

12-Person Jury

FILED
11/21/2019 12:32 PM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019L012896

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

BRIAN LESS, Individually and as Independent)
Administrator of the ESTATE OF DAYNA LESS,)
Deceased,)

Plaintiffs,)

v.)

MERCY HOSPITAL & MEDICAL CENTER, an)
Illinois Corporation, SDI SECURITY, INC., an)
Illinois Corporation, TRINITY HEALTH, INC., an)
Indiana Corporation, and MARGARITA CADENA,)
as Independent Administrator to Collect for the)
Estate of JUAN LOPEZ, Deceased.)

Defendants.

Case No.

JURY TRIAL DEMANDED

COMPLAINT AT LAW

Plaintiff Brian Less, Individually and as Independent Administrator of the Estate of Dayna Less (“Dayna”), by his attorneys Hughes Socol Piers Resnick & Dym, Ltd., complains against Defendants Mercy Hospital & Medical Center (“Mercy” or “Mercy Hospital”), SDI Security, Inc. (“SDI”), Trinity Health, Inc. (“Trinity”), and Margarita Cadena, as Independent Administrator to Collect for the Estate of Juan Lopez, Deceased (“Lopez”), as follows:

INTRODUCTION

1. On November 19, 2018, Dayna Less was leaving her job as a Pharmacy Resident at the Mercy Hospital Family Health Center (“FHC”) when she was brutally murdered in the FHC lobby and reception area by an armed shooter who had been on the hospital premises for over an hour and a half. Defendants Mercy, SDI and Trinity completely failed to take even the most basic and simple safety and security measures which would have easily prevented Dayna’s shooting and death.

FILED DATE: 11/21/2019 12:32 PM 2019L012896

2. Mercy had contracted with SDI, a private security firm, to provide additional security throughout the hospital. Mercy also had its own safety and security employees at the hospital.

3. As set forth below, Dayna's death was a direct result of systemic failures in security at Mercy Hospital which allowed a domestic violence incident to escalate into a triple homicide on hospital grounds.

4. That day, Dayna and a co-resident and friend, both employees of Comprehensive Pharmacy Services, Inc., were working in the basement pharmacy. Their shift ended at 3:00 p.m. They gathered their belongings and took the elevator upstairs to head to the parking lot. Dayna had offered to give her friend a ride home. The friends **had not been warned** and were therefore completely unaware that a dangerous gunman had been on the loose on hospital grounds for over an hour. They did not know that Dayna would not make it out of her workplace alive. As set forth in more detail below, Defendants Mercy, SDI and Trinity failed to take any measures to protect Dayna from the shooter, resulting in Dayna's death. These Defendants were well aware that active shooter situations are frequent occurrences throughout the United States and had in place a written policy of responding to them by issuing a "Code Silver" alert, warning persons on the premises and locking the facility down. If these Defendants had simply issued a Code Silver alert, Dayna and others would have been warned that an armed shooter was on the premises. Dayna would never have entered the elevator and would today be a happy newly-wed with a loving family. If Mercy or SDI would have confronted the shooter, Lopez, while he was seen in person and on security cameras lurking in the hospital lobby for approximately 90 minutes before he began to attack a physician in the Mercy parking lot, Dayna's shooting would not have occurred. If Mercy or SDI had locked down the hospital, locking the lobby doors and shutting

down the elevators, after Lopez exited the hospital and shot his first victim in full view of the security cameras, the shooting would not have occurred. Simply put, Mercy and SDI knew or should have known what to do and had ample time to do it. Shockingly, they did nothing.

5. When Dayna and her co-resident stepped off the elevator, they were confronted by Lopez pointing a gun at them. By that time, Lopez, after lurking in the Mercy lobby for approximately 90 minutes, had already exited the lobby to the Mercy Hospital parking lot, where he shot and killed a physician and fired at responding Chicago Police officers before reloading his weapon and walking back into the lobby. Lopez told the two young women to “get the f*** out of here.” Both women turned toward the lobby entrance and attempted to flee. Dayna’s co-worker made it to the door and out of the building. Dayna did not.

6. As Dayna attempted to flee, Lopez opened fire and shot her multiple times in the chest, back and arm. She fell to the empty lobby floor, struggling for her life but ultimately dying from her massive internal injuries.

7. For about an hour and a half before the shooting began, Lopez had exhibited clearly suspicious behavior on the hospital premises while apparently waiting to attack Dr. Tamara O’Neal (“Dr. O’Neal”), his ex-fiancé. Nobody approached him during this time to ascertain his reason for being in the hospital or assess whether he was a danger to others. No hospital personnel or member of SDI security took the opportunity to intercept Lopez or deescalate the situation.

8. After approximately 90 minutes and before shooting Dayna, Lopez left the hospital lobby and confronted and threatened Dr. O’Neal in the parking lot in the plain sight of and with the full knowledge of Mercy and SDI. Lopez brandished a weapon and chased his ex-

fiancée in the parking lot, eventually shooting her. During this attack, Mercy and SDI, inexplicably, did nothing.

9. Mercy and SDI had numerous opportunities to prevent Lopez's hospital re-entry by locking down the facilities, but the doors were not locked and the elevators were not shut down. Mercy and SDI knew well before he murdered Dayna that Lopez was armed, dangerous and extremely violent. They had watched him chase Dr. O'Neal around the parking lot, gun her down as she attempted to flee back into the hospital, and then shoot at the police as they arrived at the scene. They then watched him reload his weapon and walk back into the unlocked building. In addition to their own observations, Mercy and SDI received telephone calls from witnesses, urging them to respond to the violent situation. Not until well after Lopez had repeatedly shot Dayna inside the hospital did Mercy finally issue a Code Silver, warning employees about the armed shooter. It was, of course, too late by then to lock down the building or shut down the elevators. The misconduct of Mercy, SDI and Trinity on November 19, 2018 in failing to protect Dayna and others was shocking, unconscionable and inexcusable.

10. These utterly reckless and completely inexcusable failures in basic security responses caused Dayna to board the elevator and unknowingly walk directly into the gunman and his line of fire.

11. Had it not been for Defendants Mercy, SDI and Trinity's complete failure to properly implement and follow basic security and safety procedures for the safety of Dayna and others, Dayna would be alive today.

12. Dayna Less was the only child of Brian and Teena Less and was 24 years old at the time of her needless and totally preventable death. Dayna had dedicated herself at a young age to helping others, beginning as a camp counselor, continuing as an author of a blog dedicated

to bringing hope to the chronically ill and culminating in her decision to pursue pharmacy as a career. She attended pharmacy school at Purdue University, and as part of her education, chose to serve a two-month rotation in a pharmacy in Kenya. She had been dating her fiancé, whom she had known since the age of nine, for nine years and their wedding was set for June 1, 2019. Teena, a devoted mother and an accomplished seamstress, had lovingly hand-made Dayna's wedding dress. Brian, Teena and Dayna were all excitedly looking forward to the upcoming wedding. Defendants Mercy, SDI and Trinity's inexcusable and wrongful conduct as described herein cut short this remarkable life which was filled with love, compassion, happiness and optimism.

13. Brian and Teena Less will continue to suffer the indescribable loss of their only child for the rest of their lives. Dayna was exceptional in so many ways and was the pride and bright star of the Less family and a joy to everyone who met her. Their suffering is compounded by the horrific circumstances of her death, the knowledge of her intense suffering between the time of the first encounter with Lopez and her demise some time later, and the knowledge of how easily Defendants Mercy, SDI and Trinity could have prevented it.



Brian, Dayna and Teena Less

PARTIES

14. Dayna Less was a resident of Chicago in Cook County, Illinois at the time of her death. Brian Less was appointed the Independent Administrator for the Estate of Dayna Less, and Brian and Teena are the surviving next of kin of their daughter, Dayna.

15. Mercy Hospital is a Level 2 Trauma Center located on the Near South Side of Chicago. In 2012, Mercy was acquired by Trinity Health, a conglomerate of 93 hospitals and other health care facilities in 22 states. Mercy is an Illinois corporation with its principal place of business in Chicago, Illinois.

16. SDI is an Illinois corporation with its principal place of business in Chicago, Illinois. At all relevant times, SDI held a contract to provide private security services at Mercy.

17. Trinity is an Indiana corporation operating 93 hospitals in 22 states as well as numerous other facilities, and with its principal place of business in Livonia, Michigan.

18. Margarita Cadena is the Independent Administrator to Collect for the Estate of Juan Lopez, the murderer of Dayna. Lopez died on November 19, 2018.

FACTUAL ALLEGATIONS

A. Chronology of Events.

19. The lobby of the Mercy Hospital FHC is a small area with large windows facing the Mercy parking lot, located immediately adjacent to the entrance to the Emergency Room (“ER”) and the FHC. The parking lot is easily visible from the ER, the FHC and many other areas in and around the first floor of Mercy Hospital.

20. On November 19, 2018, Lopez arrived at the FHC lobby about 1:43 p.m.

21. Lopez remained in the lobby of the FHC until approximately 3:12 p.m. During this time, no SDI or Mercy employees questioned his presence, despite the fact that he could be

seen in-person and on security camera acting in an increasingly suspicious manner throughout the nearly 90 minutes he remained in the lobby (fidgeting, pacing between a lobby chair and the entryway, continuously staring into the parking lot, and displaying no apparent business in the waiting room).

22. At approximately 3:12 p.m., Lopez went from the lobby vestibule out to the parking lot, where he confronted Dr. O’Neal. The two had recently called off their engagement. Lopez confronted Dr. O’Neal and demanded that she return the engagement ring he had given her, and threatened to kill her if she did not comply.

23. From approximately 3:12 p.m. to 3:17 p.m., the confrontation between Lopez and Dr. O’Neal became increasingly fraught and the danger was obvious; he began chasing Dr. O’Neal around the parking lot, causing her to beg bystanders for help. Eyewitness reports provided to the Chicago Police Department (“CPD”) describe a rapidly escalating confrontation. Multiple eyewitnesses reported that Dr. O’Neal ran up to them and/or shouted to them and asked for help as the situation devolved. During that time, John Arnburg (“Arnburg”), Mercy’s Director of Public Safety and Emergency Management, was notified of the confrontation in the parking lot and of the fact that Lopez was armed with a gun.

24. CPD first became aware of this incident from a 911 call placed by Dr. O’Neal. They then received additional calls from witnesses in and near the parking lot.

25. At approximately 3:17:49 p.m., Lopez shot Dr. O’Neal 3-5 times in the back in the parking lot as she attempted to flee back into the hospital.

26. After shooting Dr. O’Neal, Lopez turned and shot at a CPD vehicle arriving at the scene. He then turned back to Dr. O’Neal, who lay bleeding on the ground, and shot her another 4-5 times. He then stopped to reload his weapon.

27. SDI guards directly observed both the confrontation leading up to the shootings in the parking lot as well as the repeated shootings. Mercy and SDI were on full notice of the armed and dangerous situation prior to Dayna's shooting. **MERCY and SDI DID NOTHING.**

28. Lopez remained in the parking lot until approximately 3:20 p.m., and the situation escalated from a single murder to armed combat as he began shooting at police as they arrived on the scene.

29. At approximately 3:20 p.m., Lopez walked back to the hospital and reentered the lobby/waiting room of the FHC, with his gun freshly reloaded. **Incredibly, despite all that had already occurred – in full view and knowledge of SDI and Mercy security personnel – the building had not been secured or locked down.**

30. Lopez paced around the lobby for a minute raising and lowering his gun looking for more targets in full view of the hospital security cameras. Dayna Less and her co-worker left a secure area in the basement, from behind a locked metal door protected by a security code. At approximately 3:21 p.m., Dayna and her friend, completely unaware of the danger that awaited them, stepped off the elevator and into the lobby, where they were confronted by the gunman.

31. At no time prior to 3:21 p.m. had Defendants Mercy or SDI issued any warnings to Dayna that an armed shooter was on the premises, locked down the facilities, locked the doors so that Lopez could not reenter, shut down the elevators or taken any other actions to protect Dayna from injuries or death.

32. Both women attempted to run; Dayna's co-worker was able to make it to the door. Dayna was not. Lopez shot Dayna multiple times. After she was shot, Dayna was injured and spent time in excruciating pain, suffering, and anguish, alone on the empty lobby floor, without her loved ones, as she gasped for air and eventually died.

33. Beginning around 3:25 p.m., several Chicago Police officers engaged in a shoot-out with Lopez in a hallway toward the east end of the hospital. At that time, Officer Samuel Jimenez was fatally shot by Lopez. Lopez was wounded by a bullet to the chest, then took his own life by shooting himself in the head.

34. Dayna was transported from Mercy to Northwestern Memorial Hospital where she was pronounced dead at 4:04 p.m.

B. From Lopez's Arrival at the Hospital to the Escalation to an Active Shooter Situation, Defendants Recklessly Failed to Properly Respond.

35. It is well known that active shooter incidents are, tragically, all too common in recent years. Mercy Hospital's location is in a high crime area on Chicago's South Side. Accordingly, active shooter incidents were foreseeable.

36. The foreseeability of an active shooter incident is underscored by the fact that Mercy had adopted an active shooter protocol well prior to this shooting, entitled "Code Silver," which would alert persons in the hospital of an active shooter and initiate **lock down** of the building. Mercy also had adopted "Code Grey" for general-security-issue situations. Both of those Code designations were in common use in hospitals in the United States prior to November 19, 2018.

37. Arnburg himself had conducted active shooter training at Mercy Hospital within sixty days prior to November 19, 2018.

38. Mercy's security office is located in close proximity to the parking lot and FHC lobby, both of which were visible via surveillance camera.

39. Additionally, at all relevant times, a Mercy employee with security training and experience was located at a desk in the FHC lobby from which she witnessed the shooting of Dr. O'Neal yet failed at any time to take action to cause the lock down of the facility.

40. At all relevant times, in addition to Mercy, SDI security knew of Lopez's presence in and around the building and the deadly events which unfolded over the course of nearly two hours.

41. An SDI security guard working at the time of the shooting reported that she was in the ER waiting room when she heard gunshots. She called in "shots fired" on her radio. She went outside, where she saw Dr. O'Neal on the ground and Lopez standing over her, shooting her. She saw Lopez reload his weapon and shoot at police vehicles entering the parking lot. She saw Lopez walk back toward the hospital and re-enter the lobby of the Family Health Center. She at no time made any effort to intercept Lopez, lock down the facility or call for a Code Silver prior to Dayna's shooting.

42. A second member of the SDI security team on duty reported that he heard shots fired and observed Lopez outside the FHC. He observed Lopez shoot Dr. O'Neal. He then observed Lopez fire at Chicago Police officers responding to the scene. He observed Lopez walk back toward the hospital and re-enter the FHC. He at no time made any effort to intercept Lopez, lock down the facility or call for a Code Silver prior to Dayna's shooting.

43. A third member of the SDI security team reported that he saw Lopez shoot Dr. O'Neal in front of the FHC, then observed Lopez shoot at CPD officers who were responding to the scene. He observed Lopez walk back toward the hospital and reenter the FHC. He at no time made any effort to intercept Lopez, lock down the facility or call for a Code Silver prior to Dayna's shooting.

44. Defendants Mercy and SDI had multiple opportunities over a lengthy period of time to prevent Dayna's shooting, suffering and eventual death. Defendants Mercy and SDI failed to call a Code Silver to provide notice of an active shooter to persons inside the hospital so that they could avoid contact with the shooter. Defendants never locked down the hospital which

would have prevented reentry by Lopez. Defendants Mercy and SDI never shut down the elevators which would have prevented Dayna from encountering the shooter.

45. Dayna's death could have easily been prevented if Mercy and SDI had responded properly on multiple occasions, yet both inexplicably chose to do nothing until well after Dayna's shooting.

46. Defendants Mercy's and SDI's gross failure to call a Code Silver and place the hospital on lockdown, or indeed to take any reasonable measures to protect the persons in the hospital, was a proximate cause of Dayna's death. Dayna's suffering after being shot and her subsequent death was easily preventable.

47. The gunman suspiciously stood in the hospital lobby approximately 90 minutes and was never challenged or questioned. This failure to inquire why Lopez was lurking in the lobby was also a proximate cause of Dayna's death.

48. The first 911 call the police received was not from any Defendant, but rather from Dr. O'Neal, as she frantically and desperately sought protection from the armed Lopez as he chased her around the parking lot. Defendants Mercy and SDI failed to intervene and failed to timely call and implement a Code Silver. Each of these failures was a proximate cause of Dayna's death.

C. Hospital Emergency Procedures Were Not Properly Utilized.

49. Mercy Hospital had two security codes applicable to this incident: Code Silver (active shooter) and Code Grey (security incident). However, the first notification of this incident did not reach hospital personnel or patients **by either Code until well after Dayna's shooting.**

50. Police reports summarize interviews with several witnesses who had been in the ER and in the FHC who described initially hearing the gunshots from the parking lot. Reports

also contain several similar reports from additional witnesses on the ground floor, who were all first warned of this incident from the chaos occurring around them, not from any Code being called or any other formal hospital procedure.

51. Dozens of witness accounts indicate that when people actually became aware of the situation, they responded appropriately by barricading themselves in the nearest safe location, shutting off lights and waiting to be told it was safe to come out.

52. Because, however, Mercy, SDI and Trinity utterly failed to alert others on the premises of the fatal violence taking place, Dayna never became aware of the situation until it was too late. Because she was unaware, she walked directly into the danger. Defendants' various wrongful acts proximately caused Dayna's demise.

COUNT I
WRONGFUL DEATH – NEGLIGENCE OF MERCY

53. Plaintiff, Brian Less, as Independent Administrator of the Estate of Dayna Less, incorporates by reference all previous allegations in the preceding paragraphs, as if fully set forth herein.

54. Mercy owed a duty to Dayna and others at Mercy to use reasonable care in following the security policies it created and put in place and to use reasonable care to protect them from the dangerous acts of third parties.

55. Notwithstanding said duty, Mercy was negligent due to the following acts or omissions:

- a) failure to promptly lock down the hospital (lock the lobby doors and shut down the elevators) prior to Lopez reentering the hospital;
- b) failure to secure the building, shut down elevators, or warn persons on the premises of an active shooter, despite shots being fired in the parking lot, and

- despite having a specific code – Code Silver – for that very reason;
- c) failure to call a Code Silver until well after Dayna’s shooting;
 - d) failure to approach Lopez during the 90 minutes he spent in the hospital waiting room, exhibiting suspicious behavior such as pacing and fidgeting;
 - e) failure to exercise care by relying upon improperly-trained employees of SDI Security, Inc. to provide additional security throughout the hospital;
 - f) failure to take proper security and safety measures for Dayna at any time from Lopez’s arrival at the hospital to the point of her shooting;
 - g) failure to properly train Mercy employees regarding the calling and implementing of a Code Silver including timely notification and lock down of the facility; and,
 - h) was otherwise careless and negligent in its actions and omissions.

56. As a direct and proximate result of one or more of the above-mentioned negligent acts or omissions of Mercy, Plaintiff’s decedent, Dayna Less, sustained serious and permanent injuries which proximately resulted in her death on November 19, 2018.

57. As a direct and legal result of Mercy’s negligence, carelessness, and wrongful acts and/or omissions set forth above, Dayna died on November 19, 2018.

58. As a direct and legal result of the wrongful acts and/or omissions of Mercy set forth above, Plaintiff and his wife, Teena, have suffered and continue to suffer the loss of love, society, solace, companionship, comfort, care, assistance, protection, affection and/or moral support from Dayna, as well as other pecuniary damages including grief, sorrow and mental suffering, in amounts to be determined at trial.

59. As a further direct and legal result of the wrongful conduct of Mercy set forth above, Plaintiff incurred financial and burial expenses.

60. Plaintiff brings this action pursuant to 740 ILCS 180/01 et seq., commonly known as the Wrongful Death Act of Illinois.

WHEREFORE, Plaintiff Brian Less, as Independent Administrator of the Estate of Dayna Less, requests that judgment be entered in his favor and against Mercy in an amount in excess of the jurisdictional requirements of the Court, plus costs and such other relief the Court deems appropriate.

COUNT II
SURVIVAL ACTION – NEGLIGENCE OF MERCY

61. Plaintiff, Brian Less, as Independent Administrator of the Estate of Dayna Less, repeats and realleges paragraphs 1 - 55 of Count I for paragraph 61 of Count II.

62. As a direct and proximate result of one or more of the above-mentioned negligent acts or omissions of Mercy, Plaintiff's decedent, Dayna Less, was shot multiple times and spent time in agonizing pain, suffering and anguish, alone with her shooter on the unsecured empty hospital lobby floor, gasping for air and fearing her impending death, and was pronounced dead at Northwestern Memorial Hospital later that day.

63. Plaintiff brings this action pursuant to 755 ILCS 5/27-6 to recover for decedent, Dayna Less's, horrific pain and suffering prior to her death.

WHEREFORE, Brian Less, as Independent Administrator for the Estate of Dayna Less, requests that judgment be entered against Mercy in an amount in excess of the jurisdictional requirements of this Court, plus costs and such other relief as this Court deems appropriate.

COUNT III
FAMILY EXPENSE STATUTE – NEGLIGENCE OF MERCY

64. Plaintiff, Brian Less, repeats and realleges paragraphs 1- 55 of Count I for paragraph 64 of Count III.

65. As a direct and proximate result of the negligent and careless acts and omissions of Mercy, Plaintiff Brian Less became obligated for sums for hospital, medical and funeral expenses, pursuant to 750 ILCS 65/15, and is entitled to recover said sums from Mercy.

WHEREFORE, Plaintiff Brian Less requests judgment in his favor and against Mercy in an amount to be determined by proof at trial, costs and other such relief this Court deems appropriate.

COUNT IV
WRONGFUL DEATH – NEGLIGENCE OF SDI

66. Plaintiff, Brian Less, as Independent Administrator of the Estate of Dayna Less, repeats and realleges paragraphs 1 – 52 as the allegations of paragraph 66 of Count IV.

67. As the security provider for Mercy, SDI owed a duty to Dayna and others at Mercy to use reasonable care in the provision of security services to protect them from the dangerous acts of third parties.

68. Notwithstanding the above, SDI was negligent due to the following acts or omissions:

- a) failure to approach Lopez during the approximately 90 minutes he spent in the hospital waiting room, exhibiting suspicious behavior;
- b) failure to intervene when the exchange between Lopez and Dr. O’Neal became heated and Dr. O’Neal warned that Lopez “had a gun;”
- c) failure to put the building on lockdown (locking the lobby doors and shutting down the elevators) which would have prevented Lopez from reentering the building;
- d) failure to secure the building, shut down elevators, or warn Dayna or other persons on the premises of an active shooter, despite shots being fired in the

parking lot, and despite the existence of a specific Code - Code Silver - for that very reason;

- e) failure to call for a Code Silver until well after Dayna's shooting and death; and,
- f) was otherwise careless and negligent in its actions and omissions.

69. As a direct and proximate cause of SDI's negligence, Plaintiff's decedent sustained serious and permanent damages, which proximately resulted in her death on November 19, 2018.

70. Plaintiff brings this action under 740 ILCS 180/01, et seq. commonly known as the Wrongful Death Act of Illinois.

WHEREFORE, Plaintiff Brian Less, as Independent Administrator for the Estate of Dayna Less, requests that judgment be entered against SDI in an amount in excess of the jurisdictional requirements of the Court plus costs and such other relief the Court deems appropriate.

COUNT V
SURVIVAL ACTION – NEGLIGENCE OF SDI

71. Plaintiff Brian Less, as Independent Administrator of the Estate of Dayna Less, repeats and realleges paragraphs 66 - 68 of Count IV for paragraph 71 of Count V.

72. As a direct and proximate result of one or more of the above-mentioned negligent acts or omissions of SDI, Plaintiff's decedent, Dayna Less, was shot multiple times and spent time in agonizing pain, suffering and anguish, alone with her shooter on the unsecured empty hospital lobby floor, gasping for air and fearing her impending death, and was pronounced dead at Northwestern Memorial Hospital later that day.

73. Plaintiff brings this action pursuant to 755 ILCS 5/27-6 to recover for decedent Dayna Less's horrific pain and suffering prior to her death.

WHEREFORE, Plaintiff Brian Less, and as Independent Administrator of the Estate of Dayna Less, deceased, requests that judgment be entered against SDI in an amount in excess of the jurisdictional requirements of the Court, plus costs and such other relief the Court deems appropriate.

COUNT VI
FAMILY EXPENSE STATUTE – NEGLIGENCE OF SDI

74. Plaintiff Brian Less repeats and realleges paragraphs 66 - 68 of Count IV for paragraph 74 of Count VI.

75. As a direct and proximate result of the negligent and careless acts and omissions of SDI, Plaintiff Brian Less became obligated for sums for hospital, medical and funeral expenses, pursuant to 750 ILCS 65/15, and is entitled to recover said sums from SDI.

WHEREFORE, Plaintiff Brian Less requests judgment in his favor and against SDI in an amount to be determined by proof at trial, costs and other such relief this Court deems appropriate.

COUNT VII
WRONGFUL DEATH – NEGLIGENCE OF TRINITY

76. Plaintiff, Brian Less, as Independent Administrator for the Estate of Dayna Less, repeats and realleges paragraphs 1 through 52 as for the allegations of paragraph 76 of Count VII.

77. Defendant Trinity owed and assumed a duty to Dayna and others at Mercy in its participation in the implementation of Mercy’s active shooter policies and procedures in order to protect Dayna and others from the dangerous acts of third parties.

78. Notwithstanding said duty, Trinity was negligent due to the following acts or omissions:

- a) failed to properly participate and implement Mercy's Code Silver policy;
- b) failed to properly supervise the implementation of Code Silver policy; and,
- c) was otherwise negligent or careless in its actions and omissions.

79. As a direct and proximate result of one or more of the above-mentioned negligent acts or omissions of Trinity, Plaintiff's decedent, Dayna Less, sustained serious and permanent injuries which proximately resulted in her death on November 19, 2018.

80. As a direct and legal result of Trinity's negligence, carelessness and wrongful acts or omissions set forth above, Dayna died on November 19, 2018.

81. As a direct and legal result of the wrongful acts and/or omissions of Trinity set forth above, Plaintiff and his wife, Teena have suffered and continue to suffer the loss of love, society, solace, companionship, comfort, care, assistance, affection and/or moral support from Dayna, as well as other pecuniary damages including grief, sorrow and mental suffering, in amounts to be determined at trial.

82. As a further and direct legal result of the wrongful conduct of Trinity set forth above, Plaintiff incurred financial and burial expenses.

83. Plaintiff brings this action pursuant to 740 ILCS 180/01 et seq., commonly known as the Wrongful Death Act of Illinois.

WHEREFORE, Brian Less, as Independent Administrator for the Estate of Dayna Less, requests judgment be entered in his favor and against Trinity in an amount in excess of the jurisdictional requirements of this Court, plus costs and such other relief as this Court deems appropriate.

COUNT VIII
SURVIVAL ACTION – NEGLIGENCE OF TRINITY

84. Plaintiff, Brian Less, as Independent Administrator for the Estate of Dayna Less, repeats and realleges paragraphs 76 - 78 of Count VII as paragraph 84 of this Count VIII.

85. As a direct and proximate result of one or more of the above-mentioned negligent acts or omissions of Trinity, Plaintiff's decedent, Dayna Less, was shot multiple times and spent time in agonizing pain, suffering and anguish, alone with her shooter on the unsecured empty hospital lobby floor, gasping for aid and fearing her impending death, and was pronounced dead at Northwestern Memorial Hospital later that day.

86. Plaintiff brings this action pursuant to 755 ILCS 5/27-6 to recover for decedent Dayna Less's horrific pain and suffering prior to her death.

WHEREFORE, Brian Less, as Independent Administrator for the Estate of Dayna Less, requests that judgment be entered against Trinity in an amount in excess of the jurisdictional requirements of this Court, plus costs and such other relief as this Court deems appropriate.

COUNT IX
FAMILY EXPENSE STATUTE – NEGLIGENCE OF TRINITY

87. Plaintiff, Brian Less repeats and realleges paragraphs 76 - 78 of Count VII for paragraph 87 of this Count IX.

88. As a direct and proximate result of the negligent and careless acts and omissions of Trinity, Plaintiff Brian Less became obligated for sums for hospital, medical and funeral expenses, pursuant to 750 ILCS 65/15, and is entitled to recover said sums from Trinity.

WHEREFORE, Plaintiff Brian Less requests judgment in his favor and against Trinity in an amount to be determined by proof at trial, costs and other relief this Court deems appropriate.

COUNT X
WRONGFUL DEATH – INTENTIONAL BATTERY BY LOPEZ

89. Plaintiff Brian Less, as Independent Administrator of the Estate of Dayna Less, incorporates by reference paragraphs 1 - 51 for the allegations of paragraph 89 of this Count X.

90. Plaintiff sues Margarita Cadena, as Independent Administrator to Collect for the Estate of Juan Lopez, for the intentional misconduct of Lopez alleged herein.

91. Lopez committed a battery against Dayna by intentionally shooting and killing her on November 19, 2018.

92. As a direct and proximate result of Lopez's intentional act, Plaintiff's decedent sustained serious and permanent injury which proximately resulted in her death on November 19, 2018.

93. Plaintiff brings this action pursuant to 740 ILCS 180/01 et seq., commonly known as the Wrongful Death Act of Illinois.

WHEREFORE, Plaintiff Brian Less, as Independent Administrator of the Estate of Dayna Less, requests that judgment be entered in his favor and against Margarita Cadena, as Independent Administrator to Collect for the Estate of Juan Lopez, in an amount in excess of the jurisdictional requirements of the Court plus costs and such other relief this Court deems appropriate.

COUNT XI
SURVIVAL ACTION – INTENTIONAL BATTERY BY LOPEZ

94. Plaintiff Brian Less, as Independent Administrator of the Estate of Dayna Less, repeats and realleges paragraphs 89 - 91 of Count VII for the allegations of paragraph 94 of Count XI.

95. As a direct and proximate result of the intentional act of Lopez, Plaintiff's decedent, Dayna Less, was shot multiple times and spent time in agonizing pain, suffering and anguish, alone with her shooter on the unsecured empty hospital lobby floor, gasping for air and fearing her impending death, and was pronounced dead at Northwestern Memorial Hospital later that day.

96. Plaintiff brings this action pursuant to 755 ILCS 5/27-6 to recover for decedent Dayna Less's horrific pain and suffering prior to her death.

97. WHEREFORE, Plaintiff Brian Less, as Independent Administrator of the Estate of Dayna Less, requests that judgment be entered in their favor and against Margarita Cadena, as Independent Administrator to Collect for the Estate of Juan Lopez, in an amount in excess of the jurisdictional requirements of the Court plus costs and such other relief this Court deems appropriate.

COUNT XII
FAMILY EXPENSE STATUTE – INTENTIONAL BATTERY OF LOPEZ

98. Plaintiff repeats and realleges paragraphs 89 – 91 of Count VII for paragraph 98 of Count XII.

99. As a direct and proximate result of the intentional acts of Juan Lopez, deceased, Plaintiff Brian Less became obligated for sums for hospital, medical and funeral expenses, pursuant to 750 ILCS 65/15, and is entitled to recover said sums from the Estate of Juan Lopez.

WHEREFORE, Plaintiff Brian Less requests judgment in his favor and against Margarita Cadena, as Independent Administrator to Collect for the Estate of Juan Lopez, in an amount to be determined by proof at trial, costs and such other relief as this Court deems appropriate.

By: Matthew J. Piers
One of the Attorneys for Plaintiff Brian Less,
Individually and as Independent
Administrator of the Estate of Dayna Less

Matthew J. Piers
Mark S. Dym
Charlie Wysong
Justin Tresnowski
Hughes Socol Piers Resnick & Dym, Ltd.
70 West Madison Street, Suite 4000
Chicago, IL 60602
312-580-0100
Firm No. 45667