

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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VIOLET LENOKA GRAHAM  
and SHEILA DICKENS,  
as Co-Executrixes of the Estate of  
SHERMAN SIZEMORE, JR., deceased,

Plaintiffs,

v.

Civil Action No.: 07-C-200-K

RALEIGH ANESTHESIA ASSOCIATES, INC.,  
a West Virginia corporation,

Defendant.

**COMPLAINT**

The plaintiffs, Violet Lenoka Graham and Sheila Dickens, as Co-Executrixes of the Estate of Sherman Sizemore, Jr., deceased, for their Complaint states as follows:

1. The plaintiffs, Violet Lenoka Graham and Sheila Dickens, as Co-Executrixes of the Estate of Sherman Sizemore, Jr, are and were at all times alleged herein residents of Raleigh County, West Virginia. Violet Lenoka Graham and Sheila Dickens were duly appointed as Co-Executrixes of Sherman Sizemore's Estate by the County Commission of Raleigh County on February 7, 2006.

2. The defendant, Raleigh Anesthesia Associates, Inc., (hereinafter "Raleigh Anesthesia") is a West Virginia corporation licensed to do business in the State of West Virginia, and is presently doing business in Raleigh County, West Virginia.

3. Bruce Cannon, D.O., is and was at all times alleged herein a licensed doctor practicing in the specialty field of anesthesiology. Dr. Cannon was an agent and/or employee of Raleigh Anesthesia at all times alleged herein, and he was acting within the course and scope of his employment with Raleigh Anesthesia at all times alleged herein. Consequently, any and all acts and/or omissions

complained of herein By Dr. Cannon are the acts and/or omissions of the corporate defendant, Raleigh Anesthesia.

4. Larry Rupe, CRNA, a Certified Registered Nurse Anesthetist, was an agent and/or employee of Raleigh Anesthesia at all times alleged herein, and he was acting within the course and scope of his employment with Raleigh Anesthesia at all times alleged herein. Consequently, any and all acts and/or omissions complained of herein by Larry Rupe are the acts and/or omissions of the corporate defendant, Raleigh Anesthesia.

5. The plaintiffs have complied with the notice requirements set forth under *W. Va. Code §55-7B-6*.

6. On January 19, 2006, Sherman Sizemore, Jr. was admitted to Raleigh General Hospital to undergo an exploratory laparotomy to diagnose the cause of some abdominal pain that he had been experiencing that was more than likely related to gall bladder issues.

7. At that time, Sherman Sizemore, Jr., was a retired coal miner, but was still actively working as a Baptist Minister and was the Executive Director of the Freewill Baptist Conference for Raleigh County.

8. Mr. Sizemore had been married to Ruby Sizemore for 56 years, and he provided substantial care to her including but not limited to assistance with her everyday living activities. Sherman Sizemore, Jr., also had four loving children surviving him, and several grandchildren and great-grandchildren. Sherman Sizemore, Jr., was the patriarch of his family and was highly regarded in the community.

9. On January 19, 2006, Dr. Bruce Cannon was the anesthesiologist, and Larry Rupe was the CRNA, assigned to administer appropriate anesthesia to Sherman Sizemore, Jr., during the said

exploratory laparotomy at Raleigh General Hospital.

10. Prior to the said exploratory laparotomy, the defendant, through its agents and/or employees, administered Mr. Sizemore paralytic agents otherwise known as neuromuscular agents which rendered Mr. Sizemore paralyzed and unable to move, speak or even scream despite being fully aware of what was occurring.

11. Nevertheless, Dr. Bruce Cannon and/or Larry Rupe, CRNA, negligently, carelessly, recklessly and in a clear deviation from the appropriate standard of medical care failed to provide inhalational anesthesia to Sherman Sizemore for twenty-nine minutes after the induction of the exploratory laparotomy, and for sixteen minutes after the first incision into Mr. Sizemore's abdomen. Inhalational anesthesia is the agent that renders the patient unconscious and unable to experience pain.

12. Sixteen minutes after the first incision into Mr. Sizemore's abdomen, the defendant, by and through its agents and/or employees, discovered that they had negligently, carelessly, recklessly and in a clear deviation from the appropriate standard of medical care failed to turn on the inhalational anesthesia; and therefore, did in fact begin to administer the inhalational anesthesia to Mr. Sizemore.

13. Following the recognition of their clear error, Dr. Cannon and Larry Rupe, CRNA, also administered to Mr. Sizemore a drug to induce amnesia of the event.

14. In the short period following the exploratory laparotomy of January 19, 2006, Mr. Sizemore began behaving uncharacteristically. For example, Mr. Sizemore was unable to sleep, was afraid to be left alone, complained of not being able to breath, complained of people trying to bury him alive, refused to be around his grandchildren, had nightmares when he was able to sleep and he made other complaints and took other actions that were simply out of character for him. No one ever advised Mr. Sizemore of the failure to provide inhalational anesthesia during the said surgery, nor did the defendant,

by and through their agents and/or employees, explain to Mr. Sizemore that given the extreme trauma that he had been through as result of experiencing surgery without anesthesia, it was common to experience this type of uncharacteristic behavior.

15. Anesthesia awareness, also called unintended intra-operative awareness, occurs under general anesthesia when a patient becomes cognizant of the surgical events, but is unable to communicate with the surgical team because of the paralytic agents that have been administered to the patient. Anesthesia awareness is known to occur approximately twenty to forty thousand times per year in the United States, and is closely associated with patients experiencing post-surgical sensations of not being able to move or breathe, pain and panic and the development of other psychological conditions including but limited to post-traumatic stress disorder.

16. Post-traumatic stress disorder, also known as PTSD, is among only a few mental disorders that are triggered by a disturbing outside event, quite unlike other psychiatric disorders such as depression, and is associated with feelings of intense fear, helplessness or horror. One would be hard pressed to imagine a more disturbing scenario than having one's body cut open while totally awake and alert, but totally helpless to move, scream or alert others to the situation.

17. The American Association of Nurse Anesthetists has reported that prolonged psychological or psychiatric care is often needed in anesthesia awareness episodes. In addition, patient testimonials from people who have undergone anesthesia awareness describe sensations of suffocation, being buried alive, overwhelming pain, inability to signal their distress and are particularly chilling.

18. In addition, on October 6, 2006, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), which is the organization that works to set the standards for providing quality healthcare in hospitals and other healthcare providing facilities, issued a "Sentinel Event Alert" on

the issue of preventing and managing the impact of anesthesia awareness. Because JCAHO recognized that anesthesia awareness is under-recognized and under-treated, it recommended that it was important to tell the patient in anesthesia awareness incidents what had occurred, reassure the patient's credibility and assure access to necessary mental health services for the purposes of diminishing the impact of post-traumatic stress syndrome or other mental health related issues. The American Society of Anesthesiologists approved similar standards regarding anesthesia awareness in 2005.

19. Despite the defendant's employees' and/or agents' clear failure to provide Mr. Sizemore with inhalational anesthesia for twenty-nine minutes after the beginning of the exploratory laparotomy and sixteen minutes after the first incision, and after administering to Mr. Sizemore an amnesic drug, the defendant, by and through its agents and/or employees never advised Mr. Sizemore of the unmistakable error, which fact caused Mr. Sizemore to be more tormented because he questioned whether what he was experiencing really occurred. The defendant, by and through its agents and/or employees also failed to offer a psychological or psychiatric consult to Mr. Sizemore so that he could attempt to understand what he was experiencing.

20. The defendant, by and through their agents and/or employees, did not obtain a consultation with any other physicians or other healthcare providers and discharged the plaintiff's decedent home on January 20, 2006, despite ominous signs of psychological injuries, which the defendant's agents and/or knew, or in the exercise of reasonable care, should have known were ominous signs of psychological injuries associated with the anesthesia awareness experienced by plaintiff's decedent which required prompt and appropriate medical and/or psychological attention.

21. After two weeks of torment resulting from the psychological injuries caused by the defendant's negligence, carelessness and recklessness as described above, Sherman Sizemore, Jr., took his

life on February 2, 2006. Sherman Sizemore never suffered from any psychological or psychiatric conditions prior to January 19, 2006, and any and all psychological or psychiatric conditions that contributed to cause Mr. Sizemore's suicide on February 2, 2006, were directly related the defendant's failure to provide appropriate anesthesia to him on January 19, 2006 as aforesaid, and the defendant's failure to provide access to appropriate mental and medical care after Mr. Sizemore experienced the anesthesia awareness .

22. On or about the 19<sup>th</sup> day of January, 2006, the defendant, Raleigh Anesthesia, by and through its agents and/or employees, both individually and collectively, acted negligently, carelessly, recklessly, incompetently, and in a deviation from the normal standard of medical care, and failed to properly provide anesthesia, diagnose, evaluate, treat, refer, or otherwise care for the plaintiff's decedent, Sherman Sizemore, Jr., such deviations include, but are not limited to, the failure of each of the defendant, by and through their respective agents and/or employees, to adequately provide inhalational anesthesia to Mr. Sizemore; the failure to adequately diagnose and treat Sherman Sizemore's medical and psychiatric problems which were clearly exhibiting themselves while he was still a patient at Raleigh General Hospital and after his discharge; the failure to provide appropriate follow-up care; the failure to obtain competent consultative opinions or conduct further evaluations and testing; and the failure of the defendant, by and through its agents and/or employees, to treat Sherman Sizemore, Jr., pursuant to the appropriate standard of medical care.

23. As a direct and proximate result of the negligence, carelessness, recklessness, incompetent procedures, willful lack of care, and deviation from the normal standard of medical care hereinabove listed of the defendant, Raleigh Anesthesia, by and through its employees and/or agents, both jointly and severally, the plaintiff's decedent, Sherman Sizemore, Jr., died.

24. As a further direct and proximate result of the negligence, carelessness, recklessness, incompetent procedures, wilful lack of care, and deviation from the normal standard of medical care hereinabove listed of the defendant as aforesaid, the heirs at law of the decedent, Sherman Sizemore, Jr., have suffered damages, including but not limited to, the following:


- (A) sorrow, mental anguish and solace, which may include society, companionship, comfort, consortium, guidance, kindly offices and advice of the decedent;
- (B) compensation for the reasonably expected loss of services, protection, care and assistance provided by the decedent;
- (C) funeral expenses of the decedent; and
- (D) all other damages allowed under West Virginia law.

**WHEREFORE**, the plaintiffs, Violet Lenoka Graham and Sheila Dickens, as Co-Executrixes of the Estate of Sherman Sizemore, Jr, deceased, demand judgment of and from the defendant, Raleigh Anesthesia Associates, Inc., in such sums as will adequately compensate the plaintiffs for the wrongful death of Sherman Sizemore, Jr., as aforesaid, which said sums are far in excess of any sums necessary to confer the jurisdiction of this court, together with prejudgment and postjudgment interests, the costs expended in the prosecution of this lawsuit, including reasonable attorney fees, and do further pray for such other and further general relief as this court may deem proper.

**THE PLAINTIFFS FURTHER DEMAND A TRIAL BY JURY.**

**VIOLET LENOKA GRAHAM  
And SHEILA DICKENS,  
as Co-Executrixes of the Estate of  
SHERMAN SIZEMORE, JR., deceased,**

**By Counsel**

  
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