

**IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA**

VELMA HARRISON )  
 )  
 Plaintiff, )  
 )  
 v. ) CIVIL ACTION NO. CV 05-1282  
 )  
 GEORGE L. JACKSON )  
 and HENRY L. SMITHSON )  
 )  
 Defendants. )

**AMENDED AND RESTATED COMPLAINT**

WHEREFORE, COMES NOW the Plaintiff, Velma Harrison, and alleges as follows:

**PARTIES**

1. Plaintiff Velma Harrison (“Harrison”) is and at all times mentioned herein was a natural person over the age of twenty-one (21) years of age and a resident citizen of Tuscaloosa County, Alabama.

2. Harrison is, of the time of the filing of this Complaint, of the age of eighty-five (85) years of age.

3. Defendant George L. Jackson (“Jackson”) is and at all times mentioned herein was a natural person over the age of twenty-one (21) years of age and, to the best information and belief of Harrison, a resident of Tuscaloosa County, Alabama.

4. Defendant Henry L. Smithson (“Smithson”) is and at all times mentioned herein was a natural person over the age of twenty-one (21) years of age and, to the best information and belief of Harrison, a resident of Tuscaloosa County, Alabama.

5. Jackson and Smithson are sometimes referred to herein collectively as the “Defendants.”

#### JURISDICTION AND VENUE

6. The subject matter in controversy is within the jurisdictional limits of this Court.

7. Venue in Tuscaloosa County, Alabama is proper in this action because it is the county where Plaintiff Harrison resides and, to the best information and belief of Harrison, it is the county where Defendants Jackson and Smithson reside.

#### FACTS

8. Harrison and the Defendants are shareholders of Alabama Health Management, Inc. (the “Corporation”), an Alabama corporation which, according to records in the Office of the Secretary of State of Alabama, has its principal offices located at 5001 Old Montgomery Highway, Tuscaloosa, Alabama 35405. According to records of the Secretary of State of Alabama, the Corporation reported in its 2005 annual report that the registered agent of the Corporation is Victor Harrison. Defendants Jackson and Smithson are also directors and officers of the Corporation.

9. Plaintiff Harrison is the surviving spouse of Victor Harrison. Victor Harrison has been deceased since February 6, 2000, five (5) years prior to the annual report of the Corporation as filed with the government and approved by Jackson for the fiscal year 2005. During the period of soon after February 6, 2000, until January 24, 2006, Harrison was also a director and officer of the Corporation, but she resigned on January 24, 2006, as a director and officer.

10. The Corporation was incorporated in Tuscaloosa County on November 8, 1984. The initial members of the board of directors and the initial and only shareholders and officers of the Corporation were Victor Harrison and Jackson.

11. The Corporation is and at all times mentioned herein engaged in the business of the operation of an elder care facility in the City of Tuscaloosa, Tuscaloosa County, Alabama, operating under the name "Skyland Oaks Retirement Center" ("Skyland Oaks").

12. Sometime during the calendar year 1991, Smithson became a director, officer, and shareholder of the Corporation.

13. During the period of approximately 1991 until the death of Victor Harrison, Jackson, and Smithson were the only shareholders and the only directors and officers of the Corporation.

14. As of February 6, 2000, the date of the death of Victor Harrison, Victor Harrison owned 1,250 shares of the common stock of the Corporation, representing one third (1/3) of the 4,000 total outstanding shares of the Corporation. Jackson and Smithson each owned 1,250 shares, representing one third (1/3) of the 4,000 total outstanding shares of the Corporation as of that same date. At such date, the Corporation also had 250 shares held as treasury stock. As a result of such equal distribution of the total outstanding shares of common stock of the Corporation, Victor Harrison, Jackson, and Smithson each was a "minority shareholder" of the Corporation.

15. Upon the death of Victor Harrison, Plaintiff Harrison inherited all of the shares of common stock of the Corporation that were owned by her husband Victor

Harrison. Following the date of the death of Victor Harrison, Plaintiff Harrison inherited ownership of his shares of the common stock of the Corporation, representing one third (1/3) of the 4,000 total outstanding shares of the Corporation. Jackson and Smithson each owned one third (1/3) of the 4,000 total outstanding shares of the Corporation as of that same date. As a result of such equal distribution of the total outstanding shares of common stock of the Corporation, each of Plaintiff Harrison, Jackson, and Smithson was, on or about the date of the death of Victor Harrison, a “minority shareholder” of the Corporation.

16. As minority shareholders of the Corporation, neither Harrison, Jackson, nor Smithson had, after Victor Harrison’s death and the inheritance of his shares by Plaintiff Harrison, the voting power, acting alone in Plaintiff Harrison’s or Defendants Jackson’s or Smithson’s capacity as a shareholder, to effect any corporate action of the shareholders of the Corporation. With only one third (1/3) of the Corporation’s total outstanding shares of common stock owned by each of Harrison, Jackson, and Smithson, no one of them could authorize or approve any shareholder action of the Corporation in their own right.

17. As of the date of this Complaint, Plaintiff Harrison is the record owner of 1,250 shares of the common stock of the Corporation, representing one third (1/3) of the 4,000 total outstanding shares of the Corporation. To the best information and belief of Harrison, Jackson and Smithson each is the record owner of 1,250 shares of common stock of the Corporation, representing one third (1/3) of the 4,000 total outstanding shares of the Corporation as of that same date. As a result of such equal distribution of

the total outstanding shares of common stock of the Corporation, each of Harrison, Jackson, and Smithson was a “minority shareholder” of the Corporation just as each of them was on or about February 6, 2000, when Plaintiff Harrison first became a record shareholder of the Corporation upon the death of her husband, Victor Harrison.

18. To the best information and belief of Harrison, there are no authorized or outstanding shares of capital stock of the Corporation other than shares of common stock, par value \$1.00 per share.

19. In addition to acquiring a minority ownership in the Corporation upon the death of Victor Harrison, Plaintiff Harrison was also elected by Jackson and Smithson to serve as a director of the Corporation to fill the vacancy on the board of directors of the Corporation resulting from the death of Victor Harrison. Plaintiff Harrison was also elected as the secretary of the Corporation at the same time that she was elected to serve as a director. As of the date of her election as a director of the Corporation and through and including January 24, 2006, Plaintiff Harrison served as one (1) of the three (3) directors of the Corporation. On January 24, 2006, Harrison resigned as a director and officer of the Corporation due to her concerns about her prospective liability to third persons as a director and officer as a result of egregious mismanagement of the Corporation by the Defendants as well as the fraud and other unlawful conduct perpetrated upon Harrison by the Defendants. The other two (2) members of the board of directors since Harrison’s election as a director and through and including the date of this Complaint are Jackson and Smithson.

20. As one of the three (3) directors of the Corporation, Harrison, Jackson, and Smithson each had only one vote as a director with respect to any action coming before the board of directors of the Corporation for consideration or approval and no one of them has the voting power to approve or veto any corporate action of the board of directors.

21. At the time of the death of Victor Harrison, the Corporation was a profitable enterprise. The Corporation reported positive net income for the fiscal year ended December 31, 1999, just prior to Victor Harrison's death, and the Corporation had positive earnings per share for such fiscal year.

22. For the fiscal year ended December 31, 2000, the Corporation's income tax returns reported negative net income and in each fiscal year after the death of Victor Harrison and the inheritance of his stock by Plaintiff Harrison the net income and earnings per share of the Corporation have dramatically declined during a time when Jackson and Smithson collaborated and conspired to manage and operate the Corporation and were its alter egos and Harrison had no influence on the management or operations of the Corporation whatsoever.

23. In each year since Plaintiff Harrison became a shareholder and a director of the Corporation, Jackson and Smithson have ignored all recommendations of Harrison for marketing programs of Skyland Oaks, recommendations for employment of qualified employees to solicit new residents to Skyland Oaks, recommendations for modest improvements to the physical plant to make Skyland Oaks more attractive for prospective new residents, and every other recommendation of Harrison to improve the

quality of living conditions for the residents of Skyland Oaks, to conduct marketing efforts to solicit new residents of Skyland Oaks and to increase profits for the benefit of shareholders of the Corporation.

24. Jackson and Smithson have conspired with one another to vote their shares of stock of the Corporation consistently the same in opposition of every proposal of Harrison which, in her judgment, could have increased profits of the Corporation and improved the quality of life for residents of Skyland Oaks. Jackson and Smithson have dismissed out-of-hand every recommendation of Ms. Harrison without even approving a single one of such recommendations on a trial basis to see if, perhaps, any of her recommendations just might have a positive effect on profits, the quality of life of Skyland Oaks residents, or the interests of shareholders or the Corporation generally.

25. Jackson and Smithson have declined to listen to, implement, or act upon any recommendations of Harrison for the improvement of living conditions of residents of Skyland Oaks, creating substantial exposure to Harrison in her capacity as a director for risks of liability claims against Harrison and risks of sanctions or other penalties that may be imposed by governmental authorities for compliance lapses or other inadequacies of Skyland Oaks resident care based on applicable government standards.

26. On multiple occasions, Plaintiff Harrison has requested or demanded action from the Defendants that would result in additional income from operations of Skyland Oaks. For example, on May 16, 2001, Harrison presented a written demand to the Defendants for basic maintenance and renovations to Skyland Oaks with a view to making it a more attractive facility for prospective residents to enhance occupancy and

income of the Corporation. She further demanded approval of a marketing program to attract new residents. She further demanded that the Defendants make loans to the Corporation in accordance with the shareholder agreement among the three (3) shareholders just as she had done so that the Defendants would not be delinquent with respect to their shareholder loan obligations.

27. As a further example, on October 25, 2002, Harrison restated her demand for marketing and other programs to increase resident occupancy and income for the Corporation. On November 26, 2002, Defendant Jackson wrote a letter to Harrison in which never addressed any of Harrison's demands or requests for marketing programs, improvements to the Skyland Oaks physical plant, or any other of Harrison's income enhancing ideas. Rather, Jackson demanded a loan to the Corporation from Harrison in the amount of \$23,460 and he threatened to file paperwork to place the Corporation into bankruptcy on behalf of the Corporation if Harrison failed to make such a loan and he stated in his letter to Harrison that "[t]he future of the facility [Skyland Oaks] lies in your hands."

28. Defendants Jackson and Smithson, during the period between February 6, 2000, and the date of this Amended and Restated Complaint, intentionally and fraudulently misled Harrison by omitting to disclose to her their intention not to improve the financial condition of the Corporation through marketing, facility improvements, and other reasonable measures for their purpose of devaluing Harrison's stock in the Corporation.



29. In furtherance of their conspiracy, Smithson has voted in alignment with the vote of Jackson regarding every item of business put before the board of directors of the Corporation without regard or care for the best interests of the Corporation and its shareholders. If Jackson is for a proposal, Smithson is for the proposal; if Jackson is against a proposal, Smithson is against the proposal. By aligning their votes uniformly in opposition to every proposal of Harrison, Jackson and Smithson have disenfranchised Harrison as both a director and as a shareholder because her vote is always rendered irrelevant to the outcome of any proposal put before the board of directors or the shareholders of the Corporation.

30. Jackson and Smithson have intentionally, recklessly, and grossly negligently acted and/or omitted to act to depreciate the market value of shares of capital stock of the Corporation with the further intention of buying shares of capital stock of the Corporation that are owned by Harrison or owned by her estate for less than the real value of such stock or less than the real value of such stock were it not for their misconduct and/or omissions for the purpose of damaging the value of Harrison's Corporation stock.

31. In addition to his ownership of stock of the Corporation, Jackson is also a stockholder, owner, or control person of Heritage Health Care and Rehab, Inc., Tuscaloosa, Alabama, Heritage Health Care Center, Inc., Tuscaloosa, Alabama, and Magnolia Chapel Funeral Home, Inc., Tuscaloosa, Alabama, and Smithson is a shareholder, owner, or control person of Park Supply of Tuscaloosa, Inc., Tuscaloosa, Alabama. A comparison of marketing, advertising, and public relations expenditures

with respect to Jackson's and Smithson's other business interests versus expenditures for those items for Skyland Oaks will reflect that Jackson and Smithson expend money for promotion of their other ventures, but they have vetoed Harrison's proposals for such expenditures for Skyland Oaks. For, example, when Harrison has proposed expenditures to market and advertise Skyland Oaks with a view to attracting new residents and increasing net income, Jackson and Smithson have universally vetoed such expenditures and called such expenditures "fluff," but, in contrast, Jackson's other business interests advertise regularly in national and local publications and conduct vigorous marketing programs to enhance their income. Additionally, Smithson has neglected his duties of care, loyalty, and good faith by virtue of, among other things, his failure to ever challenge Jackson for any explanation to the board of directors or the shareholders concerning the glaring discrepancy between promotion of Jackson's other businesses and Jackson's opposition to promotion of Skyland Oaks and, likewise, Jackson has never challenged Smithson concerning similar discrepancies concerning his business interests other than the Corporation. But Smithson, of course, does not challenge Jackson on anything.

32. As an example of the foregoing, on May 13, 2003, Heritage Health Care Center (the elder care facility of Heritage Health Care and Rehab, Inc.), of which Defendant Jackson is the administrator and a principal, held a highly publicized event named the "United We Stand" program to honor the Center's veterans as part of Alabama Nursing Home Week. Northport Mayor Harvey Fretwell and Tuscaloosa Mayor Al Dupont were invited by Defendant Jackson to speak and they each did speak

at the event. Marches and patriotic music were presented by the Lloyd Wood-Echols Middle School Advanced Band and the Tuscaloosa County High School Junior ROTC presented colors, all at the invitation of Jackson. Jackson presented performance awards at the event. However, no such program was held at Skyland Oaks and no other similar event has ever been held to promote the interests of Skyland Oaks or its residents at any time during the period of February 6, 2000, to the present. Defendants Jackson and Smithson intentionally and fraudulently misled Harrison by omitting to disclose to her the material fact of their intention not to conduct any such promotional and marketing events for their purpose of devaluing her stock in the Corporation.

33. Harrison and Smithson have intentionally, recklessly, grossly negligently, and/or negligently failed to manage the Corporation and Skyland Oaks in the best interests of Harrison and themselves as shareholders or in the best interests of residents of Skyland Oaks for the purpose of making Harrison's stock less valuable in order that they may buy her stock from her or her estate for less than it would be worth if the Corporation and Skyland Oaks were managed in accordance with reasonable management principles. Among other things, Jackson and Smithson have opposed Harrison's recommendations to hire additional needed employees; Jackson has approved and purchased on behalf of the Corporation inadequate liability insurance to protect the Corporation against foreseeable risks associated with the operation of an elder care facility; Jackson and Smithson have opposed Harrison's recommendations for improvements to the physical plant of Skyland Oaks to make it more attractive and competitive with other elder care facilities in the Tuscaloosa, Alabama area; Jackson and

Smithson have ignored security risks at Skyland Oaks; Jackson and Smithson have mismanaged the financial condition of the Corporation to such an extreme degree that shareholders are routinely subjected to demands for loans to the Corporation to cover ordinary operational expenses to pay insurance, to pay taxes, and to pay for other expenses that could be paid out of earnings if it were not for the complete abdication of fiscal responsibility and the intentional, reckless, grossly negligent, and/or negligently financial management by Jackson and Smithson; Jackson and Smithson have acted or omitted to act to insure the undercapitalization of the Corporation; they have so controlled the Corporation and its assets to the exclusion of Harrison and in disregard of the corporate entity, corporate formalities, and the separateness of the Corporation and its assets from themselves that they have jointly and severally become an alter ego of the Corporation for the purpose of injuring Harrison; and Jackson and Smithson have otherwise purposefully failed to act in the best interests of Harrison and have intentionally oppressed her as a Corporation shareholder.

34. While Jackson and Smithson each own one third (1/3) of the stock of the Corporation, Jackson's domination of Smithson's votes and Smithson's acquiescence to Jackson's desires in each vote of the board and the shareholders, Jackson entirely dominates the outcome of every decision of those corporate bodies.

35. Soon after the death of Victor Harrison, Plaintiff Harrison was elected as secretary of the Corporation.

36. Under the bylaws of the Corporation the secretary of the Corporation has the responsibility for, among other things, recording proceedings of the meetings of the

board of directors of the Corporation and the shareholders of the Corporation in the form of minutes of such meetings. In addition, the secretary has responsibility for giving notice of meetings of the board of directors and the shareholders in accordance with the notice requirements of the Corporation's bylaws and applicable laws. The secretary has responsibility for maintaining custody of all books, records, and papers of the Corporation.

37. Shortly after her election to the office of secretary of the Corporation, Harrison was summarily removed from the office of secretary of the Corporation and persons were presumably elected to replace her as secretary or, to the contrary, were not duly elected to serve as secretary and Harrison has never been given access to the Corporation's books and records to verify any such election(s).

38. To the best information and belief of Harrison, no minutes of the board of directors or shareholders of the Corporation reflect her removal as secretary or the election of any other person to serve as secretary.

39. Jackson purports to serve, as of the date of the Corporation's most recently filed annual report to the Office of the Secretary of State of Alabama as secretary of the Corporation, but, to the best information and belief of Harrison, Jackson's service in that capacity is either by self-appointment or by illegal means for the purpose of his and Smithson's personal control over corporate records without any input from Harrison, despite the fact that she has a right to approve the substance of minutes to verify that they reflect accurately all actions taken by the board of directors and shareholders and to participate in corporate processes in her capacity as a director and shareholder. On

those infrequent occasions when minutes of meetings of the Corporation's board of directors or shareholders are prepared, Jackson has prepared them to document matters that serve his own personal interests and the personal interests of Smithson. Jackson and Smithson have intentionally denied Harrison her rights of review and participation and have intentionally excluded her and ignored her requests for advance review of drafts of corporate minutes.

40. Harrison was denied a review of the Corporation's minutes even when Harrison made a formal written demand for inspection of minutes, books, and records of the Corporation under section 10-2B-16.02 of the *Alabama Code*. Harrison has been given no explanation for the Corporation's failure to provide her with a complete body of minutes of the meetings of the board of directors and the shareholders. Upon information and belief, one possible reason why Harrison was denied her rights as a shareholder and a director of the Corporation to review such minutes is that Jackson as *de facto* secretary of the Corporation and Smithson in his collusion and conspiracy with Jackson have failed to record minutes of such meetings in violation of law and their obligations to Harrison. Frustrated and ignored by Jackson and Smithson in her attempts to receive and review books and records of the Corporation to which she is entitled as a director or otherwise, Harrison resorted to her statutory inspection rights as a shareholder as a means to compel the Corporation—and its alter egos, Jackson and Smithson—to produce books and records that were denied to her in her capacity as a director of the Corporation or otherwise, in which capacity she has a right and a responsibility to any and all books and records of the Corporation that she may choose

to review. By and through its counsel, the Corporation stated in writing that Harrison was not entitled to review certain information pursuant to her demand under section 10-2B-16.02, despite the fact that such statute provides Harrison a right to inspect “*all* [emphasis added] of the Corporation’s books, papers, records of account, minutes and record of shareholders.” When Harrison, by and through her counsel, informed the Corporation’s counsel that Harrison was entitled to inspect any books and records that she may choose to inspect, the Corporation’s counsel and Jackson corresponded with one another that Harrison’s counsel “sure is technical,” in disdain and disregard of the statutory rights to access to records of corporations doing business in the State of Alabama as established by the legislative bodies of such state. While Jackson and the Corporation’s counsel apparently find humor in thwarting Harrison’s exercise of her shareholder rights, Harrison finds no such humor when her rights are intentionally thwarted and she cannot adequately carry out her rights, responsibilities, and privileges as a director and shareholder of the Corporation because she is continuously denied access to information that has been deemed by her to be material to her performance of her duties as a director and her exercise of her statutory rights as a shareholder of the Corporation and to which she has certain other legal rights.

41. Jackson, as *de facto* secretary of the Corporation, has intentionally and fraudulently failed to record the proceedings of meetings of the board of directors and the shareholders; he has intentionally and fraudulently failed to produce minutes of such meetings; he has intentionally and fraudulently failed to circulate drafts of minutes to the other directors and shareholders of the Corporation for their review and approval

prior to finalization; he has intentionally and fraudulently stored many of the records of the Corporation in his personal residence or in his own offices to keep them secret from Harrison; and he has intentionally and fraudulently substantially failed to maintain definitive official minutes of the meetings of the board and shareholders. In fact, the dereliction of duty of Jackson as *de facto* secretary of the Corporation has been so significant that there effectively is no such thing as an official minutes book of either the board or the shareholders; to the extent that any minutes book of the proceedings of the board of directors and the shareholders does exist, it is substantially empty or its contents have been withheld intentionally, recklessly, grossly negligently, and/or negligently in violation of Harrison's rights and in violation of law and the Corporation's bylaws for the purpose of omitting to disclose to Harrison material information about proceedings by the Corporation's directors and shareholders. Smithson has, of course, not fulfilled his obligations to challenge Jackson and has intentionally and fraudulently omitted to disclose to Harrison the material fact of his like purposes.

42. As for the few instances in which Jackson has recorded proceedings and produced minutes of meetings of the board or the shareholders, such minutes have been made intentionally so sparse in content that they do not accurately or completely reflect the proceedings at meetings. Jackson has failed to circulate drafts of any meeting minutes and has intentionally declined to circulate drafts of any meeting minutes to Harrison for her input and comments prior to finalizing documents purporting to be



minutes despite Harrison's specific requests for drafts for her review and comments. Smithson has, of course, not fulfilled his obligations to challenge Jackson.

43. In addition, Jackson produces minutes of meetings when it serves his own personal interest to document in writing those matters that he and Smithson approved or voted against, depending on whether Harrison opposed or supported the matter. If Harrison opposes any particular item, Jackson and Smithson are for it; if Harrison proposes or supports any particular item of business, Jackson and Smithson are against it. The practices of the Corporation are that minutes of meetings document those matters that Jackson and Smithson wish to use, or think they will use, against the interests of Harrison.

44. As an example of Jackson's and Smithson selective documentation in corporate minutes, on January 26, 2005 the board of directors held a special meeting at the offices of counsel to the Corporation in Tuscaloosa, Alabama, and voted to approve and authorize a sale of the Corporation or substantially all of its assets. The board of directors also authorized the Corporation's counsel to coordinate with Harrison's counsel and the Corporation's accountants to expedite such a sale. This vote came after Harrison had to confirm whether or not the meeting was in fact a meeting of the board of directors. Harrison, through her counsel, submitted proposed resolutions of the board of directors relating to such approval and various matters concerning such a sale during a meeting in the offices of counsel to the Corporation. Harrison's proposed resolutions were not discussed at the board meeting. Harrison's proposed resolutions were not voted upon at the meeting. Harrison's proposed resolutions were not included

in any minutes of the board meeting, despite the fact that they reflected the affirmative, unanimous vote of the board to sell. Minutes of this board meeting were never circulated for board members to review. Despite an express request by Harrison for a copy of the minutes of such meeting, no minutes have ever been produced. Jackson and Smithson do not want accountability for their vote in favor of Harrison's motion that the Corporation or substantially all of its assets be sold. Rather, Jackson and Smithson appear to prefer to delude themselves into thinking that Harrison, her counsel, and counsel to the Corporation, all of whom were present at the meeting, will not remember the unanimous vote of the board members in favor of the motion to sell as though by intentionally failing to produce minutes means the event of the vote never occurred. This one vote is merely a single instance of many in which Jackson's and Smithson's lies about corporate events may appear to fool them but no one else. Actually, Jackson and Smithson do not delude themselves at all. Their motivations are sinister: They never intended to sell the Corporation or its assets so long as Harrison, her estate, or her heir(s) is a shareholder and might profit from such a sale. The Defendants intentionally and fraudulently misled Harrison by omitting to disclose to Harrison the material fact that they did not have any intent to conduct a sale of the Corporation under reasonable and customary terms.

45. Despite the January 26, 2005, board vote in favor of a sale of the Corporation or substantially all of its assets, Jackson and Smithson have intentionally thwarted and obstructed the intent of the board that such a sale occur. Although the board, as a corporate body, voted to sell the Corporation or its assets, which would

normally, in the case where directors act in good faith, indicate an intent of the board that its approval should be carried out, it is clear that Harrison was the only member of the board of directors who, at the time of such vote, had any sincere intention of selling the Corporation or its assets. The actions of Jackson and Smithson since the time of their vote on January 26, 2005, in favor of a sale reflect clearly that their vote was just a subterfuge. They did not really intend to sell the Corporation or its assets, but, rather, they intended to pacify and defraud Harrison through the lie and deception of a vote for a sale. The Defendants have thereby intentionally and fraudulently misrepresented to Harrison their intent to sell the Corporation and they have intentionally and fraudulently omitted to disclose to her their true intent, which is not to sell until after her death or her sale to them at a devalued price. The actions of Jackson and Smithson now speak far louder than their action of a vote.

46. At the time that the board of directors voted in favor of a sale of the Corporation or its assets, Jackson first stated to the other board members at the meeting on January 26, 2005, in Tuscaloosa, Alabama, that he was engaged in discussions with Methodist Homes for the Aging Corporation (“MHAC”), an owner and operator of elder care facilities in Alabama and Northwest Florida, which is headquartered in Birmingham, Alabama. Jackson, a Methodist minister, indicated to the other members of the board of directors that he had an “inside track” to MHAC by virtue of his close relationship with The Reverend A. Wray Tomlin, President and Chief Executive Officer of MHAC. In reliance on Jackson’s representations about ongoing discussions with MHAC and his close relationship with Tomlin, Harrison agreed with Jackson’s

recommendation to the board of director that he be authorized to continue such discussions and report regularly to the board regarding the progress of such discussions.

47. Over the course of the ensuing many months, Jackson reported to the board on multiple occasions that his discussions with The Reverend Tomlin were continuing well. In response to specific questions from Harrison concerning price negotiations and other details of those discussions, Jackson reported that MHAC had engaged its accountants and other experts to work on the acquisition project for Skyland Oaks and the Corporation. Jackson also reported that the board of directors was to consider the acquisition at an upcoming board meeting and authorize an inspection of various aspects of the business of the Corporation (referred to as “due diligence” with respect to a target of an acquisition). During Corporation board meetings at which a MHAC acquisition was discussed, Smithson sat silently and asked no questions.

48. Given the position of trust and confidence maintained by Jackson as President and a director of the Corporation, his alleged close relationship with The Reverend Tomlin of MHAC, and the involvement of Corporation counsel as legal advisor of the Corporation and to Jackson as its President, Harrison deferred to their judgment as to the nature of discussions with MHAC and relied on their periodic updates with respect to such discussions.

49. After many months of generally positive reports from Jackson regarding discussions with MHAC and promises by Defendant Jackson of upcoming MHAC board meetings for approval of an acquisition of Skyland Oaks and/or the Corporation,

Harrison finally insisted on definitive indications from MHAC about its plans. The board of directors, including Jackson and Smithson, of the Corporation voted unanimously to limit Jackson's authority to negotiate directly with MHAC.

50. As noted above, Jackson and Smithson both voted in favor of Harrison's proposal to limit Jackson's negotiating authority. Their votes, however, were a sham and were intended to pacify and defraud Harrison into believing that Jackson and Smithson would obtain prior board approval of any substantive negotiations with MHAC and that they would keep Harrison informed of any dealings with MHAC concerning a proposed sale to it.

51. In direct disregard and disobedience of the board's explicit limitation on the authority of Jackson to negotiate directly with MHAC, Jackson did so anyway. Among other things, sometime after the January 26, 2005, board meeting in a secret meeting between Jackson, Smithson, and counsel to the Corporation, Jackson and Smithson authorized such counsel to "offer" to sell the Corporation to MHAC for the sum of approximately \$5,250,000.00. The board of directors never authorized any such offer, but, rather, the board—the board vote again included the affirmative vote of both Jackson and Smithson—had expressly resolved that Jackson have no such authority. In fact, Harrison never received any notice whatsoever from the Corporation, Jackson, Smithson, or the Corporation's counsel that this secret and clandestine meeting among them to the exclusion of Harrison would be held. She merely was mailed a copy of a definitive, signed version of the Corporation's counsel's "offer" letter after it was mailed to MHAC. The letter actually states that the "offer" contained in it resulted from a

meeting among Jackson, Smithson, and the Corporation's counsel and that the letter was sent at the behest of Jackson. Jackson and the Corporation's counsel acted in direct contravention of the board's limitation of authority and acted against the express wishes of Harrison as she stated them in meetings of the board of directors. Further, the secret meeting was not a duly called and held meeting of the board because Harrison never received notice of the meeting or executed a waiver of notice and any vote taken as represented by the Corporation's counsel to MHAC was, as a matter of law, a void act not legally binding as an action of the board under the Alabama Business Corporation Act. By making such an "offer" to MHAC, Jackson, Smithson, and the Corporation's counsel undermined the credibility and integrity of the Corporation and its board of directors, including Harrison, and established a putative value of the Corporation and Skyland Oaks without the exercise of any due care or approval by the board of directors in anticipation of any proposed selling price for the Corporation. Jackson, Smithson, and Corporation counsel exposed Harrison to potential liability without any notice to her whatsoever, without any opportunity to express her position, without her consent, and in direct disregard of the will of Harrison and the board as a corporate entity that Jackson have no authority to negotiate on behalf of the Corporation. Harrison was completely unaware that Jackson and the Corporation's counsel intended to make any such "offer" to MHAC and she was notified by copy of such counsel's letter to MHAC that such offer was made after it had been made. All of this was done to the detriment of Harrison in connection with the most important event of all events in the life of a corporation – the sale or other termination of its existence.

52. Counsel to the Corporation advised Harrison that he did contact the accountant to whom he had been referred for details of a proposed sale transaction from the point of view of MHAC. Counsel to the Corporation advised Harrison that the MHAC accountant had done no analysis of any such transaction and that no meeting among representatives of the Corporation and MHAC was proposed by MHAC, much less scheduled. The Reverend Tomlin advised Jackson in writing that MHAC would pay no more than an amount significantly less than an amount that Harrison reasonably believed could be obtained for the Corporation and much less than for which Jackson had offered to sell. This information from The Reverend Tomlin to Jackson followed weeks of unreturned telephone calls from Jackson to Tomlin. Jackson's purported close relationship with The Reverend Tomlin was obviously not close enough that Jackson could get a meeting with any representative of MHAC; Jackson did not have his telephone calls returned by Tomlin or anyone else at MHAC; and neither the accountant for MHAC nor any other expert of MHAC considered Jackson's interest in a sale to MHAC worthy of consideration to the point that MHAC would demonstrate any reciprocation of Jackson's overtures, assuming that Jackson actually made any overtures to MHAC as he told Harrison and the board that he was doing, all of which evidences the pretence, misrepresentation, and fraud perpetrated upon Harrison that any sincere effort to produce a sale to MHAC or any other acquisition partner was ongoing.

## **COUNT 1**

### **BREACH OF FIDUCIARY DUTY**

53. The allegations of paragraphs 1-52 above are realleged and incorporated herein by reference.

54. Defendants Jackson and Smithson, as majority shareholders, directors, officers, key employees, and/or agents of the Corporation, in positions of trust and confidence with respect to the Corporation and Plaintiff Harrison, owed to Harrison as a minority shareholder of the Corporation fiduciary duties, including but not limited to a duty not to misuse or abuse their controlling power in a manner that would conflict with the proper conduct of the Corporation's business, to benefit themselves alone, or in a self-dealing manner detrimental to Harrison, as well as a duty of Jackson and Smithson to act in good faith, to deal fairly, and to communicate with candor in the best interests of Harrison in her capacity as a Corporation minority shareholder and co-director.

55. While active and controlling majority shareholders, directors, officers, key employees, and/or agents of the Corporation, Jackson and Smithson, acting in concert and separately of their own accord, and in betrayal of the confidence and trust imposed upon them in said positions and relationships, each acting for his own profit, benefit, personal advantage, and financial gain, undertook various acts in violation of their fiduciary duties to Harrison.

56. Harrison has been injured and continues to suffer damage as a result of wrongful acts and breaches of fiduciary duties of Jackson and Smithson.



57. Jackson and Smithson have engaged in intentional, reckless, and grossly negligent conduct to oppress Harrison as a minority shareholder of the Corporation in breach of fiduciary duties owed by Jackson and Smithson to her.

58. Jackson and Smithson have engaged in intentional, reckless, and grossly negligent conduct, acting in concert and separately of their own accord, in their capacities as directors, officers, key employees, and/or agents of the Corporation in breach of their fiduciary duties to Harrison in her capacity as a director of the Corporation.

59. Jackson and Smithson are jointly and severally liable for damages to Harrison resulting from their wrongful acts and breaches of their fiduciary duties.

60. Jackson and Smithson are also under a duty to account for the unjust enrichment, profits, and gains, whether realized or not yet realized, that they have obtained resulting from their wrongful acts and breach of their fiduciary duties.

61. Jackson and Smithson have engaged in the acts and omissions to act alleged in connection with the breaches of their fiduciary duties with the willfulness, intent, and malice to justify an award of punitive damages against them and in favor of Harrison.

**WHEREFORE**, Plaintiff Harrison demands judgment against Defendants Jackson and Smithson jointly and severally in such an amount of compensatory, special, and punitive damages as a jury deems reasonable, plus costs.

## **COUNT II**

### **FRAUD**

62. The allegations of paragraphs 1-52 above are realleged and incorporated herein by reference.

63. While active and controlling majority shareholders, directors, officers, key employees, and/or agents of the Corporation, Jackson and Smithson, acting in concert, and each acting for his own profit, benefit, personal advantage, and financial gain, willfully, intentionally, wantonly, and fraudulently misused and abused their fiduciary positions and undertook various wrongful acts and omitted to act with the intent to and which did defraud Harrison.

64. Jackson and Smithson devised and executed a fraudulent conspiracy and scheme whereby they managed and operated the Corporation and Skyland Oaks in such a way, and with the intention to, diminish the value of Harrison's ownership interest in the Corporation so that they might purchase her stock from her or await her death and purchase it from her estate or her heir(s) at a value less than its value would be were it not for Jackson and Smithson's fraudulent conspiracy and scheme and to deprive her of cash and/or property distributions, leave her, her estate, or her heir(s) at personal risk of loss for debts and liabilities of the Corporation and to deprive her, her estate, or her heir(s) of the opportunity for future financial benefit and gain.

65. Harrison has been injured and continues to suffer damage as a result of the fraudulent acts and breaches of fiduciary duties of Jackson and Smithson to her.

66. Jackson and Smithson intentionally, willfully, wantonly, grossly negligently, and/or negligently undertook, permitted, and/or failed to act to correct breaches of fiduciary duties owned by each of them individually and jointly to Harrison.

67. Jackson's and Smithson's intentional, wanton, grossly negligent, and/or negligent mismanagement and/or failure to supervise Skyland Oaks and its operations, and the associated acts and omissions, occurred with intentional, wanton, grossly negligent, and/or negligent disregard for facts and circumstances known to them and for the welfare and interests of Harrison such that an award of punitive damages is justified.

68. As a proximate result, Harrison was injured and damaged.

**WHEREFORE**, Plaintiff Harrison demands judgment against Defendants Jackson and Smithson jointly and severally in such an amount of compensatory, special, and punitive damages as a jury deems reasonable, plus costs.

### **COUNT III**

#### **CONVERSION**

69. The allegations of paragraphs 1-52 above are realleged and incorporated herein by reference.

70. Prior to the death of Harrison's spouse, Victor Harrison, and for some time thereafter, the Corporation owned and was in possession and control of the business of Skyland Oaks and all other assets of the Corporation associated with the then-ongoing business operations of Skyland Oaks.

71. During the time between Victor Harrison's death and the date of the filing of this Complaint, Jackson and Smithson came to control and domineer the assets and operations of Skyland Oaks to the complete exclusion of Harrison, despite her capacity as a director of the Corporation and despite their duties to her as a minority shareholder

and otherwise, to such a degree that they converted Corporation property to themselves, which was owned indirectly by Harrison as a one-third (1/3) owner of the Corporation..

72. The precise identification and value of converted property cannot be known without further discovery and an accounting to Harrison in accordance with her right to the same.

73. As a result of Jackson's and Smithson's exercise of control and dominion over property of the Corporation that was indirectly owned by Harrison, the Corporation was unable to continue its normal business operations and the value of its property was substantially reduced from what it would have been had the wrongful conversion not occurred.

74. At the time of conversion of Corporation property that was indirectly owned by Harrison, Jackson and Smithson, as members of the board of directors and officers of the Corporation, majority shareholders of the Corporation by virtue of their conspiracy, collusion, and concerted acts and omissions, were personally involved in, participated in, and/or directly benefited from their conversion of Corporation property indirectly owned by Harrison.

75. Harrison has been damaged by said conversion, and she is entitled to recover for the value of the property converted by Defendants.

76. The conversion of Corporation property indirectly owned by Harrison was done intentionally, wantonly, willfully, and maliciously by Jackson and Smithson, with a reckless and total disregard for the Corporation's rights of ownership and Harrison's

indirect interest in such property by virtue of her ownership of shares of capital stock of the Corporation.

77. As a proximate result, Harrison was injured and damaged.

#### COUNT IV

#### VIOLATION OF SECTION 10-2B-8.32 OF THE *CODE OF ALABAMA* (1975)

78. The allegations of paragraphs 1-52 above are realleged and incorporated herein by reference.

79. While acting as president, directors, or managing officers of the Corporation, by whatsoever name or title that Jackson or Smithson were called, they did act or omitted to act with the intent to depreciate the market value of the stock of the Corporation and with further intent to enable them to buy Harrison's stock at less than the real value thereof, all in violation of section 10-2B-8.32 of the *Code of Alabama* (1975).

80. As a proximate result, Harrison has been injured and damaged.

**WHEREFORE**, Plaintiff Harrison demands judgment against Defendants Jackson and Smithson jointly and severally in such an amount of compensatory, special, and punitive damages as a jury deems reasonable, plus costs.

#### PRAYER FOR RELIEF

**WHEREFORE, PREMISES CONSIDERED**, Plaintiff Harrison demands judgment against Defendants Jackson and Smithson as follows:

- (1) For general damages;
- (2) For special damages;
- (3) For punitive damages;

- (4) For interest and costs of suit herein incurred; and
- (6) For such other and further relief as the court may deem proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by a jury.

**DONE** as of this the 16<sup>th</sup> day of February 2006.

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DANIEL B. GRAVES  
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## CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that, on this the 16th day of February, 2006, a copy of the foregoing Amended and Restated Complaint was mailed by certified mail, return receipt requested, and postage prepaid to the following counsel to the Defendants:

Paige Oldshue, Esq.  
Rosen Cook Sledge Davis Shattuck Oldshue, P.A.  
2117 Jack Warner Parkway  
Tuscaloosa, AL 35401-1029

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DANIEL B. GRAVES