

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

The Estate of LACETTA ANNE TESTER,	)	
by and through Personal Representative,	)	
NATHAN D. TESTER,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	CASE NO.: 3:24-cv-00005-MPB-CSW
	)	
THE VILLAGE AT HAMILTON POINTE, LLC,	)	
An Indiana Limited Liability Company;	)	
RIVERVIEW HOSPITAL, d/b/a	)	
HAMILTON POINTE HEALTH AND REHAB,	)	
An Indiana County Hospital Corporation;	)	
TENDER LOVING CARE MANAGEMENT, INC.,	)	
d/b/a TLC MANAGEMENT,	)	
An Indiana For-Profit Corporation; and	)	
NEWBURGH PROPERTY MANAGEMENT, LLC,	)	
An Indiana Limited Liability Company,	)	
	)	
<i>Defendants.</i>	)	

**DEFENDANTS' MOTION TO DISMISS FOR LACK OF**  
**SUBJECT MATTER JURISDICTION**

The Village at Hamilton Pointe, LLC, Riverview Hospital, d/b/a Hamilton Pointe Health and Rehabilitation Center, Tender Loving Care Management, Inc., d/b/a TLC Management, and Newburgh Property Management, LLC (*Hamilton Pointe*), by their counsel, and pursuant to Rule 12(B)(1) of the Federal Rules of Civil Procedure, respectfully request this honorable Court dismiss the Estate of Lucetta Anne Tester's First Amended and Restated Complaint and Demand for Jury Trial, without prejudice, so that the Estate's medical negligence claim may first be presented to the Indiana Department of Insurance as required by the Indiana Medical Malpractice Act. In support of this Motion to Dismiss, Hamilton Pointe has contemporaneously filed its Brief in Support of the Motion to Dismiss.

**WHEREFORE**, Hamilton Pointe respectfully moves this honorable Court to dismiss the Estate of Lucetta Anne Tester's first Amended and Restated Complaint and Demand for Jury Trial, without prejudice for lack of subject matter jurisdiction; and furthermore, respectfully requests Hamilton Pointe be granted all other relief as is just and proper in the premises.

Respectfully submitted,

DREWRY SIMMONS VORNEHM, LLP

/s/ Janet A. McSharar  
Janet A. McSharar

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served with the Clerk of the Court on this 7<sup>th</sup> day of May 2024 using the CM/ECF system which sent notification of this filing or by placing it in the U.S. Mail, postage pre-paid, to the following:

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An Indiana For-Profit Corporation; and	)	
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An Indiana Limited Liability Company,	)	
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<i>Defendants.</i>	)	

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION**

This matter comes before the Court on the Defendants, The Village at Hamilton Pointe, LLC, Riverview Hospital, d/b/a Hamilton Pointe Health and Rehabilitation Center, Tender Loving Care Management, Inc., d/b/a TLC Management, and Newburgh Property Management, LLC (*Hamilton Pointe*), Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

The Court, having considered the Defendant's motion, and good cause having been shown therefore, hereby **GRANTS** the Defendants' Motion and hereby **ORDERS** that the Estate's First Amended and Restated Complaint and Demand for Jury is dismissed without prejudice.

IT IS SO ORDERED.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Judge, United States District Court

Distribution: All counsel of record.