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Cause of nursing home fall, broken femur disputed

\$200,000 Settlement

Plaintiff was a 78-year-old resident of the defendant nursing home. In May 2008, she sustained a left spiral femur fracture during a transfer from her bed to her wheelchair.

Liability was complicated by the lack of a clear recollection of the incident by the plaintiff. She testified that she was ordered by the defendant certified nursing assistant to get out of bed, stand unassisted and walk five or six steps to her wheelchair. She testified that she then walked backward to her bed and fell when she could not locate her wheelchair. The defendants strongly challenged the credibility of this testimony.

The plaintiff's own treating physicians testified in discovery depositions that the plaintiff would have been unable to stand or walk unassisted as a result of equines contractures and severe complications from a chronic left hip infection.

The defendant CNA testified that she and another unknown CNA were transferring the plaintiff when she began to slide off the bed. The defendant testified that she and the other CNA prevented the plaintiff from falling and lowered her to the floor. No one from the nursing home was able to identify the other CNA who was supposedly present and assisting with the transfer.

A third version of the incident arose during the deposition of a former housekeeping employee of the defendant nursing home. The former employee testified that she was present when the incident occurred. She testified that the CNA had placed the wheelchair beside the plaintiff's bed and then left to tend to the other patient in the room.

The former employee stated that the plaintiff sat up on her own and then began to slide off the bed. She caught her, called out to the CNA for help, and then they lowered the plaintiff to the floor. The former employee testified that she had seen the plaintiff try to get out of bed by herself on previous occasions and had warned the charge nurse of this.

Plaintiff's position was that it did not matter which version the jury believed. Plaintiff's experts opined that the defendants were negligent under any of the scenarios as follows: (1) Based on the warning from the housekeeping employee that the plaintiff had previously tried to get out of bed on her own, the plaintiff should not have been left unsupervised while sitting on the side of the bed, (2) the plaintiff should have been identified as a fall risk due to periods of confusion, anxiety and impulsiveness documented in her medical records, (3) a gait belt should have been used to assist with the transfer and two staff members should have been re-

quired for transfer.

The plaintiff made a good recovery from her injuries and there was no claim for permanency. Her treating orthopedic surgeon testified in deposition that she had fully recovered

within three months of the incident. The plaintiff was already in a wheelchair and unable to walk unassisted prior to the incident. Her treating physicians did not believe that the spiral fracture had any effect on her mobility or long term prognosis.

Plaintiff claimed \$107,863.27 in special damages. Approximately \$60,000 were directly related to treatment of the fracture itself. The remainder of the special damages was for treatment at a skilled nursing facility after the injury. The defense argued that this treatment was unrelated since the plaintiff would have required additional skilled nursing treatment for her prior medical conditions regardless of whether she sustained the spiral femur fracture.

The case was settled at mediation for \$200,000.

[10-T-043]



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Type of case: Nursing home neglect

Injuries alleged: Spiral fracture of left femur

Name of case: Confidential.

Mediator: Thomas Shadrick

Special damages: \$107,863.27

Verdict or Settlement: Settlement

Amount: \$ 200,000

Plaintiff's attorney: John Newby, Richmond