

1. Plaintiffs intend to conduct discovery under Discovery Control Plan Level 3. Plaintiff affirmatively pleads for the recovery monetary relief of more than \$1,000,000. Plaintiffs reserve the right to amend this damage calculation as discovery progresses. Plaintiffs make this damage calculation at this time pursuant to Texas Rule of Civil Procedure 47.

PARTIES

2. Thomas Goodwin is an individual residing in Galveston County, Texas. Plaintiff may be served through the undersigned counsel.

3. David Goodwin is an individual residing in Madisonville, Louisiana. Plaintiff may be served through the undersigned counsel.

4. Marti Goodwin is an individual residing in Galveston County, Texas. Plaintiff may be served through the undersigned counsel.

5. Defendant is a Texas limited liability company and may be served with process through its registered agent, James D. Gray, at 6363 Woodway Dr. Ste. 870 Houston, Texas 77057. Plaintiffs request issuance of citation to Defendant.

JURISDICTION & VENUE

6. Jurisdiction is proper in this Court because the amount-in-controversy is within the jurisdictional limits of this Court.

7. Venue is proper in this Court because a substantial part of the acts or omissions giving rise to Plaintiff's claims occurred in Harris County, Texas.

FACTS

8. On September 6, 2018, Earl Clinton Goodwin, Jr., ("**Decedent**") was entrusted to the care of The Village of River Oaks (the "**Facility**" or "**Management**"), an assisted living facility owned and operated by the Defendant. Although Decedent was initially a resident of the Facility's independent living unit, the progression of Decedent's Alzheimer's was such that he began to experience memory loss, confusion, and balancing problems—sustaining several falls between August 2018 and September 2018.

9. For the safety of Decedent, the Facility insisted he needed to be transferred to the Facility's 24-hour care assisted living unit. The Facility assured the Plaintiffs that the assisted living unit would not only be able to meet the standard of care necessary to care for Decedent but would be the best place for him. In fact, the Facility insisted that Decedent be transferred to their assisted living unit to provide him with supervised 24-hour care.

10. However, Defendant and its employees failed to use reasonable care and diligence in providing the necessary care and supervision for Decedent. On the date of incident, the very day Decedent was moved into his assisted living apartment, he was left by himself. Alone in his unfamiliar, and brand-new living quarters, Decedent foreseeably, left his room and began to navigate the strange new hallways completely unsupervised—no fall protections, no transfer assistance, no assistance while ambulating, and certainly no “24-hour care.”

11. Consequently, Decedent wandered into an elevator, where, tragically but unsurprisingly, he lost his balance and fell. As a result of his fall, Decedent sustained a major blow to his head, breaking his neck and causing his brain to bleed. He suffered considerably before unceremoniously passing away, restrained in a hospital bed on October 5, 2018.

CAUSES OF ACTION

First Cause of Action – Negligence and Gross Negligence

12. Plaintiffs incorporate by reference the above paragraphs here.

13. On the date in question, Defendant failed to exercise ordinary care, as required by law, concerning the care and treatment provided to Decedent Earl Goodwin. Specifically, the following acts of Defendant were a proximate cause of Decedent's injuries and ultimate death:

- a. failing to take precautions, or timely or adequately take precautions, to prevent injuries to Decedent;
- b. failing to adequately train its employees;
- c. failing to adequately supervise its employees;
- d. failing to adequately supervise its residents;
- e. disregarding the safety of its residents;
- f. failing to provide necessary assistance to its residents;
- g. failing to develop and implement proper safety protocols for the supervision of residents;
- h. failing to enforce any existent precautionary measures and safety protocols, and
- i. other actions or omissions deemed negligent and grossly negligent.

14. Defendant is liable under the doctrine of *respondeat superior* for the acts and omissions of its agents, servants, employees, and statutory employees and agents. Defendant's employee committed various acts and/or omissions during the course and scope of employment, which proximately caused the damages pled herein.

15. Defendant's actions were grossly negligent because there was an objectively extreme degree of risk to Decedent that Defendant consciously disregarded, which resulted in the incident giving rise to this claim.

16. Each and all the above and foregoing acts, both of omission and commission, singularly or in combination with others, constituted negligence, which proximately caused the occurrence made the basis of this suit.

Second Cause of Action – Wrongful Death

17. Plaintiffs incorporate by reference the above paragraphs here.

18. Plaintiffs have suffered a pecuniary loss, which includes the loss of the care, maintenance, support, advice, counsel, and reasonable contributions of a pecuniary value that they, in reasonable probability, would have received from Earl Goodwin had he lived. Additionally, Plaintiffs have been forced to endure a loss of companionship and society, which means the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiffs, in reasonable probability, would have received from Earl Goodwin had he lived. Plaintiffs have unfortunately experienced mental anguish, meaning the emotional pain, torment, and suffering because of the death of Earl Goodwin. This pecuniary loss, loss of companionship and society and mental anguish, in reasonable probability, will be sustained in the future. This cause of action is brought pursuant to Section 71.001 *et seq.* of the Texas Civil Practice & Remedies Code.

Third Cause of Action – Survival Action

19. Plaintiffs incorporate by reference the above paragraphs here.

20. The Estate of Earl Goodwin is entitled to survival damages due to the pain and mental anguish, medical expenses and funeral and burial expenses incurred due to the death of Earl Goodwin. Pain and mental anguish refers to the conscious physical pain and emotional pain, torment, and suffering experienced by Earl Goodwin before his death as a result of the negligence of Defendant. Funeral and burial expenses refers to the reasonable amount of expenses for funeral and burial for Earl Goodwin reasonably suitable to his station in life. Plaintiff Thomas Goodwin is the Independent Executor of the Estate of Decedent Earl Goodwin.

21. Plaintiff Thomas Goodwin brings suit on behalf of The Estate of Earl Goodwin for all allowable damages under the Survival Statute.

DAMAGES

22. Upon the trial of this case, it will be shown that Plaintiffs sustained damages and Earl Goodwin died as a proximate result of Defendant's wrongful conduct. There are certain elements of damages provided by law that Plaintiffs are entitled to have considered to determine the appropriate sum of money for each element that will fairly and reasonably compensate Plaintiffs for the damages incurred, including but not limited to:

- a. Mental anguish sustained by Thomas Goodwin, David Goodwin and Marti Goodwin in the past and, in all reasonable probability that they will sustain in the future;
- b. Funeral and burial bills sustained in the past;

- c. Loss of companionship and society sustained in the past, and in all reasonable probability, that they will sustain in the future;
- d. Loss of advice and counsel sustained in the past, and in all reasonable probability, that they will sustain in the future;
- e. Loss of care sustained in the past, and in all reasonable probability, that they will sustain in the future;
- f. Loss of maintenance sustained in the past, and in all reasonable probability, that they will sustain in the future;
- g. Exemplary damages; and
- h. Such other and further relief, both general and special, at law and in equity to which Plaintiffs are justly entitled.

CONDITIONS PRECEDENT

23. Plaintiffs have complied with the provisions of Chapter 74 of the Texas Civil Practice & Remedies Code by serving written notice of his claims upon the Defendant named herein prior to filing of this action. Such notice was provided on July 22, 2019.

REQUEST FOR DISCLOSURE

24. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is requested to disclose and/or produce the information and materials described in Rule 194.2 within fifty days (50) of the service of this request.

INTEREST

25. Plaintiffs seek prejudgment and post judgment interest as authorized by law. Plaintiffs also claim damages in the amount of the legal interest as allowed by law on all pecuniary and non-pecuniary damages as found by the jury at the maximum legal rate allowed by law: (a) accruing from a date beginning 180 days after the date the Defendant

received written notice of this claim or on the date of filing suit, whichever occurred first, until the time judgment against the Defendant is rendered and (b) after judgment until same is paid.

DEMAND FOR JURY TRIAL

26. Plaintiffs demand a trial by jury on all claims.

PRAYER

Plaintiffs pray that Defendant be cited to appear herein and, after a trial on the merits, that the Court enter judgment awarding Plaintiffs actual damages and additional damages as allowed by law, exemplary damages, costs of court, pre-judgment and post-judgment interest to the maximum extent as allowed by law, and all such other and further relief, both general and special, at equity and at law, to which Plaintiffs may be justly entitled.

Respectfully submitted,

ARMSTRONG & LEE LLP

By: /s/ Scott P. Armstrong

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