

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

LYLE D. FOSTER, DULY APPOINTED PERSONAL REPRESENTATIVE OF THE ESTATE OF LUCILLE HAMMETT; CYNTHIA LYNNE WOLFF; MICHAEL HAMMETT; JULIE HAMMETT DAVIS; and RICHARD ADAM HAMMETT

PLAINTIFFS

VS.

CASE NO. 60CV-23-9817

CONWAY REGIONAL MEDICAL CENTER; JESSI WIEDOWER; TAYLOR ANDERSON; ARTHUR REED SLATON, MD; COPIC, a Risk Retention Group; CONTINENTAL CASUALTY COMPANY and JOHN DOES 1-10

DEFENDANTS

ANSWER TO COMPLAINT

Defendants Conway Regional Medical Center, Jessi Wiedower, Taylor Anderson, Arthur Reed Slaton, M.D., COPIC, a Risk Retention Group, and Continental Casualty Company for their Answer to the Complaint, do state:

1. The allegations contained in Paragraph 1 of the Complaint are admitted as to the appointment of a personal representative and Conway Regional Medical Center, Jessi Wiedower, Taylor Anderson and Arthur Reed Slaton, M.D are healthcare providers. COPIC is the insurer for Conway Regional Medical Center. Continental Casualty Company is not an insurer for Conway Regional Medical Center. Any other allegation or assertion contained in Paragraph 1 of the Complaint is denied.

2. The allegations contained in Paragraph 2 of the Complaint are admitted.

3. The allegations contained in Paragraph 3 of the Complaint are responded to by reference to the medical records. To the extent the allegations in Paragraph 3 are

consistent with the medical records, they are admitted. To the extent they are not, they are denied.

4. The allegations contained in Paragraph 4 of the Complaint are denied in that Ms. Hammett actually had three codes.

5. The allegations contained in Paragraph 5 of the Complaint are not known to these Defendants despite reasonable inquiry and, therefore, those allegations are denied.

6. The allegations contained in Paragraph 6 of the Complaint are denied in that Ms. Hammett coded on two prior occasions and heroic measures were performed to revive her.

7. The allegations contained in Paragraph 7 of the Complaint are denied because, in fact, two separate codes were performed wherein the patient was revived.

8. These Defendants are without knowledge of the allegations contained in Paragraph 8 of the Complaint. To the extent those allegations are consistent with the medical records, they are admitted. To the extent they are not, they are denied.

9. These Defendants are without knowledge of the allegations contained in Paragraph 9 of the Complaint. To the extent those allegations are consistent with the medical records, they are admitted. To the extent they are not, they are denied.

10. The allegations contained in Paragraph 10 of the Complaint are denied.

11. The allegations contained in Paragraph 11 of the Complaint are responded to by reference to the previous responses contained herein.

12. The allegations contained in Paragraph 12 of the Complaint are denied because medical care providers at Conway Regional Medical Center attempted to revive

Ms. Hammett on two separate occasions. It is admitted that another family identified Ms. Hammett as their mother.

13. The allegations contained in Paragraph 13 of the Complaint are responded to by reference to the medical records. To the extent the allegations are consistent with the medical records, they are admitted. To the extent they are not, they are denied.

14. The allegations contained in Paragraph 14 of the Complaint are denied.

15. The allegations contained in Paragraph 15 of the Complaint are denied.

There were no surgeries.

16. The allegations contained in Paragraph 16 of the Complaint are denied.

17. The allegations contained in Paragraph 17 of the Complaint are denied.

18. The allegations contained in Paragraph 18 of the Complaint are denied and these Defendants reserve the right to claim attorney's fees and costs for an allegation suggesting behavior consistent with punitive damages.

19. The allegations contained in Paragraph 19 are responded to by reference to the previous responses contained herein.

20. The allegations contained in Paragraph 20 of the Complaint are denied.

21. The allegations contained in Paragraph 21 of the Complaint are admitted that the claim must be brought under the Medical Malpractice Act. Any other allegation or assertion contained in Paragraph 21 of the Complaint is denied.

22. The allegations contained in Paragraph 22 of the Complaint are denied.

23. The allegations contained in Paragraph 23 of the Complaint are denied.

24. The allegations contained in Paragraph 24 of the Complaint are denied.

Further, these Defendants reserve the right to claim attorney's fees and costs for the allegations of behavior sufficient to warrant punitive damages.

25. The allegations contained in Paragraph 25 of the Complaint are responded to by reference to the previous responses contained herein.

26. The allegations contained in Paragraph 26 of the Complaint are denied.

27. The allegations contained in Paragraph 27 of the Complaint do not appear to be associated with this case and, therefore, those allegations are denied.

28. The allegations contained in Paragraph 28 of the Complaint do not appear to have any association with the facts of this case and, therefore, those allegations are denied.

29. The allegations contained in Paragraph 28 of the Complaint do not appear to have any association with the facts of this case and, therefore, those allegations are denied.

30. The allegations contained in Paragraph 30 of the Complaint are denied.

31. The allegations contained in Paragraph 31 of the Complaint are denied.

32. The allegations contained in Paragraph 32 of the Complaint are denied.

33. The allegations contained in Paragraph 33 of the Complaint are denied.

34. The allegations contained in Paragraph 34 of the Complaint are denied.

35. The allegations contained in Paragraph 30 of the Complaint are concurred in by these Defendants who also demand a trial by jury.

36. The allegations contained in the prayer for relief are denied.

37. That any allegation contained in the Complaint not admitted herein is both generally and specifically denied.

38. That the Plaintiffs' injuries or damages, if any, are not the result of any negligence or fault on the part of these Defendants and may be the fault of others for whom these Defendants are not responsible depending on discovery.

39. These Defendants assert all Executive Orders and Legislation regarding immunity due to the COVID-19 pandemic. All Defendants assert their immunity from liability based on their good faith efforts to provide healthcare service which was a direct result of the services to the patient for the treatment and mitigation of COVID-19.

40. That the allegations against the insurer herein are denied. CNA is not a proper defendant.

41. These Defendants reserve their right to plead further upon the completion of discovery.

42. The Plaintiffs' claims for punitive damages are barred by both the Arkansas Constitution and the United States Constitution as set forth more fully herein:

(a) Arkansas law has not established a definitive standard for setting the amount of punitive damages and, therefore, an award of punitive damages without requiring Plaintiff to prove every element beyond a reasonable doubt or, in the alternative, by clear and convincing evidence, violates Defendants' due process rights under the U. S. Constitution, Amend. XIV and the corresponding applicable due process provisions of the Arkansas Constitution.

(b) Because it is not subject to a predetermined limit, such as maximum multiple compensatory damages or a maximum amount, an award of punitive damages violates Defendants' due process rights under the U.S. Constitution, Amend. XIV and corresponding applicable due process provisions of the Arkansas Constitution.

(c) An award of punitive damages violates Defendants' due process and equal protection rights guaranteed by the U.S. Constitution, Amend. XIV, and the double jeopardy clause of the U.S. Constitution, Amend. V, as incorporated into Amend XIV, and a jury (1) is not provided a standard of sufficient clarity for determining the

appropriateness, or the appropriate size, of a punitive damages award; (2) is not instructed on the limits of punitive damages imposed by the applicable principles of deterrents and punishment; (3) is not expressly prohibited from awarding punitive damages in whole or in part, on the basis of insidiously discriminatory characteristics, including the corporate status of any Defendant; (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible; (5) is not subject to judicial review on the basis of objective standards; and (6) is not required to consider the character and degree of the alleged wrong, and (7) is not instructed to find in favor of a mere distributor and not manufacturer of a product.

(d) An award of punitive damages under Arkansas law for the purposes of compensating Plaintiffs for elements of damage not otherwise recognized by Arkansas law violates Defendants' due process rights guaranteed by the U.S. Constitution, Amend. XIV, and by the corresponding applicable provisions of the Arkansas Constitution.

(e) An award of punitive damages under state law without the same protection that is accorded to all criminal defendants, including protection against unreasonable searches and seizures, double jeopardy, self-incrimination, the right to confront adverse witnesses, a speedy trial and the effective assistance of counsel, violates Defendants' rights under the U.S. Constitution, Amend. XIV, and Amends. IV, V and VI, as incorporated into Amend. XIV, and under the corresponding applicable provisions of the Arkansas Constitution.

43. Lyle D. Foster, as duly appointed representative of the Estate, has a direct conflict of interest in this matter in that Dr. Slaton is a client of his law firm.

WHEREFORE, having fully answered, Defendants pray that the Complaint be dismissed, for their costs, attorney's fees, and all other proper relief to which they may be entitled.

Respectfully submitted,

/s/William M. Griffin III
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CERTIFICATE OF SERVICE

I, William M. Griffin III, do hereby certify that on 2nd day of January, 2024, I electronically filed a copy of the foregoing with the Clerk of the Courts via the eFlex filing system, which will send notification of said filing to the following:

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/s/ William M. Griffin III
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