

2015 WL 4652563 (Or.Cir.) (Trial Pleading)
Circuit Court of Oregon.
Washington County

Teresa Anne BAUGHMAN, Personal Representative of the Estate of Judith Davidson, Plaintiff,

v.

CORNELL INVESTORS GROUP, INC. an Oregon corporation, d/b/
a Cornell Estates Retirement and Assisted Living Residence, Defendant.

No. C153546CV.
July 30, 2015.

Complaint

[Craig A. Nichols](#), OSB No. 830700, Nichols & Associates, for plaintiff.

(Wrongful Death and Senior **Abuse**)

CLAIM NOT SUBJECT TO MANDATORY ARBITRATION

JURY TRIAL DEMANDED

Prayer Amount: \$4,715,255.82

[Per [ORS 21.160\(1\)\(d\)](#)]

Plaintiff Teresa Baughman (hereinafter referred to as "Plaintiff"), Personal Representative for the Estate of Judith Davidson, deceased, alleges as follows:

PARTIES

1.

Plaintiff Teresa Baughman is the daughter of Judith Davidson, deceased, and is the duly appointed, qualified and acting Personal Representative of the Estate of Judith Davidson, appointed by the Circuit Court of the State of Oregon for Washington County. At the time of her death, Judith Davidson was a resident of Washington County, Oregon.

2.

At all material times, Defendant Cornell Investors Group, Inc. an Oregon corporation d/b/a Cornell Estates Retirement and Assisted Living Residence (hereinafter referred to as "Defendant") operated as a retirement community with assisted living services in Hillsboro, Oregon. All references to Defendant include its agents, servants, and employees, who at all material times were acting within the scope and course of their agency and/or employment.

FACTS

3.

At the time of her death, Judith Davidson was a resident in Defendant's care facility in Hillsboro, Oregon.

4.

On June 1, 2014 at approximately 4:40 p.m., Judith Davidson, a recovering stroke victim in her late 70s, was eating her dinner on Defendant's premises under Defendant's care when she began to choke on some food she had attempted to swallow.

5.

As she was choking, Ms. Davidson fell to the floor. Defendant's staff refused to come to Ms. Davidson's aid as she had signed a Do Not Resuscitate (DNR) for comfort measures only, despite a history of choking on her food. From the time Ms. Davidson began choking until the time the ambulance personnel arrived, Defendant's employees made no attempt to clear Ms. Davidson's air passageway as she lay on the ground choking.

6.

Despite the fact that Judith Davidson was choking, Defendant's employees delayed contacting emergency personnel. Defendant's representatives first called Plaintiff Theresa Baughman to inform her that Ms. Davidson was choking, but hung up when she answered and never, in fact, advised Ms. Baughman that her mother was choking. Defendant's personnel then called American Medical Response ambulance. When Emergency Medical Responders arrived at the scene, Judith Davidson was blue and hypoxic with gasping, labored agonal breathing.

7.

Ms. Davidson was brought to the emergency department at Tuality Community Hospital where she died three days later from severe hypoxia.

FIRST CLAIM FOR RELIEF

(Wrongful Death)

8.

Plaintiff realleges and incorporates herein paragraphs 1 through 6 above.

9.

Defendant was negligent in one or more of the following ways:

- a. In failing to properly monitor Judith Davidson's physical and mental health conditions;
- b. In failing to timely recognize that Judith Davidson was choking on her food;
- c. In failing and refusing to provide medical aid to Judith Davidson after she began choking including, but not limited to failing to administer the Heimlich Manuever or manual suction to clear Judith Davidson's airway;

- d. In failing to timely notify emergency medical personnel;
- e. In failing to adequately train it's staff employees with regard to the administration of first aid procedures regarding a choking individual.
- f. In failing to properly prepare Judith Davidson's food in such a manner as to minimize choking risks;
- g. In failing to timely respond to Judith Davidson's medical emergency at such time as Judith Davidson was choking;
- h. In interpreting the provisions of Judith Davidson's Do Not Resuscitate ("DNR") Directive to prohibit the clearing of airway obstructions at such time as Judith Davidson was choking;
- i. In failing to property understand Defendant's required response to Judith Davidson's choking in conjunction with Defendant's requirements under Judith Davidson's DNR Directive;
- j. In failing to have sufficient and property mined staff members available to monitor and provide medical aid to Judith Davidson; and
- k. In withholding necessary and adequate medical aid from Judith Davidson.

10.

Defendant knew or should have known that the foregoing negligent acts or omissions would create a foreseeable and an unreasonable risk of harm to Judith Davidson at its facility.

11.

Defendant's negligence did, in fact, create a foreseeable and unreasonable risk of harm to Judith Davidson and was the substantial factor in causing ha extreme hypoxia and resultant death.

SECOND CLAIM FOR RELIEF

(Elder Abuse)

ORS 124.100 et seq.

12.

Plaintiff incorporates and realleges paragraphs 1 through 10 above as if fully set forth herein.

13.

At all times herein, Judith Davidson was an **elderly** and vulnerable person within the meaning of **ORS 124.100(1)(a) and (e)** owing to the fact that she was over 65 years of age.

14.

Pursuant to [ORS 124.105](#), Defendant engaged in conduct against Plaintiff, a vulnerable person, that constituted criminal mistreatment under the provisions of [ORS 163.200\(1\)\(a-b\)](#).

15.

Defendant had a legal duty to provide care to Judith Davidson pursuant to [OAR 411-086-0010](#) through [411-086-0360](#).

16.

On June 1, 2014, Defendant unlawfully **abused** Judith Davidson, an **elderly** and vulnerable person, in one or more of the following ways:

- a. In failing to properly monitor Judith Davidson's physical and mental health conditions;
- b. In failing to timely recognize that Judith Davidson was choking on her food;
- c. In failing and refusing to provide medical aid to Judith Davidson after she began choking including, but not limited to failing to administer the Heimlich Manuever or manual suction to clear Judith Davidson's airway;
- d. In failing to timely notify emergency medical personnel;
- e. In failing to adequately train its staff's employees with regard to the administration of first aid procedures regarding a choking individual;
- f. In failing to properly prepare Judith Davidson's food in such a manner as to minimize choking risks;
- g. In failing to timely respond to Judith Davidson's medical emergency at such time as Judith Davidson was choking;
- h. In interpreting the provisions of Judith Davidson's Do Not Resuscitate ("DNR") Directive to prohibit the clearing of airway obstructions at such time as Judith Davidson was choking;
- i. In failing to properly understand Defendant's required response to Judith Davidson's choking in conjunction with Defendant's requirements under Judith Davidson's DNR Directive;
- j. In failing to have sufficient and properly trained staff members available to monitor and provide medical aid to Judith Davidson; and
- k. In withholding necessary and adequate medical aid from Judith Davidson.

17.

As a result of Defendant's **abuse** of Judith Davidson, Judith Davidson suffered extreme pain, emotional distress, interference with her recovery, and ultimately death.

18.

Pursuant to [ORS 124.100 et seq.](#), Plaintiff is entitled to relief against defendant as follows:

- a. An amount equal to three times all economic damages in an amount to be determined at trial, resulting from the above-described physical **abuse**:
- b. An amount equal to three times all non-economic damages in an amount to be determined at trial, resulting from the above-described physical **abuse**;
- c. Reasonable attorney fees incurred by Plaintiff; and
- d. Costs and disbursements incurred by Plaintiff herein.

DAMAGES

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Prior to Judith Davidson's admission to Defendant's facility, she was mentally alert and oriented. At the time of her death, Judith Davidson was seventy-nine (79) years of age.

20.

Judith Davidson suffered non-economic damages for the pain and suffering she endured leading up to her death on June 4, 2014 in the amount of \$1,500,000.00, which pursuant to [ORS 124.100](#) should be trebled

21.

Judith Davidson is survived by her three children, Russell Frederick Schell, Michael Jay Schell and Teresa Baughman. As a result of Defendant's negligence, these heirs suffered the loss of Judith Davidson's love, companionship, and society for which compensation should be awarded in an amount of \$100,000.00.

22. As a further result of Defendant's negligence. Judith Davidson incurred medical expenses, and her estate has incurred funeral and burial expenses, all to the estate's economic damage in the amount of \$100,255.82 and \$15,000.00, respectively.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Teresa Baughman, as Personal Representative of the Estate of Judith Davidson, prays for judgment against Defendant as follows:

1. On the First Claim for Relief:
 - a. For non-economic damages in the amount of \$1,500,000.00;
 - b. For pecuniary damages for Judith Davidson's heirs' loss of her society, love, and companionship, in the amount of \$100,000.00;
 - c. For economic damages for medical expenses and burial cost in the amount of \$115,255.82;
 - d. For costs and disbursements incurred herein; and

e. For such other relief as this court deems proper.

2. On the Second claim for Relief:

a. For economic damages in the amount of \$215,767.82;

b. For non-economic damages in the amount of \$4,500,000.00;

c. For Plaintiff's costs and disbursements incurred herein:

d. For Plaintiff's reasonable attorney fees: and

e. For such other relief as this court deems proper.

DATED this 30 day of July, 2015.

NICHOLS & ASSOCIATES

<<signature>>

Craig A. Nichols, OSB No. 230700

Of Attorneys for Plaintiff

Trial Attorney:

Craig A. Nichols, OSB No. 830700

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