

**IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR MIAMI-DADE COUNTY,  
FLORIDA**

**DARIEN SMITH, by and through his parent and  
guardian, LINDA McCOY,**

**CASE NO: 02 27401 CA 01**

**Plaintiff,**

**vs.**

**HOME DEPOT U.S.A., INC., NATIONAL UNION  
FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA., GAB ROBINS NORTH  
AMERICA, INC. and SEDGWICK CMS, INC.,**

**Defendants.**

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**PLAINTIFF’S MOTION FOR LEAVE TO AMEND SECOND AMENDED COMPLAINT  
TO ADD A CLAIM FOR PUNITIVE DAMAGES WITH SUPPORTING  
MEMORANDUM OF LAW AND PROFFER OF EVIDENCE**

Plaintiff moves under section 768.72, Florida Statutes, and Florida Rule of Civil Procedure 1.190(f) to amend his second amended complaint to add a claim for punitive damages against Defendants National Union Fire Insurance Company and Sedgwick CMS, and states as follows:

1. Florida’s Workers’ Compensation law exists “to assure the quick and efficient delivery of disability and medical benefits to . . . injured worker[s].” § 440.015, Fla. Stat. “Fundamentally, the workers’ compensation system establishes a system of exchange between employees and employers, as well as employees and insurance carriers, that is designed to promote efficiency and fairness.” *Aguilera v. Inservices, Inc.*, 905 So. 2d 84, 90 (Fla. 2005) (emphasis added).

2. Defendants National Union and Sedgwick have thwarted the purpose behind the Workers' Compensation law by systematically delaying or denying Plaintiff Darien Smith necessary medical care and equipment over a period of several years.
3. When Plaintiff Smith was just a teenager, he received two head injuries while working at Home Depot. These injuries rendered Plaintiff Smith a ventilator-dependant quadriplegic who requires constant skilled nursing care for his survival.
4. Defendant National Union is the insurance carrier for Plaintiff Smith's workers' compensation claim with Home Depot and, since the year 2000, Defendant Sedgwick has been the third-party administrator of Plaintiff Smith's claim.
5. Since March 2000, Defendants National Union and Sedgwick have exercised exclusive control over Plaintiff Smith's ability to receive medical care. Rather than exercising this control in the best interest of Plaintiff Smith's health and safety, they have systematically engaged in tactics to deprive or delay Plaintiff Smith of medically necessary care, treatment, and equipment.
6. As Defendants' actions to deprive or delay Plaintiff Smith of medically necessary care, treatment and equipment were conducted intentionally or recklessly with a conscious disregard for Plaintiff Smith's health, safety and life, Plaintiff is entitled to amend his complaint to allege a claim for punitive damages against National Union and Sedgwick.

WHEREFORE Plaintiff respectfully requests the Court grant his Motion for Leave to Amend his Second Amended Complaint to include a Claim for Punitive Damages and deem Plaintiff's Third Amendment Complaint, attached hereto as Exhibit "A," as filed upon the Court's granting of Plaintiff's Motion.

## MEMORANDUM OF LAW

1. **To amend his Complaint to state a claim for punitive damages, Plaintiff need demonstrate only that a “reasonable basis” for such damages exists in the record.**

Punitive damages act as a punishment to deter wrongful conduct and “to vindicate wrongs arising from antisocial behavior. The incentive to bring actions for punitive damages is favored because it has been determined to be the most satisfactory way to correct evil-doing in areas not covered by the criminal law.” Johns-Manville Sales Corp. v. Janssens, 463 So. 2d 242, 247 (Fla. 1st DCA 1984) (citations omitted). Plaintiff seeks to amend his Second Amended Complaint to state a claim for punitive damages pursuant to section 768.72, Florida Statutes, and Florida Rule of Civil Procedure 1.190(f). In pertinent part, 768.72 provides:

In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by **evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages**. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure.

§ 768.72(1), Fla. Stat. (emphasis added). Rule 1.190(f) states: “A motion for leave to amend a pleading to assert a claim for punitive damages **shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages.**” (Emphasis added).

Thus, in order to plead a claim for punitive damages, Plaintiff need only provide the Court with a showing of a “reasonable basis” for the recovery of such damages. See Strasser v. Yalamanchi, 677 So. 2d 22, 23 (Fla. 4th DCA 1996). “[A]n evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.” Estate of Despain v. Avante Group, Inc., 900 So. 2d 637, 642 (Fla. 5th DCA 2005). Plaintiff may establish the reasonable basis for

punitive damages by proffer, which “is merely a representation of what evidence the [party] proposes to present and is not actual evidence.” Id. (quoting Grim v. State, 841 So. 2d 455, 462 (Fla. 2003)). “[T]he standard that applies to determine whether a reasonable basis has been shown to plead a claim for punitive damages should be similar to the standard that is applied to determine whether a complaint states a cause of action.” Id. at 644. **The proffer, therefore, is reviewed in the light most favorable to the Plaintiff and accepted as true.** Id. (citing Sobi v. Fairfield Resorts, Inc., 846 So. 2d 1204 (Fla. 5th DCA 2003)).

Pursuant to section 768.72(2), a defendant may be held liable for punitive damages based upon clear and convincing evidence of intentional misconduct or gross negligence. “‘Intentional misconduct’ means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.” § 768.72(2)(a). “‘Gross negligence’ means that the defendant’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.” § 768.72(2)(b).

To impose punitive damages against a corporation, the requirements of section 768.72(2) must be satisfied, as well as one of the following:

- (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or
- (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

§ 768.72(3), Fla. Stat.

Plaintiff does not have to *prove* any of the above in order to amend his Complaint; Plaintiff *need only provide a reasonable basis* for the recovery of punitive damages in the form of a proffer of evidence. As demonstrated below, Plaintiff's proffer of evidence satisfies both subsections (2) and (3) of 768.72.

Furthermore, this Court has already found that Plaintiff has sufficiently pleaded a cause of action for intentional infliction of emotional distress, which means that Plaintiff's complaint alleges facts sufficient to support an award of punitive damages. *See Donigan v. Nevins*, 785 So. 2d 573, 575 (Fla. 4th DCA 2001) ("To state a cause of action for the intentional infliction of emotional distress, a complaint must allege facts which, if proven, would also support an award of punitive damages."); *see also Dependable Life Insurance Co. v. Harris*, 510 So. 2d 985, 986 (Fla. 5th DCA 1987) ("The correctness of the compensatory and punitive damage awards turns upon whether [Plaintiff] sufficiently established the prima facie tort of intentional infliction of emotional distress."). Therefore, the Court should grant Plaintiff's Motion for Leave to Amend the Second Amended Complaint to add a claim for punitive damages.

**2. Plaintiff's proffer of evidence in support of his Motion for Leave to Amend his Second Amended Complaint satisfies the "reasonable basis" standard.**

Plaintiff's proffer of evidence, presented below, provides a reasonable basis for his recovery of punitive damages. In summary, the evidence presented by Plaintiff demonstrates that Defendants National Union and Sedgwick systematically engaged in intentional or grossly negligent conduct that interfered with Plaintiff's ability to receive medically necessary care and treatment. Defendants repeatedly failed to timely pay Plaintiff's medical attendants, which caused some of those attendants to quit providing services to Plaintiff, and caused Plaintiff's mother to pay attendants out of her own pocket to ensure that her son would continue to receive

care. Defendants delayed providing approval for Plaintiff to receive medical treatment prescribed by his treating physicians, resulting in Plaintiff failing to receive medically necessary rehabilitation for more than a year after he developed partial movement in his legs and toes. Defendants also failed to timely approve and pay for court-ordered home modifications thereby putting Plaintiff's health and safety at risk by requiring him to live in an environment that the workers' compensation judge found caused "a bona fide emergency regarding the health, safety or welfare of the [Plaintiff] because of the partially demolished status of the [Plaintiff's] home and the [Plaintiff's] severely compromised health as a result of his accident. . . ." Defendants' systematic delay and denial of medically necessary care and treatment to Plaintiff provides a reasonable basis for Plaintiff to amend his complaint to add a claim for punitive damages. *See Scott v. Progressive Express Ins. Co.*, 932 So. 2d 475 (Fla. 4th DCA 2006) (finding plaintiff's allegation that the insurers failure to timely pay benefits occurred systematically and was conducted willfully, wantonly, maliciously and in reckless disregard of the rights of the insured was sufficient to state a cause of action for punitive damages).

### **PROFFER OF EVIDENCE**

In support of his Motion for Leave to Amend his Second Amended Complaint to include a claim for punitive damages, Plaintiff makes the following proffer of evidence, which is based on the discovery conducted in this case and will be demonstrated by witness testimony and documentary evidence at trial:

- 1. Defendants National Union and Sedgwick intentionally, or with reckless disregard, deprived Plaintiff Smith of, and interfered with Plaintiff Smith's ability to timely receive, medically necessary attendant care services.**
  - The employer/carrier persistently underpaid Plaintiff's attendants and care givers:

- John Meddling, a neuromuscular therapist, provided Plaintiff massage therapy prescribed by Dr. Osborne on February 24, 2005. He billed the employer/carrier on a weekly basis but did not receive any payment until he provided several months of services to Plaintiff. Mr. Meddling's services were of great benefit to Plaintiff, who had begun to have a greater range in his neck, improved vocalization, and greater voluntary movement in his fingers and toes since the treatments began. Because Mr. Meddling could not continue to provide these services to Plaintiff without being paid, Plaintiff's mother began to pay Mr. Meddling out of her own pocket. When the employer/carrier finally began to make some payments to Mr. Meddling, the payments were always much less than was owed, usually about only 20% of what was billed. On one occasion, the employer/carrier stopped payment on one of the checks it sent to Mr. Meddling because it had been mailed to the wrong address, but it never bothered to reissue that check. To this day, Mr. Meddling has not been fully compensated by the employer/carrier for the services he provided to Plaintiff. In a mediation agreement dated August 29 2005, the employer/carrier agreed to pay Mr. Meddling for past and future massage therapy from June 17, 2005, but as of September 26, 2005 it had yet to pay him anything. As of April 21, 2006, the employer/carrier owed Mr. Meddling \$7,040.
- Two of Plaintiff's nurses, Herbert Jordan and Ronald Baker, quit because the employer/carrier failed to timely pay them for their attendant care services.
- The employer/carrier issued a check to Ronald Baker for providing attendant care services to Plaintiff Smith from March 16-March 31, 2001, but then stopped payment on the check. When the employer/carrier failed to reissue the check, Plaintiff's mother paid Mr. Baker \$1,680 out of her own pocket in order to keep Mr. Baker as one of Plaintiff's attendants.
- The employer/carrier arbitrarily reduced the rate it paid Plaintiff's nurses from \$35 per hour to \$25 per hour, which caused two of Plaintiff's nurses to quit.

- As of April 16, 2003, the employer/carrier arbitrarily reduced the hourly rate it paid to Plaintiff's on-call attendants to \$10 per hour, less than half of the area's fair market rate of \$21 per hour. The case manager, Ken Hodges, determined that a substantial increase in this hourly rate was required in order for Plaintiff to obtain qualified attendants.
- After failing to pay Carl Clemons for attendant care services for over one year, the employer carrier gave him a check for \$126,300 as payment for services rendered from February 18, 2002 to April 13, 2003. The employer/carrier did not, however, pay him for additional attendant care services that he provided thereafter, so by July 31, 2004, the employer carrier owed Mr. Clemons \$134,900 for 5,396 hours of work. Instead of paying that amount, the employer/carrier arbitrarily reduced Mr. Clemons's hourly rate to \$10 per hour by paying him only \$57,640.
- Because Plaintiff's nurses, who were supposed to be paid bi-weekly, were having extreme financial difficulty as a result of the employer/carrier providing them with only one check per month, they formally requested in writing that the employer/carrier pay them monthly in the hopes that this change would result in the nurses being timely paid the full amount due each month.
- The employer/carrier paid Thanh Nguyen only \$18 an hour for services rendered from September 1 to September 30, 2004, instead of \$35.
- As of June 20, 2005, the employer/carrier had failed to pay Keba Faye for services rendered from May 1 to May 31, 2005. And, the employer/carrier later reduced the hourly rate she was paid from \$18 per hour to \$16.59 per hour.
- The employer/carrier persistently delayed payment to attendants and refused to make payments based on faxed records. Even when the attendants' records were overnighted to the employer/carrier, the payments to attendants were not timely made. The employer/carrier also frequently ignored and communications about the failure to pay attendants and failed to return calls on the issue.

- Pursuant to his case manager's recommendation, Plaintiff requested that his nurses receive certification from the American Academy for the Certification of Brain Injury Specialists. Plaintiff's treating physician, Dr. Osborne, found it would be medically reasonable and necessary for the nurses to receive this training. Nevertheless, the employer/carrier denied Plaintiff's requests finding there was no medical documentation to demonstrate that such certifications were medically necessary.
- In February 2001, Plaintiff filed a request for the approval of alternative nurses in the event one of his regular nurses was unable to care for him at the scheduled time due to an emergency. This request was still not approved as of December 2002.

**2. Defendants National Union and Sedgwick intentionally, or with reckless disregard, deprived Plaintiff Smith of, and interfered with Plaintiff Smith's ability to timely receive, medically necessary equipment.**

- In October 2001, Plaintiff requested a replacement for his manual wheelchair, which was seven years old and in disrepair. Because the employer/carrier continually denied the request, Plaintiff made an emergency request for the immediate replacement of the chair in May 2002. In June 2002, Plaintiff's treating physician, Dr. Osborne, wrote a letter stating that Plaintiff had an urgent need for the repair or replacement of his manual wheelchair because use of the chair posed a safety hazard to Plaintiff. The employer/carrier did not approve Plaintiff's request so he had to get a court order to resolve the matter.
- Plaintiff also requested a new power wheelchair because the sip and puff chair he had was not appropriate for him given his respiratory problems and difficulty swallowing. Plaintiff was evaluated for a new chair, but the employer/carrier took over a year to approve the request, requiring Plaintiff to be evaluated again before he could receive a chair.
- Plaintiff requested a shower stretcher for years so that he could take a shower in his home for the first time since his accident. The court ordered in June 2002 that

Plaintiff be provided with a shower stretcher, but the employer/carrier had still not provided one as of November 2002.

- Because Plaintiff's request for emergency cell phone service was denied, the court ordered the employer/carrier to provide the service, but the employer/carrier repeatedly failed to pay for the service, which was eventually disconnected.
- Plaintiff repeatedly requested a computer that he could control with his eyes, even filing a petition for such system in January 2001, and such requests were denied by the employer/carrier on the ground that Plaintiff was not a candidate for such a system. In September 2001, Plaintiff's treating physician, Dr. Osborne, confirmed that Plaintiff has the skills needed to use an Eye Gaze system and did not require an ophthalmologist to examine him to make this determination. The employer/carrier again denied the request although the case manager Judith Mehl submitted a doctor's prescription for the device. Sedgwick senior claims examiner Gloria Dyer advised Ms. Mehl that she did not believe the device was actually necessary.

When Plaintiff was examined by neuro-optometrist Daniel Gottlieb, who also found that Plaintiff is a candidate for the Eye Gaze system, the employer/carrier repeatedly refused to pay for Dr. Gottlieb's evaluation of Plaintiff.

In April of 2002, the employer/carrier finally advised Plaintiff that it was agreeing to provide the Eye Gaze system on a lease-purchase basis. Plaintiff immediately provided the employer/carrier with a stipulated order indicating the authorization of the Eye Gaze system. The employer/carrier then delayed signing the stipulated order or entering into a contract for the lease of the Eye Gaze system. Although Plaintiff began requesting this system at the beginning of 2001, he was not actually provided the system until September 2002. And, as of September 2003, the employer/carrier was delinquent in paying for the Eye Gaze system.

**3. Defendants National Union and Sedgwick intentionally, or with reckless disregard, deprived Plaintiff Smith of, and interfered with Plaintiff Smith's ability to timely receive, medically necessary home modifications.**

- In December 2000, the workers' compensation judge ordered the employer/carrier to pay architectural fees to Charles Bythwood for services associated with making Plaintiff Smith's home wheelchair accessible. The employer/carrier failed to pay Architect Bythwood, requiring Plaintiff Smith's mother to pay \$4,000 out of her own pocket in order to get Architect Bythwood to start working. As of April 2001, the employer/carrier had still failed to make any payment to Charles Bythwood or reimburse Plaintiff's mother. The employer/carrier's failure to make timely payment delayed Plaintiff Smith's ability to move into his handicapped accessible home.

The employer/carrier demanded that Dr. Leslie approve the architectural designs before payment would be made, but Dr. Leslie was not one of Plaintiff's treating physicians, had not seen Plaintiff in years, and refused to see Plaintiff regarding this matter. Nevertheless, the employer/carrier refused to permit one of Plaintiff's treating physicians to review the architect's plans, requiring Plaintiff to litigate the issue and obtain a court order. The workers' compensation judge found it "would be unreasonable and illogical to require . . . approval for any further home modifications from a doctor who does not wish to examine or treat" Plaintiff. (Apr. 15, 2003 Order of Judge Alan Kuker, Division of Administrative Hearings, Miami District Office).

- In May 2001, Plaintiff filed a request for assistance for the employer/carrier to approve Ram Building Services to perform partial home modifications that were approved by Plaintiff's treating physicians, Drs. Osborne and Yarde. Plaintiff's case manager at the time, Judith Mehl, had already received approval from Sedgwick senior claims examiner Gloria Dyer for Ram Building Services to begin working on the home modifications immediately on an emergency basis. Plaintiff's mother relied on this approval when paying a \$6,500 deposit to get the modifications started.

The employer/carrier then refused to pay Ram Building Services or reimburse Plaintiff's mother, again insisting that the modifications be approved by Dr. Leslie, who had not treated Plaintiff in years. Because the employer/carrier did not make timely payment to Ram Building Services for work already completed, the company stopped work on Plaintiff's home resulting in delay of the completion of the medically necessary modifications. In October 2001, Ms. Dyer informed Ram Building Services that "Home Depot will not pay for the work that was performed on Darien Smith's home" and that the homeowner was responsible for making any payment. Ms. Dyer informed case manager Mehl that she had a problem with the home of Plaintiff and his mother because she thought Plaintiff's mother "was a nigger living high." (Deposition of Judith Mehl, 44:18-19).

This issue was the subject of an administrative hearing in December 2002. Evidence was presented that Ms. Dyer told both case manager Mehl and Al Jones of Ram Building Services that the work was approved and would be paid for by the employer/carrier. The court found that the employer/carrier did authorize the modifications be completed and that Plaintiff and Ram Building Services relied on this authorization to their detriment. The court intimated the employer/carrier's claim that there was a question as to whether the modifications were medically necessary was disingenuous because Drs. Bilsky, Leslie, Yarde and Osborne had all found the modifications to be medically necessary.

Although there was evidence presented at the hearing that Plaintiff "had an urgent need for the . . . modifications for his physical health as well as his emotional health" and "[a]ll of the doctors that testified agreed that the [Plaintiff's] present living situation which consists of living in one room amid construction debris and dust that was caused when modifications were suspended due to lack of payment, is deleterious to the [Plaintiff's] health," (Apr. 15, 2003 Order of Judge Alan Kuker, Division of Administrative Hearings, Miami District Office), the employer/carrier still did not pay for the completion of the modifications. Instead, it appealed the order of the workers' compensation judge. Then, when that order was upheld by the First District Court of Appeal, and the

employer/carrier's motion for clarification was denied, the modifications were begun, but were then suspended in April 2005 because the existing contractor needed to be replaced.

The employer/carrier refused to approve an alternate contractor because it was "concerned with the money it expended" on the earlier contract and planned to litigate that contract. (Jul. 21, 2005 Order of Judge Alan Kuker, Division of Administrative Hearings, Miami District Office). The workers' compensation judge found that "a bona fide emergency regarding the health, safety or welfare of the [Plaintiff existed] because of the partially demolished status of the [Plaintiff's] home and the [Plaintiff's] severely compromised health as a result of his accident which requires him to be on a ventilator" and ordered that the modifications be completed. (Jul. 21, 2005 Order of Judge Alan Kuker, Division of Administrative Hearings, Miami District Office). Thus, the medically necessary housing accommodations that Plaintiff required in order to safely live in his home and first requested in 2001 were still not completed as of mid-2005.

The employer/carrier continued to hold up the completion of the modifications to Plaintiff's home. It delayed approving a replacement contractor, and once it approved a replacement contractor it unreasonably required that contractor obtain a performance bond, which is not the standard for residential construction and prevented that contractor from beginning work on Plaintiff's home. In September 2005, the court found, "There continues to be a bona fide emergency regarding the health, safety or welfare of the Claimant because of the partially demolished status of [Plaintiff's] home and [Plaintiff's] severely compromised health as a result of his accident which requires him to be on a ventilator. I previously found this in my order of July 21, 2005 and this continues to be the case." (Sept. 21, 2005 Order of Judge Alan Kuker, Division of Administrative Hearings, Miami District Office).

A replacement contractor was finally hired (and was not required to obtain a performance bond) and sent the employer/carrier a draw schedule on January 24, 2006 stating that it could begin work on the modification on February 2, 2006 if it

received the first draw for construction costs, but as of April 15, 2006 the work had not begun because the employer/carrier had still not paid that first draw.

- An order in April 2003 required the employer/carrier to provide Plaintiff with an emergency call system as well as additional recommended devices. As of January 2004 the employer/carrier had still not paid for or provided these items. It finally agreed to do so on January 26, but by then the prices for the equipment had increased and the employer/carrier refused to pay the additional amount, continuing the delay.

**4. Defendants National Union and Sedgwick intentionally, or with reckless disregard, deprived Plaintiff Smith of, and interfered with Plaintiff Smith's ability to timely receive, medically necessary care and evaluations.**

- The judge ordered on March 22, 2002 and again on June 26, 2002 that Plaintiff receive speech therapy, but the employer/carrier had still not provided him with this therapy as of July 13, 2004.
- After finding new movement in Plaintiff's legs and toes, Dr. Osborne prescribed on July 7, 2004 that Plaintiff receive inpatient rehabilitation. The employer/carrier failed to timely respond to Plaintiff's request for rehabilitation. In November 2004 it decided that Plaintiff must have a neurosurgical evaluation before would approve the request for rehabilitation. Plaintiff had already been evaluated by a neurosurgeon months earlier. Because the employer/carrier continued to deprive Plaintiff of this medically necessary rehabilitation, the court ordered in January 2005 that Plaintiff receive inpatient rehabilitation. As of March 2005, however, the employer/carrier had still not provided this medically necessary care to Plaintiff.
- The impact on Plaintiff of the employer/carrier's failure to timely provide him with rehabilitation is demonstrated by the July 20, 2005 evaluation of Plaintiff by psychologist Steven Marrinson:  
"Follow-up regarding this patient's anxiety and depressive reaction to recent problems with construction on his home through W/C and his frustration regarding delay in receiving physical rehabilitation which was prescribed for him one year ago by Dr. Osborne. The patient has appeared to have lost his will to

live. He is having crying spells on a daily basis wherein he is overwhelmed by feelings of helplessness. This centers on his extreme disappointment about not being able to move forward with Dr. Osborne's rehabilitation plan to take advantage of movement in his hands and toes. When this movement first appeared, the patient grew hopeful that he might be able to achieve a higher level of medical recovery than he has for the past 11 years, and this was reinforced by Dr. Osborne's recommendation for inpatient rehabilitation at a facility for his leg and arm therapy. **The delay in implementation of this treatment plan has clearly triggered a severe depressive reaction, such that I am concerned that this patient is losing his will to live and may continue to deteriorate physically as well as emotionally.** His crying spells are daily and overwhelming. He has nightmares that someone is trying to harm him and prematurely take his life. The circumstances of his home reinforce this strong feeling. It appears that the contractor hired by W/C provider to do renovations for the patient has left the house in an actually dangerous condition. The main doors are barricaded which would prevent his mother from easily escaping in case of a fire. The patient is having constant worries about this, which are reinforcing this extreme depressive reaction.

On this basis I am going to request an urgent hearing for this patient to request that W/C provider immediately address the problems that are causing this severe deterioration in the patient's psychological status." (Emphasis added).

This proffer of evidence provides a reasonable basis that Defendants National Union and Sedgwick either acted: a) intentionally to delay and deprive Plaintiff of medically necessary care, treatment and equipment knowing that Plaintiff would be harmed by these actions; or b) with gross negligence because its actions of delaying and depriving Plaintiff of medically necessary care, treatment and equipment constitute a conscious disregard of Plaintiff's life, health and safety. This showing is sufficient to satisfy the statutory requirement to plead a claim for

punitive damages. Furthermore, this claim for punitive damages may be imposed against corporate Defendants National Union and Sedgwick because these Defendants actively and knowingly participated in this conduct of denying and delaying Plaintiff's care, *see* §768.72(2)(a), and/or engaged in grossly negligent conduct that caused the denial and delay of Plaintiff's care. *See* §768.72(2)(c).

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by U. S. Mail, postage prepaid, this 30th day of July, 2007 to Troy J. Crotts, Esq., Fowler White, P.O. Box 210, St. Petersburg, FL 33731; Sally Still, Esq., Buckingham, Doolittle & Burroughs, LLC, 5355 Town Center Road, Suite 900, Boca Raton, FL 33486-1069; Thomas J. McCausland, Esq., Conroy Simberg Ganon Krevans & Abel, 3440 Hollywood Boulevard , 2nd Floor, Hollywood, FL 33021; Karl Sturge, Esq., Marlow Connel, et al., 4000 Ponce de Leon Boulevard, Suite 570, Coral Gables,

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