

2012 WL 6826460 (Or.Cir.) (Trial Pleading)  
Circuit Court of Oregon.  
Multnomah County

R. Jeff CHAIDEZ, as personal representative of the Estate of Marilyn E. Adair, Plaintiff,

v.

INTERIM HEALTHCARE OF OREGON, Inc. an Oregon corporation, and Abby E. Reynolds, Defendants.

No. 121216435.  
December 21, 2012.

Complaint

(Violation of **Elderly** Persons and Persons with Disabilities **Abuse** Prevention Act; Conversion; Negligence)

Prayer Amount: \$1,551,720

(Ch. 595, Sec. 15(1)(c))

Jury Trial Requested

**Claim not Subject to Mandatory Arbitration**

Williams, Kastner & Gibbs PLLC, [J. Richard Urrutia](#), OSB #824520, Email: [rurrutia@williamskastner.com](mailto:rurrutia@williamskastner.com), Trial Attorney;,  
[J. Richard Urrutia](#), OSB #824520.

Plaintiff alleges:

**1.**

Plaintiff R. Jeff Chaidez (“Jeff Chaidez”) is a resident of the state of Oregon and son of Marilyn E. Adair (“Ms. Adair”). Plaintiff was duly appointed to serve as personal representative of the Estate of Marilyn E. Adair in Multnomah County Circuit Court Case No. 1211-91618. At all relevant times, Ms. Adair was a vulnerable person, 70 years of age, and suffering from amyotrophic lateral sclerosis, also known as ALS or Lou Gehrig's disease. ALS is a progressive, debilitating, and terminal neurodegenerative disease that affects nerve cells in the person's brain and spinal cord ultimately resulting in a complete loss of motor function and death. Ms. Adair died on September 26, 2012.

**2.**

Defendant Interim HealthCare of Oregon, Inc. (“Interim”) is an Oregon corporation with its principal place of business in Multnomah County, Oregon. At all relevant times, Interim was an in-home care agency licensed by the state of Oregon to provide in-home care services to seniors and those suffering from acute illness, long-term health conditions, permanent disabilities, and terminal illness, including ALS.

**3.**

Defendant Abby E. Reynolds (“Reynolds”) is a resident of the state of Washington. At all relevant times, Reynolds was a 27 year old home health aide employed by Interim to provide in-home care to Ms. Adair, and was acting within the course and scope of her employment for Interim.

4.

On or about August 15, 2011, Ms. Adair entered into an in-home care services agreement with Interim. Under the agreement, Interim agreed to provide for an hourly fee in-home care services to Ms. Adair through qualified and supervised home health aides.

5.

From January 15, 2012 through July 9, 2012, Reynolds served as Ms. Adair's primary home health aide, while at the direction and under the control of Interim. As her home health aide, Reynolds spent hours at a time with Ms. Adair in Ms. Adair's home tending to her most basic needs. She helped Ms. Adair bathe, dress, and groom herself. She helped Ms. Adair to bed and stayed with her while she slept. She cleaned, washed and folded laundry, changed linens, prepared and served meals, shopped for Ms. Adair, and ran errands for her. She picked up Ms. Adair's prescriptions and administered her medications, monitored her vital signs, and changed her bandages and dressings. She helped Ms. Adair with home exercises and her medical equipment, and accompanied her to medical appointments. She maintained daily records detailing Ms. Adair's condition, progress, and difficulties, and communicated directly with Ms. Adair's other home health aides, medical providers, and family regarding the same. She socialized with Ms. Adair, read to and watched television with her, counseled her, and offered her emotional and psychological support.

6.

An essential element to being a successful in-home care agency and home health aide is gaining the trust of the client and his or her family. As Ms. Adair's home health aide, both Interim and Reynolds hoped and expected that Ms. Adair and her family would rely upon and trust Reynolds and, in fact, Ms. Adair and her family did rely upon and trust Reynolds.

7.

As Ms. Adair's trusted home health aide, Reynolds spent hours at a time in Ms. Adair's home, including while Ms. Adair slept. During her time in Ms. Adair's home, Reynolds had access to Ms. Adair's personal belongings. On a number of different occasions, and without the knowledge, authorization or approval of Ms. Adair, Reynolds stole Ms. Adair's bank debit card from Ms. Adair's purse. Reynolds later admitted that she obtained the pin number for the bank debit card from Ms. Adair's filing cabinet, again, without the knowledge, authorization or approval of Ms. Adair.

8.

On not less than one hundred and thirteen separate occasions from March 2, 2012 through July 6, 2012, while in Ms. Adair's home serving as Ms. Adair's trusted home health aide, and without Ms. Adair's knowledge or consent, Reynolds used Ms. Adair's stolen bank debit card to withdraw money from Ms. Adair's bank account and to make purchases, all for Reynolds' personal use and benefit, and without the knowledge, authorization, or approval of Ms. Adair. In total, Reynolds stole approximately \$16,740 from Ms. Adair through unauthorized bank account withdrawals and purchases.

9.

As Ms. Adair's trusted home health aide, Reynolds had access to Ms. Adair's prescribed medications and narcotics, including liquid morphine and Lorazepam. Initially, Ms. Adair kept her medications and narcotics next to her bed, in her night stand, in a hospice provided sealed, clear plastic medication box. In early April 2012, Reynolds stole Ms. Adair's Lorazepam and liquid morphine. Reynolds then replaced the liquid morphine with water in an effort to conceal her theft. After it was discovered that

medications and narcotics were missing, Ms. Adair's medication and narcotics were then secured in a combination lock box. Hospice replaced the stolen liquid morphine on April 24, 2012. Reynolds then obtained the combination to the drug lock box. On Reynolds' next work day, Reynolds falsely reported to hospice that Ms. Adair had a seizure. In fact, Ms. Adair did not have a seizure. Reynolds falsely reported that Ms. Adair had a seizure in order to explain why she broke the seal on the morphine vial, allowing Reynolds to again steal more morphine. After stealing the morphine, Reynolds again replaced the missing morphine with water. Replacing the morphine with water was a serious compromise to Ms. Adair's health. Upon learning of Reynolds' actions as described in this paragraph, Ms. Adair suffered anxiety, fear, vulnerability and emotional distress. In total, Reynolds stole medications and narcotics from Ms. Adair in an amount not less than \$500.

**10.**

Upon discovering the thefts, the Portland Police Bureau was notified and an investigation opened. During the investigation, Adam Morris, Interim's Administrator, told Detective B. M. Dean that he had met with Reynolds and Reynolds had admitted to the thefts. Morris also told the Portland Police that Interim would repay Ms. Adair for her loss. Ms. Adair contacted Morris on several occasions regarding the delay in Interim's investigation and repayment. Morris advised Ms. Adair that an investigation by Interim would "not do a bit of good", and that the Portland Police detective was the cause of the delay. Morris repeatedly told Ms. Adair and Jeff Chaidez that Interim would repay Ms. Adair for her loss.

**11.**

Despite Interim's repeated assurances to Ms. Adair that Interim would repay, Ms. Adair died on September 26, 2012 without receiving any payment from Interim. Interim's failure to pay caused Ms. Adair significant emotional distress.

**FIRST CLAIM FOR RELIEF Against Defendants Interim and Reynolds**

**Violation of **Elderly** Persons and Persons with Disabilities **Abuse** Prevention Act)**

**12.**

Plaintiff re-alleges paragraphs 1 through 11.

**13.**

At all relevant times, Ms. Adair was a person 65 years or older and a "vulnerable person," as defined by the **Elderly** Persons and Persons with Disabilities **Abuse** Prevention Act (the "**Elder Abuse** Act").

**14.**

Pursuant to **ORS 124.100**, Ms. Adair was a vulnerable person who suffered damage by reason of financial and physical **abuse** by Reynolds and Interim based on the actions alleged in paragraphs 5 through 11. The financial and physical **abuse** of Ms. Adair were a culmination of a progressive series of actions that began with and continued to involve Reynolds' performance of her ordinary and authorized duties as a home health aide as set forth in paragraphs 5 and 6, above. The performance of Reynolds' official duties as a home health aide to Ms. Adair was a precursor to the financial and physical **abuse**, and the financial and physical **abuse** were a direct outgrowth of conduct that was within the scope of Reynolds' employment and for which she was hired by Interim to perform. The financial and physical **abuse** would not have been possible, but for Reynolds' role as Ms. Adair's trusted home health aide.

15.

Pursuant to [ORS 124.110\(1\)](#), an action may be brought under [ORS 124.100](#) for financial and physical **abuse** when a vulnerable person suffers injury or damage by reason of physical **abuse** or financial **abuse**.

16.

Pursuant to [ORS 124.100\(3\)\(c\)](#), Jeff Chaidez, as personal representative of the Estate of Marilyn E. Adair, has standing to bring these claims.

17.

As a result of the **Elder Abuse** Act violations of Reynolds and Interim, through causing physical and financial **abuse** and/or permitting another to cause financial and physical **abuse**, plaintiff is entitled to \$51,720 in economic damages and noneconomic damages in an amount determined reasonably by a jury currently estimated to be \$1,500,000.

18.

Plaintiff is entitled to his reasonable attorney's fees pursuant to [ORS 124.100\(2\)\(c\)](#). SECOND CLAIM FOR RELIEF Against Defendants Interim and Reynolds (Conversion)

19

Plaintiff re-alleges paragraphs 1 through 11.

20.

Ms. Adair was the rightful owner of the money and prescribed medication and narcotics Reynolds stole.

21.

Reynolds interfered with Ms. Adair's right to possession of the money when she used the used the debit card to withdraw money from Ms. Adair's bank account and to make purchases, all for Reynolds' personal use and benefit, and without Ms. Adair's knowledge, authorization, or approval.

22.

Reynolds interfered with Ms. Adair's right to possession of her prescribed medications and narcotics, including morphine and Lorazepam, when she took possession of them for her personal use and benefit, and without Ms. Adair's knowledge, authorization, or approval.

23.

Reynolds took possession of Ms. Adair's bank debit card and prescribed medications and narcotics while at Ms. Adair's home performing her official duties as Ms. Adair's trusted home health aide as set forth in paragraphs 5 and 6, above. She then used the

debit card and Ms. Adair's pin number to withdraw money from Ms. Adair's bank account and to make purchases and without the knowledge, authorization, or approval of Ms. Adair.

**24.**

In performing her official duties as set forth in paragraphs 5 and 6, above, Reynolds was motivated, at least initially, by a desire to fulfill her duties as a home health aide to Ms. Adair and to further the interests of Interim.

**25.**

The thefts were a culmination of a progressive series of actions that began with and continued to involve Reynolds' performance of her ordinary and authorized duties as a home health aide as set forth in paragraphs 5 and 6, above. The performance of Reynolds' official duties as a home health aide to Ms. Adair was a precursor to the thefts, and the thefts were a direct outgrowth of conduct that was within the scope of Reynolds' employment and for which she was hired by Interim to perform. The thefts would not have been possible, but for Reynolds' role as Ms. Adair's trusted home health aide.

**26.**

Interim is vicariously liable for the conduct of Reynolds.

**27.**

As a result of the conversion of Ms. Adair's money and medications, Ms. Adair sustained economic damages in an approximate amount of \$17,240, plus prejudgment interest at the statutory rate from the dates of the conversions to be determined at trial. Plaintiff reserves the right to amend to seek punitive damages.

**THIRD CLAIM FOR RELIEF Against Defendant Interim Only (Negligence)**

**28.**

Plaintiff re-alleges paragraphs 1 through 27.

**29.**

Interim was negligent and breached its duty of care owed to Ms. Adair in one or more of the following ways:

- a. Interim hired Reynolds as a home health aide for Ms. Adair despite Reynolds' criminal history, including a prior arrest for theft.
- b. Interim retained Reynolds as an employee and home health aide for Ms. Adair even though it knew or should have known of Reynolds' criminal history, including her prior arrest for theft
- c. Interim failed to properly train Reynolds that she may not steal money from clients, including Ms. Adair.
- d. Interim failed to properly train Reynolds that she may not steal medication from clients, including Ms. Adair.
- e. Interim failed to properly supervise Reynolds to prevent her from stealing money from Ms. Adair.

- f. Interim failed to properly supervise Reynolds to prevent her from stealing medication from Ms. Adair.
- g. Interim failed to take adequate measures to prevent Reynolds from stealing money from Ms. Adair.
- h. Interim failed to take adequate measures to prevent Reynolds from stealing medication from Ms. Adair.
- i. Interim failed to take adequate measures to detect whether Reynolds was stealing money from Ms. Adair.
- j. Interim failed to take adequate measures to detect whether Reynolds was stealing medication from Ms. Adair.
- k. Interim's nurse supervisor failed to take adequate measures to detect those discrepancies in Ms. Adair's drug logs.
- l. Interim's nurse supervisor failed to detect that Reynolds had broken the seal on the liquid morphine and replaced it with water.
- m. Interim failed to conduct drug testing on Reynolds after it was reported that drugs were missing.
- n. Interim failed to conduct drug testing on Reynolds after Reynolds admitted that she stole money from Ms. Adair.
- o. Interim failed to conduct drug testing on Reynolds at the time Reynolds admitted to Interim that she stole money from Ms. Adair and appeared to be under the influence of drugs.
- p. Interim failed to repay Ms. Adair the stolen money during her lifetime despite repeated assurances that it would do so.
- q. Interim hired and retained Adam Morris as its head administrator in Portland, Oregon, despite the fact that Morris failed to possess the requisite education, training and professional or management experience in a health-related field or program or successfully complete a training program approved by the Public Health Division of the Oregon Health Authority.
- r. Interim failed to adopt, maintain and implement appropriate administrative and professional oversight protocols, procedures and controls to prevent and detect inadequate supervision of Reynolds, resulting in further financial and physical **abuse** to Ms. Adair.
- s. Interim failed to assist Ms. Adair after the thefts were discovered by failing to establish additional security measures to protect Ms. Adair from Reynolds, after Ms. Adair advised Interim that she was in fear of retaliation by Reynolds.

**30.**

As a result of Interim's negligence, Ms. Adair suffered Ms. Adair sustained economic damages in an amount not less than \$17,240.

**31.**

As a result of Interim's negligence, plaintiff suffered, prior to her death, anxiety, fear, vulnerability, and emotional distress, all to plaintiff's noneconomic damage in the amount of \$500,000.

WHEREFORE, plaintiff requests judgment against defendants as follows:

1. Awarding plaintiff judgment against defendants on its first claim for relief for \$51,720 in economic damages and what is estimated to be at least \$1,500,000 in noneconomic damages.
2. Awarding plaintiff judgment against defendants on its second claim for relief for \$17,240 in economic damages, plus prejudgment interest at the statutory rate from the dates of the conversions.
3. Awarding plaintiff judgment against defendant Interim on its third claim for relief for \$17,240 in economic damages and what is estimated to be at least \$500,000 in noneconomic damages.
4. Awarding plaintiff reasonable attorney fees on its first claim for relief.
5. Awarding plaintiff costs and disbursements incurred herein and such other and urther relief as the Court may deem as just.

DATED this 21<sup>st</sup> day of December, 2012.

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