

2007 WL 7006928 (Tenn.Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Tennessee.
Clinton
Anderson County

Lawrence Junior KANIPE, as Administrator for the Estate of Lillian L. Kanipe,
deceased, and on behalf on wrongful death beneficiaries of Lillian L. Kanipe, Plaintiff,

v.

MARINER HEALTH MANAGEMENT COMPANY d/b/a Mariner Healthcare; Mariner Health
of Florida, Inc. d/b/a Mariner Health of Norris; Sava Senior Care Administrative Services, LLC;
Sava Senior Care, LLC; SSC Andersonville Operating Company LLC d/b/a Norris Health and
Rehabilitation Center; SSC Special Holding, LLC; SSC Andersonville Management Company, LLC;
Gina Harris, in her capacity as Administrator of Norris Health and Rehabilitation Center; Douglass
Dailey, in his capacity as Administrator of Norris Health and Rehabilitation Center; Kenneth
Beck, in his capacity as Administrator of Norris Health and Rehabilitation Center, Defendants.

No. A6LA0177.
July 23, 2007.

Jury Demanded

Plaintiff's Brief in Support of Motion to Compel

Nix, Patterson & Roach, LLC, M. Chad Trammell BPR # 021146, [S. Drake Martin](#), BPR # 018786, 37 Sandstone Circle,
Jackson, TN 38305, Telephone: (731) 512-0283, Fax: (731) 512-0284.

[Rule 26.02 of the Tennessee Rules Civil Procedure](#) provides the scope of information and documents to which parties are entitled during the discovery phase of litigation. Specifically, the Rule provides “parties may obtain discovery *regarding any matter*, not privileged, *which is relevant* to the subject matter involved in the pending action....” It is not a ground for objection the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Ibid*. The information sought by Plaintiff in the pertinent interrogatories and requests for production is discoverable under Tennessee law. The requested discovery is relevant to the subject matter involved in this case. Moreover, a Court Order requiring responses to the interrogatories and production of the requested documents would not be unduly burdensome or oppressive to Defendants. Accordingly, the Court should order these Defendants to produce responsive documents.

A. THE FACTS

This case is a survival and wrongful death action arising out of the neglect and abuse of Lillian Kanipe, a resident of a nursing home owned and operated by Defendants. Ms. Kanipe was admitted to Mariner Health of Norris/Norris Health and Rehabilitation Center on September 15, 2004. During Ms. Kanipe's residency, Mariner Health of Norris/Norris Health and Rehabilitation Center was owned and/or operated by all Mariner/SAVA Defendants in this action. During Lillian Kanipe's residency at Mariner Health of Norris/Norris Health and Rehabilitation Center, Ms. Kanipe suffered multiple personal injuries, severe physical pain and suffering, as well as mental anguish and humiliation. These injuries were a direct result of the failure of Mariner Health of Norris/Norris Health and Rehabilitation Center to discharge its obligations of care to Ms. Kanipe, namely to provide sufficient and adequately trained nursing staff to meet her needs.

The scope and severity of the recurrent negligence inflicted upon Lillian Kanipe while she was under the care of the defendant nursing home corporations accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in numerous physical and emotional injuries and death. Specifically, Ms. Kanipe suffered the following injuries: pressure sores which resulted in amputation, malnutrition, severe dehydration, degrading indignities and ultimately death.

Each of these injuries were directly caused by one or more acts of negligence on the part of all Mariner/SAVA Defendants corporately and/or by and through their servants, agents and employees. Such acts of negligence include, but are not limited to, the failure to provide sufficient numbers of qualified personnel to meet the total needs of Lillian Kanipe, failure to assist Ms. Kanipe in her personal needs, failure to prepare appropriate and timely care plans for Ms. Kanipe's care and treatment, failure to provide supervision to protect Ms. Kanipe's safety, failure to assess and treat Ms. Kanipe properly, failure to provide adequate nutrition and hydration, failure to perform timely assessments and take preventive measures to prevent the development of pressure sores, failure to act in a reasonable and/or proper manner when Defendants knew or should have known of the health problems and/or health risks created by continued failure to properly treat and care for Lillian Kanipe and failure to take reasonable steps to prevent, eliminate and correct deficiencies and problems in resident care at Mariner Health of Norris/Norris Health and Rehabilitation Center.

A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the above listed care. Therefore, Plaintiff contends and has pleaded the acts and omissions of Defendants constitute a blatant and reckless disregard for the rights of Lillian Kanipe for which damages are appropriate. However, the documents and information requested by Plaintiff that reveal Defendants' negligent and reckless acts are being withheld. This recalcitrance cannot be tolerated and therefore, Plaintiff respectfully requests this Court to compel Defendant to produce the requested documents.

B. THE DISPUTE – PLAINTIFF'S UNANSWERED DISCOVERY REQUESTS

Plaintiff seeks production of a number of documents and information that were objected to in Defendants' Responses to Plaintiffs Requests for Production of Documents and Defendants' Responses to Plaintiffs First Set of Interrogatories Specifically, Plaintiff seeks to compel the following documents from Defendant:

REQUEST NO. 2: Please produce a copy of any and all advertisements, descriptive brochures, pamphlets, trade show materials, and any other printed and/or video/audio materials used by Defendant's facility to publicly inform of services and facility amenities used and/or offered by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC from September 15, 2004 through September 5, 2005.

REQUEST NO. 3: Please provide a copy of all employee daily, weekly and monthly schedules from Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville - Management Company, LLC for the entirety of LILLIAN L. KANIPE's residency for the entire facility.

REQUEST NO. 4: Please provide copies of all employee sign-in sheets, timecards, timesheets, and/or punch detail reports for all nursing and therapy personnel, including LPN's, RN's, CNA's, medications aides and orderlies, showing the name of the employee, the classification of the employee, and the hours worked per pay period for the entirety of LILLIAN L. KANIPE's residency for the entire facility.

REQUEST NO. 5: Please produce a copy of any contract between the nursing home and the Medical Director during the nursing home residency at issue in this action, as well as:

- (a) The specific duties he/she must perform;
- (b) Proof of certification;
- (c) A copy of his/her license; and
- (d) Whether or not this physician has ever been disciplined or suspended by any applicable state authority or authorities.

REQUEST NO. 6: Please produce true and correct copies of all incident and/or accident reports prepared at the nursing home during the nursing home residency at issue in this action as required by applicable laws and regulations.

REQUEST NO. 7: Please produce a true, correct, and complete copy of every Policy and Procedure Manual and/or Quality Improvement Manual which was in effect at the nursing home during the nursing home residency at issue in this action.

REQUEST NO. 8: Please produce true and correct copies of all of the 2567Ls and state licensure surveys during the nursing home residency at issue in this case.

REQUEST NO. 9: Please produce true and correct copies of all skin audits performed at the nursing home during the nursing home residency at issue in this case.

REQUEST NO. 10: Please produce true and correct copies of all documentation concerning the nutrition and fluid intakes of the Plaintiff while a resident at the nursing home.

REQUEST NO. 11: Please produce true and correct color copies of all photographs or videotapes of the resident in the possession of Defendants which were produced at the nursing home during the nursing home residency at issue in this case.

REQUEST NO. 13: Please produce true and correct copies of all resident census reports to include acuity levels at the nursing home for the nursing home residency at issue in this case as required by applicable laws and regulations. If necessary, any names of residents other than the resident at issue may be redacted.

REQUEST NO. 14: Please produce a true and correct copy of any and all budgets prepared for the purpose of operating the nursing home during the nursing home residency at issue in this case.

REQUEST NO. 15: Please produce a true and correct copy of any and all documentation maintained by the nursing home for each employee of the nursing home, as required by applicable laws and regulations, who worked at the nursing home during the residency at issue, including but not limited to the following information:

- (a) Applications for employment;
- (b) Employment verification information;
- (c) Criminal background information;
- (d) Licensing certification information for the employee;
- (e) Disciplinary information of the employee such as reprimands and complaints by third parties;
- (f) Documents submitted by the employee regarding complaints registered by the employee;

(g) Performance evaluations for the employee;

1.0 Termination letters; and

2.0 Resignation letters.

REQUEST NO. 16: Please produce true and correct copies of the 24-hour communication reports and shift change reports maintained at the nursing home during the nursing home residency at issue in this case.

REQUEST NO. 17: Please produce a copy of the job description and contract between the facility's Administrator and the nursing home during the nursing home residency at issue in this case.

REQUEST NO. 18: Please produce a copy of the corporate structure of the nursing home. (This request seeks any and all corporate organizational charts created or made at any time during the nursing home residency at issue.)

REQUEST NO. 20: Please produce all nursing personnel agency information during the nursing home residency at issue in this case, including, but not limited to:

(a) Invoices for services rendered;

(b) Names, addresses, and telephone numbers of agency personnel who worked at the nursing home nursing home residency at issue in this case;

(c) Schedules that reflect the use of agency staff; and

(d) Classification of nursing personnel utilized (i.e.*RN, LPN, CNA).

REQUEST NO. 21: Please produce all documentation and reports generated from any consultant or management personnel. (Please redact the names of all residents other than Plaintiff).

REQUEST NO. 22: Please produce any and all Customer Surveys and any compilations of Customer Surveys that were prepared during the residency of Plaintiff.

REQUEST NO. 23: Please produce any and all Employee Satisfaction Surveys and any compilations of Employee Satisfaction Surveys that were prepared during the residency of Plaintiff.

REQUEST NO. 24: Please produce any and all Financial Reports that were prepared regarding the nursing home at issue in this action during the residency of Plaintiff to include analysis of accounts receivable and accounts payable.

REQUEST NO. 25: Please produce all documents that describe the bonus program available for Administrators and other employees in effect during the residency of Plaintiff.

REQUEST NO. 26: Please produce a copy of the Evaluation/Performance Form used by the Defendant's facility for the evaluation and/or performance review of the Director of Nursing (DON), Assistant Director of Nursing (ADON), Administrator, Registered Nurses (RN's), Licensed Practical Nurses (LPN's), and Certified Nurse Aides (CNA's) employed by the Defendant's facility during the residency of LILLIAN L. KANIPE.

REQUEST NO. 27: Please produce any and all documentation that reflects how Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center;

Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC measures and/or assesses resident acuity.

REQUEST NO. 28: Please produce copy of the contract between you and any agency that provided staffing during the residency of the Plaintiff.

REQUEST NO. 29: Please produce a copy of any report or document that references the percentage of the budget allocated for nursing labor.

REQUEST NO. 30: Please produce copies of all “P & L” reports or statements during the residency of LILLIAN KANIPE.

REQUEST NO. 31: Please produce a copy of the Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC Corporate Manual.

REQUEST NO. 32: Please produce a copy of the “Grievance Procedure Log” used during the residency of LILLIAN KANIPE.

REQUEST NO. 33: Please produce a copy of any “Compliance Line” records for the residency of LILLIAN KANIPE.

REQUEST NO. 34: Please attach the posters that identify Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC toll free Compliance Hotline.

REQUEST NO.35: Please attach the policies, procedures, memoranda, guidelines or regulations regarding the Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC toll free Compliance Hotline.

REQUEST NO. 36: Please attach full, complete, and legible photocopies of any Documents, employee handouts or other such documents that identify or state Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC employee bonus structure.

REQUEST NO. 37: Please attach full, complete, and legible photocopies of any and all correspondence, including email correspondence, setting forth all information you received relating to the toll free Compliance Hotline, including but not limited to, any notification or log of calls which are made to the toll free Compliance Hotline.

REQUEST NO. 38: Please attach full, complete, and legible photocopies of any documents or handouts provided to attendees of every District, Regional or National meeting of Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC held in 2004 and 2005.

REQUEST NO. 39: Please attach the Census Reports generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 40: Please attach the Care Issue Reports generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 41: Please attach the Cash Collection Reports generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 42: Please attach the **Anticipated Admissions Reports** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 43: Please attach the **Potential Discharge Reports** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 44: Please attach the **Accounts Payable Reports** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 45: Please attach the **Finance Reports** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 46: Please attach the **Budget Reports** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 47: Please attach the Complaint Reports generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 48: Please attach the Management Practice Guideline (MPG) Report generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 49: Please attach the Quality Indicator Report generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 50: Please attach the Clinical Key Indicator Reports generated by Mariner Healthcare Management Company d/b/a Mariner-Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 51: Please attach the P&L Report and Conference Call Minutes generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 52: Please attach the Rehabilitation Manager Report generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company,

LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 53: Please attach the **Pressure Ulcer Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 54: Please attach the Incident/Accident Compilations or Report generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 55: Please attach the Fall Report generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 56: Please attach the **Weight Loss Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 57: Please attach the **Restraints Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 58: Please attach the **Regional Clinical Director's (RCD) Visit Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 59: Please attach the **Customer Survey Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center;

Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 60: Please attach the **In-Service Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 61: Please attach the **Daily Nursing Hours Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 62: Please attach the **24-Hour Shift Change Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 63: Please attach the **Employee Satisfaction Survey Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 64: Please attach the **Variance Report** generated by Mariner Healthcare Management Company d/b/a Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC, its Administrator, its Director of Nursing, or any other employee or independent contractor employed by the above named defendant nursing home, whether transmitted by mail, facsimile, e-mail, hard copy or transmitted electronically or otherwise.

REQUEST NO. 65: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails produced by any employee of Mariner Healthcare, Inc., Mariner Healthcare Management Company; Mariner Healthcare; Mariner Health of Florida, Inc. d/b/a Mariner Health of Norris/Norris Health and Rehabilitation Center; Pinnacle Care Corporation; Sava Senior Care Administrative Services, LLC; Sava Senior Care, LLC; SSC Andersonville Operating Company, LLC d/b/a Norris Health and Rehabilitation Center; SSC Special Holdings, LLC; SSC Andersonville Management Company, LLC; concerning LILLIAN KANIPE and her residency and/or care.

REQUEST NO. 66: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Administrator of the nursing home related to the operation of the nursing home including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 67: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Director of Nursing of the nursing home related to the operation of the nursing home including but not limited to the following subject areas: information transmitted to or from the Regional Clinical Director, staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 68: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Assistant Director of Nursing of the nursing home related to the operation of the nursing home including but not limited to the following subject areas: information transmitted to or from the Regional Clinical Director, staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 69: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional Financial Analyst (as identified in the deposition testimony of Boyd Gentry on October 16, 2006) of the nursing home related to the operation of the nursing home including but not limited to the following: information transmitted to or from the Administrator, to or from the Regional Vice-President, to or from the Regional President, staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, CIA or Corporate Integrity Agreement, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Daily Nursing Hours Reports, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 70: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Admissions/Marketing Coordinator of the nursing home related to the nursing home including but not limited to the following subject areas: information transmitted to or from the Regional or District Marketing Director, staffing, labor, budget, labor budget, census, budget fluctuation, CIA or Corporate Integrity Agreement, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 71: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional Vice-President of Operations over this nursing home related to the operation of the nursing home or the operations of the region assigned to the Regional Vice-President of Operations including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Regional Vice-President of Operations that were transmitted only to other nursing homes or regions but does include electronic communications related to the operation of the region as a whole.

REQUEST NO. 72: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional Clinical Director over this nursing home related to the operation of the nursing home or the operations of the region assigned to the Regional Clinical Director including but not limited to the following subject areas: information transmitted to the Director of Nursing or the Assistant Director of Nursing of the nursing home, staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Regional Clinical Director that were transmitted only to other nursing homes or regions but does include electronic communications related to the operation of the region as a whole.

REQUEST NO. 73: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Senior Vice-President of Clinical Services over this nursing home related to the operation of the nursing home or the operations of the company as a whole including but not limited to the following: information transmitted to or from the Administrator or Director of Nursing or the Assistant Director of Nursing of the nursing home, staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports,

Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Senior Vice-President of Clinical Services that were specific to other nursing homes or regions but does include electronic communications related to the operation of the company as a whole.

REQUEST NO. 74: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional President of Operations over this nursing home related to the operation of the nursing home or the operations of the Region assigned to the Regional President of Operations including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Regional President of Operations that were specific to other nursing homes or regions but does include electronic communications related to the operation of the region as a whole.

REQUEST NO. 75: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional Marketing Director (or District Marketing Director) over this nursing home related to the marketing of the nursing home or the marketing of the nursing homes in the Region assigned to the Regional Marketing Director (or District Marketing Director) including but not limited to the following subject areas: marketing for new residents, complaints concerning quality of care, staffing, labor, budget, labor budget, census, budget fluctuation, Census Reports, Care Issue Reports, Anticipated Admission Reports, Potential Discharge Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Customer Survey Reports, Employee Satisfaction Survey Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Regional Marketing Director that were specific to other nursing homes but does include electronic communications related to the operation of the region as a whole.

REQUEST NO. 76: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional Maintenance Director over this nursing home related to the operations of the nursing home or the operations of the nursing homes in the Region assigned to the Regional Maintenance Director including but not limited to the following subject areas: maintenance, staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Regional

Maintenance Director that were specific to other nursing homes but does include electronic communications related to the operation of the region as a whole.

REQUEST NO. 77: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from Boyd Gentry and/or the Treasurer of Mariner Health, Inc. and/or the CFO of Mariner Health, Inc. or the Treasurer or CFO of any its subsidiaries affiliated with the nursing home related to the operation of the nursing home or the operations Mariner Health, Inc. or Mariner Health Management Company or any of its subsidiaries including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of Boyd Gentry and/or the Treasurer of Mariner Health, Inc. and/or the CFO of Mariner Health, Inc. or the Treasurer or CFO of any its subsidiaries affiliated with the nursing home that were specific to other nursing homes or regions but does include electronic communications related to the operation of the company as a whole.

REQUEST NO. 78: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from C.C. Winkle or the CEO of Mariner Health, Inc. and/or the CEO of Mariner Health Management or CEO of any of the Mariner Health subsidiaries affiliated with the nursing home or related to the operation of the nursing home or the operations of Mariner Health, Inc. or Mariner Health Management Company or any of its subsidiaries including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of C. C. Winkle or the CEO of Mariner Health, Inc. and/or the CEO of Mariner Health Management or CEO of any the Mariner Health subsidiaries affiliated with the nursing home or related to the operation of the nursing home or the operations of Mariner Health, Inc. or Mariner Health Management Company or any of its subsidiaries that were specific to other nursing homes or regions but does include electronic communications related to the operation of the company as a whole.

REQUEST NO. 79: Please produce a copy of each issue of the monthly newsletter to the nursing home from CEO, Tommy Oglesby for the year 2005.

REQUEST NO. 80: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Administrator or the Director of Nursing of the nursing home related to Customer Survey(s) Report(s) and/or Employee Satisfaction Survey(s) Report(s). The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 81: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Regional Vice-President of Operations, Regional Clinical Director, Regional Vice-President of Operations, Regional President of Operations, Senior Vice-President of Clinical Services, Boyd Gentry, C.C. Winkle, Tommy Oglesby, related to Customer Survey(s) Report(s) and/or Employee Satisfaction Survey(s) Report(s) that concern the nursing home at issue in this action or a compilation of these surveys for the district of this nursing home, the region of this nursing home or the entire company. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 82: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Administrator or the Director of Nursing of the nursing home related to toll free Compliance Hotline Reports and/or Compliance Line Reports and/or Customer Response and Compliance Reports. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. Any names of other residents may be redacted.

REQUEST NO. 83: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the CEO of both Mariner Healthcare, Inc. and Sava and/or C.C. Winkle and/or Tommy Oglesby that was a periodic report that concerned the operations of the nursing home at issue in this action or a compilation for the region or district of this nursing home or the entire company. The time frame for this request includes the residency and two years prior to the residency and six months after the residency.

REQUEST NO. 84: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from the Treasurer of Sava Senior Care and/or the CFO of Sava Senior Care or the Treasurer or CFO of any its subsidiaries affiliated with the nursing home related to the operation of the nursing home or the operations Sava Senior Care or any of its subsidiaries including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results, survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of the Treasurer of Sava Senior Care and/or the CFO of Sava Senior Care or the Treasurer or CFO of any its subsidiaries affiliated with the nursing home related to the operation of the nursing home or the operations Sava Senior Care or any of its subsidiaries that were specific to other nursing homes or regions but does include electronic communications related to the operation of the company or its subsidiaries as a whole.

REQUEST NO. 85: Please produce a copy of all electronic communications and/or electronic documents and attachments including but not limited to e-mails to or from Tony Oglesby or the CEO of Sava Senior Care or CEO of any its subsidiaries affiliated with the nursing home related to the operation of the nursing home or the operations Sava Senior Care or any of its subsidiaries including but not limited to the following subject areas: staffing, labor, budget, labor budget, census, budget fluctuation, supplies, supply budget, Census Reports, Care Issue Reports, Cash Collection Reports, Anticipated Admission Reports, Potential Discharge Reports, Accounts Payable Reports, Finance Reports, Variance Reports, Budget Reports, Complaint Reports, Management Practice Guideline (MPG) reports, Quality Indicator Reports, Clinical Key Indicator Reports, Profit & Loss (P&L) Reports, P&L Report Conference Call and/or minutes of Conference Call, Rehabilitation Manager Report, Pressure Ulcer Report, Incident/Accident Compilations or Report, Customer Survey Reports, Employee Satisfaction Survey Reports, Falls Report, Weight Loss Reports, Restraints Reports, Regional Clinical Director's Report (RCD Visit Report), In-Service Reports, 24 Hour Shift Change Reports, Daily Nursing Hours Reports, grievance(s), surveys and survey results,

survey activity, adverse actions, CIA or Corporate Integrity Agreement, etc. The time frame for this request includes the residency and two years prior to the residency and six months after the residency. This request does NOT include any electronic communications on behalf of Tony Oglesby or the CEO of Sava Senior Care or CEO of any of its subsidiaries affiliated with the nursing home related to the operation of the nursing home or the operations Sava Senior Care or any of its subsidiaries that were specific to other nursing homes or regions but does include electronic communications related to the operation of the company as a whole.

INTERROGATORY NO. 10: Please identify the individuals from the nursing home who were responsible for implementing policy changes in reference to Federal Tag violations cited in surveys of the nursing home during the residency at issue in this case as well as the individuals currently responsible for implementing policy changes in reference to Federal Tag violations cited in surveys of the nursing home.

INTERROGATORY NO. 11: Please state the complete name, address, title, and official capacity of each person not previously named in your other answers to the Interrogatories who you know, or have reason to believe, has knowledge about the facts alleged in Plaintiffs Complaint and/or the residency of Plaintiff at the nursing home.

INTERROGATORY NO. 12: Please state the complete name, address, and telephone number of each person whom you will or may call as a witness upon the trial of this cause.

INTERROGATORY NO. 13: Identify all members of the governing body for the nursing home during the nursing home residency at issue in this case, and list the following information:

(a) Name;

(b) Current or last known home address;

(c) Current or last known place of employment

(d) Telephone number; and

(e) Dates identified person served as a member of the governing body of the nursing home.

INTERROGATORY NO. 14: Please state the complete name, address, and telephone number of each person whom you plan to call as an expert witness upon the trial of this cause of action, together with the person's complete curriculum vitae, area of claimed expertise and detailed summary of his/her anticipated testimony, including opinions or mental impressions held by such expert and the facts known to each such expert which relate to, or form a basis of, the mental impressions and opinions held by each such expert.

INTERROGATORY NO. 15: Please list and describe in detail each book, document, and/or tangible thing which you plan to offer as evidence or use at trial.

INTERROGATORY NO. 21: Please define any relationship with Living Centers of America. Please explain any contract relationships or ownership.

INTERROGATORY NO. 22: Please state the name, address, and telephone number of any Regional Clinical Nurses or nurse consultants employed by Mariner Health of Norris/Norris Health and Rehabilitation Center from 2004 through 2005.

INTERROGATORY NO. 23: Please list with specificity the date of each District, Regional or National meeting of Mariner Health Care held in 2004 and 2005 and provide the names of all individuals who attended said meetings, including those which

took place in Orlando, Florida; Myrtle Beach, South Carolina; Hickory, North Carolina; Asheville, North Carolina; Houston, Texas and Atlanta, Georgia.

C. DISCOVERY STANDARD

Discovery in this matter is governed by Rule 26.o2 of the Tennessee Rules of Civil Procedure, which reads:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons who have knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

[Rule 401 of the Tennessee Rules of Evidence](#) defines “relevant evidence” as follows:

[E]vidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

[Tennessee Rules of Evidence 401.](#)

Judge Koch, writing for the Middle Section of the Court of Appeals, succinctly set forth the analysis that governs whether discovery requests should be granted:

The Tennessee Rules of Civil Procedure embody a broad policy favoring the discovery of any relevant, non-privileged evidence. See [Tenn.R.Civ.P. 26.02\(1\)](#); [Vythoukas v. Vanderbilt University](#), 693 S.W.2d 350, 357 (Tenn.-Ct. App. 1985). Evidence need not be admissible to be discoverable. Thus, rather than undertaking the impossible task of defining all the circumstances that might require discovery to be limited, the rules leave it to the trial court's discretion to decide upon the discovery restrictions that might become necessary in a particular case. [Strickland v. Strickland](#), 618 S.W.2d 496, 501 (Tenn. Ct. App. 1981); 4 J. Moore, J. Lucas & G. Grotheer, *Moore's Federal Practice* 1 26.67 (2d ed. 1989); 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2036 (1970).

However, a trial court's discovery decisions are not immune from appellate review simply because they are discretionary. In light of the rules' broad policy favoring discovery, the party opposing discovery must demonstrate with more than conclusory statements and generalizations that the discovery limitations being sought are necessary “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” [Tenn. R.Civ.P. 26.03](#); [Loveall v. American Honda Motor Co.](#), 694 S.W.2d 937, 939 (Tenn. 1985). A trial court should decline to limit discovery if the party seeking the limitations cannot produce specific facts to support its request.

A trial court should balance the competing interests and hardships involved when asked to limit discovery and should consider whether less burdensome means for acquiring the requested information are available. [Marrese v. American Academy of Orthopaedic Surgeons](#), 706 F.2d 1488, 1493 (7th Cir. 1983); [Newsom v. Breon Laboratories, Inc.](#), 709 S.W.2d 559, 560 (Tenn. 1986). If the court decides to limit discovery, the reasonableness of its order will depend on the character of the information being sought, the issues involved, and the procedural posture of the case. [Price v. Mercury Supply Co.](#), 682 S.W.2d 924, 935 (Tenn. Ct. App. 1984); 8 C. Wright & A. Miller, *Federal Practice and Procedure* § 2035 (1970).

Duncan v. Duncan, 789 S.W.2d 557, 560-561 (Tenn. Ct. App. 1990).

This language sets forth a clear analytical path. Discovery must be answered unless the party resisting discovery sets forth “specific facts” supporting a limitation. Mere “conclusory” or generalized objections will not suffice. If the opponent cannot do so, a motion to compel is in order. Even if, however, specific objections are presented, that alone does not justify limiting discovery. Rather, the trial court should balance those justifications against the information sought and the stage-of the case.

Plaintiff's claims are based on the injuries suffered by Lillian Kanipe as a result of Defendants' neglect and abuse. The discovery requested by Plaintiff is directed toward proving the claims made in the complaint. Defendants' lack of response is basis alone for a motion to compel.

Even if Defendants were to set forth “specific facts to support [their] request,” a motion to compel would still be in order. As set forth below, the information sought goes to the heart of Plaintiff's case. When placed in balance against Defendants' lack of response or possible objections, the interest in disclosure of the information clearly outweighs its protection. The information sought by Plaintiff in her discovery requests is clearly calculated to lead to the discovery of admissible evidence. Therefore, the Court should require Defendants to produce the information discussed herein.

D. MERITS OF PLAINTIFF'S REQUESTS

The information sought by Plaintiff is relevant and discoverable as will be set forth below. Therefore, the Court should compel Defendants to produce such documents in a timely fashion.

1. Interrogatory Nos. 22: Requests for Production No. 15, 20, 26 Defendants Should Produce Information Relating to Employee Files for Personnel as well as Contact Information for Former and Current Employees & Agents of the Nursing Home During Lillian Kanipe's Residency and Agency Employees.

The above requests and interrogatories seek information regarding registered nurses (R.N.s), licensed practical nurses, nurse assistants, orderlies, medication aides, any other nursing personnel, administrators or directors of nursing or employees who worked at the nursing home at any time during Lillian Kanipe's residency. Current and former employees observed and/or provided direct care to Lillian Kanipe during her residency and, as such, are likely to possess relevant, admissible information or, at the very least, information which is likely to and will lead to the discovery of admissible information.

These employees were charged with caring for Ms. Kanipe, evaluating, monitoring and maintaining the adequacy of the care and treatment provided at the facility and/or managing the facility. The names, in addition to the other requested information, are necessary so that Plaintiff may obtain access to potential witnesses and persons with knowledge of discoverable matters. Plaintiff is entitled to speak with these individuals and potential witnesses and to depose those that remain employed at Mariner Health of Norris/Norris Health and Rehabilitation Center.

The Oklahoma Supreme Court has held that this type of information is relevant and discoverable. In *Fulton v. Lane*, 829 P.2d 959 (Okla. 1992), the Court ruled in a nursing home case that plaintiff's counsel was entitled to interview current and former employees of a nursing home defendant. As to former employees of the nursing home, the Oklahoma Supreme Court specifically wrote, “Because former employees may not speak for or bind the corporation, ex parte communications with former employees are not prohibited.” *Id* at 960. Obviously, Plaintiff's counsel cannot interview these potential witnesses to this matter if their names are withheld by the Defendants. Clearly this strategy by Defendants is meant to prevent Plaintiff's counsel from uncovering the truth about the care and treatment of Lillian Kanipe during her residency at this nursing home.

Other jurisdictions have also specifically ordered the production of this type of information. The Alabama Supreme Court upheld a trial court's decision to order defendant to provide names of all employees who worked at [a nursing home during the residency of the plaintiff](#). *Ex Parte Coosa Valley Healthcare, Inc.*, 789 So.2d 208 (Ala. 2000). In reaching this conclusion, the court wrote:

We do not find that the trial court abused its discretion in compelling Coosa Valley to produce a list of its employees. As... explained, the purpose for requesting a list of employees was to identify all individuals who either witnessed or had the opportunity to witness the circumstances, events or occurrences that were relevant to the facts and issues in the instant case.

Id. at 219.

The majority of care and treatment delivered in nursing homes is provided by nursing assistants, not nurses. Also, other nursing home personnel, such as those working in the kitchen or the dietary employees, have knowledge related to the dietary intake of residents, dietary policies and practices of the facility, and whether the facility failed to follow its dietary menus and nutritional guidelines. This type of information is clearly relevant because Lillian Kanipe was malnourished during her stay at Mariner Health of Norris/Norris Health and Rehabilitation Center. Other nursing home personnel, such as those employees assigned to housekeeping, often observe care being administered to residents such as Lillian Kanipe as well.

The employees about whom Plaintiff seeks information all had an opportunity to observe the care and conditions existing at Mariner Health of Norris/Norris Health and Rehabilitation Center throughout Ms. Kanipe's residency and some of these employees will recall things specifically as they relate to Lillian Kanipe. The fact that these personnel do not appear in Ms. Kanipe's chart does not preclude them from possessing relevant information. In fact, testimony of all employees of Mariner Health of Norris/Norris Health and Rehabilitation Center with knowledge about the quality of care may be relevant. Plaintiff's requests are reasonably calculated to lead to the discovery of persons who provided care or services to Lillian Kanipe as well as others who have knowledge regarding the conditions at Mariner Health of Norris/Norris Health and Rehabilitation Center during Ms. Kanipe's residency.

Gina Harris, the Administrator of Mariner Health of Norris/Norris Health and Rehabilitation Center testified via deposition in this case on May 8, 2007. She testified that all employees in the facility (including, but not limited to nursing staff, housekeepers, laundry workers, maintenance workers and dietary) are or may be out on the floor watching residents and interacting with them. Donna Sloan, the Director of Nursing for Mariner Health of Norris/Norris Health and Rehabilitation Center also testified via deposition in this case on May 8, 2007. She testified that any member of the nursing staff frequently would be pulled from the hall they were assigned and scheduled to work to another hall. Therefore, all employees are all possible witnesses in this lawsuit. (Gina Harris depo at pp 55-57 and Donna Sloan depo at pp. 34-35, Exhibit A.)

Nursing home personnel who may have observed the care, or lack thereof, being administered to residents are clearly material witnesses in this case, and their identities should be provided along with the additional-relevant information requested. Information related to the qualifications, evaluations, complaints, criticisms and merits of the employees of this nursing home is also discoverable. Tennessee nursing homes are required to ensure that their staff meet certain qualifications. See Tennessee Department of Health, Standards for Nursing Homes, ch. 1200-8-6. Plaintiff can determine, by reviewing these files, if an employee is appropriately certified or licensed. Plaintiff can also determine the extent of Defendants' knowledge regarding their employees' qualifications based upon performance evaluations. Employee files often contain evaluations and criticisms of employee performance. These files may also contain letters of commendation, praise, and complaints an employee may have had about this facility. The files also contained letters of resignation, if any. Much of this information may be relevant in this action, and at the least could lead to the discovery of admissible evidence.

In a Texas nursing home case, *In Re Highland Pines*, 2003 W.L. 22682356 (Tex.App.-Tyler), the Texas Court of Appeals, Tyler District, refused to overturn a trial court's order compelling production of employee personnel files. This issue was also considered in *D'Angelo v. United States*, 588 F.Supp. 9 (W.D.N.Y. 1983). In that case, plaintiff brought a medical malpractice action against three physicians working for the Veterans' Hospital. Plaintiff sought certain documents from personnel files from physicians and had to move the Court for an order compelling discovery. The Court concluded the plaintiff sought "information which is clearly relevant to the plaintiffs causes of action." *Id.* at 12. The plaintiff had alleged in the complaint that the Veterans'

Administration failed to ensure its staff maintained a level of skill and knowledge required to provide adequate medical services to its patients. *Ibid.* The same allegations have been made in this case.

Any concern with privacy should not prevent disclosure. A privacy interest held by non-litigants alone is not sufficient to defeat a discovery request. As the Court of Appeals has made clear, “discovery” of private information of non-litigants “requires a compelling showing of relevance,” which is shown when the requesting party demonstrates “that the value of the information sought would outweigh the privacy interests of the affected individuals.” [Johnson v. Nissan North America, Inc.](#), 146 S.W.3d 600, 606 (Tenn. Ct. App. 2004) (internal citations and quotations omitted). Plaintiff meets this standard as set forth above.

Other courts have also held that where pertinent background information about employees of the defendant is relevant to the plaintiffs cause of action, personal information is discoverable. These courts have agreed that sensitive information can be redacted to protect the employee's privacy. See [Bennett v. State](#), 280 N.Y.S. 2d 294 (1967); see also [Unger v. Cohen](#), 125 F.R.D. 67 (S.D.N.Y. 1989); [Inmates of Unit 14B Rebideau](#), 102 F.R.D. 122 (N.D.N.Y. 1984). Plaintiff would agree to the redaction of such information. Plaintiff is also willing to agree to a protective order to restrict the use of this information in this litigation only and to prohibit the disclosure to any persons other than attorneys and attorneys' staff working on this case. As the Court might expect, Defendants' counsel has accessed these files and they will undoubtedly use documentation favorable to the Defendants' case in this litigation, thus, in the basic interest of fairness there is no reason for such information not to be produced to Plaintiff subject to a Protective Order.

2. Interrogatory No. 23; Requests for Production Nos. 6, 8, 9, 10, 16, 21, 22, 23, 32, 33, 34, 35, 37, 38, 40, 47, 49, 50, 52, 53, 54, 55, 56, 57, 58, 59, 62, 63 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85

Defendants Should Produce Documents, Emails and/or Correspondence Relating to Incident/Accident Reports Similar to Accidents Involving Lillian Kanipe, Grievance Forms, Associate Satisfaction Surveys and Compilations, Complaints, Concerns, Policy for Mariner Health of Norris/Norris Health and Rehabilitation Center's 1-800 Complaint Line, Customer Response Forms Regarding Mariner Health of Norris/Norris Health and Rehabilitation Center's 1-800 Complaint Line, Customer Satisfaction Surveys, All Skin and Nutrition Audits and any reports relating to the operation of the facility.

Plaintiff seeks a number of different documents that fall within a similar category.

Plaintiff seeks all criticisms, unfavorable comments, or complaints (reduced to any form of documentation) or praise on behalf of residents or their families or the employees of the nursing home who, like Lillian Kanipe, were similarly affected by the lack of appropriate care and treatment which were created while Ms. Kanipe resided at Mariner Health of Norris/Norris Health and Rehabilitation Center. This information can be gleaned from employee and customer satisfaction surveys that Mariner Health of Norris/Norris Health and Rehabilitation Center gathers from its customers and its employees as well as any grievance or complaint forms that may have been filed by family members or employees particularly those related to a 1-800 complaint line.

Plaintiff also seeks incident/accident reports and all skin/nutrition audits. Mariner Health of Norris/Norris Health and Rehabilitation Center tracked significant problems with Lillian Kanipe and other residents in the home through skin/nutrition audits. Plaintiff is not interested in the identification of residents other than Lillian Kanipe, but as the Arkansas Supreme Court observed in the *Advocat v. Sauer*, whether other residents in a nursing home suffered certainly has a bearing on whether the allegations made by Plaintiffs about the lack of quality of care were more or less probable. *Advocat v. Sauer* 353. Ark. 29, 60, 111 S.W.3d 346 (2003). As will be discussed, this is also evidence of the fact that the Defendants were on notice of dangerous conditions in the nursing home. *Id.* at 60.

Any objection to providing these documents would be baseless. There is perhaps nothing more calculated to lead to the discovery of admissible evidence and relevant to the conduct of Defendants than determining how they monitored the care their residents received and how many times others before Lillian Kanipe suffered injuries or made complaints about care at the facility.

Information that relates to incidents that occurred at Mariner Health of Norris/Norris Health and Rehabilitation Center during Ms. Kanipe's residency is evidence of prior and similar incidents and is relevant to prove defect, foreseeability, notice and appreciation of the danger of substandard care. Such evidence is also probative of Defendants' intent or motive with regard to the acts and omissions for which Plaintiff claims damages. Plaintiff should be allowed to discover evidence that indicates that the failures on the part of Defendants were not simple mistakes and that Defendants knew of the conditions existing on the premises before and during Lillian Kanipe's residency.

The existence of prior similar incidents is clearly probative of Defendants' liability and the information requested by Plaintiff is relevant to show that Defendants knew or should have known of the problems in their facility. Under Tennessee law, the admissibility of prior incidents is governed by [Rule 404\(b\) of the Tennessee Rules of Evidence](#), which provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes.

The definitive case on such issues was recently decided by the Arkansas Supreme Court, [Advocat v. Sauer](#), 353 Ark. 29, 111 S.W.3d 346 (Ark. May 1, 2003).

In the case at hand, the harm inflicted by the Appellants was not purely economic in nature. Mrs. Sauer suffered, and there was considerable evidence introduced that budgetary constraints contributed to a diminished staff and inadequate supplies. In addition, the Appellants knew by virtue of the surveys by the Office of Long Term Care that they were understaffed with nurses at Rich Mountain and that this directly related to patient care. This understaffing continued even after complaints by staff members, patients and family members. Furthermore, the record in this case reveals deliberate false entries on patient charts and efforts to conceal this evidence. We have no hesitancy in concluding that the reprehensibility of the Appellants' conduct in this case was high.

Id. at 55 (emphasis added).

In the *Sauer* case, the Arkansas Supreme Court upheld the trial court's admission of numerous Office of Long Term Care Surveys wherein state surveyors inspected the home and found that residents in the home suffered lack of personal hygiene, feeding, and treatment because of inadequate staffing in the nursing home. The Arkansas Supreme Court held specifically,

Each OLTC survey notified Appellants of examples of the manner in which Rich Mountain failed to meet the needs of its patients due to inadequate staffing. Whether the patients at Rich Mountain suffered from inadequate nurse staffing pertaining to personal hygiene, feeding, and treatment would certainly have a bearing on whether the allegations made by Sauer Estate about the lack of quality care afforded to Mrs. Sauer were more or less probable. Moreover, the surveys are probative of the fact that the Appellants were on notice of dangerous conditions in the nursing home due to understaffing.

Id. at 60.

With regard to appellants' arguments that the probative value of the surveys was outweighed by unfair prejudice the Arkansas Supreme Court held, "The mere fact that evidence is prejudicial to a party is not, in itself, a reason to exclude it." *Id.* The Court concluded,

The probative value of the OLTC surveys was great. Not only did the surveys show that Rich Mountain was understaffed during the relevant time period, but they also serve as evidence that Rich Mountain was put on notice of its failure to address adequacy-of-staff issues in 1997. Although the surveys were undoubtedly

prejudicial to Appellants, that prejudice did not outweigh the strong probative value of the surveys. We affirm the Circuit Court on this point.

Ibid. Accordingly, evidence of prior occurrences and poor conditions is also relevant to Plaintiffs punitive damages claim. This evidence tends to show Defendant were aware of, but consciously disregarded, a substantial and unjustifiable risk of such a nature that its disregard constituted a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances. It is relevant to this case. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992). See also *Advocat v. Sauer*, 353 Ark. 29, 111 S.W.3d 346 (2003).

Another Arkansas case, *Rose Care, Inc. v. Ross*, 2005 Ark. App. LEXIS 432, addresses the discoverability of consultant reports. In that case, the plaintiff won a substantial compensatory verdict, but the trial court refused to instruct on punitive damages. The Arkansas Court of Appeals reversed, and also reversed the trial court's ruling that consultant reports were not subject to discovery. Indeed, the Arkansas Court of Appeals held that refusing to compel their production was an abuse of the trial court's discretion.

In this case, Defendants should be required to produce any information that indicates their actions or inactions were not mistakes but rather that Defendants knew of the conditions existing on the premises at the time of Lillian Kanipe's residency. Accordingly, in *Criswell v. Best Western International*, 636 So.2d 562 (Fla. 3d Dist. Ct. App. 1994), the court wrote that in a personal-injury suit involving negligence "accident reports, preceding and post-dating plaintiff's injury can be used to establish notice of dangerous or defective conditions..." *Id.* at 563. In addition, Plaintiff has agreed to the redaction of any names other than that of Lillian Kanipe, therefore any concern with respect to resident confidentiality is unfounded and the information should be produced. Therefore, Defendants should be compelled to produce all responsive documents.

The Supreme Court of Oklahoma was faced with this issue in *Tansy v. Dacommed Corp.*, 890 P.2d 881 (Okla. 1994). A physician improperly implanted a defective device into the plaintiff patient, which failed and was subsequently removed. The defendant sought the admission of evidence showing that the physician was familiar with the procedures required for installing and removing improperly implanted devices and had performed such procedures in the past. The Court held that this evidence was for a legitimate purpose and that it showed something other than propensity. *Id.* at 889. The Court further held that the defendant had reason to seek admission of this evidence to show that the physician had faced problems with the product prior to the plaintiffs incident, and thus the information was admissible as a prior incident. *Ibid.*

Likewise, in *Mitchell v. State*, 491 So. 2d 596 (Fla. 1st Dist. Ct. App. 1986), the appellate court held that evidence relating to the general conditions of a nursing home facility including roach infestation, the failure to follow dietary menus and nutritional guides, inadequate staffing and training, and references to poor care of other residents at the facility were admissible:

We are of the view that the evidence ... was admissible to show knowledge and absence of mistake on the part of Mitchell. The defense pointed to testimony that bedsores can occasionally develop in a properly supervised facility. Evidence of the prevalence of the conditions and improper treatment throughout the [facility] was relevant to counter an inference that the conditions giving rise to the named victims' injuries were isolated instances beyond the defendant's knowledge and control.

Id. at 599.

Furthermore, in State of *Missouri v. Boone Retirement Center, Inc.*, 26 S.W.3d 265 (Mo. App. W.D. 2000), the court upheld convictions of a nursing home and its administrator on charges of neglect of a nursing home resident. In Boone, a hotline investigation conducted by the Missouri Division of Aging resulted in the issuance of numerous state and federal regulatory citations for issues such as prevention and quality of care for pressure sores, nutrition and nursing care. Two of the facilities' residents died in September 1995 with complications from bedsores contributing to their deaths. The State later filed eight

counts of neglect and 34 counts of false representation to receive a Medicaid payment against each defendant. In upholding the convictions, the court considered the following evidence:

1. The facility was frequently understaffed and, as a result, patients were not turned consistently on a two-hour basis;
2. There was a problem with residents not receiving snacks that would have bolstered their nutritional status and aided bed sore healing;
3. The nursing home had an increasing rise in both the incidents and severity of bedsores; and
4. Charting of care was frequently incomplete.

The court held that the above was sufficient evidence that defendants knew of the dangers potentially presented by bedsores and that they “well understood” the potential danger to at-risk patients from inadequate staffing, nutrition, turning, pressure relieving devices and other treatments. *Id.*

In *State of Wisconsin v. Serebin*, 350 N.W.2d 65 (Wis. 1984), the Wisconsin Supreme Court upheld the conviction of a nursing home administrator for abuse and neglect of 12 nursing-home residents. Expert medical testimony determined that understaffing of the facility had a direct connection to the residents' weight loss as well as the development and worsening of the residents' bedsores. *Id.* at 855-56. Evidence also indicated that the abuse and neglect occurred because there were not enough nurses and aides to ensure that residents were eating all of their meals and being turned and repositioned every two hours. *Id.*

In *Sauer, Boone, Mitchell, and Serebin*, the courts admitted evidence of conditions throughout the facilities in question when the specific acts alleged were against particular residents. This was true in *Boone, Mitchell*, and *Serebin* even though criminal sanctions would potentially be imposed. Plaintiff here is seeking a lesser punishment, that of punitive damages. If a criminal jury can consider such evidence in determining whether to convict individuals of felony crimes, certainly a civil jury can do the same.

3. Interrogatory No. 21; Requests for Production Nos. 14, 24, 29, 41, 44, 45, 46, 51, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82,83,84,85

Defendants Should Produce All Information Relating to Budgets, Budget Variances, Financial Reports, and Budget Reports.

Plaintiff propounded different requests for production concerning Defendants' expenditures for the operation of this nursing home. The information is clearly relevant to Plaintiffs case in many respects. Plaintiff claims the Defendants failed to allocate their resources in a manner that a similar corporation using ordinary care would. Plaintiff has also made a claim for punitive damages. The information requested goes right to the heart of both of those claims. It is impossible to know exactly how Defendants did or did not allocate their resources without being able to see their resources and documents showing how much was allocated for nursing home residents entrusted to their care. Thus, this financial information is vital to Plaintiffs negligence claims. Furthermore, with regard to Plaintiffs claims for punitive damages, it is impossible to know if Defendants were reckless or acting with reckless disregard when they determined their budgets, made their staffing schedules, ordered supplies, and made all other decisions regarding fiscal matters, without actually seeing what resources Defendants had to work with and how they chose to allocate them.

It is important to determine whether Defendants increased or decreased the budget for items such as staffing and supplies following repeated warnings the facility received regarding its deficiencies. Such financial information is essential for Plaintiff to prove that Defendants knew what financial resources were needed to provide appropriate and necessary care for the facility's residents, yet made a conscious decision not to provide these resources.

Plaintiff contends the management of this nursing home intentionally limited expenditures in order to increase profits such that residents, including Lillian Kanipe, were not cared for adequately. To do so, those managing corporations monitored and tracked revenues and expenses of Mariner Health of Norris/Norris Health and Rehabilitation Center like a hawk. By way of the reports Plaintiff seeks, Defendants monitored how individual nursing homes were spending money and staying within or varying from budgets. Defendants will not dispute that final budget authority came from the top executives via the Board of Directors. (Harris depo at pp. 88-96, Exhibit B)

These reports are evidence of the intense scrutiny and control the corporate Defendants exercised over resident care at Mariner Health of Norris/Norris Health and Rehabilitation Center. It is not only discoverable, but admissible. The financial information requested goes directly to Defendants' intent, the egregiousness of their conduct, and the total lack of necessity for such suffering by Lillian Kanipe.

Perhaps the most compelling and shocking evidence of a nursing home company's focus on financial performance instead of resident care came from the words of Beverly Enterprises' Chief Executive Officer, William Floyd, when he took over the company in the year 2000. The compelling evidence of this company philosophy of elevating profits over patient care came during the following exchange in a deposition taken in a Beverly case:

Q: [by Mr. Trammell] You said that there was a Floyd statement made at a meeting about financial performance, at a meeting of group vice presidents. What was that statement?

A: You know, once again, I'm going to, you know, just restate that it's, you know, how anyone else took the delivery of that. It depends on, I think, if you are male or female or what - how you look at things overall, but the first meeting that Mr. Floyd ever did with the group vice presidents that I attended - he may have had others that I wasn't present - as I said Mr. Floyd was brought in because the company was in great financial distress and something did need to happen, but at this meeting he gave us the scenario that if we had children that we needed to think that our youngest had just been kidnapped and that we would never see our child again unless we met our budget expectation. And regardless of where the company was, where it needed to be, what my performance was or what it was not, I will have to say that that probably gave me a bad opinion of the change in management in the company. And I knew then I would not fit, and subsequently thereafter, things were brought up and I was asked to resign, but I did make it known that I did not like that statement. He said there would be blood flowing down the corridors.

(Julie Clark depo at 71-72, Exhibit C)

Through this testimony, Ms. Clark provided valuable insight for the jury into the corporate management philosophy of that nursing home corporation for the jury and the Court. Meeting budget expectations, of which labor costs are the primary expense, was paramount - to the detriment of nursing home residents. The testimony shows the degree to which the company was exclusively profit driven and the lengths to which corporate executives would go to further their objectives. When Group Vice-Presidents at Beverly, Administrators, or Directors of Nursing were faced with the choices of "staying within the budget" set and approved by Beverly Enterprises, Inc. or providing quality care to the elderly, they were asked to imagine the unimaginable - their children taken hostage. The testimony offers a rare and valuable insight into the lengths to which a nursing home conglomerate will go to protect its profit margin all at the expense of resident care. Plaintiff should be allowed to discover similar evidence in this case.

In these interrogatories and requests for production, Plaintiff is not seeking information regarding the net worth of Defendants. Plaintiff realizes that a factual basis for punitive damages must exist before this information is required to be produced. *Breault v. Friedli*, 610 S.W.2d 134, 139 (Tenn. Ct. App. 1980). However, Plaintiff specifically seeks information about budget reports and other documents Defendants generated in determining how much money to spend in caring for its residents and specifically Lillian Kanipe.

In the present case, the financial information of Defendants is sought in order for Plaintiff to establish her case of negligence and punitive damages against Defendants - that Defendants had a duty of reasonable care to allocate financial resources as reasonable companies in similar circumstances would, and they recklessly and maliciously breached that duty. Thus, in the present case, these financial records are integral to Plaintiff's case in chief. The Tennessee Rules of Civil Procedure allow a party to discover any matter, not privileged, which is relevant to the issues in the pending action. See [Tenn. R.Civ. P. 26.02](#). Plaintiff should therefore be entitled to discovery of the documents sought from Defendants.

4. Interrogatory No. 21; Requests for Production Nos. 3, 13, 27, 28, 39, 42, 43, 61 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84,85

Defendants Should Produce Information Relating to Staffing, Census and Acuity Levels, Days Mariner Health of Norris/ Norris Health and Rehabilitation Center Failed to Meet State Minimum Staffing Levels.

Plaintiff made requests regarding staffing logs, work schedules, time cards, census, acuity levels and workloads of those who worked at the nursing home during Lillian Kanipe's residency at Mariner Health of Norris/Norris Health and Rehabilitation Center. Plaintiff also asked Defendants to identify each day staffing fell below the state minimum and whether Defendants ever used agency personnel. Nursing homes are required by law to staff facilities to meet the needs of the residents. At a minimum, nursing homes must meet a specific formula that takes into account the resident census and characteristics, and staff above those numbers, if necessary. Plaintiff has alleged that Mariner Health of Norris/Norris Health and Rehabilitation Center was not adequately staffed, thereby causing harm to Ms. Kanipe. For instance Plaintiff alleges that Defendants failed to provide sufficient numbers of qualified nursing personnel to meet the total needs of Ms. Kanipe. Thus, information related to staffing is extremely relevant to Plaintiff's claims.

Defendants' own Administrator and Director of Nursing testified via depositions taken in this case that they relied on employee schedules, punch detail reports and payroll records to perform their own staffing analysis. (Gina Harris depo at pp 195-196 and Donna Sloan depo at pp. 43-46, Exhibit D.)

Defendants Set the Staffing Levels and Staffing Directly Impacts Quality of Care.

The understaffing of a facility has a direct negative impact on all the nursing home's residents. According to a report issued by the Center for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration, in July of 2000, fifty-four percent of all nursing homes are understaffed to the point that residents do not get the minimal two hours of care by nurses' aides per day necessary to keep them from being endangered. See *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes – Report to Congress, Ch. 6 (July, 2000)*. According to a report issued by the Committee on Government Reform, U.S. House of Representatives entitled *Nursing Home Conditions in Arkansas: Many Nursing Homes Fail to Meet Federal Standards for Adequate Care Special Investigations Division*, ninety-two percent (92%) of all nursing homes in Arkansas are understaffed to the point that residents do not get the minimal two hours of care by nurses' aides per day necessary to keep them from being endangered. The report further states that there is a correlation between inadequate staffing and inadequate care. The fewer nurses and nurses' aides on staff, the less individual attention the residents get, and the more bedsores, malnutrition, falls, abnormal weight loss and dehydration they suffer. The fewer nurses and nurses' aides on staff, the less individual attention the residents get, and the more bedsores, malnutrition, falls, abnormal weight loss and dehydration they suffer. Additionally, in a sizeable number of nursing homes, government inspectors continue to find residents who are malnourished, left soaking in their own urine and feces and physically abused by underpaid, poorly trained staffers. *Id.* Inspection results compiled by CMS show that one of every five facilities surveyed was cited for abuse of residents; more than seventeen percent were cited for failure to properly treat or prevent bedsores, a condition that is frequently a sign of neglect, and only fifteen percent of the facilities were found to be in compliance with all health standards. *Id.*

Additionally, testimony in hearings before the United States Senate Finance Committee show that one of the most significant and preventable causes of abuse and neglect in a nursing home setting is inadequate staffing levels. **Elder Abuse** in Residential Long-

Term Care Facilities: What is Known About Prevalence, Cause and Prevention: Testimony Before the U.S. Senate Committee on Finance, Statement of Catherine Hawes, Ph.D. (June 18, 2002) (“I should note that if I were going to do only one thing to reduce abuse and neglect, it would be to increase staffing in the nation's nursing homes.”).

Finally, a GAO report to the Senate Finance Committee and Special Committee on Aging issued on June 113, 2002, found that nursing homes providing more nursing hours were less likely to be cited for quality of care problems than homes providing fewer nursing hours. See *Nursing Home Expenditures and Quality*, GAO-02-431R (June 13, 2002).

The Arkansas Supreme Court ruled such evidence is admissible in [Advocat v. Sauer](#), 353 Ark. 29, 111 S.W.3d 346 (2003), and from that it logically follows such evidence is discoverable. Other jurisdictions have found the type of information requested by Plaintiff to be not only discoverable, but admissible at trial. In [Beverly Enterprises – Florida, Inc. v. Spilman](#), 661 So. 2d 867 (Fla. App. 1995), the court held that the following information was relevant to issues surrounding the extent of defendant's negligence. Some of the evidence in Spilman showed:

1. Spilman lost an excessive amount of weight, became increasingly confused and agitated, and became non-ambulatory.
2. He was seen restrained in a geri-chair (in a vest with ropes which tied in the back) almost everyday for hours at a time.
3. If the nursing home was understaffed, he was often left sitting in soiled clothing, and on a number of occasions he attempted to untie his restraints to escape his chair. When he was unsuccessful, he dragged the chair around with him.
4. He was supposed to receive help eating, but if the nursing home was understaffed, he received no help and his tray was thrown away. At times his chart was documented to show that he was fed when he was not.
5. When a stomach tube was placed in his stomach to provide him nourishment, on many occasions nurses did not properly refill it for hours at a time. An employee who worked in Spilman's wing of the nursing home during the day shift testified that when the stomach tube was in place, he was supposed to receive 30-minute feedings, two times per shift. When she was rushed, however, she had to the feeding in five to eight minutes. She stated that the tube site looked “nasty” and was draining and that Spilman suffered from deep draining pressure sores. His bandages were supposed to be changed and initialed on every shift. Sometimes the bandages were changed from day-to-day; other times they were not.
6. Spilman had deep bedsores on his hips and buttocks and the odor was strong outside his room.
7. Each wing of the nursing home contained sixty patients to be cared for by one charge nurse, one regular nurse and three certified nursing assistants.
8. A certified nursing assistant was also required to perform a nurse' job.
9. The head nurse was unavailable for hours at a time.
10. The nursing staff knew when the state would come to inspect and on those occasions increased staff.
11. The nursing home was understaffed.
12. A treating physician testified that Spilman suffered from one of the worst cases of bedsores he had ever seen. The physician stated that he “couldn't believe it” when he first examined Spilman. He discovered that the tissue in Spilman's hip was rotted well into both hip joints, surrounding muscles, tendons and ligaments. His post-operative diagnosis was osteomyelitis, a bone infection, which was indicated by bone coated in fluid. The periosteum rotted away from the bone, and the bone was gray and non-viable. When he saw Spilman in the hospital, his injuries were beyond repair.

Id. at 870-71.

In the 2003 Arkansas Supreme Court case, [Advocat v. Sauer](#), 353 Ark. 29, 111 S.W.3d 346 (2003), the Arkansas Supreme Court upheld the admission of such evidence.

Here, Mrs. Sauer died in the care of Rich Mountain from severe malnutrition and dehydration. There was evidence presented that she was found at times with dried feces under her fingernails from scratching herself while lying in her own excrement. At other times, she was not “gotten up” out of her bed as she should have been. Often times, Mrs. Sauer’s food tray was found in her room, untouched because there was no staff member at the nursing home available to feed her. She was not provided with “range of motion” assistance when the facility was short of staff.

Id. at 43.

Mrs. Sauer was often times found wet without being changed in four hours. She had pressure sores on her back, lower buttock, and arms on days she was found sitting in urine and excrement. ... at times she had no water pitcher in her room; nor did she receive a bath for a week or longer, due to there not being enough staff at the facility... . at the time she was hospitalized prior to her death, she had a severe vaginal infection. When she was in the geriatric chair, she was not “let loose” every two hours, as required by law. Finally, Mrs. Sauer was found to suffer from poor oral hygiene with caked food and debris in her mouth.

Id. at 44.

With regard to the \$15 million compensatory damage award to Mrs. Sauer’s estate, the Arkansas Supreme Court concluded, “We hold that the jury verdicts were not based on passion or prejudice.” *Id.* The Court reasoned, “There was ample testimony and evidence presented to demonstrate that Mrs. Sauer suffered considerably and was not properly cared for, that Rich Mountain was short-staffed, and that the Appellants’ tried to cover this up by “false-charting” and by bringing in additional “employees” on State-inspection days. *Id.* “All of this serves to support the Sauer estate’s case that the nursing home, under the auspices of the Appellants, knew it had staffing problems and committed negligence as to Mrs. Sauer, because it was short-staffed due to cutbacks.” *Id.*

Defendants in this case are required to comply with laws and regulations governing the operation of nursing homes. For example, Mariner Health of Norris/Norris Health and Rehabilitation Center is required to maintain sufficient staff to provide for the welfare of those persons, such as Lillian Kanipe, residing at the nursing home. 42 C.F.R. § 483.30, the governing regulation, reads that nursing homes must have sufficient staff to provide nursing and related services to attain or maintain the resident’s highest practicable physical, mental and psychosocial well-being. Tennessee requires nursing homes to staff to meet the needs of nursing home residents. Tennessee Department of Health, Standards for Nursing Homes, ch. 12-8-6.

5. Interrogatory No. 10,13, 21, 22, 2 Requests for Production No. 4, 7, 18, 19,30,31,38,48,50

Defendants Should Produce All Facility Policies and Procedures in Effect During Lillian Kanipe’s Residency and the person or persons responsible for implementing them as well as all In-Service Training Documentation and the names of the members of the Governing Body of the nursing home.

Plaintiff requested Defendants to disclose all policies, procedures, manuals or guidelines in effect while Lillian Kanipe resided at Mariner Health of Norris/Norris Health and Rehabilitation Center which set forth the expected standard of care for residents and the standard of conduct for employees.

All of these requests are relevant in order to determine whether Mariner Health of Norris/Norris Health and Rehabilitation Center was in compliance with federal regulations at the time of Ms. Kanipe's residency. The policies and procedures of the nursing home will reveal whether the home has met 42 C.F.R. § 483.13, which requires all long-term care facilities to:

Develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents.

Tennessee's Standards for Nursing Homes also require the promulgation and implementation of policies and procedures for resident care. Tennessee department of Health, Standards for Nursing Homes, ch. 12-8-6. These items are, thus, clearly discoverable.

Defendants' own Administrator and Director of Nursing testified via depositions taken in this case that they relied on the policies and procedures outlined in Defendants Policy and Procedure Manuals to be certain they complied with State and Federal regulations, as well as to ensure that the care delivered to residents was within the standard of care. (Gina Harris depo at pp 45-46 and Donna Sloan depo at pp. 51-54, Exhibit E.)

6. Requests for Production Nos. 5, 17, 25, 36

Defendants Should Produce a Copy of the Incentive Program Guide for Employee Bonuses and Evidence of any Bonuses Paid.

Defendants own Administrator and Director of Nursing testified via deposition on May 8, 2007, in this case that Defendants maintained an incentive program guide that determined how each employee received bonus compensation during Ms. Kanipe's residency. (Gina Harris depo at p 214 and Donna Sloan depo at pp. 88-89, Exhibit F.)

As has been discussed elsewhere in this brief, Plaintiff alleges and has evidence that this company placed profits over resident care. The criteria for determining employee bonuses consisted of, among other things, financial performance. The incentive program guide comprises the actual words of Mariner Health of Norris/Norris Health and Rehabilitation Center in terms of how its employees receive their bonuses. (Gina Harris depo at pp 215-221, Exhibit G.)

In a report from the Office of Long Term Care on October 20, 1998, Mark Hemingway, the Director of Arkansas' OLTC, stated one of Beverly Enterprises' problems in delivering resident care was that its administrators were rewarded for financial performance instead of delivering quality of care. (Arkansas Democrat Gazette Article attached as Exhibit H.) For these reasons, the incentive program guide is discoverable as well as any documentation revealing actual bonuses.

7. Interrogatory No. 11, 12, 14, 15; Request for Production No 2, 11

Defendants Should Produce Copies of Records Pertaining to Lillian Kanipe, and Information regarding Documents and Witnesses in this Law suit.

These items of discovery seek the most basic law suit information. Plaintiff seeks documents not ordinarily contained in the chart but that portray the medical condition of Lillian Kanipe. Plaintiff seeks liability coverage so that an assessment of the case can be made.

Defendants produce brochures setting forth the services that they promise to provide residents. Plaintiff is entitled to those brochures to assist in determining whether Defendants provided the services they promised. These brochures are relevant and discoverable.

Finally, Plaintiff seeks information regarding defense witnesses that the Rules of Civil Procedure clearly make available. These items must be compelled.

CONCLUSION

As contended by Plaintiff and supported by the foregoing, the information requested by Plaintiff is clearly relevant and likely to lead to admissible evidence. Furthermore, Plaintiff emphasizes, as written by the Supreme Court of Oklahoma, that the purpose of modern pretrial discovery techniques is to “promote the discovery of the true facts and circumstances of a controversy, rather than to aid in their concealment.” *Davis v. Davis*, 536 P.2d 915 (Okla. 1975) (emphasis added). In *First Healthcare Corp. v. Hamilton*, 740 So.2d 1189 (Fla. Ct. App. 1999), the plaintiff complained that the defendant was negligent in its failure to provide for the protection, supervision, and safety of the decedent. Prior to trial defendant objected to providing “basic discovery materials” (including the corporate defendant's policies and procedures, employee lists, and incident reports) using the “boilerplate objection that the request was overbroad, burdensome, and not reasonably calculated to lead to the discovery admissible evidence.” In holding that all such materials were discoverable and relevant, the court wrote:

Each of these objections, stated baldly, and without particulars, is patently without merit as the court found following the hearing on plaintiffs motion to compel. Such ‘stonewalling tactics,’ designed to delay making a timely response to valid discovery requests, constitute discovery abuse and should not be condoned.

Id. at 1193, n.1.

The documents and information requested are readily accessible to Defendants. There is no basis for their lack of response other than a patent refusal to provide relevant materials that may be harmful to their position. As such, Plaintiff respectfully requests that Defendants be compelled to timely produce information responsive to the interrogatories and requests for production listed above.

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