

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

ESTATE OF HARLAND OLSEN	)	CASE NO.
c/o Eadie Hill Trial Lawyers	)	
3100 E. 45 St., Suite 218	)	
Cleveland, Ohio 44127	)	JUDGE
	)	
Plaintiff,	)	
	)	<b><u>COMPLAINT</u></b>
vs.	)	
	)	
ATHENIAN ASSISTED LIVING, INC. dba	)	<b>With Jury Demand</b>
ATHENIAN VILLAGE	)	
c/o Statutory Agent MARY GATES	)	
1026 Pearl Road	)	
Brunswick, Ohio 44212	)	
	)	
and	)	
	)	
INTEGRITY HOME CARE, LTD.	)	
c/o Statutory Agent JAY COURY	)	
2 Berea Commons, Suite 1	)	
Berea, Ohio 44017	)	
	)	
and	)	
	)	
JESSICA ROMPALA, CNP	)	
State Road Family Practice	)	
12744 State Road	)	
North Royalton, Ohio 44133	)	
	)	
	)	
Defendants.	)	

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Plaintiff, for its Complaint against the above-captioned Defendants, states and avers upon information and belief:

## **INTRODUCTION**

1. This is a negligence, recklessness, breach of contract, and wrongful death action involving the Defendants' failure to provide adequate care and / or services to Harland Olsen at Athenian Village, leading to his death on November 25, 2016.

2. This Complaint includes a jury demand.

## **JURISDICTION AND VENUE**

3. This Court has Jurisdiction over the Defendants because, among other things, all Defendants do, and all times relevant did, purposefully avail themselves of the laws of the state of Ohio, and/or commit tortious acts within the state of Ohio.

4. Venue is proper in this County under Civil Rule 3(B) because, among other reasons: (a) Defendants reside, domicile, or carry on their principal place of business, in that county; and (b) part of the claim for relief arose in that county, including Mr. Olsen's injuries and death.

## **COMMON FACTS**

### **The Defendants**

5. Athenian Assisted Living, Inc. ("Athenian Village" or the "Facility") is a Residential Care Facility in Ohio that manages, controls, hires, employs, trains, and supervises the nursing, aide, and other staff members within the Facility.

6. At all times relevant, Athenian Village held itself out to the public as Residential Care Facility provider, directly and through their respective agents, operatives and/or employees.

7. Integrity Home Care, Ltd., employs other care providers the Athenian Village used to care for residents, including Harland Olsen.

8. Jessica Rompala is a Certified Nurse Practitioner acting as the primary care provider for Harland Olsen while he was at Athenian Village.

9. Harland Olsen looked to the Defendants for care.

10. The Defendants are vicariously liable for the negligent actions of their employees and agents (*respondeat superior* and agency liability) and/or contractors (*Clark v. Southview* agency by estoppel).

**The Athenian Village’s Obligations to Harland Olsen  
as Operator of a Residential Care Facility**

11. The Facility is a Residential Care Facility pursuant to Chapter 3721 of the Ohio Revised Code and Section 3701-17-50 *et seq.* of the Ohio Administrative Code, and subject to those state laws and regulations.

12. During his stay, Harland Olsen was a “resident” as defined by Ohio Revised Code section 3721.10, and the Facility was a “home,” as defined by Ohio Revised Code section 3721.01, affording Harland Olsen the Resident Rights in Revised Code section 3721.13, including the right to have Defendant provide:

- a. “a safe . . . living environment”; and
- b. “adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted”;

13. Athenian Village is required under the Ohio Administrative Code to ensure an initial written health assessment and periodic assessments thereafter were completed for Harland Olsen, to ensure that all components of the assessments were completed, and that Harland Olsen did not require accommodations or services beyond those that the residential care facility provides.

14. Athenian Village was required under the Ohio Administrative Code to enter into a Residential Care Agreement with Harland Olsen meeting certain requirements, and fulfil those requirements.

15. Athenian Village has not produced the entire resident agreement despite multiple requests.

16. Athenian Village was obligated to act reasonably in setting staffing levels, including providing sufficient funding to have adequate staff to meet resident case and assistance needs.

**The Defendants Fail to Meet their  
Legal and Contractual Duties to Harland Olsen**

17. Athenian Village improperly assessed Harland Olsen's needs and its ability to meet those needs, and retained him as a resident when they could not meet those needs.

18. On November 20, 2016, at 5 am, Athenian Village staff documented Harland Olsen falling trying to get into his wheelchair. His feet were cut and bleeding.

19. Athenian Village staff wrapped his feet, creating a fall hazard and unsafe condition.

20. Athenian Village staff did not alert his family or other care providers to the fall or injuries, or to the improper and unsafe bandaging.

21. Athenian Village staff took no steps to prevent Harland Olsen from falling again.

22. Four and a half hours later, at 9:30 am, Athenian Village staff document finding Harland Olsen on the floor, confused, with his foot bandages saturated with blood.

23. Athenian Village alerted CNP Rompala to the fall.

24. CNP Rompala ordered skilled nursing visit from Integrity Home Care for foot wound care.

25. CNP Rompala either failed to respond to the marked mental confusion shown by Harland Olsen, or Athenian Village staff did not adequately inform her of the marked mental confusion shown by Harland Olsen, which required hospitalization.

26. No one sent Harland Olsen to the hospital for evaluation of his confusion for possible head trauma or other injury.

27. Athenian Village took no steps to prevent Harland Olsen from falling again.

28. Five hours later, at 2:30 pm, Athenian Village staff document finding Harland Olsen on the floor of his bathroom, severely confused, with his pants off, not understanding where he was.

29. Harland Olsen was complaining of pain to his chest.

30. CNP Rompala either failed to respond to the marked mental confusion shown by Harland Olsen, or Athenian Village staff did not adequately inform her of the marked mental confusion shown by Harland Olsen, which required hospitalization.

31. No one sent Harland Olsen to the hospital for evaluation of his confusion for possible head trauma or other injury.

32. An hour later, at 3:30 pm, one of Harland Olsen's daughters arrived, observed her father's complaints of pain, confusion, and poor state of health, and ordered Athenian Village to send him to the hospital.

33. It was discovered at the hospital that Harland Olsen was seriously injured by the falls.

34. Harland Olsen died five days later, still in the hospital, from the injuries he sustained from the falls at the Athenian Village.

35. The medical examiner determined Harland Olsen died from the blunt force trauma of the multiple falls suffered at Athenian Village.

36. Had the Athenian Village taken steps to prevent the additional falls, or Athenian Village or CNP Rompala sent Harland Olsen to the hospital at the first sign of confusion, Harland Olsen would not have died.

**FIRST CAUSE OF ACTION**  
**(NEGLIGENCE)**

37. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

38. Plaintiff's Decedent depended on the Defendants and their staff, to provide a safe environment and adequate care and assistance.

39. Athenian Village knew of should have known the room they provided was not a safe environment for Plaintiff's Decedent, and that they were not providing adequate care.

40. Athenian Village had the duty to—and chose not to—act reasonably in assessing, placing, caring for, assisting, and monitoring, new residents like Plaintiff's Decedent.

41. Athenian Village had the duty to—and chose not to—act reasonably in budgeting and providing funding to hire adequate staff to care for and assist residents like Plaintiff's Decedent.

42. Athenian Village, Integrity Home Health, and / or CNP Rompala breached their duty to provide reasonable care under similar circumstances.

43. As a direct and proximate result of the negligence described above, Plaintiff's Decedent sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, and significant medical expenses.

44. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), for Plaintiff's Decedent's conscious pain and suffering, medical expenses, loss of enjoyment, and death, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which Plaintiff may be entitled to or the court finds appropriate.

**SECOND CAUSE OF ACTION**  
**(RESIDENTS' RIGHTS VIOLATION R.C. 3721.13)**

45. Plaintiff incorporate all other paragraphs of this Complaint as if fully rewritten herein.

46. Athenian Village, directly or through employees or agents, violated Plaintiff's Decedent's rights as a resident of the Facility, as enumerated in R.C. 3721.13, including, but not limited to:

- a. The right to a safe and clean living environment;
- b. The right to "adequate and appropriate medical treatment and nursing care and to other ancillary services that comprise necessary and appropriate care consistent with the program for which the resident contracted";
- c. The right to have any significant change in the resident's health status reported to the resident's sponsor.

47. These violations constitute negligence *per se* and give rise to a statutory cause of action.

48. As a direct and proximate result of Defendants' violations of R.C. 3721.13, Plaintiff's Decedent endured conscious pain and suffering and disability, incurred medical expenses, and death.

49. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), for Plaintiff's Decedent's conscious pain and suffering, medical expenses, loss of enjoyment, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which Plaintiff may be entitled to or the court finds appropriate.

**THIRD CAUSE OF ACTION**  
**(BREACH OF CONTRACT)**

50. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

51. Athenian Village, directly or through their employees or agents, violated their contractual obligations in the Residential Agreement, a copy of which Athenian Village has refused to produce.

52. As a direct and proximate result of those violations, Plaintiff suffered harm.

53. WHEREFORE, Plaintiff demands judgment against Athenian Village in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), together with costs of suit, attorney's fees and expenses, punitive and exemplary damages, and any other relief to which the court finds is appropriate and/or equitable.

**FOURTH CAUSE OF ACTION**  
**RECKLESS MISCONDUCT**

54. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

55. Defendants and their staff knew the great risk of serious physical harm to Plaintiff's Decedent in being exposed to dangerous physical conditions putting them at risk of deadly falls, such as having feet wrapped without assistance, monitoring, or fall

prevention of any kind, while confused, and in not providing medical attention for serious injuries after multiple falls.

56. Athenian Village knew the risk to residents in providing inadequate funding for staffing needs, incentivizing aggressive sales to fill facilities and maximize profits, and not providing adequate assessments, evaluations, monitoring, or care, to residents.

57. Defendants caused, endorsed, participated in, or encouraged such dangerous behavior through inadequate policies, inadequate monitoring and supervision, inadequate hiring, intentionally deficient staffing or staffing levels, or such other acts or omissions.

58. These actions constituted a conscious disregard and lack of any care towards residents like Plaintiff's Decedent.

59. There was a great probability that harm would result from this willful, wanton, and/or reckless misconduct.

60. The Defendants were aware of the great probability of the harm that could result from their willful, wanton, and/or reckless misconduct.

61. The Defendants' disregard for the rights and safety of residents like Plaintiff's Decedent created circumstances under which it became substantially certain that serious injuries would result, entitling Plaintiff to awards for compensatory and punitive damages.

62. The Defendants are directly liable for their own willful, wanton, and/or reckless misconduct.

63. The Defendants are also vicariously liable for their employees' and agents' willful, wanton, and/or reckless misconduct.

64. As a direct and proximate result of the Defendants' and Defendants' staff's willful, wanton, and/or reckless misconduct, Plaintiff's Decedent sustained permanent injury and loss including, but not limited to, conscious pain and suffering, disability, significant medical expenses, physical injuries, and death.

65. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00), for Plaintiff's Decedent's conscious pain and suffering, medical expenses, loss of enjoyment, together with costs of suit, attorney's fees and expenses, punitive and exemplary damages to punish and deter the Defendants' actions from recurring or being committed by others, and any other relief to which Plaintiff may be entitled to or the court finds appropriate.

**FIFTH CAUSE OF ACTION**  
**WRONGFUL DEATH**

66. Plaintiff incorporates all other paragraphs of this Complaint as if fully rewritten herein.

67. Plaintiff brings this Cause of Action pursuant to Ohio's Wrongful Death Statute for the benefit of Plaintiff's Decedent's heirs and next of kin who have suffered loss and damage due to Plaintiff's Decedent's wrongful and untimely death

68. As a direct and proximate result of the negligence/recklessness described above, Plaintiff's Decedent sustained physical injuries that caused their untimely and wrongful death.

69. Plaintiff's Decedent's next-of-kin suffered damages as set forth in the Ohio Wrongful Death statute, including mental anguish and grief, medical and funeral expenses, and loss of decedent's support, services, society and companionship.

70. WHEREFORE, Plaintiff demands judgment against the Defendants, jointly, in an amount more than Twenty-Five Thousand Dollars (\$25,000.00) to compensate the decedent's next of kin and heirs at law, together with costs of suit, attorney's fees and expenses, exemplary damages, and any other relief the court finds appropriate.

**A TRIAL BY JURY IS HEREBY DEMANDED.**

*/s/ William B. Eadie*

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**Court of Common Pleas**

**New Case Electronically Filed:**  
**November 20, 2017 22:17**

By: WILLIAM B. EADIE 0085627

Confirmation Nbr. 1230921

ESTATE OF HARLAND OLSEN

CV 17 889373

vs.

ATHENIAN ASSISTED LIVING, INC., DBA ATHENIA,  
ET AL

**Judge:** CASSANDRA COLLIER-WILLIAMS

**Pages Filed:** 11