

Federal Trial Courts

VERDICT: \$567,833 net (50/50), hotel guest stroke.

A Billings jury found that both Jeffrey Wojtowicz and Best Western Lupine Inn in Red Lodge were negligent and a cause of injury to him in connection with a stroke he suffered while a guest, and that, without considering any reduction due to his negligence, he suffered \$1,135,666 damages. It found that Wojtowicz and the hotel were each 50% negligent and at fault.

Wojtowicz, then 36, was driving home to Massachusetts after a week in Yellowstone Park when he checked into the Lupine Sunday evening, 6/4/00, for one night. He paid with a credit card. The hotel treated it as a final sale and Wojtowicz never authorized additional charges. He testified that he got up about 3 a.m. and was showering when he passed out. He said that when he came to he found himself sitting in the tub unable to move his right side and thought his leg muscles were cramping. He claimed, and the hotel disputed, that he was able to drag himself to lean against a bed before he again lost consciousness. Later that morning a maid asked if he needed maid service and he replied that he did not, believing that he was just suffering cramps and would be able to get dressed and continue his drive home. He testified that he was able to pull on his shorts and the

next thing he remembered is being wedged between the bed and bathroom wall, on his paralyzed right side, unable to move. He testified that the next contact he had with any employee was about 1 p.m. Thursday when a maid asked if he wanted maid service. He asked for help and the owner/manager called police. When the owner and officer went into the room they found him wedged between the bed and wall. Wojtowicz testified that he was found in the position that he had been in since Monday morning. That was consistent with histories taken by the EMTs, the doctor at the Red Lodge hospital, and the health care providers who flew with him to Billings. Defendant attempted to impeach that with evidence that his counsel had indicated in his 2/03 demand letter, complaint, and preliminary pretrial statement that he had lain in the bathroom for several days. Wojtowicz's testimony was also contrary to a history taken by a nurse at the Red Lodge hospital.

Neurologist Patrick Cahill concluded on 6/12/00 that Wojtowicz had suffered a stroke. He testified that his exam disclosed several pressure injuries along his right side, and concluded that he had lain on his right side, unable to move even from side to side, for at least 48 hours before being found. According to Defendant, Cahill reduced that to 12-24 hours on cross; according to Wojtowicz, Cahill repeatedly said that the medical evidence established that he had been unable to move for a minimum of 24 hours and more probably 48 hours or more. Cahill opined that his permanent disabilities were 50% worse (according to Plaintiff) or 30-50% worse (according to Defendant) than had he received treatment 24 hours after the stroke, and that he would have been able to return to his rural mail carrier job had he received treatment within that time. The hotel did not argue that Cahill's treatment of Wojtowicz was inappropriate, but disputed his opinions on recovery.

It was undisputed that Wojtowicz could speak, although the stroke slightly altered his speech. He admitted that he did not call out for help until Thursday because he did not believe he needed it. The evidence conflicted as to the degree to which he could move about the room. Doctors reported in their records that he watched TV for several days in the room. It was undisputed that he could not reach the phone from where he was found, but it was disputed as to the length of time he was in that location. The primary dispute regarding the hotel's contact with him was whether he was able to reach the phone and speak with hotel employees and the owner. The owner testified that personnel talked to him by phone Monday afternoon, Tuesday through the door, and twice on the phone Wednesday. However, the employee that the owner claimed had talked to him on Tuesday denied that she had any conversations with him that day. The first responders and ER personnel indicated that he was oriented as to name, place, and location and could respond orally to all their inquiries. His mother, father, and girlfriend testified that they had 3 conversations with the owner within 2 days of when he was found. According to Plaintiff, the owner told them the staff had not

checked on him because it was assumed he was binging on drugs & alcohol. According to Defendant, it was alleged that the owner told them "people" binge on drugs & alcohol. The owner denied those conversations and said he would not have made such a statement. Wojtowicz admitted drinking at bars after checking in but no evidence was found that he had consumed drugs or alcohol while in the room. There was no contention that the Lupine caused the stroke, and no expert testimony that it violated any rules or standards or that its practices on checking on rooms were unreasonable.

Wojtowicz acknowledged that he had experienced right arm numbness prior to the stroke but did not seek medical attention. He walks with a limp, has right arm spasms, continues to need care, and is unable to return to work. He incurred \$200,000+ medicals.

Plaintiff's expert: neurologist Patrick Cahill, Billings.

Defendant's experts: none. (Defendant contended that opposing medical testimony was admitted through Plaintiff's video deposition of U. Mass. Hospital stroke specialist Jane Sargent, who treated Wojtowicz since 4/03.)

Demand, \$600,000; offer, \$105,000. Charles Cashmore, mediator. Jury request, \$2,271,332; jury suggestion, 0.

Jury deliberated 5 hours 4th day; Judge Cebull.

Wojtowicz v. Qu'Appelle Holdings (Best Western Lupine Inn), CV 03-52-BLG, 9/29/05.

L.B. Cozzens & Steven Harman (Cozzens, Harman, Warren, Harris & Odegaard), Billings, for Wojtowicz; James Halverson & William Gilbert (Halverson & Gilbert), Billings, for Qu'Appelle.