

Nursing Home Neglect: \$78,400,000 Jury Verdict For Pain And Suffering, Punitive Damages, Reduced To \$26,000,000.

The Supreme Court of Arkansas reviewed the dismal record of the patient's care over a five-year period at a nursing home, focusing on the six-week period just before her death.

The court agreed with the jury that the evidence justified a substantial verdict in the family's wrongful death lawsuit, money that would go to the family of the deceased who filed the lawsuit and to the lawyers who represented the family.

But \$78,400,000 was excessive. The Supreme Court of Arkansas ruled the judge who presided over the jury trial was in error not to order remittitur of the excessive damages as the nursing home's lawyers requested.

The Supreme Court itself imposed a remittitur, that is, a conditional ruling that there would be a whole new trial unless the plaintiffs agreed to accept \$5,000,000 general damages for the deceased's pain and suffering and \$21,000,000 punitive damages in place of the \$15,400,000 and \$63,000,000 figures the jury awarded.

Remittitur

Remittitur is rarely used, but it is a practice that has been upheld by the common law for centuries as a vehicle for judges and appellate courts to exercise control over excessive jury verdicts. If the plaintiffs are not willing to accept a lower figure set by the court, the excessive verdict is thrown out altogether and there is a new trial before a different jury, which is anticipated to produce a lower verdict than the first verdict and also lower than the bottom line after the remittitur.

The plaintiffs can take the remittitur for the specified sum, take their chances on a new trial or attempt to negotiate a settlement somewhere in between.

Additur is the term for the opposite practice, where the court grants the plaintiff's request for a whole new trial, conditioned on the defendant's willingness to agree to entry of a specified final judgment larger than the jury's verdict.

Pain and suffering have no actual market price. They are not capable of being exactly and accurately determined, and there is no fixed rule or standard whereby general damages for pain and suffering can be measured.

Hence, the amount of damages to be awarded for pain and suffering must be left to the judgment of the jury, subject only to correction by the courts for abuse and passionate excess.

The amount allowed must be fair and reasonable, free from sentimental or fanciful standards, and based upon the evidence disclosed in the courtroom.

The courts have traditionally exercised control over the damages awarded by juries in civil suits through the use of remittitur.

Remittitur means the court orders a whole new trial for the defendant's benefit unless the plaintiffs accept a lower damage award specified by the court, in this case \$26,000,000.

The opposite is referred to as an additur, used when the verdict is too low.

SUPREME COURT OF ARKANSAS
May 1, 2003

Evidence Of Neglect

Large Damages for Pain and Suffering

According to the court, the deceased resident suffered significantly from neglect by the nursing home staff. She eventually died from dehydration and malnutrition.

She was left in her own filth, not changed, turned or bathed, and even had dried feces under her fingernails after she died, apparently from scratching herself excessively.

She was not given range-of-motion exercises for contractures, not let out of her soft bed restraints every four hours or out of her geri chair every two hours.

The evidence went on and on.

She was not fed by the nursing home staff. Her meals were just left in her room and she began to subsist on snacks from the nursing home vending machines. She failed to thrive, lost nearly fifteen pounds and was scheduled to go to the hospital for a gastrostomal tube.

Her admission was delayed a couple of weeks, but eventually she had to be rushed to the hospital where she died from the cumulated effects of neglect.

Evidence of Profit Motivation Large Punitive Damages

The classic case for punitive damages is when a corporate defendant has deliberately allowed the profit motive to lead to serious harm to customers or the public.

According to the court, the nursing home was chronically understaffed, making it impossible for the staff on duty fully to take care of their patients' needs.

According to the court, the nursing home's corporate parent apparently had bogus names added to the daily rosters to make it appear there was no short staffing and brought in extra staff people, that is, enough people, when it was in the wind that a survey inspection could be expected.

The court ruled punitive damages were appropriate, but not as much as the jury awarded. ***Advocat, Inc. v. Sauer*** __ S.W. 3d __, 2003 WL 1996087 (Ark., May 1, 2003).