2013 WL 1974888 (Pa.Com.Pl.Civil Div.) (Trial Pleading)
Court of Common Pleas of Pennsylvania.
Civil Division
Westmoreland County

Toni MOUGH, as Administratrix of the Estate of Mary Dubich, deceased, Plaintiff,
v.
NORTHERN HEALTH FACILITIES, INC. d/b/a Oak Hill Nursing & Rehabilitation Center; Extendicare Health Facilities, Inc.; Extendicare Health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc., Defendants.

No. 13C102149.
May 2, 2013.

Jury Trial Demanded

Complaint in Civil Action

Filed on behalf of:, Plaintiff, Toni Mough, as Administratrix of the Estate of Mary Dubich, Counsel of Record for this Party:, Peter D. Giglione, Esquire, Pa. ID. # 89523.

Ryan J. Duty, Esquire, Pa. ID. #309685, Wilkes & McHugh, P.A., The Frick Building, 437 Grant Street, Suite 912, Pittsburgh, PA 15219, (412) 434-1110, (412) 434-4882 (fax).

NOTICE TO DEFEND

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. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.
Pennsylvania Lawyer Referral Service Center

Pennsylvania Bar Association

P.O. Box 565

Greenburg, PA 15601

(724)-834-7260

COMPLAINT IN CIVIL ACTION

Plaintiff, Toni Mough, as Administratrix of the Estate of Mary Dubich, by and through her undersigned counsel and the law firm of Wilkes & McHugh, P.A., files the instant Complaint in Civil Action, as follows:

I. PARTIES

1. Plaintiff, Toni Mough, is an adult individual and resident of the Commonwealth of Pennsylvania, currently residing at 609A East Pittsburgh Street, Greensburg, Pennsylvania 15601.

2. On April 22, 2012, Mary Dubich died. Mary Dubich was a resident of the skilled nursing facility commonly known as Oak Hill Nursing & Rehabilitation Center, from September 22, 2011 through March 20, 2012.

3. Plaintiff, Toni Mough, was appointed Administratrix of the Estate of Mary Dubich, deceased, on April 22, 2012, by the Register of Wills of Westmoreland County.

4. Defendant, Northern Health Facilities, Inc. d/b/a Oak Hill Nursing & Rehabilitation Center, is a Pennsylvania corporation doing business as a long-term care nursing facility with a principal place of business located at 827 Georges Station Road, Greensburg, Pennsylvania 15601. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant.

5. Defendant, Extendicare Health Facilities, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203. Upon information and belief, Defendant, Extendicare Health Facilities, Inc., owned, operated, managed, and/or controlled the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center during the relevant time period in this case. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant.

6. Defendant, Extendicare Holdings, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203. Upon information and belief, Defendant, Extendicare Holdings, Inc., owned, operated, managed, and/or controlled the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center during the relevant time period in this case. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant.

7. Defendant, Extendicare Health Facility Holdings, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203. Upon information and belief, Defendant, Extendicare Health Facility Holdings, Inc., owned, operated, managed, and/or controlled the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center during the relevant time period in this case. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant.

8. Defendant, Extendicare Health Services, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203. Upon information and belief, Defendant, Extendicare Health Services, Inc., owned, operated, managed, and/or controlled the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center during the relevant time period in this case. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant.

9. Defendant, Extendicare Health Network, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the State of Wisconsin, with offices and a place of business located at 111 W. Michigan Street, Milwaukee, Wisconsin 53203. Upon information and belief, Defendant, Extendicare Health Network, Inc., owned, operated, managed, and/or controlled the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center during the relevant time period in this case. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant.

10. Defendant, Extendicare, Inc., upon information and belief, is a Canadian corporation and the 100% owner of Extendicare Holdings, Inc., with a business address located at 3000, Steeles Avenue East, Suite 700, Markham, Ontario, Canada, L3R 9W2. Upon information and belief, Defendant, Extendicare, Inc., owned, operated, managed, and/or controlled the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center during the relevant time period in this case. In addition to the foregoing, Extendicare, Inc. is a successor-in-interest and mere continuation of Extendicare Limited Partnership and Extendicare Real Estate Investment Trust, and has assumed and bears liability for all acts and/or omissions by Extendicare Limited Partnership and Extendicare Real Estate Investment Trust and of the agents of those entities. Plaintiff is asserting, *inter alia*, a professional liability claim against this Defendant (all named Defendants are collectively referred to as "Defendants" herein).

11. Defendants are collectively engaged in the business of owning, operating and/or managing nursing homes, including Oak Hill Nursing & Rehabilitation Center (hereinafter "the Facility"), providing healthcare, medical services, nursing care, assisted living/personal care to the public in Greensburg, Westmoreland County, Pennsylvania, and, were at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, holding themselves and their 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 are individually 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 Mary Dubich.

12. Upon information and belief, all named Defendants collectively owned, operated, managed, and/or controlled, via a joint venture, the skilled nursing facility known as Oak Hill Nursing & Rehabilitation Center ("the Facility" herein), during the relevant time frame in this case and are individually and collectively engaged in the business of providing nursing care and assisted living/personal care services to the general public.

II. JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in this Honorable Court insofar as Defendants regularly conduct business in Westmoreland County, Pennsylvania, and/or the cause of action arose therein. *See* Pa.R.C.P. 1006 and 2179.

III. FACTS

A. Conduct of Defendants

14. On September 22, 2011, Mary Dubich ("Mrs. Dubich") was admitted to the care of the Facility. [1]

15. During the course of her residency, Mary Dubich 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 Defendants' Facility to obtain such care and protection.

16. The 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 Mary Dubich.

17. At all times material hereto, the 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 Mary Dubich, consisting of care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

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

19. Defendants exercised complete and total control over the health and nursing care of all residents of the Facility, such as Mary Dubich.

20. Upon information and belief, at all times hereto, Defendants consisted of several corporations and unique business formations that were vertically integrated and controlled by the same individuals who were responsible for the operation, planning, management, and quality control of the Facility.

21. At all times material hereto, the control exercised by Defendants included, inter alia: budgeting, marketing, human resource management, training, supervision of staff, staffing, and the creation and implementation of all policies and procedures used by the Facility.

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

23. 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.

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

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

26. Defendants, acting through their administrators, various boards, committees, and individuals, were responsible for the standards of care and treatment provided by members of their staff at the Facility, and to oversee their conduct in the matters set forth herein.

27. 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 Mary Dubich as set forth herein.

28. As a part of their duties and responsibilities, 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 Mary Dubich, whether within the Facility, or obtained from other medical care providers.

29. 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 Mary Dubich.

30. In their effort to maximize profits and/or excess revenues, 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.

31. 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 Mary Dubich's needs.

32. Over the past several years, and at all times material hereto, Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical and custodial care, in order to increase the amount of governmental and other third party reimbursements received by the Facility and Defendants.

33. 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.

34. 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.

35. Defendants failed to provide resources necessary, including sufficiently trained staff, to meet the needs of the residents, including Mary Dubich.

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

37. 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.

38. The acts and omissions of 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 Mary Dubich.

39. The actions of Defendants were solely designed to increase reimbursement by governmental programs.

40. Defendants' financial motives were evidenced by the fact that Mary Dubich 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 Mary Dubich.

41. The aforementioned acts directly caused injury to Mary Dubich and were known by Defendants.

42. Defendants knowingly sacrificed the quality of care received by all residents, including Mary Dubich, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses like those suffered by Mary Dubich, as described herein, which included the development and worsening of multiple pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus; falls, urinary tract infections, severe anasarca, poor hygiene, severe pain, and eventually death.

43. At the time and place of the incidents herein described, the 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 Defendants.

44. At all times material hereto, 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 Defendants herein.

45. The aforementioned incidents were caused solely and exclusively by the negligence, carelessness, and recklessness of 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 Mary Dubich.

46. 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 Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

47. 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 Defendants herein, as each of the entities named as 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.

B. Injuries to Mary Dubich

48. In approximately August of 2011, Mrs. Dubich had suffered a fall at home and was seen at Westmoreland Regional Hospital. She was diagnosed with a left tibial fracture and left ulnar fracture. Her fractures were splinted and she was sent home.

49. After suffering another fall at home, Mrs. Dubich presented to the emergency room at Allegheny General Hospital on September 7, 2011 with complaints of back, arm, and leg pain.

50. Upon presentation to the emergency room, a cervical collar was placed for a C6 fracture, and a knee immobilizer was placed for her left tibial fracture.

51. On September 9, 2011, a closed reduction and percutaneous pinning, and external fixation were performed on Mrs. Dubich's left distal radius fracture.

52. On September 20, 2011, nursing noted that Mrs. Dubich had a scabbed area to her right ankle and a blackened area to her right great toe on the side near her second toe.

53. Mrs. Dubich was admitted to Oak Hill Nursing & Rehabilitation Center on September 22, 2011 for rehabilitation.

54. Upon admission to the Facility, Mrs. Dubich was noted to be a high fall risk. She was incontinent of bowel and bladder, and was to be transferred from bed to wheelchair with assist of two via a Hoyer lift.

55. On October 15, 2011, an open area was noted to Mrs. Dubich's left inner ankle, with a partial piece of scab hanging in the area, measuring 1.0 x 1.3 cm.

56. On November 27, 2011, two open areas were noted to Mrs. Dubich's buttocks; the right wound measuring 1.0 x 0.5 cm, and the left wound measuring 1.0 x 0.2 cm.

57. Mrs. Dubich was found on the floor beside her bed on December 3, 2011.

58. On December 13, 2011, Mrs. Dubich was noted with a Stage II pressure wound to her left inner ankle measuring 1.0x1.5x0.1 cm with serous drainage.

59. By December 18, 2011, this wound measured 1.0 x 1.2 x 0.1 cm with no noted drainage. Per nursing documentation, this wound was felt to be caused by Mrs. Dubich's leg brace sliding down, and lamb's wool had been applied to the bottom of the brace.

60. On January 1, 2012, a culture of Mrs. Dubich's urine returned positive for MRSA.

61. On January 7, 2012, an open area was noted on Mrs. Dubich's left inner thigh, measuring 2.0 x 1.5 cm with a scant amount of serous drainage.

62. A urine culture was obtained on January 13, 2012, revealing the presence of E-Coli, indicating another urinary tract infection.

63. Also on this date, nursing staff responded to Mrs. Dubich's alarm sounding, and found her on the floor beside her bed.

64. On January 17, 2012, an encrusted area was noted to Mrs. Dubich's right proximal calcaneus, or right proximal heel, measuring 1.0 x 0.6 cm, with no drainage. By January 24, 2012, this wound had progressed to a Stage II, measuring 1.0 x 0.4 x 0.1 cm, with pink, serous drainage.

65. On January 18, 2012, a culture of Mrs. Dubich's urine was taken which revealed yet another urinary tract infection.

66. Mrs. Dubich was again found on the floor next to her bed on January 30, 2012.

67. Mrs. Dubich's calcaneus wound showed improvement on February 2, 2012, measuring 0.6 x 0.2 x 0.1 cm with serous drainage, but by February 7, 2012, the wound had progressed to a Stage III, measuring 3.0 x 3.0 x 0.2 cm with blue-red tissue and bright red bleeding.

68. On February 4, 2012, a culture of Mrs. Dubich's bilateral eyes was ordered and returned positive for MRSA.

69. Mrs. Dubich was taken to Westmoreland Regional Hospital on February 7, 2012, for evaluation of a change in mental status, but returned to Oak Hill Nursing & Rehabilitation Center on February 17, 2012.

70. Mrs. Dubich was noted to have six pressure ulcers present upon her readmission to the Facility: (1) left third toe, (2) right proximal calcaneus, (3) an unstageable wound measuring 1.0 x 0.6 with eschar tissue to the left inner ankle, (4) a stage II measuring 0.4 x 0.3 cm to the left lower buttock, (5) a stage II measuring 2.5 x 1.0 cm with serous drainage to the right inner middle buttock, and (6) a Stage II measuring 3.5 x 2.8 cm with serous drainage to the right outer ankle.

71. On February 19, 2012, nursing noted a large amount of eschar tissue sloughed off Mrs. Dubich's right outer ankle.

72. Mrs. Dubich's albumin level was 1.3 on February 19, 2012, indicating malnutrition.

73. On March 2, 2012, Mrs. Dubich was noted to have increased right lower extremity swelling and redness with 2 edema to the right lower extremity versus 1 edema to the left lower extremity.

74. On March 5, 2011, a stage II pressure ulcer, measuring 4.0 x 3.0 x 0.2 cm with a small amount of serous drainage was noted to Mrs. Dubich's right inner buttock fold.

75. Also on March 5, 2012, Mrs. Dubich's wound to her left inner buttock re-opened, and measured 1.0 x 2.5 x 0.1 with a small amount of serous drainage.

76. Mrs. Dubich was seen by the physician on March 6, 2012 for increased weight gain and swelling. Her lower extremities were noted with red bullae, and a five day course of Lasix was initiated.

77. On March 13, 2012 Mrs. Dubich slid off of her bed and hit the right side of her head on the closet door, sustaining a large bruise and hematoma.

78. On March 14, 2012, Mrs. Dubich's prealbumin level was <4.

79. When changing dressings on March 20, 2012, Mrs. Dubich was noted to have anasarca to her whole body. She was examined by the physician who found her to have severe anasarca substantiated by a low albumin of 1.3 on March 14, 2012.

80. Mrs. Dubich was transferred to Westmoreland Regional Hospital for evaluation on March 20, 2012. By April 4, 2012, she was transferred to Excela Health Latrobe Hospital with anasarca and multiple decubitus ulcers, including a Stage IV to her right buttocks, noted upon admission. She would eventually be transferred to Greensburg Care Center on April 20, 2012, where she passed away several days later on April 22, 2012.

81. The Facility accepted Mary Dubich 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.

82. Defendants knew or should have known that Mary Dubich was at risk for the development and worsening of multiple pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus; falls, the development of MRSA, urinary tract infections, malnutrition, severe anasarca, and eventually death.

83. As a result of the negligence, both ordinary and professional carelessness and recklessness of the Defendants herein described, Mary Dubich 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 multiple pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus; falls, the development of MRSA, urinary tract infections, poor hygiene, malnutrition, severe anasarca, and eventually death, 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.

84. The severity of the negligence inflicted upon Mary Dubich 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 the expense unnecessary hospitalizations.

COUNT ONE – NEGLIGENCE PURSUANT TO THE SURVIVAL ACT (Direct and Vicarious Liability)

Toni Mough, as Administratrix of the Estate of Mary Dubich, Deceased,

V. Northern Health Facilities, Inc. d/b/a Oak Hill Nursing & Rehabilitation Center; Extendicare health Facilities, Inc.; Extendicare health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc.

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

86. At all times material hereto, Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Mary Dubich, were protected.

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

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

89. At all times material hereto, Defendants owed a duty and responsibility to furnish Mary Dubich with appropriate and competent nursing and/or total healthcare.

90. At all times material hereto, Defendants owed and failed to fulfill the following duties to Mary Dubich: 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 Facility; and formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents.

91. 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 Mary Dubich, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

92. Defendants knew, or should have known, of the aforementioned problems that were occurring with the care of Mary Dubich, as they were placed on actual and/or constructive notice of said problems.

93. 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 Mary Dubich.

94. The corporate conduct of Defendants was independent of the negligent conduct of the employees of the Facility, noted herein, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Mary Dubich.

95. Additionally, at all times material hereto, 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 Defendants.

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

97. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of Defendants individually and/or acting by and through their agents, servants, employees, contractors, subcontractors and/or consultants of Defendants, consisted of the following acts and omissions in the care and treatment of Mary Dubich:
a. failing to provide adequate and appropriate health care by failing to keep Mary Dubich 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 appropriate treatment and services to prevent the worsening of pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus, multiple urinary tract infections, MRSA, severe anasarca, falls, poor hygiene, severe pain, and eventually death;

b. failing 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 Mary Dubich who failed to prevent malnutrition, failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent the worsening of pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus, multiple urinary

tract infections, MRSA, severe anasarca, falls, poor hygiene, severe pain, and eventually death, and failed to provide adequate assessments of Mary Dubich following a change in condition;

c. failing to ensure that Mary Dubich did not develop serious and permanent injuries to, in and about her body and possible aggravation and/or activation of any preexisting 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 worsening of pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus, multiple urinary tract infections, MRSA, severe anasarca, falls, poor hygiene, severe pain, and eventually death, when the Defendants knew or should have known that she was at risk for the same;

d. failing to respond in a timely manner with appropriate medical care when Mary Dubich was injured, when she experienced the worsening of pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus, multiple urinary tract infections, MRSA, severe anasarca, falls, poor hygiene, severe pain, and eventually death, when Defendants knew or should have known that she was at risk for the same;

e. failing to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it based upon continuing assessments to reflect Mary Dubich's current conditions;

f. failing to ensure that Mary Dubich, who entered the Facility without pressure sores, did not develop pressure sores unless her clinical condition rendered them unavoidable, and failing to ensure that, once Mary Dubich began to develop pressure sores, she received the appropriate care and treatment to promote their healing;

g. failing to ensure that Mary Dubich received the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being;

h. failing to formulate, adopt and enforce adequate policies and procedures to ensure quality healthcare for Mary Dubich, specifically relating to the prevention of the worsening of pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus, multiple urinary tract infections, MRSA, severe anasarca, falls, poor hygiene, severe pain, and eventually death;

i. failing to supervise and oversee all persons who practiced nursing and/or skilled healthcare in the Facility who failed to prevent the worsening of pressure ulcers to her bilateral buttocks, left inner ankle, and right calcaneus, multiple urinary tract infections, MRSA, severe anasarca, falls, poor hygiene, severe pain, and eventually death;

j. grossly understaffing the Facility, and failing to ensure that the 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, acuity levels, and individual plans of care; and

k. acting in a grossly negligent manner, with reckless indifference to the rights, safety, and well-being of Mary Dubich.

98. Upon information and belief, the corporate officers of the Defendants were made aware of the governmental/state survey results and placed on notice of the issues with resident care at their Facility. Upon further information and belief, the Defendants were aware that there were numerous problems at the Facility, based upon numerous citations by the Pennsylvania Department of Health for failures at the Facility.

99. Upon information and belief, Defendants were aware that they had been cited by the Pennsylvania Department of Health for numerous failures regarding resident care at the Facility, including on 8/13/10 for failing to implement **abuse** prohibition policies, failing to ensure that residents at risk for pressure sores were provided proper care, and failing to ensure that residents with alterations in skin integrity were assessed by a registered nurse; on 8/24/11 for failing to immediately inform the resident's

legal representative or interested family member of an incident of wrong medications being given causing a significant change in condition; and on 10/26/11 for failing to implement physician's orders.

100. As a direct and proximate result of the Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Mary Dubich 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 and medical expenses; and (e) aggravation of her pre-existing medical conditions.

101. In causing the aforementioned injuries, Defendants knew, or should have known, that Mary Dubich would suffer such harm.

102. The conduct of Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Mary Dubich, such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Toni Mough, as Administratrix of the Estate of Mary Dubich, deceased, respectfully requests that judgment be entered in her favor, and against Defendants, in an amount in excess of the arbitration limit, together with costs, punitive damages, and any other relief that this Honorable Court deems just.

A JURY TRIAL IS DEMANDED

COUNT TWO – PURSUANT TO THE SURVIVAL ACT

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

Toni Mough, as Administratrix of the Estate of Mary Dubich, deceased,

V. Northern Health Facilities, Inc. D/B/A Oak Hill Nursing & Rehabilitation Center; Extendicare health Facilities, Inc.; Extendicare health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc.

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

104. 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.

105. 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.

106. At all times pertinent hereto, Mary Dubich was a care dependent resident of the 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.

107. 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 Mary Dubich sustained.

108. The Defendants, in accepting the responsibility for caring for Mary Dubich 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 Mary Dubich for whom they were responsible to provide care as specifically set forth in this Complaint;

109. As a direct result of the aforesaid negligence "per se" of the Defendants, Mary Dubich was caused to sustain serious personal injuries and damages as aforesaid.

110. 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, Toni Mough, as Administratrix of the Estate of Mary Dubich, deceased, respectfully requests that judgment be entered in her favor, and against Defendants, in an amount in excess of the arbitration limit, together with costs, punitive damages, and any other relief that this Honorable Court deems just.

A JURY TRIAL IS DEMANDED

COUNT THREE – PURSUANT TO THE SURVIVAL ACT

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

Toni Mough, as Administratrix of the Estate of Mary Dubich, Deceased,

V. Northern Health Facilities, Inc. D/B/A Oak Hill Nursing & Rehabilitation Center; Extendicare Health Facilities, Inc.; Extendicare health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc.

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

112. 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.

113. 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.

114. At all times pertinent hereto, Mary Dubich was an older person who was a resident of 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.

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

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

117. As a direct result of the aforesaid negligence "per se" of the Defendants, Mary Dubich was caused to sustain serious personal injuries and damages as aforesaid.

118. The conduct of 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, Toni Mough, as Administratrix of the Estate of Mary Dubich, deceased, respectfully requests that judgment be entered in her favor, and against Defendants, in an amount in excess of the arbitration limit, together with costs, punitive damages, and any other relief that this Honorable Court deems just.

A JURY TRIAL IS DEMANDED

COUNT FOUR – WRONGFUL DEATH

Toni Mough, as Administratrix of the Estate of Mary Dubich, deceased,

V. North Health Facilities, Inc. d/b/a Oak Hill Nursing & Rehabilitation Center; Extendicare Health Facilities, Inc.; Extendicare health Facility Holdings, Inc.; Extendicare Health Services, Inc.; Extendicare Health Network, Inc.; Extendicare Holdings, Inc.; Extendicare, Inc.

119. Plaintiff incorporates each and every preceding paragraph by reference.

120. As a direct and proximate result of all Defendants' negligence, Mary Dubich died on April 22, 2012.

121. The following persons are Wrongful Death Beneficiaries as defined by Pennsylvania statute: Toni Mough.

122. As a direct and proximate result of all Defendants' acts and omissions which resulted in the death of Plaintiffs Decedent, the Estate of Mary Dubich has incurred administrative funeral and burial expenses, and the expense of administration necessitated by reasons of injuries causing death.

123. As a direct and proximate result of all Defendants' negligence as more specifically described herein, the Wrongful Death Beneficiaries, as stated herein, incurred loss of care, comfort and society of Mary Dubich that they would have been entitled to for the remainder of her natural life.

WHEREFORE, Plaintiff, Toni Mough, as Administratrix of the Estate of Mary Dubich, deceased, respectfully requests that judgment be entered in her favor, and against Defendants, in an amount in excess of the arbitration limit, together with costs, punitive damages, and any other relief that this Honorable Court deems just.

A JURY TRIAL IS DEMANDED

Respectfully submitted,

WILKES & McHUGH, P.A.

Pete D. Giglione, Esquire

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.

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