

IN THE HEALTH CARE ATERNATIVE DISTPUTE RESOLUTION OFFICE

DONALD SMACK, Individually, and as
Personal Representative of the
Estate of NEIL CARLTON SMACK, deceased
10650 Flower Street
Berlin, MD 21881

TO THE USE OF :

as issue of the Neil Carlton Smack, who
"may be entitled by law to damages"
pursuant to Rule 15-1001.

Lynn Smack
11286 Wild Meadow Street
Waldorff, MD 20601

Ronald Smack
1417 South 54th Street
Philadelphia, PA 19143

Victor Smack
P.O. Box 321
Berlin, MD 21811

Reneya Williams
1781 Richfield Drive
Severn, MD 21144

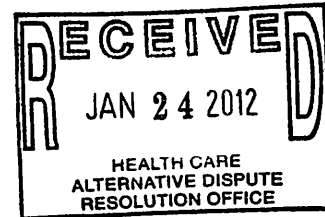
Rotoya Williams
502 Jacque Court
Bowie, MD 20721

Anjolene Whaley
12211 Kingsford Court
Mitchellville, MD 20721

Plaintiffs

v.

MID-ATLANTIC LONG TERM CARE, LLC
d/b/a Berlin Nursing and Rehabilitation Center
9715 Health Center Drive
Berlin, MD 21811

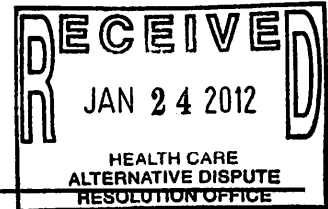


Civil Case No.

2012-046

Defendant

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STATEMENT OF CLAIM

COMES NOW plaintiffs, Donald Smack, Individually, and as the Personal Representative of the Estate of Neil Lynn Smack, deceased, and Ronald Smack, Lynn Smack, Victor Smack, Reneya Williams, Rotoya Williams, and Anjolene Whaley, by counsel, and brings this Survival and Wrongful Death action against the defendant, Mid-Atlantic Long-Term Care, LLC d/b/a Berlin Nursing and Rehabilitation Center. In support of her Complaint, plaintiff avers as follows:

FACTS RELEVANT TO ALL COUNTS

1. The amount of this claim exceeds \$30,000.00.
2. The venue of this claim is proper in Worcester County, Maryland, the venue in which the acts complained of occurred.
3. The defendant Mid-Atlantic Long-Term Care, LLC d/b/a Berlin Nursing and Rehabilitation Center's nursing facility at issue is located at 9715 Health Center Drive, Berlin, MD 21811.
4. This claim arises from negligent nursing home care provided by the defendant to plaintiff's decedent, Neil Carlton Smack, which was in breach of the applicable standards of care. The nursing home care provided to Neil Carlton Smack which is at issue was provided from on or about November 9, 2010.
5. Neil Carlton Smack died on November 9, 2010 due to a failure to change the texture of his diet and/or monitor him during his meals, which occurred at Berlin Nursing and

Rehabilitation Center. Donald Smack is the son of Neil Carlton Smack at all times relevant to this action. Donald Smack was duly appointed as the Personal Representative of the Estate of Neil Carlton Smack on March 11, 2011 by the Register of Wills, Worcester County Circuit Court.

6. At all times relevant hereto, the defendant was responsible for the substandard and negligent acts of its employees and are therefore vicariously liable to Neil Carlton Smack and plaintiff for the negligent acts of the defendant's actual and apparent agents, including all of the defendant's employees, agents, and/or servants/contractors pursuant to the doctrine of respondeat superior. All references throughout this Complaint to the "defendant" include, and also refer to, the acts and/or failures to act of the defendant's employees, agents, and/or servants/contractors.

7. At all times relevant hereto, the defendant agreed to provide nursing home care to Neil Carlton Smack and as such owed a duty to Neil Carlton Smack and plaintiff to exercise the degree of skill and care expected of a reasonably competent nursing home in the same or similar circumstances.

8. On or about January 1, 2010, the defendant admitted Neil Carlton Smack into their nursing home known as Berlin Nursing and Rehabilitation Center. At the time of Neil Carlton Smack's admission into the defendant's nursing home, the defendant was aware of, or should have been aware of, Neil Carlton Smack's physical and mental condition, and represented to Neil Carlton Smack and his family that the defendant could, and would, fully and adequately care, treat, and attend to Neil Carlton Smack's nutritional needs.

9. At all times relevant hereto, the Berlin Nursing and Rehabilitation Center nursing home facility was owned and/or operated and/or managed by Mid-Atlantic Long-Term Care, LLC.

10. Plaintiff's decedent, Neil Carlton Smack, has seven living offspring: plaintiffs Donald Smack, Ronald Smack, Lynn Smack, Victor Smack, Reneya Williams, Rotoya Williams, and Anjolene Whaley.

COUNT I
(Negligence – Survival Action)

Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 10 of this Complaint, as if each allegation was fully set forth herein, incorporates each preceding allegation by reference, and further alleges as follows:

11. At all times relevant herein the defendant was aware, or should have been aware, that Neil Carlton Smack was dependent on assistance for all activities of daily living, including nutrition.

12. The defendant had a duty to Neil Carlton Smack and plaintiff to provide Neil Carlton Smack nursing, rehabilitative, and medical care which would comply with the applicable standards of care for nursing home facilities. The defendant also had a duty to Neil Carlton Smack and plaintiff to provide a sufficient number of adequately trained, supervised, and equipped staff to attend to the nutritional and other speech pathology needs of Neil Carlton Smack.

13. Based on the defendant's representations that it would provide adequate care and would meet the needs of Neil Carlton Smack, Neil Carlton Smack agreed to have his nursing home care provided by the defendant.

14. The defendant owed Neil Carlton Smack and plaintiff a duty to provide Neil Carlton Smack with care in accord with the applicable standards of care and to properly monitor, assess, care plan, treat, maintain, protect, and Neil Carlton Smack from his various medical conditions, including nutritional and speech pathology needs. The defendant had a further duty

to provide care in accord with the applicable standards of care in order to address Neil Carlton Smack's dysphagia and other needs and that Neil Carlton Smack was receiving all required medication, was routinely and regularly maintained, assessed, monitored, and that any change in condition, or other disabling medical condition was promptly and properly care planned, assessed, reported, and treated.

15. The defendant's above-referenced duty was non-delegable. Therefore, the defendant was, and is, responsible for the conduct of all employees, its agents, servants, and/or independent contractors who participated in Neil Carlton Smack's care.

16. Throughout the course of his nursing home care at the defendant's facility, Neil Carlton Smack was subjected to substandard medical, nutritional and speech pathology care by the defendant. The incidents of speech pathology and nursing home care provided by the defendant to Neil Carlton Smack which breached the applicable standards of care included, but were not limited to, the following:

- a. The defendant's staff failed to ensure that Neil Carlton Smack's changes in condition were properly observed, assessed, monitored, reported to an appropriate physician, and treated.
- b. The defendant's staff failed to implement an appropriate plan of care, therapy, and rehabilitation for Neil Carlton Smack.
- c. The defendant's staff failed to adequately observe and report, or report in a timely fashion, to an appropriate physician changes in Neil Carlton Smack's physical, mental, and emotional condition.
- d. The defendant's staff failed to follow accepted and standard medical, nutritional and speech pathology procedures.

k. The defendant's staff failed to change the texture of Neil Carlton Smack's diet and supervise him during meals.

17. As a direct and proximate result of the defendant's staff's negligence, neglect, and multiple and repeated breaches of the applicable standards of care, Neil Carlton Smack was caused to suffer serious and permanent injuries and debilitating conditions, including, but not limited to, choking to death on a cookie and/or solid food, and premature death. Additionally he suffered great pain of mind and body, suffered mental and emotional distress, required extensive medical treatment, including, but not limited to, hospitalizations, incurred substantial medical and out-of-pocket expenses, and incurred other substantial related costs and would have enjoyed an otherwise normal life expectancy, commensurate with her condition

18. The injuries, damages, and death referenced above were directly and proximately caused by the breaches from the applicable standards of care and other negligence by the Defendant without any contributory negligence by Neil Carlton Smack.

WHEREFORE, Plaintiff, Donald Smack, individually, and as the Personal Representative of the Estate of Neil Carlton Smack, deceased, moves this Court for judgment against the defendant in an amount in excess of the jurisdictional limit to include compensation for Neil Carlton Smack' medical expenses, pain and suffering, and wrongful death, plus interest and costs of this action and any other appropriate relief.

Count II
(Negligence – Wrongful Death Action)

Plaintiffs repeats and re-alleges each and every allegation set forth in paragraphs 1 through 18 of this Complaint, as if each allegation was fully set forth herein, incorporates each preceding allegation by reference, and further alleges as follows:

19. As a direct and proximate result of the Defendant's negligence as detailed in

Count I, Plaintiff's decedent, Neil Carlton Smack, died.

20. Plaintiffs, Donald Smack, Ronald Smack, Lynn Smack, Victor Smack, Reneya Williams, Rotoya Williams, and Anjolene Whaley bring this action to recover damages as a result of the wrongful death of their father, Neil Carlton Smack.

21. As a direct result of the wrongful death of Neil Carlton Smack, Plaintiffs suffered the loss of the value of Neil Carlton Smack's services to the family including attention, counsel, guidance, and personal advice and has sustained other losses.

22. The proceeds of any wrongful death claim we be dispensed to Donald Smack, Ronald Smack, Lynn Smack, Victor Smack, Reneya Williams, Rotoya Williams, and Anjolene Whaley as required by Maryland law.

WHEREFORE, Plaintiffs moves the Court for judgment against the Defendant in an amount in excess of the jurisdictional limit in compensatory damages, plus interest and costs of this action, and any other appropriate relief.

Respectfully submitted,

Attorney for Plaintiff