

\$4M Award For Nursing Home Choking Death

Nurse's aide mistakenly fed roast beef to 93-year old patient

By Thomas B. Scheffey

Theresa Dalessio, Administratrix, v. Lexington Health Care Group Inc., et al: Amel Trezza, a nursing home resident at Country Manor Health Care in Prospect, was having lunch on May 31, 2001, during a statewide nursing strike.

A replacement staffer provided by defendant U.S. Nursing Corp. gave Trezza a tray with regular roast beef, which she sliced into four smaller portions. But Trezza had written physician's orders for a soft diet, calling for ground meat. He was blind, in a wheelchair and had mild dementia.

After eating the food, he began to choke. When nursing help arrived, he had stopped breathing and was no longer conscious. Trezza was transferred to a local hospital, where he died 10 days later after suffering severe brain damage due to lack of oxygen.

After a two-and-a-half week trial in Waterbury Superior Court before judge **Bethany J. Alvord**, Watertown plaintiff's lawyer **Michael A. D'Amico** won \$22,232 in economic damages, \$2.5 million in pain and suffering, and an additional \$1.5 million in offer of judgment interest, resulting in a total of \$4,047,232.

D'Amico, of **D'Amico, Griffin & Pettinichi**, said he knows of no higher verdict in Connecticut for a nursing home wrongful death.

D'Amico said before the trial, the Trezza matter was argued for two focus groups. One set non-economic damages at \$2 million. The second group came in at \$250,000, but members didn't think the \$2 million

figure was unfair. Individual "jurors" evaluations ranged from \$150,000 to \$10 million for non-economic damages, D'Amico said, with one commenting that Trezza deserved \$1 million for every minute he was aware of his fatal choking.

D'Amico said his firm conducts about five mock trials per year, with the defense role performed by colleagues from the defense bar who are unconnected to the case.

The highest settlement offer in the Trezza case, he said, was \$100,000. Legal experts say that's a typical amount for wrongful death cases involving elderly people.

That so much money was awarded even though Trezza was 93 affirms the high value inherent in human life, said D'Amico. "In my mind, a wrongful death claim in a civil case is equivalent to a murder charge in a criminal case—essentially the highest civil wrong that there is," he said. "A death is a death, and life has basic, intrinsic value."

The nursing home, Country Manor, and its parent, Lexington Health Care Group, were represented by **John L. Costa**, of Stamford's **Heidell, Pittoni, Murphy & Bach**.

Nurse's aide Mah Fernandez and U.S. Nursing were represented by **Julie A. Harris**, of the Law Offices of **Jack V. Genovese II**, in Glastonbury. "I appreciate the opportunity to speak, but I am not at liberty to comment at this time," said Harris.

The two defendants presented conflicting arguments. Harris contended that the food mix-up was the fault of Country Manor's food preparation employees. "She argued it was the kitchen staff — employees of John Costa's clients—who put the wrong

meat on the tray," said D'Amico. "Although Julie Harris couldn't hide from the fact that her nurse's aide should have picked up on that mistake, before giving [the roast beef] to Mr. Trezza, her argument was that the kitchen staff put the wrong food on the tray."

Costa countered that kitchen staff did not make a mistake at all, and that the nurse's aide, Mah Fernandez, inadvertently fed Trezza his roommate's lunch.

The jury agreed, according to its five-part interrogatories. It concluded that because Lexington Health Care Group supervised and controlled Fernandez, it was vicariously liable under the borrowed servant doctrine.

However, Costa, said in an interview that his nursing home client and its parent company will not have to pay any part of the verdict. He said the nursing home's contract with U.S. Nursing contains an indemnification agreement and that U.S. Nursing has adequate insurance coverage. "U.S. Nursing and its insurer will pay the entire freight," he said. "When you pay no money, we consider that a win."

Harris, on behalf of U.S. Nursing, has filed motions to reduce or set aside the verdict.

"There was an offer of judgment of \$750,000," said D'Amico. "Interest is ticking at about \$25,000 a month. I don't think there are any good appealable issues, but if they were to take another year to appeal, it would cost another \$300,000 or so."

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