

CIRCUIT COURT OF COLE COUNTY, MISSOURI

DEBRA TESTERMAN, individually )  
and on behalf of those persons )  
comprising the wrongful-death )  
class entitled to bring this )  
action, )  
) )  
) *Plaintiffs,* )  
) vs. )  
) )  
JEFFERSON CITY MANOR, INC. ) Case № \_\_\_\_\_ )  
) )  
) and )  
) )  
) )  
JUCKETTE MANAGEMENT SERVICES )  
SENIOR LIVING, INC., d/b/a JMS )  
Senior Living, )  
) )  
) *Defendants.* )

PETITION

COMES NOW Plaintiff Debra Testerman, individually and on behalf of the persons comprising the wrongful-death class herein, and for this cause of action states as follows:

A. Jurisdiction and Venue

1. This Court has jurisdiction over this case pursuant to Mo. CONST. Art. V, § 14(a), and Mo. Rev. Stat. § 478.070.
2. Venue is proper herein per Mo. Rev. Stat. § 508.010.4 because Plaintiff was first injured in Cole County.

B. Parties

3. Plaintiff Debra Testerman is a citizen of the State of Missouri who at the time this cause of action accrued was one of five adult children of David H. Ousley, who died on October 4, 2020 in Jefferson City, Cole County, Missouri as a result of the negligence described in this petition.
4. The decedent's other four children, all adults, are

David Ousley, Jr., Beverly Lueckenhoff, Dennis Ousley, and Darla Figolah, who along with Plaintiff Debra Testerman comprise the class of persons identified by Mo. Rev. Stat. § 537.080.1(1) are entitled to bring this cause of action and to share in the proceeds of any recovery had hereby.

5. At all relevant times, Defendant Jefferson City Manor, Inc., was a Missouri general-business corporation authorized to do business in Missouri, and did so by owning and operating a skilled nursing facility in Jefferson City, Cole County, Missouri bearing the name Jefferson City Manor, and which acted by and through its agents, servants, or employees, who at all relevant times herein acted within the course and scope of their agency, service, or employment.

6. Defendant Jefferson City Manor is a "facility," "residential care facility" or an "assisted living facility" as defined by the Missouri Omnibus Nursing Home Act (hereafter "Act"), codified at Mo. Rev. Stat. §198.003, *et seq.*

7. Upon information and belief, at all relevant times Defendant Jefferson City Manor accepted Medicare and Medicaid funds to operate, and was subject to regulation by the Missouri Division of Social Services, among other authority.

8. At all relevant times, Defendant Juckette Management Services Senior Living, Inc., was a Missouri general-business corporation authorized to do business in Missouri, and did so as "JMS Senior Living" to operate or manage Defendant Jefferson City Manor, and which acted by and through its agents, servants, or employees, who at all relevant times herein acted within the course and scope of their agency, service, or em-

ployment.

**C. Facts Common to All Counts**

9. As of August 1, 2020, the decedent, David H. Ousley ("Decedent") was in-patient at the premises of Defendant Jefferson City Manor suffering from conditions requiring its care.

10. Long before August 1, 2020, the well-known COVID-19 pandemic was in full swing, and people throughout the world — including many people in Cole County, Missouri — had become infected by the disease.

11. As a direct consequence of the existence of the pandemic, skilled-nursing facilities in Cole County, including Defendant Jefferson City Manor, quarantined its resident patients such that the only persons allowed in or out of such facilities were new resident patients, employees of the facilities, and deceased residents.

12. As of August 1, 2020, Defendants Jefferson City Manor and JMS had been quarantining its resident patients, including Decedent.

13. Upon information and belief, as of August 1, 2020, none of the resident patients at Defendant Jefferson City Manor had acquired COVID-19.

14. None of Decedent's conditions requiring his placement at Defendant Jefferson City Manor included COVID-19, and he had never before been exposed to anyone or any circumstance which could have resulted in his acquiring the infection.

15. Within the first week of August, 2020, Decedent (and other resident patients) became infected with COVID-19 as a

direct consequence of its spread within and about the premises of Defendant Jefferson City Manor by an employee of Defendants Jefferson City Manor and JMS who had acquired the infection from outside the facility, all as admitted to Plaintiff by a nurse employed by Defendants shortly after Decedent's infection was discovered.

16. After suffering from the COVID-19 infection for two months, which included three emergency hospital admissions, Decedent died from complications directly associated with, and caused by, the COVID-19 infection.

17. But for Decedent being exposed to COVID-19 by Defendants' employee, he would not have contracted the infection and would not have died.

18. But for Decedent being exposed to COVID-19 by Defendants' employee, Plaintiff and the other wrongful-death class members would not have been damaged by losing the consortium, services, companionship, comfort, instruction, guidance, and counsel of their father, and would not have incurred unnecessary funeral, burial, and other expenses.

**D. Claims for relief**

**COUNT I WRONGFUL DEATH**

19. Pursuant to Mo. S. Ct. R. 55.12, Plaintiff incorporates in this count the foregoing facts common to all counts.

20. Defendants, by their agents, servants, or employees, had duties to possess and use that degree of skill and learning ordinarily used in the same or similar circumstances by members of their profession in caring for and treating Decedent.

21. During the course of their care and treatment of Decedent, Defendants, by their agents, servants, or employees, breached their said duties by failing to meet the requisite standard of due care, skill, and practice ordinarily exercised by members of their professions under the same or similar circumstances, to wit:

a. They failed to formulate or implement a plan to ensure none of their employees would enter the premises of Defendant Jefferson City Manor with COVID-19 infections;

b. They failed to formulate or implement a plan to otherwise prevent the introduction of the COVID-19 virus on or about the premises of Defendant Jefferson City Manor;

c. They failed to formulate or implement a plan for ensuring as sterile an environment as possible within and about the premises of Defendant Jefferson City Manor so as to minimize or eliminate the possibility of the spread of any COVID-19 viruses that made its way into or about the premises;

d. They failed to provide adequate personnel or staff to ensure Decedent's protective oversight, assistance, and supervision;

e. They failed to provide appropriate care and supervision to and for Decedent, who was incapable of caring for himself;

f. They failed to properly supervise and train its agents, servants, or employees, who were responsible for Decedent's care, treatment, and oversight;

g. They violated 19 C.S.R. 15-14.042(16), which requires that all persons who have any contact with the resident

patients in their facility to not knowingly act or omit any duty in a manner which would materially and adversely affect the health, safety, welfare, or property of a resident patient; and

h. Defendants violated 19 C.S.R. 15-14.042(71), which required that Decedent receive round-the-clock protective oversight and supervision, personal attention, and care in accordance with his condition and the risks of his residency, and which were consistent with current acceptable medical practice.

22. While Decedent was at Defendant Jefferson City Manor, Defendants' agents, servants, or employees also violated certain regulations which govern skilled nursing facilities and set forth the following standards of care, including but not limited to the following:

a. 19 C.S.R. 30-85.042(6). The facility shall not knowingly admit or continue to care for residents whose needs cannot be met by the facility directly or in cooperation with outside resources. Facilities which retain residents needing skilled nursing care shall provide licensed nurses for these procedures;

b. 19 C.S.R. 30-85.042(13). The facility shall develop policies and procedures applicable to its operation to insure the residents' health and safety and to meet the residents' needs. At a minimum, there shall be policies covering personnel practices, admission, discharge, payment, medical emergency treatment procedures, nursing practices, pharmaceutical services, social services, activities, dietary, house-keeping, infection control, disaster and accident prevention, residents' rights and handling residents' property;

c. 19 C.S.R. 30-85-14.042(16). All persons who have any contact with the residents in the facility shall not knowingly act or omit any duty in a manner which would materially and adversely affect the health, safety, welfare or property of a resident;

d. 19 C.S.R. 30-85.042(37). All facilities shall

employ nursing personnel in sufficient numbers and with sufficient qualifications to provide nursing and related services which enable each resident to attain or maintain the highest practicable level of physical, mental and psychosocial well-being. Each facility shall have a licensed nurse in charge who is responsible for evaluating the needs of the residents on a daily and continuous basis to ensure there are sufficient, trained staff present to meet those needs;

e. 19 C.S.R. 30-85.14.042(66). Each resident shall receive twenty-four (24)-hour protective oversight and supervision;

f. 19 C.S.R. 30-85.042(67). Each resident shall receive personal attention and nursing care in accordance with his/her condition and consistent with current acceptable nursing practice;

g. 19 C.S.R. 30-88.010(20). Each resident shall be free from mental and physical abuse; and

h. 19 C.S.R. 30-88-010(24). Each resident shall be treated with consideration, respect and full recognition of his/her dignity and individuality, including privacy in treatment and care of his/her personal needs.

23. The breach of duties and violations of law by Defendants by their agents, servants, or employees caused or contributed to cause Decedent's death on October 4, 2020.

24. As a direct and proximate result of Defendants' negligence and that of its agents, servants, or employees, Decedent died and Plaintiff and the other class members have suffered the loss of the consortium, services, companionship, comfort, instruction, guidance, and counsel of their father, and incurred unnecessary funeral, burial, and other expenses.

**F. Demand for jury trial**

25. Plaintiff demands a trial by jury.

**WHEREFORE**, Plaintiff prays for judgment against Defendants Jefferson City Manor and JMS:

A. For damages for Decedent's medical expenses and pain

and suffering between the time he contracted the COVID-19 infection during the first week of August 2020, and the time he died on October 4, 2021;

B. For damages for Plaintiff's and the other class members' loss of the consortium, services, companionship, comfort, instruction, guidance, and counsel of their father, as well as funeral and burial expenses;

C. For all other damages for which recovery is available;

D. For the costs of this action; and

E. For all other relief allowed by law.

Respectfully submitted,

**HANRAHAN & NACY, P.C.**

by: /s/ William P. Nacy

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Attorneys for Plaintiff





IN THE 19TH JUDICIAL CIRCUIT, COLE COUNTY, MISSOURI

Judge or Division: DANIEL RICHARD GREEN	Case Number: 21AC-CC00339
Plaintiff/Petitioner: DEBRA TESTERMAN	Plaintiff's/Petitioner's Attorney/Address WILLIAM "PETE" P NACY HANRAHAN & NACY, PC 522 E CAPITOL AVE JEFFERSON CITY, MO 651013008
Defendant/Respondent: JEFFERSON CITY MANOR, INC.	Court Address: PO BOX 1870 301 E HIGH ST JEFFERSON CITY, MO 65101
Nature of Suit: CC Wrongful Death	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: JUCKETTE MANAGEMENT SVCS

Alias:

SERVE: R/A GIBBS POOL & TURNER PC  
3225 EMERALD LN, SUITE A  
JEFFERSON CITY, MO 65109

COURT SEAL OF



COLE COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for plaintiff/petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

Friday, August 27, 2021

Date

*[Signature]*

Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within 30 days after the date of issue.

I certify that I have served the above summons by: (check one)

- delivering a copy of the summons and a copy of the petition to the defendant/respondent.
- leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the defendant/respondent with \_\_\_\_\_, a person of the defendant's/respondent's family over the age of 15 years who permanently resides with the defendant/respondent.
- (for service on a corporation) delivering a copy of the summons and a copy of the complaint to: \_\_\_\_\_ (name) \_\_\_\_\_ (title).
- other: \_\_\_\_\_

Served at \_\_\_\_\_ (address)

in \_\_\_\_\_ (County/City of St. Louis), MO, on \_\_\_\_\_ (date) at \_\_\_\_\_ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on \_\_\_\_\_ (date).

(Seal)

My commission expires: \_\_\_\_\_

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ \_\_\_\_\_

Non Est \$ \_\_\_\_\_

Sheriff's Deputy Salary Supplemental Surcharge \$ 10.00

Mileage \$ \_\_\_\_\_ ( \_\_\_\_\_ miles @ \$ \_\_\_\_\_ per mile)

Total \$ \_\_\_\_\_

A copy of the summons and a copy of the petition must be served on each defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



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