

2013 WL 3913331 (Pa.Com.Pl.) (Trial Pleading)
Court of Common Pleas of Pennsylvania.
Lancaster County

Nancy J. STOVER Executrix of the Estate of Horace W. Stover, deceased, Plaintiff,

v.

WILMAC HEALTH CARE, INC. d/b/a Lancashire Hall,

and

WILMAC CORPORATION,

and

BROCKIE HEALTHCARE, INC.,

and

MANOR CARE OF LANCASTER PA, LLC d/b/a Manorcaren Health Services Lancaster,

and

HCR MANOR CARE, INC.,

and

HCR HEALTHCARE, LLC,

and

HCR HEALTHCARE II, LLC,

and

HCR HEALTHCARE III, LLC,

and

HCR HEALTHCARE IV, LLC,

and

MANORCARE HEALTH SERVICES, INC.,

and

MANOR CARE, INC., Defendants.

No. CI-13-06519.
July 10, 2013.

Court of Common Pleas Lancaster County, PA

Notice

Wilkes & McHugh, P.A., [Erica C. Wilson](#), Esquire, Attorney for Plaintiff.

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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

Lancaster Bar Association Lawyer Referral Service 28 East Orange Street Lancaster, PA 17602 Telephone: 717-393-0737

COMPLAINT IN CIVIL ACTION

(Medical Professional Liability Action)

Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, by and through counsel, Wilkes & McHugh, P.A., files the within Complaint in Civil Action as follows:

I. PARTIES

A. Plaintiff f

1. Horace W. Stover was an adult individual and resident o Lancashire Hall, located at 2829 Lititz Pike, Lancaster, PA 17601, from August 1, 2011 through September 1, 2011, with the exception of hospitalization; and at ManorCare Health Services - Lancaster, located at 100 Abbeyville Road, Lancaster, PA 17603, from September 1, 2011 through October 10, 2011, with the exception of hospitalization. Thereafter, Horace Stover died on November 3, 2011.
2. Nancy J. Stover is the wife of Horace W. Stover, deceased, and an adult individual and citizen of the Commonwealth of Pennsylvania, residing at 110 Jemfield Court, Lancaster, PA 17603.
3. Nancy J. Stover was appointed Executrix of the Estate of Horace W. Stover deceased, on November 8, 2011, by the Register of Wills of Lancaster County.

B. Defendants, Wilmac Health Care, Inc. d/b/a Lancashire Hall; Wilmac Corporation; Brockie Healthcare, Inc. (“Lancashire Defendants”)

4. Defendant, WILMAC Healthcare, Inc., d/b/a Lancashire Hall, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with offices and a place of business located at 209 N. Beaver Street, York, PA 17401, and 2829 Lititz Pike, Lancaster, PA 17601, respectively.
5. Defendant, WILMAC Healthcare, Inc., d/b/a Lancashire Hall, is engaged in the business of owning, operating and/or managing nursing homes, including Lancashire Hall (“Lancashire Hall Facility”), providing healthcare, medical services and nursing care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate Lancashire Hall, and was the employer, supervisor, parent company, and exercised control of Lancashire Hall, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at Lancashire Hall, out to the public as competent and skillful healthcare providers and practitioners of medicine and which is directly and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners, all of whom played a role in the care of Horace Stover.

6. Defendant, Wilmac Corporation, is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with an office and a place of business located at 209 N. Beaver Street, York, Pennsylvania 17403.

7. Defendant, Wilmac Corporation, is engaged in the business of owning, operating and/or managing nursing homes, including Lancashire Hall (“Lancashire Hall Facility”), providing healthcare, medical services and nursing care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate Lancashire Hall, and was the employer, supervisor, parent company, and exercised control of Lancashire Hall, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors,³ staff and/or partners, and those persons granted privileges at Lancashire Hall, out to the public as competent and skillful healthcare providers and practitioners of medicine and which is directly and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners, all of whom played a role in the care of Horace Stover.

8. Defendant, Brockie Healthcare, Inc., is a corporation, duly licensed, organized and existing under and by virtue of the laws of the Commonwealth of Pennsylvania, with an office and a place of business located at 209 N. Beaver Street, York, Pennsylvania 17403.

9. Defendant, Brockie Healthcare, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including Lancashire Hall (“Lancashire Hall Facility”), providing healthcare, medical services and nursing care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate Lancashire Hall, and was the employer, supervisor, parent company, and exercised control of Lancashire Hall, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at Lancashire Hall, out to the public as competent and skillful healthcare providers and practitioners of medicine and which is directly and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners, all of whom played a role in the care of Horace Stover.

10. Upon present information and belief, at all times material hereto, the Lancashire Defendants individually and collectively, and/or through a joint venture, owned, operated, licensed and/or managed Lancashire Hall, and are individually and collectively engaged in the business of providing medical care services to the general public.

C. Defendants, Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services - Lancaster; HCR Manor Care, Inc.; HCR Healthcare, LLC; HCR Healthcare II, LLC; HCR Healthcare III, LLC; HCR Healthcare IV, LLC; ManorCare Health Services, Inc.; Manor Care Inc. (herein “ManorCare Defendants”)

11. Defendant, Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services Lancaster, is a corporation, duly licensed, organized and existing under and by virtue of the Commonwealth of Pennsylvania, with offices and a place of business located at 100 Abbeyville Road, Lancaster, Pennsylvania 17603.

12. Defendant, Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services Lancaster, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

13. Defendant, HCR Manor Care, Inc., is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

14. Defendant, HCR Manor Care, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

15. Defendant, HCR Healthcare, LLC, is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

16. Defendant, HCR Healthcare, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

17. Defendant, HCR Healthcare II, LLC, is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

18. Defendant, HCR Healthcare II, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

19. Defendant, HCR Healthcare III, LLC, is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

20. Defendant, HCR Healthcare III, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions

of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

21. Defendant, HCR Healthcare IV, LLC, is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

22. Defendants, HCR Healthcare IV, LLC, is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

23. Defendant, ManorCare Health Services, Inc., is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

24. Defendant, ManorCare Health Services, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

25. Defendant, Manor Care, Inc., is a corporation, duly licensed, organized, and existing under the laws of the State of Delaware, with offices and a place of business located at 333 North Summit Street, Toledo, Ohio 43604-2617.

26. Defendant, Manor Care, Inc., is engaged in the business of owning, operating and/or managing nursing homes, including ManorCare Health Services - Lancaster, providing healthcare, medical services, nursing care, assisted living/personal care to the public in Lancaster, Lancaster County, Pennsylvania, and, was at all times material hereto, duly licensed to operate same in the Commonwealth of Pennsylvania, and was the employer, supervisor and/or partner of all other ManorCare Defendants, noted herein, holding itself and its agents, employees, servants, contractors, subcontractors, staff and/or partners, and those persons granted privileges at the Facility, out to the public as competent and skillful long-term healthcare providers and practitioners of medicine and which is personally and vicariously liable, among other things for the acts and omissions of themselves, their agents, employees, servants, contractors, subcontractors, staff and/or partners and all other ManorCare Defendants, all of whom played a role in the care of Horace Stover.

27. Upon present information and belief, at all times material hereto, the ManorCare Defendants individually and collectively, and/or through a joint venture, owned, operated, licensed and/or managed the skilled nursing facility known as ManorCare Health Services Lancaster ("the ManorCare Facility" herein), and are individually and collectively engaged in the business of providing nursing care and assisted living/personal care services to the general public akin to a hospital.

II. JURISDICTION AND VENUE

28. Jurisdiction and venue are proper in this Honorable Court in Lancaster County, Pennsylvania, insofar as Defendants regularly conduct business in this county, the cause of action arose in this county and/or the action is being brought in any county which venue may be laid against any defendant. *See Pa.R.C.P. 1006 and 2179.*

III. FACTUAL BACKGROUND

A. Conduct of the Lancashire Defendants

29. On August 1, 2011, Horace Stover was admitted to the care of the Lancashire Hall Facility.¹

30. During the course of his residency, Horace Stover was incapable of independently providing for all of his daily care and personal needs without reliable assistance. In exchange for monies, he was admitted to Defendants' Facility to obtain such care and protection.

25. The Defendants, through advertising, promotional materials and information sheets, held out themselves and the Facility, as being able to provide skilled nursing and personal care to sick, **elderly** and frail individuals, including Horace Stover.

26. At all times material hereto, the Defendants held themselves out as capable of being able to provide the requisite care, including total health care, to the sick, **elderly**, and frail individuals, like Horace Stover, consisting of care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

27. At the time of his admission, the Defendants, individually and/or through their agents, employees, servants, contractors, subcontractors, staff and representatives, assessed the needs of Horace Stover, and promised that they would adequately care for his needs.

28. Defendants exercised complete and total control over the health care of all residents of the Facility, such as Horace Stover.

29. Upon information and belief, at all times hereto, Defendants were a vertically integrated corporation that was controlled by the same board of directors, who were responsible for the operation, planning, management, and quality control of the Facility.

30. At all times material hereto, the control exercised by Defendants included, *inter alia*: budgeting, marketing, human resource management, training, supervision of staff, staffing, and the creation and implementation of all policy and procedural manuals used by the Facility.

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

32. Defendants, by and through their board of directors and corporate officers, utilized survey results and quality indicators to monitor the care being provided at their personal care homes/residential health care/skilled nursing facilities, including the Facility.

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

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

35. Defendants, acting through their administrators, various boards, committees, and individuals, were responsible for the standard of professional practice by members of their staff at the Facility, and to oversee their conduct in the matters set forth herein.

36. Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper treatment was rendered to individuals having medical and nursing problems, such as those presented by Horace Stover as set forth herein.

37. As a part of their duties and responsibilities, Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of medical conditions suffered by residents, such as Horace Stover, whether within the Facility, or obtained from other medical care providers.

38. Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits and/or excess revenues at the expense of the care required to be provided to its residents, including Horace Stover.

39. In their effort to maximize profits and/or excess revenues, Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care and supervision to the residents, which demonstrated a failure to comply with the applicable regulations and standards for personal care homes/skilled nursing facilities.

40. Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Facility to be set at a level such that the personnel on duty could not and did not meet Horace Stover's needs.

41. Over the past several years, and at all times material hereto, Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical and custodial care.

42. Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary for the new resident population.

43. Defendants knew, or should have known, that the acuity needs of the residents in their Facility increased and, therefore, the resources necessary increased, including raising the amount of staffing required to meet the needs of the residents.

44. Defendants failed to provide resources necessary, including sufficiently trained staff, to meet the needs of the residents, including Horace Stover.

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

46. Defendants knowingly disregarded patient acuity levels while making staffing decisions; and, also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatment.

47. The acts and omissions of Defendants were motivated by a desire to increase profits and/or excess revenues of the Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Horace Stover.

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

49. Defendants' financial motives were evidenced by the fact that Horace Stover was not transferred to the appropriate medical facility and/or facility with the appropriate level of health care when Defendants knew, or should have known, that they could not meet needs of Horace Stover.

50. The aforementioned acts directly caused injury to Horace Stover and were known by Defendants.

51. Defendants knowingly sacrificed the quality of care received by all residents, including Horace Stover, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Horace Stover, as described herein, which included development and/or worsening of pressure ulcers and severe pain.

52. At the time and place of the incidents herein described, the Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of Defendants.

53. At all times material hereto, Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of Defendants herein.

54. The aforementioned incidents were caused solely and exclusively by the negligence, carelessness, and recklessness of Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or omission to act on the part of Horace Stover.

55. Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

56. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial **neglect** and corporate negligence against the Defendants herein, as each of the entities named as Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

B. Injuries of Horace Stover at the Lancashire Facility

57. At the time of his admission to the Lancashire Hall Facility, Horace Stover had a past medical history including CHF, sleep apnea, pacemaker placement, stent placement, osteoarthritis, left hip and right knee replacement, history of TIA, newly diagnosed diabetes, gastric ulcer, depression, peripheral neuropathy, gout, chronic kidney disease, BPH, atrial fibrillation, anemia, TURP, right inguinal hernia repair, and hypertension.

58. Upon admission to the Facility, Horace Stover was dependent upon the staff for his mental, physical and medical needs, requiring assistance with activities of daily living, and had various illnesses and conditions that required evaluation and treatment.

59. Defendants knew or should have known that Horace Stover was at risk for development and/or worsening of pressure ulcers and severe pain.

60. The Defendants deprived Horace Stover of adequate care, treatment, food, water and medicine and caused him to suffer numerous illnesses and injuries, which upon information and belief, included development and/or worsening of pressure ulcers and severe pain.

61. The severity of the negligence inflicted upon Horace Stover, by the Defendants accelerated the deterioration of his health and physical condition, and resulted in physical and emotional injuries that caused him severe pain, suffering and mental anguish, together with unnecessary hospitalizations, and ultimately death.

62. These injuries, as well as the conduct specified herein, caused Horace Stover, to suffer a loss of personal dignity, together with degradation, anguish, emotional trauma, pain and suffering, and ultimately death.

63. During his admission, Horace Stover required assistance in care with his activities of daily living.

64. Upon admission, he was noted to have a possible stage I pressure ulcer to his buttocks.

65. On August 3, 2011, Mr. Stover's left buttocks ulcer worsened.

66. On August 23, 2011, his heels were boggy and dry, and the Facility noted a skin tear on his left heel. He was sent to the Lancaster General Hospital this day, and upon admission to the hospital, the hospital recorded that he had a stage III calcaneal ulceration on his left heel.

67. By August 31, 2011, his left heel ulceration was documented as open.

68. He was discharged to ManorCare Facility on September 1, 2011.

69. The Facility accepted Horace Stover as a resident fully aware of his medical history and understood the level of nursing care required to prevent the occurrence of his serious injuries.

70. Horace Stover's chart includes and evidences missing and incomplete documentation, including Activities of Daily Living sheets, medication administration records, treatment administration records, and controlled medication utilization record.

71. The severity of the negligence inflicted upon Horace Stover by the Defendants consisted of mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training of the Facility employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate therapeutic care plan; failure to preclude development and/or worsening of pressure ulcers and severe pain; and failure to ensure that the highest level of physical, mental and psychosocial functioning was attained.

72. As a result of the negligence, carelessness and recklessness of the Defendants herein described, Horace Stover was caused to suffer serious and permanent injuries as described herein, to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, development and/or worsening of pressure ulcers and severe pain, and other body pain and damage, and anxiety reaction and injury to his nerves and nervous system, some or all of which were permanent, together with other medical complications.

C. Conduct of the ManorCare Defendants

73. On September 1, 2011, Horace Stover was admitted to the care of the ManorCare Facility.²

74. During the course of his residency, Horace Stover was incapable of independently providing for all of his daily care and personal needs without reliable assistance. In exchange for monies, he was admitted to Defendants' Facility to obtain such care and protection.

75. The Defendants, through advertising, promotional materials and information sheets, held out themselves and the Facility, as being able to provide skilled nursing and personal care to sick, **elderly** and frail individuals, including Horace Stover.

76. At all times material hereto, the Defendants held themselves out as capable of being able to provide the requisite care, including total health care, to the sick, **elderly**, and frail individuals, like Horace Stover, consisting of care planning and the provision of medication, medical care and treatment, therapy, nutrition, hydration, hygiene and all activities of daily living.

77. At the time of his admission, the Defendants, individually and/or through their agents, employees, servants, contractors, subcontractors, staff and representatives, assessed the needs of Horace Stover, and promised that they would adequately care for his needs.

78. Defendants exercised complete and total control over the health care of all residents of the Facility, such as Horace Stover.

79. Upon information and belief, at all times hereto, Defendants were a vertically integrated corporation that was controlled by the same board of directors, who were responsible for the operation, planning, management, and quality control of the Facility.

80. At all times material hereto, the control exercised by Defendants included, *inter alia*: budgeting, marketing, human resource management, training, supervision of staff, staffing, and the creation and implementation of all policy and procedural manuals used by the Facility.

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

82. Defendants, by and through their board of directors and corporate officers, utilized survey results and quality indicators to monitor the care being provided at their personal care homes/residential health care/skilled nursing facilities, including the Facility.

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

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

85. Defendants, acting through their administrators, various boards, committees, and individuals, were responsible for the standard of professional practice by members of their staff at the Facility, and to oversee their conduct in the matters set forth herein.

86. Defendants had an obligation to employ competent, qualified and trained staff so as to ensure that proper treatment was rendered to individuals having medical and nursing problems, such as those presented by Horace Stover as set forth herein.

87. As a part of their duties and responsibilities, Defendants had an obligation to maintain and manage the Facility with adequate staff and sufficient resources to ensure the timely recognition and appropriate treatment of medical conditions suffered by residents, such as Horace Stover, whether within the Facility, or obtained from other medical care providers.

88. Defendants made a conscious decision to operate and/or manage the Facility so as to maximize profits and/or excess revenues at the expense of the care required to be provided to its residents, including Horace Stover.

89. In their effort to maximize profits and/or excess revenues, Defendants negligently, intentionally and/or recklessly mismanaged and/or reduced staffing levels below the level necessary to provide adequate care and supervision to the residents, which demonstrated a failure to comply with the applicable regulations and standards for personal care homes/skilled nursing facilities.

90. Defendants recklessly and/or negligently disregarded the consequences of their actions, and/or negligently caused staffing levels at the Facility to be set at a level such that the personnel on duty could not and did not meet Horace Stover's needs.

91. Over the past several years, and at all times material hereto, Defendants intentionally increased the number of sick, **elderly** and frail residents with greater health problems requiring more complex medical and custodial care.

92. Defendants knew that this increase in the acuity care levels of the resident population would substantially increase the need for staff, services, and supplies necessary for the new resident population.

93. Defendants knew, or should have known, that the acuity needs of the residents in their Facility increased and, therefore, the resources necessary increased, including raising the amount of staffing required to meet the needs of the residents.

94. Defendants failed to provide resources necessary, including sufficiently trained staff, to meet the needs of the residents, including Horace Stover.

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

96. Defendants knowingly disregarded patient acuity levels while making staffing decisions; and, also knowingly disregarded the minimum time required by the staff to perform essential day-to-day functions and treatment.

97. The acts and omissions of Defendants were motivated by a desire to increase profits and/or excess revenues of the Facility, by knowingly, recklessly, and with total disregard for the health and safety of the residents, reducing expenditures for needed staffing, training, supervision, and care to levels that would inevitably lead to severe injuries, such as those suffered by Horace Stover.

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

99. Defendants' financial motives were evidenced by the fact that Horace Stover was not transferred to the appropriate medical facility and/or facility with the appropriate level of health care when Defendants knew, or should have known, that they could not meet needs of Horace Stover.

100. The aforementioned acts directly caused injury to Horace Stover and were known by Defendants.

101. Defendants knowingly sacrificed the quality of care received by all residents, including Horace Stover, by failing to manage, care, monitor, document, chart, prevent, diagnose and/or treat the injuries and illnesses suffered by Horace Stover, as described herein, which included development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death.

102. At the time and place of the incidents herein described, the Facility whereupon the incidents occurred was individually, collectively, and/or through a joint venture, owned, possessed, controlled, managed, operated and maintained under the exclusive control of Defendants.

103. At all times material hereto, Defendants were operating personally or through their agents, servants, workers, employees, contractors, subcontractors, staff, and/or principals, who acted with actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of Defendants herein.

104. The aforementioned incidents were caused solely and exclusively by the negligence, carelessness, and recklessness of Defendants, their agents, servants, contractors, subcontractors, staff and/or employees and was due in no part to any act or omission to act on the part of Horace Stover.

105. Defendants, their agents, servants, contractors, subcontractors, staff and/or employees are/were, at all times material hereto, licensed professionals/professional corporations and/or businesses and the Plaintiff is asserting professional liability claims against Defendants, their agents, servants, contractors, subcontractors, staff and/or employees.

106. In addition to all other claims and demands for damages set forth herein, Plaintiff is asserting claims for ordinary negligence, custodial **neglect** and corporate negligence against the Defendants herein, as each of the entities named as Defendants herein are directly and vicariously liable for their independent acts of negligence, for their acts of general negligence, and for their acts of general corporate negligence.

D. Injuries of Horace Stover at the ManorCare Facility

107. At the time of his admission to the Facility, Horace Stover had a past medical history including the injuries described in paragraph 57, *supra*, as well as pressure ulcers.

108. Upon admission to the Facility, Horace Stover was dependent upon the staff for his mental, physical and medical needs, requiring assistance with activities of daily living, and had various illnesses and conditions that required evaluation and treatment.

109. Defendants knew or should have known that Horace Stover was at risk for development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death.

110. The Defendants deprived Horace Stover of adequate care, treatment, food, water and medicine, and caused him to suffer numerous illnesses and injuries, which upon information and belief, included development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death.

111. The severity of the negligence inflicted upon Horace Stover, by the Defendants, accelerated the deterioration of his health and physical condition, and resulted in physical and emotional injuries that caused him severe pain, suffering and mental anguish, together with unnecessary hospitalizations, and ultimately death.

112. These injuries, as well as the conduct specified herein, caused Horace Stover to suffer a loss of personal dignity, together with degradation, anguish, emotional trauma, pain and suffering, and ultimately death.

113. During his admission, Horace Stover required assistance in care with his activities of daily living.

114. On 9/12/11, a urinalysis was obtained, but the urinalysis was contaminated. On 9/15/11, it is documented that his urine was greenish and had a foul smell. It was not until 9/18/11, that staff finally could diagnose that Mr. Stover had a urinary tract infection.

115. On 9/26/11, Mr. Stover was diagnosed with C. Diff.

116. On 10/3/11, he was suffer with a urinary tract infection, and new orders were written for an antibiotic.

117. On 10/8/11, he fell out of bed.

118. On 10/10/11, he was admitted to the Lancaster General Hospital, with a diagnosis of acute or chronic renal failure likely secondary to medication. The medical records note that he had been taking a double dose of double-strength antibiotics during the previous week. He also had ulcer on his great left toe that was unstageable, as well as a left heel ulcer.

119. Mr. Stover died on 11/3/11, with a cause of death listed of the death certificate as renal failure and urosepsis.

120. The Facility accepted Horace Stover as a resident fully aware of his medical history and understood the level of nursing care required to prevent the occurrence of his serious injuries.

121. Horace Stover's chart includes and evidences missing and incomplete documentation, including Activities of Daily Living sheets, medication administration records, treatment administration records, and controlled medication utilization record.

122. The severity of the negligence inflicted upon Horace Stover by the Defendants consisted of mismanagement, improper/under-budgeting, understaffing of the Facility and lack of training of the Facility employees, failure to provide adequate and appropriate health care; engaging in incomplete, inconsistent and fraudulent documentation; failure to develop an appropriate therapeutic care plan; failure to provide proper medication; and failure to provide sufficient food and water to preclude development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death; and failure to ensure that the highest level of physical, mental and psychosocial functioning was attained.

123. As a result of the negligence, carelessness and recklessness of the Defendants herein described, Horace Stover was caused to suffer serious and permanent injuries as described herein, to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, fall, severe pain, and ultimately death, and other body pain and damage, and anxiety reaction and injury to his nerves and nervous system, some or all of which were permanent, together with other medical complications.

COUNT ONE

Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Wilmac Health Care, Inc. d/b/a Lancashire Hall; Wilmac Corporation; Brockie Healthcare, Inc.

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

125. At all times material hereto, Defendants were acting through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Defendants.

126. At all times material hereto, Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Horace Stover, were protected.

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

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

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

130. At all times material hereto, Defendants owed a duty and responsibility to furnish Horace Stover with appropriate and competent nursing and/or total healthcare.

131. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Facility, including those suffered by Horace Stover, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

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

133. Defendants, as the corporate owners, board members and/or managers of the Facility, breached their duty and were, therefore, negligent, careless and reckless in their obligations to Horace Stover.

134. The corporate conduct of Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Horace Stover.

135. At all times material hereto, Defendants owed and failed to fulfill the following duties to Horace Stover: use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent staff; oversee and supervise all persons who practiced nursing and/or skilled healthcare within the Facility; and, formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents.

136. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of Defendants individually and/or acting by and through their officers, board members, physicians, physicians' assistants, nurses, certified nurses' aides and office staff who examined, treated and/or communicated the condition of Horace Stover, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff

supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of Defendants, consisted of the following acts and omissions in the care and treatment of Horace Stover:

a. failure to hire appropriately trained staff and/or train, select and retain competent staff, and knowingly allowing and/or encouraging unskilled and untrained individuals to care for Horace Stover who failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent development and/or worsening of pressure ulcers, and severe pain, and failed to provide adequate assessments of Horace Stover following a change in condition, increasing his risk of harm;

b. failure to prevent and engage in incomplete, inconsistent and/or fraudulent documentation by failing to consistently complete Activities of Daily Living sheets, failing to document administration of medications and failing to update MDS with significant changes in conditions, and failing to consistently document Treatment Record;

c. failure to provide adequate pain management;

d. failure to ensure that Horace Stover did not develop serious and permanent injuries to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, when he experienced development and/or worsening of pressure ulcers, and severe pain, when the Defendants knew or should have known that he was at risk for the same;

- e. failure to respond in a timely manner with appropriate medical care when Horace Stover was injured, including when he experienced development and/or worsening of pressure ulcers, and severe pain, when Defendants knew or should have known that he was at risk for the same;
- f. failure to provide adequate and appropriate health care by failing to keep Horace Stover free from infection, failing to respond to a change in condition in a timely manner, failing to provide an adequate assessment following a change in condition, failing to provide adequate hygiene, failing to provide appropriate treatment and services to prevent development and/or worsening of pressure ulcers, and severe pain, and failing to administer ordered medications and treatments;
- g. failure to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it to reflect current conditions, and failing to provide social services such as physical therapy, occupational therapy and speech therapy in order to attain the highest practicable physical, mental, and social well-being;
- h. failure to ensure that each resident received and that the Facility provided the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;
- i. failure to ensure that the Facility used the results of the assessment to develop, review and revise the resident's comprehensive plan of care, developing a comprehensive care plan for each resident that included measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;
- j. failure to ensure that the Facility had sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident assessments and individual plans of care, providing services by sufficient number of each of the required types of personnel on a twenty-four-hour basis to provide nursing care to all residents in accordance with resident care plans;
- k. failure to administer the Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;
- l. failure to develop and implement written policies and procedures that prohibit mistreatment, **neglect**, and abuse of residents and misappropriation of the resident's property;
- m. failure to ensure that the services provided or arranged by the Facility were provided by qualified persons in accordance with each resident's written plan of care;
- n. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the Facility who failed to prevent development and/or worsening of pressure ulcers, and severe pain;
- o. failure to formulate, adopt and enforce adequate rules, procedures and policies to ensure quality healthcare for residents by failing to: provide adequate and appropriate health care to prevent development and/or worsening of pressure ulcers, and severe pain, and provide complete and consistent documentation, provide appropriate treatment, services and adequate assessments following change in condition to prevent development and/or worsening of pressure ulcers, and severe pain;
- p. failure to undertake and/or implement the instructions provided by physicians and notify the physicians of change in the condition of Horace Stover;

- q. failure to refer Horace Stover to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated Horace Stover's condition due to failure to notify treating physicians and follow up on physicians instructions;
- r. failure to provide Horace Stover with the necessary care and services to allow his to attain or maintain the highest practicable physical, mental and psychological well-being;
- s. failure to ensure that the Facility was properly funded;
- t. failure to implement a budget that would allow the Facility to provide adequate and appropriate healthcare to Horace Stover including adequate staff and supplies;
- u. grossly understaffing the Facility;
- v. failure to take appropriate steps to remedy continuing problems at the Facility that Defendants knew were occurring with Horace Stover's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;
- w. failure to evaluate the quality of resident care and efficiency of services, identify strengths and weaknesses, set in place measures for improvements where necessary, and, evaluate progress and institute appropriate follow-up activities;
- x. failure to maintain open lines of communication with the governing body, department heads, Facility staff and its residents to ensure that resources were properly allocated and that resident care was maintained at a high level;
- y. failure to maintain compliance with governmental regulations;
- z. failure to implement personnel policies and procedures that define job responsibilities, accountability and the performance appraisal process and emphasize the importance of the health care team in the delivery of quality resident care;
- aa. failure to coordinate training programs to improve employee skills and to enhance employee performance;
- bb. failure to develop a budget with an objective of the delivery of quality care; and,
- cc. acting in a grossly negligent manner, with reckless indifference to the rights and safety of Horace Stover.

137. Upon information and belief, the corporate officers of the Defendants were made aware of the governmental/state survey results and placed on notice of the issues with resident care at their Facility.

138. Upon information and belief, the Defendants were aware that there were numerous problems at the Facility, and that they had been cited by the Pennsylvania Department of Health for failures at the Facility.

139. Upon information and belief, the Defendants were aware that they had been cited by governmental units regarding additional failures at the Facility on: 2/17/10 failed to provide a functioning bath tub for residents on two of four nursing units; failed to implement a resident's plan of care to adequately address good hygiene by failing to provide a shower for one resident; failed to assure that physician orders were followed regarding the administration of medications; 3/11/10 failed to provide adequate supervision to residents; 5/4/10 failed to record information in accordance with physician's orders and/or resident needs; failed to assess one of one residents to self administration medication; 6/25/10 failed to provide sufficient preparation to provide continued care to the resident and his family to ensure a safe discharge; 7/22/10 failed to assure that a plan of care

was developed to manage a cardiac condition and risk for bleeding; 8/10/10 failed to follow physician's orders regarding the monitoring and reporting of a low blood sugar, and failed to obtain a physician's before administering a medication to increase blood sugar, and timely assess a resident prior transfer to the hospital; 12/2/10 failed to conduct comprehensive investigations for bruises of unknown origin; failed to follow physician's orders for the bowel protocol and skin protective devices for six of 30 residents reviewed; failed to follow the physician orders for administering medications; failed to implement infection control measures during the provision of a pressure ulcer treatment for one of four pressure ulcer treatments observed and further failed to provide infection control measures for resident care equipment on three of four nursing units; 12/8/10 failed to accurately assess, timely identify and to provide the necessary care and services to prevent the development and to promote healing of pressure ulcers for two of two residents reviewed with pressure sores; 5/13/11 failed to assure that safety devices were in place for one of seven residents reviewed who was ambulated in a wheelchair, resulting in actual harm to the resident; failed to assure that adequate toenail care was provided to the three out of five residents reviewed who required assistance with grooming; 7/23/11 to provide safe and comfortable air temperatures on two of four nursing units; 7/27/11 to assure that medications were administered as ordered by a physician; 7/31/11 failed to ensure that alternative interventions were attempted prior to administration of antianxiety medication; 8/25/11 failed to assess and monitor a resident with a diagnosis of chronic kidney disease and a history of urinary tract infections when this resident experienced a significant change in medical condition, resulting in actual harm to the resident; failed to notify the responsible party of a significant change in physical status; failed to assure that a plan of care was updated; failed to ensure the proper accountability and disposition of narcotic medications; 10/3/11 failed to meet professional standards of quality, regarding the monitoring of pain causing actual harm to a resident; failed to provide adequate housekeeping services necessary to ensure a sanitary and comfortable environment for three out of four units; failed to maintain an effective infection control program to assist in maintaining a safe and healthy environment in one of four units observed; 11/3/11 failed to effectively implement the abuse policy and failed to report identified **neglect** cases to the Department of Health; to assure that for one of eight residents reviewed that medications were received as ordered by the physician; failed to accurately assess and provide the necessary treatment ordered by the physician in order to promote the healing pressure ulcers; failed to document the administration of medications for three of eight residents reviewed; 11/21/11 failed to meet professional standards of practice regarding the administration of medications for four of nine residents; facility's Administrator and Director of Nursing failed to consistently implement the plan of correction for the survey completed on August 25, 2011 which indicated that all licensed staff were to be in-serviced regarding physician notification relating to regulatory guidelines, and the development of resident care plans; the facility failed to consistently maintain compliance since August 25, 2011 related to notification of changes, resident plans of care, professional standards of practice, and drug records/storage and labeling.

140. Upon information and belief, the corporate officers of the Defendants had been made aware in the past that the Facility had been cited for the failures mentioned in the preceding paragraph.

141. Defendants knew that the violations described in the paragraphs above were not isolated events and were, at times, described as repeat deficiencies, which placed them on notice of failures to provide proper care and treatment to residents, including Horace Stover.

142. As a direct and proximate result of the Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Horace Stover suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the Facility and (e) aggravation of his pre-existing medical conditions.

143. In causing the aforementioned injuries, Defendants knew, or should have known, that Horace Stover, would suffer such harm.

144. The conduct of Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Horace Stover.

145. The conduct of Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the Lancashire Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT TWO

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

**Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Wilmac
Health Care, Inc. d/b/a Lancashire Hall; Wilmac Corporation; Brockie Healthcare, Inc.**

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

147. At all times pertinent hereto, there was in full force and effect 35 P.S. § 10225.101, et seq., "Pennsylvania Older Adults Protective Services Act," which sets forth civil penalties, administrative penalties and other consequences for abuse of a care-dependent person.

148. 35 P.S. § 10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of abuse, **neglect**, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from abuse, **neglect**, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of abuse, **neglect**, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

149. At all times pertinent hereto, Horace Stover was an older person who was a resident of Defendants' Facility who lacked the capacity to protect himself and thus fell within the class of persons 35 P.S. § 10225.101, et seq. was intended to protect, thus entitling Plaintiff to adopt 35 P.S. § 10225.101, et seq. as the standard of care for measuring the Defendants' conduct.

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

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

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

153. The conduct of Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the Lancashire Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT THREE

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

**Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Wilmac
Health Care, Inc. d/b/a Lancashire Hall; Wilmac Corporation; Brockie Healthcare, Inc.**

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

155. At all times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person,” which set forth penal consequences for **neglect** of a care-dependent person.

156. 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be abused or **neglected**, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such abuse or **neglect** causes injury, either physical or mental, then such conduct is actionable.

157. At all times pertinent hereto, Horace Stover was a care dependent resident of the Defendants’ Facility, and thus fell within the class of persons 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” as the standard of care for measuring the Defendants’ conduct.

158. Additionally, 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Horace Stover sustained.

159. The Defendants, in accepting the responsibility for caring for Horace Stover as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” in that they:

- a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Horace Stover for whom they were responsible to provide care as specifically set forth in this Complaint;

160. As a direct result of the aforesaid negligence “per se” of the Defendants, Horace Stover was caused to sustain serious personal injuries and damages as aforesaid.

161. The conduct of the Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the Lancashire Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT FOUR

Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services - Lancaster; HCR Manor Care, Inc.; HCR Healthcare, LLC; HCR Healthcare II, LLC; HCR Healthcare III, LLC; HCR Healthcare IV, LLC; ManorCare Health Services, Inc.; Manor Care Inc.

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

163. At all times material hereto, Defendants were acting through their agents, servants and employees, who were in turn acting within the course and scope of their employment under the direct supervision and control of the Defendants.

164. At all times material hereto, Defendants had the ultimate responsibility of ensuring that the rights of the residents, including Horace Stover, were protected.

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

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

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

168. At all times material hereto, Defendants owed a duty and responsibility to furnish Horace Stover with appropriate and competent nursing and/or total healthcare.

169. Despite being made aware of the types and frequency of injuries, illnesses, and/or infections, many of which were preventable, sustained by the residents of the Facility, including those suffered by Horace Stover, Defendants failed to take steps to prevent the occurrence of said injuries, illnesses, and/or infections.

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

171. Defendants, as the corporate owners, board members and/or managers of the Facility, breached their duty and were, therefore, negligent, careless and reckless in their obligations to Horace Stover.

172. The corporate conduct of Defendants was independent of the negligent conduct of the employees of the Facility, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health and well-being of the residents, including Horace Stover.

173. At all times material hereto, Defendants owed and failed to fulfill the following duties to Horace Stover: use reasonable care in the maintenance of safe and adequate facilities and equipment; select and retain only competent staff; oversee and

supervise all persons who practiced nursing and/or skilled healthcare within the Facility; and, formulate, adopt, and enforce rules, procedures and policies to ensure quality care and healthcare for all residents.

174. At all times material hereto, the breach of duties, negligence, carelessness and recklessness of Defendants individually and/or acting by and through their officers, board members, physicians, physicians' assistants, nurses, certified nurses' aides and office staff who examined, treated and/or communicated the condition of Horace Stover, and through the administrative personnel responsible for hiring, retaining and/or dismissing staff, staff supervision and policy-making and enforcement, as well as any agents, servants, employees, contractors, subcontractors and/or consultants of Defendants, consisted of the following acts and omissions in the care and treatment of Horace Stover:

- a. failure to hire appropriately trained staff and/or train, select and retain competent staff, and knowingly allowing and/or encouraging unskilled and untrained individuals to care for Horace Stover who failed to prevent dehydration failed to prevent and engaged in incomplete, inconsistent and fraudulent documentation, failed to provide appropriate treatment and services to prevent development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death, and failed to provide adequate assessments of Horace Stover following a change in condition, increasing his risk of harm;
- b. failure to prevent and engage in incomplete, inconsistent and/or fraudulent documentation by failing to consistently complete Activities of Daily Living sheets, failing to document administration of medications and failing to update MDS with significant changes in conditions, and failing to consistently document Treatment Record;
- c. failure to provide adequate pain management;
- d. failure to ensure that Horace Stover did not develop serious and permanent injuries to, in and about his body and possible aggravation and/or activation of any pre-existing conditions, illnesses, ailments, or diseases he had, and/or accelerated the deterioration of his health, physical and mental condition, and more particularly, when he experienced development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death, when the Defendants knew or should have known that he was at risk for the same;
- e. failure to respond in a timely manner with appropriate medical care when Horace Stover was injured, including when he experienced development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death, when Defendants knew or should have known that he was at risk for the same;
- f. failure to provide adequate and appropriate health care by failing to keep Horace Stover free from infection, failing to respond to a change in condition in a timely manner, failing to provide an adequate assessment following a change in condition, failing to provide adequate hygiene, failing to provide adequate nutrition impacting wound healing ability, failing to provide adequate hydration, failing to provide appropriate treatment and services to prevent development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death, and failing to administer ordered medications and treatments;
- g. failure to develop an appropriate therapeutic care plan by failing to develop a comprehensive care plan and revise it to reflect current conditions, and failing to provide social services such as physical therapy, occupational therapy and speech therapy in order to attain the highest practicable physical, mental, and social well-being;
- h. failure to ensure that each resident received and that the Facility provided the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, in accordance with the comprehensive assessment and plan of care;
- i. failure to ensure that the Facility used the results of the assessment to develop, review and revise the resident's comprehensive plan of care, developing a comprehensive care plan for each resident that included measurable objectives and timetables to

meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment, describing the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;

j. failure to ensure that the Facility had sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by the resident assessments and individual plans of care, providing services by sufficient number of each of the required types of personnel on a twenty-four-hour basis to provide nursing care to all residents in accordance with resident care plans;

k. failure to administer the Facility in a manner that enabled it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

l. failure to develop and implement written policies and procedures that prohibit mistreatment, **neglect**, and abuse of residents and misappropriation of the resident's property;

m. failure to ensure that the services provided or arranged by the Facility were provided by qualified persons in accordance with each resident's written plan of care;

n. failure to oversee and supervise all persons who practiced nursing and/or skilled healthcare in the Facility who failed to prevent development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death;

o. failure to formulate, adopt and enforce adequate rules, procedures and policies to ensure quality healthcare for residents by failing to: provide adequate and appropriate health care to prevent development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death, and provide complete and consistent documentation, provide appropriate treatment, services and adequate assessments following change in condition to prevent development and/or worsening of pressure ulcers, urinary tract infections, C. Diff, acute renal failure, falls, severe pain, and ultimately death;

p. failure to undertake and/or implement the instructions provided by physicians and notify the physicians of change in the condition of Horace Stover;

q. failure to refer Horace Stover to the necessary medical specialists in a timely manner who would have properly diagnosed and/or treated Horace Stover's condition due to failure to notify treating physicians and follow up on physicians instructions;

r. failure to provide Horace Stover with the necessary care and services to allow his to attain or maintain the highest practicable physical, mental and psychological well-being;

s. failure to ensure that the Facility was properly funded;

t. failure to implement a budget that would allow the Facility to provide adequate and appropriate healthcare to Horace Stover including adequate staff and supplies;

u. grossly understaffing the Facility;

v. failure to take appropriate steps to remedy continuing problems at the Facility that Defendants knew were occurring with Horace Stove's care, which included the need to increase the number of employees, hiring skilled and/or trained employees, adequately training the current employees, monitoring the conduct of the employees, and/or changing the current policies and procedures to improve resident care;

- w. failure to evaluate the quality of resident care and efficiency of services, identify strengths and weaknesses, set in place measures for improvements where necessary, and, evaluate progress and institute appropriate follow-up activities;
- x. failure to maintain open lines of communication with the governing body, department heads, Facility staff and its residents to ensure that resources were properly allocated and that resident care was maintained at a high level;
- y. failure to maintain compliance with governmental regulations;
- z. failure to implement personnel policies and procedures that define job responsibilities, accountability and the performance appraisal process and emphasize the importance of the health care team in the delivery of quality resident care;
- aa. failure to coordinate training programs to improve employee skills and to enhance employee performance;
- bb. failure to develop a budget with an objective of the delivery of quality care; and,
- cc. acting in a grossly negligent manner, with reckless indifference to the rights and safety of Horace Stover.

175. Upon information and belief, the corporate officers of the Defendants were made aware of the governmental/state survey results and placed on notice of the issues with resident care at their Facility.

176. Upon information and belief, the Defendants were aware that there were numerous problems at the Facility, and that they had been cited by the Pennsylvania Department of Health for failures at the Facility.

177. Upon information and belief, the Defendants were aware that they had been cited by governmental units regarding additional failures at the Facility on: 2/24/10 failed to identify timely, accurately assess, and provide interventions to prevent the development of pressure ulcers for one of two residents with pressure ulcer reviewed; failed to ensure that interventions were attempted prior to the administration of antianxiety medication; 5/17/10 failed to report allegations of abuse to the Department of Health for two out of five residents reviewed; 6/4/10 failed to notify the physician of a resident's change in condition in a timely manner; 10/21/10 failed to ambulation devices were maintained in a safe and functional manner; failed to assure that care plans were developed to meet the psychosocial needs of a resident; failed to follow aspiration precautions, failed to follow up on consult recommendations and failed to ensure accurate documentation to address the bowel function of residents; failed to implement preventative measures for the development of pressure ulcers; failed to ensure order signed by the physician; facility failed to maintain effective infection control techniques when providing incontinent care; 11/15/10 failed to accurately assess, timely identify and provide the necessary care and services to provide interventions and timely treatments to promote healing of multiple wounds resulting in actual harm; failed to accurately assess, timely identify and provide the necessary care and services to prevent the development of and/or to promote healing of pressure ulcers; 2/24/11 failed to position the call bell within reach of a resident; failed to ensure physician's order was followed; 8/1/11 failed to meet professional standards of quality, regarding administration of medications; failed to ensure that medications were administered in accordance with physician's orders; 9/9/11 failed to provide nursing care in a manner that promoted resident dignity; failed to obtain laboratory studies in a timely manner; failed to assure that tube feeding, medication, fluid restriction and wound vacuum care documentation was accurate and complete for four out of 24 residents reviewed; 9/26/11 failed to assess and report weight changes to the physician and dietitian; failed to maintain effective housekeeping and maintenance services in order to ensure a sanitary environment; 11/3/11 failed to meet professional standards of quality, regarding administration of medications; failed to ensure that prescribed medications were effectively, and timely administered; 8/23/12 failed to provide sufficient fluid intake to maintain proper hydration; 10/25/12 failed to ensure that physician orders were clarified to include parameters for pain medications and complete orders; failed to provide an accurate assessment for a resident; failed to ensure proper policies regarding medication, including documentation.

178. Upon information and belief, the corporate officers of the Defendants had been made aware in the past that the Facility had been cited for the failures mentioned in the preceding paragraph.

179. Defendants knew that the violations described in the paragraphs above were not isolated events and were, at times, described as repeat deficiencies, which placed them on notice of failures to provide proper care and treatment to residents, including Horace Stover.

180. As a direct and proximate result of the Defendants' acts and/or omissions, and their breach of their duty of care, negligence, carelessness and recklessness, Horace Stover suffered (a) severe permanent physical injuries resulting in severe pain, suffering, and disfigurement (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity, (c) loss of capacity for enjoyment of life, (d) expense of otherwise unnecessary hospitalizations, medical expenses and residency at the Facility (e) aggravation of his pre-existing medical conditions, and (f) death.

181. In causing the aforementioned injuries, Defendants knew, or should have known, that Horace Stover, would suffer such harm.

182. The conduct of Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health and well-being of Horace Stover.

183. The conduct of Defendants was such that an award of punitive damages is justified.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT SIX

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

Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services - Lancaster; HCR Manor Care, Inc.; HCR Healthcare, LLC; HCR Healthcare II, LLC; HCR Healthcare III, LLC; HCR Healthcare IV, LLC; ManorCare Health Services, Inc.; Manor Care Inc.

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

185. At all times pertinent hereto, there was in full force and effect **18 Pa.C.S.A. § 2713** “**Neglect** of Care Dependent Person,” which set forth penal consequences for **neglect** of a care-dependent person.

186. **18 Pa.C.S.A. § 2713** “**Neglect** of Care Dependent Person” expresses the fundamental public policy of the Commonwealth of Pennsylvania that **elders**, like children, are not to be abused or **neglected**, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such abuse or **neglect** causes injury, either physical or mental, then such conduct is actionable.

187. At all times pertinent hereto, Horace Stover was a care dependent resident of the Defendants' Facility, and thus fell within the class of persons 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” was intended to protect, thus entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” as the standard of care for measuring the Defendants' conduct.

188. Additionally, 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” is directed, at least in part, to obviate the specific kind of harm which Horace Stover sustained.

189. The Defendants, in accepting the responsibility for caring for Horace Stover as aforesaid, were negligent “per se” and violated 18 Pa.C.S.A. § 2713 “**Neglect** of Care Dependent Person” in that they:

- a. failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Horace Stover for whom they were responsible to provide care as specifically set forth in this Complaint;

190. As a direct result of the aforesaid negligence “per se” of the Defendants, Horace Stover was caused to sustain serious personal injuries and damages as aforesaid.

191. The conduct of the Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT SEVEN

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

**Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Manor Care of Lancaster PA, LLC d/
b/a ManorCare Health Services - Lancaster; HCR Manor Care, Inc.; HCR Healthcare, LLC; HCR Healthcare II,
LLC; HCR Healthcare III, LLC; HCR Healthcare IV, LLC; ManorCare Health Services, Inc.; Manor Care Inc.**

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

193. At all times pertinent hereto, there was in full force and effect 35 P.S. § 10225.101, et seq., “Pennsylvania Older Adults Protective Services Act,” which sets forth civil penalties, administrative penalties and other consequences for abuse of a care-dependent person.

194. 35 P.S. § 10225.102, expresses the policy of the Commonwealth of Pennsylvania that:

...older adults who lack the capacity to protect themselves and are at imminent risk of abuse, **neglect**, exploitation or abandonment shall have access to and be provided with services necessary to protect their health, safety and welfare. It is not the purpose of this act to place restrictions upon the personal liberty of incapacitated older adults, but this act should be liberally construed to assure the availability of protective services to all older adults in need of them. Such services shall safeguard the rights of incapacitated older adults while protecting them from abuse, **neglect**, exploitation and abandonment. It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of abuse, **neglect**.

exploitation and abandonment, and to establish a program of protective services for older adults in need of them.

195. At all times pertinent hereto, Horace Stover was an older person who was a resident of Defendants Facility who lacked the capacity to protect himself and thus fell within the class of persons [35 P.S. § 10225.101, et seq.](#) was intended to protect, thus entitling Plaintiff to adopt [35 P.S. § 10225.101, et seq.](#) as the standard of care for measuring the Defendants' conduct.

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

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

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

199. The conduct of Defendants, and each of them, as specifically set forth in this Complaint, was outrageous, inconsistent with and intolerable given the norms of modern society and as such, Plaintiff requests punitive damages in addition to all other damages as aforesaid.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT EIGHT

Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services - Lancaster; HCR Manor Care, Inc.; HCR Healthcare, LLC; HCR Healthcare II, LLC; HCR Healthcare III, LLC; HCR Healthcare IV, LLC; ManorCare Health Services, Inc.; Manor Care Inc.

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

201. Plaintiff brings this action on behalf of the decedent's estate under and by virtue of the Pennsylvania Judiciary Act, [42 Pa.C.S. 8302](#), known as the Survival Statute, to recover all damages legally appropriate thereunder.

202. The following persons are entitled to share under this cause of action in the estate of said Decedent: Nancy J. Stover (wife) and Kathleen J. Taft (daughter).

203. Plaintiff claims damages for the pain, suffering and inconvenience endured by Plaintiffs decedent, Horace Stover, up to and including the time of his death, which was caused by the Defendants' breach of duties, negligence, carelessness and recklessness.

204. Plaintiff claims damages for the fright and mental suffering attributable to the peril leading to the death of Plaintiffs decedent, Horace Stover, which was caused by the Defendants' breach of duties, negligence, carelessness and recklessness.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

COUNT NINE

Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased v. Manor Care of Lancaster PA, LLC d/b/a ManorCare Health Services - Lancaster; HCR Manor Care, Inc.; HCR Healthcare, LLC; HCR Healthcare II, LLC; HCR Healthcare III, LLC; HCR Healthcare IV, LLC; ManorCare Health Services, Inc.; Manor Care Inc.

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

206. As a result of the negligence, carelessness, and reckless conduct by the Defendants, their agents, servants, and/or employees, Plaintiff's decedent, Horace Stover, died on November 3, 2011.

207. Plaintiff's decedent, Horace Stover, left the following survivors: Nancy J. Stover (wife), Kathleen J. Taft (daughter), and Marjorie Nesbitt (daughter).

208. Nancy J. Stover was appointed Executrix of the Estate of Horace W. Stover deceased, on November 8, 2011, by the Register of Wills of Lancaster County.

209. Plaintiff's decedent, Horace Stover, did not bring any action during his lifetime, nor has any other action been commenced on behalf of the Deceased against the Defendants herein.

210. Plaintiff brings this action on behalf of the decedent's estate under and by virtue of the Pennsylvania Judiciary Act, [42 Pa.C.S. 8301](#), known as the Wrongful Death Statute, to recover all damages legally appropriate hereunder.

211. The following persons are entitled to share under this cause of action as survivors of the said Decedent: Nancy J. Stover (wife), Kathleen J. Taft (daughter), and Marjorie Nesbitt (daughter).

212. Plaintiff claims damages for the pecuniary loss suffered by the decedent's survivors by reason of the death of Horace Stover, deceased, as well as for the reimbursement of hospital, nursing, medical, and funeral expenses, and the expenses of administration necessitated by reason of Horace Stover's injuries which caused his death, and other expenses incurred in connection therewith.

213. As a result of the death of Horace Stover, the survivors, as aforesaid, have been deprived of the companionship, comfort, aid, assistance, society, tutelage and maintenance that they would have received from Horace Stover, for the remainder of his natural life.

WHEREFORE, Plaintiff, Nancy J. Stover, Executrix of the Estate of Horace W. Stover, deceased, respectfully requests that judgment be entered in her favor, and against the ManorCare Defendants, in an amount in excess of the compulsory arbitration limits and/or Fifty Thousand Dollars (\$50,000.00), whichever is greater, together with punitive damages, costs, and any other relief that this Honorable Court deems appropriate given the circumstances. A jury trial is demanded.

Date: **7/10/13**

Respectfully submitted,

WILKES & McHUGH, P.A.

By:

Erica C. Wilson, Esquire

Attorney for Plaintiff

Footnotes

- 1 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.
- 2 Plaintiff is not bringing any claim pursuant to Pa. St. [62 P.S. § 1407\(c\)](#), and nothing in this Complaint should be interpreted as an attempt to recover damages pursuant to that statute.

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