

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**Civil Division**

**DANIEL M. LITT, Individually as** :  
**Widower and as Personal Representative of**  
**the Estate of ANN S. LITT, Deceased, et al.** :

**Plaintiffs,** : **2007 CA 007961 M**  
 : **Cal. 8 - Judge Cheryl Long**  
**v.** : **Next Court Date: 3/5/09**  
 : **Event: Motions Hearing**

**SIBLEY MEMORIAL HOSPITAL, et al.** :  
**Defendants.** :

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT REGARDING PLAINTIFFS' GROSS NEGLIGENCE**  
**AND PUNITIVE DAMAGES CLAIMS**

Plaintiffs, by and through counsel, hereby file this opposition to Defendants' Motion For Partial Summary Judgment Regarding Plaintiffs' Gross Negligence and Punitive Damages Claims, and submits that, because there is a question of fact as to whether the conduct and inaction of Dr. Meredith Garrett, Nurse Celena Dalton and Dr. Joseph Blansfield constitute reckless disregard for Ann S. Litt's life, this question is not appropriate for summary judgment and thus must be placed squarely in the hands of the jury. Contrary to the statements set forth in Defendants' motion, there are several material facts which would support a jury's finding on this claim as well as supportive testimony from expert witnesses. As a result, Defendants' motion should be denied. In further support of Plaintiffs' Opposition to Defendants' Motion for Partial Summary

Judgment on Plaintiffs' Gross Negligence and Punitive Damages Claims, the Plaintiffs respectfully refer the Court to the attached Memorandum of Points and Authorities.

Respectfully submitted,

REGAN ZAMBRI & LONG, P.L.L.C.

By:           /s/ Catherine D. Bertram            
Patrick M. Regan # 336107  
pregan@reganfirm.com  
Catherine D. Bertram #425052  
cbertram@reganfirm.com  
Jacqueline T. Colclough #434483  
jcolclough@reganfirm.com  
1919 M Street, N.W., Suite 350  
Washington, D.C. 20036  
PH: (202) 463-3030  
FX: (202) 463-0667  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment on Plaintiffs' Gross Negligence and Punitive Damages Claims, the Plaintiffs respectfully refer the Court to the attached Memorandum of Points and Authorities in support thereof and proposed Order was e-served on the following counsel of record on the 2<sup>nd</sup> day of March 2009:

Nicholas McConnell, Esquire  
Daniele Herndon, Esquire  
Allyson C. Kitchell, Esquire  
Jackson & Campbell, PC  
1120 20th Street, NW  
South Tower, Suite 300  
Washington, DC 20036-3437

Steven Hamilton, Esquire  
Karen Karlin, Esquire  
Hamilton Altman Canale & Dillon, LLC  
4600 East-West Highway  
Suite 201  
Bethesda, MD 20814

Andrew Vernick, Esquire  
Kathleen Bartley, Esquire  
Wharton Levin Ehrmantraut & Klein  
104 West Street  
Post Office Box 551  
Annapolis, MD 21404-0551

/s/ Catherine D. Bertram  
Catherine D. Bertram

Regan  
Zambri & Long, P.L.L.C.  
1919 M Street, NW  
Suite 350  
Washington, D.C. 20036

202-463-3030

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**Civil Division**

**DANIEL M. LITT, Individually as** :  
**Widower and as Personal Representative of**  
**the Estate of ANN S. LITT, Deceased, et al.** :

**Plaintiffs,** : **2007 CA 007961 M**  
 : **Cal. 8 - Judge Cheryl Long**  
**v.** : **Next Court Date: 3/5/2009**  
 : **Event: Motions Hearing**

**SIBLEY MEMORIAL HOSPITAL, et al.** :  
**Defendants.** :

**STATEMENT OF MATERIAL FACTS WHICH ARE IN DISPUTE**

The Plaintiffs, by and through their undersigned counsel, hereby submit the following Statement of Material Facts Which are In Dispute.

1. Whether the health care providers employed by Sibley Memorial Hospital and who were responsible for providing medical care and treatment to Mrs. Litt on May 29 and May 30, 2007 were grossly negligent.

2. Whether Dr. Garrett, at the time she saw Mrs. Litt on May 29, 2007, was grossly negligent and/or displayed a wanton and willful disregard for Mrs. Litt's safety and life.

3. Whether Dr. Garrett altered her May 29, 2007 medical record with the intent to deceive the Litt family members and others as to any issues surrounding Dr. Garrett's examination of Mrs. Litt on May 29, 2007.

4. Whether the intent by Dr. Garrett to deceive the Litt family members and others, by altering her medical record, warrants the imposition of punitive damages.

Respectfully submitted,

REGAN ZAMBRI & LONG, P.L.L.C.

By:           /s/ Catherine D. Bertram          

Patrick M. Regan # 336107

pregan@reganfirm.com

Catherine D. Bertram #425052

cbertram@reganfirm.com

Jacqueline T. Colclough #434483

jcolclough@reganfirm.com

1919 M Street, N.W., Suite 350

Washington, D.C. 20036

PH: (202) 463-3030

FX: (202) 463-0667

*Counsel for Plaintiff*

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**Civil Division**

**DANIEL M. LITT, Individually as** :  
**Widower and as Personal Representative of**  
**the Estate of ANN S. LITT, Deceased, et al.** :  
  
**Plaintiffs,** : **2007 CA 007961 M**  
**v.** : **Cal. 8 - Judge Cheryl Long**  
: **Next Court Date: 3/5/2009**  
: **Event: Motions Hearing**  
**SIBLEY MEMORIAL HOSPITAL, et al.** :  
  
**Defendants.** :

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR PARTIAL**  
**SUMMARY JUDGMENT REGARDING PLAINTIFFS' OF GROSS**  
**NEGLIGENCE AND PUNITIVE DAMAGES CLAIMS**

Plaintiffs contend that Mrs. Litt was never fully and appropriately evaluated by certain health care providers at Sibley Memorial Hospital. In fact, it is their contention that Mrs. Litt's severe abdominal pain was summarily ignored and dismissed - she was simply instructed that she was merely constipated based on little investigation and was given minimal pain medication and finally a sleeping pill to keep her quiet.

The initial exchange between Defendant Garrett and Mrs. Litt in support of the claims for gross negligence/punitive damages was witnessed by the decedent's friend, Karen Jatlow, in the emergency department. Mrs. Jatlow's hand written statement that was authored by her within days after Mrs. Litt's death sets forth the exchange in detail. (See Exhibit 1). This statement was produced to defense counsel, and in her deposition, Mrs. Jatlow was probed regarding what she observed and witnessed in the emergency

department as Sibley while she was at Mrs. Litt's bedside. Mrs. Jatlow testified that she arrived at Sibley at about 3:30 p.m. on May 29, 2007 when Mrs. Litt was in the emergency department. Ms. Jatlow described Mrs. Litt was "pale and green" and "looking horrible." (Jatlow Dep. at 32; see excerpts of Karen Jatlow's deposition testimony attached as Exhibit 2) She further recalls that Mrs. Litt was moaning constantly and that Mrs. Litt told her that the pain in her abdomen was severe — worse than childbirth. (Jatlow Dep. at 59).

Based upon Mrs. Jatlow's written statement, it is clear that Dr. Garrett told her and Ms. Jatlow that her sole reason for evaluating Mrs. Litt, whose life hung in the balance, was her friendship with Dr. Beth Unger, Mrs. Litt's primary care doctor. (Jatlow Statement, p. 3). In addition, both in the witness statement and her deposition testimony, Mrs. Jatlow described the tone and nature of Dr. Garrett's encounter with Mrs. Litt. First, when Mrs. Jatlow tried to explain that Mrs. Litt was a nutritionist employed by the Washington Redskins organization and thus was in tune with her body, Dr. Garrett responded by asking, "Are you trying to impress me? Everyone that comes into Sibley Hospital is somebody." (Jatlow Dep. at 39). Mrs. Jatlow then begged Dr. Garrett to admit Mrs. Litt, to which Dr. Garrett responded "(T)his is not the kind of place that you can check yourself in and out of whenever you feel like it." (Jatlow Dep. at 48, Jatlow Statement at p. 3). When confronted with whether she made these statements, Dr. Garrett did not deny that she said them. This, according to Mrs. Jatlow, was Dr. Garrett's way of conveying that "Ann was no one special." (Jatlow Dep. at 42).

Despite Mrs. Litt's vomiting and severe abdominal pain (recorded as 8 out of 10 in the emergency department chart), Dr. Garrett planned merely to medicate Mrs. Litt and discharge her (Jatlow Dep. at 48-9). Mrs. Jatlow recalls that Dr. Garrett's examination of Mrs. Litt lasted a *mere 5 minutes* (Jatlow Dep. at 46). It was only after Mrs. Jatlow forced the issue that Dr. Garrett reluctantly agreed to admit her but even then only for limited observation with no instructions. (Jatlow Dep., p. 49-50)

In essence, the tone and substance of Dr. Garrett's exchange with Mrs. Litt and Mrs. Jatlow is disturbing and inappropriate – indicating a fundamental lack of empathy and regard for the welfare of a woman who had placed her life in the doctor's hands. Moreover, Dr. Garrett's admitting orders for Mrs. Litt for "observation" did not include any sort of plan or follow up evaluation by nursing or the surgical house officer in the event Mrs. Litt's mere "constipation" was not alleviated or her severe abdominal pain persisted or worsened – no parameters for physician notification, no meaningful hydration scheme, no monitoring of fluid balance. Indeed, no care at all. All essential elements of a plan of care for a patient precariously clinging to life such as Mrs. Litt.

In effect, Mrs. Litt was simply admitted and warehoused on 4 East to placate Mrs. Jatlow. Even Defendant Sibley's nursing expert agreed that Dr. Garrett should have written parameters in her orders for the nurses if she expected to be informed of concerning trends in Mrs. Litt's vital signs (Bourgette p. 72, attached hereto as Exhibit 3) Dr. Garrett admitted in her deposition that the trend in Mrs. Litt's blood pressure and pulse (heart rate) were trends "in the wrong direction" as of midnight (Garrett at p.

137, see excerpts of Dr. Garrett's deposition testimony attached as Exhibit 4) and that while she wasn't called, if she was called she would have had the house officer evaluate Mrs. Litt. (Garrett at p. 138). The medical record does not include any physical assessment of Mrs. Litt's abdomen between 8:41 p.m. on May 29, 2007 and 4:00 a.m. on May 30, 2007 when Mrs. Litt was found in profound septic shock with a blood pressure of 70/30. There are no vital signs recorded for Mrs. Litt between midnight and 4:00 a.m. despite her continuing complaints of severe pain and the fact that she pressed the call light for assistance between 5 and 7 times between 2 a.m. and when she was found in profound shock at 4:00 a.m. Separate and apart from the wholesale lack of care, lack of effort to diagnose her terminal condition if left unattended, are the collective and reckless neglect of Mrs. Litt at the hands of the other Sibley health care providers – Nurse Dalton and Dr. Blansfield – during the critical hours after Mrs. Litt was placed in their care.

Dr. Thomas Gouge, one of plaintiff's surgical experts, testified that there was no action on the part of the hospital nursing staff between midnight and 4 a.m. No physical assessments and absolutely no action in response to her ongoing complaints of severe abdominal pain. (Gouge at p. 134-135, see excerpts of Dr. Gouge's deposition testimony attached as Exhibit 5). Dr. Paul Marik, Plaintiff's critical care expert, did express his outrage at the nursing breaches. He commented that "they did not even touch the patient" between midnight and 4 a.m. (Marik at p. 94-94, see excerpts of Dr. Marik's deposition testimony attached as Exhibit 6) and then when commenting on the

breaches by nursing and Dr. Blansfield, the house officer on call, Dr. Marik stated that the breaches were “quite remarkable” (Marik at p. 108) and that the lack of care “defies any kind of logic” (Marik at p. 108)

With regard to the care of Sibley’s in house physician, Dr. Blansfield, it is clear that Plaintiffs’ experts are sickened by the delay in getting Mrs. Litt to the ICU, getting proper antibiotics administered and mostly by the lack of any meaningful efforts to provide her with basic fluids to give her body a fighting chance to respond to the bowel perforation and profound shock she was in. Dr. Gouge explained that for some unknown reason, according to the hospital’s own medical records, Mrs. Litt was not provided any meaningful emergency care between 4:00 a.m. when she was discovered in entremis and 8:30 a.m. when she was finally taken to an operating room. Even if the jury were to accept Defendants’ post-hoc story and determine that Mrs. Litt’s critical condition was only discovered at 5:00 a.m. (and not at 4) those were three hours to do what Dr. Gouge testified should have been done to save her life in 15 minutes and that, he admitted, was generous in terms of time. (Gouge at p. 126-133) While Dr. Gouge was polite at deposition, he will testify that Dr. Blansfield’s delay and the hospital’s complete inaction amounted to gross incompetence and a wanton disregard for Mrs. Litt’s very life.

The deviations by Sibley nurses, their house officer and then Dr. Garrett in doing nothing for her between 4 a.m. and 7:30 a.m. and then taking Mrs. Litt to the operating room between 7:30 and 8:00 before she was rehydrated and prepared for surgery which

led to her immediate coding even before she could get to the operating room before surgery were “pretty outrageous deviations.” (Marik at p. 113)

Were all of this not enough, the medical records, witness testimony and deposition testimony include two other egregious examples of wanton and reckless conduct.

Dr. Garrett initially dictated her consultation findings immediately after seeing Mrs. Litt in the emergency department on May 29, 2007. The electronic record shows that Dr. Garrett dictated her note following her evaluation of Mrs. Litt on May 29, 2007. After Mrs. Litt was found in profound shock and Dr. Garrett returned to Sibley to perform emergency surgery on a woman Dr. Garrett had dismissed as having mere constipation, seven hours after surgery. Dr. Garrett went back to her report, now knowing that Mrs. Litt was likely going to die and intentionally altered her medical record of her five-minute examination of Mrs. Litt the day before. She purposefully removed the phrase “ill appearing” from her initial consult note with the intent of deceiving anyone who reviewed the May 29 note as to Mrs. Litt’s condition at the time. The quote “ill appearing” phrase which Dr. Garrett deliberately deleted matches quite closely the testimony and written statement of Mrs. Jatlow, who recalls Mrs. Litt looking sick in the ER, specifically Mrs. Jatlow wrote that Ann was “green and pale”. Dr. Garrett next alters the report to limit where Mrs. Litt was having pain changing it from her abdomen to her “lower quadrant” – again to minimize the condition she observed. Further, Dr. Garrett inserted additional findings such as “no obstruction” into

her consult note. All of this, Plaintiffs contend was done for an obvious and grossly improper purpose by this Defendant: to cover her gross malfeasance and try to minimize the horrible condition Mrs. Litt was in when she was dismissively evaluated on May 29.

Finally, believing she could get away with altering her records, the handwritten version of the consult note that should have been filed in Mrs. Litt's office record in Dr. Garrett's office was, to put it charitably, lost. It was never made part of the Foxhall Surgical chart for Mrs. Litt. This is nothing less than intentional spoliation of evidence in an effort to cover up Dr. Garrett's reckless disregard for Mrs. Litt's well being – indeed her very life.

When Mr. Litt was with his wife on 4 East, he asked several times for a heating pad to attempt to relieve some of his wife's pain. The hospital did not give her one. Instead, Mr. Litt had to leave the hospital and purchase one and return to the hospital to give it to his wife.

After Mr. Litt left the hospital when Mrs. Litt was briefly sleeping after they have her sleeping pills, Mrs. Litt woke up again repeatedly asked for help. Nurse Casey Hicks testified that Mrs. Litt asked for help approximately 5-7 times before 4 a.m. - yet no one assessed her or tried to take her vitals or called the in house doctor or her surgeon. They did nothing.

The above recitation is but a mere sampling of the testimony and evidence that the jury will hear on this issue. As a matter of law, summary judgment is inappropriate, as the fact finder here will be the ultimate arbiter of the issues to be decided. We

believe this story, this nightmare for Mrs. Litt and her family, is but a collection, an unbroken string of gross negligence and reckless and wanton conduct amounting to gross negligence warranting an award of punitive damages.

Respectfully submitted,

REGAN ZAMBRI & LONG, P.L.L.C.

By:           /s/ Catherine D. Bertram          

Patrick M. Regan # 336107

pregan@reganfirm.com

Catherine D. Bertram #425052

cbertram@reganfirm.com

Jacqueline T. Colclough #434483

jcolclough@reganfirm.com

1919 M Street, N.W., Suite 350

Washington, D.C. 20036

PH: (202) 463-3030

FX: (202) 463-0667

*Counsel for Plaintiff*

Regan  
Zambri & Long, P.L.L.C.  
1919 M Street, NW  
Suite 350  
Washington, D.C. 20036

202-463-3030

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**Civil Division**

**DANIEL M. LITT, Individually as** :  
**Widower and as Personal Representative of**  
**the Estate of ANN S. LITT, Deceased, et al.** :

**Plaintiffs,** : **2007 CA 007961 M**  
 : **Cal. 8 - Judge Cheryl Long**  
**v.** : **Next Court Date: 3/5/2009**  
 : **Event: Motions Hearing**

**SIBLEY MEMORIAL HOSPITAL, et al.** :

**Defendants.** :

**ORDER**

Upon consideration of Plaintiff's Opposition to Defendants' Motion for Partial Summary Judgment Regarding Plaintiffs' Gross Negligence and Punitive Damages Claims \_\_\_\_\_, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2009;

ORDERED that the Motion be, and the same hereby is, DENIED, and it is

\_\_\_\_\_  
Judge Cheryl M. Long

Copies electronically served upon:

cc: Patrick M. Regan, Esquire  
Catherine D. Bertram, Esquire  
Jacqueline T. Colclough, Esquire  
Regan Zambri & Long, PLLC  
1919 M. Street, Suite 350  
Washington, DC 20036

Nicholas S. McConnell, Esquire  
Daniele Herndon, Esquire  
Allyson C. Kitchell, Esquire  
Jackson & Campbell, PC  
1120 20th Street, NW  
South Tower, Suite 300  
Washington, DC 20036-3437

Steven A. Hamilton, Esquire  
Karen Karlin, Esquire  
Hamilton Altman Canale & Dillon, LLC  
4600 East-West Highway, Suite 201  
Bethesda, MD 20814

Andrew E. Vernick, Esquire  
Kathleen M. Bartley, Esquire  
Wharton Levin Ehrmantraut & Klein  
104 West Street  
Post Office Box 551  
Annapolis, MD 21404-0551