



F L O R I D A

JURY VERDICT

REVIEW & ANALYSIS®

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**SUMMARIES
WITH TRIAL
ANALYSIS**

**Volume 23, Issue 5
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A monthly review of Florida State and Federal civil jury verdicts with professional analysis and commentary.

The Florida cases summarized in detail herein are obtained from an ongoing monthly survey of the State and Federal courts in the state of Florida.

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This publication includes a capsulized summary of significant verdicts from our companion publications.

Published monthly.

Summaries with Trial Analysis

\$1,775,000 VERDICT INCLUDING \$975,000 IN PUNITIVE DAMAGES – MEDICAL MALPRACTICE – NURSING HOME NEGLIGENCE – FAILURE TO PREVENT DEVELOPMENT OF DECUBITUS ULCERS – INFECTION – DOWNWARD HEALTH SPIRAL – BRONCHIAL PNEUMONIA – WRONGFUL DEATH AT AGE 72.

Palm Beach County, FL

The estate of the 72-year-old decedent, a former professional wrestler, brought this action against the defendant nursing home under Florida's Resident's Rights Act. The plaintiff alleged that the defendant negligently allowed the decedent to develop decubitus ulcers (pressure sores) which became infected leading to the downward spiral in his health culminating in his death. The defendant argued that the decedent's treatment met the standard of care and that his death was not preventable.

The decedent entered the defendant nursing home in 2008 after suffering an episode of dementia, fleeing his home and being hospitalized under the Baker Act. The plaintiff alleged that, while at the defendant facility, the decedent developed pressure sores which were not properly prevented or treated by the defendant and caused a serious infection. The decedent was transferred to another facility after 63 days in the defendant's facility. The decedent subsequently died at a hospital with "bronchial pneumonia" listed as the cause of death.

The plaintiff alleged that the decedent's death was a direct result of the downward spiral in his health caused by the defendant's negligence. The plaintiff alleged that, in addition to failing to prevent the pressure sores, the defendant negligent allowed the sores to become infected, the decedent to become dehydrated and failed to provide him with adequate nutrition. The decedent was survived by his wife and two adult children.

The defendant showed that the decedent had been discharged to another nursing home and then, some two months later, transferred to two different hospitals prior to his death. The defense argued that the decedent death resulted from a natural progression of his deteriorating health and not from any act or omission on the part of the defendant. Further, the defense argued that the decedent's blood test, taken prior to discharge from the defendant nursing home, was negative for infection and showed that the infection occurred at the non-party facility. Finally, the defendant argued that the

decedent had an extremely poor quality of life and limited life expectancy. The defense noted that the decedent had multiple co-morbidities including end stage senile dementia and, according to plaintiff's own expert, the decedent had less than one year to live at the time he was admitted to the defendant's facility.

After a week-long trial, the jury found negligence on the part of the defendant which was a legal cause of the decedent's death and also found that there was a violation of the decedent's resident's rights under Florida Statutes Section 400.022. The jury awarded total damages of \$1,775,000, including \$800,000 in pain and suffering to the decedent's wife and \$975,000 in punitive damages. The case is currently on appeal.

REFERENCE

Plaintiff's accounting expert: Frank Ferraro from Stuart, FL. Plaintiff's geriatrics expert: Jeffrey Levine from New York, NY. Plaintiff's nursing expert: Joann O'Jeadra from Tampa, FL.

Estate of George Dahmer vs. Lake Worth Enterprise. Case no. 50-2010CA001762XXXMB; Judge Robin Rosenberg, 11-19-12.

Attorneys for plaintiff: Joseph P. Landy and Michael S. Smith of Lesser, Lesser, Landy & Smith in West Palm Beach, FL.

COMMENTARY

Plaintiff's counsel personalized the decedent by introducing evidence of his former professional wrestling career in which he was known as "Chief White Owl". The defense maintained that the decedent had reached the end of his life cycle and that his death did not result from any act or omission on the part of the defendant. In support of its claim for punitive damages, the plaintiff alleged that the defendant falsified the decedent's medical records to conceal the fact of the developing decubitus ulcers. The all-male jury, which consisted primarily of business owners, apparently responded to the plaintiff's presentation and awarded a significant \$1.775 verdict in the plaintiff's favor. The jury deliberated approximately 41 minutes before rendering its decision. The verdict included \$975,000 in punitive damages.

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