

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

TAMARA L. KAMMERER AS EXECUTOR  
OF THE ESTATE OF MILDRED L. POEHNER

Plaintiff

v.

CASE NO. 1:24-cv-1369

DUNN LORING VA OPCO LLC d/b/a AUGUST  
HEALTHCARE AT ILIFF AND DUNN LORING  
PROPCO, LLC

Defendants

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**Plaintiff's Motion to Amend  
With Supporting Memorandum**

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NOW COMES Plaintiff, Tamara L. Kammerer, as Executor of the Estate of Mildred L. Poehner ("Plaintiff") by counsel, and pursuant to Fed. R. Civ. P. 15, moves this Court for an order allowing Plaintiff to Amend her Complaint, and in support thereof, states as follows:

1. This case was removed on August 7, 2024. [Doc. 1]. Plaintiff alleges negligence, wrongful death, breach of contract and punitive damages arising out of Ms. Poehner's alleged neglect at August Healthcare at Iliff ("Iliff") a skilled nursing facility collectively operated by Defendants.

2. Defendants' initial discovery responses have revealed that Defendant Dunn Loring VA OpcO LLC, the licensee of the facility, is no longer in existence. It was purportedly taken

over by a successor entity, Iliff Opco, LLC, both operating under the trade name August Healthcare at Iliff.

3. Plaintiff has also learned that the Iliff nursing facility is part of a complex, fragmented combination of LLCs and family trusts which are set up to avoid legal liability for the neglect of their patients by undercapitalizing the operating entity and not maintaining malpractice insurance, which is a violation of Virginia law.

4. Plaintiff seeks to add the successor licensee Iliff Opco LLC which took over as license of Iliff on June 1, 2024, but still maintains a business relationship with the HC Family Trust, Zanziper Family Trust. The Amended Complaint alleges that the successor entity is still liable under a joint venture theory and that the unique facts of this case justify piercing the LLC veil to reach the assets and income of both the Family Trusts and Iliff Opco LLC.

5. Plaintiff also seeks to add Accordius Health LLC under a joint venture and vicarious liability theory, as this entity appears to be the actual employer of the staff at Iliff. Their involvement in this case was disclosed this week through the production of staff personnel files. Similarly, Plaintiff seeks to add the owners of the licensee Dunn Loring VA Opco LLC, Akiva Schonfeld, as trustee of the HC Family Trust and Natalie Zanziper as trustee of the Zanziper Family Trust, also under a joint venture theory.

6. Plaintiff's reliance on Virginia's joint venture theory is well supported by the facts and applicable case law. Under Virginia substantive law which controls in diversity cases, Plaintiff need only establish that the Defendants joined in a business enterprise for their mutual benefit, with their understanding that they would share in the profits or losses, with each having a right to control or manage the enterprise. *Roake v. Hicks*, 234 Va. 470, 475, 362 S.E.2d 711, 714 (1987).

Plaintiff seeks to add the new entities as she has adequately pled all the essential elements of a joint venture in paragraphs six through sixteen of her proposed Amended Complaint against all Defendants.

7. Plaintiff also seeks to pierce the corporate or LLC veil of the successor entity Iliff Opco LLC and the HC and Zanziper Family Trusts. Under Virginia law a court may pierce the corporate veil "to find that an individual is the alter ego of a corporation where it finds '(i) a unity of interest and ownership between [the individual and the corporation], and (ii) that [the individual] used the corporation to evade a personal obligation, to perpetrate fraud or a crime, to commit an injustice, or to gain an unfair advantage.'" *Newport News Holding Corp. v. Virtual City Vision Inc.*, 650 F.3d 423, 434 (4<sup>th</sup> Cir. 2011)(alterations in the original). The fact that the entity is an LLC as opposed to a corporation does not alter the analysis. See, *A.G. Dillard, Inc v. Stonehouse Construction, LLC*, 2016 WL 321360 (Va. 2016)(holding that the same standard applying to piercing the veil of an LLC applies to piercing the veil of a traditional corporation). Plaintiff has adequately pled the requirements for piercing the LLC and trust veils in paragraphs eighteen through twenty-six.

8. This is Plaintiff's first request to amend her complaint. Given the complex structure that Defendants have set up to disguise the owners and operators of this facility and avoid responsibility for their torts, Plaintiff should be allowed to amend her complaint as anticipated by the liberal allowance of amendments under Fed. R. Civ. P. 15. *Austin v. Reynolds Metal Co.*, 327 F.Supp.1145 (E.D. Va. 1970)(leave to amend is to be granted with liberality).

9. Prior to filing this matter, Plaintiff sought consent from defense counsel who refused to consent to this Motion. Plaintiff filed this motion soon after obtaining discovery supporting these additional allegations and after giving time for defense counsel time to respond

to Plaintiff's proposed Motion to Amend. Plaintiff's counsel also spent a week waiting for counsel to respond to the Motion and provide available dates for oral argument or consent to the matter being heard by the Court without oral argument. As of the filing of this Motion, defense counsel has failed to respond to Plaintiff's multiple requests for his availability for oral argument or otherwise consent to the Court resolving this matter on the parties' submissions. As set forth in Plaintiff's accompanying Notice of Motion, Plaintiff has no objection to the Court resolving this matter without oral argument, should the Defendant consent.

Wherefore, these and other premises considered, Plaintiff moves this Court for an order granting her Motion to Amend the Complaint. The Amended Complaint and proposed order are attached to this Motion.

Respectfully submitted this 3<sup>rd</sup> day of October, 2024

*/s/ Jeffrey Downey*  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of October, 2024, Plaintiff served by email a true and correct copy of the above Motion to Amend, with notice of hearing and attachments, upon the following counsel of record:

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BY: /s/ Jeffrey Downey  
Jeffrey J. Downey