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2006 Top Defense Verdicts

Testimony of Woman, 78, Saved Nursing Home Following Death

Lawyers for Covenant Care Inc. and Grancare Home Health Services, operators of nursing homes and hospice care, knew they faced enormous odds.

The son and daughter of a 72-year-old man, diagnosed in the final stages of Parkinson's dementia, accused the health-care providers of conspiring to deny their father treatment to maximize their profits from Medicare reimbursements. They claimed their father was starved to death, skeletal at the end. They sought \$14 million.

Moreover, during the decade of hearings and appeals leading up to last year's trial, the state Supreme Court affirmed the plaintiffs' punitive-damages claim. The decision effectively stripped health care providers of procedural protections in claims involving elder abuse and punitive damages.

The defense argued the plaintiffs' allegations were motivated by denial, guilt and greed. The turning point came when, after eight weeks of highly technical testimony from experts on both sides in medicine, nursing, hospice care and the stages of dying, a di-



JOHN SUPPLE

minutive, 78-year-old woman took the stand.

Speaking barely above a whisper, Hortensia Gonzalez told a rapt jury that her cousin, Juan A. Inclan, said he never wanted to be tube-fed or kept alive by any other artificial means, contrary to his children's claims.

Gonzalez, who visited her cousin daily, said she was satisfied with his care and believed hospice services were just what he needed in his last months of life. She said that, in the four years Inclan lived in California, he received only one visit from his son and none from his daughter, both who live in New York.

The jury returned a complete defense verdict Dec. 12, on behalf of Covenant Care, rep-

resented by John L. Supple and Elizabeth A. Burns of Gordon & Rees, in San Francisco and Randolph M. Even in Woodland Hills. Grancare was represented by Thomas Beach and Sean Cowdrey of Camarillo's Beach Whiteman. *Inclan v. Covenant Care*, LC041017, (L.A. Super. Ct., filed May 5, 1997).

Covenant Care owned Riverdale Convalescent Hospital in Glendale. Grancare provided hospice services and owned Laurelwood Convalescent Hospital in North Hollywood, where Inclan stayed during his last week of life.

The jurors did find in favor of the plaintiffs on a willful-misconduct claim and awarded \$80,000 in noneconomic damages against the Grancare defendants. The Covenant Care defendants received a complete defense verdict. However, because the plaintiffs did not prevail on the elder-abuse allegations, they cannot collect.

The jury also found Inclan's daughter, Lourdes Inclan, 30 percent at fault. Russell Balisok of Glendale, who represented the Inclans, was unavailable for comment.

— Susan McRae

Wal-Mart Prevailed Against Suit Filed by Injured Bike-Riding Boys

Nine boys from California and other states sued Wal-Mart claiming the front wheels on a mountain bike sold for \$150 under the Next brand had a tendency to come off, spilling riders head first over the handlebars.

The lawsuit also named, Dynacraft BSC, which imported 460,000 of the bikes from China, and Dynacraft's insurer, Carl Warren & Co. The plaintiffs alleged 100 accidents nationwide resulted from the defect. Three boys claimed to have suffered brain damage from accidents with their bikes; the other six sustained various injuries, including facial scarring, broken teeth and permanent disfigurement.

San Francisco plaintiffs' attorney Mark Webb, represented the boys. He sought \$8 million plus punitive damages.

Fletcher Alford, a partner at Gordon & Rees



FLETCHER ALFORD

in San Francisco, represented San Rafael bicycle maker Dynacraft and Carl Warren. He convinced a Marin County jury that the bikes were not defective. *May-Carmen v. Dynacraft BSC Inc.* (Marin Super. Ct. 2006).

The bicycles are not longer sold in the United States, and the plaintiffs claimed at trial that Wal-Mart and Dynacraft knew they were dangerous because of complaints from users but failed to report

the alleged defects to government regulators.

The bikes were made in China, with final assembly in the United States. Wal-Mart referred accident claims to Dynacraft, which referred them to Carl Warren & Co., the plaintiffs said.

Alford won the eight-week jury trial with his co-counsel Joe Harrison and Joanne Early of the Gardere firm in Dallas. Robert Phillips of San Francisco's Phillips, Spallas & Angstadt represented Wal-Mart.

The suit garnered substantial press coverage, including stories which noted that the Consumer Product Safety Commission previously fined Dynacraft \$1.4 million for other defective bike parts (though not the quick-release mechanism).

— Donna Domino