

Ex-Prisoner Keeps Trial Win Over Delayed Cancer Diagnosis

By **Cara Salvatore**

Law360 (September 30, 2020, 10:13 PM EDT) -- An Illinois federal judge has reduced, but refused to erase, a multimillion-dollar verdict for a kidney cancer patient whose illness went untreated for months by private health providers in the prison where he was being held.

Ruling on post-trial briefs Monday following a December 2019 trial, U.S. District Judge Sue Myerscough kept the jury's liability findings in favor of former prisoner William Kent Dean and against Wexford Health Sources Inc. and two of its doctors for deliberate indifference to Dean's life-threatening illness while he was locked up at Taylorville Correctional Center in Illinois.

Before awarding \$1 million in compensatory damages and \$10 million in punitive damages, the jury heard that Dean presented with painless, visible blood in his urine in December 2015, but didn't receive appropriate testing for months. He was then forced to wait months more for a July 2016 surgery intended to ameliorate what turned out to be Stage 4 metastatic cancer. At the time of the trial, he was still on chemotherapy, the jury heard.

Wexford moved for a new trial and judgment as a matter of law, but the judge denied it.

"The evidence allowed a reasonable inference that Wexford's practices were a moving force behind the delays and that Wexford knew that its practices would lead to inexplicable delays for an urgently needed diagnosis and treatment of life-threatening conditions," Judge Myerscough said.

One of the doctors, Abdur Nawoor, even appeared to be exhibiting evidence of deliberate indifference during the trial, the judge said.

"A reasonable juror could have found Dr. Nawoor's attitude disdainful and disinterested. Dr. Nawoor also appeared to be sleeping at times throughout the trial," the judge said.

At trial, Dean's attorneys put on evidence that after his urine was abnormal in December 2015 he should have been given a CT scan promptly. He was forced to wait for months before he was given one, the judge said.

Dean's lawyers said that a Wexford policy called "collegial review" — decisions by offsite doctors who had not seen or examined the patient about what care should be done — resulted in Dean's not getting the CT scan he needed and not being able to see a urologist until months later.

The jury awarded \$100,000 for physical suffering, \$500,000 for emotional suffering, \$100,000 for disability and diminished life expectancy, and \$300,000 for future medical care.

The judge said punitive damages were warranted in part because "the jury could have reasonably found from the testimony at trial, including defendants' own witnesses, that Wexford continues to be indifferent to how its practices put inmates with potentially life-threatening diseases at a substantial risk of serious harm."

But a reduction from \$10 million to \$7 million was in order because a double-digit ratio of punitive damages to compensatory damages would be "unconstitutionally excessive" here, the judge said.

Pegging punitives at \$7 million "recognizes the reprehensibility of Wexford's conduct and the harm plaintiff suffered, should be sufficient to deter future similar conduct, and also stays within the bounds of due process," the judge said.

That leaves the total verdict at \$8 million.

Judge Myerscough also awarded Dean some \$634,000 in legal fees — but, under the Prison Litigation Reform Act, these have to come out of his damages and are not added on top.

Dean is currently "out of prison, living with his wife, and doing well," one of Dean's lawyers, Craig Martin of Willkie Farr & Gallagher, said via a spokeswoman Wednesday. Martin, who represented Dean pro bono, also said in a statement Tuesday that the ruling is "a wonderful result for our client" and a "well-reasoned opinion."

Another of Dean's trial lawyers, Joel Pelz of Jenner & Block, said Thursday that the ruling "sends a strong message about the systemic deficiencies in medical care involved in this case.

"We are hopeful that Mr. Dean and his family will now promptly receive the resources necessary to support his care," Pelz said.

Representatives for Wexford and the two doctors were not immediately available for comment.

Dean is represented by Craig Martin and Chloe Holt of Willkie Farr & Gallagher LLP, Joel Pelz of Jenner & Block, and William Strom of Palmersheim & Mathew LLP.

Wexford, Abdur Nawoor and Rebecca Einwohner are represented by Alexandra Rice of Cassidy Schade LLP and Elizabeth Babbitt and J. Timothy Eaton of Taft Stettinius & Hollister LLP.

The case is Dean v. Wexford Health Sources Inc., case number 3:17-cv-03112, in the U.S. District Court for the Central District of Illinois.

--Editing by Bruce Goldman.

Correction: A previous version of this article misstated a detail about Dean's representation. The error has been corrected.

Update: This story has been updated with a quote and additional counsel information.