

2012 WL 3791797 (Conn.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Connecticut.
Fairfield County

Robert SKINNER, Administrator of the Estate of Muriel Skinner,

v.

RELIABLE CARE, LLC, et al.

No. FBT-CV-08-5016143-S.
February 20, 2012.

Defendants, Reliable Care, LLC & Helen Jetter's Post Trial Brief

The Defendants, Reliable Care, LLC and Helen Jetter, 404662, Wesley M. Malowitz, Esq., Law Offices of Wesley M. Malowitz, 1055 Summer Street - 2nd Floor, Stamford, Connecticut 06905, Tel: (203) 324-8990, Juris #404662.

The defendants, Reliable Care, LLC and Helen Jetter, hereby submit the following post trial brief addressing liability issues only. The trial transcript dated October 21, 2011 cited in defendants' brief has been electronically filed as a separate exhibit. Trial transcripts dated October 26, 2011 and October 27, 2011 cited herein have previously been filed by the plaintiff.

I. FACTUAL BACKGROUND

The defendant, Reliable Care, LLC is a limited liability company organized and existing under the laws of the State of Connecticut. Defendant, Helen Jetter is the managing member of Reliable Care, LLC. Reliable Care, LLC operates as an employer fee paid employment agency duly registered and licensed by the Connecticut Department of Labor pursuant to [C.G.S. §31-130](#). As such, Reliable Care, LLC serves as a registry for individual independent contractors (called "private duty specialists") seeking private employment with families or individuals in need of various home health care services. Reliable Care, LLC does not employ home health care service providers and is not a home health care agency. It merely serves as a liaison between families in need of home health care services and individual independent contractors seeking such employment.

On or about October 6, 2007, the plaintiff Robert Skinner hired the defendant Bernadette Casimir to work as a companion for his mother, Muriel Skinner. At the time, Ms. Casimir was one of several independent contractors/private duty specialists registered with Reliable Care, LLC. While in Mr. Skinner's employ as a companion for Muriel Skinner, Ms. Casimir left Muriel Skinner secured in her wheel chair on the porch of her house for a brief period of time. During that time, Ms. Skinner caused herself to fall from her front porch.

II. LAW AND ARGUMENT

A. Plaintiff has Failed to Prove Negligence as to Bernadette Casimir

On October 6, 2007 Robert Skinner hired Bernadette Casimir to serve as a companion for his mother, Muriel Skinner. That morning, Mr. Skinner was in a hurry to get to his photography assignment and did not provide Ms. Casimir with any information regarding his mother's physical or mental condition.¹ Specifically, Mr. Skinner did not tell Casimir that his mother was suffering from dementia, nor did he provide her with any medical documentation concerning his mother's condition.² Mr. Skinner never told Bernadette Casimir that she had to physically keep her eyes on his mother at all times.³ From all appearances, Ms. Skinner appeared alert and oriented and in no danger of hurting herself if temporarily left alone for brief periods of time.⁴

No evidence was produced at trial showing that Ms. Skinner was unable to ambulate or that she was confined to a wheel chair. Muriel Skinner's prior medical records and Robert Skinner's own testimony confirmed that his mother was able to ambulate with a cane or a walker and that there were no doctor's orders in effect that required his mother to be confined to a wheel chair on the date this incident occurred.⁵ (See Defs'. Ex. F, L, M, N & U).

Robert Skinner's insistence that he instructed Ms. Casimir to be with his mother every second and to visually keep her under surveillance throughout the day is not credible. First, no medical records submitted into evidence at trial contained any treatment orders supportive of Mr. Skinner's allegation that his mother needed constant visual supervision. Second, his own testimony indicated that he often left his mother unattended for brief periods of time.⁶ Finally, Muriel Skinner's medical records from prior to the date of the subject incident are replete with entries showing that Muriel Skinner was left alone for periods of time and that she was not under constant visual supervision while at her home, while in Norwalk Hospital and while in Marathon Nursing Home of Norwalk. (See Defs' Ex. F, L, M, N & U). These same medical records contain numerous entries indicating that Ms. Skinner often attempted to get up from her bed or her wheel chair while unattended and that she self-propelled in her wheel chair prior to this incident. (See Defs'. Ex. M, N & U).⁷

Furthermore, there is ample evidence within these medical records that Ms. Skinner suffered from fainting spells or episodes of syncope that caused her to lose her balance and fall over. In fact, Ms. Skinner had at least 3 syncopal episodes within a short period of time prior to the date of the incident alleged in plaintiff's complaint. The medical records in evidence also show that Ms. Skinner took the medication Alprazolam, the recognized side effects of which include "excessive daytime drowsiness, unusual weakness, dizziness, lightheadedness, clumsiness or unsteadiness". (See Defendants' Exhibit L). Robert Skinner did not tell Bernadette Casimir about his mother's prior fainting spells or medication.

Robert Skinner confirmed in his testimony that he was not looking for or expecting to hire a skilled nurse or other type of skilled home health professional to care for his mother on the day the incident occurred. Instead, Skinner testified that he was essentially hiring a companion, or an **elder** sitter, to be with his mother while he was working that day.⁸

Common-law negligence is the failure to use reasonable care under the circumstances. Reasonable care is the care that a reasonably prudent person would use in the same circumstances. *Hoelter v. Mohawk Services, Inc.*, 170 Conn. 495, 501 (1976). A duty to use care exists when a reasonable person, *knowing what the defendant knew or should have known at the time*, would foresee that harm of the same general nature as that which occurred was likely to result from that conduct. *Coburn v. Lenox Homes, Inc.*, 186 Conn. 370, 375 (1982); *Pisel v. Stamford Hospital*, 180 Conn. 314, 332-33 (1980); *Orlo v. Connecticut Co.*, 128 Conn. 231, 237 (1941).

In the instant case, Bernadette Casimir was not provided with any information regarding Muriel Skinner that would lead her to reasonably believe that she could not be left unattended for brief periods of time. She was not told that Ms. Skinner suffered from fainting spells; that she took medication that made her dizzy, clumsy and unsteady; that she had a habit of getting up and wandering; or that she had a habit of propelling herself in her wheel chair. She was also never told that she could not bring Muriel Skinner out to the porch.

Ms. Casimir's actions in bringing Muriel Skinner outside to sit on her front porch in her wheel chair to wait for her son to get home were reasonable. Ms. Casimir wheeled her to the far end of the porch, several feet from the front stairs and locked the wheels of the wheel chair. As per the testimony of Robert Skinner, the porch itself was level and surrounded by a solid wooden half wall on all sides except for an opening directly above the front stairs. Muriel Skinner appeared alert to Ms. Casimir on the date in question and there was no indication that if left alone briefly she would move herself from the spot where she was securely left on the porch so as to cause herself to fall from the porch.

The plaintiff has the affirmative burden to prove that Ms. Casimir knew or should have known that leaving Ms. Skinner unattended for a brief period of time would cause the injuries alleged by the plaintiff. In addition, plaintiff has the burden of proof to show that the act or omission complained of caused the injuries alleged. In the instant case, the plaintiff has failed to provide any proof as to how the accident actually occurred. Based on her history of fainting spells, it is likely that Ms. Skinner suffered another syncopal episode and fell from her wheel chair causing her injuries. It is equally likely that that the Alprazolam medication she was taking caused her to fall from her wheel chair. Given her habit of get up and wandering and self-propelling in her wheel chair, it is similarly likely that Ms. Skinner's own actions caused her fall. Therefore, plaintiff has failed to prove by a preponderance of the evidence that Bernadette Casimir was negligent.

B. Plaintiffs' Contributory Negligence

“Comparative negligence is conduct which involves an undue risk of harm to the person who sustains it.... In determining whether [a party] is guilty of comparative negligence ... you must consider whether [that party] failed to exercise that degree of care for his own safety that a reasonable person would have exercised ... and as a result, contributed to the injuries which he sustained....” *Champagne v. Raybestos-Manhattan, Inc.*, 212 Conn. 509, 562 A.2d 1100 (1989).

Ms. Skinner suffered from fainting spells or episodes of syncope that caused her to lose her balance and fall over. In fact, Ms. Skinner had at least 3 syncopal episodes within a short period of time prior to the date of the incident alleged in plaintiff's complaint. Ms. Skinner also took the medication Alprazolam, the recognized side effects of which include “excessive daytime drowsiness, unusual weakness, dizziness, lightheadedness, clumsiness or unsteadiness”. As shown in her medical records, Ms. Skinner also had a habit of getting out of bed or up from a seated position unattended and wandering, as well as a habit of propelling herself in her wheel chair. Robert Skinner did not convey any of this information to Reliable Care, LLC, to Helen Jetter or to Bernadette Casimir and thus contributed to his mother's accident.

Muriel Skinner also is contributory negligent for this incident. Ms. Casimir wheeled her to the far end of the porch, several feet from the front stairs and locked the wheels of the wheel chair. As per the testimony of Robert Skinner, the porch itself was level and surrounded by a solid wooden half wall on all sides except for an approximate four foot opening directly above the front stairs. The wheel chair would not roll on its own on a flat porch. Therefore, the only way the accident could have happened is if Muriel Skinner got up out of her wheel chair and walked off the porch on her own volition or if she unlocked the wheels of the wheel chair and propelled herself across the porch in her wheel chair causing herself to tumble down the steps. The medical records entered into evidence by the Defendants provide numerous examples that Muriel Skinner had a habit of getting up and wandered around by herself and self-propelling in her wheel chair prior to (and after) the date of the incident.

C. Reliable Care, LLC is not Negligent or Liable to Plaintiff:

In his post-trial brief, plaintiff asserts for the first time since this action has been pending that the defendant Reliable Care, LLC is liable to the plaintiff for breach of contract. Plaintiff's original Complaint dated April 22, 2008 only alleges a cause of action in negligence against defendant Reliable Care, LLC. In fact, the Second Count of plaintiff's complaint dated April 22, 2008 is titled “Second Count (Negligence - Reliable Care, LLC)”. Moreover, after incorporating the factual allegations of the First Count of the Complaint, paragraph 14 reads, “This occurrence and resultant injuries to the Plaintiff, as hereinafter described, were caused, among other things, *by and through the negligence and carelessness* of Defendant Reliable Care, LLC ...” (See Plaintiff's April 22, 2008 Complaint - Second Count, paragraph 14) (emphasis added).

On or about November 12, 2008 plaintiff filed a First Amended Complaint which repeated these very same negligence allegations only, but against both Reliable Care, LLC and Helen Jetter. On or about January 21, 2009, plaintiff filed a Second Amended Complaint in conjunction with this Court granting his motion to add Helen Jetter as an additional defendant. Plaintiff's Second Amended Complaint dated January 21, 2009 is the operative complaint under which this matter went to trial. Again, plaintiff's Second Amended Complaint asserts only negligence claims against the defendants Reliable Care, LLC and Helen

Jetter in her individual capacity. Plaintiff repeats his headings for the Second Count and the Fourth Count as “Second Count (Negligence - Reliable Care, LLC)” and “Fourth Count (Negligence - Helen Jetter)”. Plaintiff repeats in the body of this complaint that he is alleging a negligence cause of action against Reliable Care, LLC and Helen Jetter. (See Plaintiff’s January 21, 2009 Second Amended Complaint - Second Count, paragraph 14; Fourth Count, paragraph 14). Nowhere in his original Complaint, his First Amended Complaint, or his Second Amended Complaint does the plaintiff ever allege that either defendant Reliable Care, LLC or Helen Jetter were in breach of contract or that plaintiff was pursuing a claim for, or theory of recovery, under breach of contract. Indeed, in plaintiff’s Trial Management Report dated October 17, 2011 and filed with this Court on the day this trial commenced plaintiff reaffirms that he is alleging only negligence (the CUTPA count notwithstanding) against defendants Reliable Care, LLC and Helen Jetter.⁹

At a bare minimum the Complaint should fairly apprise the litigants and the Court as to the factual allegations and legal theories under which the plaintiff seeks recovery. The operative complaint must provide the defendants “fair notice of the claim” that plaintiff is asserting. *Sharp v. Mitchell*, 209 Conn. 59, 60, 546 A.2d 846 (1988); *Alswanger v. Smego*, 257 Conn. 58, 65-66, 776 A.2d. 444 (2001). From the pendency of this action in August 2008 through the completion of the trial more than three years later, the plaintiff’s only causes of action against the defendants were negligence and CUTPA. Reliable Care, LLC and Helen Jetter spent more than three years defending this lawsuit, engaging in discovery, preparing for trial, and trying this case based on the allegations of negligence and CUTPA that were asserted by the plaintiff. The first time plaintiff ever indicated he was seeking recovery on a breach of contract cause of action was in his post-trial brief. The defendants will be severely prejudiced if the Court allowed the plaintiff to completely alter his theory of recovery and proceed under a breach of contract cause of action at this late date and after the trial in this matter has been completed.

Similarly, the Court should not allow the plaintiff to amend his complaint yet again to now assert a breach of contract cause of action. While Connecticut courts are generally amenable to liberal amendment of pleadings, a line is drawn where a requested amendment will prejudice the opposing party. Connecticut courts have denied requests to amend in cases that presented circumstances considerably less egregious than those of the present case. See *Rizzuto v. Davidson Ladders, Inc.*, 280 Conn. 225, 258, 905 A.2d 1165 (2006) (affirming lower court’s denial of plaintiff’s request to amend complaint four months prior to trial to assert new claim for CUTPA violation where proposed amendment was untimely and prejudicial to the defendants because the amendment injected new and complex legal issues into the litigation, requiring additional discovery and delaying trial) ; *AirKaman, Inc. v. Groppo*, 221 Conn. 751, 767, 607 A.2d 410 (1992) (trial court did not **abuse** discretion by denying request to amend complaint where pleadings had been closed, opposing party had submitted trial brief and claim would require additional discovery); *Connecticut National Bank v. Douglas*, 221 Conn. 530, 548, 606 A.2d 684 (1992) (trial court did not **abuse** discretion by denying request to amend that was filed approximately two weeks before trial and would have added lengthy new allegations of fact and law); *Beckman v. Jalich Homes, Inc.*, 190 Conn. 299, 303, 460 A.2d 488 (1983) (trial court did not **abuse** discretion by denying request to amend that was filed day before trial and would have added new basis of liability). Accordingly, any effort by the plaintiff to assert a new cause of action for breach of contract in his post-trial brief and to recover damages under such a new cause of action must be rejected by the Court.

However, assuming *arguendo* that the Court allows plaintiff to proceed on a breach of contract theory of recovery, plaintiff’s arguments for recovery still fail. The only possible document submitted into evidence that could arguable be considered a contract between Reliable Care, LLC and the plaintiff is the Services Agreement (Defendants’ Exhibit C). Paragraph 8(a) of this Exhibit specifically provides “[t]his Agreement constitutes *the entire agreement and understanding* between the parties relating to the subject matter hereof, and supersedes all prior agreements and understandings, written or oral.” (Def. Ex. C - emphasis added). Pursuant to its own terms, the Services Agreement is the entire contract between the parties and cannot be supplemented by any extraneous documents such as the Client Bill of Rights and Responsibilities (Plaintiff’s Exhibit 13) as alleged by the plaintiff.

“Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity.... Similarly, any ambiguity in a contract must emanate from the language used in the contract rather than from one party’s subjective perception

of the terms.” *Poole v. Waterbury*, 266 Conn. 68, 87-88, 831 A.2d 211 (2003). “[T]he mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous.” *United Illuminating Co. v. Wisvest-Connecticut, LLC*, 259 Conn. 665, 670, 791 A.2d 546 (2002). “[L]anguage is unambiguous when it has a definite and precise meaning ... concerning which there is no reasonable basis for a difference of opinion.” *Levine v. Advest, Inc.*, 244 Conn. 732, 746, 714 A.2d 649 (1998). When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. *Levine v. Massey*, 232 Conn. 272, 278, 654 A.2d 737 (1995).

The language of paragraph 8(a) the Services Agreement is clear and unambiguous when it provides that the “[t]his Agreement constitutes *the entire agreement and understanding* between the parties.” There is absolutely no reference to Plaintiff’s Exhibit 13 in the Services Agreement and such an extraneous document cannot be considered part of the agreement unless expressly stated in the agreement. Moreover, Plaintiff’s Exhibit 13 is not a contract between the parties in and of itself and does not establish any duties or obligations on the either of the parties.

Paragraph 7 of the Services Agreement is equally unambiguous and clearly defines Reliable Care, LLC’s role as a liaison between the plaintiff and the private duty specialists he hired for his mother. This paragraph provides in relevant part: *Client acknowledges that Providers are Independent Contractors, and thus are not agents, employees, or legal representatives of Company. As such, Company has no control over Provider’s actions. Client understands that Company’s sole role in arranging for services is to act as a liaison between Providers and Client. Company does not do an independent evaluation of Providers and assumes no responsibility for damages, loses or injuries to client in connection with Services rendered.*

By signing the Services Agreement, Robert Skinner acknowledged that he knew and understood that Reliable Care, LLC was only serving as a liaison between him and the private duty specialists he hired for his mother; that Reliable Care, LLC was not responsible for doing an assessment of his mother’s home health care needs; and that the private duty specialists (Providers) were independent contractors and not employees or agents of the defendant Reliable Care, LLC.

Reliable Care, LLC fulfilled its obligations under the Services Agreement by serving as a liaison between the plaintiff (the Client) and Bernadette Casimir (the Provider). Pursuant to the express and unambiguous terms of the Services Agreement, providing this match was the extent of the services Reliable Care, LLC provided to the plaintiff. Moreover, under Paragraph 2 of the Services Agreement, the only consideration paid to defendant, Reliable Care, LLC was for acting as a liaison between Robert Skinner and the private duty specialists he hired for his mother.¹⁰ Thus, even if the Court were to allow plaintiff to assert a cause of action against Reliable Care, LLC at this late date in the proceedings, it is clear that Reliable Care, LLC complied with the Services Agreement by serving as a liaison between Robert Skinner and Bernadette Casimir.

It is equally clear that Reliable Care, LLC was not negligent with regard to the incident which is the subject of plaintiff’s complaint. Reliable Care, LLC was not responsible for assessing the home health care needs of its clients; nor was it responsible for training or supervising the private duty specialists that were hired by its clients. Finally, all private duty specialists, including Bernadette Casimir, hired by Reliable Care, LLC’s clients were independent contractors and not employees or agents of Reliable Care, LLC.

Reliable Care, LLC has always operated as an employer fee paid employment agency duly licensed by the Connecticut Department of Labor pursuant to C.G.S. §31-130.¹¹ As such, Reliable Care, LLC serves as a registry for individual independent contractors seeking private employment with families or individuals in need of various home health care services. Reliable Care, LLC does not employ home health care service providers and is not a home health care agency. It merely serves as a liaison between families in need of home health care services and individual independent contractors seeking such employment.

The uncontroverted testimony of Helen Jetter, managing member of Reliable Care, LLC, described the business model of her company as always being in accordance with the Connecticut Department of Labor’s employer fee paid agency licensing requirements.¹² Plaintiff has proffered no evidence to show, let alone prove, that Reliable Care, LLC operated in any other

manner than simply as a liaison or match maker between its registered private duty specialists seeking employment and its clients seeking to hire home health care workers for themselves or family members.

Similarly, plaintiff has failed to prove by a preponderance of the evidence that either of the defendants, Reliable Care, LLC or Helen Jetter, had any responsibility or owed any duty to the plaintiff to assess the home health care needs of Muriel Skinner. Defendants have introduced into evidence several exhibits containing the medical records of Muriel Skinner. Each of these exhibits shows conclusively that Robert Skinner relied on Muriel Skinner's doctors, nurses and various other health care professionals, including the nurses and social workers at Connecticut VNA of Norwalk, to assess his mother's home health care needs and to outline her treatment plan.

Defendants' Exhibit X is the Inter-Agency Patient Referral form from the State of Connecticut Department of Social Services that was completed when Muriel Skinner was discharged from Marathon Health Care Nursing Home after her previous unwitnessed fall in July 2007. Exhibit X is dated August 27, 2007, approximately 5 weeks prior to the October 6, 2007 incident. This exhibit confirms that Ms. Skinner was referred to the Connecticut Visiting Nurses Association (CT VNA) by Marathon Nursing Home of Norwalk for assessment of her home health care needs. Exhibit X details "Patient Care Information" including "activities" and "safety precautions" and states that Ms. Skinner is to be followed by Dr. S. Kumar at Soundview Medical.

Defendants' Exhibit V is a packet of Physician Orders issued by Dr. Sujatha Kumar while Ms. Skinner was a patient at Marathon Nursing Home of Norwalk in July and August 2007. These orders include physical therapy orders, occupational therapy orders and speech therapy orders. On the last page of Exhibit V is a typed notation indicating that Dr. Kumar has "reviewed and accepted" the resident care plan and *discharge plan* for Ms. Skinner.

Defendants' Exhibit L is the complete medical records from Dr. John Svogun and Dr. Sujatha Kumar at Soundview Medical Associates, Muriel Skinner's primary care physicians. Contained within this packet of medical records are several "Home Health Certification and Plan of Care" forms spanning the certification period from at least May 1, 2007 through December 2, 2007, which includes the date of the incident alleged in plaintiff's complaint. A review of the "Home Health Certification and Plan of Care" forms show, in box #7 of the form, that the provider of home health care services is Connecticut VNA of Norwalk. The various "Home Health Certification and Plan of Care" forms assess Ms. Skinner's home health care needs and establish a treatment plan. The forms are signed by a nurse from Connecticut VNA of Norwalk and Muriel Skinner's primary care physicians, Dr. Svogun or Dr. Kumar. Significantly, each form contains a certification in box #25 attesting that Drs. Svogun and Kumar and the Connecticut VNA of Norwalk have certified the plan of care.¹³

Also contained within defendants' Exhibit L are several communications between Connecticut VNA of Norwalk and Drs. Svogun and Kumar at Soundview Medical Associates. These communications are additional home health care assessments and orders issued by Connecticut VNA and faxed to Drs. Svogun and Kumar for approved. These assessments and orders begin as early as May 20, 2007.

Finally, a letter date May 16, 2007 written and signed by Robert Skinner and addressed to Dr. John Svogun further proves that Mr. Skinner was relying on the social worker from the Connecticut VNA and Dr. Svogun to assess his mother's needs and develop her plan of treatment.

Nowhere in any of the exhibits detailed above is there any indication that Reliable Care, LLC or Helen Jetter had any role is assessing Muriel Skinner's home healthcare needs.

The medical evidence submitted by the defendants alone sufficiently proves that the plaintiff did not rely on Reliable Care, LLC or Helen Jetter, personally to assess his mother's home health care needs or to implement any home health care plans. When combined with plaintiff own testimony, there can be no doubt that plaintiff's allegations in this regard are simply untrue.

Robert Skinner repeatedly testified that he was fully aware that Reliable Care, LLC and Helen Jetter were not involved in any way with assessing his mother's home health care needs. In fact, plaintiff testified that he initiated a meeting with the Alzheimer's Association to evaluate his mother's condition when she first moved to Connecticut and relied on Dr. Svogun to assess his mother's home health care needs.¹⁴

Robert Skinner testified that he never met with anyone from Reliable Care, LLC to do any type of home health care assessment.¹⁵ Significantly, he further testified that he did not ask and he did not expect Reliable Care, LLC or Helen Jetter to be involved in assessing his mother's condition. Instead, Robert Skinner relied on the medical knowledge of Dr. Svogun and the nurses and social workers at Connecticut Visiting Nurses Association of Norwalk to assess his mother's condition and to develop a home health care treatment plan.¹⁶

Robert Skinner's own testimony discredits the plaintiff's argument that the defendants, Reliable Care, LLC and Helen Jetter, had the duty or responsibility to assess the client's condition and recommend a private duty specialist for the job; or that Robert Skinner was relying on the defendants to provide this assessment and recommendation. It was Robert Skinner that selected the level of care he felt appropriate for his mother and it was Robert Skinner who determined which level of private duty specialist to hire.¹⁷

The evidence presented at trial also shows that Reliable Care, LLC and Helen Jetter cannot be held liable for the actions of Bernadette Casimir. At all times relevant to this claim, Ms. Casimir was an independent contractor, not an employee or agent of Reliable Care, LLC or Helen Jetter. Robert Skinner acknowledged this fact when he signed the Services Agreement (Defendants' Exhibit C). That agreement provides in relevant part “[c]lient acknowledges that Providers are Independent Contractors, and thus are not agents, employees, or legal representatives of Company.” (See Def. Ex. C, ¶ 7). Although the agreement itself is not necessarily conclusive on the question of whether Ms. Casimir is an independent contractor, it does reflect the intent of Robert Skinner, Reliable Care, LLC and Helen Jetter relative to this question.

“The fundamental distinction between an employee and an independent contractor depends upon the existence or nonexistence of the right to control the means and methods of work.” *Latimer v. Administrator*, 216 Conn. 237, 248, 579 A.2d 497 (1990); see also, *Beaverdale Memorial Park, Inc. v. Danaher*, 127 Conn. 175, 179, 15 A.2d 17 (1940); *Northwestern Mutual Life Ins. Co. v. Tone*, 125 Conn. 183, 190, 4 A.2d 640 (1939); *Norwalk Gaslight Co. v. Norwalk*, 63 Conn. 495, 524, 28 A. 32 (1893). “The test of the relationship is the right to control. It is not the fact of actual interference with the control, but the right to interfere, that makes the difference between an independent contractor and a servant or agent.” *Id.* (internal quotations omitted, citations omitted). “An employer-employee relationship does not depend upon the actual exercise of the right to control. The right to control is sufficient. The decisive test is who has the right to direct what shall be done and when and how it shall be done? Who has the right of general control?” *Id.* (internal quotations omitted, citations omitted). The Connecticut Supreme Court reaffirmed its reliance on the “right to control” test for determining whether an individual is an employee or an independent contractor in the context of a worker's' compensation claim in *Hanson v. Transportation General, Inc.*, 245 Conn. 613, 625, 716 A.2d 857 (1998).

Applying the right to control test to the facts presented at trial proves that Bernadette Casimir was not an employee of Reliable Care, LLC or Helen Jetter. Bernadette Casimir testified that she knew she was not an employee of Reliable Care, LLC and that she was not be paid by Reliable Care, LLC or provided with any benefits by Reliable Care, LLC.¹⁸ More importantly, she testified that either she or the family that she worked for had the right of control over the means and methods of her work. Casimir testified that she controlled when she would accept a job placement from Reliable Care, LLC and that she was free to reject any job placement offered to her. She further testified that either she or the client would set her rate of pay and the hours that she worked.¹⁹ She also testified that the family instructed her what to do while at work and determined whether she would return to the job for continued work.²⁰ Thus, it is clear from Bernadette Casimir's testimony that Reliable Care, LLC and Helen Jetter did not have the right to control the means and methods of Ms. Casimir's work as a home health companion.

Bernadette Casimir's testimony in this regard was echoed by Helen Jetter, managing member of Reliable Care, LLC. Ms. Jetter testified that the private duty specialists such as Bernadette Casimir are not employees of Reliable Care, LLC, but are independent contractors. Each private duty specialist is paid by the family they work for and it is the families who determine where they will work, the number of days they will work and the hours per day they will work. Ms. Jetter detailed how each private duty specialist is free to accept or reject a suggested placement and that each family is free to reject or accept a private duty specialist. Ms. Jetter also explained that it is the family that directs the private duty specialist on what to do throughout the work day and the family that provides any equipment or other materials needed for the private duty specialist to complete the job. Finally, Helen Jetter confirmed that Reliable Care, LLC does not pay the private duty specialists; does not provide them with unemployment benefits or workers' compensation coverage; does not provide vacation or sick days; does not provide benefits such as health insurance; and does not withhold payroll taxes on behalf of the private duty specialists. (See testimony of Helen Jetter, October 26, 2011 Transcript, pages 110-15).

Not only was the testimony of Helen Jetter and Bernadette Casimir uncontroverted by the plaintiff on this issue, but the testimony of Robert Skinner confirmed that Reliable Care, LLC's clients had the right to control the means and methods of work done by the private duty specialists. Robert Skinner testified that he alone exercised the right of control over the private duty specialists he generally hired through Reliable Care, LLC and that he exercised the right of control over Bernadette Casimir specifically on the date of the incident alleged in plaintiff's complaint.²¹

In *Latimer*, supra, the Connecticut Supreme Court had occasion to review the status of personal care assistants vis-à-vis a company that operated as a nurses' registry and vis-à-vis the family for which the personal care assistant worked. Although decided in the context of an appeal from the assessment of unemployment compensation contributions rather than a negligence claim, the ruling in *Latimer* is persuasive. The underlying relationships in the *Latimer* case are remarkable similar to the relationships between the parties in this matter. *Latimer* involved a personal care assistant (PCA's) registered with the Litchfield Hills Nurses Registry who operated exactly as Bernadette Casimir and the other private duty specialists registered with Reliable Care, LLC. The Litchfield Hills Nurses Registry placed a personal care assistant with the Latimer family to provide home health care for the needs of one of its family members. Like the private duty specialists registered with Reliable Care, LLC, the personal care assistants registered with Litchfield Hills Nurses Registry were certified nurse's aides, home health care assistants or had prior experience working as nurse's aides who offered their general services to the public through the registry. *Latimer*, supra at 243.

As with Bernadette Casimir and Robert Skinner, the PCAs in the *Latimer* case were paid an agreed hourly wage by the family; the family retained the right to discharge any PCA; the PCAs reported directly to the family; the family set the hours and the location when and where the PCAs would work; and the family provided all the materials or tools necessary for the PCAs to do their work. *Id.*, at 244, 250. Furthermore, as with Bernadette Casimir and Robert Skinner, the PCAs in *Latimer* reported to the family; the family provided the care instructions to the PCA; and the family could intervene to correct the PCAs if care was not being given according to their instruction. *Id.* at 250-1.

Under the facts presented in *Latimer*, the Supreme Court held that the family whom the PCA worked for possessed the right to control the means and methods of the work performed. Whether the family actually exercised the right to control was irrelevant to the Court's analysis. "[I]t is not the actual exercise of the right to control ... but rather the employer's possession of the right to control" that is determinative. *Id.* at 251. Therefore, in *Latimer*, the Court held that the PCA was actually the employee of the family for whom she worked. *Id.*

This Court need not find that Robert Skinner was actually the employer of Bernadette Casimir. However, the rules set forth in *Latimer* under strikingly similar factual relationships to the parties in this case, does show that Reliable Care, LLC was not Bernadette Casimir's employer on the date of the incident alleged in plaintiff's Complaint. Thus, assuming *arguendo* that Bernadette Casimir is found to be negligent and her negligence is found to have been the proximate cause of Muriel Skinner's injuries, her negligence cannot be attributed to Reliable Care, LLC or Helen Jetter in her individual capacity.

D. Helen Jetter is not Personally Liable to the Plaintiff

Defendant, Helen Jetter, incorporates herein by reference and relies on all previous arguments set forth in defendants' post trial brief as to the lack of liability on the part of Reliable Care, LLC as pertaining to Helen Jetter in her individual capacity as well.

The plaintiff has failed to prove by a preponderance of the evidence any liability on the part of defendant, Helen Jetter, in her individual capacity. Plaintiff does not dispute that Reliable Care, LLC is a duly licensed limited liability company organized and existing under the laws of the State of Connecticut. Defendants' Exhibit A included the Articles of Incorporation for Reliable Care, LLC as well as its annual filings for 2007 through 2011. Although Reliable Care, LLC's annual filings from previous years (1998-2006) were not put into evidence by the defendants, Helen Jetter, managing member of Reliable Care, LLC, testified that Reliable Care, LLC complied with its annual filing requirements every year since its inception in 2007 and that Reliable Care, LLC has maintained its active status as an LLC since its creation and initial filing on May 27, 1997.²²

Connecticut General Statutes section 34-133(a) provides in relevant part that “a person who is a member ... of a limited liability company is not liable, solely by reason of being a member ... for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company.” C.G.S. §34-133(a). Nevertheless, plaintiff seems to be arguing that because Helen Jetter also filed a Certificate of Registration of Trade Name indicating that she is doing business as Reliable Care, LLC she somehow loses the protection of her LLC and becomes legally liable to the plaintiff for the alleged negligent acts of Reliable Care, LLC. Plaintiff provides absolutely no case law or statutory citations supporting this argument. Further, plaintiff has provided no evidence that would justify this Court “piercing the corporate veil” to hold Helen Jetter personally liable for any alleged acts or omissions of Reliable Care, LLC or for any actions she took in furtherance of Reliable Care, LLC's business.

“Ordinarily the corporate veil is pierced only under exceptional circumstances, for example, where the corporation is a mere shell, serving no legitimate purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice.” *Naples v. Keystone Building & Development Corp.*, 295 Conn. 214, 233, 990 A.2d 326 (2010). The improper use of the corporate form is the key to the inquiry. “It is true that courts will disregard legal fictions, including that of a separate corporate entity, when they are used for fraudulent or illegal purposes. Unless something of the kind is proven, however, to do so is to act in opposition [to the] public policy of the state as expressed in legislation concerning the formation and regulation of corporations.” *Id.* at 233-4.

Connecticut recognizes two theories under which it will permit the corporate veil to be pierced and the protection of the corporate structure set aside: The “instrumentality rule” and the “identity rule”. “The instrumentality rule requires, in any case but an express agency, proof of three elements: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the] plaintiff's legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of” *Id.* at 232.

“The identity rule has been stated as follows: if [the] plaintiff can show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, an adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise.” *Id.* (citations omitted; internal quotation marks omitted) citing *Angelo Tomasso, Inc. v. Armor Construction & Paving, Inc.*, 187 Conn. 544, 552-54, 447 A.2d 406 (1982).

“Courts, in assessing whether an entity is dominated or controlled, have looked for the presence of a number of factors. Those include: (1) the absence of corporate formalities; (2) inadequate capitalization; (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes; (4) overlapping ownership, officers, directors, personnel; (5) common office space, address, phones; (6) the amount of business discretion by the allegedly dominated corporation; (7) whether the

corporations dealt with each other at arm's length; (8) whether the corporations are treated as independent profit centers; (9) payment or guarantee of debts of the dominated corporation; and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own." *Id.* at 233 (internal quotation marks omitted), citing *Litchfield Asset Management Corp. v. Howell*, 70 Conn. App. 133, 152-53, 799 A.2d 298, cert. denied, 261 Conn. 911, 806 A.2d 49 (2002).

Plaintiff has not produced any evidence that would justify this Court piercing the corporate veil under either of these two theories. First, plaintiff has not proven or even suggested that Helen Jetter operated Reliable Care, LLC for the purpose of committing fraud or to perpetrate a statutory violation or other dishonest or unjust act in contravention of the plaintiff's legal rights as required under the "instrumentality theory."

Second, with regard to the "identity theory", Helen Jetter's testimony shows that Reliable Care, LLC operated as a separate and distinct entity which maintained its independence from her personally. Helen Jetter testified that Reliable Care, LLC has always maintained a separate business office, business address, business phone number, business fax number, and e-mail address. Jetter testified that Reliable Care, LLC has an agent for receipt of service of process registered with the Connecticut Secretary of State and that it has continuously maintained its status as an LLC under Connecticut law. Jetter testified that Reliable Care, LLC has never owned any real property, has never lent money to her, has never guaranteed any loans for her, and has never paid any of her personal debts. She further testified that Reliable Care, LLC has always maintained its own business bank accounts separate from her personal accounts.²³ This testimony was not contested by the plaintiff nor has the plaintiff produced one shred of evidence to prove otherwise. In fact, when asked, Robert Skinner testified that he knew Reliable Care, LLC was a corporation and that all his dealings were with Reliable Care, LLC.²⁴ Thus, none of the factors Courts use to determine whether a corporation is dominated or controlled by an individual or other corporate entity are present in the case at bar.

Connecticut courts routinely decline to pierce the veil of even the most closely held corporations in the absence of proof that failure to do so will perpetrate a fraud or other injustice. *Naples*, supra at 234, citing *Campisano v. Nardi*, 212 Conn. 282, 293-94, 562 A.2d 1 (1989) (rejecting attempt to hold principal of construction corporation personally liable for breach of contract when plaintiff produced no evidence principal used control over the corporation to commit fraud or avoid personal liability); *Lewis v. Frazao Building Corp.*, 115 Conn. App. 324, 336-37, 972 A.2d 284 (2009) (declining to pierce corporate veil where construction company left incomplete work because there was no wrongful or deceitful motive and no fraud was committed that resulted in injury to the plaintiff). Thus, even if it is found that Helen Jetter controlled Reliable Care, LLC, plaintiff has failed to show that Jetter used that control "to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the] plaintiffs legal rights ... and ... that the aforesaid control and breach of duty ... proximately cause[d] the injury or unjust loss complained of." *Angelo Tomasso, Inc.*, supra, 187 Conn. 553.

The plaintiff does not proffer any evidence showing that Reliable Care, LLC did not serve a legitimate business purpose, or that failing to pierce its corporate veil and hold Helen Jetter personally responsible would perpetrate a fraud or other injustice.

For the same reasons, the plaintiff's claims also fail under the identity rule, pursuant to which he was required to "show that there was such a unity of interest and ownership that the independence of the corporations had in effect ceased or had never begun, and adherence to the fiction of separate identity would serve only to defeat justice and equity by permitting the economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise." *Angelo Tomasso, Inc.*, supra, 187 Conn. 554. The fact that Jetter "acted on behalf of [Reliable Care, LLC] is no more than a reflection of the reality that all corporations act through individuals. It is axiomatic that while such an entity has a distinct legal life, it can act only through individuals." *Naples*, supra at 237. Accordingly, this Court must find that Reliable Care, LLC served a legitimate business purpose, and was not "a mere shell ... used primarily as an intermediary to perpetrate fraud or promote injustice." *Angelo Tomasso, Inc.*, supra at 557.

Accordingly, Helen Jetter should not be found personally liable for any alleged breach of contract or negligence of Reliable Care, LLC.

E. Reliable Care, LLC Did Not Violate CUTPA

Plaintiff purports in his post-trial brief that defendant Reliable Care, LLC has violated [Connecticut General Statutes §35-1\(a\)](#) and that such alleged violation is a per se violation of CUTPA. [C.G.S. §35-1](#) generally prohibits individuals in Connecticut from conducting or transacting business in Connecticut under an assumed name. Although plaintiff provides scant reasoning on how Reliable Care, LLC purportedly violated [C.G.S. §35-1](#), he appears to be arguing that the filing of a Trade Name Certificate indicating that Helen Jetter is doing business as Reliable Care, LLC somehow violates this statute. However, the language of the statute itself shows the specious nature of this argument.

First, the [C.G.S. §35-1](#) prohibits doing business under an assumed name “unless there has been filed, in the office of the town clerk in the town in which such business is or is to be conducted or transacted, a certificate stating the name under which such business is or is to be conducted or transacted and the full name and post-office address of each person conducting or transacting such business or, in the case of a corporation or limited liability company using such an assumed name, its full name and principal post-office address.” [C.G.S. §35-1\(a\)](#). Helen Jetter filed a Certificate of Registration of Trade Name indicating that she would be doing business as Reliable Care, LLC in compliance with this statute. The Certificate met all the statutory requirements set forth in [§35-1\(a\)](#).²⁵

Moreover, [C.G.S. §35-1\(a\)](#) specifically excepts limited liability companies from its mandates. The statute provides in relevant part, “[t]his subsection *shall not apply to*...any limited liability company, as defined in section 34-101, provided such limited liability company (A) has (i) filed articles of organization as provided for in section 34-120, or (ii) registered with the Secretary of the State as provided in section 34-223 and (B) conducts or transacts business under the name stated in the articles of organization or registered with the Secretary of the State.” [C.G.S. §35-1\(a\)](#) (emphasis added).

As has already been discussed, Reliable Care, LLC filed its Articles of Incorporation with the Connecticut Secretary of State in 1997 and has conducted business under its duly filed name ever since. Accordingly, it is clear that Reliable Care, LLC is not in violation of [C.G.S. §35-1\(a\)](#).

Equally clear is the fact that none of the actions alleged by the plaintiff violate the Connecticut Unfair Trade Practices Act. As set forth above, Reliable Care, LLC served only as a liaison between families seeking to hire home health care professionals and those private duty specialists that registered with Reliable Care, LLC to be so hired. Reliable Care, LLC is not a homemaker-companion agency under [C.G.S. §20-670](#). This statute defines a “homemaker-companion agency” as “any public or private organization, *employing* one or more persons that is engaged in the business of providing companion services or homemaker services.” [C.G.S. §20-670\(6\)](#) (emphasis added). As detailed earlier in this brief, the private duty specialists registered with Reliable Care, LLC, including Bernadette Casimir, are not employees of Reliable Care, LLC. Consequently, since Reliable Care, LLC is not a “homemaker-companion agency” as that term is defined by statute, it is not required to obtain a certificate of registration from the Commissioner of Consumer Protection under [C.G.S. §20-671](#).²⁶ Nor was Reliable Care, LLC required to comply with any other provisions of [C.G.S. §20-670, et seq.](#) including conducting a background check ([C.G.S. §20-678](#)) or providing a service plan ([C.G.S. §20-679](#)). Therefore, failure to do so cannot be a basis for a CUTPA claim.

The testimony presented by the witnesses and the exhibits admitted into evidence at trial simply do not support the allegations on which plaintiff attempts to base a CUTPA claim against Reliable Care, LLC. As set forth fully in earlier sections of this brief, it was not the business of Reliable Care, LLC to assess the family's home health care needs or to develop a plan of care for the family. Robert Skinner acknowledged that Reliable Care, LLC was not responsible for assessing his mother's condition and he acknowledged that Reliable Care, LLC was not responsible for developing a plan of care for his mother. He did not rely on any statements made by the defendants in this regard. Instead, he relied on his mother's primary care physicians, the Alzheimer's Association and Connecticut VNA of Norwalk to assess his mother's condition and to develop a home health care plan. It strains credulity to believe that Robert Skinner made decisions for his mother's care based on alleged representations from Reliable Care, LLC - essentially a placement agency - when he had numerous doctors and skilled nursing facilities that

were performing these tasks for him. Similarly, plaintiff has provided absolutely no evidence that the defendants had a policy of ensuring its private duty specialist maintained liability insurance; that if such a policy existed it violated that policy; or that such a violation had any causal effect on the incident described in plaintiff's complaint.

If this Court somehow finds against the weight of all evidence to the contrary, that Reliable Care, LLC made certain representations to the plaintiff which it failed to meet, the actions of Reliable Care, LLC still do not rise to the level of being immoral, unethical, oppressive or unscrupulous.²⁷

III. CONCLUSION

Reliable Care, LLC provided the plaintiff with well qualified private duty specialists to hire for the care of his mother. The plaintiff determined who to hire and what level of care his mother required. He relied on his mother's doctors and other health care professionals working for his mother to assess her home health care needs and to develop an appropriate course of treatment. Plaintiff never provided any medical records or treatment plans to the defendants.

Defendants Reliable Care, LLC and Helen Jetter did not represent to the plaintiff that they would assess his mother's condition or her home health care needs. They did not breach any purported contract nor did they act negligently. If defendant Casimir is found to be negligent, her transient negligence on the date in question was due solely to her own action or inaction was not the result of any actions on the part of defendants Reliable Care, LLC and Helen Jetter.

Bernadette Casimir was not the agent or employee of Reliable Care, LLC or Helen Jetter and her alleged negligence cannot be a basis for holding Reliable Care, LLC or Helen Jetter liable.

Reliable Care, LLC did not violate CUTPA.

WHEREFORE, the defendants, Reliable Care, LLC and Helen Jetter, respectfully request that this Court find that plaintiff failed to present a prima facie case of negligence prove by a preponderance of the evidence the Counts set forth in his Second Amended Complaint as to defendants, Reliable Care, LLC and Helen Jetter. Therefore, the Court should find in favor of Reliable Care, LLC and Helen Jetter on all issues of liability.

THE DEFENDANTS,

RELIABLE CARE, LLC and HELEN JETTER

BY /s/ 404662

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Footnotes

- 1 Testimony of Bernadette Casimir, 10/26/11 Transcript (page 16, lines 11-18):
Q: And how long did Mr. Skinner spend with you that morning before he left for his job?
A: Probably around 5 minutes.
Q: Did he tell you anything about his mother's condition?
A: The only thing he tell me, he said his mother was coming from the hospital, his mother need someone to watch her.
- 2 Testimony of Bernadette Casimir, 10/26/11 Transcript (page 31, lines 24-27 & page 32, lines 1-20):
Q: He-Now, when you arrived that morning, what if anything did Mr. Skinner provide you in writing about his mother's condition?
A: Nothing.
Q: What, if any, medical assessment of his mother's condition did Mr. Skinner provide you with?
A: Nothing?
Q: What, if any, documents from Connecticut Visiting Nurses Association of Norwalk did Mr. Skinner provide you with?
A: Nothing.
Q: Did he appear to be in a hurry that morning?
A: It was almost time for him to leave.
Q: And did he appear to be in a hurry that morning?
A: Yes
Q: Did Mr. Skinner provide you with any written documents concerning his mother's condition that day?
A: No.
Q: Did he provide you with any written documents concerning what her limitations were that day?
A: No.
Q: Did he provide you with any written documentation of what her restrictions where that day?
A: No.
- 3 Testimony of Bernadette Casimir, 10/26/11 Transcript (page 23, lines 1-8):
Q: You weren't told by Mr. Skinner that you had to watch her while she was in the bathroom, correct?
A: No.
Q: And you weren't told by Mr. Skinner that you had to watch her, meaning physically keep your eyes on her, when she was in bed, correct?
A: No.
- 4 Testimony of Bernadette Casimir, 10/26/11 Transcript (page 22, lines 14-2, page 23, line 1):
Q: And was Ms. Skinner alert enough to tell you what she wanted for lunch?
A: Yes.
Q: And was Ms. Skinner alert enough to tell you when she wanted to get up out of bed?
A: Yes.
Q: And was Ms. Skinner alert enough to tell you when she needed to use the commode?
A: Yes.
Q: And she able to be in the bathroom once assisted onto the toilet by herself, correct?
A: Yes.
Q: And she was able to be in her bedroom when she was resting by herself, correct?
A: Yes.
- 5 Testimony of Robert Skinner, 10/27/11 Transcript (page 67, lines 14-23):
Q: The wheelchair was a matter of convenience for you, right?
A: Yes.
Q: There was no doctor's order in place on October 6th, 2007 that indicated your mother was wheelchair bound, correct?
A: That's correct.
Q: And similarly, there was no doctor's order that said she could not use the walker, correct.
A: That's correct.
- 6 Testimony of Robert Skinner, 10/27/11 Transcript (page 60, lines 7-27, page 61, lines 1-2):
Q: Okay, and when your mother was asleep or in her bedroom, she wasn't under constant visual supervision by you, is that correct?
A: That's correct.
Q: And we've already established that when she was in the bathroom, she wasn't under constant visual supervision by you, correct?
A: Correct.
Q: That continued--that was true up until and including the day that this accident occurred, correct?

A: Well, not exactly. I mean after the July incident, it was a little more concerning to make sure that she was, you know, always being watched and being cared for.

Q: Okay, but when she was sleeping, you wouldn't watch her, correct?

A: No, I wouldn't watch her.

Q: And when she was in the bathroom, after the July '07 accident, you wouldn't watch her, correct?

A: Not while she was going.

Q: Or maybe there was an instance when you had to go to the bathroom and your mom was in the living room, watching TV, or whatever, you wouldn't be watching her then, correct?

A: Right, correct.

7 Defs' Ex. M is Muriel Skinner's 7/17/07 to 7/24/07 Norwalk Hospital records following a fall she sustained when she suffered a fainting episode while left alone in the bathroom by her son. Defs' Ex. N is Muriel Skinner's 8/17/07 Norwalk Hospital records from another unwitnessed fall she sustained while getting out of her bed unattended at Marathon Nursing Home. Defs' Ex. U is the nurse's notes from Marathon Nursing home from 7/25/07 to 8/28/07 and from 10/16/07 to 7/9/10. Defs' Ex. U contains nurses notations from 7/25/07, 8/1/07, 8/2/07, 8/23/07 showing self-propelling in wheel chair and from 8/9/07, 8/17/07, 8/19/07 showing Ms. Skinner getting out of bed and walking around on her own.

8 Testimony of Robert Skinner, 10/27/11 Transcript (page 65-66, lines 13-27, 1-2):

Q: When you first contacted reliable care, LLC, you were essentially looking for an **elder** care, an **elder** sitter, correct?

A: I was essentially looking an aid, for someone to stay with my mom because she had her balance and her dementia, and that was the primary reason.

Q: But you weren't expecting them to render any type of medical treatment, correct?

A: No.

Q: Not any physical therapy.

A: Not from my prospective.

Q: They weren't--you testified earlier, they weren't supposed to give any medication.

A: No.

Q: But they were essentially a companion, is that fair to say?

A: Fair to say, yes.

9 See Plaintiff's 10/17/11 Trial Management Report:

2. List of the Legal and Factual Issues in Dispute The Plaintiff is asserting negligence against Bernadette Casimir, Helen Jetter, and Reliable Care, LLC, and CUTPA grounds against Reliable Care, LLC.

10 Paragraph 2 of the Services Agreement provides: Client agrees that Client is solely responsible for payment of Provider's fees in connection with Services. For acting as a liaison between client and Providers, client agrees to pay to Company a Registry Fee based on compensation Client pays Providers... (Def. Ex. C, ¶ 2).

11 See Defendants' Exhibit B - State of Connecticut, Department of Labor certified copies of Reliable Care, LLC's Employer Fee paid Agency registrations issued for period 1/14/98 through 6/3/2011, excepting 1/14/99 to 5/20/00.

12 Testimony of Helen Jetter, 10/26/11 Transcript (pages 88-89, lines 16-26 & 1-14):

Q: Has Reliable Care, LLC always operated as an employer fee paid employment agency?

A: Yes.

Q: And what does that mean?

A: That means we collect our fees from our client or patient, the family, the representative of the family.

Q: And has that always been the business model for Reliable Care, LLC?

A: Always been, yes, yes. (page 84, lines 17-25)

Q: And has Reliable Care, LLC always operated under that statute as an employer fee paid employment agency?

A: Yes.

Q: Okay; and what does that mean in the context of your specific company? How does it work for Reliable Care, LLC?

A: The way it works for Reliable Care, LLC is that we have people that come in and we refer them, they're not our employees.

Q: Okay; and who are these people that come in?

A: They are private duty specialists. They can be independent contractors; they're certified nurse's aid, home health aids, companions.

Q: Okay. So those are the individuals like Ms. Casimir?

A: Yes.

Q: Who are looking for you to associate them with a family that's in need of somebody to come into their home and provide some health assistance for a family member, correct?

A: Correct

Q: And who are your clients? Who are the clients of Reliable Care, LLC?

A: The clients or [sic] the people in need of the services or their representatives, yeah.

Q: Like Mrs. Skinner?

A: Mrs. Skinner.

Q: - or Mr. Skinner in this case?

A: yes, right.

13 Box 25 of the Home Health Certification and Plan of Care forms provides, "I certify/recertify that this patient is confined to his/her home and needs intermittent skilled nursing care, physical therapy and/or speech therapy or continues to need occupational therapy. *The patient is under my care, and I have authorized the services on the plan and will periodically review the plan.* See Def's Ex. L (emphasis added).

14 Testimony of Robert Skinner, 10/26/11 Transcript (pages 9-10, lines 26-27 & 1-18):

Q: Now, did you--at that point, when you decided that she shouldn't be left alone, did you start contracting for persons to come into the home to stay with her?

A: I did, because we had a meeting with the Alzheimer's Association, and they did an evaluation on my mom and they kind of, along with Dr. Svogun, sort of intimated that--let's--let's get somebody in here at all times.

Q: Okay.

A: And the Alzheimer's Association is how I got the name of Reliable Care.

Q: Okay, and is that meeting with the Alzheimer's Association, is that something that you initiated?

A: Yes.

Q: Okay, and do you recall where that meeting took place?

A: Yes, it took place in our living room.

Q: Okay.

A They came out and sat with my mom for an hour, did an evaluation, and then had provided us some respite care, but as well as giving us the name of Reliable Care.

15 Testimony of Robert Skinner, 10/26/11 Transcript (page 11, lines 21-23):

Q: Okay, and did you ever meet with anybody from Reliable Care?

A: No, I did not.

16 Testimony of Robert Skinner, 10/26/11 Transcript (page 53, lines 12-27; page 54, lines 1-7 & 26, 27; page 55, lines 1-21):

Q: Now, when your mother first came to Connecticut, you sought the assistance of a social worker to help assess what her needs were, correct?

A: A social worker for the doctor's visit as well. (sic)

Q: And a doctor's visit with Dr. Svogun, correct?

A: Dr. Svogun, yes.

Q: Okay, a medical doctor, correct?

A: Yes.

Q: As well as the assistance of Connecticut Visiting Nurses Association of Norwalk, isn't that correct?

A: Yes.

Q: And it was the social worker and Connecticut VNA of Norwalk and Dr. Svogun together, that assessed what your mother's needs were, right?

A: That's right.

Q: You never asked Reliable Care, LLC, to assess what your mother's needs were, correct?

A: I never asked them, no.

Q: And you didn't expect them, Reliable Care, LLC, to assess what her needs were, correct?

A: Ah --

Q: Yes or no, Mr. Skinner.

A: No.

Q: And throughout the course of your mom's stay in Connecticut, up until the point of this accident, October 6th, 2007, it was the Connecticut VNA that would update the assessments, correct?

A: Yes, and Dr. Svogun.

Q: A medical doctor, correct?

A: Yes.

Q: And you knew that Reliable Care, LLC, did not provide any medical treatment, correct?

A: Yes.

Q: Okay, and you knew that Helen Geter--Jetter, excuse me, wasn't a medical doctor, correct?

A: Correct.

Q: And you relied on the assessments that were performed by the medical doctor, Dr. Svogun, correct?

A: Yes.

Q: And the medical assessments that were performed by Connecticut VNA of Norwalk, correct?

A: Yes.

Q: As well as the recommendations of the social worker as to what your mother's needs were when she came to Connecticut, correct?

A: Yes.

17 Testimony of Robert Skinner, 10/26/11 Transcript (page 58, lines 17-27 & page 59, lines 1-14):

Q: Now, you testified earlier when talking about the rate sheet that was provided for you, that you reviewed the rate sheet and I think I wrote down exactly what you said, that you reviewed the rate--the following price sheet and "I determined the appropriate person from that list and paid them accordingly," is that correct?

A: That's right.

Q: So, having reviewed the rate sheet, I think it was exhibit 16, if I'm not mistaken, you determined the appropriate person that should come in and assist your mother, correct?

A: That's right.

Q: That wasn't something the Reliable Care, LLC, determined, correct?

A: They didn't determine that, they didn't tell me, or advise me what I should be--where I should be going with that.

Q: You didn't rely on them to give you that advice, correct.

A: I--you know, if they gave me the advice, I would have followed them.

Q: But you weren't relying on them to give you that advice, in fact, you reviewed the rate sheet and you determined which level of care you needed, correct?

A: Right.

18 Testimony of Bernadette Casimir, 10/21/11 Transcript (pages 98-99, lines 18-22 & 1-13) (pages 101-03, lines 21-7; 1-27; & 1-6):

Q: And when you registered with Reliable Care, LLC, you understood that Reliable Care, LLC was not going to be your employer, correct?

A: Yes.

Q: That they were not going to pay you for the time that you did your work, correct?

A: Yes.

Q: And you understood that they were not going to provide you with any benefits, correct?

A: Yes.

Q: You understood they weren't going to provide you with any health insurance?

A: Yes.

Q: That they weren't going to pay you for any days that you were sick and could not work, correct?

A: Yes.

Q: They weren't going to pay you for any time that you wanted to take off for vacation, correct?

A: Yes.

Q: You understood that if you did not want an assignment that Reliable Care, LLC suggested for you that you could say, no, I don't need that assignment, correct?

A: I could refuse.

Q: Now, when you registered with Reliable Care, LLC, you knew that you would be paid by the family, correct?

A: Yes.

Q: Okay. You never expected Reliable Care, LLC to pay you for the time that you worked, correct?

A: No.

Q: And you knew that it was your responsibility to contact Reliable Care, LLC and let them know when you were available for a particular assignment, correct?

A: Yes.

Q: All right. And you took the steps to contact Reliable Care, LLC to tell them what hours or what days you'd be available for an assignment, correct?

A: Yes.

Q: Okay. And when somebody from Reliable Care, LLC would contact you and tell you there was an assignment that you could go on, you knew that you could either choose to go on that assignment or you could say, no, I'm sorry, I can't take that assignment, correct?

A: Yes.

Q: And were there times that you did that -- that you refused to take an assignment from July through October when this -- before this incident happened?

A: Yes.

Q: And you also knew that Reliable Care, LLC was not going to be responsible for paying any of the taxes on the money that you earned, correct?

A: Yes.

Q: And when you registered with Reliable Care, LLC, you knew that they weren't going to provide you with worker's compensation coverage if you got hurt on the job, correct?

A: Yes.

Q: And you knew that Reliable Care, LLC was not going to provide you with any type of insurance coverage, correct?

A: Yes.

19 Testimony of Bernadette Casimir, 10/21/11 Transcript (page 10, lines 3-11):

Q: Okay. And did -- how did you determine how much you were going to be paid?

A: When -- the first day when they refer you to a job they tell you how much that job give -- how much is the rate. It is up to me if I want it or not.

(page 15, lines 12-18)

Q: Okay. So she would offer you a job and she would tell you this is how much you will be paid for this patient?

A: Yes, but it can -- it is up to me to said yes or no if I wanted.

Q: That's right. I understand that. You could deny a job if you didn't --

A: All the time, yes.

20 Testimony of Bernadette Casimir, 10/21/11 Transcript (page 22, lines 14-24):

Q: Okay. So I'll ask you another question. Once you went out to a person -- an individual's home and you provided them with services for the day, did you know whether or not you had to return another time?

A: Yes.

Q: Okay. And who would tell you whether or not you should return on another day?

A: The family or the patient.

Q: The family would. Okay. And did you have to report to Reliable Care whether or not you would be returning?

A: No.

21 Testimony of Robert Skinner, 10/27/11 Transcript (page 66, lines 14-27; p. 67, lines 1-9 & 24-27, p. 68, lines 1-27, P. 69, lines 1-11 & 23-25) :

Q: When the private duty specialist would come to work for you, you would set what hours they worked, you would tell them what hours that you needed them, correct?

A: It was--we discussed it before hand and we would, you know, agree on the time that they were going to be there.

Q: And that was something that [w]as directed by you, correct?

A: Well, yes, yes, yes.

Q: And the private duty specialist would work in your home?

A: Yes.

Q: And whatever they needed to do their job would be provided by you, correct?

A: That's right.

Q: If they needed to cook your mother lunch, the equipment to do that would be provided by you, correct?

A: Yes.

Q: If they needed to take your mother out in the wheelchair, that wheelchair would be provided by you, correct?

A: Yes.

Q: Walker, that was provided by you, correct?

A: Yes.

Q: You chose when to hire a private duty specialist, when you needed that and stop when you didn't need that, correct?

A: Correct.

Q: Did you have occasion to ask for a different private duty specialist when you had some issues with one or two that might not have arrived on time?

A: That and maybe if my mother expressed that she had a favorite person then I would to hire them for her, you know, based on that.

Q: And you gave the instructions to the private duty specialist yourself, correct?

A: That's right.

Q: You have the right to discharge any private duty specialist that you didn't feel was working out, correct?

A: Well, sure, but I would certainly call Helen to try to talk to her about it, try to make her understand what the issue was first.

Q: I understand. The same was true with Bernadette Casimir on the day that this accident occurred, correct? You were anticipating paying her for the time that she worked, correct?

A: That's right.

Q: You set the hours that she needed to be there, correct?

A: Right.

Q: You testified that she was a little bit late, you were heading out to a bar mitzvah, but if you didn't want her, you could have called Reliable Care, LLC, and requested a different person to come out, correct?

A: I could have, however, there was an issue of time because once she arrived, I mean, I didn't have much recourse at that point.

Q: I understand, but that was within your ability to do that, correct?

A: Right.

Q: And you provided Bernadette Casimir all the instructions on how to care for your mother that day, correct?

A: That's right.

Q: And you provided her all the tools and equipment for her to do her job that day, correct?

Q: And you set, obviously, the location where they work, this was your home, correct?

A: Yes.

22 Testimony of Helen Jetter, 10/26/11 Transcript (Page 78, lines 3-15):

Q: And was Reliable Care, LLC an active, current corporation from the time you first incorporated it in 1998 through the present?

A: Yes.

Q: Okay. It's never - its corporate status has never lapsed; is that correct?

A: No, never.

Q: Even though there may not be the certificates, you just provided the ones -

A: Right

Q: - that were relevant to this date of loss and going forward, correct?

A: Correct

23 Testimony of Helen Jetter, 10/26/11 Transcript, pages 85-87.

24 Testimony of Robert Skinner, 10/27/11 Transcript (page 62, lines 19-27 & page 63, Lines 1-8):

Q: When you first contacted Reliable Care, LLC, you contacted them at their business address, correct?

A: Yes, I--it was a phone number I called.

Q: When you dialed that phone number and somebody picked up, did they say "Reliable Care, LLC, may I help you," or something similar to that?

A: Yes, I believe so.

Q: Okay, and you knew you were dealing with the business, with the corporation, correct?

A: Yes.

Q: Did you ever contact Ms. Jetter at her home, that you're aware of?

A: I don't think I had that information to get her at home.

Q: Because she didn't provide it to you, correct?

A: I don't believe so.

Q: What she provided to you was her business address, correct?

A: Yes.

Q: And her business phone number, correct?

A: Right.

Q: And to you, all your dealings were with the business Reliable Care, LLC, correct?

A: Yes.

Q: And you knew you were hiring people through Reliable Care, LLC, correct?

A: Yes.

25 See Plaintiff's Exhibit 11.

26 Reliable Care, LLC did register annually with the CT Department of Labor as an Employer Fee Paid Agency pursuant to [C.G.S. §31-130\(i\)](#).

27 In determining whether a practice violates CUTPA Connecticut Courts have adopted the criteria set out in the cigarette rule by the Federal Trade Commission for determining when a practice is unfair. The criteria examined involve: "(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise -- in other words, it is within at least the penumbra of some common law, statutory, or other established

concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers..." *Naples v. Keystone Building & Developmental Corp.*, 295 Conn. 214, 227, 990 A.2d 326 (2010)

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