

Plaintiffs lawyer asks jury to award millions in elder care case

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The plaintiffs' lawyer asked a jury Friday to award \$3 million to \$5 million for pain and suffering to the family of a woman who, they claim, incurred bedsores in an Auburn assisted living facility that contributed to her death.

Attorney Lesley Ann Clement said that Joan Boice, 82, "suffered from the neglect" of Emeritus at Emerald Hills for the 156 days she lived there before she was transferred to a nearby nursing home where she died in February 2009.

Boice's family charged in the wrongful death and elder abuse lawsuit against Seattle-based Emeritus, the largest assisted living facility in the United States, that the company's drive for profits has resulted in an understaffed, undertrained workforce that was not prepared to care for the woman.

"She wasn't just their mother," Clement told the Sacramento Superior Court jury. "She represents everyone's mother."

Lawyers for Emeritus say Boice died as a result of a natural progression of advanced Alzheimer's disease. They have asked that the jury award nothing to the Boice family.

"We're confident in the system and we're confident that the jury will return an appropriate verdict," said Janet McKinnon, Emeritus vice president of legal affairs.

Although Clement asked for the \$3 million to \$5 million award, the real damages could come later for Emeritus if the jury finds that the company acted out of malice, oppression and fraud. The trial would then proceed to a second phase to decide punitive damages that would be linked to the wealth of a company with annual revenues of \$1.25 billion.

Despite the plaintiffs' request for the multimillion-dollar pain and suffering damages, Judge Judy Holzer Hersher ruled earlier in the trial that the state's \$250,000 cap that governs medical malpractice cases also applies to the Boice case against Emeritus.

Hersher said at the time of her Feb. 15 ruling that the cap in the assisted living case "would clearly be something the appellate court might want to consider."

Emeritus attorney Bryan R. Reid argued that the jury should be told about the cap, but Hersher sided with Clement in deciding to not inform the panel about the limitation.

The judge said at the time of her ruling that the jury's verdict on what it thinks the pain and suffering cost ought to be to Emeritus could provide the group with a "touchstone" for an award in the event jurors hold the company liable for punitive damages.

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