

2010 WL 5088949 (Ohio Com.Pl.) (Trial Pleading)

Court of Common Pleas of Ohio.

Civil Division

Montgomery County

Robert WARD, Individually and As Administrator of the Estate of Yulonda Ward,
Deceased and Robert B. Ward, Jr. and Heather Weghorst and Don Ward, Plaintiffs,

v.

LIBERTY RETIREMENT COMMUNITY OF WASHINGTON TOWNSHIP, INC., Individually and/
or Its Employees and/or Agents and Liberty Health Care Corporation, Individually and/or Its
Employees and/or Agents and John Does 1-6, Individually and As Employees and/or Agents of Liberty
Retirement Community of Washington Township, Inc. and/or Liberty Health Care Corporation and
Jane Does 1-6, Individually and As Employees and/or Agents of Liberty Retirement Community
of Washington Township, Inc. and/or Liberty Health Care Corporation and U.S. Department of
Health & Human Services and Ohio Department of Job & Family Services and Humana, Defendants.

No. 2010CV02816.

April 2, 2010.

**Complaint for Medical Negligence; Negligence Per Se; Wrongful Death with Loss of
Chance; Res IPSA Loquitur; Breach of Contract; Punitive Conduct; Jury Demand**

Dyer, Garofalo, Mann & Schultz, [J. Pierre Tismo](#), Esq. (0067924), Attorney for Plaintiffs, 131 N. Ludlow Street, Suite 1400,
Dayton, Ohio 45402, (937) 223-8888, Fax # (937) 824-8630, ptismo@dgmslaw.com.

Plaintiffs, complaining of Defendants herein, respectfully allege and assert to this Honorable Court the following:

JURISDICTION AND VENUE

1. Robert Ward is the Administrator of the Estate of Yulonda Ward, deceased, by appointment of the Probate Court of Montgomery County, Ohio, Case No. 2009 EST 02113. Yulonda Ward, deceased, is survived by her husband, Robert Ward, her sons, Robert B. Ward, Jr. and Don Ward, and her daughter, Heather Weghorst. As Administrator of the Estate, Robert Ward brings this action for the pain and suffering and wrongful death of Yulonda Ward who died on March 14, 2009 from chemical peritonitis with septic shock due to a dislodged gastrostomy tube (hereinafter referred to as “feeding tube”) that leaked food into the abdominal cavity.

2. Defendant, Liberty Retirement Community of Washington Township, Inc. (hereinafter referred to as “Liberty Retirement Community”), is an Ohio corporation duly authorized to do business and operate as a nursing home and skilled nursing, rehabilitative care facility with its principal place of business at 7300 McEwen Road, City of Dayton, County of Montgomery, Ohio 45459.

3. Defendant, Liberty Health Care Corporation (hereinafter referred to as “Liberty Health Care”), is an Ohio corporation that owns and operates retirement homes, including, but not limited to, Defendant, Liberty Retirement Community.

4. A license was issued to Defendant, Liberty Retirement Community, and/or Defendant, Liberty Health Care, to operate and manage said nursing facility.

5. At all times relevant, Defendant, Liberty Retirement Community, and/or Defendant, Liberty Health Care, held itself out to the public and Plaintiffs as a provider of medical services.
6. Upon information and belief, Defendant, Liberty Retirement Community, may be served by service of process upon its registered agent for service, Linda Black-Kurek, 7445 Liberty Woods Lane, Dayton, Ohio 45459.
7. Upon information and belief, Defendant, Liberty Health Care, may be served by service of process upon its registered agent for service, Linda Black-Kurek, 7445 Liberty Woods Lane, Dayton, Ohio 45459.
8. Defendants, John Does 1-6, Individually and as Employees and/or Agents of Defendant, Liberty Retirement Community, and/or Defendant, Liberty Health Care, (hereinafter referred to as “John Does (1-6)”), and as such, were acting within the course and scope of his employment with the aforesaid Defendant.
9. Defendants, Jane Does 1-6, Individually and as Employees and/or Agents of Defendant, Liberty Retirement Community, and/or Defendant, Liberty Health Care (hereinafter referred to as “Jane Does (1-6)”), and as such, were acting within the course and scope of her employment with the aforesaid Defendant.
10. Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), at all relevant times herein were responsible for the care, health, safety, and well-being of Yulonda Ward, deceased.
11. Pursuant to [Ohio R. Civ. P. 10\(D\)\(2\)](#), an Affidavit of Merit of medical negligence committed by Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), is attached hereto as Plaintiffs' Exhibit “1”.
12. Jurisdiction and venue are proper in this Honorable Court.

FACTS

13. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-12 as though fully rewritten herein.
14. Yulonda Ward, deceased, was admitted to Liberty Retirement Community on or about October 23, 2008 due to health related problems to receive proper medical care to recover and rehabilitate.
15. As such, Plaintiffs and/or Plaintiffs' family retained the services of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), to care for Yulonda Ward, deceased.
16. Plaintiffs reposed a special trust, confidence, and duty in Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), to adequately and properly care for Yulonda Ward, deceased.
17. While a resident at Liberty Retirement Community on or about February and March 2009, Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), negligently failed to check and monitor the feeding tube to ensure that it was not displaced, which resulted in significant injury and ultimately the wrongful death of Yulonda Ward, deceased.
18. The foregoing injuries and untimely death sustained by Yulonda Ward, deceased, would not have occurred if Yulonda Ward, deceased, had been properly cared for by Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6).

19. As alleged more specifically herein, due to the joint and several negligence and departures from the standard of care of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), Yulonda Ward, deceased, suffered significant injuries and ultimately died on March 14, 2009.

20. While under the care of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), Yulonda Ward, deceased, continuously suffered gross, extensive neglect, undue pain, mental distress, and her dignity was disregarded, as alleged more specifically herein.

FIRST CAUSE OF ACTION - NEGLIGENCE

21. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-20 as though fully rewritten herein.

22. At all relevant times herein, Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), were negligent and departed from the standard of care and were willful, wanton, reckless and careless in the treatment of Yulonda Ward, deceased, including but not limited to, the following particulars:

- a. In failing to properly care for Yulonda Ward, deceased;
- b. In failing to provide a safe environment for Yulonda Ward, deceased;
- c. In failing to maintain sufficient personnel to properly care for Yulonda Ward, deceased;
- d. In failing to properly and adequately supervise the staff assigned to care for and treat Yulonda Ward, deceased;
- e. In failing to properly and adequately train the staff assigned to care for and treat Yulonda Ward, deceased;
- f. In failing to hire, train and supervise their employees and/or agents;
- g. In failing to use sound judgment in providing care to Yulonda Ward, deceased;
- h. In failing to properly delegate nursing care to nursing personnel commensurate with their education, experience and training;
- i. In misrepresenting that Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), could properly care for Yulonda Ward, deceased;
- j. In failing to accommodate Yulonda Ward, deceased's individual needs and preferences; and
- k. In such other and further particulars as the evidence may show.

23. All of the above-reference acts and/or omissions and/or commissions are in violation of the common laws and statutes of the State and/or the obligations of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6).

24. Each of these acts and/or omissions and/or commissions singularly or in combination with others constitutes a breach of the duty of care of the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6) which proximately caused the severe injuries and untimely death of Yulonda Ward, deceased.

25. As a direct and proximate result of the individual and joint negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6):

- a. Yulonda Ward, deceased, was not properly treated for her medical condition;
- b. Yulonda Ward, deceased, experienced pain and suffering until her untimely death;
- c. Yulonda Ward, deceased, required hospital, medical care and treatment which would not have otherwise been necessary;
- d. Yulonda Ward, deceased, incurred medical expenses, including, but not limited to, funeral and burial expenses which would have otherwise not been incurred; and
- e. Yulonda Ward, deceased, suffered a tragic and untimely death depriving her of the ability to live and enjoy a normal life.

26. The aforesaid negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), was the direct and proximate cause of the injuries and damages to Plaintiffs.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

SECOND CAUSE OF ACTION - NEGLIGENCE PER SE

27. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-26 as though fully rewritten herein.

28. Each of the above reference acts and/or omissions and/or commissions of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), constituted negligence per se.

29. Such conduct was in violation of legislative statutes enacted for the protection of the **elderly**.

30. Specifically, Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), violated [42 USC § 1396r](#), Requirements for Nursing Facilities, including, but not limited to, the following particulars:

- a. [42 USC § 1396r\(b\)\(1\)\(A\)](#) - "A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident."
- b. [42 USC § 1396r\(b\)\(2\)](#) - "A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care..."
- c. [42 USC § 1396r\(b\)\(3\)\(A\)](#) - "A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity..."
- d. [42 USC § 1396r\(c\)\(1\)\(B\)\(i\)](#) - "Notice of Rights. A nursing facility must - (i) inform the resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter..."

e. [42 USC § 1396r\(c\)\(1\)\(B\)\(ii\)](#) - “Notice of Rights. A nursing facility must - (ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed...”

31. At all times relevant, Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), are also in violation of 42 CFR § 483, Subpart B, Requirements for Long Term Care Facilities, including, but not limited to, the following particulars:

a. [42 CFR § 483.1](#) - “Skilled nursing facilities participating in Medicare must meet certain specific requirements.”

b. [42 CFR § 483.10](#) - “Resident rights. The resident has a right to a dignified existence, self-determination, and communication...A facility must protect and promote the rights of each resident...”

c. [42 CFR § 483.10\(a\)\(1\)](#) - “*Exercise of rights.* (1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

d. [42 CFR § 483.10\(a\)\(2\)](#) - “*Exercise of rights.* (2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.”

e. [42 CFR § 483.10\(b\)\(1\)](#) - “*Notice of rights and services.* (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing.”

f. [42 CFR § 483.10\(b\)\(11\)\(i\)\(A\)\(B\)\(C\)](#) - “*Notification of changes.* (I) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is - (A) An accident involving the resident which results in injury and has the potential for requiring physicians intervention; (B) A significant change in the resident's physical, mental, or psychological status (i.e., deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications); (C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment).”

g. [42 CFR § 483.10\(f\)\(1\)](#) - “*Grievances.* A resident has the right to - (1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished.”

h. [42 CFR § 483.10\(g\)\(1\)](#) - “*Examination of survey results.* A resident has the right to - (1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan on correction in effect with respect to the facility. The facility must make the results available for examination in a place readily accessible to residents, and must post a notice of their availability.”

i. [42 CFR § 483.10\(g\)\(2\)](#) - “*Examination of survey results.* A resident has the right to - (2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.”

j. [42 CFR § 483.13\(c\)](#) - “*Staff treatment of residents.* The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.”

k. [42 CFR § 483.13\(c\)\(1\)\(ii\)\(A\)\(B\)](#) - “The facility must - (ii) Not employ individuals who have been - (A) Found guilty of abusing, neglecting, or mistreating residents by a court of law; or (B) Have had a finding entered into the State nurse aid registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property.”

- l. 42 CFR § 483.13(c)(1)(iii) - “The facility must - (iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aid or other facility staff to the State nurse aid registry or licensing authorities.”
- m. 42 CFR § 483.13(c)(2) - “The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).”
- n. 42 CFR § 483.13(c)(3) - “The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.”
- o. 42 CFR § 483.13(c)(4) - “The results of all investigations must be reported to the administrator or his designed representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.”
- p. 42 CFR § 483.15 - “Quality of life. A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.”
- q. 42 CFR § 483.15(a) - “*Dignity*. The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.”
- r. 42 CFR § 483.15(b)(1) - “*Self-determination and participation*. The resident has the right to - (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care.”
- s. 42 CFR § 483.15(b)(3) - “*Self-determination and participation*. The resident has the right to - (3) Make choices about aspects of his or her life in the facility that are significant to the resident.
- t. 42 CFR § 483.15(h)(1) - “*Environment*. The facility must provide - (1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible.”
- u. 42 CFR § 483.20(a) - “The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, (a) *Admission orders*. At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.”
- v. 42 CFR § 483.20(b)(1) - “*Comprehensive assessments* - (1) *Resident assessment instrument*. A facility must make a comprehensive assessment of a resident's needs, using the resident assessment instrument (RAI) specified by the State. The assessment must include...”
- w. 42 CFR § 483.20(c) - “*Quarterly review assessment*. A facility must assess a resident using the quarterly review instrument specified by the State and approved by CMS not less frequently than once every 3 months.”
- x. 42 CFR § 483.20(k)(1) - “*Comprehensive care plans*. (1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychological needs that are identified in the comprehensive assessment. The care plan must describe the following...”
- y. 42 CFR § 483.20(k)(3)(i) - “The services provided or arranged by the facility must - (i) Meet professional standards of quality.”

- z. [42 CFR § 483.20\(1\)](#) - “*Discharge summary*. When the facility anticipates discharge a resident must have a discharge summary that includes...”
- aa. [42 CFR § 483.25](#) - “Quality of care. Each resident must receive and the facility must provide 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.”
- bb. [42 CFR § 483.25\(h\)\(1\)\(2\)](#) - “*Accidents*. The facility must ensure that - (1) The resident environment remains as free of accident hazards as is possible; and (2) Each resident receives adequate supervision and assistance devices to prevent accidents.”
- cc. [42 CFR § 483.30](#) - “The facility must have sufficient nursing staff to provide nursing related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.”
- dd. [42 CFR § 483.30\(a\)\(1\)](#) - “*Sufficient staff*. (1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans.”
- ee. [42 CFR § 483.40](#) - “Physician Services. A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician.”
- ff. [42 CFR § 483.40\(b\)\(1\)\(2\)](#) - “*Physician visits*. The physician must - (1) Review the resident's total program of care, including medications and treatments, at each visit required by paragraph (c) of this section; (2) Write, date, and sign progress notes at each visit.”
- gg. [42 CFR § 483.40\(c\)\(1\)](#) - “*Frequency of physician visits*. (1) The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.
- hh. [42 CFR § 483.410\(b\)](#) - “*Standard: Compliance with Federal, State, and local laws*. The facility must be in compliance with all applicable provisions of Federal, State and local laws, regulations and codes pertaining to health, safety, and sanitation.”
- ii. [42 CFR § 483.75\(b\)](#) - “*Compliance with Federal, State, and local laws and professional standards*. The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.”
- jj. [42 CFR § 483.75\(e\)\(4\)\(i\)\(ii\)\(iii\)](#) - “*Competency*. A facility must not use any individual who has worked less than 4 months as a nurse aid in that facility unless the individual - (i) Is a full-time employee in a State-approved training and competency evaluation program; (ii) Has demonstrated competence through satisfactory participation in a State-approved nurse aid training and competency evaluation program or competency evaluation program; or (iii) Has been deemed or determined competent as provided in § 483.150 (a) and (b).”
- kk. [42 CFR § 483.75\(e\)\(5\)](#) - “*Registry verification*. Before allowing an individual to serve as a nurse aid, a facility must receive registry verification that the individual has met competency evaluation requirements unless...”
- ll. [42 CFR § 483.75\(f\)](#) - “*Proficiency of Nurse aides*. The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.”

mm. [42 CFR § 483.75\(g\)\(1\)\(2\)](#) - “*Staff qualifications.* (1) The facility must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements. (2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.”

nn. [42 CFR § 483.75\(I\)\(1\)](#) - “*Medical director.* (1) The facility must designate a physician to serve as medical doctor.”

oo. [42 CFR § 483.75\(I\)\(1\)\(i\)\(ii\)\(iii\)\(iv\)](#) - “*Clinical records.* (1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are - (i) Complete; (ii) Accurately documented; (iii) Readily accessible; and (iv) Systematically organized.”

32. At all times relevant, Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), were also in violation of the laws of this State, specifically, [O.R.C. § 3721.13](#), Residents' Rights, including, but not limited to, the following particulars:

a. [O.R.C. § 3721.13\(A\)](#) - “The rights of residents of a home shall include, but are not limited to, the following...”

b. [O.R.C. § 3721.13\(A\)\(2\)](#) - “The right to be free from physical, verbal, mental, and emotional abuse and to be treated at all times with courtesy, respect, and full recognition of dignity and individuality.”

c. [O.R.C. § 3721.13\(A\)\(3\)](#) - “Upon admission and thereafter, the right adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted. This care shall be provided without regard to considerations such as race, color, religion, national origin, age, or source of payment for care.”

d. [O.R.C. § 3721.13\(A\)\(4\)](#) - “The right to have all reasonable requests and inquiries responded to promptly.”

e. [O.R.C. § 3721.13\(A\)\(6\)](#) - “The right to obtain from the home, upon request, the name and any specialty of any physician or other person responsible for the resident's care or for the coordination of care.”

f. [O.R.C. § 3721.13\(A\)\(25\)](#) - “The right to be fully informed, prior to or at the time of admission and during the resident's stay, in writing, of the basic rate charged by the home, of services available in the home, and of any additional charges related to such services, including charges for services not covered under the medicare or medicaid program. The basic rate shall not be changed unless thirty days notice is given to the resident or, if the resident is unable to understand this information, to the resident's sponsor.”

g. [O.R.C. § 3721.13\(A\)\(26\)](#) - “The right of the resident and person paying for the care to examine and receive a bill at least monthly for the resident's care from the home that itemizes charges not included in the basic rates.”

h. [O.R.C. § 3721.13\(A\)\(27\)\(a\)\(i\)](#) - “The right to be free from **financial exploitation**; (i) A complete record of all funds, personal property, or possessions of a resident from any source whatsoever, that have been deposited for safekeeping with the home for use by the resident or the resident's sponsor.”

i. [O.R.C. § 3721.13\(A\)\(31\)](#) - “The right to voice grievances and recommend changes in policies and services to the home's staff, to employees of the department of health, or to other persons not associated with the operation of the home, of the resident's choice, free from restraint, interference, coercion, discrimination, or reprisal. This right includes access to a residents' rights advocate, and the right to be a member of, to be active in, and to associate with persons who are active in organizations of relatives and friends of nursing home residents and other organizations engaged in assisting residents.”

m. [O.R.C. § 3721.13](#)(A)(32) - “The right to have any significant change in the resident's health status reported to the resident's sponsor. As soon as such a change is known to the home's staff, the home shall make a reasonable effort to notify the sponsor within twelve hours.”

33. The harm to Yulonda Ward, deceased, while under the care of the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), were the type of harm which the above referenced statutes and codes are designed to prevent.

34. Consequently, the acts and/or omissions and/or commissions of the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), constituted negligence per se.

35. The owners, operators, managers, and staff of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), either knew or should have known about the departures of the standard of care and the injuries which were suffered by Yulonda Ward, deceased, while under the care of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6).

36. As a direct and proximate result of the individual and joint negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6):

- a. Yulonda Ward, deceased, was not properly treated for her medical condition;
- b. Yulonda Ward, deceased, experienced pain and suffering until her untimely death;
- c. Yulonda Ward, deceased, required hospital, medical care and treatment which would not have otherwise been necessary;
- d. Yulonda Ward, deceased, incurred medical expenses, including, but not limited to, funeral and burial expenses which would have otherwise not been incurred; and
- e. Yulonda Ward, deceased, suffered a tragic and untimely death depriving her of the ability to live and enjoy a normal life.

37. The aforesaid negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), was the direct and proximate cause of the injuries and damages to Plaintiffs.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

THIRD CAUSE OF ACTION - WRONGFUL DEATH WITH LOSS OF CHANCE

38. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-37 as though fully rewritten herein.

39. As a direct and proximate result of the individual and joint negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), Plaintiffs sustained injuries and damages as follows:

- a. Yulonda Ward, deceased's beneficiaries suffered a loss of support from the reasonably expected earning capacity;

- b. Yulonda Ward, deceased's beneficiaries suffered damages for a loss of services over her lifetime, including loss of companionship, love, affection, comforts, joys, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education.
- c. Yulonda Ward, deceased's beneficiaries have suffered mental anguish caused by her death;
- d. Yulonda Ward, deceased's heirs-at-law at the time of her death suffered loss of prospective inheritance;
- e. Yulonda Ward, deceased's beneficiaries incurred funeral expenses and burial expenses;
- f. Yulonda Ward, deceased, suffered an untimely death depriving her of the ability to live and enjoy a normal healthy life;
- g. Yulonda Ward, deceased's beneficiaries suffered damages for a loss of society over her lifetime including loss of companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, and education;
- h. Yulonda Ward, deceased, was deprived the chance to survive.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

FOURTH CAUSE OF ACTION - RES IPSA LOQUITUR

40. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-39 as though fully rewritten herein.

41. On or about February and March, 2009, and at all times mentioned in this complaint, the care of Yulonda Ward, deceased, was under the exclusive management and control of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6).

42. An injury of the nature sustained by Yulonda Ward, deceased, was not by her voluntary act and does not ordinarily occur in the absence of negligence on the part of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), and which injury is and was unusual and unexpected medical result which ordinarily does not occur in the absence of negligence.

43. As a direct and proximate result of the individual and joint negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6):

- a. Yulonda Ward, deceased, was not properly treated for her medical condition;
- b. Yulonda Ward, deceased, experienced pain and suffering until her untimely death;
- c. Yulonda Ward, deceased, required hospital, medical care and treatment which would not have otherwise been necessary;
- d. Yulonda Ward, deceased, incurred medical expenses, including, but not limited to, funeral and burial expenses which would have otherwise not been incurred; and
- e. Yulonda Ward, deceased, suffered a tragic and untimely death depriving her of the ability to live and enjoy a normal life.

44. The aforesaid negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), was the direct and proximate cause of the injuries and damages to Plaintiffs.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

FIFTH CAUSE OF ACTION - BREACH OF CONTRACT

45. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-44 as though fully rewritten herein.

46. Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), made the following assurances and/or guarantees in their contractual obligations to the Plaintiffs in that they were capable of providing the level of care necessary, including, but not limited to:

- a. In failing to properly care for Yulonda Ward, deceased;
- b. In failing to provide a safe environment for Yulonda Ward, deceased;
- c. In failing to maintain sufficient personnel to properly care for Yulonda Ward, deceased;
- d. In failing to properly and adequately supervise the staff assigned to care for and treat Yulonda Ward, deceased;
- e. In failing to properly and adequately train the staff assigned to care for and treat Yulonda Ward, deceased;
- f. In failing to hire, train and supervise their employees and/or agents;
- g. In failing to use sound judgment in providing care to Yulonda Ward, deceased;
- h. In failing to properly delegate nursing care to nursing personnel commensurate with their education, experience and training;
- i. In misrepresenting that Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), could properly care for Yulonda Ward, deceased;
- j. In failing to accommodate Yulonda Ward, deceased's individual needs and preferences; and
- k. In such other and further particulars as the evidence may show.

47. Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), had an affirmative duty to provide the level of care required for Yulonda Ward, deceased, and failed to intervene when said Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), were obligated to prevent the obvious deterioration of Yulonda Ward, deceased.

48. Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), knew of the falsity of their representations.

49. As a direct and proximate result of Defendants', Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), breach of contractual obligations, Yulonda Ward, deceased, underwent great shock and suffering, great physical pain and anguish, has been forced to undergo additional and unwanted medical treatment for her injuries from the above-referenced acts and misrepresentations for which Plaintiffs seek damages.

50. Plaintiffs seek recovery for the conscious suffering, emotional pain and torment that Yulonda Ward, deceased, incurred as a result of the incidents in question.

51. Plaintiffs also seek recovery for the reasonable and necessary charges for medical care and treatment, including, but not limited to, doctors' fees, hospital services, supplies, medicine, and out-of-pocket expenses, as a result of the above-referenced acts.

52. Plaintiffs seek damages and such other and further relief as this Honorable Court and the jury deems just and proper.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

SIXTH CAUSE OF ACTION - LOSS OF CONSORTIUM

53. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-52 as though fully rewritten herein.

54. Plaintiff, Robert Ward, and Yulonda Ward, deceased, were husband and wife respectively.

55. Plaintiff, Robert Ward, has lost the services, companionship, love, affection, comforts, consortium and joys of his deceased spouse, Yulonda Ward.

56. Plaintiff, Robert B. Ward, Jr., is the natural son of Yulonda Ward, deceased, born to her on XX/XX/1969.

57. Plaintiff, Heather Weghorst, is the natural daughter of Yulonda Ward, deceased, born to her on XX/XX/1971.

58. Plaintiff, Don Ward, is the natural son of Yulonda Ward, deceased, born to her on XX/XX/1974.

59. Pursuant to [*Rolf v. Tri State Motor Transit Co. \(2001\)*](#), 91 Ohio St.3d 380, 2001-Ohio-44, adult emancipated children may recover for loss of parental consortium.

60. As a proximate result of the occurrence as set forth above, Plaintiffs, Robert B. Ward, Jr., Heather Weghorst, and Don Ward, have lost the services, companionship, love, affection, comforts, consortium and joys of their mother, Plaintiff, Yulonda Ward, deceased.

61. The aforesaid negligence of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), were the direct and proximate cause of the injuries and damages to Plaintiffs, Robert Ward, Robert B. Ward, Jr., Heather Weghorst, and Don Ward.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane

Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

SEVENTH CAUSE OF ACTION - PUNITIVE CONDUCT

62. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-61 as though fully rewritten herein.

63. As a direct and proximate result of the above-mentioned acts of negligence, gross negligence, willfulness, and wantonness, Yulonda Ward, deceased, underwent great shock and suffering, great physical pain and anguish, was forced to undergo additional and unwanted hospitalization and ultimately her untimely death, related to the above referenced acts, for which Plaintiffs seek actual and punitive damages in an amount sufficient to deter such unconscionable and irresponsible conduct in the future.

64. The above negligent acts were done with conscious, malice and willful indifference to the safety and well-being of Yulonda Ward, deceased, and as such, amount to gross negligence for which Plaintiffs seek recovery of actual and punitive damages in an amount sufficient to deter such unconscionable and irresponsible conduct in the future.

65. As a direct and proximate cause of the above negligent acts, Yulonda Ward, deceased, sustained significant injuries.

66. Plaintiffs seek recovery for the, conscious suffering, emotional pain and torment of Yulonda Ward, deceased, incurred as a result of the incidents in question.

67. Plaintiffs also seek recovery for the reasonable and necessary charges for medical care and treatment, including, but not limited to, doctors' fees, hospital services, supplies, medicine, and out-of-pockets, as a result of the above referenced acts.

68. The owners, operators, managers and staff Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), either knew or should have known of the continuing danger that Yulonda Ward, deceased, was placed in and the incidents of abuse and neglect which were suffered in the care of Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6).

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al, demands judgment against the Defendants, Liberty Retirement Community, Liberty Health Care, John Does (1-6) and Jane Does (1-6), jointly and severally, in an amount in excess of \$25,000.00, and punitive damages in an amount in excess of \$25,000.00, plus interest, the cost of this action, attorney fees, and any other relief this Court deems necessary and just.

EIGHTH CAUSE OF ACTION - SUBROGATION

69. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-68 as though fully rewritten herein.

70. Defendant, U.S. Department of Health and Human Services (hereinafter "Medicare"), paid medical expenses on behalf of Yulonda Ward, deceased, in connection with the injuries as set forth in the above causes of action.

71. As a result, Defendant, Medicare, has a vested interest in the within action as a result of its claim of subrogation.

72. Defendant, Medicare, is being joined in this action to defend and protect its claim of subrogation.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al., demands that Defendant, U.S. Department of Health and Human Services, appear and represent its interest in the within action or be forever barred from pursuing its subrogation claim.

NINTH CAUSE OF ACTION - SUBROGATION

73. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-72 as though fully rewritten herein.

74. Defendant, Ohio Department of Job & Family Services, (hereinafter "Medicaid"), paid medical expenses on behalf of Yulonda Ward, deceased, in connection with the injuries as set forth in the above causes of action.

75. As a result, Defendant, Medicaid, has a vested interest in the within action as a result of its claim of subrogation.

76. Defendant, Medicaid, is being joined in this action to defend and protect its claim of subrogation.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al., demands that Defendant, Ohio Department of Job & Family Services, appear and represent its interest in the within action or be forever barred from pursuing its subrogation claim.

TENTH CAUSE OF ACTION - SUBROGATION

77. Plaintiffs incorporate herein by reference thereto each and every allegation contained in paragraphs 1-76 as though fully rewritten herein.

78. Defendant, Humana, paid medical expenses on behalf of Yulonda Ward, deceased, in connection with the injuries as set forth in the above causes of action.

79. As a result, Defendant, Humana, has a vested interest in the within action as a result of its claim of subrogation.

80. Defendant, Humana, is being joined in this action to defend and protect its claim of subrogation.

WHEREFORE, Plaintiff, Robert Ward, Individually and as Administrator of the Estate of Yulonda Ward, deceased, et. al., demands that Defendant, Humana, appear and represent its interest in the within action or be forever barred from pursuing its subrogation claim.

JURY DEMAND

Now come Plaintiffs, by and through counsel, and hereby demand a trial by jury on all issues of this matter.

Respectfully submitted,

DYER, GAROFALO, MANN & SCHULTZ

/s/ J. Pierre Tismo, Esq.

J. Pierre Tismo, Esq. (0067924)

Attorney for Plaintiffs

131 N. Ludlow Street, Suite 1400

Dayton, Ohio 45402

(937)223-8888

Fax # (937) 824-8630

ptismo@dgmslaw.com

Appendix not available.

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.