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Struggling Artist's Life Worth \$2.2M

*Verdict counters
conventional wisdom*

By **THOMAS B. SCHEFFEY**
Law Tribune Staff Writer

On Oct. 30, a Waterbury jury deliberated less than three hours before awarding the widow of a Portuguese artist \$2.2 million for his medical malpractice death, in a case that her lawyer says would never be brought if non-economic “caps” were law.

Connecticut, like several other states, is mulling the idea of imposing a maximum of \$250,000 on damages that aren't calculated on earnings, or other “hard” economic calculations.

Attorney Robert B. Adelman, who represented former factory worker Paulina dos Santos in the 1999 hospital death of her artist husband, Luiz, said, “This case would not be brought by any competent medical malpractice lawyer if there was a cap in place. She never would have gotten her day in court.”

Before the case began, Adelman said colleagues warned him that he was unlikely to get a high verdict in recession-plagued Waterbury. “I think times are tough there, and they appreciate the value of a dollar,” said Adelman, of Bridgeport's Adelman, Hirsch & Newman. “I was reading that the cost of a 30-second Superbowl commercial will be \$2.3 million. [It's] hard to say a human life is not worth that.”

The plaintiff had no economic expert, and the award was only based on pain, suffering and loss of life's enjoyment. A \$700,000 portion of the award was for the widow's loss

of consortium; \$1.5 million was for Luiz's losses.

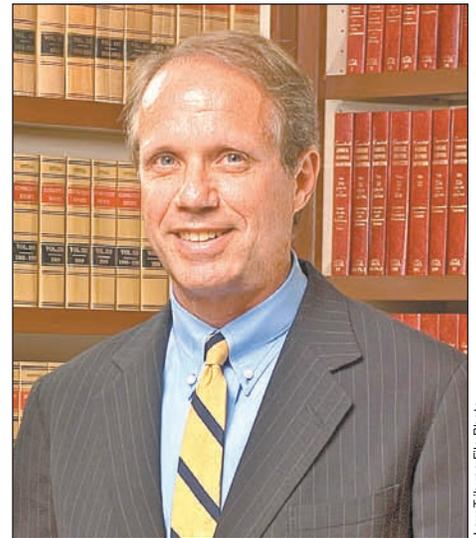
If a medical malpractice case were “capped” at \$250,000 in non-economic damages, Adelman explained, “If I lost I would get nothing, and if I won, it would be about \$80,000. I have many times that in lawyer time. So that even if I win, I lose.”

In this case, Adelman had no paychecks to talk about, so he told the jury a love story.

Paulina grew up poor in Portugal—so poor that of her nine siblings, only five survived. At the age of 9, she went to work as a housekeeper, and, at 15, entered a convent in the tiny town of Aldeia Nova do Cabo, and eventually became its mother superior. Luiz, at the age of 34, decided he wanted to pursue art and left Portugal for Paris in 1968. In 1977, he had a commission to paint the Pieta sculpture in Aldeia Nova do Cabo. In the six months he spent on the 9 by 9 foot canvas, he fell in love with Paulina. She left the order that year and migrated to the U.S., going to work for the Timex factory in Torrington. Luiz followed her in 1980, and they married.

Luiz awoke one night early in 1999 with abdominal pains. His doctor, Abdul Zarif, determined he needed gall bladder surgery. He clamped the bile duct as part of the removal process. “For reasons highly contested during trial,” said Adelman, “the clips didn't hold, and fell off. He developed a leak of bile into the abdomen.”

The jury had to weigh whether Luiz exhibited obvious symptoms of a bile leak. Ten days after the surgery, on Feb. 15, 1999, Paulina testified she told the doctor her husband was not eating and “is always in the bed.”



Law Tribune File Photo

Attorney Robert B. Adelman said his case would never have been brought if non-economic caps were law.

Adelman conceded that her English is not good. Dr. Zarif's chart reflected no notation of lack of eating or lethargy.

“Not eating equals anorexia, always in the bed equals lethargy—those are signs and symptoms that, 10 days after laparoscopic surgery, that's not normal,” said Adelman.

The defense, conducted by David J. Robertson of Bridgeport's Bai, Pollock, Blueweiss & Mulcahey, contended that no such symptoms were ever reported.

Robertson could not be reached by press time.

Adelman said Robertson's cross examination of the plaintiff's medical expert was “especially effective,” but the case turned on an issue of fact—whether symptoms were reported. “My client's testimony on that was, I thought, unshakable.” ■