

Elder-care company slammed, defended in trial's closing arguments

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The company wanted "heads in the beds," and once they got them inside, there was no "closing the back door," a lawyer argued in a blistering conclusion Thursday in the civil trial against the country's biggest assisted living company.

Attorney Lesley Ann Clement said the Emeritus Corp. of Seattle was so obsessed with profits that once it got the old and sick inside its residential care communities, there was only one way out for them.

"The only move out that is acceptable," Clement said, in an ominous paraphrase of her view of Emeritus' corporate philosophy of the assisted living business, "is death."

In his closing argument in front of a Sacramento Superior Court jury, Emeritus lawyer Bryan R. Reid unloaded on Clement.

He told jurors Clement's game was to bombard them with emotion and irrelevancy, to get them thinking about issues apart from what really mattered in the case.

In Reid's view, the trial should have been all about Joan Boice, the 82-year-old retired teacher and the level of care she received during her three-month stay at Emeritus at Emerald Hills, the company's community in the foothills of Auburn.

Boice, whose family filed the wrongful death and elder abuse lawsuit against Emeritus, received "awesome care," Reid said, from the time she moved into Emerald Hills on Sept. 12, 2008, until she moved out Dec. 4 of the same year. Boice died three months after her departure from Emerald Hills to a nearby nursing home in Auburn, due to complications that totally stemmed, Reid said, from her advanced state of Alzheimer's disease.

"There are not facts that merit a substantial shift of wealth to the Boice family," Reid told the jury. "They lost their mother to a disease, not to the people who were doing battle with a disease."

Nobody from the family complained about Boice's care during her stay with Emeritus "because what was occurring was what was expected," Reid said. The inevitability of her death by Alzheimer's "wasn't shocking to them," he said, "and it shouldn't have been."

None of the nearly 30 caregivers who were around Boice in the final months of her life, at Emeritus and at the nursing facility, ever reported allegations of neglect or elder abuse to state authorities, Reid said. He called this "powerful evidence" that Boice was not abused.

Instead, the defense lawyer argued, plaintiffs attorneys followed an "elder abuse formula" that seeks to ring up heavy damages in a civil case with a "bash the corporation" strategy. It's

designed, Reid said, to prejudice the jury against Emeritus.

"The weeks and weeks of testimony that we have heard, and all of these things that have nothing to do with Joan Boice, are designed to play to that," Reid said.

He disputed that Emeritus officials ever made the "heads in the beds" and "closing the back door" remarks that Clement attributed to them.

In any event, "They don't impact whether the care delivered to Joan Boice was appropriate or whether it caused her death," Reid said. "It's designed to put you in a biased frame of mind."

Boice lost substantial weight and contracted at least four pressure sores that contributed to her death during her three-month stay at Emerald Hills.

Clement argued Boice never should have been admitted into Emerald Hills and that she should have immediately been transferred to a skilled nursing home as soon as staffers at the Emeritus residential care facility discovered the potentially life-threatening pressure ulcers within a few weeks of her arrival.

The plaintiffs based their case on staffing levels at Emerald Hills that some nights left nobody on duty in the facility's memory care unit where Boice lived.

Clement cited testimony that Emeritus' resident nurse knew early on in Boice's stay about the bed sores but instructed a caregiver to "just don't let anybody know."

Able to get around with a walker when she first moved into Emerald Hills, Boice fell down 10 days into her stay and was never able to get out of her wheelchair again – after which her most serious pressure sore developed on her backside, Clement told the jury.

Clement said the company's drive for profits motivated it to accept patients who should never have been allowed in and to keep them inside once they got there.

In the meantime, Emeritus knowingly refused to add staff or properly train its employees, in order to keep its costs down, Clement argued.

More of a real estate company than a residential care provider, Emeritus "will do whatever it takes" to improve its bottom line, Clement told the jury, even if it harms "our greatest treasures" – older relatives who have been entrusted into the company's residential care network.

Clement asked the jury for "payback" on Emeritus, but she did not list a monetary amount on the damages she is seeking on behalf of Boice's family. That could come today when she concludes her rebuttal argument.

Judge Judy Holzer Hersher will then instruct the jury and send it out to deliberate.

The trial has been broken up into two phases. If the jury finds Emeritus liable for elder abuse and wrongful death, with findings of "malice, oppression and fraud," the case would then proceed to the next phase in which the panel would decide the amount of punitive damages.

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