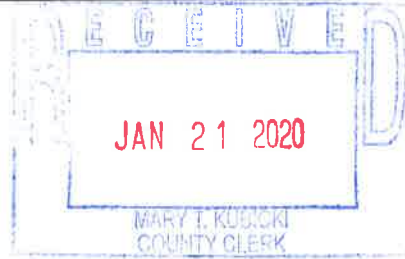


**STATE OF WISCONSIN****CIRCUIT COURT****KENOSHA**Estate of Vickery Fredrick by SA Elizabeth Fredrick et al  
vs. Brookside Care Center et al**Electronic Filing  
Notice**Case No. 2020CV000028  
Class Code: Other-Personal Injury

SC-03-20

FILED  
01-07-2020  
Clerk of Circuit Court  
Kenosha County  
2020CV000028  
Honorable Anthony  
Milisauskas  
Branch 4BROOKSIDE CARE CENTER  
3506 WASHINGTON ROAD  
KENOSHA WI 53144

Case number 2020CV000028 was electronically filed with/converted by the Kenosha County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

**Pro Se opt-in code: 0aa656**

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 262-653-2664.

Kenosha County Circuit Court  
Date: January 7, 2020

FILED  
01-07-2020  
Clerk of Circuit Court  
Kenosha County  
2020CV000028  
Honorable Anthony  
Milisauskas  
Branch 4

STATE OF WISCONSIN

CIRCUIT COURT

KENOSHA

ESTATE OF VICKERY FREDRICK, *by special administrator* ELIZABETH FREDRICK  
5924 83rd Place  
Kenosha, WI 53142

Plaintiff,

UNITEDHEALTHCARE INSURANCE COMPANY  
c/o Registered Agent  
CT Corporation System  
301 S. Bedford Street, Suite 1  
Madison, WI 53703

Case No.: \_\_\_\_\_  
Case Code: 30107  
JURY TRIAL DEMANDED

Involuntary Plaintiff,

v.

BROOKSIDE CARE CENTER  
3506 Washington Road  
Kenosha, WI 53144

ABC INSURANCE COMPANY  
*A fictitious insurance company,*

Defendants.

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**SUMMONS**

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**THE STATE OF WISCONSIN**

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within (45) days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes.

The answer must be sent or delivered to the **Clerk** for the **CIRCUIT COURT OF KENOSHA COUNTY, WI**, whose address is **912 56TH STREET, KENOSHA, WI 53140**; and, to **JAMES M. PAYNE, RIZZO & DIERSEN, S.C.**, Plaintiff's attorneys, whose address is **3505 30TH AVENUE, KENOSHA, WI 53144**. You may have an attorney help or represent you.

If you do not provide a proper answer within (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint.

A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated in Kenosha, Wisconsin, this /d/ 7th day of January 2020.

Respectfully submitted,  
**RIZZO & DIERSEN, SC**

*Electronically signed by James M. Payne*

BY:

\_\_\_\_\_  
JAMES PAYNE  
State Bar No. 1105889  
*Attorneys for Plaintiff the Estate of  
Vickery Fredrick*

**Mailing Address**

3505 30th Avenue  
Kenosha, WI 53144  
T: 262/652-5050  
F: 262/652-5053

FILED  
01-07-2020  
Clerk of Circuit Court  
Kenosha County  
2020CV000028  
Honorable Anthony  
Milsauskas  
Branch 4

STATE OF WISCONSIN

CIRCUIT COURT

KENOSHA COUNTY

ESTATE OF VICKERY FREDRICK, *by special administrator* ELIZABETH FREDRICK  
5924 83rd Place  
Kenosha, WI 53142

Plaintiff,

UNITEDHEALTHCARE INSURANCE COMPANY  
c/o Registered Agent  
CT Corporation System  
301 S. Bedford Street, Suite 1  
Madison, WI 53703

Case No.: \_\_\_\_\_  
Case Code: 30107  
JURY TRIAL DEMANDED

Involuntary Plaintiff,

v.

BROOKSIDE CARE CENTER  
3506 Washington Road  
Kenosha, WI 53144

ABC INSURANCE COMPANY  
*A fictitious insurance company,*

Defendants.

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**COMPLAINT**

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NOW COMES Plaintiff, The Estate of Vickery Fredrick, by authority of special administrator to the Estate, Elizabeth Fredrick, and by counsel, Rizzo & Diersen, S.C., James M. Payne, and as for its Complaint against Defendants Brookside Care Center and ABC Insurance Company states and avers as follows:

**INTRODUCTION**

1. This is a survivorship civil negligence action seeking monetary damages against Defendants for committing acts of negligence against Plaintiff.

### PARTIES

2. The Plaintiff is Vickery Fredrick, now deceased, who sustained injuries due to the negligence of the Defendants. This action is brought on behalf of his estate by his surviving spouse and special administrator Elizabeth Fredrick.
3. Involuntary Plaintiff, UnitedHealthcare Insurance Company (hereinafter "UHC"), is a foreign corporation engaged in the business of providing health insurance in the State of Wisconsin with an address for service as provided in the caption. UHC may be a necessary party by virtue of having provided insurance coverage to Plaintiff as a result of the events alleged hereinafter resulting in payment of medical expenses or other amounts. As a result of said coverage, UHC may have a right of subrogation, reimbursement, and/or lien interest. Plaintiff affirmatively alleges that any such right is subject to the "made whole" doctrine, the "common fund doctrine," and any and all laws that may reduce or preclude recovery by UHC.
4. Defendant, Brookside Care Center ("Brookside"), is a municipally run nursing home center with a business address as stated in the caption.
5. Defendant ABC Insurance Company ("ABCCO") is a fictitious insurance company providing a policy of applicable insurance to one or more of the defendants. By virtue of the existence of said policy of insurance, Defendant ABCCO is directly liable to Plaintiff in an amount to be determined for personal injuries as stated at length below.

### FACTUAL BACKGROUND

6. Plaintiff repeats, re-alleges, and incorporates by reference the allegations contained in paragraphs 1-5 above with the same force and effect if set forth at length herein.

7. In the fall of 2016, Vickery Fredrick sustained a severe stroke resulting in in-patient hospitalization at Froedert from November 7 until December 16, 2016.
8. Due to the severe and substantial nature of the injuries, and the deficits resulting from the stroke, Vickery Fredrick was transferred to Brookside for long term assisted living.
9. Mr. Fredrick's status post stroke was severely deficient requiring assistance with walking, eating, drinking, and most activities of daily living.
10. Particularly, Mr. Fredrick had strength and coordination deficits in his arms and upper body including but not limited to shaky hands. Family of Mr. Fredrick had often noticed he could not hold glasses and required assistance with drinking such as holding a soda can for him.
11. The stroke also impaired Mr. Fredrick's cognitive abilities.
12. On February 10, 2017, at around approximately 9:30 AM, Vickery Fredrick was at breakfast in the dining hall at Brookside.
13. On that day, Mr. Fredrick was placed at a table for "self feed" meaning the residents at that table did not require help with eating or drinking.
14. Typically, Mr. Fredrick was sat at a table which was coded to require aid and supervision for eating and drinking.
15. At the "self feed" table, a Brookside employee asked Mr. Fredrick what he would like to drink and he stated hot tea.
16. The Brookside employee brought hot tea in a mug and set it in front of Mr. Fredrick.
17. The Brookside employee did not assist or help Mr. Fredrick with the beverage.
18. When Mr. Fredrick picked up the beverage and attempted to drink from it, he dropped the mug into his lap spilling the hot beverage on his legs, thighs, pelvis, and groin area.

19. The liquid burned the affected areas causing a mix of second and third degree burns and resulting in skin breakage, blistering, and significant pain.
20. Upon information and belief, the hot tea provided to Mr. Fredrick came from a machine leased or otherwise obtained by Brookside from S&D Coffee.
21. Upon information and belief, at all relevant times hereto, Brookside maintained control and operation of the hot beverage machines and regularly operated them to provide beverages to the residents.
22. Upon information and belief, the unit which dispensed the hot tea as described above was set to a dispensing temperature of 190 degrees Fahrenheit.
23. 190 degrees Fahrenheit is dangerously high and had the machine been set to a lower temperature Mr. Fredrick would have sustained less severe injuries.
24. Subsequent to the incident, the hot beverage units were set to dispense liquid at a lower temperature.
25. Over the next 21 days, Mr. Fredrick suffered from the severe burns from the hot tea incident.
26. Mr. Fredrick died on February 21, 2017.

**FIRST CAUSE OF ACTION: NEGLIGENCE OF DEFENDANT BROOKSIDE**

27. Plaintiff repeats, re-alleges, and incorporates by reference the allegations contained in paragraphs 1-26 above with the same force and effect if set forth at length herein.
28. At all relevant times hereto, Defendant Brookside owed Plaintiff Vickery Fredrick a duty of care to operate its nursing home with a standard of care and attention to the needs of its residents to keep them safe and to specifically provide care and assistance to Plaintiff to ensure that his needs were met.

29. In breach thereof, Defendant Brookside committed the following negligent acts or omissions:
- a. Failed to properly place Mr. Fredrick at the correct dining table and improperly placed him at a table where residents do not require assistance with eating or drinking;
  - b. Failed to properly supervise dining room employees to make sure that residents were seated properly at the correct dining room table for each resident's specific medical needs;
  - c. Alternatively, failed to properly and adequately evaluate Mr. Fredrick's medical status and code him for requiring assistance with eating and drinking;
  - d. Failed to properly provide post-burn care causing additional pain and suffering;
  - e. Failed to properly maintain and operate the hot beverage machines to dispense liquid at a reasonable temperature for consumption to protect its residents from harm, many of whom had substantial physical impairments;
  - f. Failed to follow or meet Federal and State regulations for the administration of a nursing home including, but not limited to, setting the proper standards for temperature of liquids; and
  - g. All other negligence not currently known to Plaintiff, but which may become known through further discovery.
30. As a direct and proximate result of one of the aforesaid negligent and careless acts or omissions of the Defendant Brookside, the Plaintiff sustained serious, painful, and permanent bodily injuries, significant physical and mental pain and anguish, severe and substantial emotional pain, disfigurement, and medical expenses.



31. The medical incident occurred as a result of Defendant Brookside's aforesaid negligent acts or omissions. As a result, Brookside is liable to Plaintiff in an amount to be determined for past pain and suffering, past medical expenses, mental pain and anguish, emotional pain, and out-of-pocket expenses.

WHEREFORE, Plaintiff demands judgement against the above-named Defendants, jointly and severally, as follows:

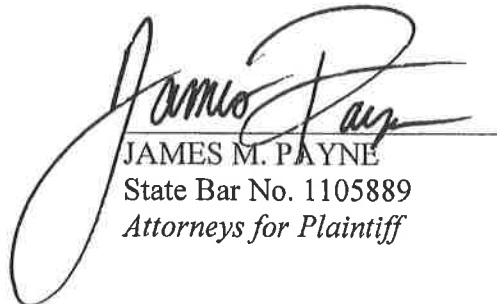
- A. For damages suffered by Plaintiff in an amount to be determined for personal injuries, past medical expenses, past pain and suffering, disfigurement, loss of enjoyment of life, emotional distress, and mental anguish; and
- B. For court costs, service fees, pre- and post-judgment interest, disbursements, and any other relief the Court deems just and equitable.

**TRIAL BY JURY OF TWELVE (12) IS HEREBY DEMANDED**

Dated at Kenosha, Wisconsin, this 7th day of January, 2020.

Respectfully submitted,  
**RIZZO & DIERSEN, S.C.**

BY:

  
JAMES M. PAYNE  
State Bar No. 1105889  
*Attorneys for Plaintiff*

**Mailing Address**

3505 30th Avenue  
Kenosha, WI 53144  
T: 262/652-5050  
F: 262/652-5053  
jmp@rizzolaw.com

STATE OF WISCONSIN      CIRCUIT COURT      KENOSHA COUNTY

For Official Use

Estate of Vickery Fredrick by SA Elizabeth  
Fredrick et al  
Plaintiff(s)

CONFERENCE ORDER  
AND NOTICE OF  
SCHEDULING  
CONFERENCE

vs.

Brookside Care Center et al  
Defendant(s)

Case No. 2020CV 000028  
Judge Anthony Milisauskas

**FILED**

JAN - 7 2020

REBECCA MATOSKA-MENTINK  
CLERK OF CIRCUIT COURT

**This case is scheduled for:    Scheduling Conference pursuant to Sec. 802.10(3) Stats.**

**DATE:                                    Thursday, May 7<sup>th</sup>, 2020**

**TIME:                                    8:45 AM**

**COURT OFFICIAL:                  Anthony Milisauskas**

**LOCATION:                              Room: 117 Kenosha County Courthouse  
    912 56<sup>th</sup> Street, Kenosha, WI 53140**

**THE COURT ORDERS:**

1. The plaintiff shall serve this notice upon all defendants to this action and provide proof of service to the court. Any party in this case who causes another party to be joined shall serve this notice upon the joined party and provide proof of service to the court.
2. **All plaintiffs and defendants named in this case shall appear either in person OR by attorney of record; unless otherwise authorized by the court.**
3. Any party who fails to comply with this order may have the court enter an order pursuant to Sec. 805.03 and 804.12, Stats. which may include a finding of contempt of court and entry of a default judgment against the offending party.
4. If you intend to challenge the allegations by the plaintiff in the complaint, you must file a written Answer within the number of days specified on the summons. If you do not file such an Answer you do not have to appear at the above date and time.

Dated : **January 7, 2020**

**JUDGE ANTHONY MILISAUSKAS**  
Circuit Court Judge, Branch 4