

CAUSE NO. C2010-0712-D

DANIEL MCCULLOUGH
INDIVIDUALLY AND ON BEHALF
OF THE ESTATE OF
RANDALL MCCULLOUGH, DECEASED
PLAINTIFFS

VS.

THE GEO GROUP, INC., AND WARDEN
ARTHUR ANDERSON, WARDEN RANDY
TATE, ~~GEORGE ZOLEY~~, WAYNE H.
CALABRESE, JOHN O'ROURKE, AND
JOHN BULFIN
DEFENDANTS

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IN THE DISTRICT COURT

JUDICIAL DISTRICT

COMAL COUNTY, TEXAS

BY
KATHY H. CLARK
ASSISTING CLERK
COMAL COUNTY

SAC

FILED FOR RECORD
2010 MAY 21 AM 9:43

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Daniel McCullough, Individually and on Behalf of the Estate of his father, Randall McCullough, hereinafter called Plaintiffs, complaining of and about The Geo Group, Inc., and Warden Arthur Anderson, George Zoley, Wayne H. Calabrese, John O'Rourke, and John Bulfin, hereinafter called Defendants, and for causes of action would show unto the Court the following:

COPY

I.

DISCOVERY CONTROL PLAN

1.1 Plaintiffs intend to conduct discovery under Level 2. Alternatively, a tailored discovery plan under Level 3 should be entered by the court pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

II.

PARTIES AND SERVICE

2.1 Plaintiffs, **DANIEL MCCULLOUGH** brings this suit individually, and as the personal administrator and representative of and on behalf of, the **ESTATE OF HIS FATHER, RANDALL MCCULLOUGH**. Plaintiff Randall McCullough was a resident and a citizen of Texas at the time of his death in Texas.

2.2 Defendant, **THE GEO GROUP, INC.** is a private jail company and has a central regional office and its principal place of business in Comal County, Texas at 1583 Common Street, Suite 1111, New Braunfels, Texas 78130. The Geo Group, Inc. (GEO) may be served by serving its registered agent for service, Prentice Hall Corporation System, Inc. at 107 Brazos Street, Suite 1050, Austin, Texas 78701.

2.3 Defendant, **WARDEN ARTHUR ANDERSON**, is an individual resident and citizen of Texas, and can be served with process at 118 County Rd., 206, Haskell, Texas 79521.

2.4 Defendant, **WARDEN RANDY TATE**, is an individual resident and citizen of Texas, and can be served with process at 1583 Common Street, Suite 1111, New Braunfels, Texas 78130.

2.5 Defendant, **GEORGE ZOLEY**, Chairman of the Board and Chief Executive Officer of GEO, can be served with process at GEO GROUP WORLD HEADQUARTERS, 621 NW 53rd Street, Suite 700, Boca Raton, Florida, 33487. Zoley is a citizen of Florida.

2.6 Defendant, **WAYNE H. CALABRESE**, President and Chief Operating Officer of GEO can be served with process at GEO GROUP WORLD HEADQUARTERS, 621 NW 53rd Street, Suite 700, Boca Raton, Florida, 33487. Calabrese is a citizen of Florida.

2.7 Defendant **JOHN O'ROURKE**, Former Senior Vice President and Chief Financial officer of GEO, can be served with process at GEO WORLD HEADQUARTERS, 621 NW 53rd Street, Suite 700, Boca Raton, Florida, 33487. O'Rourke is a citizen of Florida.

2.8 Defendant, **JOHN BULFIN**, Senior Vice President and General Counsel and Corporate Secretary of GEO, can be served with process at GEO WORLD HEADQUARTERS, 621 NW 53rd Street, Suite 700, Boca Raton, Florida, 33487. Bulfin is a citizen of Florida.

III.

JURISDICTION AND VENUE

3.1 Venue is proper in Comal County under Texas Civil Practice & Remedies Code section 15.002 because

- (A) all or a substantial part of the events or omissions occurred in Comal County; and
- (B) Defendant The Geo Group, Inc., a corporation, maintains its principal office in Texas in Comal County.

IV.

EXCLUSION OF FEDERAL CLAIMS

4.1 Plaintiffs hereby give notice that only claims arising under Texas state law are alleged in this suit. This suit specifically excludes all federal causes of action. The only causes of action which are intended to be litigated in this Court are those concerning rights arising under the Laws and Constitution of the sovereign State of Texas.

V.

FACTS

5.1 Randall McCullough was transferred from Idaho to serve time in a privately owned and operated GEO facility called Bill Clayton Detention Center (BCDC) in Littlefield, Texas. Warden Arthur Anderson was the warden of the jail and was responsible for the day to day operations. Warden Arthur Anderson had overall authority over the BCDC and negligently supervised the BCDC. Randall McCullough suffered severe trauma, extreme physical injuries, extreme pain and suffering, and death.

BCDC was completely controlled by Defendants Anderson, and Tate, and by GEO, by and through their corporate officers George Zoley, Wayne H. Calabrese, O'Rourke, and John Bulfin. As set forth below in more detail, these corporate officers jointly execute a corporate strategy of calculated deceit and corruption in many aspects of their operation of this facility and other facilities nationwide. Zoley, Calabrese, O'Rourke and Bulfin are personally liable for their own actions, and the actions of their company, The Geo Group, Inc.

5.2 Defendants GEO and Anderson housed inmates such as Randall in deplorable conditions. Due to inhumane conditions created by Defendant GEO at the direction of Zoley, Calabrese, O'Rourke and Bulfin, Anderson, and Tate, Randall McCullough became depressed.

5.3 On August 18, 2008, Randall McCullough was found dead while supposedly being monitored by GEO and its personnel. His death was caused by specific breaches of duty by Defendants GEO, Anderson and Tate, and as a result of the corporate direction given by Zoley, Calabrese, O'Rourke, and Bulfin which include grossly inhumane treatment, abuse, neglect, illegal and malicious conditions of confinement, and subsequent cover up of wrongdoing.

5.4 Geo and its personnel were found to have fabricated evidence, including practicing "pencil whipping," a policy and practice of GEO to destroy and fabricate log books and other relevant evidence.

5.5 Defendants GEO, Zoley, Calabrese, O'Rourke, and Bulfin personally engage in efforts to illegally influence public officials in Austin, Texas and in the Texas counties where

GEO prisons are located, including Laredo, Webb County, Texas. Their goal is to conceal, deflect, hide or exculpate themselves and their company from all forms of personal civil or criminal liability, censure, detriment, or punishment in order to procure and continue their lucrative contracts at the expense of the inmates' and their families' suffering. They and their company, GEO, engage in a pattern and practice of abuse, neglect, public corruption, and cover up.

5.6 Defendant GEO and its officers Zoley, Calabrese, O'Rourke, and Bulfin, engage in a corporate wide policy, and have a history of illegally neglecting, manipulating, and abusing inmates, and then covering up their wrongful and illegal conduct. The personal actions by these individuals and the company strategy is a proximate cause of harm to Plaintiffs. Defendant GEO has engaged in illegal activities including:

1. Public Corruption;
2. Making illegal payments to governmental entities in exchange for contracts and permits;
3. Abuse and neglect of inmates and illegal cover-ups of wrongdoing, including obstruction of justice, destruction of evidence and lying to state investigators; and
4. Misrepresentations to state and governmental entities regarding conditions inside their facilities.

5.7 The tortious conduct by Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate make them personally liable for compensatory and exemplary damages for their own actions, in causing the wrongful death of Randall McCullough.

VI.

CAUSES OF ACTION

Negligence / Gross Negligence

6.1 Defendant GEO, Anderson, Tate, Zoley, Calabrese, O'Rourke, and Bulfin were grossly negligent and negligent in proximately causing the suffering and death of Randall McCullough, and damages to his wrongful death beneficiaries. These injuries and damages were foreseeable and proximately caused by Defendants' negligent, reckless, grossly negligent and intentional disregard of legal duties of care. Additionally, the following acts, omissions, and breaches proximately caused Plaintiffs' injuries:

1. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate abused and neglected Randall McCullough.
2. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly, or intentionally failed to provide a safe environment and a healthful place to live for Randall McCullough.
3. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly, or intentionally failed to provide or maintain custodial care and services free from unreasonable risk of harm as would a reasonable jailor of ordinary prudence under the same or similar circumstances.
4. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly, or intentionally failed to use reasonable care to supervise or control the correctional officers as would a reasonable jailor of ordinary prudence under the same or similar circumstances.
5. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly or intentionally hired and retained unqualified corrections officers, inadequately trained and equipped such officers, and inadequately staffed the facility as would a reasonable jailor of ordinary prudence under the same or similar circumstances. Furthermore, Defendants negligently failed to implement adequate safeguards to keep Plaintiff free from injury.

6. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly, or intentionally failed to provide adequate policies, procedures, or regulations as would a reasonable jailor of ordinary prudence under the same or similar circumstances.
7. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly, or intentionally failed to comply with existing policies, procedures, or regulations as would a reasonable jailor of ordinary prudence under the same or similar circumstances.
8. Defendants GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate negligently, recklessly, knowingly, or intentionally entrusted Plaintiff with drugs with which he committed suicide.

Each of such acts and omissions, singularly or in combination with others, constituted negligence and gross negligence that proximately caused the injuries that decedent suffered and that resulted in his death.

Negligent Activity

6.2 Defendants GEO, Anderson, Tate, Zoley, Calabrese, O'Rourke, and Bulfin engaged in negligent activity. Each of the acts or omissions, singularly or in combination with others, constituted negligent and gross negligent activity that proximately caused the injuries that decedent suffered and that resulted in his death.

Breach of Assumed Duties/Contorts

6.3 Defendant GEO contracted with the State of Idaho, and was handsomely paid to care for inmates such as Randall McCullough. Under the contract, GEO assumed the duty to provide inmate services, maintain and operate the building, staff the facility, and meet all of the other contractual terms in the agreement.

6.4 Defendant GEO engaged in malfeasance and negligent affirmative conduct in the

performance of its contractual obligations. Defendant GEO breached the assumed duties to perform the contract with the requisite care, skill and reasonable care required to keep Plaintiff safe.

6.5 Defendant GEO's breach of their assumed duties, malfeasance and negligent affirmative conduct proximately caused the wrongful death of Randall McCullough.

6.6 All conditions precedent have occurred or have been performed.

VII.

RESPONDEAT SUPERIOR AND JOINT AND SEVERAL LIABILITY

7.1 At all times whenever an act of a vice-principal, employee, agent, and/or servant of Defendant GEO performed some act in relation to this lawsuit, such individual was performing acts within the scope and course of his/her employment with the GEO Defendants. Defendant GEO is legally responsible for the misconduct of those vice-principals, employees, agents and servants under the doctrine of *respondent superior* and joint and several liability.

7.2 Defendant GEO is liable for their acts, as well as acts of their vice-principals, agents, servants, and employees under the doctrine of *respondent superior*. Such agents, servants, and employees had a right and duty to control the perpetrators and are liable for their conduct.

7.3 Defendant GEO is also liable for the acts of their employees because (1) Defendants authorized the doing and the manner of the act; (2) the agents were unfit and Defendants acted with malice in employing or retaining them; (3) the agent was employed in a managerial capacity and was acting in the scope of employment; or (4)

the employer or a manager of the employer ratified or approved the act.

7.4 As a result of the ongoing corporate scheme of abuse, neglect, public corruption and cover up, which is orchestrated by Defendant GEO, Zoley, Calabrese, O'Rourke, Bulfin, Anderson and Tate, their agents, servants, and employees, all of them are engaged in a joint enterprise and partnership. Individual Defendants are accordingly personally liable for their own individual torts and are also liable for all the actions of all others.

7.5 Vicarious liability also arises from Defendants' practice of failing to enforce rules and procedures designed to protect inmates. Each of such acts omissions, singularly or in combination with others, proximately caused the injuries that decedent suffered and that resulted in his death.

7.6 Defendant GEO is liable jointly as a result of their participatory assistance, and encouragement of the wrongful conduct that caused Plaintiffs' injuries.

VIII.

WRONGFUL DEATH AND SURVIVAL CLAIMS

8.1 Plaintiff is a surviving heir at law, and is the son of Randall McCullough, hereinafter called "the decedent." Plaintiff brings this wrongful death and survival action pursuant to TEX. CIV. PRAC. & REM. CODE, 71.001 et. seq. and 71.021, respectively, because of injuries suffered by the decedent resulting in decedent's wrongful death based upon the facts and legal theories more fully set out above. Plaintiff sues in all capacities in which he is entitled to recover.

8.2 Decedent was injured as a result of Defendant's negligence described more fully above. As a result of said occurrence, the decedent suffered bodily injuries resulting in

the decedent's death.

8.3 At the time of the decedent's wrongful death, the decedent was survived by his son, Daniel McCullough, who is entitled to recover damages in this action.

8.4 Daniel McCullough is the decedent's son, and is the personal representative of decedent's estate . Plaintiff seeks damages for the conscious pain and suffering and mental anguish that the decedent suffered prior to death and for the reasonable and necessary expenses which were reasonably incurred because of such wrongful death. Plaintiff also brings individual claims for the personal injuries suffered by him. Plaintiff seeks damages within the jurisdictional limits of the court.

IX.

EXEMPLARY DAMAGES

11.1 Defendants GEO, Zoley, Calabrese, O'Rourke, Anderson and Tate have specific intent to cause substantial injury to Plaintiffs or are substantially certain such injury will occur. Alternatively, Defendants GEO, Zoley, Calabrese, O'Rourke, Anderson and Tate engaged in conduct which, when viewed objectively from their standpoint at the time of occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which the Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety or welfare of others, including Randall McCullough and his son. Defendants GEO, Zoley, Calabrese, O'Rourke, Anderson and Tate caused Plaintiff serious harm, including the death of Randall McCullough.

11.2 Defendants GEO, Zoley, Calabrese, O'Rourke, Anderson and Tate are liable for their own criminal acts and the criminal acts of their employees because Defendants authorized the doing and the manner of the act; the employees were unfit and Defendants acted with malice in employing or retaining the employees, the employees were employed in a managerial capacity and were acting in the scope of employment; or Defendants or a manager of Defendants ratified or approved the act(s).

X.

DAMAGES FOR PLAINTIFF, THE ESTATE OF RANDALL MCCULLOUGH

9.1 During his lifetime, decedent was industrious and energetic. He gave advice, counsel, comfort, care and protection to his son. In all reasonable probability, he would have continued to provide for and support his family for the remainder of their lives. As a direct and proximate result of the occurrence made the basis of this lawsuit, Randall McCullough was caused to suffer great physical and emotional injury, and death.

9.2 As a direct and proximate result of the occurrence made the basis of this lawsuit, Randall McCullough incurred the following damages:

1. Physical pain and suffering in the past;
2. Mental anguish in the past;
3. Loss of earning and lost earning capacity in the past and future.

XI.

DAMAGES FOR PLAINTIFF, DANIEL MCCULLOUGH

10.1 As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, Daniel McCullough has incurred the following damages:

1. Mental anguish, grief and sorrow in the past;
2. Mental anguish, grief and sorrow in the future;
3. Loss of Consortium in the past, including damages to the parent-child relationship, including loss of affection, assistance, emotional support, comfort, solace, companionship, protection, services, and love; and,
4. Loss of Consortium in the future, including damages to the parent-child relationship, including loss of affection, assistance, emotional support, comfort, solace, companionship, protection, services, and love.

XII.

GEO LIABLE UP TO NET WORTH

12.1 Defendants have requested that Plaintiffs state the maximum amount claimed in this suit. Due to Defendants' horrific conduct that caused Randall's gruesome death, and the fact that Defendants GEO and their individual corporate officers continue to engage in the same illegal conduct of inmate abuse and cover-up despite GEO already being punished by a judge, jury and court of appeals at least once before, Plaintiff submits that the damages should be left within the sound discretion of the jury, up to the maximum amount of The Geo Group, Inc.'s net worth that has been reported by GEO to the SEC to be \$595 million.

XIII.

JURY DEMAND

13.1 Plaintiffs demand a trial by jury.

**XIV.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, respectfully pray that Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiffs against Defendants, jointly and severally, for all damages caused to Plaintiffs including general, special and exemplary damages; pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate; costs of court, and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Signed this 20th day of May, 2010.

Respectfully submitted,

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