, maybe just one day she'd take dinner
13 home with her.

14 Q. **Okay.**

15 A. Or she fixed a sandwich at home.

16 Q. **Okay.**

17 A. But she would -- I would know when she wasn't
18 coming. She usually told me.

19 Q. **She did?**

20 A. Yes.

21 Q. **All right. How close was her residence to your**
22 **residence?**

23 A. A half a block.

24 Q. **Okay. Do you recall there being a time when you**
25 **inquired of folks here at the premises as to the well-being**

1 of Ms. Parrott?

2 MR. BUCKNER: Object to the form.

3 BY MR. REEVES:

4 A. What, now?

5 Q. Did there come a time when you became worried
6 about Ms. Delila because she had not -- you had not seen
7 her --

8 A. Well, yes.

9 Q. -- currently?

10 A. Yes.

11 Q. Can you tell me what happened. Can you tell me
12 how that came about, please?

13 A. Well, it was on a Tuesday and she didn't want to
14 play Bingo. And when I got home from Bingo, she had left me
15 a birthday message. Because Wednesday was my birthday and I
16 was going to my brother's so she wouldn't see me probably,
17 especially if she didn't come for dinner. And I asked them
18 if they had seen her Tuesday and they said, yes, but not
19 that night. And -- no, not -- they saw her that night. I
20 don't know about the lunch.

21 Q. Okay.

22 A. I don't remember if she was there or not.

23 Q. And your birthday was on Wednesday?

24 A. Yes.

25 Q. Is that **REDACT**?

1 A. Yes.

2 Q. All right. Did you see Ms. Delila on REDACTED?

3 A. No.

4 Q. Okay. And she left you the birthday wish
5 message on Tuesday evening?

6 A. Yes.

7 Q. All right. Did you know you were not going to
8 see her on REDACTED?

9 A. I didn't -- if she didn't come to dinner I would
10 not see her.

11 Q. Okay. Did you see her on June 5th?

12 A. On Tuesday?

13 Q. No. That would be Thursday.

14 A. On Thursday? No.

15 Q. Okay. What, if any, concerns did you have about
16 not seeing her on Thursday? Did you expect to see her?

17 A. Yes.

18 Q. All right. And what did you do, if anything,
19 once you did not see her?

20 A. I called her, went down and knocked on the door.
21 And the lady at the desk called her several times and went
22 down and knocked on the door.

23 Q. Do you know the name of the lady at the desk?

24 A. Rebecca.

25 Q. And did you ask Rebecca to call and check on

1 **Ms. Delila?**

2 A. Yes.

3 **Q. All right. Did she receive an answer to your**
4 **knowledge?**

5 A. She said she didn't have her name and telephone
6 number -- her address and telephone number.

7 **Q. Repeat that, Ms. Lila? I'm sorry.**

8 A. She did not have her address and telephone
9 number.

10 **Q. What did Rebecca do to try to -- she just tried**
11 **to call her from what you observed?**

12 MR. BUCKNER: Object to the form.

13 BY MR. REEVES:

14 A. What did she do? Well, she -- she went down
15 there and knocked on the door and rang the phone.

16 **Q. Okay. All right. And did she get any response**
17 **to your knowledge?**

18 A. No.

19 **Q. Did you do anything else on Thursday to**
20 **determine -- let me rephrase that.**

21 What, if anything, did you do on Thursday to try
22 to check on Ms. Delila other than talk to Rebecca?

23 A. I went down there and went on the front porch
24 and moved a rocking chair over and made a little bit of
25 noise, and nothing.

1 Q. Okay. Did you try to call her telephone number?
2 A. Oh, yeah. Several times.
3 Q. Did you ever receive an answer?
4 A. No.
5 Q. On Friday morning, this would be June 6th, did
6 you see Ms. Delila that morning?
7 A. No.
8 Q. Did you do anything as a result of not seeing
9 her?
10 A. We did the same routine, Rebecca and I.
11 Q. Okay. And did she call again?
12 A. Oh, yeah.
13 Q. Do you know if she received an answer?
14 A. No. Nobody -- we didn't.
15 Q. Okay. Did you go to Ms. Delila's room or her
16 apartment?
17 A. Oh, yes.
18 Q. And you did not receive any notice or any --
19 A. I knocked on both doors, nothing.
20 Q. Did you speak with Rebecca again that day about
21 trying to get into Ms. Delila's apartment?
22 MR. BUCKNER: Object to the form.
23 BY MR. REEVES:
24 A. No.
25 Q. Okay. What happened next on Friday then?

1 A. On Friday, I -- I went -- I called her again.
2 And Rebecca kept saying she was probably with one of her
3 daughters. And I said, I don't think so. She would let me
4 know, I think. So I asked for -- I went down to play Bingo
5 Friday night and she wasn't there. So I went and asked
6 Rebecca, I said, I want every master key you have, I've got
7 to get in there. She said, we don't have it because she
8 changed the locks on the door.

9 So I started to leave after Bingo and I said,
10 no, I'm not going. I've got to get in there. So I just
11 plopped my stuff down and went back and Rebecca had the key,
12 and that's all I know. I opened the door and I went in and
13 I found her.

14 Q. You found Ms. --

15 A. And we called an ambulance and that was it.

16 Q. Okay. I know this story is difficult for you
17 and I don't mean to -- but I have to ask you a few detailed
18 questions, okay? If you'll bear with me just a minute,
19 okay?

20 Initially, Rebecca told you she did not have a
21 key --

22 MR. BUCKNER: Object to the form.

23 BY MR. REEVES:

24 Q. -- is that correct?

25 A. Yes.

1 **Q. All right. What, if anything, did you tell her**
2 **when she said, I don't have a key? What was your response**
3 **to that?**

4 A. I couldn't fight City Hall. I mean, I -- I
5 can't argue with staff.

6 **Q. Okay.**

7 A. Well, the manager came out Friday afternoon when
8 I was there and she said that she was probably with her
9 daughter and she probably didn't turn a key in. And I --
10 and I said to her, well, you had all that information on me
11 when I moved in, but no address or telephone number. And I
12 just -- because she had -- the manager had left when I went
13 back to Rebecca and Rebecca had found the key. And I said,
14 where was the key? And she said it was in a lock box in the
15 manager's office. I mean, she just opened the drawer and
16 there it was.

17 I don't know if she was going down if I hadn't
18 stayed and asked for the key or not. Probably she would
19 have, because I think she had just found the key.

20 **Q. Did you ask for a key on Thursday?**

21 A. No. That was Friday that I asked for all the
22 master keys they had.

23 **Q. Okay. What, if any, requests, Ms. Lila, did you**
24 **make of the manager or Rebecca on Thursday for them to go**
25 **and check on Ms. Delila?**

1 MR. BUCKNER: Object to the form.

2 BY MR. REEVES:

3 A. I'm not really hearing all -- did I do what?

4 Q. Okay. I'm sorry. I'll speak a little bit
5 closer. Did you ask the manager or Rebecca to go check on
6 Ms. Delila on Thursday?

7 MR. BUCKNER: Object to the form.

8 BY MR. REEVES:

9 A. We both did, yes.

10 Q. And on Friday you said you spoke with the
11 manager. Who was the manager that you spoke with?

12 A. Corrine. And I don't know her last name.

13 Q. Okay.

14 A. She told me that Rebecca's mother had seen
15 Delila and she didn't know whether it was lunch or dinner.
16 And I said, well, I didn't see her.

17 Q. May I ask you, what day was Ms. Corrine
18 referring to when she said Rebecca's mother saw her at lunch
19 or dinner?

20 A. She said she saw her on Thursday but she didn't
21 know whether it was lunch or dinner.

22 Q. Did you, on Thursday, Ms. Lila, attend lunch and
23 dinner?

24 A. Yes.

25 Q. Did you see --

1 A. No.

2 Q. -- Ms. Delila at lunch or dinner? Was it your
3 routine, if she was going to eat, that you and her would eat
4 together?

5 A. Was it our routine? We ate at the same table.

6 Q. Okay. All right. Did you see Ms. Delila at any
7 time on Friday before you went to her room?

8 A. No. When I was talking with Rebecca, she said
9 that, my mother would not say she saw her if she didn't see
10 her, calm down. That's what she said to me.

11 Q. Okay. Does Rebecca still work here?

12 A. No.

13 Q. Does Corrine still work here?

14 A. No.

15 Q. Did Rebecca offer you any explanation, if
16 anything, about the key and why she was not able to produce
17 that earlier?

18 A. She said she found it in a lock box in Corrine's
19 office, is what she said.

20 Q. Did anyone go with you to Ms. Delila's room when
21 you took the key to open the door?

22 A. (Shakes head).

23 Q. No?

24 A. No.

25 Q. Did you ask anyone to go with you?

1 A. No.

2 **Q. Where did you find Ms. Delila when you came into**
3 **the room?**

4 A. She was on the floor.

5 **Q. Can you describe where in the apartment she was**
6 **on the floor?**

7 A. Well, yes. Like if this is the wall, there's a
8 window here and the chair was there. There was a big chest
9 of drawers here, one of those great big ones. The
10 four-poster bed was here and she was between the bed and
11 chester drawers.

12 **Q. Okay. What did you notice about her appearance?**
13 **Did she appear to be injured?**

14 MR. BUCKNER: Object to the form.

15 BY MR. REEVES:

16 A. She was lucid. She was fine.

17 **Q. Okay.**

18 A. I mean, she just said, oh, I'm so glad to see
19 you, don't leave me, don't leave me. I said, I've got to
20 call an ambulance.

21 **Q. Did you call the ambulance, Ms. Lila?**

22 A. No. She said, my phone's over there. But I
23 didn't. I went back and asked Rebecca to call the
24 ambulance. And then she did and then Becca came and the
25 ambulance people came.

1 Q. All right. Do you know where Ms. Lila was --
2 excuse me, Ms. Delila was taken by ambulance? Do you know
3 where she went?

4 A. (Shakes head). No.

5 Q. Did you visit her after she was taken by EMS
6 away from the premises?

7 A. Not to the hospital. But she was sent to rehab
8 at Sandpiper and I went over there a lot.

9 Q. All right. So you saw her there?

10 A. Yes.

11 Q. What did you observe about her going through
12 rehab? Did that appear to help her?

13 A. I just argued with her, telling her to shape up.

14 Q. And did she?

15 A. No. She said, that did something to my mind.
16 So a couple of times when I went over, I said, just stop it,
17 you're hallucinating. And it didn't stop.

18 Q. When she said that did something to her mind,
19 what was she speaking of, the incident?

20 A. Well, people were after her or wanted to kill
21 her and stuff like that.

22 Q. All right.

23 A. She said she looked out the window and there was
24 a lady down on the ground being killed and she was afraid
25 she was going to be next. And I said, oh, stop it, you're

1 hallucinating. See? I can look over it like that, trying
2 to bring her around. I just told her all kind of fool
3 things, we need you -- I need you at Bingo and we miss you
4 and all that stuff. And she's -- and then she got to
5 where -- I went over one day and she was not there. And I
6 said to this janitor -- he said, she got to where she
7 couldn't even stand up. And he said, okay. And she went to
8 17 North, or St. Francis, 17 North.

9 In the meantime, I had gone downtown to a
10 nursing home and -- no, I'm sorry. That wasn't from rehab.
11 That was from the nursing home downtown.

12 Q. Yes, ma'am.

13 A. And I went down there and they told me where she
14 was. So then I came and went to 17 North. She went, how
15 did you find me? I said, I told you I'd follow you
16 everywhere you go. And she said, well, I don't want anybody
17 to know I was here, not even my daughters. And I said,
18 well, I'm here. And, I said, you've got to go back to where
19 you were. You can't sit here in this corner like this
20 and -- you didn't ask me this, but she was kind of in a
21 lounge chair all covered up and I sat on the foot of the
22 lounge chair and it kept going down and I went on the floor
23 and she giggled a little bit. Well, the nurse heard her. I
24 think it was the next day or the next day they sent her
25 right back where she came from.

1 **Q.** **Okay.**

2 **A.** She thought that was so funny when my butt hit
3 the floor.

4 **Q.** **All right.**

5 **A.** So she just thought she was going to be next,
6 so -- that she would be killed next. She had to get away
7 from that nursing home where she was.

8 **Q.** **Ms. Lila, did the Ms. Delila that you knew**
9 **before the incident where she fell in her room where you**
10 **found her and the Ms. Delila you knew afterwards, was there**
11 **any changes? Was she the same? Did she change?**

12 MR. BUCKNER: Object to the form.

13 BY MR. REEVES:

14 **A.** I would say yes.

15 **Q.** **How so?**

16 **A.** She just didn't care, didn't make sense anymore.

17 **Q.** **Did Ms. Delila tell you or say anything to you**
18 **about how long she had been on the floor before you found**
19 **her?**

20 **A.** She told the ambulance people. She said, I've
21 been here since Tuesday night. And this was Friday night.
22 And the ambulance guy said, you mean Thursday. And she
23 says, no, I don't.

24 **Q.** **Okay. Ms. Lila, after this event happened, did**
25 **anyone from Sandpiper speak with you about what had happened**

1 or how it had happened or provide to you any information
2 about the events?

3 MR. BUCKNER: Object to the form.

4 BY MR. REEVES:

5 A. Not that I recall.

6 Q. Okay. Did you have, after this -- after you
7 found Ms. Delila, did you have any more conversations with
8 Rebecca about what had happened?

9 A. No. Not that I recall.

10 Q. Okay. What, if any, effect did the
11 circumstances of Ms. Delila being in her room have on you
12 and Rebecca? Did that cause any problems with your
13 relationship with her?

14 A. Well, I didn't -- yes and no. I mean, we were
15 okay after that.

16 Q. Okay.

17 A. It just took me a while, you know, for -- to get
18 over her telling me in the tone that she told me about, if
19 my mother didn't see her, she wouldn't say she had seen her
20 if she hadn't seen her. Yeah, we were okay after that.

21 Q. Okay.

22 A. And we didn't talk about anything.

23 Q. Okay. After this event, Ms. Lila, did you speak
24 with Ms. Corrine any more about --

25 A. No.

1 Q. -- what had happened? All right. Ms. Lila,
2 does anyone at this premises have a key for your apartment?

3 A. The staff -- the office does. They have a
4 master key for everybody.

5 Q. Right. Do you know, when you found Ms. Delila,
6 whether she was wearing an emergency button?

7 A. She was not.

8 Q. All right. Do the patrons or residents of this
9 premises wear emergency buttons?

10 MR. BUCKNER: Object to the form.

11 BY MR. REEVES:

12 A. We all do as far as I know.

13 Q. Okay.

14 A. I did. I don't wear it but I have it.

15 Q. I understand. I understand. Why do you not
16 wear it all the time?

17 A. I hadn't really felt like I needed it until the
18 last six months or so.

19 Q. Okay.

20 A. And I tell myself I'm going to start using it
21 every day and I forget.

22 Q. Okay. All right. Is that true for other
23 residents?

24 A. What?

25 Q. Is that true for other residents, too?

1 A. I -- I don't know.

2 Q. Okay. Ms. Lila, you said earlier you met with
3 Joan Acosta and a gentleman named Leon Parrott a couple of
4 months ago; is that correct?

5 A. (Nods head).

6 Q. And did you tell them this story?

7 A. Yes.

8 Q. Okay. All right.

9 A. But Delila had told her daughter everything, you
10 know, when -- because she remembered everything at first.

11 Q. Right.

12 A. And she told her -- had already told her
13 everything.

14 Q. Did Ms. Acosta make any statements to you about
15 whether she believed her mother and what her mother told her
16 about how she came to be on the floor and how long she was
17 there?

18 MR. BUCKNER: Object to the form.

19 BY MR. REEVES:

20 A. She just said that she had hurt her leg and she
21 was down for like three months. And she hurt it -- and she
22 was on the floor and it was at night and on the steps and
23 she said she just -- all she could do was think about her
24 mother lying there in the dark all that time. And, of
25 course, she said, I was only there like about three hours

1 and it was scary, she said, though.

2 Q. Okay. Do you recall having a conversation with
3 Ms. Acosta, Joan Acosta, at Ms. Delila's funeral about what
4 had happened?

5 A. I did not go to the funeral.

6 Q. Okay.

7 A. I saw her the night before she passed.

8 Q. I see. I see.

9 A. And she was at -- somewhere in Mount Pleasant.

10 Q. Okay.

11 A. A friend took me over and I saw her.

12 Q. Okay. Did you talk with Ms. Acosta about what
13 had happened with Ms. Delila when you found her?

14 A. Yes.

15 Q. Okay.

16 A. But Delila had already told her everything --

17 Q. Okay.

18 A. -- that I could tell her.

19 Q. After you had found her and the EMS was called,
20 did she ever come and live back in that apartment again?

21 A. No.

22 Q. Okay. Do you know how long after this event
23 that Ms. Delila passed away?

24 A. Maybe a year and-a-half.

25 Q. Okay.

1 A. Maybe. I'm not sure.

2 Q. Okay. Did Ms. Delila tell you how she had come
3 to be on the floor when you found her?

4 MR. BUCKNER: Object to the form.

5 BY MR. REEVES:

6 A. She was hanging a curtain and she fell off the
7 chair.

8 Q. Okay. Ms. Lila, I want to make sure I've got
9 some dates right and if you don't know the answer just tell
10 me. But if your birthday was on REDACTED then the message
11 you received from Ms. Delila telling you happy birthday was
12 on June 3rd; is that correct?

13 MR. BUCKNER: Object to the form.

14 BY MR. REEVES:

15 A. Right.

16 Q. Okay. All right. And when you first observed
17 her as you've testified, or when you did not see her on
18 Thursday, that's when you started making phone calls and
19 going to her apartment?

20 MR. BUCKNER: Object to the form.

21 BY MR. REEVES:

22 A. Uh-huh.

23 Q. All right. You need to say yes or no.

24 A. Yes.

25 Q. All right. On Thursday could you get anybody

1 from the premises to go into the room to check on
2 Ms. Delila?

3 MR. BUCKNER: Object to the form.

4 BY MR. REEVES:

5 A. No. They just -- she just said that she must be
6 with her daughter.

7 Q. Okay.

8 A. And I said, have you heard from her? And they
9 said, no, and -- she said she must be with one of her
10 daughters.

11 Q. Okay. Ms. Lila, did anyone ask you for your
12 information about what you knew about this circumstance
13 after it happened? Did anybody ask you what had happened?

14 MR. BUCKNER: Object to the form.

15 BY MR. REEVES:

16 A. Yeah. I have to sort of take that back because
17 it was Elenore.

18 Q. And who is Elenore, please?

19 A. Elenore Kissell.

20 Q. Is she a resident or does she work --

21 A. Yes.

22 Q. -- here?

23 A. She's a resident.

24 Q. Okay. Ms. Lila, do you know if anyone else
25 besides yourself visited Ms. Delila's room on Thursday or

1 **Friday before you found her?**

2 A. No. I don't know.

3 Q. Okay. Did she live alone?

4 A. Yes.

5 Q. Ms. Lila, was it Ms. Delila's habit to tell you
6 **what her schedule was going to be for any day or week?**

7 MR. BUCKNER: Object to the form.

8 BY MR. REEVES:

9 A. No. But she would tell me, my daughter's coming
10 tomorrow for a couple of hours, or something like that.

11 Q. Okay. Ms. Lila, did you report to Joan Acosta
12 **that you had tried to recreate what Ms. Delila went through**
13 **in your own room?**

14 MR. BUCKNER: Object to the form.

15 BY MR. REEVES:

16 A. I did.

17 Q. Tell me about that. What did you do?

18 A. Well, she was telling me about when she was
19 lying on the floor after she hurt her leg. And so one night
20 I got down on the floor just to see what it was like and it
21 was really black dark and I said, I can see it would be
22 scary.

23 Q. Were you close to Ms. Delila?

24 A. I thought so.

25 Q. Okay. How did you feel when she passed away?

1 A. Really bad. I knew I was going to miss her, but
2 these things happen.

3 Q. Ms. Lila, has anything changed here about the
4 way this premises checks on people or checks on people's
5 well-being based on what you've observed?

6 MR. BUCKNER: Object to the form.

7 BY MR. REEVES:

8 Q. You can answer.

9 A. I see a lock box at the desk now that I hadn't
10 seen before.

11 THE WITNESS: Is that new, that box -- that box
12 there with all those keys in it?

13 BY MR. REEVES:

14 Q. I don't know.

15 A. I've noticed that several times. There's a box
16 there, a lock box that has all the keys in it.

17 Q. Okay. Ms. Lila, has anyone at the premises
18 promised to check on you every so often? Is that a rule
19 here? Does anybody do that here?

20 MR. BUCKNER: Object to the form.

21 BY MR. REEVES:

22 A. They can't promise to do that, no.

23 Q. Okay.

24 A. It's independent living.

25 Q. Okay.

1 A. But they do.

2 Q. How do they do that?

3 A. By telephone.

4 Q. Okay. And under what circumstances would they
5 check on you by telephone?

6 A. If they don't see you that day they call you
7 that night.

8 Q. Were they doing that when Ms. Delila fell in her
9 apartment?

10 MR. BUCKNER: Object to the form.

11 BY MR. REEVES:

12 A. Yes.

13 Q. They were? Who would usually do the calling, if
14 you know?

15 A. Who what?

16 Q. Who would do the calling if you know?

17 A. The person that was on duty that day.

18 Q. At the time this happened, Ms. Lila, who else
19 worked at the front desk other than Rebecca, if you know?

20 A. Rebecca and her mother, Beth, and -- gee, I
21 forgot.

22 Q. That's okay.

23 A. I don't know -- I don't remember who else, but
24 there was somebody.

25 Q. Was Ms. Beth the woman who supposedly saw

1 **Ms. Delila on Thursday?**

2 A. Yes.

3 **Q. Does she still work here?**

4 A. No.

5 **Q. Okay.**

6 A. At least she told the manager that she saw her.
7 She said, I saw her but I don't know if it was lunch or
8 dinner. And that's when I said, well, I didn't.

9 **Q. Okay. Ms. Lila, I'm going to let you answer any**
10 **questions that Mr. Buckner may have for you. I appreciate**
11 **your time.**

12 MR. BUCKNER: Thank you.

13 EXAMINATION

14 BY MR. BUCKNER:

15 **Q. Ms. Watters, my name is Perry Buckner and I**
16 **represent Sandpiper in this case who's been sued by**
17 **Ms. Parrott's family, so I represent the defendant in this**
18 **case; do you understand that?**

19 A. (Nods head).

20 **Q. And it's my understanding, and you can tell me**
21 **if I'm wrong, that you were contacted by Ms. Parrott's**
22 **family to talk about this incident with Delila, correct?**

23 A. Yes.

24 **Q. And they asked you to appear for a deposition**
25 **here today; is that correct?**

1 A. Yes.

2 Q. Do you want to be here today, Ms. Watters?

3 A. Not necessarily.

4 Q. All right.

5 A. But I think she would do it for me. And then
6 her daughter. I like both of her daughters very much and --

7 Q. All right. And --

8 A. It was like that.

9 Q. -- you understand that when we try this case, if
10 we do try it, whether it goes to court or arbitration,
11 you'll be a witness at the trial or arbitration?

12 A. That means I'm going to be involved in what?
13 Because I would like this to end it right now.

14 Q. Well, unfortunately, I can't promise you that.
15 You've been identified by the plaintiff and you will be a
16 witness for the remainder of the case, regardless --

17 A. Well, I'm not going -- I'm not going to leave
18 Sandpiper.

19 Q. Right.

20 A. Right now I have some problems of my own.

21 Q. Right. But you were asked to be here today by
22 Ms. Delila's family, correct?

23 A. Mr. Parrott.

24 Q. All right. And who else?

25 A. And Jane, her daughter.

1 Q. All right. And how much of what you recall
2 about this incident with Delila is of your own independent
3 recollection as opposed to what somebody else might have
4 told you since it happened?

5 A. Nobody's told me anything.

6 Q. All right. Have you met with Mr. Parrott or
7 Ms. Acosta about this incident?

8 A. They came to my apartment, yes.

9 Q. All right. And they videotaped you when they
10 came?

11 A. No.

12 Q. Did they ever videotape you --

13 A. No.

14 Q. -- to talk about this incident?

15 A. No. They took a tape, though.

16 Q. Oh. When you say a tape, do you mean like a
17 tape recorder --

18 A. Yes.

19 Q. -- an audio recording? All right. And when did
20 that audio recording take place? Do you remember --

21 A. The end of December.

22 Q. Of this year?

23 A. Yes.

24 Q. Was Mr. Reeves there?

25 A. Last year in December.

1 Q. All right. December of 2016?
2 A. Yes.
3 Q. Was Mr. Paul Reeves there that day?
4 A. No.
5 Q. All right. Had you met with Mr. Reeves --
6 A. No.
7 Q. -- before today?
8 A. No.
9 Q. Have you spoken to him on the phone?
10 A. No.
11 Q. All right. Do you keep a daily journal in your
12 apartment or a diary or anything like that?
13 A. No.
14 Q. You had referenced earlier that there were
15 several attempts, both by staff and yourself, to call
16 Ms. Delila; is that correct?
17 A. Oh, yes.
18 Q. Do you recall her phone number?
19 A. Lord, no.
20 Q. All right. Would it have been a phone number
21 that was regarding a phone in her apartment, though?
22 A. I think it was her cell phone.
23 Q. All right. And were you calling her from your
24 cell phone?
25 A. I don't have a cell phone. But, yes, from my

1 apartment.

2 Q. All right. And what is the number for your
3 apartment phone?

4 A. 6703. 843-6703.

5 THE WITNESS: Do we have an 884?

6 BY MR. BUCKNER:

7 Q. You said the number was 843 --

8 A. Yeah.

9 Q. And then what --

10 A. I think 884-6703 is my phone number.

11 Q. All right. Would that have been your phone
12 number at the same time --

13 A. Yes.

14 Q. -- when this incident occurred? It would have
15 been the same number as when this incident occurred?

16 A. Yeah.

17 Q. All right. And you have lived here at Sandpiper
18 for a little over five years; is that --

19 A. No. It will be five in December, I think.

20 Q. All right. And the folks like Ms. Strickler and
21 other people that work here, they've always been nice to
22 you?

23 A. Absolutely.

24 Q. And they've always done anything you've ever
25 asked of them?

1 A. Yes.

2 Q. All right. And you enjoy living here, that's
3 fair to say?

4 A. Yes.

5 Q. Otherwise, you wouldn't live here, would you?

6 A. No.

7 Q. All right.

8 A. I'm happy here.

9 Q. And was Ms. Parrott always happy here when she
10 was here?

11 A. As far as I know.

12 Q. Your understanding of Ms. Parrott's fall was
13 that she was hanging curtains on a rocking chair; is that
14 right?

15 A. I don't think it was a rocking chair. I think
16 it was a stuffed chair. And I don't know if it was a
17 recliner or not but it was a stuffed chair.

18 Q. All right. And, obviously -- and you can tell
19 me if I'm wrong -- but, obviously, that initial fall in no
20 way, shape or form could be attributed to the acts of
21 somebody working for Sandpiper, right? They didn't cause
22 that fall, did they?

23 A. No.

24 Q. All right. And you didn't see that fall and you
25 don't know when that fall occurred, do you?

1 A. No.

2 Q. All right. And if I have documents in my
3 possession, and when I say -- I'm not talking about things
4 that necessarily might be here. But if the folks at
5 Sandpiper took statements and reports about their
6 conversations with you after this incident occurred, would
7 that be something that would jog your memory about maybe
8 talking with them about this?

9 MR. REEVES: Object to the form.

10 BY MR. BUCKNER:

11 A. Yeah.

12 Q. All right. Do you recall those conversations?

13 A. Yes.

14 Q. With Ms. Carrington?

15 A. Yes.

16 Q. And they occurred after this incident, correct?

17 A. Yes.

18 Q. All right. So when you testified earlier in
19 response to Mr. Reeves' question that you hadn't spoken with
20 anybody at Sandpiper about this incident, were you mistaken?

21 A. No.

22 Q. All right.

23 A. I didn't speak to anybody at Sandpiper.

24 Q. All right.

25 A. Just Elenore one -- because she's the one that

1 took me to see her the night before she passed away.

2 Q. All right. If Ms. Corrine Carrington documented
3 that she spoke with you after Ms. Parrott was found in her
4 apartment, do you have any reason to dispute that?

5 A. She did not talk to me.

6 Q. All right. How about Ms. Beth Auld?

7 A. No.

8 Q. All right.

9 A. Nobody talked to me after.

10 Q. Even Rebecca?

11 A. Nobody.

12 Q. All right. And if those folks documented a
13 conversation they had with you after this incident, is there
14 any way that that could have taken place on Thursday before
15 Ms. Parrott was discovered?

16 A. I don't know that anything was documented. We
17 just didn't talk about it after that.

18 Q. All right. Was Ms. Carrington, insofar as you
19 know, an honest person?

20 MR. REEVES: Object to the form.

21 BY MR. BUCKNER:

22 A. As far as I know.

23 Q. And she took her job very seriously as far as
24 you know?

25 MR. REEVES: Object to the form.

1 BY MR. BUCKNER:

2 A. She did.

3 Q. All right. And do you believe that she would
4 fraudulently document something in a report that didn't
5 occur?

6 MR. REEVES: Objection.

7 BY MR. BUCKNER:

8 A. I don't know that she documented anything and I
9 I don't know that she would do it if it didn't occur. I
10 mean, I know she did it properly.

11 Q. All right. What is your relationship, if any,
12 with Ms. Beth Auld?

13 A. Fine.

14 Q. And is Ms. Auld an honest person?

15 MR. REEVES: Object to the form.

16 BY MR. BUCKNER:

17 A. As far as I know.

18 Q. And Ms. Auld has no reason to lie or mislead
19 anyone about what might have happened to Ms. Delila, right?

20 A. None, that I know of.

21 Q. And you're aware, per your conversation with her
22 daughter Rebecca, that Ms. Auld claims that she saw
23 Ms. Delila on Thursday before the Friday that she was
24 discovered, correct?

25 A. That's what she told the manager, Corrine.

1 Q. All right. And can you think of any reason
2 sitting here today that will Ms. Auld would tell
3 Ms. Carrington something that wasn't true?

4 MR. REEVES: Objection.

5 BY MR. BUCKNER:

6 A. No.

7 MR. BUCKNER: Could we go off for a second?

8 VIDEOGRAPHER: Off the record at 10:43.

9 (Momentarily off the record)

10 VIDEOGRAPHER: Back on the record at 10:44.

11 BY MR. BUCKNER:

12 Q. Ms. Watters, I don't have too much for you so
13 I'm going to try to be quick so we can get this done. I
14 promise, I'm not going to keep asking you too many
15 questions, and I appreciate your patience.

16 What, if anything do you know about
17 Ms. Parrott's paranoia before this incident?

18 A. I didn't see it at all.

19 Q. All right. And are you aware that she asked the
20 staff at Sandpiper to change the locks on her door because
21 she was paranoid?

22 A. Yes.

23 Q. All right.

24 A. She didn't tell me until after the fact.

25 Q. But you don't dispute that she did that because

1 of paranoia?

2 MR. REEVES: Object to the form.

3 BY MR. BUCKNER:

4 A. I don't know why she did it. I thought it was
5 kind of dumb, but she did it.

6 Q. All right. And are you aware of any
7 conversations that she had with Ms. Carrington or any other
8 security staff about accessing keys to her apartment?

9 A. What Delila told me was when they -- she had her
10 locks changed she gave the key to Rusty, our maintenance
11 man, and he took it to Corrine.

12 Q. All right. Do you know whether Ms. Delila asked
13 Corrine to have any sort of a special arrangement for her
14 key? In other words, to restrict access to it?

15 A. She just sent -- she sent a new key back and the
16 old ones, the old key and the brand new key. And she said
17 she sent the brand new key by Rusty.

18 Q. And she didn't ask the folks at Sandpiper,
19 obviously, before she changed her locks, right?

20 A. I don't know.

21 Q. All right. You discussed earlier with
22 Mr. Reeves a -- I think you called it an emergency button --

23 A. Yes.

24 Q. -- that some residents wear?

25 A. Yes.

1 Q. But, obviously, this is an independent living
2 village, correct?
3 A. Yes.
4 Q. And residents like yourself independently choose
5 whether to wear that button or not, correct?
6 A. I'm sorry. Do that one more time?
7 Q. Yes, ma'am. Residents like yourself, you choose
8 for yourself whether to wear that emergency button or not --
9 A. Yes.
10 Q. -- correct?
11 A. Yeah.
12 Q. And the folks at Sandpiper can't force you to
13 wear that against your will, can they?
14 A. No.
15 Q. And they wouldn't have done that with
16 Ms. Delila, would they?
17 A. No.
18 Q. Insofar as you know, no?
19 A. Yeah.
20 Q. And do you have any knowledge sitting here today
21 whether Ms. Delila was in fact wearing her emergency button?
22 A. She was not.
23 Q. All right.
24 MR. BUCKNER: Could we go off for just one
25 minute?

1 VIDEOGRAPHER: Off the record at 10:47.

2 (Recess from 10:47 a.m. to 10:53 a.m.)

3 VIDEOGRAPHER: On the record at 10:53.

4 BY MR. BUCKNER:

5 Q. Ms. Watters, I promised you I didn't have much
6 longer and I don't have much longer so I'm trying to get
7 through it, so please be patient. I appreciate all of your
8 help so far.

9 You had testified earlier that you and staff
10 from Sandpiper went to Ms. Parrott's apartment on Thursday,
11 the day before she was found; is that --

12 A. We didn't go together but we both went.

13 Q. All right. And it was Rebecca, Beth Auld's
14 daughter, that went?

15 A. Yes.

16 Q. All right. And she knocked on the door?

17 A. She said she did.

18 Q. All right. And when did you first find out that
19 she had tried to visit Ms. Parrott on that Thursday?

20 A. She told me she was checking every day. And
21 that's when she said she might be with one of her daughters.
22 And I said, I don't think so, she would let me know.

23 Q. And at that time had Rebecca spoken with her
24 mother about seeing her that day, that Thursday?

25 A. I was not involved in that. Rebecca and Beth

1 and Corrine. Corrine's the one that told me that Beth said
2 she saw her, but she couldn't remember if it was lunch or
3 dinner.

4 Q. All right. And I want you to -- I know you
5 don't know anything about that and I'm not asking you to
6 because we can't know something about something we have no
7 clue about. But I want you to assume for a second that
8 Ms. Auld had seen Ms. Parrott on that Thursday, okay? Will
9 you do that for me for purposes of this question?

10 A. Well, nobody at the dinner table had seen her.

11 Q. I know. I'm asking if you will assume that
12 Ms. Auld did in fact see her.

13 MR. REEVES: Objection.

14 BY MR. BUCKNER:

15 A. I think she made a mistake.

16 Q. All right. And had Ms. Auld seen her on that
17 Thursday?

18 A. No. She made a mistake.

19 Q. All right. And why is it that you believe she
20 made a mistake?

21 A. Because she wasn't there for any meal and she
22 didn't contact me, so --

23 Q. All right. And who was at lunch that Thursday,
24 if you ate lunch that Thursday?

25 A. I don't know. We keep changing people at our

1 table. People leave all the time.

2 Q. Do you recall anybody who was there?

3 A. Ellen Haimes and Beulah were two of the oldest
4 ones since I've been there.

5 Q. All right. And --

6 A. And Matilda.

7 Q. All right. How about at dinner? Do you recall
8 who was there on Thursday at dinner?

9 A. Nobody had seen her.

10 Q. But I'm asking you what other residents were at
11 dinner.

12 A. I don't remember who came to dinner and who
13 didn't come to dinner. I mean, they might just come in and
14 you see them and they just take their dinner home and eat
15 it.

16 Q. Is it your understanding that Ms. Beth Auld no
17 longer works here?

18 A. She does.

19 Q. She does work here?

20 A. Yes.

21 Q. Okay. And I don't want to pry, but because
22 you've been identified as a witness and you're giving a
23 deposition today, I have to ask you a couple of questions
24 that I wouldn't otherwise do.

25 Are you on any sort of medication today that

1 would affect your ability to testify in any way?

2 A. I'm on medication but nothing that affects me.

3 Q. All right. What medications are you on?

4 A. I'm -- blood pressure medication.

5 Q. And that's it?

6 A. (Nods head). Well, she put me on an
7 antidepressant when a medication they gave me is not
8 working.

9 Q. All right.

10 A. But it doesn't have anything to do with my
11 ability to remember what happened.

12 Q. Have you spoken -- besides the Parrott family
13 including Ms. Parrott's daughter, have you spoken with
14 anybody else about this case?

15 A. Only Elenore Kissell.

16 Q. And that would be it?

17 A. Yes.

18 Q. All right.

19 A. No. I did tell Barbara Hardy. I remember now.

20 Q. All right. Who is Barbara Hardy?

21 A. She's another resident.

22 Q. All right. Does she still live here?

23 A. It is not mentioned -- it's not been mentioned
24 since I told her about Delila, because she and I became good
25 friends, too.

1 Q. All right. Does Barbara still live here?

2 A. Yes.

3 Q. What apartment does she live in?

4 A. C-1, I think. Right across the street from me.

5 Q. All right. And what apartment was Ms. Parrott
6 in at the time of this incident where she fell?

7 A. She was in S-something. It was only about a
8 half a block from me. I could walk down there.

9 Q. All right. Do you recall who her next door
10 neighbors were on each side --

11 A. No.

12 Q. -- of her?

13 A. No.

14 Q. All right. Did she have folks living in those
15 apartments on each side of her?

16 A. As far as I know, yeah. She told me she took a
17 shoe and banged on the chester drawers but nobody heard her.
18 But she heard me when I was on the porch. She said, well,
19 why didn't you come to the window? I said, I can't answer
20 that, why I didn't. It was only like three feet away. I
21 thought if she couldn't hear me from the door, she couldn't
22 hear me from the window. I didn't -- I didn't go to the
23 window but she wanted to know why I didn't go to the window.

24 Q. I don't think I have any other questions. Thank
25 you for your time.

REEXAMINATION

BY MR. REEVES:

Q. Ms. Watters, do you like living here?

A. What?

Q. You like living here a lot?

A. Yes.

Q. And it's been an enjoyable experience for you?

A. Is this an experience for me?

Q. It's been an enjoyable experience for you?

A. Yes. Yes.

Q. You don't want to hurt anybody at this residence?

A. No.

Q. You just -- have you told the truth today, though?

A. Yes.

Q. Does it bother you to have to tell this story even though you like living here?

A. Well, yes. I just don't want Sandpiper to get mad with me --

Q. Okay.

A. -- for doing it.

Q. But you've told the truth today?

A. Yes.

Q. Thank you, ma'am.

1 A. I just think she would have done it for me and
2 then I did like her daughters. I said I'd do it, so I'm
3 doing it.

4 **Q. And you've told the truth?**

5 A. Yes.

6 **Q. Okay. Thank you, ma'am.**

7 MR. REEVES: That's all I have.

8 MR. BUCKNER: Nothing else.

9 VIDEGRAPHER: This will conclude the video
10 deposition of Ms. Lila Watters. We're off the record
11 at 11:01 a.m. on February 2nd, 2017.

12 (The taking of the deposition concluded at
13 11:01 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, Laura S. DeCillis, Certified Court Reporter and
3 Notary Public in and for the State of South Carolina at
4 Large, do hereby certify:

5 That the foregoing deposition was taken before me
6 on the date and at the time and location stated on Page 1 of
7 this transcript; that the deponent was duly sworn to testify
8 to the truth, the whole truth and nothing but the truth;
9 that the testimony of the deponent and all objections made
10 at the time of the examination were recorded
11 stenographically by me and were thereafter transcribed; that
12 the foregoing deposition as typed is a true, accurate and
13 complete record of the testimony of the deponent and of all
14 objections made at the time of the examination to the best
15 of my ability.

16 I further certify that I am neither related to nor
17 counsel for any party to the cause pending or interested in
18 the events thereof.

19 I further certify that the original of said
20 transcript shall be hereafter sealed and delivered to PAUL
21 L. REEVES, ESQUIRE, Reeves and Lyle, 1527 Blanding Street,
22 Columbia, South Carolina, 29201, and that this original
23 transcript shall be retained by the above party, who shall
24 be responsible for filing same with the court prior to trial
25 or any hearing which might result in a final order on any
issue.

Witness my hand, I have hereunto affixed my
official seal this 15th day of February 2017, at Columbia,
Richland County, South Carolina.

Laura S. DeCillis,
Certified Court Reporter
State of South Carolina at Large
My Commission expires
August 4, 2026

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON) CASE NO.: 2016-CP-10-5379
3
4 The Estate of Delila Parrott,)
5)
6 Plaintiff,) VIDEO DEPOSITION OF
7) LAWRENCE H. BERGMANN, PhD
8 vs.) AUGUST 25, 2020
9)
10 Sandpiper Independent &)
11 Assisted Living-Delaware, LLC,))
12)
13 Defendants.)
14 _____)
15 Video Deposition on oral examination of LAWRENCE H.
16 BERGMANN, PhD, reported by Barbara S. Ham, Court Reporter
17 and Notary Public in and for the State of South Carolina;
18 pursuant to Rule 30 of the South Carolina Rules of Civil
19 Procedure; said Video Deposition was taken via Zoom
20 Videoconference, on Tuesday, the 25th day of August, 2020,
21 commencing at the hour of 2:59 p.m.
22
23
24
25

APPEARANCES:

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ALSO:

JOHN BOSWELL, ESQUIRE
Michael Arrison, Videographer

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Court Reporter's Legend:

dashes [--] Intentional or purposeful interruption

... Indicates trailing off

[ph] Denotes phonetically written

[sic] Written as said

This video deposition is taken in accordance with
the South Carolina Rules of Civil Procedure.

VIDEOGRAPHER: We are now on the record at 2:59 p.m.

on Tuesday August 25, 2020. This is the video
deposition of Dr. Lawrence Bergmann. Counsel has
waived the reading of the caption. Counsel,
please state your name for the record and confirm
your consent to proceed WITH this video
deposition via Zoom, videoconferencing.

MR. REEVES: My name is Paul Reeves, I represent the
Plaintiffs and I consent.

MR. BOSWELL: My name is John Boswell, I also
represent the Plaintiff and I consent.

MR. RIDDLE: My name is Matt Riddle, I represent the
Defendants and I consent.

VIDEOGRAPHER: Will the court reporter please swear
in the witness.

1 It is agreed and stipulated by the deponent and
2 respective counsel that the reading and signing of the
3 video deposition by the deponent is expressly waived.

4 WHEREUPON:

5 LAWRENCE H. BERGMANN, PhD, being duly sworn and
6 cautioned to speak the truth, the whole truth and nothing
7 but the truth, testifies as follows:

8 DIRECT EXAMINATION BY MR. REEVES:

9 Q. Dr. Bergmann, good afternoon. We're here today
10 to take your deposition for use at trial. In as
11 much as you have a conflict - conflict during the
12 week of the trial regarding your testimony in the
13 matter of Delila Parrott versus Sandpiper Senior
14 Living, et al. Could you provide to the court
15 your full name, please?

16 A. Lawrence H. Bergmann.

17 Q. And what is -- are you retired today, Dr.
18 Bergmann?

19 A. I'm retired, but I'm doing some part-time
20 consulting.

21 Q. Okay. And prior to being retired, what did you
22 do?

23 A. I was the owner and director of Post Trauma
24 Resources in Columbia, South Carolina.

25 Q. What type of services does Post Trauma Resources

1 **offer?**

2 A. Post Trauma Resources is a mental health practice
3 that specializes in the treatment of trauma. And
4 so we would both treat patients and we would also
5 work with communities and businesses and
6 organizations after traumatic events happen to
7 provide support services.

8 Q. Generally speaking and often times, when people
9 hear of trauma, they think of physical trauma or
10 physical injury. Would you describe what you do
11 as to how that is different from a physical, an
12 injury of trauma, could cause to the body of a
13 person?

14 A. Well, I think what we're trying to do is to
15 reduce the long-term consequences of exposure to
16 a traumatic event. There's -- there's no way a
17 person isn't going to be upset and bothered by
18 something that they go through, that's really not
19 the goal. But there is some danger that people
20 can experience long-term consequences that can be
21 life disrupting. And so our goal is to try to
22 minimize the probability that that won't happen.

23 Q. Would you provide to the court your educational
24 experience?

25 A. Of course. I have a Bachelor's degree in

1 Sociology from Emory University. After that I
2 had a one-year fellowship at Emory in Social
3 Psychology. Then I went to Eastern Illinois
4 University and received a Master's degree in
5 Clinical Psychology and finally I received a Ph.D
6 in Counseling from the University of South
7 Carolina.

8 Q. All right. And you just explained what you did
9 briefly at Post Trauma Resources. Could you also
10 provide any additional work background, other
11 than your attachment to and ownership in
12 management and participation in Post Trauma
13 Resources?

14 A. Well, part of what I did at Post Trauma
15 Resources, well, I guess there's several parts.
16 Part is that I supervised clinical staff who were
17 providing trauma related care. I also saw a
18 full-time patient case load and that was about 80
19 percent trauma or chronic pain patients and most
20 of those were workers' compensation claimants
21 toward the end of my career. The other thing
22 that I did was respond to traumatic events or
23 coordinate the respondents to traumatic events.
24 So at Post Trauma Resources we would respond to
25 40 or 50 bank robberies a year, multiple other

1 retail robberies. I was the head of
2 psychological services, the fire department in
3 Columbia for about 30 years. Worked with the
4 sheriff's department to work with the sheriff's
5 deputies and provide programing there. And then
6 private consulting, primarily with a large
7 insurance company who as part of their products
8 provided humanitarian assistance and trauma
9 related services to their large corporate
10 clients.

11 Q. How long between the time you started and the
12 time you retired that -- that you carried out
13 those duties you just explained?

14 A. Paul, say that again, I didn't quite understand?

15 Q. How long did you -- how long have you done these
16 things before you retired?

17 A. I started working and I developed Post Trauma
18 Resources as a contractor to the Veteran's
19 Administration in 1982. And from 1982 to 1985,
20 all I did, and all we did, is work with Vietnam
21 Veteran's and their families. And then from 1985
22 to when I retired, about a year and a half ago, I
23 provided the services that I just mentioned to
24 you.

25 Q. Okay. What, if any, experience did you have with

1 **seniors during your practice?**

2 A. Well, consistently I worked with seniors, some of
3 them were veteran's of World War II and Korea.
4 Some of them had been injured at work and lately,
5 as populations grow older veteran's from other
6 wars were coming into see us as well. I think
7 overall my case load was about 20 percent seniors
8 throughout my career, I imagine.

9 Q. All right. Dr. Bergmann, have you rendered
10 expert opinions in the area of trauma and its
11 impact on people in state courts before today?

12 A. Yes, I've been an expert in state courts, in
13 federal courts and also in military courts. And,
14 of course, through my work with workers'
15 compensation claimants, I was deposed many times
16 for workers' compensation hearings. And I think
17 I only had to actually testify in person at one
18 workers' compensation hearing.

19 Q. All right. Have you been certified or
20 acknowledged as an expert in the circuit courts
21 of the state of South Carolina as far as trauma
22 and its impact upon those who suffered?

23 A. Yes, I have.

24 Q. All right. At this point I would offer Dr.
25 Bergmann to the court as a qualified -- as an

1 expert in trauma and its impact and effects on
2 those individuals who have suffered from it. Dr.
3 Bergmann, did you have an opportunity to examine
4 Ms. Parrott?

5 A. No, I did not.

6 Q. Does the fact that you did not examine her
7 prevent you from rendering any opinions about
8 what, if any, trauma she suffered and the impact
9 of that trauma?

10 A. It didn't prevent me from rendering an opinion,
11 but it changed the way that I gathered
12 information to create the opinion, to develop the
13 opinion.

14 Q. Would you explain how or what you mean by that,
15 Dr. Bergmann?

16 A. Sure, in a perfect world, you would have the
17 opportunity to interview an injured party. You
18 would have the opportunity to administer any
19 appropriate tests that might help you gain
20 information. You might talk with family members
21 and then to review information, whether that be
22 medical records or other reports. So in this
23 particular case, unfortunately, Ms. Parrott had
24 passed away. So the information that I used to
25 create my opinions was based on medical records,

1 depositions and there were a few other reports
2 that I looked at as well. So it's still possible
3 to offer an opinion, it just becomes an opinion
4 based on a different set of facts. The other
5 thing that goes into creating an opinion, of
6 course, is using your clinical experience, as
7 well as any pertinent scientific literature. So
8 as mental health professionals we're trained as
9 scientists, as well as practitioners. So using
10 research and understanding how research comes to
11 conclusions is also an important part of
12 developing opinions.

13 **Q. Was there any specific -- I want to use the word**
14 **data or information that you relied upon in this**
15 **particular case as you assessed what, if any,**
16 **impact this traumatic event had on Ms. Parrott?**

17 **A.** I reviewed all the provided medical records. I
18 reviewed all the provided depositions. I
19 reviewed an EMS reports. I also reviewed
20 scientific literature on long-term outcomes of
21 long lives and of the outcomes related to hip
22 fractures.

23 **Q. All right. And were the -- was there anything**
24 **that -- that was missing -- was there anything**
25 **that you would have liked to have seen that you**

1 could not find, other than interviewing Ms.
2 Parrott in person, as far as -- as far as this
3 case is concerned?

4 A. No. I think, of course, an opinion is stronger
5 when you have the opportunity to meet and
6 interview and get to know the injured party and,
7 unfortunately, I wasn't able to do that.

8 Q. Dr. Bergmann, before you reviewed the data and
9 information that you just went over, you didn't
10 have any opinions or conclusions about this case,
11 did you?

12 A. No.

13 Q. All right. And you mentioned a moment ago about
14 an article that, I think you used the phrase,
15 long lie, could you explain what the phrase, long
16 lie means?

17 A. A long lie, is very simply when a person falls
18 and can't get up and when they're unable to call
19 for help and, unfortunately, the result is they
20 are on the ground in a helpless situation for
21 many hours or sometimes many days.

22 Q. All right. Has the phrase or term, long lives,
23 has there been any scholarly articles that have
24 talked about this particular issue or have
25 attempted to present any correlations between a

1 long lie and it's impact on those persons who
2 suffered from that event?

3 A. Yes, there have been.

4 Q. All right. And have you reviewed those articles?

5 A. Probably not all of them, but I reviewed some of
6 them.

7 Q. Okay. All right. Dr. Bergmann, there is a -- a
8 fundamental dispute in this case about when Ms.
9 Parrott fell and how long she was on the floor
10 after that fall. Today, I'm going to ask you to
11 assume some facts that I will put forth so that
12 you can provide opinions based on those
13 assumptions. I'm sure the defense will do the
14 same thing. But I would like to go over a few
15 facts that I'd like to ask you to assume as you
16 or as a basis for your opinions; okay?

17 A. That'll be fine.

18 Q. All right. It was reported by Ms. --

19 A. Can we stop just one second, I'm having an animal
20 issue?

21 Q. Okay. Hold one.

22 A. Pardon me.

23 VIDEOGRAPHER: Off the record at 3:12 p.m.

24 (Off the Record)

25 VIDEOGRAPHER: On the record at 3:13 p.m.

1 Q. Dr. Bergmann, some of the facts that I'd like for
2 you to assume for purposes of your opinion are as
3 follows; Ms. Parrott reported that she fell on
4 Tuesday evening to EMS. She reported to medical
5 staff at Roper Hospital that she fell on Tuesday
6 after she was admitted there. On the evening of
7 June 6th, she fell from a chair and she fractured
8 her hip rendering her immobile. She was without
9 food and water for the period of time that she
10 was on the floor. She was in significant pain
11 due to her hip fracture. She, at some point, had
12 to make the decision to urinate on herself and
13 defecate on herself. All right. She was
14 unattended and she was alone and it appears to be
15 uncontroverted that she was found or rescued by
16 Delila Waters, excuse me, Lila Waters on or about
17 8:00 p.m. on Friday, June 6th, when she said she
18 had fallen on Tuesday evening June 3rd.

19 MR. RIDDLE: And Paul, I'm going to object to that
20 characterization of it being uncontroverted, that
21 she was found by Ms. Lila Waters and the
22 circumstances surrounding when she was found.

23 Q. I'll rephrase. It was uncontroverted that she
24 was found about 8:00 p.m. by whoever found her.
25 And EMS was called and she was taken to the

1 hospital and she was found to have been covered
2 in her own feces. She had dried urine on her
3 body. She suffered two decubitus ulcers, one on
4 the hip, one on the buttock. She had a vaginal
5 discharge, apparently a UTI. Was dehydrated.
6 Her lips were cracked. Her mucosal was dry and
7 she required IV fluids. She also required
8 hospitalization for these issues and the hip
9 fracture. And she was -- had surgical
10 intervention at Roper Hospital and then after a
11 stay in the hospital was then transferred to
12 Sandpiper Rehab. Dr. Bergmann, given these
13 facts, and again I know they are -- there's a
14 controversy about some of that information, but
15 based on these facts, what, if any, opinion do
16 you have to a reasonable degree of professional
17 certainty, as to whether Ms. Parrott suffered a
18 long lie?

19 A. It's my opinion that she suffered a long lie.

20 Q. And what is your opinion, to a reasonable degree
21 of professional certainty, as to what impact that
22 long lie had upon her while she was unattended on
23 the floor?

24 A. I think certainly that would fit the definition
25 of a traumatic event and for some people, for

1 many people, it would result -- it would result
2 in the development of psychological consequences.

3 Q. All right. Dr. Bergmann, what opinion, if any,
4 do you have to a reasonable degree of
5 professional certainty, as to whether Ms. Parrott
6 suffered emotional trauma while she was on the
7 floor and before she was found?

8 A. Well, I don't really think there's any doubt,
9 when you think about the helplessness of the
10 situation, soiling herself. I think, at least
11 one of the records indicated that she might have
12 tried to take her life. I think there's no doubt
13 that this was a horrible and traumatic experience
14 for her.

15 Q. What is your opinion as to, what, if any, longer
16 term impact, her being on the floor under the
17 conditions that we just talked about, after she
18 was rescued and after she was placed in the
19 hospital?

20 A. I think there's ample evidence in the record that
21 this continued to be troublesome for her. There
22 are notes in the record that indicate that she
23 was scared to be alone and needed a lot of
24 reassurance. So I think that it was clear that
25 this was more than just a bad memory. It was

1 something that continued to bother her and be
2 part of her life until her death.

3 Q. I think you said a moment ago, that you would
4 define this, in your opinion, as a traumatic
5 event while she was on, in other words, while she
6 was on the floor was in total, a traumatic event
7 to her and for her. Is that correct?

8 A. Absolutely.

9 Q. All right. Dr. Bergmann, given your experience
10 and your training and your review of these
11 records, would it have been reasonable for Ms.
12 Parrott to have I guess felt a sense of
13 hopelessness while she was there alone?

14 A. Of course. I think hopelessness is just thinking
15 that a horrible thing is going to happen that you
16 might die. And given that her expectations,
17 clearly that she would be found or should be
18 found, hopelessness would be an actual feeling to
19 have.

20 Q. Would it be your opinion that it would be
21 reasonable to anticipate that Ms. Parrott
22 suffered from a sense of helplessness while she
23 was on the floor?

24 A. Well, she was helpless, she couldn't get up. And
25 she couldn't get the help that she needed for a

1 period of time, whatever period of time that is.
2 So I'm sure that helplessness is part of the
3 equation here.

4 **Q. Dr. Bergmann, if Ms. Parrott believed that**
5 **someone would come looking for her, at some point**
6 **on Wednesday, what, if any, impact would the**
7 **event have on her if no one did come on**
8 **Wednesday?**

9 **A. Well, clearly that's when the helplessness would**
10 **develop. And I'm sure, possibly some frustration**
11 **or anger or feelings of being abandoned -- where**
12 **are people. Her expectation was that she was**
13 **going to be rescued and she never was or she was,**
14 **but not until much later.**

15 **Q. Is it your opinion that the longer one is in a**
16 **position of a long lie, the more traumatic the**
17 **impact?**

18 **A. I don't know if it's the linear relationship but**
19 **the longer it is the more likely these emotional**
20 **consequences that we're talking about could**
21 **develop.**

22 **Q. All right. Dr. Bergman, what, if any, impact**
23 **would you anticipate or it would be reasonable to**
24 **anticipate as to how Ms. Parrott would have**
25 **handled either the decision or the surrender of**

1 just losing control of her bodily functions. In
2 other words, she was having to pee on herself,
3 having to defecate on herself. Would you explain
4 what, if any, impact that would have had upon
5 her?

6 A. Well, I think from when we're young, we're told
7 you're not suppose to do that. You're suppose to
8 control your life, yourself and your body. And
9 when you can't do that, that causes a lot of
10 shame and embarrassment. Not to mention and I'm
11 sure it doesn't feel very good to have to have
12 that exposure, that chemical exposure for a long
13 period of time.

14 Q. Is it your opinion, to a reasonably degree of
15 professional certainty that she not only endured
16 the traumatic emotional psychological pain, but
17 also that she endured physical pain?

18 A. I'm not a physician, but everything that I've
19 seen in the records indicates that this was a
20 very painful injury. I think Dr. Mills,
21 emphasized that in his deposition.

22 Q. Okay. All right. I want to ask you a couple of
23 more questions about -- first of all, I know it's
24 common sense that someone in this condition, it's
25 a horrific experience, but on a more basic level

1 and maybe on a more specific level and I know
2 this seems obvious but what, if any, impact would
3 this time on the floor have on her decision
4 potentially to -- did she think about, I'm going
5 to die here, do you think?

6 A. I think most people in that situation would think
7 that.

8 Q. Did the medical evidence, excuse me, the medical
9 record indicate any information that would have
10 been consistent, potentially, with her attempting
11 to take her own life?

12 A. There was some indication in the record that she
13 had an abrasion on her wrist and the -- the
14 conclusion by some providers was that might have
15 been a suicide attempt or --

16 Q. All right. Would you have had - I'm sorry to
17 interrupt you.

18 A. -- or at least the gesture, you know, a way to
19 express her helplessness.

20 Q. Okay. Would you find that to be a reasonable,
21 although very horrific response, to the position
22 and the condition that she was in?

23 A. Yes, I would.

24 Q. All right. Dr. Bergmann, what is -- what is your
25 understanding as to Ms. Parrott's pre-existing

1 **before the fall, pre-existing mental condition?**

2 A. Ms. Parrott was apparently living a relatively
3 stable life, a good life, she was involved in
4 activities and taking care of herself. But she
5 did have a history starting in about 2009, when
6 she developed or first was identified as she had
7 a delusional disorder. She was hospitalized and
8 she continued to experience depression, anxiety,
9 and delusions for the rest of her life.

10 Q. **Okay. Was that particular condition managed or**
11 **not managed after the 2009 hospitalization?**

12 A. I would say it was fairly well managed with
13 periods of increased symptoms. And I think
14 that's typical, you know, changes in life,
15 stress, those kind of things can exacerbate
16 delusional symptoms and it seems like that was
17 the case for Ms. Parrott.

18 Q. **Was there anything in the medical record prior to**
19 **the fall of June 3rd or whenever it took place**
20 **that indicated Ms. Parrott had any type of**
21 **delirium or suffered from a delirium or**
22 **deliriums?**

23 A. No.

24 Q. **When did you notice, if you did, any references**
25 **to her suffering from deliriums?**

1 A. I believe that was when she went to Roper after
2 she was found.

3 Q. Okay. And this might be outside your area of
4 expertise, but it appears that she had deliriums
5 after she had recovered from the anesthesia for
6 the surgery to the hip or do you know?

7 A. Yes, I think she continued to experience that
8 until her passing.

9 Q. Okay. Were the deliriums, in your opinion to a
10 reasonable degree of professional certainty,
11 related to the fall, excuse me, related to the
12 long lie?

13 A. Well, since she didn't experience those symptoms
14 ever before and then she experienced the long
15 lie, you'd have to reasonably conclude that it's
16 connected.

17 Q. All right. Is there any information or
18 indicators that she suffered delirium while she
19 was unattended on the floor?

20 A. I haven't seen any records that indicate that.

21 Q. All right. Do you have an opinion, to a
22 reasonable degree of professional certainty, as
23 to whether the long lie had a traumatic impact on
24 her pre-existing condition?

25 A. I do have an opinion on that.

1 Q. Would you give the court your opinion, please?

2 A. My opinion, and this is based on experience as
3 well as research over the past 40 years in
4 traumatic events, is that people with pre-
5 existing conditions are more impacted by later
6 traumatic events.

7 Q. So she would have been more vulnerable to the
8 impact of this event because of the pre-existing
9 paranoia?

10 MR. RIDDLE: Objection.

11 A. I'm not going to use the word paranoia. I think
12 she had delusions and anxiety.

13 Q. Okay.

14 A. I think her pre-existing condition made it more
15 likely that she would experience those symptoms.

16 Q. All right. Do you believe that exacerbation of
17 the pre-existing condition carried on from the
18 time of the long lie until she passed away?

19 A. I do.

20 Q. All right. Dr. Bergmann, in rendering your
21 opinions today, is there any one particular
22 medical record that stands out or have you based
23 your opinions so far on the overall and the
24 entire record?

25 A. I spent a lot of time in the records and so I've

1 read everything. The records from or the
2 deposition of her daughter. Dr. Mills deposition
3 and records were really important. And then just
4 the ongoing records of her treatment. So I don't
5 think any -- any one thing is more important.
6 But people that knew Ms. Parrott, that
7 information seems really important to me.

8 Q. Are the people that are -- in reviewing the
9 records and determining the information
10 surrounding someone that you were unable to
11 interview because in this case of her untimely
12 death or her death, is the histories and
13 information provided by those who were around her
14 and close to her important in providing
15 information so that you can render an opinion?

16 A. It's really important because obviously they did
17 know her, you know, sometimes when you read
18 medical records you have to remember that people
19 are at work and they're in a rush, medical
20 records aren't always the most important thing
21 that medical providers are doing. So the people
22 that knew her and could talk about her condition,
23 that's really important information and I place a
24 lot of emphasis on that.

25 Q. All right. Dr. Bergmann, the time frame from her

1 entry into Roper until February 9, 2015, which
2 is, I think about 265 days, I may be wrong about
3 that, but is it your opinion that over that
4 period of time, to a reasonable degree of
5 professional certainty, did Ms. Parrott decline
6 as time went by?

7 A. She did decline. And obviously, she declined
8 until she passed in February.

9 Q. All right. In reviewing all the medical records
10 and there's a voluminous amount here, do those
11 medical records as a whole indicate a decline
12 from the time that she entered Roper until she
13 passed away in February of 2015?

14 A. They do. Of course, first she went to rehab and
15 then she had a hospital stay related to this
16 incident and eventually she had to be transferred
17 from Sandpiper's Rehab to another facility. A
18 facility that could take care of her increased
19 needs.

20 Q. Dr. Bergmann, what is your understanding of, I'm
21 going to use the word daily activities, although
22 that's not really, it's not really -- I'm looking
23 for a medical diagnosis of her activities of
24 daily living. But before the fall and the long
25 lie, what is your understanding of Ms. Parrott's

- 1 activities throughout the day, a normal day or
2 week?
- 3 A. From everything I can read, she was functioning.
4 She had some visual issues and some medical
5 issues. But she was with people. She was
6 involved in activities. I think I recall that
7 she was able to use a computer. So overall, I
8 think her condition was good.
- 9 Q. Based on the reporting of those who were around
10 after the fall, was she as active with those
11 types of activities after she had suffered the
12 long lie?
- 13 A. No, she wasn't, not according to the records.
- 14 Q. All right. I'm not sure if I've asked you this
15 before, but based on the records and your
16 understanding of the histories given, did Ms.
17 Parrott return to independent living after the
18 long lie?
- 19 A. No, she did not from my reading of the records.
20 She did not.
- 21 Q. All right. Going back to some of the articles
22 that you may have reviewed, is there a
23 correlation between long lies and the inability
24 to return to independent living?
- 25 A. Yes, there is.

1 Q. All right. And what is that correlation?

2 A. That -- that older people who have long lies tend
3 to be unlikely to return to independent living,
4 that's what the research suggests.

5 Q. Okay. Dr. Bergmann, did -- did you find anything
6 in your review of the record as to whether or not
7 Ms. Parrott suffered any complications related to
8 the hip injury itself?

9 A. Apparently, she did really well. I know that in
10 the beginning she experienced pain, that seems
11 reasonable. But most of the notes indicated that
12 her pain was fairly well tolerated and controlled
13 with medication.

14 Q. Dr. Bergmann, earlier I asked a question I think
15 Mr. Riddle objected to, I think I misspoke about
16 a pre-existing condition, I want to make sure I
17 try to get this correct so there's no objection.

18 A. Okay.

19 Q. Is it your opinion that the long lie aggravated,
20 contributed or caused her pre-existing condition
21 of, I think delusional disorder?

22 A. I'm going to have to restate that.

23 Q. Sure.

24 A. Because I'm not -- I'm not sure about the
25 question. But it's my opinion that the long lie,

1 her pre-existing condition, psychological
2 condition, was exacerbated by the long lie.

3 Q. Okay. Do you have an opinion as to a reasonable
4 degree of professional certainty as to whether
5 the long lie impacted or aggravated or
6 contributed to her death?

7 A. I do have an opinion.

8 Q. What is that opinion?

9 A. It's my opinion that the psychological
10 consequences that she experienced contributed to
11 her death.

12 Q. All right. It's my understanding, according to
13 the records that she passed away on February 9,
14 2015, is that your understanding?

15 A. That's my understanding, yes.

16 Q. Okay. As to the circumstances surrounding her
17 death, was she being treated by Hospice at the
18 time of her death based on your review of the
19 records?

20 A. Yes, she was.

21 Q. All right. Dr. Bergmann, I think that's all the
22 questions I have for right now. I would like to
23 go off the record for just a few minutes, please?

24 VIDEOGRAPHER: Off the record at 3:34 p.m.

25 (Off the Record)

1 VIDEOGRAPHER: On the record at 3:35 p.m.

2 Q. Dr. Bergmann, that's all the questions I have for
3 right now. Mr. Riddle has some questions for you
4 and I may have a follow up. But thank you for
5 your testimony.

6 DR. BERGMANN - CROSS-EXAMINATION BY MR. RIDDLE:

7 Q. All right. Dr. Bergmann?

8 A. Yes.

9 Q. Hello. Good to see you again.

10 A. Good to see you.

11 Q. We met before your deposition and I think we've
12 met maybe one or two other times before that.

13 A. That's correct.

14 Q. But I'll introduce myself again, my names Matt
15 Riddle and I represent Sandpiper in this case
16 along with my partner, Jay Davis. We're with
17 Young Clement Rivers, law firm. And I'll just
18 have a few questions for you here. And Paul
19 established some of this in his questioning, but
20 I just to clarify for my purposes here. You
21 understand that Ms. Parrott fell in June 2014.
22 She fractured her hip. She had hip surgery. And
23 then she underwent a period of rehab after that
24 surgery; right?

25 A. Yes.

1 Q. Okay. And you're not offering any opinion here
2 today that her hip fracture was made worse as a
3 result of any period of time she lay on the
4 ground after her fall, before she was found?

5 A. That's really outside the range of my
6 professional experience.

7 Q. Okay. So you're not offering any opinion about
8 the hip, itself?

9 A. No.

10 Q. Okay. And you're not testifying that her
11 recovery from the hip surgery was delayed or
12 complicated by any period of time she lay on the
13 ground after the fall?

14 A. No.

15 Q. And now, Dr. Bergmann, in your opinion, Ms.
16 Parrott did not have clinical PTSD as a result of
17 the incident that's the subject of this case?

18 A. No.

19 Q. Is that correct?

20 A. That's correct, yes.

21 Q. And likewise, she was never clinically diagnosed
22 with schizophrenia. Is that right?

23 A. I don't believe so. That's come up in the
24 records, but her symptoms don't really fit
25 schizophrenia.

1 Q. And Paul mentioned that she died on February 9,
2 2015 about eight months after her fall at
3 Sandpiper, the previous June?

4 A. That's my understanding, yes.

5 Q. And the cause of death listed on the death
6 certificate was schizophrenia and --

7 A. I know.

8 Q. -- with adult failure to thrive as another
9 significant condition. Is that correct?

10 A. That's what the record says, yes.

11 Q. All right. But in your opinion, schizophrenia
12 being listed as a cause of death was not
13 accurate?

14 A. I'm not sure how you can die from the symptoms of
15 schizophrenia. You can die from the car crash
16 you're in because you're mentally ill. But I
17 don't see that as a cause of death and I've never
18 heard of that being a cause of death.

19 Q. Okay. And she was not diagnosed with
20 schizophrenia in the first place; right?

21 A. Not that I know of.

22 Q. Okay. And then second of all, people don't die
23 from schizophrenia?

24 A. I don't think so, you know, maybe someone could
25 correct me. No, it's a neurological disease, but

1 I've never heard of anybody dying from that
2 specific set of symptoms.

3 Q. Now, I just want to make sure that I'm clear and
4 that I can establish for the purposes of my
5 questions here, again, exactly what your
6 testimony is here today. So your -- your opinion
7 is that Ms. Parrott's fall itself, was traumatic,
8 that lying on the ground for some period of time
9 after the fall was traumatic and that this trauma
10 contributed to Ms. Parrott's demise and
11 ultimately her death? Is that a fair
12 characterization of your opinion?

13 A. Yes, it is.

14 Q. All right. Now, Doctor, you understand that the
15 Plaintiff in this case has not alleged any wrong
16 doing, as to Sandpiper with regard to Ms.
17 Parrott's fall itself, and the resulting hip
18 fracture; correct?

19 A. I think I'm aware of that. I think she fell
20 trying to set some curtains up or manipulating
21 curtains in some way.

22 Q. Right. So you understand that she, Ms. Parrott,
23 apparently climbed up on the back of a chair to
24 hang some curtains and she fell and broke her
25 hip?

1 A. That's close to my understanding, yes.

2 Q. And you'd agree, obviously, that a fall like that
3 and a very painful hip fracture by itself would
4 be traumatic for anyone?

5 A. No, not necessarily. It could be traumatic for
6 some people.

7 Q. All right. A person in Ms. Parrott's position,
8 was she more vulnerable to being impacted by a
9 trauma, such as a fall from a height and a
10 painful hip fracture?

11 A. I would think so, yes.

12 Q. Okay. And Ms. Parrott was 80 years old at the
13 time of this fall; is that so?

14 A. I think so. Yes, I think so.

15 Q. She had a history of macular degeneration, is
16 that right?

17 A. That's correct.

18 Q. And that's a disease of her eyes, it caused her
19 -- it impacted her vision, is that right?

20 A. Yes.

21 Q. Okay. And Paul mentioned before that she had a
22 history of a serious pre-existing psychological
23 condition that required hospitalization in 2009
24 for delusional parasitosis?

25 A. Yes, I'm just going to change the emphasis of the

1 way you described that, if that's okay. She had
2 the one hospitalization, but after that period of
3 time, her symptoms seemed to be managed fairly
4 well.

5 Q. All right. In 2009, that hospitalization for
6 delusional parasitosis, she also expressed
7 suicidal ideations; is that correct?

8 A. I believe that's the case, yes.

9 Q. I believe she had told the doctors, specifically
10 with regard to delusional parasitosis, that she
11 believed insects were infesting her body, laying
12 eggs and bugs were crawling into her orifices to
13 the point where she was using duct tape to cover
14 her orifices to prevent the bugs from coming in.
15 Is that correct?

16 A. Yes.

17 Q. All right. And she expressed clear intent to
18 commit suicide in 2009, with stated plans for
19 overdosing on pain medication?

20 A. I don't recall that, but I think you're reading
21 from the record, so it sounds like that's
22 accurate.

23 Q. Okay. And would you have any reason to dispute
24 that that does appear in the 2009 Palmetto
25 Baptist Hospital records?

1 A. No, I'm not disputing it. I just don't recall,
2 that's why I was saying I didn't recall.

3 Q. Okay. All right. And you did mention, Dr.
4 Bergmann, that by the time she moved into
5 Sandpiper, this delusional parasitosis condition
6 appeared to be under control; right?

7 A. Control in the sense that she still had periods
8 of delusions but that she was able to live this
9 independent life that I described before.

10 Q. Okay. And so at that point she wasn't having
11 intense delusions of insects crawling into her
12 body. And she wasn't expressing the intent to
13 commit suicide at the time she was admitted to
14 Sandpiper Independent Living?

15 A. No, not that I'm aware of. No.

16 Q. Okay. But in the weeks and months before her
17 fall in June 2014, she did continue to express
18 delusions. Would you agree with that?

19 A. That's correct, yes.

20 Q. Okay. And so for someone with that history, just
21 a fall from a height and a painful hip fracture
22 requiring surgery with placement of hardware,
23 loss of mobility, weeks and months of intense
24 painful rehabilitation, those circumstances alone
25 would be taxing for someone like Ms. Parrott;

1 correct?

2 A. They very well could be.

3 Q. And so, Doctor, do you agree there were multiple
4 factors that contributed to Ms. Parrott's demise
5 and death?

6 A. Absolutely, I do.

7 Q. So we just discussed the fall itself, hip
8 fracture, difficult rehabilitation, loss of
9 mobility. Ms. Parrott, the medical records
10 reflect also had a lacunar infarcts, chronic
11 microvascular ischemic disease, also know as mini
12 strokes. And in your testimony here is that the
13 period of time that she lay on the ground was
14 also a factor --

15 A. Yes, absolutely.

16 Q. -- that contributed to her demise and death?
17 Okay. But you're not able to parse out which of
18 those factors or any others there may be had more
19 of an impact on her than any other?

20 A. I don't see how anybody could do that reasonably.

21 Q. And your testimony is not that the trauma from
22 any period of laying on the ground was a greater
23 than 50 percent contributing factor as compared
24 to any other factor to her demise?

25 A. I don't think I would put a number on it. I

1 think it's significant.

2 Q. And along those same lines, Doctor, you're not
3 able to state here today with any degree of
4 professional certainty, that Ms. Parrott's death
5 would not have occurred, but for the period of
6 time that she lay on the ground after the fall?

7 A. I think it contributed to her death and hastened
8 her demise.

9 Q. But to answer my question, Doctor, is it your
10 opinion that her death would not have occurred,
11 but for the time period she lay on the ground
12 after the fall?

13 A. I think it's my opinion that that's a real
14 possibility, yes, because of the impact of the
15 long lie. I think that was a significant factor
16 in her eventual death.

17 Q. You think that the long lie was a greater than 50
18 percent impact on her eventual death as compared
19 to the other factors that we just discussed?

20 A. I'm not ready to place a number on it. So I'm
21 just going to stick with significant or quite
22 significant. I'm not sure what the difference is
23 between 49 and 51 percent so I don't think I can
24 really answer that question. It did appear that
25 she was recovering from the hip and her rehab was

1 going well, but in the records there's just
2 continual references to her needing reassurance,
3 or being depressed, being anxious. And I don't
4 think you can discount the significance of those
5 things -- of those symptoms.

6 Q. Dr. Bergmann, with regard to what you just said,
7 that -- that you believe there's a possibility
8 that her death would not have occurred but for
9 the period of time she lay on the ground after
10 the fall. Do you recall my questions in your
11 deposition about that specific opinion?

12 A. No.

13 Q. Okay. And for the record I'm going to refer to
14 Dr. Bergmann's deposition testimony. Paul, you
15 want me cite a page number for you?

16 DR. BERGMANN: Let me -- if you give me a second, I
17 can look at that as well, please?

18 MR. RIDDLE: Sure.

19 MR. REEVES: I would place an objection on the record
20 that if you plan to impeach him, you have do it
21 properly. And I would object to the form so far.

22 MR. RIDDLE: Paul, I'll give you a minute to find that
23 transcript.

24 MR. REEVES: Sure.

25 DR. BERGMANN: I have it.

- 1 MR. RIDDLE: Thank you.
- 2 MR. REEVES: Just one second, please?
- 3 MR. RIDDLE: Just let me know when you're ready.
- 4 MR. REEVES: Sure, thanks. I'm sorry, hold on one
- 5 second. Okay. Thank you for waiting.
- 6 Q. All right. So, Dr. Bergmann, I asked you just
- 7 now the question, isn't it true you aren't able
- 8 to state -- you are not able to state that Ms.
- 9 Parrott's death would not have occurred but for
- 10 the period of time she lay on the ground after
- 11 the fall? And I believe your response was, I
- 12 believe that possibly could be the case. Is that
- 13 -- is that accurate?
- 14 A. I think so, yes.
- 15 Q. Okay. And so I'll just refer you to your
- 16 testimony from the deposition that we conducted
- 17 on June 25, 2020, that was conducted via remote
- 18 video conference. Do you recall that?
- 19 A. I do.
- 20 Q. All right. I had some questions for you about
- 21 your opinions that day. Paul was also there and
- 22 I believe you were in the same room testifying
- 23 that day, if I'm not mistaken.
- 24 A. That's correct.
- 25 Q. I remember those hats on the wall back there.

1 And my only question, Doctor, the only thing I
2 want to draw your attention to here is on page 81
3 of this deposition, beginning on line number
4 seven.

5 A. Okay.

6 Q. And I'll read this and you can just tell me if I
7 have read it correctly. Question: Do you intend
8 to provide the opinion at trial that her decline
9 and death would not have occurred but for some
10 alleged delay in finding her? Answer: I don't
11 think there's anybody that can say that. Did I
12 read that correctly?

13 A. Yes. Are you going to read the rest of it,
14 because I think I just pretty much said the same
15 thing.

16 Q. Well, Doctor, my question just now was a yes or
17 no question. Do you believe that her death would
18 not have occurred but for the fall or --

19 A. I think it would be helpful to read the rest of
20 my response because I really think that I said
21 just about the same thing. I said, I couldn't
22 give you a percentage but that I -- but that her,
23 she had increased symptoms and that it can
24 shorten the life span.

25 Q. Okay.

1 A. I don't really see any inconsistencies there at
2 all.

3 Q. All right. So you don't see any inconsistency
4 between saying that you don't think there's
5 anybody that can say she would not have died but
6 for the time she lay on the ground versus --

7 A. I think you forgot to read line 12 and then 13,
8 14 and 15.

9 Q. Well, I didn't forget to read it. I just think
10 that -- that I asked you the question today --

11 A. And I gave you the same answer really.

12 Q. All right.

13 A. In fact, I'm surprised how similar it is. I
14 didn't read it before this testimony, but it
15 seems very consistent.

16 Q. All right. So just to be clear, your opinion is
17 the same today as it was at the time I took your
18 deposition?

19 A. I think so.

20 Q. Last June; okay. All right.

21 A. From my reading of my opinion.

22 Q. Okay. Thank you. All right. So continuing
23 along those same lines, Doctor, any psychological
24 decline that Ms. Parrott exhibited after her
25 fall, you are not able to say here today that

1 this psychological decline would not have
2 occurred but for the period of time she lay on
3 the ground after the fall?

4 A. I think I can say it's much, much more likely
5 that because of the circumstances of the lie that
6 we've talked about, the urine, the feces, the
7 significant length of time, the helplessness, the
8 hopelessness, that she would not have developed
9 those psychological symptoms that she did after
10 she was found.

11 Q. All right. Is it your opinion, 50 percent or
12 greater, that she would not have developed those
13 symptoms but for the period of time she lay on
14 the ground after the fall?

15 A. Are you referring to the psychological symptoms?

16 Q. Yes.

17 A. Yes. I think it's the cause of the exacerbation
18 of her symptoms, was ultimately related to the
19 long lie.

20 Q. Excluding the trauma from the fall itself and the
21 pain from the hip fracture?

22 A. I didn't -- I didn't exclude that, I was just
23 answering the question.

24 Q. Do you think that the period of time she lay on
25 the ground after the fall was a greater

1 contributing factor to her decline, psychological
2 decline, than the hip fracture, the fall itself,
3 the pain from the fracture, the surgery and the
4 loss of mobility and her rehabilitation?

5 A. No one's asked me before, but I think, yes.

6 Q. All right. Now, with regard to the delay, the
7 alleged delay in finding Mr. Parrott, you don't
8 know how long she lay on the ground after this
9 fall, do you?

10 A. No, I don't.

11 Q. And you're aware that Ms. Parrott was not wearing
12 or did not use her emergency call button after
13 the fall?

14 A. I wasn't aware she had one. I know that she
15 didn't use it or she would have been rescued
16 earlier.

17 Q. And are you aware that the EMS record states that
18 neighbors saw Ms. Parrott walking around the day
19 before?

20 A. I think I recall that, yes.

21 Q. And that there's other evidence in the form of
22 witness testimony and medical expert testimony
23 that will support that statement in the EMS
24 record?

25 A. I'm aware there's controversy and disagreement

1 about how long Ms. Parrott was down.

2 Q. All right. So one possible scenario, according
3 to this EMS record and other evidence that we'll
4 present, was that Ms. Parrott had fallen sometime
5 on Thursday, did not have or use her emergency
6 call button and she was discovered the next
7 Friday night, June 6th. You understand that as
8 one possible scenario?

9 A. Yeah, I know there are several different
10 scenarios and I'm not at a place to judge which
11 scenario might be accurate.

12 Q. All right. But just to be clear about what we're
13 talking about, in terms of the period of time she
14 lay on the ground after the fall, that's one
15 possible scenario. The other is that -- is one
16 that Ms. Parrott alleges that she was on the
17 ground after the fall for 48 hours or more;
18 right?

19 A. Yes, those are the two primary scenarios I've
20 heard.

21 Q. And you're not able to state with any specificity
22 the degree of difference it would have made in
23 terms of her alleged psychological decline
24 between one scenario and the other?

25 A. Oh, I think I might be able to do that. I think

1 if she had expected to be rescued because people
2 may or may not have been checking on her, the
3 more time went by the more hopeless she would
4 have been and the more desperate she might have
5 been as well. Now, where exactly what that time
6 frame is, I don't think I can really describe
7 that. I don't think anybody else can either.

8 **Q. You don't know what difference precisely it would**
9 **have made in her psychological decline between a**
10 **period of time laying on the ground for 24 hours**
11 **after the fall versus 48 hours?**

12 A. No, I'm not so concerned about that number. But
13 I think there's a big difference between 20
14 minutes and 24 hours.

15 **Q. Well, Doctor, I don't believe that anyone has**
16 **alleged that someone at Sandpiper should have**
17 **discovered her within 20 minutes.**

18 A. No, I'm just making the point that 24 hours is a
19 significant period of time, 48 hours is a
20 significant period of time. Twenty-minutes,
21 three hours is not nearly so significant. I'm
22 not suggesting that anybody is alleging that.
23 I'm just trying to make the point that the length
24 of time is important.

25 **Q. Ms. Parrott, switching gears a little bit, Ms.**

1 Parrott did not exhibit delusional parasitosis
2 during the period after her fall until death
3 eight months later, did she?

4 A. Apparently not. I didn't see that in the
5 records, she had other delusional experiences but
6 not the parasitosis.

7 Q. And there's nothing in the medical records that
8 states that Ms. Parrott expressed clear intent to
9 commit suicide after the fall until her death in
10 February 2015. Is that correct?

11 A. I think there are references to her wishing that
12 she were dead. So I think that's different than
13 saying, I'm going to kill myself by hanging or
14 shooting. But -- but clearly, she was feeling
15 hopeless in that period after she fell, after she
16 was injured.

17 Q. Right. And I think -- I think this is what
18 you're getting at. So the medical records in
19 2009 talked about reference with clear intent,
20 with plans to commit suicide after the fall until
21 her death in February of 2015. There's no such
22 reference in the medical records. Is that right?

23 A. And that could be for a number of reasons or two
24 primary ones that I can think of. One is, she
25 didn't have any suicidal intent or the people

1 that were interviewing her weren't educated about
2 how to assess suicidal risks. So I wouldn't
3 expect necessarily a nurse to be able to elicit
4 that information. But, you know, given that it
5 isn't in the record clearly, you know, the intent
6 wasn't expressed in a way that anybody
7 interpreted immediate danger.

8 Q. But she was seen by doctors, her own primary care
9 doctor, the hospital physicians, hospice
10 physicians during that eight-month period from
11 the time of her fall until her death; right?

12 A. That's correct, yes.

13 Q. Okay. And there's thousands of pages of records
14 during that period of time?

15 A. There's a lot of records. Yes, sir.

16 Q. Okay. And you mentioned this before that there
17 is reference in the hospital records after her
18 fall to a laceration on her left wrist?

19 A. Yes.

20 Q. But there's no indication in that record as to
21 what the cause of that abrasion or laceration was
22 on her left wrist?

23 A. Not that I'm aware of.

24 Q. Okay. And the records certainly don't reference
25 any comments from Ms. Parrott that she tried to

1 cut her wrists?

2 A. I don't recall any. I can't remember.

3 Q. Now, you said before that you thought some
4 providers had interpreted that wound on her wrist
5 as consistent with a suicide attempt. Is that
6 correct?

7 A. It's -- I've heard it's been brought up, I can't
8 really tell you anymore about it than that,
9 unfortunately, sorry.

10 Q. I think we talked about in your deposition that
11 Ms. Acosta had come to that conclusion in her,
12 according to her deposition testimony. Does that
13 sound familiar?

14 A. That does sound familiar.

15 Q. Okay. Do you know of any doctors or medical
16 providers who reached that same conclusion?

17 A. Not that I can recall, no.

18 Q. Okay. You made a comment earlier, Doctor, that
19 the information from a person's family members
20 and friends and people close to that person are
21 important for your determination of or
22 development of your opinions?

23 A. Yes. It's one part of the information that's
24 important to me.

25 Q. Okay. And you made a comment about medical

1 **records sometimes not being the most important**
2 **part of the doctors practice?**

3 A. Well, I didn't mean as in, not important, I meant
4 that in the rush through everyday work and having
5 been a practitioner for 40 years, I know this,
6 notes don't always reach the highest priority.
7 You write the notes, you have to. And if we all
8 had unlimited time we'd probably write a lot
9 better notes, maybe more complete.

10 **Q. All right.**

11 A. But that's just the reality of healthcare.

12 **Q. All right. But generally speaking, would you**
13 **agree that it's part of a, I guess medical**
14 **standard of care to accurately keep notes and**
15 **document the treatment that is provided and the**
16 **results of the examination?**

17 A. Of course. I'm just talking about the real
18 world.

19 **Q. And generally speaking, the information in the**
20 **medical records is reliable; right?**

21 A. Yeah, generally speaking it is. I'm not
22 suggesting it's not good information. If people
23 had more time, we might have more information. I
24 think that's all I'm really saying.

25 **Q. Doctor, I believe in your deposition you told me**

1 that your experience doing trial expert work and
2 testimony is about 75 percent on the Plaintiff's
3 side. Is that correct?

4 A. Yeah, in testimony, yes. My clinical work was
5 almost always approved by defense, the defense.

6 Q. Okay. So your work with workers' compensation
7 claimant patients was authorized by the employers
8 and their insurance carriers, in treating those
9 workers' compensation plaintiffs?

10 A. Right. Because they control the process here in
11 the state.

12 Q. But as far as testimony like you're presenting
13 today, about 75 percent has been on the
14 claimant's side. Is that correct?

15 A. Yes.

16 Q. Okay. And I believe you mentioned that there was
17 an incident with the counseling review board when
18 there was distinction --

19 A. That's correct.

20 Q. -- and you paid a fine at some point?

21 A. They -- they contended that I was not
22 appropriately licensed. I contended that I was
23 appropriately licensed that they had told me that
24 I could practice with a supervisor's license, we
25 disagreed. I needed to get back to work. I paid

1 the fine and took test and returned to work.

2 Q. It's hard to fight city hall; right?

3 A. I wished I could have, but I needed to work.

4 Q. Sure. As far as relying on statements outside of
5 the medical records, of course, you rely on the
6 credibility of those statements too -- and that's
7 important for you in developing your opinions;
8 correct?

9 A. I apply a certain amount of cynicism to people's
10 statements and hopefully, that's appropriate.
11 The best information, as I mentioned before,
12 comes from interviews and objective tests. After
13 that, it's our judgment as to how credible the
14 information we receive is.

15 Q. Right.

16 A. And that's hard.

17 Q. You didn't get a chance -- you didn't get a
18 chance to examine or interview Ms. Parrott in
19 this case?

20 A. No, I did not.

21 Q. All right. Thank you, Doctor. I don't have any
22 other questions at this time.

23 A. Thank you.

24 DR. BERGMANN - RE-EXAMINATION BY MR. REEVES:

25 Q. Dr. Bergmann, if it pleases the court, I have a

1 couple of follow up questions. You were asked
2 about or you agreed that Ms. Parrott had never
3 received or did not receive an actual diagnosis
4 for Post Traumatic Stress Disorder in this
5 matter?

6 A. That's correct.

7 Q. All right. Does the fact that there was no
8 diagnosis in anyway diminish the trauma that she
9 suffered as a result of the long lie?

10 A. No, the diagnosis is a set of symptoms that are
11 required to write down that diagnosis. There are
12 many other trauma related symptoms or some
13 symptoms that go into that diagnostic criteria
14 that are just as significant and just as
15 damaging. You know, it comes from the DSM,
16 everybody's got to deal with, you know, the
17 criteria. In the end it's really just a label,
18 but traumas, trauma. And clearly you can have a
19 traumatic event with different kinds of symptoms
20 or different sets of symptoms.

21 Q. And in this case, regardless of the, excuse me,
22 the lack of the diagnosis for PTSD does not in
23 anyway impact your opinions that Ms. Parrott
24 suffered, to a reasonable degree of professional
25 certainty, trauma as a result of the long lie?

1 A. No. It's just, it's irrelevant.

2 Q. Okay. You were asked also about whether or not
3 Ms. Parrott had suffered post-fall and post-long
4 lie any delusional parasitosis. In fact, Dr.
5 Bergmann, even though she was hospitalized in
6 2009, is there any record indicating that she
7 suffered from that particular malady, delusional
8 parasitosis, ever again? I know she had some
9 delusional issues, but there was never a report
10 about that was there?

11 A. I don't recall seeing the mention of those
12 particular delusions again.

13 Q. Okay. Dr. Bergmann, finally, you were asked some
14 questions about your referencing the credibility
15 of the people involved. Is there a way for any
16 -- is there a formula to determine whose telling
17 the truth?

18 A. No. And research suggests that mental health
19 people are just as bad at determining the truth
20 as anybody else.

21 Q. All right.

22 A. We don't have special insight into people.

23 Q. I see.

24 A. I wish we did.

25 Q. And again, before the long lie based on the

1 history that you were given and the records that
2 you reviewed, how would you describe Ms.
3 Parrott's everyday life before the long lie while
4 she was at Sandpiper?

5 A. It seems like she was functioning fairly well for
6 an 80-year old lady.

7 Q. Okay. Dr. Bergmann, thank you very much. I
8 appreciate your time.

9 A. Thank you.

10 MR. RIDDLE: I don't have any other questions, thank
11 you.

12 VIDEOGRAPHER: This concludes today's deposition of
13 Dr. Bergmann. We're off the record at 4:13 p.m.

14 (There being no further questions, the deposition
15 concluded at 4:13 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, BARBARA S. HAM, COURT REPORTER AND NOTARY PUBLIC IN
3 AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE VIDEO DEPOSITION OF LAWRENCE H.
5 BERGMANN, PhD, ON TUESDAY, THE 25TH DAY OF AUGUST, 2020,
6 THAT THE WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE
7 FOREGOING 54 PAGES CONSTITUTE A TRUE AND CORRECT
8 TRANSCRIPTION OF SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
10 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO PAUL L.
15 REEVES, ESQUIRE, REEVES & LYLE, LLC, 1527 BLANDING STREET,
16 COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN THIS SEALED
17 ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE FOR FILING
18 SAME WITH THE COURT PRIOR TO TRIAL OR ANY HEARING WHICH
19 MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.

20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS
21 3RD DAY OF SEPTEMBER 2020.

Barbara S. Ham

22
23 BARBARA S. HAM, COURT REPORTER

24 MY COMMISSION EXPIRES APRIL 13, 2026
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CA#: 2016-CP-10-5379

THE ESTATE OF DELILA PARROTT,

)
)

Plaintiff,

)
)

vs

PLAINTIFF'S PRE-TRIAL
BRIEF

SANPIPER INDEPENDENT AND
ASSISTED LIVING-DELAWARE,
LLC

)
)

Defendant.

)
)

I. A concise, non-argumentative statement of the facts of the case.

This case arises from the damages Delila Parrott, an 80-year-old resident of Sandpiper Senior Living Center, suffered after falling and breaking her hip and being on the floor of her apartment from Tuesday evening to Friday evening with no one from Sandpiper rescuing her.

Ms. Parrott and her daughter, Joan Acosta, began to look for a suitable senior residence for Ms. Parrott in early 2013. Ms. Parrott and Acosta met with Corrine Carrington, the Director of Sandpiper's senior living facility prior to making the decision to lease a residence at Sandpiper. One of the facts that led Parrott and Acosta to choose Sandpiper was Sandpiper's representations that it had a policy (hereinafter referred to as the "Policy") of visually accounting for each of the residents daily. Based on the existence of the Policy and other factors, Ms. Parrott executed a lease with Sandpiper on April 26, 2013 and moved into Sandpiper's senior complex (an assisted living place and a nursing home are located on the same property). The executed lease did not reference the Policy that was presented to Ms. Parrott by Carrington.

The lease contained an arbitration clause denying Ms. Parrott any redress outside of arbitration. After the pleadings were filed, the parties agreed to waive the arbitration requirement and allow this Court to hear the matter non-jury.

Ms. Parrott suffered mild paranoia prior to moving onto Sandpiper's complex. While she enjoyed her privacy, she functioned well and was independent in carrying out activities usually associated with someone her age, such as managing her financial affairs, managing a small stock account, paying bills, socializing, using a computer, watching her favorite television shows, and going away from the property to shop and visit with friends and family. She was in excellent physical health, which allowed her to quickly recover from the physical injuries of her fall.

While Ms. Parrott lived alone at Sandpiper, she became friends with Lila Waters (and others) who also resided at Sandpiper. Ms. Parrott and Ms. Waters interacted often and would socialize and have meals together.

Ms. Parrott changed the locks to her residence on March 4, 2014. Shortly after the lock was replaced, Ms. Parrott gave a copy of the residence key to Carrington. Carrington notified other staff about the key and told staff where to locate the key, as it was kept with the other residents' master keys. Ms. Parrott's residence was less than a minute from the office where staff and a copy of her residence key were located.

On Tuesday June 3, 2014, Ms. Parrott fell in her apartment. She was trying to manipulate a curtain while standing on a chair. The fall caused her to fracture her hip and rendered her immobile and in pain.

Sandpiper admits to knowing that Ms. Parrott was missing and unaccounted for on Wednesday. Staff, per the Policy, telephoned Ms. Parrott's residence but could not get Ms.

Parrott to answer the telephone. Staff then visited Ms. Parrott's apartment and could not get her to the door. Staff tried to enter Ms. Parrott's residence; however, staff brought the wrong key and therefore could not open the lock. Staff then returned to the office and, rather than returning with the correct key, took no further action to account for Ms. Parrott.

Lila Waters reported to staff on Thursday that Ms. Parrott was missing. She also reported to staff that Ms. Parrott was missing on Friday. Sandpiper will offer testimony that Ms. Parrott was seen and checked off by staff on Thursday but Sandpiper has been unable to produce records that would substantiate that Ms. Parrott was seen on Thursday.

Ms. Parrott was found on the evening of Friday, June 6 at 8 p.m. by Lila Waters. There is a controversy about whether staff was also involved in rescuing Ms. Parrott. Ms. Parrott was covered in feces, dried urine, had decubitus ulcers on her thigh and buttock and was in pain. She was taken by EMS to Roper Hospital, where she was admitted for a treatment of the hip fracture, decubitus ulcers, dehydration, and infection.

After the fall and lying on the floor for three days, Ms. Parrott recovered fully from the hip fracture and other physical injuries associated with the fall but never returned to independent living. She spent time in a rehabilitation hospital. She was then moved to an assisted living complex. She was hospitalized in October 2014. She then was moved to a nursing home and finally entered hospice in January of 2015. She died on February 9, 2015.

Ms. Parrott's estate brought this action for conscious pain and suffering and wrongful death.

II. An objective statement of the issues in controversy.

1. Whether the Policy of visually confirming the wellbeing of each resident daily existed at the time Ms. Parrott entered Sandpiper?
2. Whether the Policy provided instructions as to how staff was to respond to a missing resident?
3. Whether the Policy created a duty for Sandpiper to confirm the wellbeing of its residents daily?
4. Whether Sandpiper followed the steps of its Policy relevant to its treatment of Ms. Parrott?
5. Whether Ms. Parrott was on the floor, immobile and unattended from June 3, 2014 to June 6, 2014 or for a shorter period of time?¹
6. Whether Ms. Parrott suffered conscious pain and suffering from the long lie, from June 3, 2014 until she was rescued on June 6, 2014?
7. Whether Ms. Parrott suffered conscious pain and suffering from the point of her rescue from the long lie until February 9, 2015?
8. Whether the long lie, as opposed to the actual broken hip, caused, aggravated, and/or contributed to her death on February 9, 2015?
9. Whether Ms. Parrott is entitled to actual damages for her conscious pain and suffering for the harm caused by Sandpiper?
10. Whether Ms. Parrott is entitled to actual damages for the harm caused by Sandpiper in causing, aggravating, and/or contributing to her death under her wrongful death cause of action?
11. Whether Ms. Parrot is entitled to punitive damages for Sandpiper's failure to follow the Policy thereby causing harm to Ms. Parrott?
12. Whether Sandpiper took any remedial measures after its failure follow its own Policy, such as additional training, adverse employment actions, revisions to the Policy, additional checks etc., and if not, are punitive damages even more appropriate?
13. Whether Ms. Parrott is entitled to damages and attorney's fees under the South Carolina Unfair Trade Practices Act?

¹ The event of an elderly person lying on the floor with the inability to get up for any time over one hour is referred to as a long lie.

14. Did Sandpiper intentionally destroy the critical records for the week of June 2, 2014?
15. Should the Court infer that the critical records Sandpiper either lost or destroyed for the week of June 2, 2014, would have refuted Sandpiper's contention that its staff saw Ms. Parrott on Thursday June 5, 2014?

III. The law applicable to the cause of action and the defense.

To prove a cause of action for negligence, a plaintiff must show: (1) the defendant owes a duty of care to the plaintiff; (2) the defendant breached that duty by a negligent act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006); *Roddey v. Wal-Mart Stores E., LP*, 784 S.E.2d 670, 675 (S.C. 2016).

Duty and Breach (Issues 1-4 above)

A legal duty of care owed by the defendant to the plaintiff must exist to maintain an action for negligence. *Bishop v. South Carolina Dep't of Mental Health*, 331 S.C. 79, 502 S.E.2d 78 (1998). Duty is generally defined as "the obligation to conform to a particular standard of conduct toward another." *Shipes v. Piggly Wiggly St. Andrews, Inc.*, 269 S.C. 479, 483, 238 S.E.2d 167, 168 (1977).

In determining the standard of care, the court may look to the *common law*, statutes, administrative regulations, industry standards, *or a defendant's own policies and guidelines*. *Id.* at 140, 638 S.E.2d at 659 (Emphasis Added). Additionally, an affirmative legal duty to act may be created "by statute, contract, relationship, status, property interest, *or some other special circumstance*." *Carson v. Adgar*, 326 S.C. 212, 486 S.E.2d 3 (1997); *Wyatt v. Fowler*, 326 S.C.

97, 484 S.E.2d 590 (1997); *Hubbard v. Taylor*, 529 S.E.2d 549, 552 (S.C. App. 2000) (Emphasis Added).

While the common law ordinarily imposes no duty on a person to act, once an act is undertaken, the actor assumes the duty to use due care. *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997). The Restatement (Second) of Torts recognizes this concept in § 314 and § 323. Under § 314, there is no duty to act to provide aid or protection to another, even if the individual realizes or should realize that action on his part is necessary to protect the other party. *Cf. Rogers v. South Carolina Dep't of Parole & Community Corrections*, 320 S.C. 253, 255, 464 S.E.2d 330, 332 (1995). However, there is a duty to exercise reasonable care to another when one “undertakes, gratuitously or for consideration, to render services to another.” *Restatement (Second) of Torts* § 323 (1965) (Emphasis Added). In this situation, the individual should realize that action is “necessary for the protection of the other’s person or things.” *Id.*

Next, the Restatement (Second) of Torts recognizes that a breach occurs when an individual, who undertook to render service, fails “to exercise reasonable care to perform his undertaking, if his failure to exercise such care increases the risk of such harm, or the harm is suffered because of the other’s reliance upon the undertaking.” *Id.*

In South Carolina, the courts have recognized the use of Defendant’s internal policies to determine duty and the failure to follow those policies to determine breach. In *Peterson v. Nat’l R.R. Passenger Corp.*, the court stated that “evidence of a company’s deviation from its own internal policies is relevant to show the company deviated from the standard of care and is properly admitted to show the element of breach,” 365 S.C. 391, 397, 618 S.E.2d 903, 906 (2005). Furthermore, in *Caldwell v. K-Mart Corp.*, the court held that K-Mart’s loss prevention manual

was relevant because "internal policies or self-imposed rules are often admissible as relevant on the issue of failure to exercise due care." 306 S.C. 27, 31, 410 S.E.2d 21, 24 (Ct.App.1991).

In this case, Sandpiper takes the position that the Policy did not exist, and if it did exist, Sandpiper was unaware of its existence. However, Carrington, Sandpiper's manager in charge of the senior living complex, and all of Sandpiper's staff testified that the Policy as set forth herein did exist. Even Sandpiper's expert witness called to testify about the responsibilities Sandpiper had toward Ms. Parrott testified, although reluctantly, that the procedure outlined above constituted a Policy and that Sandpiper should have followed it in a reasonable manner.

Carrington and staff testified that the Policy was in writing and housed in Carrington's office at Sandpiper. The Policy required that staff "check off" each resident who had been seen by making a mark by the resident's name on a written document designed for that purpose. Sandpiper has taken the position, when these documents were requested in discovery, that the documents for the entire relevant time period are now missing, destroyed, or lost. Sandpiper, despite the testimony from staff and their expert, still denies the policy existed, and if it did exist, it was only a "courtesy."

In chronological order, Sandpiper denied the existence of any policy and procedure in its Answers to Plaintiff's complaints. Sandpiper denied the existence of any policy and procedure in their responses to interrogatories. Sandpiper did not produce any documents relevant to the Policy, other than one page which reflected how the current Policy is recorded. In response to Plaintiff's request for admissions, Sandpiper simultaneously and artfully both denied and admitted that the policy existed. Sandpiper's 30(b)(6) designee denied the existence of the policy, then admitted that Carrington had the authority to offer and maintain the Policy. The designee also testified that such a Policy was used as a marketing tool. After being pressed in the 30(b)(6) deposition recently

completed, Sandpiper admitted that its staff used the Policy but then denied knowing that the policy was in place.

Proximate Cause/Foreseeability (Issue 8 above)

“For an act to be a proximate cause of an injury, the injury must be a foreseeable consequence of the act.” *Wallace v. Owens-Illinois, Inc.*, 300 S.C. 518, 389 S.E.2d 155 (Ct.App.1989). “The test of foreseeability is whether some injury to another is the natural and probable consequence of the complained of act.” *Id.*

“The defendant's negligence does not have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury.” *Hughes v. Children's Clinic, P.A.*, 269 S.C. 389, 398, 237 S.E.2d 753, 757 (1977). “The question of proximate cause ordinarily is one of fact for the jury, and it may be resolved either by direct or circumstantial evidence.” *Childers v. Gas Lines, Inc.*, 248 S.C. 316, 325, 149 S.E.2d 761, 765 (1966). See also *McNair v. Rainsford*, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct.App.1998).

Damages (Issues 5-7, 9-12 above)

A plaintiff is “entitled to recover all damages proximately resulting from the negligent acts of the defendant, including the aggravation of his [or her] pre-existing condition.” *Watson v. Wilkinson Trucking Co.*, 136 S.E.2d 286, 291 (S.C. 1964) (quoting 15 *Am.Jur.*, *Damages*, Sections 80 and 81). In determining the amount of damages a plaintiff can recover, a “jury could properly consider ... his [or her] loss of earning power, pain and suffering, and medical expenses, including any future damages resulting from permanent injuries.” *Id.* at 291. However, “these cannot be determined with certainty, and the monetary value to be placed upon them.” *Id.*

“The defendant takes the plaintiff as he [or she] is found and the plaintiff is entitled to recover damages resulting from the aggravation of a pre-existing condition.” *Id.* “As a general rule, liability for the consequences of one’s tortious act is not lessened by reason of the fact that the injuries were aggravated by the plaintiff’s unhealthy conditions due to his own bad habits.” 22 *Am.Jur.2d Damages* § 282 (1988); *Raino v. Goodyear Tire and Rubber Co.*, 422 S.E.2d 98, 100 (S.C. 1992).

In a survival action, “actual damages . . . are awarded for the benefit of the decedent’s estate.” *Scott v. Porter*, 340 S.C. 158, 530 S.E.2d 389 (Ct.App.2000). These damages “include those for medical, surgical, and hospital bills, conscious pain, suffering, and mental distress of the deceased.” *Id.*

“In a wrongful death case, the issue of damages is not directed toward the value of the human life that was lost, but rather the damages sustained by the beneficiaries as a result of the death.” *Zorn v. Crawford*, 252 S.C. 127, 165 S.E.2d 640 (1969); *Self v. Goodrich*, 300 S.C. 349, 387 S.E.2d 713 (Ct.App.1989). Damages recoverable in a wrongful death action include: (1) pecuniary loss; (2) mental shock and suffering; (3) wounded feelings; (4) grief and sorrow; (5) loss of companionship; and (6) deprivation of the use and comfort of the intestate’s society, including the loss of his experience, knowledge, and judgment in managing the affairs of himself and of his beneficiaries.” *Smith v. Wells*, 258 S.C. 316, 188 S.E.2d 470 (1972); *Scott*, *supra*. *Welch v. Epstein*, 536 S.E.2d 408, 421 (S.C. App. 2000).

In South Carolina, “punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future.” *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964). Moreover, they serve “as a vindication of private rights when it is proved that such have

been wantonly, willfully or maliciously violated.” *Harris v. Burnside*, 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973). Lastly, punitive damages may be awarded only upon a finding of actual damages.” *Carroway v. Johnson*, 245 S.C. 200, 139 S.E.2d 908 (1965).

In *Gamble v. Stevenson*, the South Carolina Supreme Court has developed an eight factor post-verdict review that trial courts are required to conduct to determine if a punitive damages award comports with due process, S.E.2d 350, 354 (S.C. 1991). The *Gamble* 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 finally, (8) as noted in *Haslip*, “other factors” deemed appropriate. *Id.* at 354. Under *Gamble*, the trial court is not required to make findings of fact for each factor to uphold a punitive damage award. *McGee v. Bruce Hosp. Sys.*, 321 S.C. 340, 468 S.E.2d 633 (1996); see also *Welch v. Epstein*, 536 S.E.2d 408, 422 (S.C. App. 2000).

The amount of damages, actual, or punitive remains largely within the discretion of the jury, as reviewed by the trial judge. See *Fennell v. Littlejohn*, 240 S.C. 189, 125 S.E.2d 408 (1962). We adhere to the precedent that this Court's review is limited. The rationale for vesting discretion in the trial court was aptly expressed in *Lucht v. Youngblood*, 266 S.C. 127, 138, 221 S.E.2d 854, 860 (1976) (stating that after a trial judge heard all of the testimony and the evidence and was more familiar than the appellate court with the evidentiary atmosphere at trial, he said “we think, a better informed view than we have; this is particularly true when the elements of damage are intangibles and the appraisal depends somewhat on an observation of the [witnesses] and evaluation of their testimony.” *Gamble* at 355, 112).

IV. South Carolina Unfair Trade Practices Act (Issue 13 above)

“SCUTPA prohibits “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” *S.C. Code Ann.* § 39–5–20(a). To state a SCUTPA claim, the plaintiff must allege “(1) that the defendant engaged in an unlawful trade practice, (2) that the plaintiff suffered actual, ascertainable damages as a result of the defendant’s use of the unlawful trade practice, and (3) that the unlawful trade practice engaged in by the defendant had an adverse impact on the public interest.” *Havird Oil Co. v. Marathon Oil Co.*, 149 F.3d 283, 291 (4th Cir. 1998). *Big Red Box, LLC v. Square, Inc.*, CV 3:18-758-SAL-SVH, 2020 WL 465928, at 14 (D.S.C. Jan. 22, 2020).

“Under South Carolina law, unfair or deceptive acts have an adverse impact upon the [public] if those acts have the potential for repetition.” *Bessinger v. Food Lion, Inc.*, 305 F.Supp.2d 574, 581 (D.S.C. 2003). Potential for repetition can be demonstrated by either “showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence” or “showing the company’s procedures created a potential for repetition of the unfair and deceptive acts.” *Singleton v. Stokes Motors, Inc.*, 595 S.E.2d 461, 466 (S.C. 2004).

“[T]he plaintiff in a SCUTPA action is required only to allege and prove those facts sufficient to demonstrate potential for repetition; at that point, [the] plaintiff has proven an adverse effect on the public interest sufficient to recover under the SCUTPA.” *Liberty Mut. Ins. Co. v. Emp. Res. Mgmt., Inc.*, 176 F.Supp.2d 510, 516 (D.S.C. 2001). “However, conduct that affects only the parties to the transaction and not the public interest provides no basis for a SCUTPA claim.” *Bessinger*, 305 F.Supp.2d at 581. *Big Red Box, LLC* at *15 (D.S.C. Jan. 22, 2020).

The holding in *Taylor v. Medenica* 324 S.C. 200, 479 S.E.2d 35 (1996) is illustrative of the broad application of the SCUTPA to businesses:

“The UTPA declares unlawful “[a]ny unfair methods of competition and unfair or deceptive acts or practices within the conduct of any trade or commerce.” S.C.Code Ann. § 39–5–20(a). “Trade and commerce” are defined as the “sale or distribution of any services.” S.C. Code Ann. § 39–5–10(b).” The provision of any service constitutes commerce within the meaning of the UTPA. The statute does not exclude professional services from its definition. Accordingly, even if medical laboratory services are considered professional services, they still constitute a trade within the meaning of the UTPA.” *Id.* 217, 44.

The case of *Wright v. PRG Real Estate Management Inc.* 775 S.E.2d 399 (S.C. App. 2015), rev'd, 826 S.E.2d 285 (S.C. 2019)² holding that the SCUTPA is not applicable to a landlord is distinguishable. The Court of Appeals held:

Wright argues Wellspring's property manager made deceptive statements to her when she filled out her rental application. Specifically, she contends the manager told her Wellspring was a “safe and secure place” and that courtesy officers patrolled the premises. The circuit court found Wright failed to prove these statements constituted unfair or deceptive acts. We agree. The *generalized statements* that the apartments are safe and secure and are patrolled by courtesy officers—on the facts of this case—simply cannot be unfair or deceptive acts under subsection 39–5–20(a). See *Johnson v. Collins Entm't Co.*, 349 S.C. 613, 636, 564 S.E.2d 653, 665 (2002) (“An act is ‘unfair’ when it is offensive to public policy or when it is immoral, unethical, or oppressive; a practice is ‘deceptive’ when it has a tendency to deceive.” (citation omitted)); *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct.App.2000) (stating “[a]n unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive” and “[a] deceptive practice is one which has a tendency to deceive”). We affirm the award of summary judgment.

Wright at 399, 406–407.

V. Spoliation of Evidence (Issue 14-15 above)

² The Supreme Court reversed the Court of Appeals decision on the single issue that the Court of Appeals erred failing to apply Section 323 of the *Restatement of Torts* 2d.

The Supreme Court of South Carolina upheld a jury charge in *Kershaw County Board of Education v. U.S. Gypsum Co.* that “when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party.” *Pringle v. SLR, Inc. of Summerton*, 675 S.E.2d 783, 787 (S.C. App. 2009). “As an initial matter, however, the party seeking the inference “must be prepared to make a showing that the document or evidence might reasonably have supported whatever presumption is being requested of the fact finder.” *Id.*, quoting Kevin Eberle, *Spoliation in South Carolina*, 19-SEP S.C. Law., Sept. 2007, 26, 32.

VI. A listing of exhibits, indicating those to which there is disagreement and a listing of witnesses who may be called and, if available, their address and phone number.

Records to be admitted:

1. Lease	
2. Sandpiper’s Records pre fall	(produced in discovery)
3. Sandpiper’s Record regarding the fall	(produced in discovery)
4. Photographs of Plaintiff	(produced in discovery)
5. Plaintiffs financial records	(produced in discovery)
6. Plaintiffs records of daily activities	(produced in discovery)
7. Medical records Roper Hospital June 2014 admission	(produced in discovery)
8. Medical Bills	(produced in discovery)
9. Medical records Sandpiper Rehab	(produced in discovery)
10. Medical records Roper October 2014 admission	(produced in discovery)
11. Medical records assisted living	(produced in discovery)
12. Medical records nursing home	(produced in discovery)
13. Medical records hospice	(produced in discovery)
14. Richard Mills, M.D. (treating physician)	(produced in discovery)
15. Death Certificate	(produced in discovery)

Witnesses:

1. Joan Acosta	(Plaintiff’s Personal Representative)
2. Corrine Carrington	(Former Director of Sandpiper)
3. Beth Auld	(current employee of Sandpiper)
4. Rebecca Munoz	(current employee of Sandpiper)
5. Sandpiper’s 30(b)(6) designee	(current employee of Sandpiper)
6. Richard Mills, M.D.	(Plaintiff’s expert, treating physician)

7. Lila Waters (video for use at trial)
8. Larry Bergmann, Ph.D., LPC (Plaintiff's expert) (video for use at trial)
9. Sally Damm, NHA (Plaintiff's Expert)
10. Potential Deposition excerpts that may be presented during Plaintiff's case in chief:
 1. Brian J. Lancenese, MBA, NHA (Defendant's expert)
 2. Beth Auld (Defendant's staff)
 3. Rebecca Munoz (Defendant's staff)
 4. Sandpiper's 30(b)(6) designee
 5. Scott Davis, M.D. (Defendant's expert)
 6. Jeffery Wagner, Ph.D. (Defendant's expert)

VII. Any unusual problems relating to evidence to be introduced, such as "Business Records as Evidence Act," hearsay, use of depositions, etc.

1. The Plaintiff and Defendant agreed to compromise on the issue of mandatory arbitration. The parties agreed that rather than litigate the issue of arbitration, the parties would agree to this matter being heard by a Circuit Court Judge non-jury. The decision of the Circuit Court would be binding, with the right for either party to appeal the judgement to the appellate courts of this state.

2. Sandpiper's spoliation of critical records regarding the wellbeing of Ms. Parrott would support the application of the negative inference law to Sandpiper's position that Ms. Parrott was seen on June 5, 2014.

3. Plaintiff may use certain depositions and discovery responses from Defendant in her case in chief.

4. Plaintiff plans to call four witnesses that work for or are identified with Defendant Sandpiper. Plaintiff seeks to use leading questions as allowed by SCRE 611.

5. Plaintiff and Defendant have agreed to waive any objections regarding the authentication of any medical records that have been exchanged in discovery.

6. If this Court considers awarding punitive damages, Plaintiff has requested Defendant produce financial information to show the net worth of Sandpiper. An agreement has been reached that Defendant will provide the net worth for Sandpiper upon commencement of the trial.

7. There may be issues with hearsay under SCRE 802, 803, 804, and 805.

VIII. Any unusual question or matter which should be brought to the attention of the court.

None anticipated.

IX. A statement that settlement negotiations were attempted before the date of the pre-trial hearing and the status of settlement negotiations.

Settlement negotiations were attempted but were unsuccessful.

Respectfully Submitted:

REEVES & LYLE, LLC

s/Paul L. Reeves

Paul L. Reeves (SC Bar #4671)

John G. Boswell (SC Bar #778)

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Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2016-CP-10-5379
THE ESTATE OF DELILA PARROTT,	)	
	)	<u>DEFENDANT'S POST-TRIAL/JUDGMENT</u>
Plaintiff,	)	<u>MOTION FOR RELIEF PURSUANT TO</u>
	)	<u>RULES 52 AND/OR 59, SCRPC, AND/OR,</u>
vs.	)	<u>TO THE EXTENT APPLICABLE,</u>
	)	<u>RULES 41 AND/OR 50, SCRPC</u>
SANDPIPER INDEPENDENT AND	)	
ASSISTED LIVING-DELAWARE, LLC,	)	***Hearing Requested***
	)	
Defendant.	)	

TO: THE HONORABLE BENTLEY D. PRICE, Presiding Circuit Judge, and PAUL L. REEVES, ESQUIRE, TODD R. LYLE, ESQUIRE, and JOHN G. BOSWELL, ESQUIRE, Attorneys for Plaintiff

NOW COMES Defendant, Sandpiper Independent and Assisted Living-Delaware, LLC, by and through its undersigned counsel, pursuant to Rules 52 and/or 59, SCRPC, and/or, to the extent applicable, Rules 41 and 50, SCRPC, within ten days after receiving written notice of entry of the order (the "Subject Order") and corresponding judgment (the "Judgment") disposing of this case,¹ and, on the following grounds, hereby moves this Honorable Court (1) to amend its findings, and/or make additional findings, and amend the Subject Order, and in turn the Judgment, to favor Defendant;² (2) to reconsider and/or otherwise alter and/or amend the Subject Order, and in turn

¹ The Subject Order refers to the order setting forth the Court's findings of fact and conclusions of law. The Judgment refers to the corresponding \$1,000,000.00 judgment in favor of Plaintiff, The Estate of Delila Parrott ("Plaintiff") ("Ms. Parrott" refers to the decedent herself). Both the Subject Order and the Judgment were filed on October 16, 2020. Defendant received written notice of their entry that same day, via the E-Filing System.

² See Rule 52(b) ("Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial."); Rule 59(b) ("In non-jury actions the motion [for a new trial] shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered."); Rule 59(e) ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the

the Judgment, to favor Defendant; or, alternatively, (3) to grant Defendant a new trial or, as a lesser alternative, to open the record, take additional testimony and/or receive additional evidence, amend its findings of fact and conclusions of law or make new findings and conclusions, and enter a new order directing judgment in favor of Defendants or, as a lesser alternative, to grant Defendants a new trial nisi remittitur³:

1. **Most respectfully, Defendant asks the Court to (re)consider and expressly rule on each and every distinct issue/argument Defendant raised at trial, each of which is hereby repeated, reasserted, and incorporated herein by reference, to include especially, but without limitation: (a) Defendant's motion for involuntary dismissal/judgment as a matter of law, both solely as to Plaintiff's wrongful death claim and as to the entirety of Plaintiff's case, which motion Defendant hereby renews; (b) Defendant's defense based on the terms of Ms. Parrott's lease; (c) Defendant's comparative negligence defense, both as a means of reducing the amount of Plaintiff's recovery against Defendant and as a means of barring Plaintiff from any recovery against Defendant at all; and (d) Defendant's arguments on all evidentiary issues on which the Court ruled against Defendant.**

“[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). “[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court

entry of the order.”); *see also* Rule 41(b) (regarding a motion by the defendant for a dismissal, operating as an adjudication on the merits, on the ground that, under the facts and the law, the plaintiff has shown no right to relief); Rule 50(a), (b), and (e) (regarding motions during trial for a directed verdict and, thereafter, for JNOV, i.e., motions for judgment as a matter of law).

³ *See* Rule 59(a) (“A new trial may be granted to all or any of the parties and on all or part of the issues . . . in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.”).

to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* at 24, 602 S.E.2d at 780 (emphasis in original). Most respectfully, Defendant asks the Court to (re)consider and expressly rule on each and every distinct issue/argument Defendant raised at trial, each of which is hereby repeated, reasserted, and incorporated herein by reference, to include especially, but without limitation: (a) Defendant’s motion for involuntary dismissal/judgment as a matter of law, both solely as to Plaintiff’s wrongful death claim and as to the entirety of Plaintiff’s case, which motion Defendant hereby renews; (b) Defendant’s defense based on the terms of Ms. Parrott’s lease; (c) Defendant’s comparative negligence defense, both as a means of reducing the amount of Plaintiff’s recovery against Defendant and as a means of barring Plaintiff from any recovery against Defendant at all; and (d) Defendant’s arguments on all evidentiary issues on which the Court ruled against Defendant.

2. In numerous respects, the Court’s findings of fact and conclusions of law are materially incomplete, unsupported by the evidentiary record, and/or erroneous as a matter of law.⁴

- (a) The Court erred in finding that the so-called “wellness” check policy created a legal duty of care owed by Defendant to Ms. Parrott.**
 - (i) The Court erred in failing to recognize that the legal relationship between Defendant and Ms. Parrott was simply that of landlord and tenant and governed by the SCRLTA and the terms of Ms. Parrott’s lease.**

“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.” *The Huffines Co., LLC v. Lockhart*, 365 S.C. 178, 188, 617 S.E.2d 125, 130 (Ct. App. 2005). The undisputed evidence shows that Sandpiper Village is not an assisted-living facility, a long-term-

⁴ To be clear, the points raised herein (under No. 2) are subject to and without waiving or otherwise taking anything away from the all-encompassing scope of the above request (in No. 1).

care facility, or any other type of regulated entity (collectively, an “Assisted-Living Facility”), but rather that it is an *independent*-living community, where Ms. Parrott lived *independently* in her own private apartment pursuant to a written lease with Defendant. The legal relationship between Defendant and Ms. Parrott was simply that of landlord and tenant, and it was governed by the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-10 to -940 (the “SCRLTA”), and the terms of Ms. Parrott’s lease.

(ii) The daily check service Defendant provided as a courtesy to residents is still a *courtesy* service notwithstanding Defendant’s internal policy to provide the service.

Neither the SCRLTA nor the lease conferred on Ms. Parrott any right to, or imposed on Defendant any responsibility to perform, a daily check. Plaintiff’s theory of liability against Defendant (negligence⁵), which the Subject Order relies on, is entirely—and erroneously—based on the daily check system somehow giving rise to a legal duty of care owed by Defendant to Ms. Parrott, even in the absence of any claim (or evidence to support such a claim) of a violation by Defendant of the SCRLTA or the terms of Ms. Parrott’s lease.

A person signing a contract, such as Ms. Parrott when she signed her lease, is “presumed to have read, understood, and assented to [the contract’s] terms.” *Gibson v. Epting*, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019). The undisputed evidence is that Ms. Parrott wanted, and contracted with Defendant for, *independent* living. The lease terms make plain and clear all parties’ understanding and agreement that Sandpiper Village is *not* an Assisted-Living Facility and that Defendant only offered an enumerated list of specified services, which included social

⁵ Negligence is Plaintiff’s only cause of action against Defendant. As the Subject Order notes, Plaintiff had asserted a cause of action against Defendant for violation of the South Carolina Unfair Trade Practices Act but dropped it at trial. (Subject Order p. 1 n.11; *see also id.* at p. 10 (setting forth the elements of a negligence cause of action—and only a negligence cause of action—at the outset of the Court’s “Conclusions of Law”).)

opportunities, dining services, housekeeping and laundry service, and other such conveniences to its residents. Because she, like most residents of Sandpiper Village, was choosing to live independently at an advanced age (she was 79 when signed her lease), Ms. Parrott expressly agreed in the lease to assume the risk of, and be responsible for, her day-to-day life decisions—such as her unfortunate decision to place herself, alone and without her emergency call button, in the particularly precarious position she was in (*standing on a rocking chair hanging curtains*) when she fell. In fact, the lease expressly provided that Ms. Parrott assumed all risk and waived all liability associated with her “*freedom to make personal health and non-health related decisions, the freedom to travel, to come and go as you please, [and] the decisions that effect and control your day-to-day activities.*” Erroneously, the Subject Order does not acknowledge, much less analyze, the lease and its effect on Plaintiff’s claims, which effect, Defendant maintains, is indeed to wholly undermine those claims.

The Subject Order erroneously uses the mere existence of Defendant’s internal policy of conducting daily checks as a courtesy to residents to transmute what was in fact a *courtesy* service—which Defendant had no obligation to provide or continue to provide and about which Ms. Parrott had no legal right to complain should Defendant not provide it or continue to provide it—into a legal duty of care, even though Defendant’s supposed assumption of such a duty is not only unsupported by any consideration but also is in direct contravention of the terms of the parties’ contract (i.e., the lease), which terms Ms. Parrott is presumed to have read, understood, and assented to.

- (iii) **The Court erred in finding that the daily check system was a “wellness” check, i.e., that the purpose of the check was to protect Ms. Parrott from the kind of harm Plaintiff complains about in this case, or that Defendant assumed any such duty, and indeed, Plaintiff did not in any way dispute the testimony of Defendant’s duly qualified expert about the relevant industry standard.**

The Court’s characterization of the daily check systems as ^a“wellness” check, or of Defendant as having assumed any duty to protect Ms. Parrott from the kind of harm Plaintiff complaint^s about in this case, is not supported by the evidence. *Huffines*, 365 S.C. at 188, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”). Rather, Defendant’s duly qualified expert Brian Lancenese testified that the industry standard for responding to falls was ⁱthe panic button or emergency call button system and that a daily check system was ⁱnot used in the industry to respond to falls or otherwise check on the well-being of residents, explaining that, as the undisputed facts of this case well illustrate, a daily check system allows for a person to lay on the floor for some 24 hours after a fall. And Plaintiff did nothing to undermine Defendant’s expert’s testimony in this regard.

- (iv) **The Subject Order conflates the threshold question of the existence of a legal duty of care with the question of whether such a duty (once found to exist) was or was not breached, viewing the very existence of the so-called “wellness” check policy as establishing the existence of a duty of care on the part of Defendant.⁶**

As recognized in the Subject Order, the elements of a negligence cause of action are, of course, (1) duty, (2) breach, (3) causation, and (4) damages. (Subject Order p. 10.) The Subject

⁶ (Compare Subject Order p. 11 (“Here, the preponderance of the evidence presented in this case is more than sufficient to convince me and support my conclusion that that Defendant Sandpiper *had a policy* of providing daily wellness checks and that *this policy created a duty* to follow the protocol established in its own policy.”) (emphasis added) *with id.* (“In determining the *standard of care*, the court may look to the common law, statutes, administrative regulations, industry standards, or a defendant’s own *policies* and guidelines.”) (emphasis added).)

Order, however, fails to recognize that the question of whether a legal duty of care exists is a *separate* question from the questions of what standard of care is required to meet the duty and whether the applicable standard was met.

The first element of a negligence claim (duty) asks *the fundamental* question: Does a legal duty of care exist? If the answer is no, everything else is, of course, moot. It is only if the answer is yes that the second element (breach) even need be considered.

The breach element encompasses two questions: (a) Given that the first element of the claim (the existence of a legal duty of care owed by the defendant to the plaintiff) is met, what standard of conduct must the defendant meet to satisfy the duty of care owed? In other words, what is the *standard of care*? And (b) did the defendant meet the standard of care?

As the Subject Order recognizes, “an affirmative legal duty to act may be created ‘by statute, contract, relationship, status, property interest, or some other special circumstance.’” (Subject Order p. 11 (citing *Carson v. Adgar*, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997))). Notice, however, that the defendant’s internal policies/procedures are not referenced here as a means for creating a duty to act. While it is true, as the Subject Order states, that in determining *the standard of care*, a court may look to the defendant’s own *policies*,⁷ this, however, does not mean that a court can look to the defendant’s policies to answer the *threshold* question of *whether a legal duty of care exists* in the first place.

Again, the undisputed evidence shows that Sandpiper Village is not an Assisted-Living Facility, but rather it is an *independent*-living community, where Ms. Parrott lived *independently* in her own private apartment pursuant to a written lease with Defendant. Indeed, Ms. Parrott’s lease expressly states what services Defendant will be provide, and the so-called “wellness” check

⁷ (Subject Order p. 11.)

is not among them. Moreover, the lease includes express provisions limiting Defendant's liability and making clear Ms. Parrott's assumption of risk associated with her decision to live independently.

There is no statute, contract, relationship, status, property interest, or other special circumstance that gives rise to the existence of a legal duty of care owed by Defendant to Ms. Parrott, and where the Subject Order finds the creation of a legal duty based, in whole or in part, on a supposed special relationship between Defendant and Ms. Parrott⁸ it is erroneous.

Again, the undisputed evidence is that the terms of Ms. Parrott's lease with Defendant conferred upon her no right to have Defendant check-in on her and imposed no duty upon Defendant to do so. Citing *Miller v. City of Camden*, 329 S.C. 310, 314, 494 S.E.2d 813, 815 (1997), the Court correctly recognizes that "the common law ordinarily imposes no duty on a person to act;" however, the Court erroneously relies on the exception to this rule that provides, "once an act is undertaken, the actor assumes the duty to use due care,"⁹ without explaining what "act" Defendant is supposed to have undertaken so as to assume a duty of care to Ms. Parrott—and indeed the record here discloses no act (or acts) capable of properly supporting the Court's invocation of the aforementioned exception.

In addressing the rule that "the common law ordinarily imposes no duty on a person to act," in *Degenhart v. Knights of Columbus*, 309 S.C. 114, 116, 420 S.E.2d 495, 496 (1992), our Supreme Court explained, "a person usually incurs no liability when he fails to take steps to protect others *from harm not created by his own wrongful conduct.*" (emphasis added). The theory of

⁸ (See Subject Order p. 11 ("Both the existence of the policy and *the special relationship between Sandpiper and the resident, Ms. Parrott*, created a duty owed by Sandpiper to follow its own policy.") (emphasis added).)

⁹ (See Subject Order p. 11.)

Plaintiff's case is not in fact that Defendant "created" any harm "by [its] own conduct." Rather, it is that, after Ms. Parrott created harm to herself by her own conduct, i.e., after Ms. Parrott, through no fault of Defendant's whatsoever, had willfully placed herself, alone and without access to any means of communicating with the outside world (to include, most notably, without her emergency call button), in the undeniably awkward and dangerous position from which she fell (*standing on a rocking chair*), Defendant did not discover her soon enough.

By its very nature, Plaintiff's theory concedes that Defendant had nothing at all to do with, and cannot be blamed for, Ms. Parrott falling and hurting herself, or Ms. Parrott not being able to use her emergency call button, or even Ms. Parrott's pain and suffering (including any future consequences thereof) for approximately the first *24 hours* after the fall. In other words, her theory concedes that Defendant did not in fact cause Ms. Parrott to suffer a "long lie." As the evidence shows, and as expressly stated in Plaintiff's pre-trial brief, "The event of an elderly person lying on the floor with the inability to get up for *any time over one hour* is referred to as a long lie." (Pl.'s Pre-Trial Brief p. 4 n.1 (emphasis added).) Plaintiff's theory of the case necessarily concedes that it was not until Ms. Parrott had already suffered a "long lie" *plus approximately 23 hours* that Plaintiff even attempts to point any finger of blame at Defendant. And even then, the most that Plaintiff can say is not that Defendant "created" any harm to Ms. Parrott but that, had Defendant done something it was indeed under no legal obligation to do, i.e., the so-called "wellness" check, the harm Ms. Parrott created for herself would have been discovered "sooner," i.e., after "only" about 24 hours.

The idea underlying the rule that a voluntarily actor must act with due care is that the voluntarily actor must not make things worse than they would have been *had the voluntary actor not acted at all*. See 57A Am. Jur. 2d *Negligence* § 104 ("One who undertakes to act, even though

gratuitously, is required to act carefully and with the exercise of due care and will be liable for injuries proximately caused by the failure to use such care. Thus, once a person steps into the role of caregiver, *such that others are discouraged or precluded from filling that role*, that person has a duty to act reasonably in fulfilling the adopted role.”) (emphasis added). There is no evidence that Defendant’s so-called “wellness” check policy discouraged or precluded anyone from providing aid to Ms. Parrott or otherwise increased the risk of harm to Ms. Parrott.

Though there is some evidence that Ms. Parrott found the check-in policy appealing in deciding to live at Sandpiper Village, there is no^t enough evidence to support a reasonable, non-speculative¹⁰ inference that this had any particular causal relationship to the incident at issue here. There is no evidence that Ms. Parrott would not have chosen to live at Sandpiper Village in the absence of the so-called “wellness” check policy. As stated in Plaintiff’s pre-trial brief, “*One of the facts that led Parrott and Acosta to choose Sandpiper was Sandpiper’s representations that it had a policy . . . of visually accounting for each of the residents daily.*” (Pl.’s Pre-Trial Brief p. 1 (emphasis added).) There is no evidence of any other living arrangements that Ms. Parrott considered or of whether any of them offered a daily check-in. There is no evidence that anyone else was discouraged or otherwise precluded or hindered from protecting Ms. Parrott or coming to Ms. Parrott’s aid because of the so-called “wellness” check policy. Moreover, Ms. Parrott could not possibly be found to have reasonably relied on the existence of a check-in policy that Defendant was under no obligation to provide to her, and this is all the more so given express terms of her lease, which, again, she is presumed to have read, understood, and assented to. *See Gibson*, 426 S.C. at 352, 827 S.E.2d at 181 (A person signing a contract is “presumed to have read, understood,

¹⁰ *Huffines*, 365 S.C. at 88, 617 S.E.2d at 130 (“[V]erdicts may not be permitted to rest upon surmise, conjecture, or speculation.”).

and assented to its terms.”). Indeed, the lease itself expressly states, “Once signed by all Parties, this Agreement becomes an enforceable contract. Therefore, if anything in this Agreement is confusing or different from what has been previously explained, you are encouraged to ask for a written explanation and to seek legal counsel before signing.” And, to be clear, there is no claim here that the terms of Ms. Parrott’s lease were unconscionable or otherwise unenforceable—nor, again, is there is any claim that Defendant actually breached any term of the lease or obligation imposed by the SCRLTA.

Most respectfully, the Court erred in finding that the so-called “wellness” check policy created a legal duty. Defendant was indeed under no duty to do it in the first place. The Court erred in finding that the daily courtesy check system was a “wellness” check for the purpose of protecting Ms. Parrott from the kind of harm Plaintiff complains about in this case, or that Defendant assumed any such duty. There is simply no evidence reasonably supporting such a finding. Likewise, the Court’s use of the mere existence of the so-called “wellness” check policy to support the existence of legal duty of care is erroneous.

(b) The Court fails to recognize that Defendant did not cause the “long lie,” and its damages awards (for both survival and wrongful death) are wholly undue and speculative or, alternatively, excessive.

“Negligence is not actionable unless it is a proximate cause of the injuries, and it may be deemed a proximate cause only when without such negligence the injury would not have occurred or could have been avoided.” *Hughes v. Children’s Clinic, P. A.*, 269 S.C. 389, 398, 237 S.E.2d 753, 757 (1977). “When one relies solely upon the opinion of medical experts to establish a causal connection between the alleged negligence and the injury, *the experts must, with reasonable certainty, state that in their professional opinion, the injuries complained of most probably resulted from the defendant’s negligence.*” *Ellis v. Oliver*, 323 S.C. 121, 125, 473 S.E.2d 793, 795

(1996) (emphasis added); *see also id.* (When expert testimony is the only evidence of proximate cause relied upon, the testimony “must provide a significant causal link between the alleged negligence and the plaintiff’s injuries, rather than a tenuous and hypothetical connection.”).

Not only does Plaintiff concede that Defendant is not responsible for the fall itself, but because Plaintiff’s theory rests solely on Defendant’s alleged breach of a duty to conduct the so-called daily “wellness” check, Plaintiff also concedes that Defendant is not responsible for approximately the first 24 hours after the fall and any consequential damages arising out of the fall and the first approximately 24 hours thereafter. Accordingly, the only damages/injuries recoverable under Plaintiff’s theory are those that can be proved (beyond speculation¹¹) to have been suffered by Ms. Parrott, not because of the fall and the state she was in for the first approximately 24 hours thereafter, but because of what she went through from (approximately) hour 25 until she was found.

The Subject Order does not recognize the undeniable fact that Plaintiff’s theory of the case necessarily concedes that it was not until Ms. Parrott had already suffered a “long lie” *plus approximately 23 hours* that Plaintiff even attempts to point any finger of blame at Defendant. And even then, the most that Plaintiff can say is not that Defendant “created” any harm to Ms. Parrott, but rather that, had Defendant done something it was indeed under no legal obligation to do, i.e., the so-called “wellness” check, the harm Ms. Parrott created for herself would have been discovered “sooner,” i.e., after “only” about 24 hours. The Subject Order never explains or otherwise accounts for how the damages awarded were determined in a reasonable, non-speculative way that accounts for the fact that Defendant’s alleged role in the harm Ms. Parrott suffered does not, even under Plaintiff’s theory, begin until Ms. Parrott had suffered a comminuted

¹¹ *See Huffines*, 365 S.C. at 188, 617 S.E.2d at 130.

hip fracture that left her on the floor of her apartment unable to move for at least approximately 24 hours. By failing to account for the foregoing, the Court's damages awards (for both survival and wrongful death) are wholly undue and speculative or, alternatively, excessive. This is especially so given the Court's view that, "[t]o the extent that Ms. Parrott had some degree of pre-existing mental health conditions, it was certainly foreseeable that those pre-existing conditions would be exacerbated by the pain and agony of from that long lie." (Subject Order p. 13.) While Defendant denies that there is sufficient evidence to support this assertion insofar as foreseeability is concerned, the potential for Ms. Parrott's pre-existing mental health conditions to be exacerbated by the long lie makes it all the more important for any proper award of damages against Defendants to be free of speculation, so that any such award is only for damages that would not have occurred not simply in the absence of the long lie but solely because of hour 25 of the long lie to the end—as, without question, all injuries/damages from the fall itself and the first 24 hours thereafter and all attendant future consequences therefrom, to include any/all ways in which all of the foregoing were exacerbated by Ms. Parrott's pre-existing mental health conditions, are not Defendant's fault and Defendant cannot be held liable therefor.

(c) There is no evidence to support the Court's ruling in Plaintiff's favor on wrongful death.

With respect to wrongful death in particular, Plaintiff's theory requires her to prove (by presenting medical expert testimony from which a reasonable, non-speculative conclusion can be reached, *see Hughes*, 269 S.C. at 398, 237 S.E.2d at 757; *Ellis*, 323 S.C. at 125, 473 S.E.2d at 795) that her death was most probably caused not just by "delay" in discovering her, but specifically by the delay from "hour 25" on. In other words, her experts needed to testify that, to a reasonable degree of medical certainty, had she only been lying there for approximately 24 hours after the fall, she most probably would have lived.

Plaintiff's experts' testimony falls short of the "most probable"/reasonable degree of medical certainty standard that is required to substantiate a non-speculative causal relationship between the alleged negligence and Ms. Parrott's death. They could not quantify the significance of the length of Ms. Parrott's "long lie" and admitted they could not say at what point the hours (i.e. 9, 24, or 36) would have (supposedly) caused her death 8 months later.

Dr. Bergmann's testimony was presented via *de benne esse* deposition. In that deposition, he confirmed that, as to Ms. Parrott's death, the substance of the opinion he was expressing at trial was the same as he had expressed in his earlier discovery deposition, which was: "[Q]: Do you intend to provide the opinion at trial that [Ms. Parrott's] decline and demise would not have occurred but for some alleged delay in finding her? [A]: *I don't think there's anybody that can say that.*" (Bergman Trial Dep. p. 40:6–41:21 (emphasis added).) And Dr. Mills, too, failed to offer sufficient testimony to substantiate a claim for wrongful death.

At most, Plaintiff and Plaintiff's experts are arguing for some sort of ersatz form of recovery on the basis of loss of chance, which is a doctrine which our state has expressly rejected. *See Jones v. Owings*, 318 S.C. 72, 456 S.E.2d 371 (1995).

(d) Defendant was prejudiced by the Court's improper admission of evidence regarding Ms. Parrott's phone records.

The Court wrongfully admitted Ms. Parrott's phone records without necessary testimony as to what the records contained and wrongfully allowed a summary of the records prepared by Plaintiff's lawyers.

(e) The Court improperly speculated about the meaning of Ms. Parrott's phone records.

The Court used the absence of phone activity by Ms. Parrott between June 3–6, 2014, to support its conclusion that the fall happened on June 3rd and its rejection of Defendant's evidence

that Ms. Parrott had been checked on June 5th. The Court never explains how the absence of Ms. Parrott's phone activity on the three days in question is different from her phone activity on other days.

(f) The Court's improper finding regarding Ms. Parrott's BUN levels.

Without supporting medical evidence, the Court also wrongfully found that the BUN levels found in Ms. Parrott rise and fall at the same rate.

(g) The Court's failure to address, much less rule in Defendant's favor on, comparative negligence.

The undisputed evidence is that Ms. Parrott *stood* on a *rocking* chair, while failing to wear her emergency/panic button and, for that matter, failing to take advantage of maintenance services set out in her lease. There is no reasonable view of the evidence under which Ms. Parrott is not guilty of comparative negligence. Defendant duly raised and supported a comparative defense and is entitled to a finding in its favor on the same. Indeed, because the only reasonable view of the evidence is that Ms. Parrott's comparative negligence exceeds 50%, Plaintiff should be barred from recovery, but at a minimum, Defendant is entitled to a reduction of any damages to which Plaintiff may be entitled based on Ms. Parrott's comparative fault.

(h) The Court never accounts for Defendant's rights under the lease.

As explained elsewhere, and without question, Ms. Parrott assumed all risk of living independently and waived of liability in lease. Defendant did not assume the duty to "make daily well checks" in the lease. There is a difference between the daily check and the "duty" to confirm well-being on a daily basis. The duty to protect Ms. Parrot's "wellbeing" is simply not in the lease; nor was there any consideration to support such a duty. Also, violation of a policy alone not enough so support a negligence finding, and a policy to see a resident daily does not equal a duty to conduct a "wellbeing check."

(i) The Court relied on patently unreliable testimony from Lila Waters.

The Court relied on Ms. Watters's testimony despite its own finding, in the Subject Order, that she was confused. Ms. Watters's testimony was inconsistent and suffered from her own confusion and is not capable of supporting reasonable, non-speculative inferences on which to support a ruling in favor of Plaintiff.

(j) The Court was inconsistent and unduly selective in choosing to accept only the testimony from Joan Acosta that was helpful to Plaintiff's case.

On the one hand, the Court believed Ms. Acosta as to the so-called "wellness" check policy being in place; however, on the other hand, the Court simply disregarded her investigation findings and testimony that Ms. Parrott was checked off on June 5th; confirming the two occasions that Beth Auld saw Ms. Parrott on June 5th; and that Ms. Waters never came to her on June 5th or 6th asking for help and must have had her days confused.

(k) There is no evidence to support the Court's ruling that "[t]o the extent that Ms. Parrott had some degree of pre-existing mental health conditions, it was certainly foreseeable that those pre-existing conditions would be exacerbated by the pain and agony of from that long lie."

There is no evidence on which to base a reasonable, non-speculative conclusion to this effect.

(l) The Court confused and/or conflated/commingled and/or misapplied the relevant legal standards governing claims for survival and wrongful death.

Survival and wrongful death and separate claims with their own particular legal standards and under which particular damages are/are not recoverable. The Subject Order confuses and/or conflates/commingles and/or misapplies the relevant legal standards governing claims for survival and wrongful death.

WHEREFORE, for the foregoing reasons (and, for that matter, for all of the reasons previously advanced to the Court in support of Defendant's position, whether in written or oral form, all of which Defendant now ask the Court to (re)consider and expressly rule on), Defendant asks the Court (1) to amend its findings, and/or make additional findings, and amend the Subject Order, and in turn the Judgment, to favor Defendant; (2) to reconsider and/or otherwise alter and/or amend the Subject Order, and in turn the Judgment, to favor Defendant; or, alternatively, (3) to grant Defendant a new trial or, as a lesser alternative, to open the record, take additional testimony and/or receive additional evidence, amend its findings of fact and conclusions of law or make new findings and conclusions, and enter a new order directing judgment in favor of Defendants or, as a lesser alternative, to grant Defendants a new trial nisi remittitur

PLEASE NOTE: Defendant reserves all rights to provide further support for this motion via such briefing, argument (to include oral argument), and/or additional submissions as the Court may permit or require.

Respectfully submitted,
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