

## suits & deals

### \$7 Million Settlement Reached After Patient Suffered Brain Injury at Hospital and Later Died

A Monmouth County medical malpractice case involving a man with a sleeping disorder who received opioid medication and suffered a brain injury that proved fatal recently settled for \$7 million.

In *Daley v. Jersey Shore University Medical Center*, the \$7 million settlement was paid on May 12 to the estate of Raymond Daley by defendant Jersey Shore University Medical Center/Hackensack Meridian Health.

Daley, 60, of Wall Township, died on May 21, 2020, less than five years after suffering hypoxic brain injuries while a patient at Jersey Shore University Medical Center in Neptune City.

The settlement was reached in March 2021 after multiple mediations with retired Ocean County Superior Court Judge James D. Clyne and a settlement conference before Monmouth County Superior Court Judge Marc C. Lemieux.

The entire funds were paid to the estate of Mr. Daley, according to **Daryl L. Zaslow** of **Eichen Crutchlow Zaslow** in Edison and James Maggs of Maggs McDermott & DiCicco in Wall, who were co-counsel to the plaintiffs.

Zaslow and Maggs advanced the legal theory that the defendants prescribed too-high a dose of hydromorphone, an opioid medication used to treat moderate to severe pain, to Daley, an “opioid-naïve” patient. They also maintained that the hospital failed to provide Daley with a Continuous Positive Airway Pressure (CPAP) machine, which Daley needed since he suffered from obstructive sleep apnea (OSA), a condition where the muscular soft tissues of the airway become limp during sleep, and cause breathing problems and snoring. A CPAP can act as an internal air splint, preventing the collapse of the muscular soft tissues over the laryngeal airway. The suit claimed the hospital and two attending nurses failed to properly medicate and monitor Daley, resulting in brain injury, and later his death.

Robert Evers of Marshall Dennehey Warner Coleman & Goggin in Roseland represented Jersey Shore University Medical Center/Hackensack Meridian Health.

Timothy B. Crammer of Crammer, Bishop & O’Brien in Absecon represented defendant



COURTESY OF DARYL ZASLOW

nurse Jaimee Sujdowski, and MaryAnn Nobile Wilderotter of Ronan Tuzzio Giannone in Tinton Falls, represented defendant nurse Stacey Telenson—the two nurses charged with caring for Daley.

All three defendants’ lawyers did not respond to requests for comment.

According to Zaslow and Maggs, on April 3, 2015, Daley, then 55, was brought to the emergency department at Jersey Shore University Medical Center after falling off a 4-foot ladder and landing on his back. Daley was diagnosed with a L1 compression

fracture that did not require surgery, and he was admitted for pain control.

Daley's medical history included OSA and obesity, and he was noted to be opiate naïve.

The plaintiffs claimed that while in the ER, Daley received 10 milligrams of oxycodone orally, and later hydromorphone. Daley was admitted to the JSUMC trauma team at 8:30 p.m., six hours after arriving at the hospital in severe pain.

Defendant Telenson, an advanced practice nurse, ordered no treatment for OSA, nor did she inquire of the patient or his wife what treatment he used at home, said Zaslow and Maggs. Telenson instead ordered patient-controlled analgesia (PCA) with additional intravenous hydromorphone that would allow Daley to trigger a pre-defined, controlled dose with a push button when he felt pain.

After each dose, Daley was "locked out" from more medication for a pre-defined time interval, according to Zaslow and Maggs.

Sujdowski, the night shift nurse, testified that she never obtained a CPAP for Daley because one was never ordered, and that Daley informed her that he did not suffer from OSA.

That contention, according to the lawyers, was vigorously contested by wife Amy Daley, who testified that she informed Sujdowski that her husband had used CPAP for 10 years to treat his OSA.

At 7:30 a.m. the following day, Daley was noted to be "sleeping and snoring" with normal vitals. At 8 a.m. Daley was lethargic and arousable. By 9:10 a.m., it was noted that he was snoring, drooling and appeared to be unresponsive. Daley was given 0.4 mg of Narcan, with no response. He was then noted to be cyanotic, and respiratory therapy was called for. He proceeded to become pulseless, and a code blue was called, the lawyers said.

The time of Daley's cardiac arrest was noted at 9:22 a.m., which continued until 9:32 a.m. He received Narcan again, epinephrine and Atropine. He was intubated and transferred to the intensive care unit. A subsequent MRI confirmed he had a severe diffuse anoxic brain injury, they said.

Zaslow and Maggs said Daley had minimal neurological recovery from the injury and was eventually admitted to a long-term care facility. Daley required a feeding tube, was non-verbal and totally dependent on others for all activities of daily living for the next five years following his anoxic brain injury.

Daley died on May 21 from COVID-19 and complications from the brain injury he suffered.

The Daleys retained 16 experts who agreed that patients with sleep apnea are at increased risk of respiratory depression and distress, especially when receiving narcotics, which could reduce a patient's drive to breath because the drugs

act on the respiratory center in the brain. That risk is further increased when such patients do not receive CPAP and supplemental oxygen, the plaintiff's experts said, according to the lawyers.

"The legal strategy was to focus on how easily understandable it would be for a jury ... that people who have obstructive sleep apnea and who require CPAP must be provided CPAP or they are at increased risk for morbidity and mortality from medications, like opiates, that further depress the respiratory effort," said Zaslow and Maggs in an email. "Mr. Daley without CPAP was at extremely high risk for a deadly respiratory complication of that medication. Had Mr. Daley been using a CPAP machine it is likely that this mechanism of hypoxemia would have been completely eliminated."

Daley, who was survived by his wife and three adult children, was a full-time employee of New Jersey Natural Gas Co. He was a distribution mechanic for 16 years before retiring in 2015. An economic expert calculated his past and future lost wages to be \$969,672.

"Although no amount of money could ever be enough when someone loses a loved one, who happened to be a sublime husband and father, under the circumstances, the \$7 million recovery was fair and reasonable compensation under our law," said Zaslow and Maggs.

— *Suzette Parmley*