


Petaluma memory care company hit with \$20 million judgment

The \$20 million award included \$17.5 million in punitive damages in a civil lawsuit that accused the facility of elder neglect, negligence and wrongful death. The award is one of the largest Sonoma County verdicts in decades. |  12



SLIDE 1 OF 5

Kellie Tennier with her sons Parker, left, and Perry, right, in the living room of her Sebastopol home. Tennier's mother, Theresa Donahue, died about a year after her fourth fall at MuirWoods Memory Care. The family sued MuirWoods and its corporate owners, MBK Senior Living, and won a \$20.5 million judgment. (Chad Surmick / The Press Democrat)

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The first fall [Theresa Donahue](#) endured at MuirWoods Memory Care, on Jan. 15, 2021, left her with a significant bruise on her buttocks. The second, a month and a half later, resulted in a large hematoma — a swollen pooling of blood — at the back of the 84-year-old woman's head.

The third fall on March 18 left Donahue on the floor, her family said, hopelessly waiting for help before crawling to her roommate's empty bed to pull a blanket over herself to keep warm. The fourth and final fall came two days later, after the family had made plans to move her out of the Petaluma assisted living facility, and left her with a fractured hip.

Donahue never fully recovered from surgery, became bedridden, went into steep mental and physical decline, and died almost a year later.

In April, a Sonoma County jury awarded Donahue's family \$20.5 million, including \$17 million in punitive damages, in a civil lawsuit that accused the facility of elder neglect, negligence and wrongful death. The award is one of the [largest Sonoma County verdicts in decades](#).

Donahue's experience provides a cautionary tale, experts and family members say, about the quality of care in barely regulated, for-profit assisted living facilities.

Attorneys for MBK Senior Living, the owner of the facility, petitioned Sonoma County Superior Court Judge Oscar Pardo to order a new trial. Pardo rejected that motion July 25.

"We are disappointed with the verdict and are currently reviewing the decision," MBK Senior Living said in a statement forwarded by a company spokesperson. "We remain steadfast in our commitment to providing quality service to seniors and their families."

Lack of staffing, training

Kellie Tennier, one of Donahue's four children and her only daughter, said she'd never sued anyone before. But she and her brother Ray Donahue did just that in June 2022. Their civil complaint against MuirWoods cited the facility's failure to apply meaningful interventions after any of Donahue's first three falls.

“MuirWoods has a 45-page fall-prevention policy. It came out during our case that the head of clinical care didn’t know that policy existed,” said Karman Guadagni, who is representing the Donahue family as an attorney with San Francisco-based Stebner Gertler Guadagni & Kawamoto. “There’s a beautiful decision tree. But none of those were done.”

The lawsuit also alleges deeper deficiencies, such as inadequate levels of staffing and training that enabled neglect and created a dangerous environment for the memory care center’s vulnerable residents — fueled in part by “the focus on increasing profits.”

MBK Senior Living offered its “deepest condolences” to Donahue’s loved ones in its statement. The company also insisted its policies and training regimen align with state and federal guidelines.

“At MBK Senior Living, the well-being of all residents in our care remains at the forefront of what we do,” the company wrote. “Our care policies come from deep industry-experience, are developed in partnership with experts in the senior living, nursing and medical fields, and are reviewed by our national medical director. Our staff receive ongoing and regular training, including in direct care, as well as fall response and management.”

Industry lacks standards

Elder care advocates say the accusations of poor care and neglect at MuirWoods are not uncommon at assisted living facilities. They also say these problems are most pronounced at facilities owned and operated by large financial interests such as real estate and private equity firms.

Unlike skilled nursing homes, assisted living centers are not considered medical facilities and are not regulated as such. Advocates say that as a result, some owners treat them as cash cows with little meaningful government oversight.

“There’s no real standard for staffing in the facilities, and that’s a big problem,” said Tony Chicotel, a staff attorney at California Advocates for Nursing Home Reform.

Chicotel said the only staffing requirement for assisted living facilities in California is that, depending on the size of the home, the “nighttime staff person” must be conscious.

“That’s it. It’s just about whether the person who’s taking care of the residents at night can sleep or has to be awake,” Chicotel said.

A happy start

Tennier said she first heard about MuirWoods Memory Care through a friend whose mother was living there.

Donahue was in good spirits during her early months at Muirwoods, Tennier said. But Tennier wasn’t getting the full picture. Donahue moved into MuirWoods in July 2020. COVID-related restrictions had the place locked down, and mother and daughter could only meet outside.

When Tennier was finally allowed to enter the building that November, she said, the red flags were everywhere.

Donahue’s room was dirty, her bedding never changed, according to Tennier. Donahue wasn’t being showered regularly. There were often no hand towels or toilet paper in her unit. At some point, Tennier noticed staff was delivering Donahue’s lunch not on a plate, but on a napkin.

The complaint states that state investigators, during an inspection back in 2018, “had observed ... that toilets were not flushed, dry feces on toilet seats and dirty sinks in residents’ bathrooms.”

Upon visiting, Tennier said, she’d walk down the hallway to a linen closet and retrieve fresh sheets to make her mom’s bed. She would help Theresa into the shower and do the bathing herself.

Tennier said she complained about her mother’s care to the on-site managers. They responded by instructing Tennier to call the facility before visiting, she said. A staff member later told her the managers would call a meeting before her arrival, to make sure Donahue and her room were cleaned up.

Falling down

The first time Theresa Donahue fell, she was being pushed in her wheelchair over uneven flooring. A month and a half after, on March 1, 2021, a staff member at MuirWoods found Donahue on the floor in front of her bed; she had fallen while unattended.

After the third fall, on March 18 of that year, Tennier had seen enough. She resolved to remove her mother immediately from MuirWoods and found an available bed at a small board-and-care home. That was on a Thursday. Tennier was scheduled to move Donahue on Sunday, but she never got the chance.

On Saturday, Donahue fell a fourth time, again while walking without assistance. As the family alleges, though Donahue was “screaming in pain,” staff members did not transfer her to the hospital until Tennier arrived and demanded it. There, Donahue was diagnosed with a fractured hip and underwent

surgery.

There were other problems, according to the lawsuit and interviews. Tennier believed her mother had scabies, an itchy rash caused by a burrowing mite. MuirWoods officials denied it until Tennier convinced them to send Donahue to a dermatologist; the doctor wrote her a prescription for scabies.

Two months after Donahue left the site for good, MuirWoods contacted Sonoma County Public Health to report a scabies outbreak, according to an investigative report by the Community Care Licensing Division, which is part of the California Department of Social Services.

Complicated corporate ownership

MuirWoods Memory Care, MBK Senior Living and associated business entities were found liable for negligence and elder neglect, according to a May 5 court order detailing the jury verdicts. The jurors were asked specifically whether they found the owners acted “with recklessness, malice, fraud or oppression?”

The jury responded “yes” to recklessness and oppression but “no” to malice and fraud.

Guadagni, in an email, said the legal definition of “oppression” means the defendants’ conduct “was despicable and subjected Theresa Donahue to cruel and unjust hardship in knowing disregard of [his/her/its/their] rights.”

Malice, she said, requires intent. Guadagni said the jury’s decision represents the belief that the defendants knew the harmful risks of understaffing, inadequate staff training and management, and that they disregarded those risks and chose to continue operating without making necessary changes.

In petitioning for a new trial, defense lawyers blamed the pandemic, not a lack of caring, for the workforce shortages.

“Ms. Donahue resided at MuirWoods during the height of the COVID-19 pandemic,” they wrote in a June 20 memo to Judge Pardo. “During that time, there were well-documented staffing shortages throughout the long-term care industry in California and the entire United States.”

As Pamela Hardesty, MBK Senior Living’s regional director of operations, testified, “It was horrifying. It was a terrible time. I think I worked 20-hour days supporting my communities. MuirWoods, the same thing. All of our communities were working as quickly as they can to follow ... the state regulations that change daily. Following the CDC guidelines.”

The legal entities that were sued in this case were the facility itself, MuirWoods MSL LLC; MBK Senior Living LLC, the facility’s parent company and owner; and MSL Community Management LLC, the management company that ran the facility.

Such multiprong business arrangements are common among large corporate owners of assisted living facilities, senior advocates said.

MBK Senior Living is owned by MBK Real Estate, a developer and investor of senior living communities, multifamily residential and industrial real estate properties. MBK Real Estate is a wholly owned subsidiary of Mitsui & Co., Ltd, a global Fortune 500 company.

Inadequate staffing, training

The plaintiffs don’t blame the hands-on employees at MuirWoods for Theresa Donahue’s decline and death. “They’re victims of the system, too,” Guadagni said.

That became evident to Tennier one day when she was hanging out in Theresa’s room at MuirWoods. One of the caregivers entered, shut the door behind her and informed Tennier she was quitting. Tennier visited her mom almost every day, but she had never met this employee and was surprised at her candor. “I don’t like how they treat my people,” the woman told her, patting her heart as she said it, according to Tennier.

“I think they were trying their hardest,” she reflected. “From what I understand, there was only four caregivers when my mom was there.”

In August 2021, state investigators reported a similar finding. The state licensing division found that, “Facility has 4 caregivers at AM & PM shift for 39 residents.”

On Aug. 31 of that year, as the state inspectors were gathered in the MuirWoods office waiting for staff to close that complaint investigation, a resident entered the room asking for help. The resident “had a shirt on, no pants, and a heavy diaper,” according to the investigation report.

The report states that the older person “urinated at the conference room door. (The inspector) walked with resident to medication room. There was no staff from conference room to dining room/medication room.”

The investigation found that the “facility has insufficient staffing to meet resident’s need.”

Tennier’s legal team couldn’t confirm specific staffing levels, because MuirWoods destroyed records from that period, according to Guadagni.

Her firm filed the lawsuit just a couple weeks after Donahue’s final fall, and quickly sent a “preservation of evidence” letter to MBK’s legal team, asking them to save all documentation relevant to the case, such as staff schedules and assignment sheets. When the plaintiffs asked for that material during the discovery process, MBK Senior Living responded that it had been destroyed, Guadagni said.

MuirWoods wasn’t the only assisted living facility having trouble retaining staff during the pandemic. The problem was rampant in the industry. But Tennier noticed it wasn’t preventing MuirWoods from bringing in new residents at a steady pace.

“Although they said they didn’t have any control over the situation because of the pandemic, they really did have a lot of choices along the way,” Guadagni said. “Choices to tell the family members what was going on, choices to keep accepting new residents even though they knew they didn’t have enough staff, choices to have management absent from the facility and not send in outside help.”

‘Inexorable march toward death’

When the trial began, MBK’s overarching defense, according to Guadagni, was that Donahue was in poor condition and likely to have died even with the best care. The plaintiffs acknowledged Donahue had dementia and health issues. But they insist the final fall and fracture presented an acute trauma to her system.

“The defense’s expert said that prior to any of the falls, Theresa Donahue, because of her dementia was just on the road to, as she said, ‘the inexorable march toward death.’ That was her phrase and she repeated that a lot of times in the trial,” Guadagni said. “I wasn’t on the jury, but that’s a pretty extreme position from a human perspective.”

The attorney also believes MBK Senior Living slow-walked the legal process.

When the plaintiffs filed their lawsuit against MuirWoods in June 2022, they asked the court to expedite the proceedings. That should have started the clock on a 120-day run-up to the trial, as any plaintiff over the age of 70 is legally entitled to, according to Guadagni. But MBK Senior Living appealed an arbitration agreement, and it would be almost two years before the jury rendered its judgment against the company.

By that time, Theresa Donahue had died.

The financial judgment offered some vindication to her family, but they remain bitter about the environment of neglect that contributed to Theresa’s death — a situation they now believe is common in assisted living facilities that prioritize profits over resident care.

“We need those places, unfortunately,” Tennier said. “But pay attention when you walk in there. Pay attention to everything.”

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