

Giant assisted-living company found guilty in wrongful death suit

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Guilty of malice, oppression and fraud, the question now for Emeritus Corp. is how much it is going to cost the nation's largest assisted living company.

A Sacramento Superior Court jury walloped the Seattle-based residential care giant Tuesday with verdicts of wrongful death and elder abuse – setting the stage for a journey that begins today into the financial worth of a company with annual revenue that exceeds \$1 billion.

Jurors came back with the findings of malice, oppression and fraud in the way Emeritus provided care to Joan Boice, an 82-year-old resident with Alzheimer's disease who died three months after she left Emeritus at Emerald Hills in Auburn in late 2008. By the time she left Emeritus, Boice had at least four major bedsores that were listed as significant factors in her cause of death.

Now, in the world of punitive damage awards, it's message time.

Carole Herman, a longtime advocate against elder abuse and president of the Foundation for Aiding the Elderly in Sacramento, said the Boice verdict could provide a textbook example of what punitive damage awards are supposed to do.

"I think it sends out a great big message to Emeritus that they had better clean up their act," Herman said. "And I think those who are investing in this corporation should make some big inquiries into the management of this company as to what is going on here. Instead of looking at their bottom-line profits, they should be looking under the sheets of what's going on in these places."

Emeritus spokeswoman Karen Lucas said in a prepared statement outside the courtroom that "we are a company of caring and compassionate caregivers and individuals who come to work every day to make a wonderful, positive difference in the lives of our residents and our families."

"Today we received an adverse verdict in Sacramento Superior Court," Lucas said. "We are deeply disappointed in this verdict. Our caregivers have earned the praise and gratitude of thousands of residents and families across the country. ... We continue to stand firmly behind and believe in the quality of care that we provide."

In 15 questions on two jury forms, the Emeritus jury came back against the company on unanimous, 12-0 votes in all but three of its findings.

Among the key ones:

- Did Emeritus employees fail to use reasonable care in providing for Joan Boice's hygienic,

mental health and safety needs?

Yes, 12-0.

- Did this result in substantial harm to her?

Yes, 12-0.

- Did officers and directors of the company know about the unfitness of their employees and act with conscious disregard of the rights and safety of others?

Yes, 12-0.

- And the biggie: Did the Boice suit prove "that an employee, officer, director or a managing agent acted with recklessness, malice, oppression and fraud?"

Yes, 12-0.

The panel talked a little about money in a couple of the questions on the two verdict forms that went against Emeritus in a big way. It put a value of \$3.875 million for Boice's pain and suffering incurred during her three-month stay at Emerald Hills, although state law limits damages on such questions in medically related matters such as this one to \$250,000.

Jurors put another \$250,000 price tag on the loss of Joan Boice's companionship to her two sons and a daughter who brought the action.

Those numbers amount to "chump change" when measured against the total value of the company, according to one leading civil lawyer in town who has won tens of millions of dollars in punitive damage awards in recent years for his clients.

Roger Dreyer, who scored awards in the Sacramento area against a radio broadcasting company, Ford Motor Co. and a Tennessee boat manufacturer, said that even if the \$3.875 million wasn't chopped down, it would still represent a mere cost of doing business for a corporation bent on maximizing profits.

"That doesn't mean anything to them," Dreyer, who is not involved in the Emeritus litigation, said in an interview after the verdict came in against the assisted living firm. "From a bottom-line standpoint, they factor in - 'Hey, we might get hit occasionally, we might have to pay a little money, but the bottom line is we make a lot of money, so it's worth it for us by cutting corners and doing these sort of things so that we can make more money.'"

Plaintiffs attorney Lesley Ann Clement presented witnesses and argued to the jury that Emeritus cut staffing to the point where there were nights during Joan Boice's stay in the memory care unit at Emerald Hills when nobody was on duty.

Clement said understaffing and lack of training represented a corporate strategy on Emeritus' part to cut costs while it was straining under a \$2.1 billion debt. That was sustained as part of a real estate acquisition campaign in which the company since has expanded to run 483 assisted living communities that house 43,000 people in 45 states, according to its latest annual report.

Starting today before Superior Court Judge Judy Holzer Hersher, Clement will begin putting on a case in the second, punitive-damages phase of Boice v. Emeritus, to get the jury to decide on a potentially much bigger number to pay for the panel's findings of malice, oppression and fraud.

Emeritus' lawyers argued in the case that Boice had already reached an advance stage of Alzheimer's by the time she arrived at Emerald Hills and that there was nothing anybody could do for what their doctor expert characterized as the woman's "terminal decline."

Judge Hersher barred the attorneys in the case from talking about it until the punitive phase is complete.

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