

**FILED**  
**01-13-2022**  
**Clerk of Circuit Court**  
**Brown County, WI**  
**2021CV001301**

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

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JANE DOE, by and through her guardian,  
CAROL SMITH,

Plaintiff,

and

LAKELAND CARE, INC.,

Involuntary Plaintiff,

v.

ASSISTED LIVING BY HILLCREST, LLC,  
and WEST BEND MUTUAL INSURANCE,

Defendants.

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**DEFENDANTS, ASSISTED LIVING BY HILLCREST, LLC, AND  
WEST BEND MUTUAL INSURANCE COMPANY'S ANSWER AND  
AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

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NOW COME the Defendants, Assisted Living by Hillcrest, LLC., and West Bend Mutual Insurance, by their attorneys, Corneille Law Group, LLC., and for their Answer and Affirmative Defenses to the Plaintiff's Complaint, hereby admit, deny and affirmatively allege as follows:

**NATURE OF THE ACTION**

1. In answer to Paragraph 1 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

2. In answer to Paragraph 2 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

3. In answer to Paragraph 3 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

4. In answer to Paragraph 4 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

5. In answer to Paragraph 5 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

6. In answer to Paragraph 6 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that

said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

7. In answer to Paragraph 7 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

8. In answer to Paragraph 8 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

9. In answer to Paragraph 9 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

10. In answer to Paragraph 10 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

11. In answer to Paragraph 11 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and

so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

12. In answer to Paragraph 12 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

13. In answer to Paragraph 13 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

14. In answer to Paragraph 14 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

15. In answer to Paragraph 15 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

16. In answer to Paragraph 16 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

17. In answer to Paragraph 17 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

18. In answer to Paragraph 18 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

### **PARTIES**

These answering defendants re-assert as if fully set forth herein paragraphs 1-18 of this answer.

19. In answer to Paragraph 19 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof.

20. In answer to Paragraph 20 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert

that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

21. In answer to Paragraph 21 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

22. In answer to Paragraph 22 of the plaintiff's Complaint, these answering defendants affirmatively assert that Assisted Living by Hillcrest, Inc., is a domestic business with a principal office address of 1889 Commerce Dr., De Pere, WI 54115-9227. As to any remaining allegations contained in said paragraph, these answering defendants lack knowledge or information sufficient upon which to form a belief as to the truth of the allegations and therefore deny the same and demand strict proof thereof. Further, these answering defendants affirmatively assert that portions of said paragraph contain legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

23. In answer to Paragraph 23 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

24. In answer to Paragraph 24 of the plaintiff's Complaint, these responding defendants affirmatively assert that West Bend Mutual Insurance Company is a mutual insurance company conducting business in the state of Wisconsin and with its principal office location as listed. As to any remaining allegations contained in said paragraph, these answering defendants lack knowledge or

information sufficient upon which to form a belief as to the truth of the allegations and therefore deny the same and demand strict proof thereof. Further, these answering defendants affirmatively assert that portions of said paragraph contain legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

### **CLAIM FOR NEGLIGENCE**

25. In answer to Paragraph 25 of the plaintiff's Complaint, these answering defendants re-assert as if fully set forth herein paragraphs 1-24 of this answer.

26. In answer to Paragraph 26 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof.

27. In answer to Paragraph 27 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof.

28. In answer to Paragraph 28 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

29. In answer to Paragraph 29 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

30. In answer to Paragraph 30 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof.

31. In answer to Paragraph 31 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

32. In answer to Paragraph 32 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

33. In answer to Paragraph 33 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

34. In answer to Paragraph 34 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.



35. In answer to Paragraph 35 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

36. In answer to Paragraph 36 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

37. In answer to Paragraph 37 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

38. In answer to Paragraph 38 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

39. In answer to Paragraph 39 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert

that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

40. In answer to Paragraph 40 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

41. In answer to Paragraph 41 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

42. In answer to Paragraph 42 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

43. In answer to Paragraph 43 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

44. In answer to Paragraph 44 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and

so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

45. In answer to Paragraph 45 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

46. In answer to Paragraph 46 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

47. In answer to Paragraph 47 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

48. In answer to Paragraph 48 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

49. In answer to Paragraph 49 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

50. In answer to Paragraph 50 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

51. In answer to Paragraph 51 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

52. In answer to Paragraph 52 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

53. In answer to Paragraph 53 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert

that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

54. In answer to Paragraph 54 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

55. In answer to Paragraph 55 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

56. In answer to Paragraph 56 of the plaintiff's Complaint, and any and all sub-parts of said paragraph of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein. Specifically deny that these answering defendants were negligent.

57. In answer to Paragraph 57 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a

response is required, these answering defendants deny the allegations contained therein. Specifically deny that these answering defendants were negligent.

58. In answer to Paragraph 58 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein. Specifically deny that these answering defendants were negligent.

59. In answer to Paragraph 59 of the plaintiff's Complaint, these answering defendants deny. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

60. In answer to Paragraph 60 of the plaintiff's Complaint, these answering defendants lack knowledge or information sufficient to form a belief as to the allegations contained therein and so deny and leave the plaintiff to her proof. Further, these answering defendants affirmatively assert that said paragraph contains legal conclusions to which no response is required; to the extent a response is required, these answering defendants deny the allegations contained therein.

### **AFFIRMATIVE DEFENSES**

1. Re-assert Paragraphs 1-60 of this Answer as if more fully set forth herein.
2. By way of their first affirmative defense, these answering defendants hereby allege that the plaintiff may have failed to mitigate her damages.

3. By way of their second affirmative defense, these answering defendants hereby allege that any injuries or damages sustained by the plaintiff may have been the result of a preexisting or subsequent medical condition or disease process, or the result of a superseding or intervening cause, over which defendants had no control.

4. By way of their third affirmative defense, these answering defendants hereby allege that the plaintiff's alleged damages may have been caused by individuals other than defendants.

5. By way of their fourth affirmative defense, these answering defendants hereby allege that the plaintiff may have failed to state a claim upon which relief may be granted in one or more respects.

6. By way of their fifth affirmative defense, these answering defendants hereby allege that plaintiff's alleged damages are subject to the limitations or caps on damages and other provisions of Chapter 655 of the Wisconsin Statutes and Wis. Stat. § 893.55.

7. By way of their sixth affirmative defense, these answering defendants hereby allege that the plaintiff may have failed to join a necessary party.

8. By way of their seventh affirmative defense, these answering defendants hereby allege that the injuries and damages, if any, sustained by the plaintiff may have been caused by persons and/or events over which these defendants had no control.

9. By way of their eighth affirmative defense these answering defendants hereby allege and incorporate by reference the defenses set forth in Wis. Stats. §§ 802.02(3) and 802.06(2) so as to avoid waiver of the same.

10. By way of their ninth affirmative defense, these answering defendants assert their liability, if any, is limited pursuant to Chapters 655 and 893 of the Wisconsin Statutes.

11. These answering defendants reserve the right to amend their Answer and assert additional affirmative defenses as discovery proceeds.

WHEREFORE, defendants Assisted Living by Hillcrest, LLC., and West Bend Mutual Insurance, demand that the above-entitled action against them be dismissed on the merits, together with costs, disbursements, and attorney's fees according to statute, and for such further relief as the Court deems just and equitable.

**DEFENDANTS DEMAND A JURY OF TWELVE**

Dated this 13<sup>th</sup> day of January 2022.

**CORNEILLE LAW GROUP, LLC**

Electronically signed by: Brian C. Bultman

Mark T. Budzinski

State Bar No. 1036103

Brian C. Bultman

State Bar No. 1097921

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