

2013 WL 3327807 (Pa.Com.Pl.) (Trial Pleading)
Court of Common Pleas of Pennsylvania.
Bucks County

Rita GUDDAT, Executrix of the Estate of Teresa Stone, deceased, Plaintiff,

v.

NORTHERN HEALTH FACILITIES, INC., d/b/a Langhorne Gardens Rehabilitation and Nursing Center; Extendicare Health Facilities, Inc.; Extendicare Health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc.; Extendicare Health Network, Inc.; Manor Care of Yardley PA LLC d/b/a Manorcare Health Services-Yardley; Manorcare Health Services, Inc.; Manor Care, Inc.; HCR Manorcare, LLC; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; and HCR IV Healthcare, LLC; Defendants.

No. 201304561.
June 17, 2013.

This is not An Arbitration Case; An Assessment of Damages is Required; Jury Trial Demanded

Notice to Defend

Wilkes & McHugh, P.A., [Ian T. Norris](#), Esquire, Attorney Identification No. 207566, Three Parkway, 1601 Cherry Street, Suite 1300, Philadelphia, PA 19102, Tel No. (215) 972-0811, Email: inorris@wilkesmchugh.com, Attorney for Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased.

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint in Civil Action and Notice to Defend are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any claim or relief requested by Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE

THE BUCKS COUNTY BAR ASSOCIATION

135 East State Street

Doylestown, Pennsylvania 18901

Phone: 215-348-9413 Fax: 215-348-3277

COMPLAINT IN CIVIL ACTION

(Medical Professional Liability Action)

Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, by and through counsel, Wilkes & McHugh, P.A., files the within Complaint in Civil Action as follows:

I. PARTIES

A. Plaintiff

1. Teresa Stone was an adult individual and was a resident of Langhorne Gardens Rehabilitation and Nursing Center, located at 350 Manor Avenue, Langhorne, PA 19047, from June 25, 2011 to July 2, 2011. She was also a resident of ManorCare Health Services: Yardley, located at 1480 Oxford Valley Road, Yardley, PA 17701, from July 28, 2011 to August 16, 2011. Teresa Stone subsequently died on November 6, 2012.

2. Rita Guddat is the daughter of Teresa Stone, deceased, and an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 8691 West Oak Street, Crystal River, Florida 34429.

3. Rita Guddat was appointed Executrix of the Estate of Teresa Stone, deceased, on June 13, 2013, by the Register of Wills of Bucks County.

B. Northern Health Facilities, Inc., d/b/a Langhorne Gardens Rehabilitation and Nursing Center; Extencicare Health Facilities, Inc.; Extencicare Health Facility Holdings, Inc.; Extencicare Health Services, Inc.; Extencicare Health Network, Inc.; Extencicare Holdings, Inc.; Extencicare, Inc. (“Extencicare Defendants”)

4. Defendant, Northern Health Facilities, Inc., d/b/a Langhorne Gardens Rehabilitation and Nursing Center, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and a place of business located at 350 Manor Avenue, Langhorne, Pennsylvania 19047.

5. Defendant, Northern Health Facilities, Inc., d/b/a Langhorne Gardens Rehabilitation and Nursing Center, is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Rehabilitation and Nursing Center (hereinafter “Extencicare Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

6. Defendant, Extencicare Health Facilities, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a principal place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203-2903.

7. Defendant, Extencicare Health Facilities, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Rehabilitation and Nursing Center (hereinafter “Extencicare Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors,

subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractor's staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

8. Defendant, Extencicare Health Facility Holdings, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a principal place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203-2903.

9. Defendant, Extencicare Health Facility Holdings, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Rehabilitation and Nursing Center (hereinafter "Extencicare Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

10. Defendant, Extencicare Health Services, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a principal place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203-2903.

11. Defendant, Extencicare Health Services, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Rehabilitation and Nursing Center (hereinafter "Extencicare Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

12. Defendant, Extencicare Holdings, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a principal place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203-2903

13. Defendant, Extencicare Holdings, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Rehabilitation and Nursing Center (hereinafter "Extencicare Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

14. Defendant, Extencicare Health Network, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203-2903.

15. Defendant, Extencicare Health Network, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Nursing and Rehabilitation Center (hereinafter “Extencicare Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

16. Defendant, Extencicare, Inc., is a foreign corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a principal place of business located at 3000 Steeles Avenue East, Suite 700, Markham, Ontario, Canada L3R9W2.

17. Defendant, Extencicare, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Langhorne Gardens Rehabilitation and Nursing Center (hereinafter “Extencicare Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Langhorne, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone. In addition to the foregoing, Extencicare, Inc. is a successor-in-interest and mere continuation of Extencicare Limited Partnership and Extencicare Real Estate Investment Trust, and has assumed and bears liability for all acts and/or omissions by Extencicare Limited Partnership and Extencicare Real Estate Investment Trust and of the agents of those entities.

18. Upon present information and belief, at all times material hereto, the Extencicare Defendants individually and collectively, and/or through a joint venture, owned, operated, licensed and/or managed Langhorne Gardens Rehabilitation and Nursing Center, and are individually and collectively engaged in the business of providing nursing care and assisted living/personal care services to the general public akin to a hospital.

C. Defendants, Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley; ManorCare Health Services, Inc.; Manor Care, Inc.; HCR ManorCare, LLC; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; and, HCR IV Healthcare, LLC (“ManorCare Defendants”)

19. Defendant, Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604 and 1480 Oxford Valley Road, Yardley, PA 17701, respectively.

20. Defendant, Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley, is engaged in the business of owning, operating and/or managing skilled nursing facilities, including ManorCare Health Services - Yardley (hereinafter “ManorCare Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and

its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

21. Defendant, HCR III Healthcare, LLC, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

22. Defendant, HCR III Healthcare, LLC, is engaged in the business of owning, operating and/or managing skilled nursing facilities, including ManorCare Health Services-Yardley (hereinafter "ManorCare Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

23. Defendant, HCR II Healthcare, LLC, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

24. Defendant, HCR II Healthcare, LLC, is engaged in the business of owning, operating and/or managing skilled nursing facilities, including ManorCare Health Services-Yardley (hereinafter "ManorCare Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

25. Defendant, HCR Healthcare, LLC, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

26. Defendant, HCR Healthcare, LLC, is engaged in the business of owning, operating and/or managing skilled nursing facilities, including ManorCare Health Services-Yardley (hereinafter "ManorCare Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

27. Defendant, Manor Care, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

28. Defendant, Manor Care, Inc., is engaged in the business of owning, operating and/or managing skilled nursing facilities, including ManorCare Health Services-Yardley (hereinafter "ManorCare Facility"), providing healthcare, medical services,

nursing care, assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

29. Defendant, ManorCare Health Services, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 N. Summit St., Toledo, OH 43604-2617.

30. Defendant, ManorCare Health Services, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services -Yardley (hereinafter “ManorCare Facility”), providing healthcare, medical services, nursing care, and assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and was, at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor, and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff, and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things, for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff, and/or partners, and all other Defendants, all of whom played a role in the care of Teresa Stone.

31. On April 6, 2011, HCR ManorCare, Inc., merged with and into HCR Healthcare Operations, LLC, and these entities were restated as HCR ManorCare, LLC.

32. Defendant, HCR ManorCare, LLC, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604.

33. Defendant, HCR ManorCare, LLC, is engaged in the business of owning, operating and/or managing skilled nursing facilities, including ManorCare Health Services-Yardley (hereinafter “ManorCare Facility”), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Yardley, Bucks County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other Defendants, all of whom played a role in the care of Teresa Stone.

34. Upon present information and belief, at all times material hereto, the ManorCare Defendants individually and collectively, and/or through a joint venture, owned, operated, licensed and/or managed ManorCare Health Services - Yardley, and are individually and collectively engaged in the business of providing nursing care and assisted living/personal care services to the general public akin to a hospital.

II. JURISDICTION AND VENUE

35. Jurisdiction and venue are proper in this Honorable Court in Bucks County, Pennsylvania, insofar as Defendants regularly conduct business in this county, the cause of action arose in this county and/or the action is being brought in any county which venue may be laid against any defendant. *See Pa.R.C.P. 1006 and 2179.*

III. FACTUAL BACKGROUND

A. Conduct of the Extencicare Defendants

36. On June 25, 2011, Teresa Stone was admitted to the care of the Extencicare Facility.¹

37. During the course of her residency, Teresa Stone was incapable of independently providing for all of her daily care and personal needs without reliable assistance. In exchange for monies, she was admitted to Extencicare Defendants' Facility to obtain such care and protection.

38. The Extencicare Defendants, through advertising, promotional materials and information sheets, held out themselves and the Extencicare Facility, as being able to provide skilled nursing and personal care to sick, elderly and frail individuals, including Teresa Stone.

39. At all times material hereto, the Extencicare Defendants held themselves out as capable of being able to provide the requisite care, including total health care, to the sick, elderly, and frail individuals, like Teresa Stone, consisting of care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

40. At the time of her admission, the Extencicare Defendants, individually and/or through their agents, employees, servants, contractors, subcontractors, staff and representatives, assessed the needs of Teresa Stone, and promised that they would adequately care for her needs.

41. Extencicare Defendants exercised complete and total control over the health care of all residents of the Extencicare Facility, such as Teresa Stone.

42. Upon information and belief, at all times hereto, Extencicare Defendants were a vertically integrated corporation that was controlled by the same board of directors, who were responsible for the operation, planning, management, and quality control of the Extencicare Facility.

43. At all times material hereto, the control exercised by Extencicare Defendants included, inter alia: budgeting, marketing, human resource management, training, supervision of staff, staffing, and the creation and implementation of all policy and procedural manuals used by the Extencicare Facility.

44. Extencicare Defendants also exercised control over reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax, and accounting issues.

45. Extencicare Defendants, by and through their board of directors and corporate officers, utilized survey results and quality indicators to monitor the care being provided at their personal care homes/residential health care/skilled nursing facilities, including the Extencicare Facility.

46. Extencicare Defendants exercised ultimate authority over all budgets and had final approval over the allocation of resources to their Extencicare Facility.

47. As a part of their duties and responsibilities, Extencicare Defendants had an obligation to establish policies and procedures that addressed the needs of the residents of the Extencicare Facility, such as Teresa Stone, with respect to the recognition and/or treatment of medical and/or nursing conditions, such as those experienced by Teresa Stone, so as to ensure that timely and appropriate care would be provided for such conditions whether within the Extencicare Facility, or obtained from other medical providers.

48. Extencicare Defendants, acting through their administrators, various boards, committees, and individuals, were responsible for the standard of professional practice by members of their staff at the Extencicare Facility, and to oversee their conduct in the matters set forth herein.

49. Extencicare Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper treatment was rendered to individuals having medical and nursing problems, such as those presented by Teresa Stone as set forth herein.

50. As a part of their duties and responsibilities, Extencicare Defendants had an obligation to maintain and manage the Extencicare Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of medical conditions suffered by residents, such as Teresa Stone, whether within the Extencicare Facility, or obtained from other medical care providers.

51. Extencicare Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits and/or excess revenues at the expense of the care required to be provided to its residents, including Teresa Stone.

52. In their effort to maximize profits and/or excess revenues, Extencicare Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care and supervision to the residents, which demonstrated a failure to comply with the applicable regulations and standards for personal care homes/skilled nursing facilities.

53. Extencicare Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Facility to be set at a level such that the personnel on duty could not and did not meet Teresa Stone's needs.

54. Over the past several years, and at all times material hereto, Extencicare Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical and custodial care.

55. Extencicare Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary for the new resident population.

56. Extencicare Defendants knew, or should have known, that the acuity needs of the residents in their Facility increased and, therefore, the resources necessary increased, including raising the amount of staffing required to meet the needs of the residents.

57. Extencicare Defendants failed to provide resources necessary, including sufficiently trained staff, to meet the needs of the residents, including Teresa Stone.

58. Extencicare Defendants knowingly established staffing levels that created recklessly high resident to staff ratios, including high resident to nurse ratios.

59. Extencicare Defendants knowingly disregarded patient acuity levels while making staffing decisions; and, also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatment.

60. The acts and omissions of the Extencicare Defendants were motivated by a desire to increase profits and/or excess revenues of the Extencicare Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Teresa Stone.

61. The actions of the Extencicare Defendants were designed to increase reimbursement by governmental programs.

62. Extencicare Defendants' financial motives were evidenced by the fact that Teresa Stone was not transferred to the appropriate medical facility and/or facility with the appropriate level of health care when Defendants knew, or should have known, that they could not meet needs of Teresa Stone.

63. The aforementioned acts directly caused injury to Teresa Stone and were known by Extencicare Defendants.

64. Extencicare Defendants knowingly sacrificed the quality of care received by all residents, including Teresa Stone, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Teresa Stone, as described herein, which included the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain.

65. At the time and place of the incidents herein described, the Extencicare Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of Extencicare Defendants.

66. At all times material hereto, Extencicare Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of Extencicare Defendants herein.

67. The aforementioned incidents were caused solely and exclusively by the negligence, carelessness, and recklessness of Extencicare Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or omission to act on the part of Teresa Stone.

68. Extencicare Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against Extencicare Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

69. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial **neglect** and corporate negligence against the Extencicare Defendants herein, as each of the entities named as Extencicare Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

D. Injuries of Teresa Stone at the Extencicare Facility

36. At the time of her admission to the Extencicare Facility, Teresa Stone had a past medical history including Paraplegia (due to traumatic injury blood clot in lower spinal cord), Chronic constipation due to atonic bowel, Chronic back and neck pain due to Degenerative joint disease and Degenerative disc disease, Obesity, Neurogenic bladder with chronic Foley catheter.

37. Upon admission to the Extencicare Facility, Teresa Stone was dependent upon the staff for her mental, physical and medical needs, requiring assistance with activities of daily living, and had various illnesses and conditions that required evaluation and treatment.

38. Extencicare Defendants knew or should have known that Teresa Stone was at risk for the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain.

39. The Extencicare Defendants deprived Teresa Stone of adequate care, treatment, food, water and medicine and caused her to suffer numerous illnesses and injuries, which upon information and belief, included the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain.

40. The severity of the negligence inflicted upon Teresa Stone, by the Extencicare Defendants accelerated the deterioration of her health and physical condition, and resulted in physical and emotional injuries that caused her severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

41. These injuries, as well as the conduct specified herein, caused Teresa Stone, to suffer a loss of personal dignity, together with degradation, anguish, emotional trauma, pain and suffering.

42. During her admission, Teresa Stone required assistance in care with her activities of daily living.

43. Upon admission to the Extencicare Facility for respite care on June 25, 2011, Mrs. Stone had 2 pitting edema of her right and left feet, with boggy heels; a left buttock pressure ulcer, measuring 3.0 x 4.0 cm and sloughing; a right sacral/ upper buttock Stage II pressure ulcer, measuring 3.0 x 6.0 x < 0.5cm cm and sloughing with a small amount red drainage; a right buttocks red and purple deep tissue injury measuring 10 x 10 cm; and a right lower buttocks Stage II pink pressure ulcer, measuring 2.0 x 2.0 x 0.3 cm. She weighed 177 pounds.

44. From June 25, 2011 through June 30, 2011, the Extencicare Facility failed to turn and reposition Mrs. Stone every two hours as ordered, and also failed to provide skin care to her heels every shift as ordered.

45. On June 27, 2011, Mrs. Stone complained of back pain. Mrs. Stone was not administered pain medication until after a delay of almost six hours.

46. By June 27, 2011, Mrs. Stone's left buttock pressure wound had increased in severity to a Stage III, and increased in size to measure 3.5 x 2.2 cm.

47. On June 29, 2011, it was noted that Mrs. Stone had experienced a weight loss of 3.4 pounds, or 1.92% of her bodyweight, in the three days since admission. On this same day, the Extencicare Facility also failed to provide Mrs. Stone Foley catheter care, skin care, and wound care, which had been ordered for every shift.

48. On June 30, 2011, a skin assessment indicated that Mrs. Stone's wounds had worsened. Her left buttock/hip pressure was a Stage III open wound measuring 3.0 x 4.0 cm and sloughing with a yellow green drainage; her right sacral upper buttock area was a Stage III wound measuring 2.5 x 3.0 cm with sloughing; her right lower buttocks red and purple deep tissue injury measured 7.0 x 6.0 cm; and her right lower buttocks had increased to a Stage III wound with yellow slough and measured 3.0 x 2.0 cm. No culture was collected to determine if the yellow green drainage was indicative of an infection.

49. On July 1, 2011, Mrs. Stone suffered two new wounds as a result of the Extencicare Facility Staff using the wrong size adult diaper. She had a left abdominal fold wound measuring 8.5 x 0.5 cm, and a left groin wound measuring 3.5 x 0.4 cm.

50. The Extencicare Facility also failed to provide Mrs. Stone with adequate hygiene; she did not receive a bath at any time during her residency.

51. The Extencicare Facility accepted Teresa Stone as a resident fully aware of her medical history and understood the level of nursing care required to prevent the occurrence of her serious injuries.

52. Teresa Stone's chart includes and evidences missing and incomplete documentation, including Activities of Daily Living sheets, medication administration records, treatment administration records, and controlled medication utilization record.

53. The severity of the negligence inflicted upon Teresa Stone by the Extencicare Defendants consisted of mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training of the Extencicare Facility employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate therapeutic care plan; failure to provide proper medication; and failure to provide sufficient food and water to preclude the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain; and failure to ensure that the highest level of physical, mental and psychosocial functioning was attained.

54. As a result of the negligence, carelessness and recklessness of the Extencicare Defendants herein described, Teresa Stone was caused to suffer serious and permanent injuries as described herein, to, in and about her body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases she had, and/or accelerated the deterioration of her health, physical and mental condition, and more particularly, the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain, and other body pain and damage, and anxiety reaction and injury to her nerves and nervous system, some or all of which were permanent, together with other medical complications.

C. Conduct of the ManorCare Defendants

55. On July 28, 2011, Teresa Stone was admitted to the care of the ManorCare Facility.²

56. During the course of her residency, Teresa Stone was incapable of independently providing for all of her daily care and personal needs without reliable assistance. In exchange for monies, she was admitted to ManorCare Defendants' Facility to obtain such care and protection.

57. The ManorCare Defendants, through advertising, promotional materials and information sheets, held out themselves and the Facility, as being able to provide skilled nursing and personal care to sick, **elderly** and frail individuals, including Teresa Stone.

58. At all times material hereto, the ManorCare Defendants held themselves out as capable of being able to provide the requisite care, including total health care, to the sick, **elderly**, and frail individuals, like Teresa Stone, consisting of care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

59. At the time of her admission, the ManorCare Defendants, individually and/or through their agents, employees, servants, contractors, subcontractors, staff and representatives, assessed the needs of Teresa Stone, and promised that they would adequately care for her needs.

60. ManorCare Defendants exercised complete and total control over the health care of all residents of the Facility, such as Teresa Stone.

61. Upon information and belief, at all times hereto, ManorCare Defendants were a vertically integrated corporation that was controlled by the same board of directors, who were responsible for the operation, planning, management, and quality control of the Facility.

62. At all times material hereto, the control exercised by ManorCare Defendants included, inter alia: budgeting, marketing, human resource management, training, supervision of staff, staffing, and the creation and implementation of all policy and procedural manuals used by the Facility.

63. ManorCare Defendants also exercised control over reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax, and accounting issues.

64. ManorCare Defendants, by and through their board of directors and corporate officers, utilized survey results and quality indicators to monitor the care being provided at their personal care homes/residential health care/skilled nursing facilities, including the Facility.

65. Defendants exercised ultimate authority over all budgets and had final approval over the allocation of resources to the ManorCare Facility.

66. As a part of their duties and responsibilities, ManorCare Defendants had an obligation to establish policies and procedures that addressed the needs of the residents of the ManorCare Facility, such as Teresa Stone, with respect to the recognition and/or treatment of medical and/or nursing conditions, such as those experienced by Teresa Stone, so as to ensure that timely and appropriate care would be provided for such conditions whether within the ManorCare Facility, or obtained from other medical providers.

67. ManorCare Defendants, acting through their administrators, various boards, committees, and individuals, were responsible for the standard of professional practice by members of their staff at the ManorCare Facility, and to oversee their conduct in the matters set forth herein.

68. ManorCare Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper treatment was rendered to individuals having medical and nursing problems, such as those presented by Teresa Stone as set forth herein.

69. As a part of their duties and responsibilities, ManorCare Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of medical conditions suffered by residents, such as Teresa Stone, whether within the ManorCare Facility, or obtained from other medical care providers.

70. ManorCare Defendants made a conscious decision to operate and/or manage the ManorCare Facility so as to maximize profits and/or excess revenues at the expense of the care required to be provided to its residents, including Teresa Stone.

71. In their effort to maximize profits and/or excess revenues, ManorCare Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care and supervision to the residents, which demonstrated a failure to comply with the applicable regulations and standards for personal care homes/skilled nursing facilities.

72. ManorCare Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the ManorCare Facility to be set at a level such that the personnel on duty could not and did not meet Teresa Stone's needs.

73. Over the past several years, and at all times material hereto, ManorCare Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical and custodial care.

74. ManorCare Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary. for the new resident population.

75. ManorCare Defendants knew, or should have known, that the acuity needs of the residents in their Facility increased and, therefore, the resources necessary increased, including raising the amount of staffing required to meet the needs of the residents.

76. ManorCare Defendants failed to provide resources necessary, including sufficiently trained staff, to meet the needs of the residents, including Teresa Stone.

77. ManorCare Defendants knowingly established staffing levels that created recklessly high resident to staff ratios, including high resident to nurse ratios.

78. ManorCare Defendants knowingly disregarded patient acuity levels while making staffing decisions; and, also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatment.

79. The acts and omissions of ManorCare Defendants were motivated by a desire to increase profits and/or excess revenues of the Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Teresa Stone.

80. The actions of ManorCare Defendants were designed to increase reimbursement by governmental programs.

81. ManorCare Defendants' financial motives were evidenced by the fact that Teresa Stone was not transferred to the appropriate medical facility and/or facility with the appropriate level of health care when ManorCare Defendants knew, or should have known, that they could not meet needs of Teresa Stone.

82. The aforementioned acts directly caused injury to Teresa Stone and were known by Defendants.

83. ManorCare Defendants knowingly sacrificed the quality of care received by all residents, including Teresa Stone, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Teresa Stone, as described herein, which included the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain.

84. At the time and place of the incidents herein described, the ManorCare Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of ManorCare Defendants.

85. At all times material hereto, ManorCare Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of ManorCare Defendants herein.

86. The aforementioned incidents were caused solely and exclusively by the negligence, carelessness, and recklessness of ManorCare Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or omission to act on the part of Teresa Stone.

87. ManorCare Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against ManorCare Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

88. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial **neglect** and corporate negligence against the ManorCare Defendants herein, as each of the entities named as ManorCare Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

D. Injuries to Teresa Stone at the ManorCare Facility

89. At the time of her admission to the Facility, Teresa Stone had a past medical history including Paraplegia (due to traumatic injury blood clot in lower spinal cord), Chronic constipation due to atonic bowel, Chronic back and neck pain due to Degenerative joint disease and Degenerative disc disease, Obesity, Neurogenic bladder with chronic Foley catheter.

90. Upon admission to the Facility, Teresa Stone was dependent upon the staff for her mental, physical and medical needs, requiring assistance with activities of daily living, and had various illnesses and conditions that required evaluation and treatment.

91. Defendants knew or should have known that Teresa Stone was at risk for the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain.

92. The Defendants deprived Teresa Stone of adequate care, treatment, food, water and medicine and caused her to suffer numerous illnesses and injuries, which upon information and belief, included the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain.

93. The severity of the negligence inflicted upon Teresa Stone, by the Defendants accelerated the deterioration of her health and physical condition, and resulted in physical and emotional injuries that caused her severe pain, suffering and mental anguish, together with unnecessary hospitalizations.

94. These injuries, as well as the conduct specified herein, caused Teresa Stone, to suffer a loss of personal dignity, together with degradation, anguish, emotional trauma, pain and suffering.

95. During her admission, Teresa Stone required assistance in care with her activities of daily living.

96. On July 29, 2011, Mrs. Stone's admission wound assessment indicated that she was admitted with a right lateral fifth toe wound measuring 1.5 x 1.0 cm; a dark gray coccyx wound measuring 6.0 x 4.5 cm, with a depth of 3 cm and undermining; a left upper hip wound measuring 1.3 cm x 3.0 cm, and a depth of 0.1 cm with 90% slough; a black eschar right heel wound measuring 3.5 x 2.5 cm and a depth of 0.1 cm; and a left ischia wound measuring 2.0 x 2.0 cm x < 0.1cm.

97. On August 2, 2011, Mrs. Stone's wounds had worsened. Her Coccyx wound was now a Stage IV and had increased in size to measure 8.0 x 10.7 x 3.0cm, with 3.8 cm of undermining, 50% blackish slough; she also experienced lower skin sheering incorporated with the coccyx wound, combined into one wound site. Her left upper hip wound measured 2.2 x 2.5 x <0.1 cm; her right heel wound was a Stage II and measured 3.0 x 2.5 x <0.1 cm.

98. On August 3, 2011, a culture indicated that Mrs. Stone's sacral wound was infected with Acinetobacter Baumannii Complex, E-Coli, Enterococcus Avium, and Gram positive rods Res Diptheroid. She was also vomiting and unable to eat on this day.

99. On August 8, 2011, Mrs. Stone was nauseous and vomiting, and she had vital signs of Blood Pressure 119/67, Pulse 80, and temperature of 100.9 degrees. She had no bowel movement since August 6 and had hypoactive bowel sounds. An abdominal x-ray showed mild small bowel ileus. On August 12, 2011, a repeat x-ray showed signs suggestive of ileus.

100. On August 9, 2011, Mrs. Stone's coccyx wound had heavy serous drainage and a foul odor. She also had a right heel wound that measured 2.5 x 1.5 x <0.1 cm with 40% pink granular tissue and 60% blackish steady eschar. She had a new mid upper back wound with drainage, measuring 2.5 x 1.5 cm x 0.6 cm.

101. On August 10, 2011, a lab report indicated that Mrs. Stone was malnourished.

102. Mrs. Stone was not turned and repositioned every two hours throughout her residency at the ManorCare Facility.

103. Upon discharge, Mrs. Stone's Sacral wound had 90% dusky-blackish necrotic tissue on superior aspect, 10% fibro-granular tissues on the inferior aspect of the wound, and measured 9.0 x 9.5 x 4.0 cm with undermining. Her right heel presents with 100% firm intact blackish eschar, and measured 3.0 x 3.0 cm with the surrounding skin as boggy and macerated. She also had a right medial ankle wound measuring 1.0 x 1.5 cm.

104. The Facility accepted Teresa Stone as a resident fully aware of her medical history and understood the level of nursing care required to prevent the occurrence of her serious injuries.

105. Teresa Stone's chart includes and evidences missing and incomplete documentation, including Activities of Daily Living sheets, medication administration records, treatment administration records, and controlled medication utilization record.

106. The severity of the negligence inflicted upon Teresa Stone by the ManorCare Defendants consisted of mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training of the Facility employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate therapeutic care plan; failure to provide proper medication; and failure to provide sufficient food and water to preclude the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain; and failure to ensure that the highest level of physical, mental and psychosocial functioning was attained.

107. As a result of the negligence, carelessness and recklessness of the ManorCare Defendants herein described, Teresa Stone was caused to suffer serious and permanent injuries as described herein, to, in and about her body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases she had, and/or accelerated the deterioration of her health, physical and mental condition, and more particularly, the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain, and other body pain and damage, and anxiety reaction and injury to her nerves and nervous system, some or all of which were permanent, together with other medical complications.

COUNT ONE

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Northern Health Facilities, Inc., d/b/a Statesman Health and Rehabilitation Center; Extendicare Health Facilities, Inc.; Extendicare Health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc.

108. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

109. At all times material hereto, Extendicare Defendants were acting through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Extendicare Defendants.

110. At all times material hereto, Extendicare Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Teresa Stone, were protected.

111. At all times material hereto, Extendicare Defendants owed a non-delegable duty to provide adequate and appropriate custodial care and supervision to Teresa Stone, and other residents, such as reasonable caregivers would provide under similar circumstances.

112. At all times material hereto, Extencicare Defendants owed a non-delegable duty to Teresa Stone, and other residents to hire, train, and supervise employees, so as to deliver healthcare and services to residents in a safe and reasonable manner.

113. At all times material hereto, Extencicare Defendants, by and through their agents, employees, and/or servants, owed a duty of care to Teresa Stone to exercise the appropriate skill and care of licensed physicians, nurses, directors of nursing, and/or nursing home administrators.

114. At all times material hereto, Extencicare Defendants owed a duty and responsibility to furnish Teresa Stone with appropriate and competent nursing and/or total healthcare.

115. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Extencicare Facility, including those suffered by Teresa Stone, Extencicare Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

116. Extencicare Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Teresa Stone, as they were placed on actual and/or constructive notice of said problems.

117. Extencicare Defendants, as the corporate owners, board members and/or managers of the Extencicare Facility, breached their duty and were, therefore, negligent, careless and reckless in their obligations to Teresa Stone.

118. The corporate conduct of Extencicare Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Teresa Stone.

119. At all times material hereto, Extencicare Defendants owed and failed to fulfill the following duties to Teresa Stone: use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent staff; oversee and supervise all persons who practiced nursing and/or skilled healthcare within the Extencicare Facility; and formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents.

120. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of Extencicare Defendants individually and/or acting by and through their officers, board members, physicians, physicians' assistants, nurses, certified nurses' aides and office staff who examined, treated and/or communicated the condition of Teresa Stone, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of Extencicare Defendants, consisted of the following acts and omissions in the care and treatment of Teresa Stone:

a. failure to hire appropriately trained staff and/or train, select and retain competent staff, and knowingly allowing and/or encouraging Inskilled and untrained individuals to care for Teresa Stone who failed to prevent dehydration and malnutrition, failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain, and failed to provide adequate assessments of Teresa Stone following a change in condition, increasing her risk of harm;

b. failure to prevent and engage in incomplete, inconsistent and/or fraudulent documentation by failing to consistently complete Activities of Daily Living sheets, failing to document administration of medications and failing to update MDS with significant changes in conditions, and failing to consistently document Treatment Record;

c. failure to provide adequate pain management;

d. failure to ensure that Teresa Stone did not develop serious and permanent injuries to, in and about her body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases she had, and/or accelerated the deterioration of her health, physical and mental condition, and more particularly, when she experienced the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain, when the Defendants knew or should have known that she was at risk for the same;

e. failure to respond in a timely manner with appropriate medical care when Teresa Stone was injured, including when she experienced the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain, when Defendants knew or should have known that she was at risk for the same.

f. failure to provide adequate and appropriate health care by failing to keep Teresa Stone free from infection, failing to respond to a change in condition in a timely manner, failing to provide an adequate assessment following a change in condition, failing to provide adequate hygiene, failing to provide adequate nutrition impacting wound healing ability, failing to provide adequate hydration, failing to provide appropriate treatment and services to prevent the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain, and failing to administer ordered medications and treatments;

g. failure to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it to reflect current conditions, and failing to provide social services such as physical therapy, occupational therapy and speech therapy in order to attain the highest practicable physical, mental, and social well-being;

h. failure to ensure that each resident received and that the Extencicare Facility provided the necessary care and services to attain Or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;

i. failure to ensure that the Extencicare Facility used the results of the assessment to develop, review and revise the resident's comprehensive plan of care, developing a comprehensive care plan for each resident that included measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;

j. failure to ensure that the Extencicare Facility had sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident assessments and individual plans of care, providing services by sufficient number of each of the required types of personnel on a twenty-four-hour basis to provide nursing care to all residents in accordance with resident care plans;

k. failure to administer the Extencicare Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

l. failure to develop and implement written policies and procedures that prohibit mistreatment, **neglect**, and abuse of residents and misappropriation of the resident's property;

m. failure to ensure that the services provided or arranged by the Extencicare Facility were provided by qualified persons in accordance with each resident's written plan of care;

n. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the Facility who failed to prevent the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain;

- o. failure to formulate, adopt and enforce adequate rules, procedures and policies to ensure quality healthcare for residents by failing to: provide adequate and appropriate health care to prevent the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain, and provide complete and consistent documentation, provide appropriate treatment, services and adequate assessments following change in condition to prevent the development and worsening of pressure wounds, weight loss, infections, delay in treatment for pain, delay in treatment for wounds, dehydration, poor hygiene, and severe pain;
- p. failure to undertake and/or implement the instructions provided by physicians and notify the physicians of change in the condition of Teresa Stone;
- q. failure to refer Teresa Stone to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated Teresa Stone's condition due to failure to notify treating physicians and follow up on physicians instructions;
- r. failure to provide Teresa Stone with the necessary care and services to allow her to attain or maintain the highest practicable physical, mental and psychological well-being;
- s. failure to provide Teresa Stone with appropriate medication for pain management;
- t. failure to assist Teresa Stone in her personal hygiene;
- u. failure to ensure that the Facility was properly funded;
- v. failure to implement a budget that would allow the Extencicare Facility to provide adequate and appropriate healthcare to Teresa Stone including adequate staff and supplies;
- w. grossly understaffing the Extencicare Facility;
- x. failure to take appropriate steps to remedy continuing problems at the Extencicare Facility that Extencicare Defendants knew were occurring with Teresa Stone's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;
- y. failure to evaluate the quality of resident care and efficiency of services, identify strengths and weaknesses, set in place measures for improvements where necessary, and, evaluate progress and institute appropriate follow-up activities;
- z. failure to maintain open lines of communication with the governing body, department heads, Facility staff and its residents to ensure that resources were properly allocated and that resident care was maintained at a high level;
- aa. failure to maintain compliance with governmental regulations;
- bb. failure to implement personnel policies and procedures that define job responsibilities, accountability and the performance appraisal process and emphasize the importance of the health care team in the delivery of quality resident care;
- cc. failure to coordinate training programs to improve employee skills and to enhance employee performance;
- dd. failure to develop a budget with an objective of the delivery of quality care; and,
- ee. acting in a grossly negligent manner, with reckless indifference to the rights and safety of Teresa Stone.

121. Upon information and belief, the corporate officers of the Extencicare Defendants were made aware of the governmental/state survey results and placed on notice of the issues with resident care at their Facility.

122. Upon information and belief, the Extencicare Defendants were aware that there were numerous problems at the Facility, and that they had been cited by the Pennsylvania Department of Health for failures at the Extencicare Facility.

364. Upon information and belief, the Extencicare Defendants were aware that they had been cited by governmental units regarding additional failures at the Facility on: 1/30/2007 for failing to ensure that an injury of unknown origin was thoroughly investigated, and failing to ensure staff documented that showers were provided to residents as scheduled; 10/18/2007 for failing to provide medical justification for the use of restraints, and failing to maintain a sanitary environment; 5/21/2008 for failing to ensure that an injury of unknown origin was thoroughly investigated, and failing to ensure that staff completely documented a resident's Treatment Administration Record; 9/12/2008 for failing to provide adequate supervision and safety interventions for residents at risk of falls, failing to maintain sanitary conditions, failing to ensure that physician ordered medications were obtained from the pharmacy, failing to ensure access to call bell, failing to administer medications in accordance with physician's orders, failing to promote adequate intake; 11/10/2008 for failing to implement assessed safety measures, and failing to prevent weight loss and maintain protein levels; on 9/18/2009 for failing to ensure that the Facility is free of medication error rates of five percent or greater, failing to implement physician's orders, failing to monitor a medical device for appropriate function, failing to ensure complete and accurate documentation, failing to ensure adequate supervision for residents identified at risk for falls, and failing to document justification, dose reduction and medication administration for residents receiving psychoactive medications; on 10/1/10 for failing to ensure that consultant physician recommendations were timely implemented, failing to provide a fortified food product for a resident identified with weight loss, and failing to prevent the potential spread of infection; on 5/25/2011 for failing to address the concerns of a resident's family member, failing to timely and thoroughly investigate an injury of unknown origin, and failing to address a decline in a resident's bowel continence; on 8/2/2011 for failing to ensure that the resident environment remains as free of accident hazards as is possible, and that each resident receives adequate supervision and assistance devices to prevent accidents; on 9/16/2011 for failing to provide restorative ambulation services; and on 8/10/2012 for failing to provide restorative services to maintain and improve a resident's ability to eat, failing to timely act upon pharmacist identified drug irregularities, and failing to implement preventative measures for residents at risk for skin breakdown.

123. Upon information and belief, the corporate officers of the Extencicare Defendants had been made aware in the past that the Extencicare Facility had been cited for the failures mentioned in the preceding paragraph.

124. Extencicare Defendants knew that the violations described in the paragraphs above were not isolated events and were, at times, described as repeat deficiencies, which placed them on notice of failures to provide proper care and treatment to residents, including Teresa Stone.

125. As a direct and proximate result of the Extencicare Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Teresa Stone suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the Facility, and (e) aggravation of her pre-existing medical conditions.

126. In causing the aforementioned injuries, Extencicare Defendants knew, or should have known, that Teresa Stone, would suffer such harm.

127. The conduct of Extencicare Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Teresa Stone.

128. The conduct of Extencicare Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the Extencicare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT TWO

NEGLIGENCE *PER SE* FOR VIOLATIONS OF **NEGLECT** OF A CARE-DEPENDENT PERSON, 18 Pa.C.S.A. § 2713

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Northern Health Facilities, Inc., d/b/a Statesman Health and Rehabilitation Center; Extencicare Health Facilities, Inc.; Extencicare Health Facility Holdings, Inc.; Extencicare Health Services, Inc.; Extencicare Health Network, Inc.; Extencicare Holdings, Inc.; Extencicare, Inc.

129. Plaintiff incorporates herein by reference the preceding paragraphs as though the same were more fully set forth at length herein.

130. At all times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person,” which set forth penal consequences for **neglect** of a care-dependent person.

131. 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be abused or **neglected**, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such abuse or **neglect** causes injury, either physical or mental, then such conduct is actionable.

132. At all times pertinent hereto, Teresa Stone was a care dependent resident of the Extencicare Defendants' Facility, and thus fell within the class of persons 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” as the standard of care for measuring the Defendants' conduct.

133. Additionally, 18 Pa.C.S.A. § 2713 **Neglect** of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Teresa Stone sustained.

134. The Extencicare Defendants, in accepting the responsibility for caring for Teresa Stone as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” in that they:

- a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Teresa Stone for whom they were responsible to provide care as specifically set forth in this Complaint;

135. As a direct result of the aforesaid negligence “per se” of the Defendants, Teresa Stone was caused to sustain serious personal injuries and damages as aforesaid.

136. The conduct of the Extencicare Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the Extencicare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT THREE

NEGLIGENCE PER SE FOR VIOLATIONS OF THE PENNSYLVANIA OLDER ADULTS PROTECTIVE SERVICES ACT, 35 P.S. § 10225.101, et seq.

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Northern Health Facilities, Inc., d/b/a Statesman Health and Rehabilitation Center; Extencicare Health Facilities, Inc.; Extencicare Health Facility Holdings, Inc.; Extencicare Health Services, Inc.; Extencicare Health Network, Inc.; Extencicare Holdings, Inc.; Extencicare, Inc.

137. Plaintiff incorporates herein by reference the preceding paragraphs as through the same were more fully set forth at length herein.

138. At all times pertinent hereto, there was in full force and effect 35 P.S. § 10225.101, et seq., “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for abuse of a care-dependent person.

139. 35 P.S. § 10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of abuse, **neglect**, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from abuse, **neglect**, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of abuse, **neglect**, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

140. At all times pertinent hereto, Teresa Stone was an older person who was a resident of Extencicare Defendants' Facility who lacked the capacity to protect herself and thus fell within the class of persons 35 P.S. § 10225.101, et seq. was intended to protect, thus entitling Plaintiff to adopt 35 P.S. § 10225.101, et seq. as the standard of care for measuring the Defendants' conduct.

141. Additionally, the Pennsylvania Older Adults Protective Services Act is directed, at least in part, to obviate the specific kind of harm which Teresa Stone sustained.

142. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the Extencicare Defendants, in accepting the responsibility for caring for Teresa Stone as aforesaid, were negligent “per se” and violated 35 P.S. § 10225.101, et seq. in that they had reasonable cause to suspect that Teresa Stone was the victim of abuse or **neglect** and failed to report said abuse and **neglect** to the appropriate agency and law enforcement officials.

143. As a direct result of the aforesaid negligence “per se” of the Extencicare Defendants, Teresa Stone was caused to sustain serious personal injuries and damages as aforesaid.

144. The conduct of Extencicare Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the Extencicare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT FOUR

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Northern Health Facilities, Inc., d/b/a Statesman Health and Rehabilitation Center; Extencicare Health Facilities, Inc.; Extencicare Health Facility Holdings, Inc.; Extencicare Health Services, Inc.; Extencicare Health Network, Inc.; Extencicare Holdings, Inc.; Extencicare, Inc.

145. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

146. Plaintiff brings this action on behalf of the decedent's estate under and by virtue of the Pennsylvania Judiciary Act, [42 Pa.C.S. 8302](#), known as the Survival Statute, to recover all damages legally appropriate thereunder.

147. The following persons are entitled to share under this cause of action in the estate of said Decedent: Anna Mae S. Dickinson (daughter) and Rita Guddat (daughter).

148. Plaintiff claims damages for the pain, suffering and inconvenience endured by Plaintiff's decedent, Teresa Stone, up to and including the time of her death, which was caused by the Extencicare Defendants' breach of duties, negligence, carelessness and recklessness.

149. Plaintiff claims damages for the fright and mental suffering attributable to the peril leading to the death of Plaintiff's decedent, Teresa Stone, which was caused by the Defendants' breach of duties, negligence, carelessness and recklessness.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the Extencicare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT FIVE

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley; ManorCare Health Services, Inc.; Manor Care, Inc.; HCR ManorCare, LLC; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; and, HCR IV Healthcare, LLC

150. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

151. At all times material hereto, ManorCare Defendants were acting through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the ManorCare Defendants.

152. At all times material hereto, ManorCare Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Teresa Stone, were protected.

153. At all times material hereto, ManorCare Defendants owed a non-delegable duty to provide adequate and appropriate custodial care and supervision to Teresa Stone, and other residents, such as reasonable caregivers would provide under similar circumstances.

154. At all times material hereto, ManorCare Defendants owed a non-delegable duty to Teresa Stone, and other residents to hire, train, and supervise employees, so as to deliver healthcare and services to residents in a safe and reasonable manner.

155. At all times material hereto, ManorCare Defendants, by and through their agents, employees, and/or servants, owed a duty of care to Teresa Stone to exercise the appropriate skill and care of licensed physicians, nurses, directors of nursing, and/or nursing home administrators.

156. At all times material hereto, ManorCare Defendants owed a duty and responsibility to furnish Teresa Stone with appropriate and competent nursing and/or total healthcare.

157. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Facility, including those suffered by Teresa Stone, ManorCare Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

158. ManorCare Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Teresa Stone, as they were placed on actual and/or constructive notice of said problems.

159. ManorCare Defendants, as the corporate owners, board members and/or managers of the Facility, breached their duty and were, therefore, negligent, careless and reckless in their obligations to Teresa Stone.

160. The corporate conduct of ManorCare Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Teresa Stone.

161. At all times material hereto, ManorCare Defendants owed and failed to fulfill the following duties to Teresa Stone: use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent staff; oversee and supervise all persons who practiced nursing and/or skilled healthcare within the ManorCare Facility; and, formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents.

162. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of ManorCare Defendants individually and/or acting by and through their officers, board members, physicians, physicians' assistants, nurses, certified nurses' aides and office staff who examined, treated and/or communicated the condition of Teresa Stone, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of ManorCare Defendants, consisted of the following acts and omissions in the care and treatment of Teresa Stone:

a. failure to hire appropriately trained staff and/or train, select and retain competent staff, and knowingly allowing and/or encouraging unskilled and untrained individuals to care for Teresa Stone who failed to prevent dehydration and malnutrition, failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain, and failed to provide adequate assessments of Teresa Stone following a change in condition, increasing her risk of harm;

- b. failure to prevent and engage in incomplete, inconsistent and/or fraudulent documentation by failing to consistently complete Activities of Daily Living sheets, failing to document administration of medications and failing to update MDS with significant changes in conditions, and failing to consistently document Treatment Record;
- c. failure to provide adequate pain management;
- d. failure to ensure that Teresa Stone did not develop serious and permanent injuries to, in and about her body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases she had, and/or accelerated the deterioration of her health, physical and mental condition, and more particularly, when she experienced the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain, when the ManorCare Defendants knew or should have known that she was at risk for the same;
- e. failure to respond in a timely manner with appropriate medical care when Teresa Stone was injured, including when she experienced the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain, when ManorCare Defendants knew or should have known that she was at risk for the same;
- f. failure to provide adequate and appropriate health care by failing to keep Teresa Stone free from infection, failing to respond to a change in condition in a timely manner, failing to provide an adequate assessment following a change in condition, failing to provide adequate hygiene, failing to provide adequate nutrition impacting wound healing ability, failing to provide adequate hydration, failing to provide appropriate treatment and services to prevent the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain, and failing to administer ordered medications and treatments;
- g. failure to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it to reflect current conditions, and failing to provide social services such as physical therapy, occupational therapy and speech therapy in order to attain the highest practicable physical, mental, and social well-being;
- h. failure to ensure that each resident received and that the ManorCare Facility provided the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;
- i. failure to ensure that the ManorCare Facility used the results of the assessment to develop, review and revise the resident's comprehensive plan of care, developing a comprehensive care plan for each resident that included measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;
- j. failure to ensure that the ManorCare Facility had sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident assessments and individual plans of care, providing services by sufficient number of each of the required types of personnel on a twenty-four-hour basis to provide nursing care to all residents in accordance with resident care plans;
- k. failure to administer the ManorCare Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- l. failure to develop and implement written policies and procedures that prohibit mistreatment, **neglect**, and abuse of residents and misappropriation of the resident's property;

- m. failure to ensure that the services provided or arranged by the ManorCare Facility were provided by qualified persons in accordance with each resident's written plan of care;
- n. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the ManorCare Facility who failed to prevent the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain;
- o. failure to formulate, adopt and enforce adequate rules, procedures and policies to ensure quality healthcare for residents by failing to: provide adequate and appropriate health care to prevent the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain, and provide complete and consistent documentation, provide appropriate treatment, services and adequate assessments following change in condition to prevent the development and worsening of pressure wounds, malnutrition, dehydration, ileus, infections, inadequate pain management, poor hygiene, and severe pain;
- p. failure to undertake and/or implement the instructions provided by physicians and notify the physicians of change in the condition of Teresa Stone;
- q. failure to refer Teresa Stone to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated Teresa Stone's condition due to failure to notify treating physicians and follow up on physicians instructions;
- r. failure to provide Teresa Stone with the necessary care and services to allow her to attain or maintain the highest practicable physical, mental and psychological well-being;
- s. failure to provide Teresa Stone with appropriate medication for pain management;
- t. failure to assist Teresa Stone in her personal hygiene;
- u. failure to ensure that the ManorCare Facility was properly funded;
- v. failure to implement a budget that would allow the Facility to provide adequate and appropriate healthcare to Teresa Stone including adequate staff and supplies;
- w. grossly understaffing the Facility;
- x. failure to take appropriate steps to remedy continuing problems at the Facility that ManorCare Defendants knew were occurring with Teresa Stone's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;
- y. failure to evaluate the quality of resident care and efficiency of services, identify strengths and weaknesses, set in place measures for improvements where necessary, and, evaluate progress and institute appropriate follow-up activities;
- z. failure to maintain open lines of communication with the governing body, department heads, Facility staff and its residents to ensure that resources were properly allocated and that resident care was maintained at a high level;
- aa. failure to maintain compliance with governmental regulations;
- bb. failure to implement personnel policies and procedures that define job responsibilities, accountability and the performance appraisal process and emphasize the importance of the health care team in the delivery of quality resident care;

cc. failure to coordinate training programs to improve employee skills and to enhance employee performance;

dd. failure to develop a budget with an objective of the delivery of quality care; and,

ee. acting in a grossly negligent manner, with reckless indifference to the rights and safety of Teresa Stone.

163. Upon information and belief, the corporate officers of the ManorCare Defendants were made aware of the governmental/state survey results and placed on notice of the issues with resident care at the ManorCare Facility.

164. Upon information and belief, the ManorCare Defendants were aware that there were numerous problems at the ManorCare Facility, and that they had been cited by the Pennsylvania Department of Health for failures at the ManorCare Facility.

165. Upon information and belief, the ManorCare Defendants were aware that they had been cited by governmental units regarding additional failures at the ManorCare Facility on: 2/13/2012 for failure to ensure that pertinent clinical information was documented within the clinical record; 11/4/2011 for failure to ensure that the resident and responsible party was given the opportunity to participate in the care planning, failure to implement infection control procedures, failure to provide timely and consistent restorative ambulation programs, failure to provide a medication in accordance with a physician's order and failure to assess and provide care to maintain and /or restore as much bladder function as possible for incontinent residents; 8/30/2011 for failure ensure that a Minimum Data Set (MDS) assessment accurately reflected the resident's status; 3/16/2011 for failure to timely address resident concerns, and failure to provide a safe, functional, sanitary, and comfortable environment; 2/18/2011 for failure to ensure that a resident's Medication Administration Record accurately reflected the correct medication dose as ordered by the physician, failure to maintain complete and accurate clinical records; 12/10/2010 for failure to maintain an effective system to report, investigate and analyze infection control data to prevent the spread of infection, failure to ensure that physician's orders were implemented regarding medication administration and that physicians were notified of consultant recommendations, failure to thoroughly investigate an incident to rule out abuse, failure to provide adequate supervision for residents at risk of falls, failure to ensure that splinting devices were applied for residents with limitations in range of motion, failure to timely develop comprehensive care plans, failure to ensure access to call bells, and failure to ensure that physician's telephone orders were signed in a timely manner; 8/11/2010 for failure to timely administer medication, maintain complete and accurate clinical records, and failure to notify the department of health of a significant disruption of service; 8/2/2010 for failure to ensure discharge summaries were completed; 7/19/2010 for failure to notify a resident's family regarding the development and worsening of pressure sores; 12/11/2009 for failure to maintain complete and accurate clinical records, failure to implement physician's orders and psychiatric recommendations, failure to offer snacks at bedtime, failure to provide a safe and clean environment, and failure to document the quantity of unused medications; 9/23/2009 for failure to timely report two incidents that involved a resident being transferred to the hospital due to an injury; 3/5/2009 for failure to maintain complete and accurate clinical records; 12/4/2008 for failure to ensure that a resident's unplanned weight loss was addressed timely; 11/20/2008 for failure maintain an effective system to report, investigate and analyze infection control data to prevent the spread of infection, failure to maintain complete and accurate clinical records, failure to follow physician's orders, failure to develop comprehensive care plans that addressed individual resident needs as identified in the comprehensive assessment, and having a medication error rate of 7.5 percent.

166. Upon information and belief, the corporate officers of the ManorCare Defendants had been made aware in the past that the ManorCare Facility had been cited for the failures mentioned in the preceding paragraph.

167. ManorCare Defendants knew that the violations described in the paragraphs above were not isolated events and were, at times, described as repeat deficiencies, which placed them on notice of failures to provide proper care and treatment to residents, including Teresa Stone.

168. As a direct and proximate result of the ManorCare Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Teresa Stone suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the ManorCare Facility, and (e) aggravation of her pre-existing medical conditions.

169. In causing the aforementioned injuries, ManorCare Defendants knew, or should have known, that Teresa Stone, would suffer such harm.

170. The conduct of ManorCare Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Teresa Stone.

171. The conduct of ManorCare Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT SIX

NEGLIGENCE PER SE FOR VIOLATIONS OF **NEGLECT** OF A CARE-DEPENDENT PERSON, 18 Pa.C.S.A. § 2713

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley; ManorCare Health Services, Inc.; Manor Care, Inc.; HCR ManorCare, LLC; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; and, HCR IV Healthcare, LLC

172. Plaintiff incorporates herein by reference the preceding paragraphs as though the same were more fully set forth at length herein.

173. At all times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person,” which set forth penal consequences for **neglect** of a care-dependent person.

174. 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be abused or **neglected**, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such abuse or **neglect** causes injury, either physical or mental, then such conduct is actionable.

175. At all times pertinent hereto, Teresa Stone was a care dependent resident of the ManorCare Defendants' Facility, and thus fell within the class of persons 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” as the standard of care for measuring the Defendants' conduct.

176. Additionally, 18 Pa.C.S. § 2713 “**Neglect** of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Teresa Stone sustained.

177. The ManorCare Defendants, in accepting the responsibility for caring for Teresa Stone as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” in that they:

a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Teresa Stone for whom they were responsible to provide care as specifically set forth in this Complaint;

178. As a direct result of the aforesaid negligence “per se” of the ManorCare Defendants, Teresa Stone was caused to sustain serious personal injuries and damages as aforesaid.

179. The conduct of the Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT SEVEN

NEGLIGENCE PER SE FOR VIOLATIONS OF THE PENNSYLVANIA OLDER ADULTS PROTECTIVE SERVICES ACT, 35 P.S. § 10225.101, et seq.

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley; ManorCare Health Services, Inc.; Manor Care, Inc.; HCR ManorCare, LLC; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; and, HCR IV Healthcare, LLC

180. Plaintiff incorporates herein by reference the preceding paragraphs as through the same were more fully set forth at length herein.

181. At all times pertinent hereto, there was in full force and effect 35 P.S. § 10225.101, et seq., “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for abuse of a care-dependent person.

182. 35 P.S. § 10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of abuse, **neglect**, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from abuse, **neglect**, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of abuse, **neglect**, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

183. At all times pertinent hereto, Teresa Stone was an older person who was a resident of ManorCare Defendants' Facility who lacked the capacity to protect herself and thus fell within the class of persons 35 P.S. § 10225.101, et seq. was intended to protect, thus entitling Plaintiff to adopt 35 P.S. § 10225.101, et seq. as the standard of care for measuring the ManorCare Defendants' conduct.

184. Additionally, the Pennsylvania Older Adults Protective Services Act is directed, at least in part, to obviate the specific kind of harm which Teresa Stone sustained.

185. In addition to the aforesaid negligence, which said negligence is specifically incorporated herein, the ManorCare Defendants, in accepting the responsibility for caring for Teresa Stone as aforesaid, were negligent “per se” and violated [35 P.S. § 10225.101, et seq.](#) in that they had reasonable cause to suspect that Teresa Stone was the victim of abuse or **neglect** and failed to report said abuse and **neglect** to the appropriate agency and law enforcement officials.

186. As a direct result of the aforesaid negligence “per se” of the ManorCare Defendants, Teresa Stone was caused to sustain serious personal injuries and damages as aforesaid.

187. The conduct of ManorCare Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT EIGHT

Rita Guddat, Executrix of the Estate of Teresa Stone, deceased v. Manor Care of Yardley PA LLC d/b/a ManorCare Health Services - Yardley; ManorCare Health Services, Inc.; Manor Care, Inc.; HCR ManorCare, LLC; HCR Healthcare, LLC; HCR II Healthcare, LLC; HCR III Healthcare, LLC; and, HCR IV Healthcare, LLC

188. Plaintiff hereby incorporates by reference the preceding paragraphs as though the same were fully set forth at length herein.

189. Plaintiff brings this action on behalf of the decedent's estate under and by virtue of the Pennsylvania Judiciary Act, [42 Pa.C.S. 8302](#), known as the Survival Statute, to recover all damages legally appropriate thereunder.

190. The following persons are entitled to share under this cause of action in the estate of said Decedent: Anna Mae S. Dickinson (daughter) and Rita Guddat (daughter).

191. Plaintiff claims damages for the pain, suffering and inconvenience endured by Plaintiff's decedent, Teresa Stone, up to and including the time of her death, which was caused by the ManorCare Defendants' breach of duties, negligence, carelessness and recklessness.

192. Plaintiff claims damages for the fright and mental suffering attributable to the peril leading to the death of Plaintiff's decedent, Teresa Stone, which was caused by the Defendants' breach of duties, negligence, carelessness and recklessness.

WHEREFORE, Plaintiff, Rita Guddat, Executrix of the Estate of Teresa Stone, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

Date: 6-17-13

Respectfully submitted,

WILKES & McHUGH, P.A.

By:

Ian T. Norris, Esquire

Attorney for Plaintiff

Footnotes

- 1 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.
- 2 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.

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