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Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

Terry Rowles, as Executor of the Estate of Wanida J. Johnson deceased, Plaintiff, v.
Manor Care of Chambersburg, PA LLC d/b/a ManorCare Health Services – Chambersburg, et al., Defendants.
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 2018-2952

HOLDING: Defendant's *Motion for Summary Judgment* on the matter of corporate liability is GRANTED in part and DENIED in part. Defendant's *Partial Motion for Summary Judgment* on the matter of punitive damages is DENIED.

HEADNOTES

Judgment – Damages, On Motion or Summary Proceeding

1. Partial summary judgment may be granted on the issue of punitive damages only. Pa. R. Civ. P. 1035.2(2). *See, e.g., Hall v. Episcopal Long Term Care*, 2012 Pa. Super. LEXIS 2524, 2012 PA Super 205; *Merced v. Gemstar Group, Inc*., 2015 U.S. Dist. LEXIS 31659 (E.D. PA. 2015).

Health – Malpractice, Negligence, or Breach of Duty; Direct Negligence and Vicarious Liability

2. Liability for negligent injury is direct when the plaintiff seeks to hold the defendant responsible for harm the defendant caused by the breach of a duty owing directly to the plaintiff. By comparison, vicarious liability is a policy-based allocation of risk. Vicarious liability occurs when, due to some relationship between the parties (and very often in an employment or agency context), the negligence of one party is to be charged against the other. *Scampone v. Grane Healthcare Co.*, 618 Pa. 363, 388-89, 57 A.3d 582, 597 (Pa. 2012).

3. A corporation can be held liable under both direct and vicarious liability, depending on whether the corporation owed the injured party a duty directly, or whether they are liable because of the breach of duty by one of their agents or employees. *See Scampone v. Grane Healthcare Co.*, 618 Pa. 363, 389, 57 A.3d 582, 597-98 (Pa. 2012).

Health – Rights, Duties, and Liabilities of Nursing Homes

4. A nursing home is analogous to a hospital in the level of its involvement in a patient's overall health care and can be held directly liable to its patients. *Scampone v. Grane Healthcare Co.*, 618 Pa. 363, 384, 57 A.3d 582 (Pa. 2012).

Charities – Rights, Duties, and Liabilities of Charitable Societies and Trustees; Liability for Torts

5. A charitable hospital functioning as a business institution must exercise a proper degree of care for its patients. *Flagiello v. Pennsylvania Hospital*, 417 Pa. 486, 494-95, 208 A.2d 193, 197 (1965).

Health – Malpractice, Negligence, or Breach of Duty; Particular Procedures; Hospitals in General

6. Under the doctrine of corporate negligence, a nondelegable duty is created by which a hospital owes a duty directly to the patient, and, thus, an injured party need not rely on and establish the negligence of third party. *Thompson v. Nason Hospital,* 527 Pa. 330, 339, 591 A.2d 703, 706-07 (Pa. 1991).

7. A hospital is liable under the doctrine of corporate negligence if it fails to uphold the proper standard of care owed to a patient, which is to ensure the patient's safety and well-being while at the hospital. *Welsh v. Bulger,* 548 Pa. 504, 512 (Pa. 1997).

8. Under the doctrine of corporate negligence, a hospital's duties include reasonable care and maintenance of safe and adequate facilities and equipment, selecting and retaining only competent physicians, overseeing all persons who practice medicine within hospital walls as to patient care, and formulating, adopting and enforcing adequate rules and policies to ensure quality care for patients. *Thompson v. Nason Hospital,* 527 Pa. 330, 336-39, 591 A.2d 703, 707 (Pa. 1991); *Welsh v. Bulger,* 548 Pa. 504, 512-13 (Pa. 1997).

9. In order for a hospital to be charged with negligence under the doctrine of corporate liability, the hospital must have actual or constructive knowledge of the defect or procedures which created harm and the hospital's negligence must be a substantial factor in bringing about harm to the injured party. *Thompson v. Nason Hospital,* 527 Pa. 330, 341-42, 591 A.2d 703, 708 (Pa. 1991); *Welsh v. Bulger,* 548 Pa. 504, 513 (Pa. 1997).

10. A cause of action against a hospital for corporate negligence arises from policies, actions, or inaction of the institution itself rather than specific acts of individual hospital employees; thus, under the corporate negligence theory, a corporation is held directly liable, as opposed to vicariously liable, for its own negligent acts. *Welsh v. Bulger,* 548 Pa. 504, 513 (Pa. 1997).

Health – Malpractice, Negligence, or Breach of Duty; Necessity of Expert Testimony, Standard of practice and departure therefrom

11. Under the corporate negligence doctrine, unless a hospital's negligence is obvious, the plaintiff must produce expert testimony to establish that the hospital deviated from the accepted standard of care and that the deviation was a substantial factor in causing harm; however, experts are not required to use "magic words," and the court instead looks to the substance of their testimony. *Welsh v. Bulger,* 548 Pa. 504, 513-15 (Pa. 1997).

12. In a traditional medical malpractice action, if the defendant's negligence is not obvious, the plaintiff must present expert testimony to establish to a reasonable degree of medical certainty that the defendant's acts deviated from the accepted medical standards, and that such deviation was the proximate cause of harm suffered. *See Welsh v. Bulger*, 548 Pa. 504, 698 A.2d 581 (1997); *Mitzelfelt v. Kamrin*, 526 Pa. 54, 584 A.2d 888 (1990); *Brannan v. Lankenau Hospital*, 490 Pa. 588, 417 A.2d 196 (1980).

Negligence – Necessity and Existence of Duty, Balancing and weighing of factors

13. A determination of whether a duty exists in a particular case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution. *Althaus v. Cohen*, 562 Pa. 547, 553, 756 A.2d 1166, 1169 (Pa. 2000).

Discovery – Objections and Protective Orders

14. Just as the plaintiff may not use discovery as a fishing expedition, the defendant may not assert boilerplate objections to valid interrogatories and document requests seeking information relevant to the underlying action." *Reusswig v. Erie Ins.*, 49 Pa. D. & C.4th 338, 351 (Monroe Cty. 2000).

15. Discovery is generally allowed with liberality in civil litigation, any limitations or restrictions upon discovery are narrowly construed, and all doubts regarding the discoverability of information should be resolved in favor of permitting discovery. *Schwab v. Milks*, 8 Pa. D. & C.4th 557, 558 (Lacka. Cty. 1990); *Horwath v. Brownmiller*, 51 Pa. D. & C.4th 33, 39 (Monroe Cty. 2001); *Fitt v. General Motors Corp.*, 13 Pa. D. & C.4th 336, 338 (Lacka. Cty. 1992).

16. The party objecting to the production of discovery generally bears the burden of establishing that the information or document sought is not discoverable and that the objections should be sustained. *Reusswig v. Erie Ins.*, 49 Pa. D. & C.4th 338, 341 (Monroe Cty. 2000); *McAndrew v. Donegal Mut. Ins. Co.*, 56 Pa. D. & C.4th 1, 7-8 (Lacka. Cty. 2002).

Discovery – Discretion of court, Objections and Protective Orders, Sanctions

17. In imposing specific sanctions for failure to comply with discovery, a trial court is required to strike a balance between the procedural need to move the case to prompt disposition and the substantive rights of the parties. Furthermore, a discovery sanction must be proportionate to the sanctioned party's failure to comply with the discovery request. *Roccograndi v. Temple Univ. Health Sys.,* 55 Pa. D. & C.4th 136, 148 (Bucks Cty. 2001); *see also Poulos v. PennDOT*, 133 Pa. Commw. 322, 325, 575 A.2d 967, 969 (1990).

Damages – Grounds and Subjects of Compensatory Damages

18. It is for the court to determine in the first instance whether conduct may be reasonably regarded as so extreme as to permit recovery. *Lazor v. Milne*, 499 A.2d 369, 370 (Pa. Super. 1985).

Damages – Exemplary Damages, Grounds for Exemplary Damages

19. Punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct. *J.J. DeLuca Co., Inc. v. Toll Naval Associates*, 56 A.3d 402, 415-16 (Pa. Super. 2012); *see also Hutchison ex rel. Hutchison v. Luddy*, 896 A.2d 1260, 1266 (Pa. Super. 2006).

20. In Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that: (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed, and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk. *Hutchison ex rel. Hutchison v. Luddy*, 896 A.2d 1260, 1266 (Pa. Super. 2006).

Health – Malpractice, Negligence, or Breach of Duty; Actions and Proceedings; Questions of Law or Fact and Directed Verdicts

21. The issue of whether a nursing home acted in an outrageous fashion in reckless disregard to the rights of others and created an unreasonable risk of physical harm to nursing home residents was for the jury in a nursing home negligence action brought by the estate of a deceased nursing home resident; there was evidence that the nursing home was chronically understaffed and complaints from the staff went unheeded, there was evidence that nursing

home deliberately increased staff during times of state inspections, there was evidence that resident's cries of pain were disregarded, there was evidence that nursing home falsified care logs, and there was evidence that there were entire months during which the resident was not given a bath. *See Hall v. Episcopal Long Term Care,* 54 A.3d 381 (Pa. Super. 2012).

Appearances:
Ryan J. Duty, Esquire *for Plaintiff*
Eugene A. Giotto, Esquire *for Defendants*
Matthew F. Smith, Esquire *for Defendants*
Maura L. Winters, Esquire *for Defendants*

OPINION

Before Sponseller, J.

I. OVERVIEW

This opinion addresses two *Motions for Summary Judgment* filed by Defendants. The first is titled *Motion for Partial Summary Judgment as to Claims for Corporate Negligence and Vicarious Liability Against Corporate Defendants* (hereafter "*Corporate Motion*"), and the second is titled *Motion for Partial Summary Judgment as to Claims for Punitive Damages* (hereafter "*Damages Motion*"). Having reviewed the record, relevant law, and having heard oral argument in this matter, the Corporate Motion shall be **GRANTED** with respect to ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC and HCR ManorCare, Inc. and **DENIED** with respect to all other Defendants. Defendant's Damages Motion shall be **DENIED.**

II. FACTUAL AND PROCEDURAL BACKGROUND

The instant matter arose on July, 13, 2018, when Plaintiff Terry Rowles ("Mrs. Rowles"), as executrix of the Estate of Wanida J. Johnson ("the Estate"), filed suit against thirteen defendants for a variety of claims of abuse and neglect.[1] Wanida J. Johnson ("Mrs. Johnson") had been a resident at a skilled nursing facility known publicly as ManorCare Health Services – Chambersburg (hereafter "the Facility"), making Manor Care of Chambersburg, PA LLC Plaintiff's lead defendant. The remaining twelve defendants are "corporate defendants," none of which have the same kind of obvious connection to facts of the case, but each of whom Plaintiff claims are liable for Mrs. Johnson's injuries.

Mrs. Johnson was a resident at the Facility from August 10, 2016 until November 15, 2016, and died on December 24, 2016 at the age of

1 Originally, two additional defendants were named in their individual capacities, but have since been dismissed from this lawsuit and will not be discussed herein.

eighty-four (84). The Estate makes a variety of allegations including that, while a resident of the Facility, Mrs. Johnson was deprived of "adequate care, treatment, food, water, and medicine," and that Defendants had caused her to suffer numerous illnesses and injuries.[2]

Plaintiff has submitted two expert reports in support of her claims, but Plaintiff specifically directed the Court to an expert report by Rosalind Wright, a registered nurse, consultant, and expert in gerontology.[3] This report (hereafter "Wright Report") discusses Mrs. Johnson's admission and stay at the Facility in great detail, but for the sake of brevity, the Court will address Plaintiff's complaints in two categories: the abuse allegations, and the neglect allegations.

A. The Abuse Allegations

Plaintiff's abuse allegations stem from a single incident, allegedly occurring on November 15, 2016. On that day, Mrs. Johnson complained of pain in her left elbow, claiming she had bumped it on a tray in the dining room.[4] Nursing notes indicate that her elbow was visibly injured, and a subsequent X-ray performed at the Facility indicated a displaced fracture to the left humerus.[5] Mrs. Johnson was transported to the emergency room at Chambersburg Hospital via ambulance.[6] Mrs. Rowles, Mrs. Johnson's daughter, visited Mrs. Johnson in the emergency room, where an emergency room doctor informed her that "this wasn't an accident" and that they were initiating an abuse investigation.[7] Mrs. Rowles also indicated that she had been informed that "the nurse broke [Mrs. Johnson's] arm while dressing her," and that the cause of the broken elbow was "excessive force."[8]

Both the Facility and the Area Agency on Aging investigated the incident.[9] According to the Wright report, at least one of the investigations

2 Complaint ¶ 76.

3 This expert report will be discussed in greater detail below. However, the Court notes that, in order to prove their claims at trial, Plaintiff was required to submit an expert report detailing how the Defendants deviated from the appropriate standard of care. *See Welsh v. Bulger*, 548 Pa. 504, 698 A.2d 581 (1997). Therefore, the findings of this expert are of paramount importance. Furthermore, as this Court must examine this motion in the light most favorable to Plaintiff as the non-moving party, the averments and findings documented in the Wright report will be taken as fact.

4 Wright Report at 12.

5 *Id.*

6 *Id.*

7 *Id.* at 15.

8 *Id.* at 15.

9 Neither of these investigation reports were provided to the Court. However, the Wright Report indicates that documentation from the investigations was reviewed in preparing the report. *See* Wright Report at 2.

revealed evidence of abuse.[10] Injuries like the one suffered by Mrs. Johnson were typically the result of falls or by flexion beyond ninety (90) degrees during care or transfers.[11] The Facility had not documented any falls, and Mrs. Johnson would not have been capable of getting up on her own.[12] Furthermore, Tammy Koser ("Ms. Koser"), a Certified Nursing Assistant at the Facility who had cared for Mrs. Johnson on the morning of the incident, stated that Mrs. Johnson had complained of pain in her arm while she was being dressed, but had not complained of pain when checked by a nurse.[13] Neither staff member documented this complaint.[14] Because she had been the nurse on duty the morning of the injury, Ms. Koser was placed on suspension pending further investigation and review.[15] One of the investigations was substantiated for physical abuse and caregiver neglect.[16]

Ms. Koser had been suspended several months earlier for an incident in which she had slammed silverware and called a resident a liar.[17] She had also been previously disciplined for the rough handling of another patient, who requested not to have Ms. Koser as a caregiver for fear that she would again be handled roughly.[18] In her deposition, Ms. Koser indicated that on the morning of the incident, Mrs. Johnson had been "fussier" than usual, but that Ms. Koser did not leave and return to try and dress her again later.[19] This was a deviation from Mrs. Johnson's care plan, which indicated that if Mrs. Johnson resisted care, it was appropriate for staff to "leave (if safe to do so) and return later."[20]

B. The Neglect Allegations

The second set of allegations against Defendants relates to Mrs. Johnson's health during her stay at the Facility. The neglect allegations are related to the worsening of a pressure sore from which Mrs. Johnson

10 The Wright Report does not clearly indicate which of the two investigations is being discussed on pages 15-16.

11 Wright Report at 16.

12 *Id.*

13 *Id.*

14 *Id.*

15 *Id.*

16 *Id.* at 18; *see* n. 10, *supra.*

17 *Id.* at 16

18 *Id.*

19 *Id.*

20 *Id.* at 12.

suffered when she was admitted to the facility, and to unexplained weight loss allegedly caused by malnutrition.

i. The Pressure Sore

A pressure sore[21] is a wound that can develop as a result of compression of soft tissue between two firm surfaces.[22] The Code of Federal Regulations dictate that the standard of care regarding pressure ulcers requires the facility to ensure that:

> (i) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and
>
> (ii) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.
>
> 42 CFR § 483.25(b)(1).

To meet this standard, a nursing facility must assess patients for their risk of developing pressure ulcers on a regular basis in order to initiate appropriate interventions.[23] If a patient is considered to be at risk for pressure ulcers, then the standard of care requires that appropriate preventative measures be taken to minimize the risk, including:

> Turning and repositioning the resident every two hours, assisting with toileting and/or providing incontinence care every two hours and as needed, using a pressure relieving mattress to decrease pressure on bony prominences, application of heel protectors, promoting adequate nutritional intake, providing nutritional supplements as orders, ensuring adequate hydration, and using proper lifting and transfer techniques to avoid trauma due to shearing or friction.

Wright Report at 20.

Upon her admission into the Facility on August 16, 2016, Mrs. Johnson was assessed for her relative risk of developing pressure sores, and

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21 The Court notes that the terms "pressure sore" and "pressure ulcer" are used interchangeably.

22 Wright Report at 19.

23 *Id.* at 20.

it was determined that she was at risk.[24] Mrs. Johnson was documented to have a Stage I pressure sore.[25] Twenty (20) days later, on August 30, 2016, it was noted that Mrs. Johnson had an excoriation[26] at her intergluteal cleft[27] which became progressively worse over the month of September.[28] The Facility did not document the injury as being pressure-related; rather, the Facility documented the injury as being related to moisture caused by incontinence.[29] Despite repeated documentation by Facility staff, including documentation which averred that Mrs. Johnson was receiving treatment for the injury and that preventative measures were in place to prevent additional pressure ulcers, Mrs. Johnson's injury continued to worsen.[30] When Mrs. Johnson was admitted to Chambersburg Hospital on November 15, 2016, it was determined that she had a Stage II pressure ulcer on her left buttock.[31] Furthermore, on September 30, 2016, the Facility's annual compliance survey revealed that the Facility had failed to provide pressure-relieving devices, though the report does not specify whether this failure was related to specifically to Mrs. Johnson or to other patients at the Facility.[32]

Plaintiff's expert concludes that the Facility staff's failure to recognize Mrs. Johnson's injury as a pressure sore and failure to implement measures to prevent it from worsening constituted reckless behavior. Plaintiff's expert states that "it is alarming" that the nursing staff documented throughout her stay that she did not have pressure ulcers."[33]

ii. The Weight Loss

According to the Wright Report, Mrs. Johnson lost 7.4 pounds after just under three months at the Facility.[34] Despite documentation indicating

24 *Id.* at 21.

25 *Id.* at 26. *See also Id.* at 20-21, detailing the development and stage classification of pressure sores. For the sake of brevity, the Court notes that there are four stages of pressure sore development, with Stage I being the least severe and Stage IV being the most severe.

26 Excoriation is defined by Merriam-Webster as "1. the act of abrading or wearing off the skin" and "2: a raw irritated lesion."

27 The intergluteal cleft is the groove between the buttocks.

28 Wright Report at 24-25.

29 *Id.* at 24.

30 *Id.* at 25.

31 *Id.*

32 *Id.* at 25-26.

33 *Id.* at 26.

34 *Id.* at 27.

that her weight was trending downward, Mrs. Johnson's care plan was not updated to address her weight loss while she was at the Facility. Plaintiff's expert concludes that the Facility failed to ensure that she received adequate nutrition, which may have contributed both to her pressure sore and her weight loss.[35] Further, the expert concludes that the Facility's failure to update Mrs. Johnson's care plan despite her weight loss also increased her risk of injury. Finally, Plaintiff's expert states that such failures are often the result of a lack of staffing.[36]

III. PROCEDURAL HISTORY

On February 16, 2021, Defendants together filed their *Motions for Summary Judgment.* On March 31, 2021, the Estate filed two briefs in opposition to the two *Motions*. On April 15, 2021, the parties appeared before this Court for oral argument on both *Motions*. Having reviewed and analyzed both *Motions*, Plaintiffs' responses, and having heard oral argument, this matter is now ripe for decision.

IV. QUESTIONS BEFORE THE COURT

In their *Corporate Motion*, the Court is presented with the following question:

1. Were the twelve "corporate" defendants properly named as Defendants under the theory of either corporate or vicarious liability?

In their *Damages Motion*, the Court is presented with the following questions:

2. Can the Defendant's procedurally file a *Motion for Summary Judgment* as to punitive damages, only?

3. Could a jury reasonably find that the Defendants in this case engaged in "extreme and outrageous conduct" such that punitive damages may be awarded?

V. SUMMARY JUDGMENT STANDARDS

A. Legality of Requesting Partial Summary Judgment for Punitive Damages

At the outset, the Plaintiff argues that Defendant's motion for partial summary judgment is procedurally improper. We disagree. Pennsylvania

35 *Id.* at 28

36 *Id.*

Rule of Civil Procedure 1035.2(2) plainly establishes that partial summary judgment may be rendered "on one or more issues of liability, defense or **damages**." *Emphasis added.* Further, the Defendants in this case were not the first defendants ever to move for partial summary judgment as to punitive damages, and doing so has been held procedurally proper in numerous contexts across a variety of different courts. *See e.g. Hall v. Episcopal Long Term Care*, 2012 Pa. Super. LEXIS 2524, 2012 PA Super 205; *Merced v. Gemstar Group, Inc*., 2015 U.S. Dist. LEXIS 31659 (E.D. PA. 2015). Therefore, the Court finds that Defendant's motion for partial summary judgment is procedurally proper and ripe for examination.

B. Standard For Summary Judgment In Pennsylvania

Before it can properly analyze Defendant's motions, the Court must establish the narrow lens presented by the standard for summary judgment. In Pennsylvania, the standard for summary judgment is statutory in nature and is codified at Pa.R.C.P. 1035.2, which provides:

> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law:
>
> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
>
> (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

See Pa.R.C.P. 1035.2. We are guided by the Pennsylvania Superior Court's application of Pa.R.C.P. 1035.2 in *Pass v. Palmiero Auto. of Butler, Inc., infra*, which provides:

> Where the nonmoving party bears the burden of proof on an issue, he may not merely rely on his pleadings or answers in order to survive summary judgment. Failure of a non-moving party to adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof establishes the entitlement of the moving party to judgment as a matter of law. Lastly, we will review the record in the light most favorable to the nonmoving

party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

See Pass v. Palmiero Auto. of Butler, Inc., 229 A.3d 1, 5 (Pa. Super. 2020).

Reading Rule 1035.2 and *Pass* together, the Court finds that summary judgment is only appropriate where the non-moving party rests merely on their initial pleadings, providing no evidence of a material issue that can be submitted to the fact finder at trial. The record itself must be viewed in the light most favorable to the nonmoving party. If there remains a genuine issue of material fact such that reasonable minds could differ, then summary judgment must be denied. With the standard for summary judgment now clearly established, we turn to the issues presented in the instant matter.

VI. THE CORPORATE LIABILITY MOTION

A. Legal Standards

i. Corporate Liability in the Hospital Context

To prove negligence, a plaintiff may proceed against a defendant on two theories: direct liability and vicarious liability. *Scampone v. Grane Healthcare Co.*, 618 Pa. 363, 388, 57 A.3d 582 (Pa. 2012). "Liability for negligent injury is direct when the plaintiff seeks to hold the defendant responsible for harm the defendant caused by the breach of a duty owing directly to the plaintiff. By comparison, vicarious liability is a policy-based allocation of risk." *Id.* Vicarious liability occurs when, due to some relationship between the parties (and very often in an employment or agency context), the negligence of one party is to be charged against the other." *See Id.* at 388-389. In *Scampone*, the Pennsylvania Supreme court explained the conflict between the two theories in the corporate context:

> Where a corporation is concerned, the ready distinction between direct and vicarious liability is somewhat obscured because we accept the general premise that the corporation acts through its officers, employees, and other agents. The corporation, as principal, assumes the risk of individual agents' negligence under the theory of vicarious liability. In this scenario, the corporation's liability is derivative of the agents' breach of their duties of care to the plaintiff. But, this Court has also recognized that a corporation may also owe duties of care directly to a plaintiff, separate from those of its individual agents, such as duties to maintain safe facilities, and to hire and oversee competent staff.

Scampone at 389 (internal citations omitted).

This distinction allows a corporation to be held liable under both direct and vicarious liability, depending on whether the corporation owed the injured party a duty directly, or whether they are liable because of the breach of duty by one of their agents or employees.

The theory of liability regarding hospitals and other healthcare providers in negligence cases has been treated differently than ordinary liability since the 18th century, and hospitals were shielded from suit by their patients entirely until the 1960s. *Thompson v. Nason Hospital.,* 527 Pa. 330, 336-339, 591 A.2d [703], 706-707 (Pa. 1991). The reason for this distinction had been because hospitals had been presumptively recognized as charitable organizations and thus public policy dictated that they should not be subject to liability. But, as part of a wave of jurisdictions abolishing charitable immunity throughout the 1950s and 60s, Pennsylvania removed the shield and has allowed hospitals to be subject to liability since 1965. *See Flagiello v. Pennsylvania Hospital*, 417 Pa. 486, 208 A.2d 1193 (1965).

In *Thompson v. Nason Hospital.,* 527 Pa. 330, *supra*, Pennsylvania extended the theory of corporate liability to hospitals, stating that "the hospital is liable if it fails to uphold the proper standard of care owed to its patients." *Id.* at 341. The *Thompson* court also codified four duties which a hospital owes to its patients:

> (a) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
>
> (b) a duty to select and train only competent physicians;
>
> (c) a duty to oversee all persons who practice medicine within its walls as to patient care; and
>
> (d) a duty to formulate, adopt, and enforce adequate rules and policies to ensure quality care for the patients.

Thompson at 339-340.

The *Thompson* court also established that, for a hospital to be charged with corporate negligence, "it is necessary to show that the hospital had actual or constructive knowledge of the defect or procedures which created the harm," and "the hospital's negligence must have been a substantial factor in bringing about the harm to the injured party." *Id.* at 341. In *Welsh v. Bulger,* 548 Pa. 504 (Pa. 1997), the Pennsylvania Supreme Court addressed the issue of what type of evidence the Plaintiff must present in order to meet these burdens.

The *Welsh* Court held that "unless a hospital's negligence is obvious, a plaintiff must produce expert testimony to establish that the hospital deviated from an accepted standard of care and that the deviation was a substantial factor in causing the harm to the plaintiff." *Id.* at 514. Critically,

however, the Court held that experts are not required to use "magic words" when expressing their opinions, and that the court will look at "the substance of their testimony." *Id.*, *citing Mitzelfelt v. Kamrin*, 526 Pa. 54, 584 A.2d [888] (1990).

Both Plaintiff and Defendant in this case acknowledge this burden, but interpret it differently. Defendant claims that Plaintiff has failed to meet the required standard because Plaintiff's expert reports do not state with specificity what misconduct was committed by any of the corporate Defendants, with each of the two expert reports focused on detailing the misconduct of the Facility.[37] Conversely, Plaintiff states that "a plaintiff need not produce separate expert testimony applicable to corporate negligence and may rely upon the expert testimony pertaining to facility's negligence and causation in support of claims for direct corporate negligence."[38] Plaintiff, the Court notes, leans rather heavily on the *Welsh* Court's warning against "magic words" to excuse what might otherwise be considered a lack of due diligence on the part of their experts.

We find that neither position is tenable. Were we to accept Defendant's position, then Plaintiff would be required to retain experts who are not only capable of examining whether there was a violation of a standard of care in the medical context, but who are also capable of deciphering the corporate structure governing the Facility. Given the complexity of the corporate structure in this case, which Plaintiff aptly describes as "dizzying," we find it unrealistic to expect experts to detail, with specificity, exactly how each individual corporate defendant deviated from the standard of care. It is a plaintiff's responsibility to prove whether and how a given defendant breached its duties, not medical experts.

Furthermore, nothing in *Welsh* indicates that we must require such specificity from expert reports. The *Welsh* court relied on *Mitzelfelt v. Kamrin*, 526 Pa. 54, 584 A.2d [888] (1990), which held that "a plaintiff is also required to present an expert witness who will testify, to a reasonable degree of medical certainty, that the acts of the **physician** deviated from good and acceptable medical standards, and that such deviation was the proximate cause of the harm suffered. *Id.* at 62, *citing Brannan v. Lakenau Hospital*, 490 Pa. 588, 417 A.2d 196 (1980) (emphasis added). In *Welsh*, the question was about whether one single hospital could be held responsible for the alleged malpractice of one of its physicians. At the time of the *Welsh* decision, *Thompson* was still a relatively recent decision, and the standard for holding hospitals corporately negligent was not clear. The *Welsh* Court merely extended the existing rule in medical malpractice actions to lawsuits

37 *See* Defendant Brief Corporate Issue, page 10-11.

38 Plaintiff Brief Corporate Issue, page 21.

against hospitals. The *Welsh* Court never contemplated lawsuits in which there was sufficient evidence in an expert report to hold the hospital liable, but not the corporations governing the hospital. Therefore, nothing about the *Welsh* decision intimates that a plaintiff is required to submit an expert report that details, with meticulous specificity, the wrongdoings of each corporate actor.

However, Plaintiff's assertion that *Welsh* stands for the proposition that they need only produce expert testimony relating to the Facility is patently false. The *Welsh* Court was not presented with such a situation. In *Welsh*, the Plaintiff *did* provide expert testimony to show that the hospital was negligent, and the expert expressly discussed the hospital's liability as a corporate defendant. *See Welsh*, 548 Pa. 504 at 514-515. *Welsh* makes clear that Plaintiff must submit an expert report detailing Facility's negligence, but makes no mention about whether such separate testimony would be required if there were two hospitals or twenty alleged to have violated the standard of care.

As such, this Court finds itself in uncharted territory with respect to *Welsh.* Nevertheless, barring guidance from the Superior Court, we find that we are not confined to read Plaintiff's expert reports as deficient simply because they do not discuss each corporate defendant with particularity. As *Welsh* makes clear, there are no "magic words" that an expert must say in order to establish corporate liability. Further, as the law surrounding corporate liability in the hospital context developed following *Welsh*, it became much clearer that whether an entity should be held liable under a theory of corporate liability is determined by a review of the totality of the circumstances, not within the four corners of single expert report. As such, this Court finds that, to whatever extent she was required to submit an expert report establishing the Facility's deviation from the standard of care, Plaintiff has met that burden in this case.

ii. *Scampone v. Grane Healthcare Co.* and Nursing Home Liability

Although Plaintiff is not required to submit a separate expert report for each corporate Defendant, Plaintiff still must establish that the corporate Defendants are appropriate parties to the lawsuit. The Pennsylvania Supreme Court extended the applicability of corporate liability to nursing homes and skilled care facilities like Defendants in *Scampone v. Grane Healthcare Co.*, 618 Pa. 363, 57 A.3d 582 (Pa. 2012). *Scampone* is the prevailing law on this issue, and in fact, the facts of *Scampone* are remarkably similar to the facts in this case.

In *Scampone*, an elderly nursing home resident died after a series of hospitalizations which were allegedly caused by the negligence of the nursing home to ensure proper staffing. This failure to appropriately staff the facility allegedly led to deficiencies in the resident's hygiene and nutrition, causing her a series of urinary tract infections and resulting in undue suffering and untimely death. There were two relevant defendants named in the suit: "Highland Park," the facility where the deceased resident had lived; and "Grane Healthcare," a corporation which provided "management services" to Highland Park. These two Defendants moved for summary judgment on the basis that neither could be held liable for the resident's injuries, as they were not "hospitals" for the purposes of *Thompson* liability. The trial court allowed the claim against Highland Park to proceed to trial, but granted summary judgment as to Grane Healthcare.

In finding that the claim against Highland Park was properly submitted to a jury, the Superior Court had found that "a nursing home is analogous to a hospital in the level of its involvement in a patient's overall health care." *Scampone*, 618 Pa. 363 at 384. The deceased resident had lived at Highland Park full-time, receiving "twenty-four-hour care, intake assessment and development of a care plan, rehabilitative care, and responsibility for carrying out doctor's orders, even where the nursing home did not employ staff physicians." *Id.* The Pennsylvania Supreme Court upheld the Superior Court, finding that nursing homes could be held directly liable to their patients.

When the Estate in the instant case initially filed its lawsuit against the Defendants, it named the Facility as the first of thirteen (13) defendants with good reason: Mrs. Johnson lived at Manorcare Health Services – Chambersburg, all of the alleged abuse and neglect took place within that building, and the Facility itself employed[39] and supervised the nurse who allegedly broke Mrs. Johnson's elbow. Thus, the Facility is in exactly the same situation as Highland Park in *Scampone*, directly responsible for Mrs. Johnson's health and well-being. Indeed, even the Defendants do not dispute that Manorcare Care of Chambersburg, PA LLC is a properly-named Defendant in this suit.

Plaintiffs opened a set of floodgates, however, when they named the twelve (12) "corporate" defendants as parties to the suit. These corporate defendants do not have the same kind of obvious connection to Mrs. Johnson's care which would expose them to direct liability. These

39 There is some dispute as to the supervision of employees at the Facility itself, as the Plaintiff alleges that more than one entity was involved in matters such as staffing and employment. There is also some dispute as to which entity, specifically, "employs" the staff at any given ManorCare facility. This will be discussed in more depth later. However, functionally, the nurse in question worked at the facility known as ManorCare Health Services – Chambersburg, supervised by other individuals working at that same structure, and any reasonable person would view her as an employee of the Facility regardless of which corporation is named on her paystubs.

corporations are in the same position as Grane Healthcare in *Scampone.* As such, we look to *Scampone* for guidance on how and whether to establish corporate liability regarding these corporations.

The Supreme Court in *Scampone* remanded the case to the trial court, instructing the trial court that their first task was to determine whether Highland Park and Grane Healthcare owed the resident legal duties or obligations, and to articulate any specific duties that it may find. *Id.* at 405. The Court required an "individualized inquiry" into each appellant's duties of care to ensure that "multiple entities are not exposed to liability for breach of the same non-delegable duty." *Id* at 404. To do this, the trial court must look to Section 323 of the Restatement **or** by application of the four factors from *Althaus v. Cohen*, 562 Pa. 547, and must apply the factors to each corporation **separately.** *Scampone*, 618 Pa. 363 at 404.

Neither party in this case attempted to apply the *Althaus* factors. Furthermore, despite the *Scampone* Court's clear edict to look either to *Althaus* or Section 323 of the Restatement of Torts, Plaintiff attempts to rely on Section 324A of the Restatement of Torts. Although the two sections are similar, Plaintiff's reliance on Section 324A is misplaced. The two sections are reproduced as follows:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection **of the other's person** or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if
>
> (a) his failure to exercise such care increases the risk of such harm, or
>
> (b) the harm is suffered because of the other's reliance upon the undertaking.
>
> Restat 2d of Torts, § 323 (emphasis added).
>
> ---
>
> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection **of a third person** or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or

(b) he has undertaken to perform a duty owed by the other to the third person, or

(c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Restat 2d of Torts, § 324A (emphasis added).

The substantial difference between the two sections is whether the undertaking was on behalf of the other person, or on behalf of a third person. In *Scampone*, the deceased resident was not a third party injured by the management corporation's failure to properly manage the nursing facility. In *Scampone*, the management corporation owed a duty **directly** to the resident. Therefore, it is not sufficient for Plaintiff to establish that the Facility is managed by the corporate defendants, that the corporate defendant mismanaged the Facility, and that Mrs. Johnson was a third party injured by that mismanagement. Plaintiff must establish, either through Section 323 or through application of the *Althaus* factors, that each corporate Defendant owed a duty *directly* to Mrs. Johnson.

In *Scampone*, the court clearly gave discretion to the trial court to use **either** the *Althaus* factors **or** Section 323 of the Restatement of Torts. Indeed, the court notes that "the question of a duty in tort is assigned to the trial court in the first instance." *Scampone*, 618 Pa. 363 at 404. The five *Althaus* factors are applicable to determine whether a duty exists in a particular case involves the weighing of several discrete factors which include:

(1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty upon the actor; and (5) the overall public interest in the proposed solution.

Althaus v. Cohen, 562 Pa. 547, 553 (citations omitted).

This Court has heard no argument from the parties about which of the two standards should be applied. Due to Plaintiff's inapposite reliance on Section 324A, we have also not heard any argument from Plaintiff as to whether Plaintiff has met her burden to show that any or all of these corporate Defendants should be held liable under either Section 323 or the *Althaus* factors. Therefore, this Court opts to utilize the five *Althaus* factors in examining the claims against **each** of the twelve corporate Defendants, individually, to determine whether they owed a duty to Mrs. Johnson.

B. Analysis

i. The Management Corporations

Three (3) of the corporate defendants were named apparently due to their involvement in the management and administration of the Facility, including making decisions regarding the Facility's staffing. These Defendants are HCR Manor Care Services, LLC; HCR ManorCare, Inc.[40]; and ManorCare Health Services, Inc., a/k/a ManorCare Health Services LLC.

a. HCR Manor Care Services, LLC

HCR Manor Care Services, LLC, is listed as the Facility's "home office" in the Facility's 2016 Medicare Cost Report.[41] As the Plaintiff points out in their brief, "home office" is a term of legal significance, defined in 42 C.F.R § 421.404(a) as "the entity that provides centralized management and administrative services to the individual providers or suppliers under common ownership and common control, such as centralized accounting, purchasing, personnel services, management direction and control, and other similar services."

The Plaintiff also directs this Court's attention to the Administrative Support Services Agreement (hereafter "the Agreement") between the Facility and HCR ManorCare Services, LLC, dated January 1, 2016, which was in effect during the entirety of Mrs. Johnson's stay at the Facility. Appendix A of the Agreement details the services to be provided to Facility by HCR ManorCare Services, LLC. Relevant to the disposition of this motion are the following provisions:

> 3. Legal and Regulatory Compliance Support Services: . . . Support and assistance in connection with **monitoring compliance with any regulatory requirements** to which [the Facility] is subject or may become subject in the future, including applications, filings, or notices required to maintain compliance with permits, licenses, and governmental approvals necessary or desirable for the conduct of Provider's business. . .
>
> . . .
>
> 11. Clinical Support Services: Consultative support, in collaboration with [the Facility's] Quality Assessment and Assurance Committee, **to assist [the Facility] in maintaining quality clinical care.** Consultative support

40 We note that HCR ManorCare, Inc. is not a party to this lawsuit.

41 The full title of this document is "Financial and Statistical Report for Nursing Facilities and Services under the Medical Assistance Program of the Department of Human Services Commonwealth of Pennsylvania." This form was submitted on behalf of the Facility. Where the form asks "Is your facility affiliated with another entity through ownership, management or contractual agreement? If "YES", submit a listing of the components of the entire entity." HCR ManorCare Services LLC is listed as "Home Office." The Court notes that the Report was filed for calendar year 2016, which encompasses the entirety of Mrs. Johnson's stay at the Facility.

> services include, but are not limited to, drafting Quality Assessment and Performance Improvement (QAPI) policies and procedures for consideration and adoption by [the Facility], auditing of clinical and QAPI systems, education and guidance on compliance with quality and regulatory standards, and analysis of clinical performance.

Administrative Support Services Agreement, Appendix A (emphasis added).

Therefore, the Agreement makes clear that, although HCR ManorCare Services, LLC, may not be directly involved in patient care, HCR ManorCare Services, LLC, is contracted to support the Facility in complying with regulatory requirements and making policy to assist the Facility "in maintaining quality clinical care." While the Agreement also takes pains to specify that the Facility "is solely responsible for the provision of Healthcare Services to its patients and for all decisions regarding adequacy and use of resources in its provision of such Healthcare services" and that the Facility may reject the services provided by HCR ManorCare Services, LLC, at their "sole discretion,"[42] the Agreement also requires the Facility to "promptly notify" HCR ManorCare Services, LLC, if circumstances arise that would prevent Facility from providing quality healthcare services.[43] Facility is also required to respond to requests for information or documentation made by HCR ManorCare Services, LLC, and must make their facility, employees, and various documents available to HCR ManorCare Services, LLC, for inspection. Thus, while the Agreement attempts to portray HCR ManorCare Services, LLC, as a relatively hands-off agency providing "administrative services," the Agreement simultaneously requires the Facility to submit to hands-on involvement by HCR ManorCare Services, LLC.

The existence of such hands-on involvement is well established. HCR ManorCare employed a Regional Director of Operations ("RDO") who visited the Facility weekly.[44] HCR ManorCare, LLC, also employs a Regional Clinical Nurse Consultant, who, together with the RDO, would be notified of deficiencies and citations by the Department of Health at the Facility and who would review the Facility's plans to correct the deficiencies.[45] Both of these individuals were involved in the internal abuse investigation regarding the injury to Mrs. Johnson's elbow.[46] Furthermore, the Facility's administrator stated that the governing body of the Facility

42 Administrative Support Services Agreement at 7 ¶ 2.2.

43 *Id.* at 7 ¶ 2.2 (a) and (b).

44 Deposition of Michelle Mowery at 29.

45 *Id.* at 51-52.

46 Deposition of Amber Hurley at 21-22.

consisted of himself, the Regional Director of Operations for HCR ManorCare Services, LLC, and the Vice President of HCR ManorCare Services, LLC.[47]

Lastly, we note that the level of corporate control by HCR ManorCare Services, LLC, is very similar to that of Grane Healthcare in *Scampone*. *See Scampone,* 618 Pa. 363 at 385. Grane Healthcare was a management corporation governing the skilled nursing facility in question, and the Superior Court noted that Grane Healthcare's purpose for being at the nursing facility was "to formulate, adopt, an enforce adequate rules and policies to ensure quality of care for the facility's residents." *Id.* HCR ManorCare Services, LLC, is exactly the same kind of governing management body that was found to be properly subject to liability in *Scampone.*

It is clear, therefore, that HCR ManorCare Services, LLC, is actively involved in making policies, taking corrective action, performing investigations, and a myriad of other "administrative services" that directly affect patients at the Facility. In applying the five *Althaus* factors, the Court finds that the factors weigh in favor of finding that HCR ManorCare Services, LLC, is an appropriately named defendant and therefore may be held liable under a theory of direct corporate liability.

The first *Althaus* factor requires the Court to examine the relationship between the parties. *Althaus*, 562 Pa. 547 at 553. Here, Mrs. Johnson was a resident at a nursing facility governed by HCR ManorCare Services, LLC. As the Facility's governing body, HCR ManorCare, LLC, was responsible for making policies and procedures that directly affected the health and safety of the Facility's residents, including Mrs. Johnson. The record demonstrates that the Facility was not solely in control of Mrs. Johnson's care and that HCR ManorCare Services, LLC, has taken a substantial role in patient care not only for residents overall, but on occasion, directly for Mrs. Johnson. Therefore, this factor weighs in favor of imposing liability.

The second *Althaus* factor requires the Court to examine the social utility of the actor's conduct. *Althaus*, 562 Pa. 547 at 553. The Court finds that nursing home residents, in general, benefit from the existence of management corporations like HCR ManorCare Services, LLC. Having a single entity making policies and procedures for hundreds of nursing facilities, rather than having each facility individually making its own policies and procedures, simply makes sense. However, their existence only serves a social utility purpose if the policies and procedures these entities put in place are **good.** Therefore, this factor does not weigh either in favor or against imposing liability.

47 Deposition of Daniel Fessler at 54-55.

The third *Althaus* factor requires the Court to examine the nature of the risk imposed and foreseeability of the harm incurred. *Althaus*, 562 Pa. 547 at 553. Here, just as society benefits from the existence of good policies and procedures, it suffers from bad ones. There is a substantial risk to residents like Mrs. Johnson, who are entirely dependent on a nursing facility to provide for their care, if the facility is governed by an entity that makes poor decisions. Furthermore, it is entirely foreseeable that a resident might be harmed by the failure of such a governing body to make good policies and procedures, to intervene when a patient is not receiving adequate care, and to investigate when a facility is not meeting regulatory requirements. Therefore, this factor weighs heavily in favor of imposing liability.

The fourth *Althaus* factor requires the Court to examine the consequences of imposing a duty of liability on the actor. *Althaus*, 562 Pa. 547 at 553. Considerations under this factor include whether the imposition of liability would interfere with the ability of the actor to properly conduct the functions of their job, or would cause such actors to cease conduct that has substantial social utility solely for fear of liability. *See Althaus,* 562 Pa. 547 at 555-556. Frankly, no chain of skilled nursing facilities could reasonably expect that the duty to create good policies and procedures for their residents could be outsourced to a management corporation without that management corporation being subject to the liability. Indeed, the liability imposed against HCR ManorCare Services, LLC, is the same liability that would have been attributed to the Facility if the Facility created its policies and procedures internally. No matter how carefully crafted their Administrative Support Services Agreement may be, HCR ManorCare Services, LLC, could reasonably expect that it would be liable to patients who suffer as a result of their failures to undertake the duties it assumed from the Facility. Therefore, any argument that the imposition of liability would interfere or prevent HCR ManorCare Services, LLC, and like management organizations from performing their necessary functions is precluded by the fact that HCR ManorCare Services, LLC, should always have expected that they could be subject to liability, and such expectation has not prevented them from performing their functions to date. Therefore, this factor weighs neither in favor nor against imposing liability.

The final *Althaus* factor requires the Court to examine the overall public interest in the proposed solution. *Althaus*, 562 Pa. 547 at 553. In this case, we find that imposing liability against HCR ManorCare Services, LLC is substantially in the public interest. As discussed above, HCR ManorCare Services, LLC, performs functions on behalf of the Facility that directly affect the health, safety, and well-being of the patients at the Facility. Regardless of whether those functions are performed by the Facility itself, or outsourced to a management entity, the patients at the Facility are owed

a duty that those functions will be performed in a manner that will benefit them, not harm them. Therefore, this factor weighs heavily in favor of imposing liability.

Accordingly, for the reasons set forth above, this Court finds that HCR Manor Care Services, LLC, is an appropriately-named defendant in this suit under a theory of direct corporate liability, and therefore Defendant's summary judgment motion shall be denied with respect to HCR Manor Care Services, LLC.

b. HCR ManorCare, LLC

Although Plaintiff discusses HCR ManorCare, Inc., in their brief, HCR ManorCare, Inc. is not a party to this lawsuit. However, HCR ManorCare, LLC, is a named as a party. In her discussion of HCR ManorCare, Inc., Plaintiff directs us to the deposition of Kathryn S. Hoops, a corporate representative for many of the named Defendants as well as a myriad of other related corporations within the HCR ManorCare corporate structure.[48] While the Court has found this deposition to be useful in understanding how HCR ManorCare has set up its corporate organization, the Hoops deposition was taken in 2016 several months prior to Mrs. Johnson's death, and it regarded an incident completely unrelated to ManorCare Health Services – Chambersburg. Therefore, the Court is hesitant to place any great weight on the Hoops Deposition to prove connections between any of the HCR ManorCare entities and Mrs. Johnson.

Furthermore, according to the Hoops Deposition, HCR ManorCare, LLC, ceased to exist in 2011.[49] The portion of the Hoops Deposition to which Plaintiff has directed the Court discusses only HCR ManorCare, Inc.[50] Especially given the similarity in the titles of the various ManorCare entities, the Court is not in a position to speculate whether Plaintiff intended to name HCR ManorCare, Inc. as a defendant, rather than HCR ManorCare, LLC. Furthermore, since there is ample evidence to establish that HCR ManorCare, Inc., and HCR ManorCare, LLC, are entirely separate entities, we are bound to assume that Plaintiff intentionally named HCR ManorCare, LLC, as a defendant. We will not speculate as to whether HCR ManorCare, Inc. would have potentially been liable for Mrs. Johnson's injuries had it been properly named as a defendant.

48 We refer to this deposition hereafter as "Hoops Deposition."

49 Hoops Dep. 41:25- 42:3.

50 Plaintiff, in their brief, directed the Court to review page 83 of the Hoops Deposition, which discusses HCR ManorCare, Inc. However, HCR ManorCare Inc. is discussed at some length from pages 80 to 100. Throughout that discussion, there is no mention that HCR ManorCare, Inc. and HCR ManorCare, LLC, are related entities. The only discussion of HCR ManorCare, LLC, is discusses its dissolution in 2011.

As Plaintiff has not provided any evidence whatsoever to establish that HCR ManorCare, LLC, is a properly named defendant in this case, summary judgment as to HCR ManorCare, LLC, must be granted.

c. ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC

In her discussion of HCR Manor Care Services, LLC, Plaintiff included ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC. However, Plaintiff never actually addresses ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC in her brief under either name. The entity is discussed in the Hoops Deposition, but its mention raises more questions than it supplies answers.

ManorCare Health Services, LLC, according to Ms. Hoops, operated a total of two skilled nursing facilities at the time of her deposition in August of 2016.[51] One of those nursing homes is located in Michigan,[52] and the other may be in Nevada.[53] Regardless of where these facilities are, Plaintiff has provided no evidence that the Facility in this case is governed or managed by ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC. Indeed, other than having named them in the case, Plaintiff has provided no evidence connecting ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC to Mrs. Johnson's injuries *whatsoever*. As such, summary judgment must be granted with respect to ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC.

ii. The Lessors

Eight (8) of the corporate defendants were named only because of their relationship to the Facility, not to the patients at the Facility. For the sake of brevity, we will discuss these corporate defendants together, as their disposition is the same. As discussed herein, this Court will discuss six (6) of these corporations together, hereafter known as "The Lessors." They are HCR III Healthcare, LLC; HCR II Healthcare, LLC; HCR Healthcare, LLC; Manor Care Inc.; HCR ManorCare Heartland, LLC; HCR ManorCare Operations II, LLC. The remaining two (2) corporate defendants, HCR IV Healthcare, LLC and HCRMC Operations, LLC, we find are *not* lessors, and are discussed separately herein. For the reasons discussed below, summary judgment shall be denied with respect to the six (6) lessors, and granted

51 Hoops Dep. 12.

52 Hoops Dep. 14:4-7.

53 Hoops Dep. 131:22-132-7.

with respect to the remaining two (2) corporate defendants.

a. Single Entity Theory

According to Plaintiff's brief, "HCR III Healthcare, LLC is the owner of the Facility and lessor on the Facility's lease and is an indirect subsidiary of HCR II [Healthcare], LLC; HCR Healthcare, LLC; ManorCare, Inc.: HCR ManorCare Operations, LLC; and HCR ManorCare, Inc."[54] Plaintiff further claims that "although the ManorCare Defendants have designed a complex corporate structure to appear separate—the Facility's policies, procedures, and budget, are all controlled by the Corporate Defendants."[55]

This argument is akin to single entity theory, which Plaintiff raises as an alternative reason to deny summary judgment as to all defendants. As the Plaintiff notes in her brief, single entity theory has not been adopted by Pennsylvania state courts, and is currently pending before the Pennsylvania Supreme Court in *Mortimer v. McCool*, 236 A.3d 1043 (Pa. 2020). Plaintiff argues that the prior deposition of a ManorCare corporate representative[56] proves that there is not any "real separation" between the corporate defendants, and that they are "pass-through entities."

The Court is not inclined to apply single entity theory to this case for two reasons. First, as single entity theory has not been adopted by Pennsylvania courts, this Court is wary to adopt it here. Second, even if we were inclined to consider these corporate defendants as one single entity, Plaintiff has certainly not proven that the twelve (12) corporate defendants in this case are one single entity. The Court notes that although the Facility is governed and surrounded by a myriad of different corporate entities, many with similar names, each functions individually as cogs in the wheel of a complex corporate structure governing approximately 281 skilled nursing facilities. It is not within our purview to examine the reasons for the existence of each of these individual cogs.[57] The Court will adhere only to its obligation under the law – to determine whether each corporation owed a duty to Mrs. Johnson under any theory of liability.

We note, however, that the corporate structure surrounding HCR ManorCare is confusing, and that even after painstaking review of the

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54 Plaintiff Brief Corporate Issue, page 18. We note, as discussed above, that HCR ManorCare, Inc., was not named as a party to this lawsuit.

55 Plaintiff Brief Corporate Issue, p. 18.

56 See n. 58, *infra.*

57 In their brief, the Estate notes that ManorCare is the subject of a *qui tam* lawsuit regarding issues wholly unrelated to this case, including against some of the Defendants named in this suit. It would be inappropriate for this Court to consider evidence of this other lawsuit, or allegations made therein, and therefore the Court will not do so.

evidence submitted in this case, we are still not clear as to how HCR ManorCare is governed. Nevertheless, it is Plaintiff's responsibility to provide clarity on this issue, as it is their burden to establish that each of the twelve corporate Defendants is properly named.

b. HCRMC Operations, LLC, and HCR IV Healthcare, LLC

In her brief, Plaintiff refers the Court to an organizational chart which establishes the corporate structure governing the Facility[58]. According to this chart, the Facility is owned by HCR III Healthcare, LLC; which is in turn a subsidiary of HCR II Healthcare, LLC; which is in turn a subsidiary of HCR Healthcare, LLC; which is in turn a subsidiary of Manor Care, Inc.; which is in turn a subsidiary of HCR ManorCare Heartland, LLC; which is in turn a subsidiary of HCR ManorCare Operations II, LLC; which is in turn a subsidiary of HCR ManorCare, Inc.[59]

However, in her brief, Plaintiff does not include these corporations together. Rather, in her discussion of HCR III Healthcare, LLC; HCR II Healthcare, LLC; HCR Healthcare, LLC, and HCR ManorCare Operations II, LLC, Plaintiff included in her caption HCRMC Operations, LLC, and HCR IV Healthcare, LLC. Other than their appearance in the caption, neither of these two entities is discussed at all within Plaintiff's brief, and the evidence does not support including them in their discussion of the Lessors.

Furthermore, Plaintiff has submitted no evidence in their brief to connect HCRMC Operations, LLC, and HCR IV Healthcare, LLC, to either Mrs. Johnson or the Facility. HCRMC Operations, LLC, is mentioned briefly in the Hoops Deposition, only to be disregarded, as the entity did not exist at the time of the incident for which Ms. Hoops was being deposed.[60] HCR IV Healthcare, LLC, was discussed briefly in the Hoops Deposition, only to establish that HCR IV Healthcare, LLC did not provide services to the facility at issue and did not have employees of its own. Beyond these brief mentions, Plaintiff has provided no evidence to establish that HCRMC Operations, LLC, and HCR IV Healthcare, LLC, are properly named defendants in this case. Therefore, summary judgment must be granted as to these two entities.

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58 *See* n. 41, *supra.*

59 *See* 2016 Medicare Cost Report.

60 Hoops Dep. 116:9-13.

c. HCR ManorCare Heartland, LLC

Omitted from Plaintiff's discussion of the organizational chart was HCR ManorCare Heartland, LLC. Rather, Plaintiff included HCR ManorCare Heartland, LLC, in the same caption as Heartland Employment Services, LLC, discussed below. However, Plaintiff makes no attempt to address HCR ManorCare Heartland, LLC, within its brief, and its discussion of Heartland Employment Services, LLC, is irrelevant to HCR ManorCare Heartland, LLC. Given its position on the 2016 organizational chart, this Court finds that HCR ManorCare Heartland, LLC, is more akin to the other lessors than to Heartland Employment Services, LLC. Indeed, HCR ManorCare Heartland, LLC, is only mentioned in Plaintiff's brief twice: First, in the organizational chart; second, in the Hoops Deposition to establish that HCR ManorCare Heartland, LLC, was appropriately listed in the organizational chart as an owner and lessor of the facility in that case.[61] Therefore, we are including HCR ManorCare Heartland, LLC, in our discussion of the other Lessors.

d. The Six (6) Lessors

With those issues properly dispatched, we turn to a discussion of the six entities which do, indeed, appear to be lessors of the Facility. These entities are HCR III Healthcare, LLC; HCR II Healthcare, LLC; HCR Healthcare, LLC; Manor Care Inc.; HCR ManorCare Heartland, LLC; and HCR ManorCare Operations II, LLC.

Relating to the Lessors, Plaintiff's claim that Facility's policies, procedures, and budget are all controlled by the corporate defendants is incorrect. Although Plaintiff has established, through the organizational chart, that these entities are related to the Facility, Plaintiff has produced no evidence to suggest that the six (6) Lessors are in any way involved in patient care or policymaking. In other words, Plaintiff has produced no evidence to suggest that the Lessors owed a duty to Mrs. Johnson. As such, we would be inclined to grant summary judgment as to these corporations.

However, Plaintiff attempts to cure this defect by arguing that it was impossible for them to provide such evidence due to Defendant's failure to provide "all lease, master lease, and sublease agreements that relate in any way to the facility and which were in effect during the residency."[62] Defendants lodged an objection to the request as "overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of

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61 *See* Hoops Dep. 76-78.

62 Plaintiff Brief Corporate Issue, p. 18.

admissible information."[63] Defendant then took no further action.

Pennsylvania Rule of Civil Procedure 4009.12 governs the requirements for answering a request for the production of documents, requiring "an answer including objections to each numbered paragraph in the request." The answer is required to be in the form of a paragraph-by-paragraph response, which shall:

> (1) identify all documents or things produced or made available;
>
> (2) identify all documents or things not produced or made available because of the objection that they are not within the scope of permissible discovery under Rule 4003.2 through Rule 4003.6 inclusive and Rule 4011(c). Documents or things not produced shall be identified with reasonable particularity together with the basis for non-production;
>
> (3) specify a larger group of documents or things from which the documents or things to be produced or made available may be identified as provided by subdivision (a)(2)(i);
>
> (4) object to the request on the grounds set forth in Rule 4011(a), (b), and (e) or on the ground that the request does not meet the requirements of Rule 4009.11;
>
> (5) state that after reasonable investigation, it has been determined that there are no documents responsive to the request.

Pennsylvania Rule of Civil Procedure 4009.12(b).

Defendant's objection did not comply with Rule 4009.12, and amounts to a boilerplate objection. An objection to a discovery request is boilerplate when it merely states the legal grounds for the objection without (1) specifying how the discovery request is deficient and (2) specifying how the objecting party would be harmed if it were forced to respond to the request.[64] As our sister court in Monroe County states, "Just as the plaintiff may not use discovery as a fishing expedition, the defendant may not assert boilerplate objections to valid interrogatories and document requests seeking information relevant to the underlying action." *Reusswig v. Erie Ins.*, 49 Pa. D. & C.4th 338 (Monroe Cty. 2000).

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63 *Id.*

64 Pennsylvania courts have not often dealt with the issue of boilerplate objections, which are much more common in the federal context. *See* NOTE: BOILERPLATE DISCOVERY OBJECTIONS: HOW THEY ARE USED, WHY THEY ARE WRONG, AND WHAT WE CAN DO ABOUT THEM, 61 Drake L. Rev. 913, 914.

Complicating matters further, Plaintiff did not move to compel the discovery following Defendant's boilerplate objection. Had Plaintiff made such a motion, it is possible that Defendant's boilerplate objection would not have been able to withstand attack. Instead, this Court was not posed with this complicated discovery question until discovery had been completed and the Defendant had moved for summary judgment. It was not until the Plaintiff's brief on this issue that the Court was ever made aware of discovery issues in this case. Furthermore, neither party raised this issue at oral argument.

The rules do not clearly define with whom the burden rests following an objection, or whether the failure to move to compel discovery results in a waiver of the Plaintiff's opposition to the discovery. However, our sister court in Lackawanna County has neatly summarized the appropriate standard of review:

> Discovery is generally allowed with liberality in civil litigation, *Schwab v. Milks*, 8 Pa. D. & C.4th 557, 558 (Lacka. Cty. 1990), and any limitations or restrictions upon discovery are narrowly construed. *Horwath v. Brownmiller*, 51 Pa. D. & C.4th 33, 39 (Monroe Cty. 2001). All doubts regarding the discoverability of information should be resolved in favor of permitting discovery. *Fitt v. General Motors Corp.*, 13 Pa. D. & C.4th 336, 338 (Lacka. Cty. 1992). **Furthermore, the party objecting to the production of discovery generally bears the burden of establishing that the information or document sought is not discoverable and that the objections should be sustained.** *Reusswig v. Erie Insurance*, 49 Pa. D. & C.4th 338, 341 (Monroe Cty. 2000) (citing Schwab, supra); *Hilgert v. Fish*, 8 Pa. D. & C.3d 271, 273 (Monroe Cty. 1978).

McAndrew v. Donegal Mut. Ins. Co., 56 Pa. D. & C.4th 1, 7-8 (Lacka. Cty. 2002)

Defendant was properly supplied with a request for a production of documents and failed to supply the documents pursuant to Pa.R.C.P. 4019(a)(1)(vii). Furthermore, Pa.R.C.P. 4019(a)(2) states that "A failure to act described in subdivision (a)(1) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has filed an appropriate objection or has applied for a protective order." In this case, Defendant lodged its objection, but did not do so in compliance with the Pennsylvania Rules of Civil Procedure, did not file its objections with this Court, and did not apply for a protective order.

In a similar case, our sister court in Bucks County imposed sanctions against a Defendant for failing to produce documents after objecting that they were protected by attorney-client privilege, but never filed the objections with the Court nor requested a protective order. *See Roccograndi v. Temple Univ. Health Sys.,* 55 Pa. D. & C.4th 136, 146 (Com. Pl. 2001). Curiously, in this case, Plaintiff never moved for sanctions, did not raise the issue of Defendants failure to produce the leasing agreements until responding to the instant Summary Judgment motions, and does not even request sanctions now.

An appropriate discovery sanction is determined by consideration of (1) the nature and severity of the violation; (2) the defaulting party's willfulness or bad faith; (3) prejudice to the opposing party; (4) the ability to cure the prejudice; and (5) the importance of the precluded evidence in light of the failure to comply. *Luszczynski v. Bradley*, 729 A.2d 83, 87 (Pa. Super. 1999), withdrawn, 559 Pa. 692, 739 A.2d 1058 (1999).

Due to the Plaintiff's lackadaisical response to Defendants objection in producing the leasing agreement, the Court is not inclined to find that the violation was particularly severe. Further, the Court does not find Defendant acted in bad faith in refusing to supply the documents, and in a case with a substantial amount of discovery requests, it is reasonable to believe that the Defendant overlooked its obligations with regard to the objection.

However, case law makes it clear that the Court must interpret discovery requests liberally, and should permit discovery whenever there is doubt to an item's discoverability. *See Schwab v. Milks*, 8 Pa. D. & C.4th 557, *supra*; *Fitt v. General Motors Corp.*, 13 Pa. D. & C.4th 336, 338, *supra.* Without the ability to see the requested leasing agreements, and without ever having heard argument about the objection to the leasing agreements, this Court is not able to decide whether the leasing agreements are discoverable. Therefore, this Court finds that it must err in favor of finding discoverability, and that the Plaintiff suffered prejudice as a result of being unable to inspect documents relevant to the claims against the Lessors. The prejudice is not curable at this stage, as the Plaintiffs state they are unable to prove the relationship between the Lessors and Mrs. Johnson without the leasing agreements. As such, the leasing agreements are of the utmost importance in light of the failure to comply. This Court finds, given the above, that it must impose sanctions against Defendants. The Court finds its requirements as follows:

> In imposing specific sanctions for failure to comply with discovery, a trial court is required to strike a balance between the procedural need to move the case to prompt disposition and the substantive rights of the parties. *Poulos*

> *v. PennDOT*, 133 Pa. Commw. 322, 325, 575 A.2d 967, 969 (1990). Furthermore, a discovery sanction must be proportionate to the sanctioned party's failure to comply with the discovery request. *See Baranowski v. American Multi-Cinema Inc.*, 455 Pa. Super. 356, 688 A.2d 207 (1997), alloc. denied, 550 Pa. 675, 704 A.2d 633 (1997).

Roccograndi v. Temple Univ. Health Sys., 55 Pa. D. & C.4th 136, 148 (Com. Pl. 2001).

Therefore, this Court finds that it is appropriate to deny Defendants' motion for summary judgment as to the Lessors due to their failure to properly comply with their discovery obligations.

iii. The Employment Corporation

The last of the corporate defendants, Heartland Employment Services, LLC, was named due to its involvement in staffing and employment at the Facility. According to Plaintiff's brief, "Defendant Heartland Employment Services, LLC is the employer of record for many HCR ManorCare facilities, possibly including this Facility."[65] Throughout its brief and submitted evidence, Plaintiff has demonstrated ample evidence that Heartland Employment Services, LLC has an active role in the procurement of employees for some facilities. Paychecks are sent to Heartland Employment Services, LLC.[66] Heartland Employment Services, LLC, has leasing agreements with some facilities in the ManorCare structure, though not necessarily the Facility in this case,[67] and provides employees to a variety of corporations within the ManorCare structure.[68] This corporation serves a critical function within the ManorCare structure – were it not for Heartland Employment Services, LLC, each individual facility would need to hire its own employees, set up its own payroll system, and perform tax-related functions.[69] Heartland Employment Services, LLC, exists because it makes the ManorCare structure function more efficiently.[70]

However, this Court is unaware whether the Facility in this case has a connection with Heartland Employment Services, LLC, whether there is

65 Plaintiff Brief Corporate Issue, p. 19.

66 Fessler Dep. 53:15-16.

67 The only evidence Plaintiff has provided regarding Heartland Employment Services, LLC, arises from the Hoops Deposition. As discussed above, while useful for obtaining a general overview of HCR ManorCare's corporate structure, the Hoops deposition cannot be used to substantiate any of the connections in the instant case, as it was taken in a case unrelated to the Facility and Mrs. Johnson[.]

68 Hoops Deposition, 58:19-59:6.

69 *Id.*

70 *Id.*

a leasing agreement in place, or whether there is any evidence to suggest that Heartland Employment Services, LLC, owed any duty of care to Mrs. Johnson. Without evidence linking Heartland Employment Services, LLC, to Mrs. Johnson, the Plaintiff has not met its burden establishing Heartland Employment Services, LLC, as an appropriate defendant.

Nevertheless, the Court is again presented with a discovery issue, nearly identical to the one affecting the Lessors. Plaintiff states that she made two discovery requests which she alleges should have elicited the contract evidencing the services provided by the Facility by Heartland Employment Services, LLC.[71] Like above, Defendants objected to the discovery requests as overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible information.[72] Defendants did nothing more.

Thus, the analysis and disposition must be the same as for the Lessors. This Court must interpret the discovery requests with liberality and find that Plaintiff was prejudiced by Defendant's failure to properly object to the production of documents request. The standard for sanctions must be applied, and again, Defendant Heartland Employment Services, LLC, must receive sanctions in the form of a denial of summary judgment.

[VI.] THE PUNITIVE DAMAGES MOTION

The legal standard for punitive damages in Pennsylvania is entirely subjective. As Defendants point out in their brief, "It is for the Court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery." *Lazor v. [Milne]*, 499 A.2d 369, 370 (Pa. Super 1985). Because the terms "extreme" and "outrageous" are so subjective, it is not for this Court to determine whether Defendants conduct in this case was extreme and outrageous. Rather, it is for this Court to determine, viewing the case in the light most favorable to the non-moving party, whether "the jury might reasonably conclude that the preponderance of the evidence establishes outrageous conduct by the defendant." *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800 (Pa. 1989).

As Defendants point out, their intent is highly relevant to the question. It is not necessary for Defendants to have intentionally engaged in extreme and outrageous behavior; rather, "punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct*." J.J. DeLuca Co., Inc. v. Toll Naval Associates*, 2012 Pa. Super 222, 56 A.3d 402 (2012).

71 Plaintiff Brief Corporate Issue, p. 19.

72 *Id.*

Indeed, "in Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk." *Hutchison ex rel. Hutchison v. Luddy*, 2006 PA Super 59, 896 A.2d 1260, 1266 (Pa. Super. 2006).

In this case, Plaintiffs have shown through two separate expert reports which establish quite clearly, when viewed in the light most favorable to the Plaintiff, that Defendants deviated from the standard of care in a variety of ways. Indeed, as the Plaintiff points out, verdicts punitive damages have been upheld in other cases where neglect due to subpar staffing led to the pain, suffering, and untimely deaths of other nursing home residents. *Dubose v. Quinlan*, 125 A.3d 1231, 2015 Pa. Super. LEXIS 699, 2015 PA Super 223; *Hall v. Episcopal Long Term Care,* 54 A.3d 381, 2012 Pa. Super. LEXIS 2524, 2012 PA Super 205. While it may indeed be true, as Defendants state in their brief, that it has become "standard operating procedure" for plaintiffs to seek punitive damages against nursing home defendants, the question is not whether Defendants' conduct in this case was *less* outrageous and extreme than conduct in other nursing home cases. The question is whether Plaintiffs have presented enough facts such that a jury might reasonably conclude that Defendants acted in an "outrageous fashion with a reckless indifference to the rights of the deceased." Plaintiff has submitted two expert reports which both describe the Defendants' conduct in this case as egregious and reckless, and which both utilize the record to explain why. Therefore, Plaintiff has met her burden, as a jury might conceivably agree with these experts, view the evidence as egregious and reckless, and elect to award punitive damages.

At oral argument, Defendants attempted to distinguish the facts of this case from the facts in other nursing home cases, including *Hall*, 54 A.3d 381, *supra.* In *Hall,* the Superior Court found that the trial court had erred by failing to allow the question of punitive damages to go to a jury, as the plaintiff "had presented evidence establishing [the facility] acted in an outrageous fashion in reckless disregard to the rights of others and created an unreasonable risk of physical harm to the residents of the nursing home, particularly the deceased." *Id.* at 396-397. Included among that evidence was the chronic understaffing of the facility, the neglect of the deceased resident at issue, and the awareness of facility employees about these problems. *Id.* at 397.

While there were other facts in *Hall* that made the circumstances even more egregious, the neglect that resulted from understaffing at the facility, as well as the facility's knowledge of the neglect and failure to

correct it, was among the reasons to allow a jury to consider an award for punitive damages. Like in *Hall*, Plaintiff has presented *prima facie* evidence to show that understaffing led to Mrs. Johnson's various injuries and untimely death and that the Facility was aware of the problem and failed to rectify it. Also like in *Hall,* where the facility engaged in behavior more egregious than simple understaffing[73], Plaintiff has presented *prima facie* evidence of additional egregious behavior here as well, relating to Mrs. Johnson's elbow.

At the summary judgment standard, with the evidence viewed in the light most favorable to the non-moving party, this Court finds that a jury might reasonably find that Defendants acted in an outrageous fashion in reckless disregard to the rights of others and created an unreasonable risk of physical harm to the residents of the nursing home, particularly the deceased. Therefore, Defendant's motion must be denied.

[VII.] CONCLUSION

For the reasons set forth fully above, Defendant's *Motion for Partial Summary Judgment as to Claims for Corporate Negligence and Vicarious Liability Against Corporate Defendants* shall be **DENIED** with respect to HCR Manor Care Services, LLC; HCR III Healthcare, LLC; HCR II Healthcare, LLC; HCR Healthcare, LLC; ManorCare, Inc.: HCR ManorCare Operations, LLC; HCR ManorCare Heartland, LLC; and Heartland Employment Services, LLC.

Defendant's *Motion for Partial Summary Judgment as to Claims for Corporate Negligence and Vicarious Liability Against Corporate Defendants* shall be **GRANTED** with respect to HCR ManorCare, LLC; ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC; HCR IV Healthcare, LLC; and HCRMC Operations, LLC. These Defendants shall hereby be dismissed from this case with prejudice.

Defendant's *Motion for Partial Summary Judgment as to Claims for Punitive Damages* shall be **DENIED.**

An appropriate Order follows.

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73 This Court does not reach a conclusion as to whether neglect as a result of understaffing and the failure to rectify the problem, with no further claims, could be properly submitted to a jury as extreme or outrageous conduct. As understaffing is not the only allegation in this case, this Court does not need to reach a conclusion as to whether punitive damages would be appropriate on the understaffing issue alone.

ORDER OF COURT

AND NOW, this 1st day of July, 2021, having reviewed and considered Defendant's *Motion for Partial Summary Judgment as to Claims for Corporate Negligence and Vicarious Liability Against Corporate Defendants* and *Motion for Partial Summary Judgment as to Claims for Punitive Damages*, Plaintiff's response thereto, the applicable law, and the oral arguments of the parties,

IT IS HEREBY ORDERED as follows:

1. Defendant's *Motion for Partial Summary Judgment as to Claims for Corporate Negligence and Vicarious Liability Against Corporate Defendants* shall be **DENIED** with respect to HCR Manor Care Services, LLC; HCR III Healthcare, LLC; HCR II Healthcare, LLC; HCR Healthcare, LLC; ManorCare, Inc.: HCR ManorCare Operations, LLC; HCR ManorCare Heartland, LLC; and Heartland Employment Services, LLC. These claims shall proceed to trial.

2. Defendant's *Motion for Partial Summary Judgment as to Claims for Corporate Negligence and Vicarious Liability Against Corporate Defendants* shall be **GRANTED** with respect to HCR ManorCare, LLC; ManorCare Health Services, Inc., a/k/a ManorCare Health Services, LLC; HCR IV Healthcare, LLC; and HCRMC Operations, LLC. These entities shall hereby be **DISMISSED** from this case, with prejudice.

3. Defendant's *Motion for Partial Summary Judgment as to Claims for Punitive Damages* is **DENIED.**

Pursuant to Pennsylvania Rules of Civil Procedure 236, the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court, to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.