

# SOUTH CAROLINA LAWYERS WEEKLY

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*Plaintiff opts to settle moments before jury returns award of \$29 million*

## ONE THAT GOT AWAY

### ■ PHILLIP BANTZ

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Russell Reynolds had sat through three weeks of graphic and painful testimony detailing the suffering that his mother endured at a South Carolina nursing home before she died. As the jury neared its fourth hour of deliberations, he had to make a tough decision.

The nursing home had upped its settlement offer to an amount that Reynolds found acceptable. He could either take the deal or take his chances with a jury in Oconee County, where jurors tend to be conservative with awards.

Reynolds was ready for a definitive end – no more lawyers, no more courtrooms, and no post-trial motions or protracted appeals.

“He wanted the settlement,” said one of Reynolds’ attorneys, Gary Poliakoff of Poliakoff & Associates in Spartanburg. Poliakoff was telling an attorney for the nursing home that Reynolds was prepared to take the deal when a bailiff opened the courtroom door, stuck his head out into the hallway and announced that the jury had reached a verdict.

It was just before 8 p.m. on Friday, Oct. 3.

Poliakoff said he asked Reynolds again if he wanted to settle. He did. Everyone filed back into court, and the attorneys informed Judge Cordell Maddox that the case had been resolved. Maddox approved the deal, but he wanted to know what the jury decided before he sent them home.

When Maddox returned from the jury room he pointed at Poliakoff and said, “You don’t want to know.” Then he called all the attorneys back to his chambers and showed them the verdict form signed by the jury foreman.

The jury had awarded Reynolds \$4 million in ac-

tual damages and hit the nursing home with \$25 million in punitive damages. The \$29 million verdict would have been the largest jury award in the history of Oconee County.

“Everybody was blown away by the amount – the plaintiff’s lawyers, the defense lawyers, the clients on both sides,” Poliakoff said. “I’m certain that the defense attorneys and defendants were highly relieved that the case settled.”

The settlement that Reynolds received from the Seneca Health and Rehabilitation Center nursing home and its parent corporation, SavaSeniorCare, is confidential. But Poliakoff said the amount was “significantly less” than the verdict.

### A voice for the neglected

Reynolds’ mother, Dorothy, entered the Seneca nursing home in June 2010, after having a mastectomy. When she was transferred to a nearby hospital six months later she was malnourished, dehydrated, and had a gaping bedsore wound that penetrated to her tailbone. She died in late January 2011 at age 88.

Poliakoff and his co-counsel, Kenneth Connor of Connor & Connor in Aiken, alleged that the nursing home staff had left Dorothy Reynolds lying in dirty diapers for extended periods of time while she was heavily medicated.

“I’ve tried these cases from Florida to California,” Connor said. “The way America treats its elderly in long-term care facilities is really scandalous. If this happened at Abu Ghraib or Guantanamo the headlines would have been a foot high. Yet this happens on a daily basis throughout the country to the most frail, most vulnerable group of people in our society.”

Connor and Poliakoff also argued that the nursing home was liable for unfair and deceptive trade practices because its operators had intentionally understaffed the facility. One of Reynolds’ experts determined that the home was overbilling Medicaid and Medicare for bogus staffing expenses.

“Staffing was at roughly 60 percent of what the

facility was billing the government for,” Poliakoff said. “If staffing is short, that allows for greater profit but it certainly affects patient care.”

Connor believes that the jury wanted to send a message. He added that the suit was the only way to bring Dorothy Reynolds’ story to light.

“This, I think, demonstrates the importance of the civil justice system,” he added. “It is the one medium in which the voices of these people can be heard.”

An attorney for the nursing home, Lori Proctor of Houston, contended that Reynolds was malnourished and dehydrated because she was dying of cancer. She said a defense expert testified that Reynolds’ cancer also caused her to develop the bedsore.

According to Proctor, Maddox said he would have declared a mistrial after reading the verdict because the jurors had, in a highly unusual move, tried to allocate a portion of the award to the attorneys on both sides – apparently because they liked the lawyers.

However, Connor disputes that ever happened.

“There’s nothing from the verdict form that says that,” he said. “I never heard the judge say he was going to declare a mistrial, ever.”

### Goodbye to \$11.6M in fees

Poliakoff and Connor had a 40 percent contingent fee with Reynolds and could have collected \$11.6 million from the jury award if he had rejected the settlement offer and the verdict was upheld, according to Poliakoff.

Poliakoff and Connor stressed that Reynolds made the decision to settle. They also said that Reynolds obtained the closure he wanted and was satisfied with the settlement.

“Our clients decide. We recommend,” Connor said. “Any time a lawyer takes that decision away I think they overstep their bounds. I certainly don’t have any regrets in that regard.”

Asked if the case would keep him awake at night, Poliakoff said, “It just makes me want to try another one.”

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**Kenneth Connor**



**Gary Poliakoff**

## SETTLEMENT REPORT

### NURSING HOME NEGLECT

**Case name:** *Reynolds v. SSC Seneca Operating Company, et al.*

**Court:** Oconee County Court of Common Pleas

**Date of settlement and verdict:** Oct. 3

**Amount:** Confidential settlement reached before \$29 million verdict

**Attorneys for plaintiff:** Gary Poliakoff and Raymond Mullman Jr. of Poliakoff & Associates, Spartanburg; and Kenneth Connor and Camille Godwin of Connor & Connor, Aiken

**Attorneys for defendants:** Lori Proctor, Houston; Jay Davis and Perry Buckner of Young Clement Rivers, Charleston