



omissions giving rise to the claims occurred in Harris County, Texas.

### FACTS

5. On July 15, 2011, Willie Lee Simmons ("Mr. Simmons") enrolled into Select Specialty Hospital – Houston West ("Select Specialty") to rehabilitate his muscles after his lungs collapsed.

6. While under the care of Defendant's nurses, physicians, and physician's assistants (collectively "caretakers"), ants and gnats crawled into Mr. Simmons' trachea tube and into his larynx. In addition, Defendant's caretakers allowed bed sores to develop within Mr. Simmons' maximus gluteus and gluteus medius. Defendant's caretakers also left Mr. Simmons lying on the floor in his own feces. Defendant's caretakers also failed to maintain Mr. Simmons' room in a sanitary condition. Mr. Simmons later died.

### CAUSE OF ACTION

#### A. COUNT 1 – MEDICAL NEGLIGENCE

7. Plaintiffs incorporate by reference the factual allegations contained in the preceding paragraphs.

8. Plaintiffs assert a claim against Defendant for medical negligence.

9. Defendant is a health-care institution, namely a hospital.

10. At all relevant times, Defendant's caretakers were physicians or health-care providers.

11. Defendant and its caretakers owed Mr. Simmons a duty of care after Defendant's caretakers treated Mr. Simmons by rehabilitating his muscles.

12. Defendant and its caretakers engaged in several acts and omissions constituting negligence, which include:

a. Failing to choose an appropriate procedure.

b. Failing to monitor Mr. Simmons' condition.

c. Failing to treat Mr. Simmons' condition properly.

d. Failing to provide the medical and nursing care reasonably required for Mr. Simmons' condition; and

e. Failing to keep Mr. Simmons' room safe.

13. Defendant is liable to Mr. Simmons for the breach of the duty of care by Defendant's caretakers, Defendant's employees, because the employees' acts were performed

while in the employment of Defendant, to further Defendant's business, and to accomplish the objective for which the employees were hired. The employees' acts were within the course and scope of that employment or within the authority delegated to the employees.

14. Defendant's breach of duty proximately caused injury to Mr. Simmons, which resulted in the following damages: a) medical expenses, pain and suffering, mental anguish, loss of enjoyment of life, and physical impairment.

15. Plaintiffs seek unliquidated damages within the jurisdictional limits of this court.

16. Mr. Simmons' injury resulted from Defendant's gross negligence, which entitles Plaintiffs to exemplary damages under Texas Civil Practice & Remedies Code section 41.003(a).

#### CONDITIONS PRECEDENT

17. Plaintiffs gave Defendant written notice of Plaintiffs' claim at least 60 days before filing suit and fully complied with the terms of Texas Civil Practice & Remedies Code sections 74.051 and 74.052. A copy of the notice and compliance are attached as Exhibits A-B.

#### ATTORNEY'S FEES & COSTS

18. As a result of Defendant's conduct, as described herein, Plaintiffs have retained Derek H. Deyon of the Deyon Law Group, P.L.L.C. to prosecute this action on their behalf and has agreed to pay the firm's reasonable and necessary attorney's fees. Defendant should be ordered to pay reasonable attorney's fees, and judgment should be rendered against Defendant in favor of this attorney.

#### JURY DEMAND

19. Plaintiffs demand a jury trial.

#### REQUEST FOR DISCLOSURE

20. Under Texas Rule of Civil Procedure 194, Plaintiffs request that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

#### PRAYER

21. For these reasons, Plaintiffs ask that the court issue citation for Defendant to appear and answer and that on final judgment the court award Plaintiff:

- a. Actual damages;
- b. Exemplary damages;
- c. Pre- and post-judgment interest at the maximum rates permitted by law;

- d. Reasonable and necessary attorney's fees;
- e. Court costs; and
- f. Such other and further relief to which Plaintiffs may be justly entitled;

DATED January 12, 2012.

RESPECTFULLY SUBMITTED,

THE DEYON LAW GROUP, P.L.L.C.



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