

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

ABIGAIL LOCKETT, individually and as Plaintiff Ad Litem for decedent Albert James

and

ALBERT JAMES, JR., individually and as surviving son of decedent Albert James

and

DEBBIE JAMES, individually and as surviving daughter of decedent Albert James

and

EDWARD JAMES, individually and as surviving son of decedent Albert James

and

KENDALL JAMES, individually and as surviving son of decedent Albert James

and

LISA JAMES, individually and as surviving daughter of decedent Albert James

and

VICTORIA JAMES, individually and as surviving daughter of decedent Albert James

Plaintiffs.

v.

**BROOK VIEW NURSING HOME, INC.
d/b/a STONEBRIDGE MARYLAND
HEIGHTS**

Serve: Registered Agent
Mark Liermann
2500 Old Hwy. 94, Suite 104
St. Charles, MO 63303

Case No.:

Division:

JURY TRIAL DEMANDED

and

**ELDERCARE MANAGEMENT
SERVICES, INC.**

Serve: Registered Agent
Mark Liermann
2500 S. Old Highway 94, Suite 104
St. Charles, MO 63303

Defendants.

PETITION FOR DAMAGES

PLAINTIFFS

1. Albert James (“Albert”) died on December 26, 2017. Prior to his death, Albert was a resident at Stonebridge Maryland Heights, a Missouri licensed nursing home located at 2963 Doddridge Ave., Maryland Heights, Missouri 63043. He resided at the facility from approximately from December 1, 2017 through December 7, 2017.

2. Plaintiff Abigail Lockett, is a resident of St. Louis County and is a surviving daughter of Albert James, and therefore, a member of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080. She is also the designated Plaintiff Ad Litem for decedent Albert James.

3. Plaintiffs Albert James, Jr., Debbie James, Edward James, Lisa James and Victoria James are all residents of St. Louis County and are surviving children of Albert James and therefore, members of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080.

4. Plaintiff Kendall James, is a resident of St. Clair County, Illinois and is a surviving son of Albert James, and therefore, a member of the class of individuals authorized to pursue a wrongful death claim pursuant to RSMo § 537.080.

DEFENDANTS

BROOK VIEW NURSING HOME, INC. d/b/a STONEBRIDGE MARYLAND HEIGHTS

5. Brooke View Nursing Home, Inc. d/b/a Stonebridge Maryland Heights is a Missouri limited liability company currently in good standing with the State of Missouri.

6. Brooke View Nursing Home, Inc. d/b/a Stonebridge Maryland Heights owned, operated, and/or managed and did business as Stonebridge Maryland Heights (hereinafter “Stonebridge Maryland Heights”) which is a Missouri licensed nursing home located at 2936 Doddridge Ave., Maryland Heights, Missouri 63043.

7. The owners of Stonebridge Maryland Heights are Deanna Bokel, Michelle Gianino, Mark Lierman and Steve Lierman.

8. At all relevant times, Stonebridge Maryland Heights was in business for the care and treatment of persons in need of nursing home care and skilled nursing and acted by and through its owners, employees, agents and representatives.

9. At all relevant times, Stonebridge Maryland Heights exercised part and/or all managerial and operational control for the Stonebridge Maryland Heights facility.

10. At all relevant times, Stonebridge Maryland Heights received money and profited from the operation of the facility.

11. Stonebridge Maryland Heights can be served through its registered agent Mark Lierman, 2500 Old Hwy. 94, Suite 104, St. Charles, MO 63303.

ELDERCARE MANAGEMENT SERVICES, INC.

12. Eldercare Management Services, Inc. is a Missouri limited liability company currently in good standing with the State of Missouri.

13. Eldercare Management Services, Inc. owned, operated, and/or managed and did business as Stonebridge Maryland Heights which is a Missouri licensed nursing home located at

2936 Doddridge Ave., Maryland Heights, Missouri 63043.

14. Eldercare Management Services, Inc. is the Home Office of Stonebridge Maryland Heights.

15. Eldercare Management Services, Inc. is owned by the same four individuals that own Stonebridge Maryland Heights, namely Deanna Bokel, Michelle Gianino, Mark Lierman and Steve Lierman.

16. At all relevant times, Eldercare Management Services, Inc. was in business for the care and treatment of persons in need of nursing home care and skilled nursing and acted by and through its owners, employees, agents and representatives.

17. At all relevant times, Eldercare Management Services, Inc. exercised part and/or all managerial and operational control for Stonebridge Maryland Heights.

18. At all relevant times, Eldercare Management Services, Inc. received money and profited from the operation of the facility.

19. Eldercare Management Services, Inc. can be served through its registered agent Mark Lierman, 2500 Old Hwy. 94, Suite 104, St. Charles, MO 63303.

DEFENDANTS' JOINT ENTERPRISE

20. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

21. Stonebridge Maryland Heights and Eldercare Management Services, Inc. were engaged in a joint enterprise in that:

- a. Defendants had an agreement, express and/or implied, among the members of the group to operate Stonebridge Maryland Heights located at 2936 Doddridge Ave., Maryland Heights, Missouri 63043;
- b. Defendants had a common purpose to operate Stonebridge Maryland Heights located at 2936 Doddridge Ave., Maryland Heights, Missouri 63043;

- c. Defendants had a community of pecuniary interest in the operation of Stonebridge Maryland Heights located at 2936 Doddridge Ave., Maryland Heights, Missouri 63043; and
- d. Defendants had an equal right to a voice in the direction of the operation of Stonebridge Maryland Heights located at 2936 Doddridge Ave., Maryland Heights, Missouri 63043 which gave the defendants an equal right of control.

22. There has been a close relationship between the defendants at all times relevant.

23. As a consequence of the joint enterprise, defendants owed a joint duty to Albert James to use reasonable care for his care and safety while under their care and supervision at Stonebridge Maryland Heights.

JURISDICTION AND VENUE

24. Venue is proper in this Court, because the tortious acts complained of occurred in St. Louis County, Missouri.

25. Stonebridge Maryland Heights is a Missouri corporation who committed tortious acts in the state of Missouri, thereby making jurisdiction in this Court proper.

26. Pursuant to RSMo § 506.500.1(3), Stonebridge Maryland Heights and Eldercare Management Services, Inc. purposely availed themselves of the protections and/or benefits of the laws in Missouri by committing tortious acts within the state including, but not limited to, failing to ensure that Stonebridge Maryland Heights had appropriate policies and procedures for its nursing staff; failing to properly capitalize and fund the Stonebridge Maryland Heights facility; failing to adequately staff the Stonebridge Maryland Heights facility; and failing to ensure that staff received adequate training and supervision, and failing to follow physicians orders thereby making jurisdiction proper in this Court.

AGENCY

27. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

28. The acts hereinafter described were performed by the agents, representatives, servants, and employees of defendants and were performed either with the full knowledge and consent of defendants, and/or were performed by their owners, operators, managers, agents, representatives, servants, or employees during the scope of their agency, representation, or employment with the defendants.

29. Furthermore, the acts hereinafter described as being performed by the owners, operators, managers, agents, representatives, servants, or employees of defendants were performed or were supposed to be performed on behalf of and/or for the benefit of Albert James.

FACTUAL BACKGROUND

Defendants' Management of Stonebridge Maryland Heights

30. Plaintiffs incorporate by reference the allegations previously set forth and further allege as follows.

31. Defendants exercised substantial control over significant aspects of the operation and management of the Stonebridge Maryland Heights during Albert James' period of residency therein, including but not limited to the creation, setting, funding and/or implementation of budgets; the hiring and training of staff; the monitoring of resident acuity levels and staffing sufficiency to meet each resident's needs; control over resident admissions and discharge to and from the facility; the supervision and monitoring of residents; and the creation and enforcement of written policies and procedures pertaining to the rules that provide for the safety and well-being of residents.

32. Each of these managerial and operational functions had a direct impact on the quality of care delivered to Albert James and other residents at Stonebridge Maryland Heights nursing home and were taken in furtherance of an operational and managerial objective over the licensee Stonebridge Maryland Heights.

33. Defendants substantially derive their revenue and profits from the receipt of taxpayer dollars through federally and state funded Medicare and Medicaid programs.

34. Residents with higher acuity levels, i.e., a greater number and degree of illnesses, place higher demands for care and services on the nursing home and its staff.

35. Acuity levels are determined by the resident's Resource Utilization Group or "RUG" score.

36. Each resident's acuity level or RUG score is contained in section Z of the required Minimum Data Set ("MDS").

37. Medicare sets an expected staffing level based on the skilled nursing facility's total acuity level on any given day.

38. The only way to determine the total acuity level of residents residing at Stonebridge Maryland Heights on any given day, and as a result, the Medicare expected staffing level, is by examining section Z of *every* MDS in effect on that day.

39. The rate at which the defendants are reimbursed by Medicare and Medicaid for the delivery of nursing home care and services, and accordingly the amount of their ultimate revenue and profits, are based upon the acuity level of the residents confined to their facilities.

40. The daily reimbursement rate varies based on the level of nursing care and number of therapy minutes provided to the resident. For example, the highest and second highest daily rates that Medicare will pay a skilled nursing facility for rehabilitation therapy is known as "Ultra High" and "Very High."

41. This creates a financial incentive on nursing home corporations, including defendants, to admit and retain residents with greater mental, physical and psychosocial needs.

42. Medicare and Medicaid expect and presume that the nursing home, and these defendants, will actually use the additional funds received for higher acuity level residents to meet

those residents' needs, primarily through the additional employment of staff members to deliver the increased care and services.

43. Despite receiving additional funds from Medicare and Medicaid based upon the resident acuity levels reported by for Stonebridge Maryland Heights during Albert James' period of residency, defendants failed to ensure, through their operational, budgetary, consultation and managerial decisions and actions, that Stonebridge Maryland Heights nursing home was sufficiently staffed to meet the individual needs of Albert James during his period of residency therein.

44. Albert James became a resident at Stonebridge Maryland Heights on or about December 1, 2017. Upon his admission he was noted to be alert and that he answered questions appropriately.

45. On December 2, 2017, staff members note that Albert James is "looking good" and has no signs or symptoms of hyperglycemia or hypoglycemia.

46. Between the date of his admission to Stonebridge Maryland Heights to December 5, 2017, defendants provided insulin to Albert James but failed to check his blood sugar before or after providing insulin shots. During this time period, defendants had no idea what Albert James' blood sugar levels were before, during or after providing the insulin because they were not monitoring it.

47. On December 5, 2017, Albert James' physician ordered that staff members at Stonebridge Maryland Heights check Albert James' blood sugars at least twice each day. Despite that order, staff members failed or refused to check his blood sugars.

48. On the morning of December 7, 2017 Albert James is noted to be unresponsive. At that time his blood sugar was finally check and registered at a dangerously low 24. He was then

transferred to DePaul Hospital whereupon his admission he was diagnosed with severe encephalopathy due to severe hypoglycemia caused by the negligent conduct of defendants.

49. Albert James remained hospitalized at DePaul Hospital until his death on December 26, 2017 which was the direct result of the negligent conduct by defendants.

50. The negligent care of defendants was reported to the Missouri Department of Health and Senior Services. Upon their investigation, the Department of Health and Senior Services determined that a regulatory violation had occurred directly related to the defendants' care of Albert James.

51. Defendants' staff members are required to anticipate the needs of the residents so they can be proactive and/or react quickly to meet the needs of the residents.

52. Albert died as a direct result of the negligent conduct exhibited by Stonebridge Maryland Heights and each of the other named defendants.

53. While holding Stonebridge Maryland Heights out to Albert James and other members of the public as providing excellent care, defendants and their owners set up a system of related party transactions whereby substantial amounts of money were extracted from the Stonebridge Maryland Heights nursing home facility and paid out to other companies owned by the same people who owned the defendant companies which should have been utilized to hire, train and retain sufficient numbers of qualified staff members to provide quality care, sufficient supervision and to meet the needs of the residents, including James Albert.

COUNT I – WRONGFUL DEATH

54. Plaintiffs incorporate by reference all of the foregoing allegations in this Petition as though fully set forth herein.

55. At all times material hereto, Albert was in a defenseless and dependent condition.

56. As a result of his defenseless and dependent condition, Albert James relied upon defendants to provide for his safety, protection, care and treatment.

57. At all relevant times, defendants had a duty to act in accordance with the standards of care required of those owning, operating, managing, maintaining, and/or controlling a skilled nursing facility.

58. These duties required defendants to implement and enforce policies and procedures to ensure the proper care for, and treatment of, residents such as Albert James.

59. These duties required defendants to have sufficient and qualified staff at Stonebridge Maryland Heights nursing home to ensure that residents of the nursing home receive proper care, supervision, monitoring, treatment and compliance with care plan requirements.

60. These duties required defendants to ensure that Stonebridge Maryland Heights' nurses and other staff provided the care required by the resident care plan, met the needs of the residents and obtain additional medical care for the residents when they undergo a change of condition.

61. These duties required defendants to ensure that Stonebridge Maryland Heights' nurses and other staff were educated and trained to provide proper supervision, care and treatment for the residents, like Albert James, including monitoring blood sugar levels of diabetic residents.

62. These duties required defendants to ensure that Stonebridge Maryland Heights was properly capitalized to ensure that the staff members were properly trained and that residents received proper supervision, care and treatment.

63. These duties required defendants to ensure that Stonebridge Maryland Heights employees knew how to timely recognize and respond when residents are undergoing significant changes in condition.

64. Specifically, with respect to Albert James, defendants and their agents, servants and/or employees breached their duties and were guilty of the following acts of negligence and carelessness by failing to measure up to the requisite standard of due care, skill, and practice ordinarily exercised by members of their profession under the same or similar circumstances, including:

- a. By failing to adequately assess Albert James' change of condition;
- b. By failing to adequately assess the risk of injury and physical decline to Albert James by not obtaining necessary medical care in a timely manner;
- c. By failing to enact and carry out an adequate care plan in regard to Albert James' medical needs;
- d. By failing to provide Albert James with proper supervision;
- e. By failing to transfer Albert James to a hospital in a timely manner after he demonstrated a change in her condition that threatened his medical condition;
- f. By failing to provide adequate staff to ensure Albert James received 24-hour protective oversight, supervision and care;
- g. By failing to properly supervise and train the employees, agents and/or servants of defendants who were responsible for the care and treatment of Albert James;
- h. By failing to have and/or implement appropriate policies and procedures regarding monitoring blood sugar levels of diabetic residents;
- i. By failing to have and/or implement appropriate policies and procedures regarding how to properly respond to a resident demonstrating a significant change in condition;
- j. By failing to ensure that Albert James received proper care and treatment to prevent the injury and death; and
- k. By failing to properly capitalize the facility so it could have enough staff members to provide Albert James with the supervision she required.

65. Defendants, as the owners, operators, and/or managers of skilled care nursing facilities licensed by the State of Missouri and accepting Medicare and Medicaid funds, were

subject to regulations promulgated by the Missouri Division of Social Services and under the Social Security Act.

66. While providing care and treatment to Albert, defendants and their agents, servants and/or employees breached their duty to Albert and were guilty of acts of negligence and negligence, *per se*, in violating regulations governing residential care facilities including but not limited to the following:

- a. 19 C.S.R. 30-85.042(3). The operator shall be responsible to assure compliance with all applicable laws and rules. The administrator shall be fully authorized and empowered to make decisions regarding the operation of the facility and shall be held responsible for the actions of all employees. The administrator's responsibilities shall include the oversight of residents to assure that they receive appropriate nursing and medical care;
- b. 19 C.S.R. 30-85.042(6). The facility shall not knowingly admit or continue to care for residents whose needs cannot be met by the facility directly or in cooperation with outside resources. Facilities which retain residents needing skilled nursing care shall provide licensed nurses for these procedures;
- c. 19 C.S.R. 30-85.042(12). A supervising physician shall be available to assist the facility in coordinating the overall program of medical care offered in the facility
- d. 19 C.S.R. 30-85.042(13). The facility shall develop policies and procedures applicable to its operation to insure the residents' health and safety and to meet the residents' needs. At a minimum there shall be policies covering personnel practices, admission, discharge, payment, medical emergency treatment procedures, nursing practices, pharmaceutical services, social services, activities, dietary, housekeeping, infection control, disaster and accident prevention, residents' rights and handling residents' property;
- e. 19 C.S.R. 30-85.042(15). All personnel shall be fully informed of the policies of the facility and of their duties;
- f. 19 C.S.R. 30-85-14.042(16). All persons who have any contact with the residents in the facility shall not knowingly act or omit any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident;
- g. 19 C.S.R. 30-85.042(20). The facility shall develop and offer an in-service orientation and continuing educational program for the development and improvement of skills of all the facility's personnel, appropriate for their job function;

- h. 19 C.S.R. 30-85.042(22). The facility must ensure there is a system of in-service training for nursing personnel which identifies training needs related to problems, needs, and care of residents and sufficient to ensure staff's continuing competency;
- i. 19 C.S.R. 30-85.042(26). All authorized personnel shall have access to the legal name of each resident, name and telephone number of physician and next of kin or responsible party of each resident to contact in the event of emergency
- j. 19 C.S.R. 30-85.042(37). All facilities shall employ nursing personnel in sufficient numbers and with sufficient qualifications to provide nursing and related services which enable each resident to attain or maintain the highest practicable level of physical, mental and psychosocial well-being.
- k. 19 C.S.R. 30-85.042(44). The facility shall ensure that the resident's private physician, the physician's designee, the facility's supervising physician or an alternate physician shall examine the resident at least annually, and shall examine the resident as often as necessary to ensure proper medical care
- l. 19 C.S.R. 30-85.14.042(66). Each resident shall receive twenty-four (24)-hour protective oversight and supervision;
- m. 19 C.S.R. 30-85.042(67). Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice;
- n. 19 C.S.R. 30-85.042(79). In the event of accident, injury or significant change in the resident's condition, facility staff shall notify the resident's physician in accordance with the facility's emergency treatment policies which have been approved by the supervising physician;
- o. 19 C.S.R. 30-85.042(81). Staff shall inform the administrator of accidents, injuries or unusual occurrences which adversely affect, or could adversely affect the resident. The facility shall develop and implement responsive plans of action; and
- p. 19 C.S.R. 30-85.042(100). Facilities shall ensure that the resident's clinical record must contain progress notes that include, but are not limited to: (A) Response to care and treatment; (B) Change(s) in physical, mental and psychosocial condition..."

67. Albert was a member of the class of persons intended to be protected by the enactment of the aforementioned regulations.

68. The physical injuries Albert James incurred were the type of injuries that the regulations were enacted to prevent.

69. As a direct and proximate result of the individual and collective acts of negligence of defendants as described above, Albert James suffered severe pain, anxiety, mental distress, and death.

70. As a direct and proximate result of the individual and collective acts of negligence of all defendants as described above, Plaintiffs suffered damages including, but not limited to, loss of companionship, loss of comfort, loss of guidance, loss of counsel and loss of instruction, pain, suffering, bereavement and mental anguish.

71. The actions of defendants were malicious, wanton, grossly negligent and reckless, and performed in reckless disregard of the welfare and safety of Albert James and others, such that, in addition to damages for pain and suffering, defendants are liable for punitive and exemplary damages for their grossly negligent care of Albert James.

72. At the time defendants failed to provide proper medical care for Albert James they knew that their conscious disregard to provide adequate staff, to properly capitalize Stonebridge Maryland Heights, to not monitor his blood sugar levels and to not train, and/or supervise their agents, servants and/or employees created a high degree of probability of injury to residents, and consciously disregarded the safety of all residents, including Albert James.

73. Accordingly, defendants showed a complete indifference to, or conscious disregard, for the safety of others, including Albert James, and warrants punitive and/or exemplary damages be assessed against defendants in an amount that is fair and reasonable and will punish defendants and deter them and others from similar conduct.

74. As a direct and proximate result of defendants' negligence, and complete indifference to, or conscious disregard, for the safety of others, including Albert James, Albert

James was harmed and suffered damages, including but not limited to pain, suffering, mental anguish, disability, disfigurement, and loss of enjoyment of life; death; and other damages.

WHEREFORE, Plaintiffs in their capacity as a members of the wrongful death class of claimants pursuant to RSMO § 537.080, prays for judgment against all defendants in an amount a jury deems fair and reasonable under the circumstances, including, but not limited to, actual damages, damages for aggravating circumstances (exemplary/punitive damages), the costs of this action, and for such other and further relief as the Court deems just and proper.

COUNT II – LOSS CHANCE OF SURVIVAL

75. Plaintiff Abigail Lockett, in her capacity as Plaintiff ad Litem for decedent Albert James incorporates by reference all of the foregoing allegations in this Petition as though fully set forth herein.

76. At the time of the negligent acts complained of herein, and at all times mentioned, Plaintiff has been the surviving natural daughter of decedent Albert James. As such, and pursuant Section 537.021, R.S.Mo., Plaintiffs has been properly appointed as Plaintiff ad Litem for decedent Albert James and as such is eligible to pursue any and all claims that survive his death.

77. The negligence of defendants in failing to properly care for Albert James, as set forth herein, directly and proximately caused or directly and proximately contributed to cause Albert James to lose his material chance of survival.

78. As a direct and proximate result of the carelessness and negligence of the defendants, as set forth previously herein, decedent Albert James suffered the following injuries:

- a. Decedent has had his ability to survive and his significant material chance of survival taken away by defendants' negligence;
- b. Decedent suffered the loss of his chance of survival and with it the loss of his future enjoyment of life; and
- c. Decedent was required to undergo treatment for her injuries.

79. The negligence of the defendants was outrageous and constituted gross negligence in that defendants knew or, in the exercise of ordinary care, should have known that their conduct created a high probability of injury to Albert James; defendants thereby demonstrated a conscious and reckless disregard for the rights of Albert James, permitting the recovery of punitive damages.

WHEREFORE Plaintiff Albert James through his Plaintiff ad Litem prays for judgment against all defendants in an amount a jury deems fair and reasonable under the circumstances, including, but not limited to, actual damages, damages for aggravating circumstances (exemplary/punitive damages), the costs of this action, and for such other and further relief as the Court deems just and proper.

COUNT III – MEDICAL NEGLIGENCE

80. Plaintiff Abigail Lockett, in her capacity as Plaintiff ad Litem for decedent Albert James incorporates by reference all of the foregoing allegations in this Petition as though fully set forth herein.

81. Defendants owed Albert James a duty to use reasonable care to protect him from unreasonable risk of harm and/or death.

82. Defendants owed James a duty to ensure that he remained free from mental and physical abuse.

83. Defendants had a duty to ensure that Albert James was treated with consideration, respect and full recognition of his dignity and individuality.

84. During his residency at Stonebridge Maryland Heights, Albert James was dependent upon defendants to meet his daily needs, safety, protection, care, treatment, assistance, and determinations of risk to his health, including monitoring his blood sugar levels.

85. Defendants were aware of the risks of hypoglycemia with diabetic residents like Albert James and knew the importance of monitoring blood sugar levels.

86. Defendants failed to provide Albert James with the care, treatment, monitoring, and supervision required to meet his needs.

87. Defendants failed to provide a sufficient number of staff members and sufficiently trained staff members to prevent the injuries sustained by Albert James, including death.

88. Defendants failed to provide a sufficient staff-to-resident ratio so that the employees at Stonebridge Maryland Heights could provide the care, treatment, monitoring and supervision Albert James required.

89. Defendants failed to provide the blood sugar monitoring Albert James required during his residency at Stonebridge Maryland Heights.

90. The negligence of Defendants was willful, wanton, malicious and directly caused or contributed to cause the injuries and death of James, thereby creating aggravating circumstances allowing the consideration of exemplary and/or punitive damages.

WHEREFORE, Plaintiff Albert James through his Plaintiff ad Litem prays for judgment against all defendants in an amount a jury deems fair and reasonable under the circumstances, including, but not limited to, actual damages, damages for aggravating circumstances (exemplary/punitive damages), the costs of this action, and for such other and further relief as the Court deems just and proper.

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