

Personal Injury and Wrongful Death Actions in the Elderly Population

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Elder Law practitioners owe it to their elderly clients to consider the possibility of pursuing personal injury and wrongful death cases when the elderly are the victims of neglect and abuse resulting in injuries and death.

Traditionally, lawyers have overlooked, or not even considered, cases involving injuries and death of the elderly. Due to infirmities, lack of earning capacity and because they rarely are providing economic support to anyone, a misconception has formed in the legal community that personal injury cases involving the elderly do not have value.

Case results suggest otherwise. Nationwide, in large counties and small counties, you can find significant verdicts and settlements for injuries and deaths of elderly individuals. In the long term care arena, the recent acquisition of several national nursing home chains by private equity firms has received a great deal of attention from the media, from politicians, and from elderly residents and their families. The worry is that in an effort to increase revenue at nursing homes these private equity firms are reducing staff and resources while increasing the census. The obvious result is that there is not enough staff and resources to care for the number of residents in the facility. This is referred to as the “profits over people” argument. The issue was addressed extensively in a recent article in the *New York Times*. The article can still be found on the *New York Times* web site and is titled, “At Many Homes More Profit and Less Nursing.” When nursing homes and the large corporations that operate them place profits over people, juries become angry. Juries recognize the last years of an individual’s life are precious. It angers them more when they hear the argument that “she was going to die anyway.” They realize that it’s not that she died but how she died. We have the right to die with dignity. Juries will award significant amounts when that right is violated.

Elder Law practitioners should

discuss issues of possible neglect or abuse with family members of loved ones in the nursing home, assisted living or home healthcare setting. The attorney should discuss what family members should look for if they have loved ones in a nursing home or other long term care setting. Family members should look for injuries like bed sores, malnutrition, dehydration, falls and sexual abuse. Family members should call state agencies to make complaints. Elder Law attorneys, when confronted with injuries and death of an elderly client, should question the circumstances surrounding the injuries or death. The Elder Law attorney should explore the possibility of neglect by the nursing staff, doctor or other healthcare providers in both the long term care and hospital setting and refer the client to an appropriate lawyer who specializes in prosecuting these types of cases.

The elderly, their families, and Elder Law attorneys should be aware that several laws have been codified to protect the rights of the elderly and encourage the elderly and their families to assert their rights through litigation.

On a national level, the Omnibus Budget Reconciliation Act of 1987 sets forth requirements for long term care facilities throughout our country. Several states, including Illinois, have adopted more laws to encourage elderly residents of nursing homes and assisted living facilities to

pursue litigation when their rights have been violated and injury or death results. Illinois adopted the Illinois Nursing Home Care Act in 1979 amid concerns of inadequate care in nursing homes throughout the state. The Illinois Nursing Home Care Act contains a provision requiring the defendant to pay plaintiff’s attorneys fees and costs in addition to any damages awarded by a jury where a resident of a long term care facility is abused or neglected.

Large verdicts and settlements are not limited to cases against long term care facilities. The Elder Law bar focuses on financial exploitation of the elderly but sometimes has a tendency to overlook cases of medical malpractice, premises liability, pharmaceutical liability, motor vehicle accidents and other cases where the elderly are injured or die due to the neglect of others. Because the elderly require more medications, Elder Law attorneys should be sensitive to potential cases involving medication errors and also to potential cases against drug manufacturers. For example, there have been multimillion dollar verdicts and settlements against the manufacturers of Vioxx and Seroquel.

Even the simplest of personal injury cases involving the elderly can lead to a big settlement. A recent example from our firm is a \$1,250,000.00 settlement on behalf of an elderly individual who was struck by a bus while crossing the street. The woman survived the accident but suffered significant injuries.

It is important for Elder Law attorneys to be able to recognize when a civil action for the injuries or death of an elderly individual may be appropriate. The elderly need advocates to stand up for them. Cases involving the elderly do have value and can be won.

Elder Law attorneys should encourage their clients in such situations to seek the counsel of experienced trial lawyers who are willing to pursue their claims.

