

But We Aren't a Nursing Home!

Pennsylvania Health Care Association Annual Conference

Presented by Thomas Morrin, Erin O'Leary and Kara White
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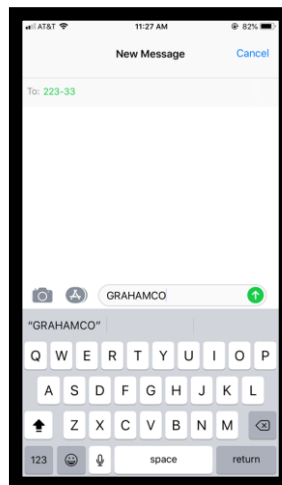


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Presenters



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You Be the Judge



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Case Summary #1

1. The resident fell and hit her head and suffered a decline in health that led to her death within a year.
2. The family contended that the assisted living facility should have never admitted her in that she warranted a higher level of care.
3. According to the family, the facility should have followed a higher medical standard of care and conducted an assessment of the resident and whether assisted living was a fit for her.
4. The lawsuit also alleged that the facility should have *monitored* the woman's condition and noticed a decline in her overall physical health.

Jury Verdict + New York + 2012 = \$1.5 Million



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Case Summary #2

1. The resident was in an assisted living facility for those with dementia.
2. She was wandering outside the facility unsupervised and she fell.
3. She suffered fatal injuries in the fall.
4. The resident had previously been injured in a fall and warranted a higher level of *supervision*.
5. The family argued that the facility neglected the resident and it constituted elder abuse according to California law.

Jury Verdict + California + 2017 = \$5 Million



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Case Summary #3

1. The resident was at an assisted living facility with a special care unit for those with Alzheimer's.
2. The resident wandered into another resident's room and was brutally attacked, suffering cuts and bruises.
3. Several weeks later, she was beaten again by another resident and hit her head in the confrontation.
4. The resident became more lethargic and started sleeping more often.
5. By the time the family had insisted on further examination, the resident had severe head injuries and died shortly thereafter.
6. The family's lawsuit alleged that the assisted living facility did not adequately *supervise* the resident and prevent her from being beaten.

Jury Verdict + Texas + 2005 = @ \$20 Million



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Case Summary #4

1. The resident had dementia and was in a special memory care unit of the assisted living facility.
2. The resident was wandering around the facility unsupervised.
3. She ended up on the second floor of the facility by a window, which she managed to open.
4. The resident fell out of the window to her death.
5. The home knew that the resident tended to wander and look for the exits.

Settlement + Massachusetts + 2017 = \$2 Million



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Case Summary #5

1. The resident was a 36-year old male.
2. He suffered severe gastrointestinal damage when he ingested various foreign objects.
3. He died of an obstruction to the gastrointestinal tract.
4. The family alleged that the facility made misrepresentations to them about the facility and the caregivers.
5. The lawsuit claimed that the facility failed to provide adequate *supervision* and did not properly store the foreign objects.

Jury Verdict + Arizona + 2009 = \$11 Million



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Case Summary #6

1. This is a rare case where an assisted living facility resident developed pressure ulcers.
2. She checked out of the facility and died three months later.
3. One of the factors that caused her death was the pressure ulcers.

Jury Verdict + Washington + 2019 = \$23 Million



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What percentage of closed liability claims due to a fall were for residents of assisted living (vs skilled nursing or independent living)?

Less than 5%	A
Between 5 & 10%	B
Between 10% and 20%	C
Over 20%	D

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Resident Falls by Bed Type

Distribution of Resident Fall-related Closed Claims by Bed Type

(Percentage of 578 fall-related closed claims.)

Bed Type	Percentage
SN	73.4%
AL	22.8%
IL	3.8%

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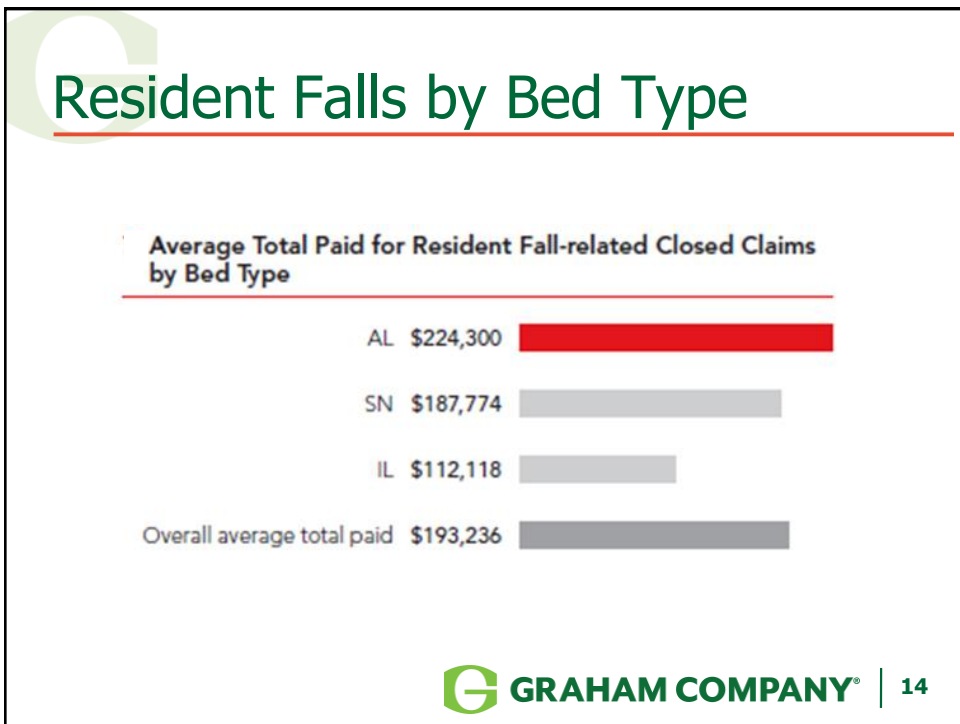
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What was the average value of the closed fall claim for assisted living residents ?

- Less than a skilled nursing claim **A**
- About the same as a skilled nursing claim **B**
- More than the skilled nursing claim **C**

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In Short....

Assisted living fall-related claims are more costly, on average, than fall-related claims in other settings.

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Falls by Allegation

Distribution of Resident Fall-related Closed Claims by Allegation

(Percentage of 578 fall-related closed claims.)

Allegation	Percentage
Failure to monitor	60.9%
Improper care	32.4%
Unsafe environment	6.7%

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Why the Increased Liability?

1. No Clear Definition of Assisted Living Services vs. Nursing Home Services
2. Ambiguity about Standards of Care
3. Unrealistic Expectations

Why the Higher Settlements?

1. Claims going to Jury Verdict
2. Jury Make-up including Millennials
3. Private Equity backing Law Firms

No Clear Definition of AL vs. SNF

1. Public Perception of the Difference between Assisted Living and Nursing Home
2. Descriptions are Vague
3. Understand AL residents need less types of care and services but do not **expect** decreased care or services

Vague Definitions

Assisted Living Residences

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One of the most frustrating parts of growing old for most people is the loss of their independence. Assisted living residences allow seniors to retain their independent lifestyles, but also provide support for the tasks and activities that become more difficult with age.

Assisted living residences typically provide such services as:

- Meals, housekeeping and other domestic assistance
- Personal, but not nursing, care
- Health and safety monitoring

Assisted living offers many benefits to seniors, but it isn't for everyone. The residences, while set up to provide a homey feeling, are not a perfect substitute for a home, especially one that a senior may have lived in for decades.

Assisted living residences also organize seniors' schedules, which can present an annoyance for a senior who can handle most tasks, but just wants someone around to do the cooking and cleaning.

 The elder law attorney you hire matters

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Vague Definitions

Services Offered

Assisted living residences offer more services than, say, an independent living facility. The type and level of assistance that a senior requires depends on the individual, but here are some common things that assisted living facilities will help out with:

Activities of Daily Living

As people age, they may start to have problems with activities of daily living (ADL): bathing, dressing, eating, using the bathroom, getting in and out of bed, etc. Assisted living residences can provide the kind of personal attention that will give seniors help with ADLs, ~~but also allow them to retain more autonomy.~~

Health and Safety Monitoring

Family and friends of seniors in assisted living facilities will definitely appreciate having someone around to make sure that the senior resident is healthy and safe. Assisted living residences will monitor their residents and check for signs of illness or distress. If there is a problem, this can be crucial in ensuring that seniors receive timely care.

Meals

Shopping for groceries and preparing meals can be a chore for everyone, but for seniors it can be especially difficult. Assisted living facilities can prepare meals for seniors, which can help seniors to maintain a proper diet and stay healthy.

Cleaning

While most people take pride in keeping a neat and tidy house, many seniors may struggle with the physical activities that this entails. In an assisted living residence, the staff can handle the housekeeping and let the seniors focus on other things.

Which brings us to...

Socializing, Hobbies and Exercise

A good assisted living facility will encourage its residents to stay active, both mentally and physically, and will provide them with opportunities to socialize with other residents, take up hobbies and get a healthy amount of exercise.

Defining AL Solutions

1. In Sales and Marketing Materials, Stop Comparing Yourself to a Nursing Home.
2. Consider Explaining How Assisted Living is Different than Resident Living Alone.

Claims Handling

1. Consent to Settle
2. Panel Counsel Requirements
3. Claims Meetings
4. Punitive Damages

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Proactive Loss Control

1. Scripted Approach: Setting Realistic Expectations
2. Falls
3. Medication Side Effects
4. Disease Progression
5. Documentation

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Coverage Considerations

1. Professional Liability/General Liability
2. Excess
3. Individual Directors & Officers and the Entity
4. Defense Coverage
5. Punitive Damages Coverage

Insurance and Risk Management

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