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November 20, 2018

PRESS RELEASE

DEFENSE VERDICT IN NURSING HOME JURY TRIAL WRONGFUL DEATH CASE

VENUE: WEST PALM BEACH, FLORIDA

ESTATE OF JONES,

Plaintiff,

vs.

SKILLED NURSING FACILITY,

Defendant.

_____ /

Plaintiff's Trial Counsel:

Rosalyn "Sia" Baker-Barnes & Jordan A. Dulcie

Searcy Denney Scarola Barnhart & Shipley (West Palm Beach, FL)

Defendant's Trial Counsel:

Kirsten K. Ullman & John Bringardner

Case Work Up By: Kelly S. Weaver

Ullman Bursa Law (Tampa, FL)

Plaintiff's Experts:

Edward Schneider, M.D. (Geriatric Physician)

Ilene Warner Maron, R.N., Ph.D. (Nursing)

Karen Severson, M.D. (Psychiatry)

Defendant's Experts:

David Goldberg, M.D. (Geriatric Physician)

Connie Cheren, R.N. (Nursing/Regulatory)

Richard Frances, M.D. (Psychiatry)

David Devereux (Nursing Home Administration)

Plaintiff's Demand in Closing Argument:

\$4 Million

Jury Verdict:

\$0.00 (Defense Verdict)

Trial Dates:

November 5, 2018 to November 16, 2018

On May 17, 2015, Mr. Jones committed suicide. This tragic event was unforeseeable, unpredictable, and unpreventable. It also resulted in a lawsuit by the daughter and son.

On March 20, 2015, Mr. Jones discharged from the health and rehab center. A few weeks later, on April 17, 2015, he went to his daughter for help. She told him to drive himself back to the health and rehab center. Mr. Jones drove himself from Fort Lauderdale to West Palm Beach (an hour long drive), asking to re-admit to the health and rehab center. He was embraced by the administrator and social services assistant. He was hungry and needed care. The social services assistant and another care giver drove him to the hospital. The hospital contacted Department of Children and Families (DCF).

A few days later, Mr. Jones re-admitted to the health and rehab center. He was at the same center a month earlier for rehab after triple bypass surgery. The health and rehab center welcomed him back.

Mr. Jones had friends at the center. He had a companion who visited him often. He also had long standing diabetes which was causing diminished blood flow to his extremities. He developed a left foot diabetic ulcer, and his toes on his left foot were dead, gangrene.

On May 17, 2015, Mr. Jones left the center, retrieved his hide a key from the gas cap lid of his truck, drove a half mile through an abandoned apartment complex to the privacy of a lake, and committed suicide by drowning.

The lawsuit and trial by plaintiff focused on the “open unit” with “unsupervised, unmanned,” doors that were “wide open.” The doors opened automatically. Residents could walk out the doors at will.

The plaintiff’s star witness, a psychiatric physician, educated in the Ivy League, testified 3 years after the sad suicide event that she warned the center over and over again that the failure to lock the doors was dangerous, and that something bad was going to happen. The center did nothing. She also testified in meticulous detail that she recalled faxing her note to the nurses’ station, 3 hole punching it, and putting it in the nursing home chart. The note revealed an overall normal mental exam, with, in the psychiatrist’s words, some bizarre thoughts. Specifically, the psychiatrist found that Mr. Jones’ reliance upon so-called “spirit guides” to advise him on his wound care was a form of psychosis and further evidence of dementia.

The assessment and plan discussed spirit guides for years, grandiose delusions, and that she felt he had some Sx Dementia [sic] and felt that he lacked capacity. The Axis diagnosis of the note stated dementia, psychosis, and that she was referred to determine capacity. Three plus years later, after she was contacted by plaintiff’s counsel, the psychiatrist testified that she told the social services assistant that Mr. Jones was demented, psychotic and lacked capacity, and for the first time, advised about this alleged Determination of Incapacity form, and that she gave it to the Social Services assistant. The psychiatrist then testified that the social services assistant allegedly called her after Mr. Jones died and asked if she should remove the document from the chart. Neither the social services assistant, nor anyone else, ever recalled any such document ever being prepared for Mr. Jones, including the psychiatrist’s assistant, who was involved with preparing **any** such Determination of Incapacity, and who did not recall such a form despite Mr. Jones’ media publicized death 4 days after the psychiatric assessment.

The undisputed testimony was that Mr. Jones was not at risk to leave the center under any circumstances, to elope, to harm himself, to harm others, to commit suicide or to need to be in a locked unit for his safety. The psychiatrist admitted to same. Accordingly, the plaintiff needed to blame the center on the safety of the center. The psychiatrist and her side kick claimed that they warned the center for a decade that the wide open, unlocked and unmanned doors would end in tragedy. Yet, the center did nothing to secure the doors.

The Court precluded evidence of surveys of compliance with the Life Safety Code, including the survey specifically reviewing this resident’s care and safety, in which no citations of deficiency existed. Only after a hard fought battle and proffer of testimony outside of the witness of the jury, did the Court even allow nurse regulatory expert Connie Cheren to testify regarding compliance with applicable life safety rules, regulations and requirements, and the center’s compliance therewith.

These 300 unit doors did open automatically during the day. These residents were individually assessed for risk, and had rights to walk outside. There was also protocol if a resident chose to go off the premises.

Resident rights were a focus of the defense, including the right to self-determination, to direct your own care, to make quality of life decisions.

Plaintiff’s case: Lock your loved ones in or you betray the family who trusted to keep them safe. The same family did not visit much and knew blessed little about their father’s life. The family asked for \$4 Million in closing.

Mr. Jones faced amputation of his toes. His friends at the center had amputations below the knee. This was his future. He knew it. He told his daughter his intentions...that he would rather end his life than have his toes amputated. She thought he was just talking. The investigating police officer testified that Mr. Jones’ daughter told the police of her father’s statements regarding potential suicide (which the daughter denied at trial).

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He was a veteran of the Army, and an artist, a good family man, and lived his life to the point where he was satisfied and proud. He did not want to be a burden, and he had no where to go. He left this world on his own terms.

Verdict for the care givers...FOR THE DEFENSE!!

A proposal for settlement was served by the defense, entitling the defense to costs and fees from the date of service.