

BERMAN & RIEDEL, LLP

ATTORNEYS AT LAW

Practicing throughout the State of California

Fall 2005

*Courtesy of
Berman & Riedel, LLP*

Areas of Practice:

- Serious Personal Injury
- Wrongful Death
- Nursing Home Litigation
- Construction Site Accidents
- Automobile/Motorcycle
- Products Liability
- Burn Injuries
- Slip & Fall

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Misrepresentation Leads to Broken Hip, Results in \$1,000,000.00 Settlement

Michele, the daughter of 76-year-old Irene, diligently researched several local care facilities when her mother's health declined to a point where she needed living assistance. In an effort to find the right place, Michele looked into several different care facilities, taking tours of the facilities and meeting with their directors and staff. When she found a place that looked nice, a facility that stated it could meet all of her mother's needs, she even agreed to pay additional fees for her mother to receive top level "enhanced services" to ensure that she would be properly cared for in her elder years. After such extensive research, how then is it possible that Irene was neglected to the point of suffering at least six falls, a severely broken hip, and several decubitus ulcers while residing at the facility?

This is what Michele asked the director and staff of a Southern California Residential Care Facility for the Elderly ("RCFE") when her mother was severely neglected after top level administration had assured her that her mother would receive "great enhanced care" by its "team of nurses" who provided "24-hour care." Unbeknownst to Michele, the facility did not even employ the services of licensed nurses at its RCFE.

Key administration of the Southern California RCFE falsely led Michele to believe that the facility would provide her mother the best possible care money could buy. Unfortunately, this false sense of security led Michele to place her trust in the facility's administration and staff.

During a pre-admission tour of the facility, the Executive Director assured Michele that the facility could meet her mother's needs because they had a "great team of nurses" who would provide "great enhanced care" to residents with special needs, such as Irene. Because the facility appeared professional and reputable, Michele authorized the facility to assess her Mother's needs in order to determine whether they could be met appropriately.

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Michele and her mother, Irene.

Berman & Riedel, LLP Clients Receive Consumer Award for Raising Elder Abuse Awareness

Berman & Riedel, LLP is honored to announce that its clients, Sheila and Robert Schlichter, have received the Consumer Activist Award from Consumer Attorneys of California for their efforts to raise awareness of elder abuse and neglect. The award honors consumers who have made significant contributions to change the law in order to help others despite the personal losses and painful experiences they have suffered.

The Schlichters came to Attorney William M. Berman during the first year of his career with a harrowing story about Sheila's mother, Lorraine Konblett, who was severely neglected while a resident of a residential care facility for the elderly. Mrs. Konblett repeatedly requested assistance when she was violently ill with vomiting. Not only were her calls for help ignored, but the night superior instructed another staff member to tie up Mrs. Konblett's call cord out of reach so that she would not bother them by summoning assistance to her room. The staff member tied up the call cord, unplugged her private phone, pushed her wheelchair away from her bed, walked out of the room, and closed the door. Mrs. Konblett was found hours later lying on the floor of her room, choking in a pool of vomit. She fell into a coma and died from aspiration pneumonia.

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Misrepresentation *(Continued)*

During the assessment, the RCFE specifically learned of all the ailments affecting Irene, including her total blindness, her need to be fed through a G-tube, and her potential as a high fall risk resident. After learning these needs, the facility's administration informed Michele that her mother was appropriate for placement and residency at the facility. Two days after the evaluation and following several persuading discussions with the facility's Executive Director and Director of Resident Services, Michele admitted her mother into the RCFE.

Irene was not only totally dependent on the facility's staff for daily activities, but she was also completely dependent on staff for her health, safety, and well-being, a responsibility the administrative staff assured Michele they were capable of satisfying, given their in-depth evaluation of Irene before admission. Based upon their own assessment, Irene was deemed to require the top level of care and Michele agreed to pay significant additional fees for the facility's "enhanced services."

Despite the fact that the facility had identified Irene as being a high risk for falling, just days after her admission to the facility she fell from her bed. In all, during the six months from March to October, 2003, Irene fell at least six times. In a direct effort to cover up their neglect, the facility failed to give notice to Michele or to Irene's primary-care physician each and every time she fell. The facility also failed to take appropriate measures to devise and implement a care plan to prevent further fall incidents from occurring. On the sixth fall, she severely broke her hip, a fracture that required reparative surgery.

After undergoing emergency surgery to repair her broken hip – which Michele believed was the result of an isolated fall incident – the Executive Director of the facility assured Michele that Irene would be well cared for upon her return to the facility, and Michele believed that her mother was indeed receiving the best possible care money could buy. Unbeknownst to her, due to the facility's understaffing, Irene was not even receiving proper "basic care." Unaware that this was a pattern of problems within the facility, Michele returned her mother to the facility.

After Irene's return to the facility, the under-staffing situation continued to degrade to the point that she was even further neglected, being left in her bed for unknown amounts of time without being moved

or re-positioned. As a result, she suffered numerous decubitus ulcers (bed sores), all of which caused severe pain and required specialized medical care. However, the staff did not follow her physicians' instructions in caring for the ulcers, causing them to worsen until they ultimately progressed to Stage III classification. It was at this point that Michele removed her mother from the facility, thereafter retaining legal counsel.

During litigation, it was uncovered that the facility's lack of care for Irene was not an isolated event, but rather the inevitable result of defendants' fraudulent misrepresentations and conscious disregard for the health, safety, and welfare of its residents. The problem was systemic in that the facility was not only understaffed, but the minimal staff that was on duty was entirely untrained and unqualified to provide proper wound care. In addition, the acting ownership and administration failed to properly train its staff to ensure compliance with *Title XXII of the California Code of Regulations* in a direct effort to minimize expenses and increase profits. As such, the care and attention rendered to the residents of the facility was secondary to the overall goal of defendants to maximize their profits. Despite express representations that had been made by the facility, the RCFE failed to provide Irene the promised level of care she not only needed, but more importantly paid to receive.

Over the period of nine months, attorney William M. Berman aggressively litigated Irene's case against the RCFE and its managing agents. After uncovering many acts of wrongdoing, Mr. Berman, on behalf of his clients, succeeded in obtaining a settlement for the full limits of defendants' insurance policy, an amount of \$1,000,000.00.

Miraculously, Irene has made a full recovery. Today, she resides in a different RCFE, where she is in good health and doing extremely well. Through this experience, Michele learned that even in a beautiful care facility, our elders can be severely neglected. Because Michele now has the invaluable knowledge of the ability of RCFE administrative staff to lie and mislead in order to profit from innocent trusting families, she uses her newfound awareness to dissect the actions of the facility in which her mother currently resides to ensure that she is being provided the proper care she rightfully deserves. ★

Consumer Award *(Continued)*

Throughout the litigation of their case the Schlichters demonstrated remarkable courage in fighting the care facility, and did so to honor the memory of Lorraine Konblett. Despite the facility's best efforts to hide information, as well as the identities of current and former staff who had information that was devastating to their defense of the case, the Schlichters held strong to the belief that justice would be done and they trusted Attorney Berman to uncover the truth. Buoyed by his clients' faith in him, Attorney Berman, whom Sheila described as a "tenacious bulldog" when it came to their case, was able to track down former staff members who were fired immediately after the incident. He also uncovered information indicating that it was the Director of the facility who had instructed a care giver to tie up Mrs. Konblett's call cord and leave the sick woman to die in a pool of her own vomit.

Following nearly one year of contentious litigation, Attorney Berman obtained a \$2,200,000.00 settlement against the facility, a settlement which was lauded as one of the highest ever reported cases against a California-based residential care facility for the elderly. During the settlement process, the Schlichters refused to accept a secrecy agreement which was demanded by defense lawyers as part of the settlement. It

was very important to Sheila Schlichter that the details of what happened to her mother be made available to the public to raise awareness of elder abuse and neglect so that nursing homes and care facilities could not hide their patterns of abuse and neglect behind secrecy agreements signed upon the offering of monetary settlement.

Because of the Schlichters' brave stance, the result of this unprecedented settlement was published in numerous newspapers and legal journals. The Schlichters' efforts also led to the successful passage of legislation last year, *California Code of Civil Procedure §2017.310*, which prohibit secret settlements in elder abuse cases. They shared their heartbreaking story with the California State Legislature, who voted overwhelmingly in favor of the anti-secrecy bill. ★



Sheila and Robert Schlichter.

October is National Breast Cancer Awareness Month

This year in the United States over 200,000 new cases of invasive breast cancer will be diagnosed, including an astounding 20,000 Californians. And unfortunately, this year over 40,000 women and men across the country will lose their battle with breast cancer.

While breast cancer is largely unpreventable, there are several things you can do to detect it during the early stages, when it is most treatable and curable. According to the American Cancer Society, a person who is diagnosed with breast cancer in the earliest stage has a 95% chance of surviving the disease five years after the initial diagnosis. Therefore it is critical for both women and men to take charge of their health and learn what they can do to catch breast cancer before it has a chance to progress.

Monthly breast self exams are a key factor in recognizing changes in your body. Instructions for how to perform a monthly breast exam yourself can be found by visiting www.monthlybreastexam.org. In addition to self exams, both men and women should visit their health care providers at least once per year for a thorough physical examination, as well as to take advantage of screening tools which assist doctors in diagnosing breast cancer.

Mammography screening is the single most effective method of early detection, and the sooner breast cancer is detected, the less likely a person will need highly invasive and uncomfortable treatment. Because of significant progress in mammography technology in recent years, physicians are able to diagnose breast cancer earlier and better treat the disease, making breast cancer survivors the largest group of cancer survivors.

There are a variety of organizations which can help people with limited financial means and/or insurance coverage to get the proper medical diagnosis and treatment necessary for breast cancer. For more information about such organizations in California, visit the California State Department of Health Services website at www.dhs.ca.gov.

October is National Breast Cancer Awareness Month, and throughout the month of October there will be several events in San Diego County and throughout the United States to raise awareness and much-needed funding for breast cancer research and treatment. Lee National Denim Day®, will take place this year on Friday, October 7. Each year Lee® Jeans invites organizations nationwide to participate by allowing proud supporters to don their denim and pink ribbon pins

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Recent Results of Interest

Elder Abuse/Neglect — Wrongful death of an 86-year-old patient at a skilled nursing facility. Upon admittance to the facility the patient was assessed and the facility determined that she would be completely dependent on facility staff for her health, safety and all daily activities. However, the facility not only failed to meet her basic needs, but while the patient was under the facility's care she suffered a left knee fracture, bilateral tibia fracture, and developed several decubitus ulcers (bed sores). Moreover, at several times following the formation of the decubitus ulcers, the patient was found by her children lying in her own feces and urine. Despite the fact that her children raised this issue with the administration on numerous occasions, her care did not improve. The facility's own records indicated a lack of attention to her basic hygiene needs, including documentation of failing to provide her a bath or shower for two weeks or more on several occasions. Further, though the facility did take note of her decubitus ulcers, it did nothing to treat them. After being left untreated for over four months one progressed to Stage IV. Despite repeated assurances to the patient's family that the care given to the patient was standard and adequate, the family requested to move the patient to a different facility for wound care and treatment. Unbelievably, the skilled nursing facility refused to transfer the patient. After numerous demands, the patient was finally transferred to a hospital, but the effects of the abuse and neglect were too severe to be reversed and the patient died of sepsis several days later. *Berman & Riedel, LLP*, was able to obtain a \$350,000.00 settlement at mediation from the self-insured facility.

Elder Neglect Committed by Southern California RCFE — \$1,000,000.00 settlement obtained on behalf of 76-year-old Resident of Southern California RCFE; *See full story on Front Page.*

Elder Abuse/Neglect — Wrongful death of an 85-year-old man. While recovering at a 24-hour skilled nursing facility following cancer surgery, the patient experienced difficulty chewing and swallowing. Within days of his admission, the patient began exhibiting symptoms of dehydration and infection that went unreported. The facility not only failed to attend to his needs, of which they were well aware, but they further failed to

report critical changes in his medical condition to his physician or family. The facility's failure to act caused the patient to develop a raging infection, and ultimately led to his death eight days after his admission into the facility. Notwithstanding the \$250,000.00 limits placed upon wrongful death actions against healthcare providers including skilled nursing facilities, *Berman & Riedel, LLP*, was able to obtain settlement in the amount of \$300,000.00 for his wife by demonstrating that the facility's failure in not reporting the critical change of the patient's condition was more than mere negligence, and rose to the level of recklessness.

Auto v. Truck Accident — While driving on a San Marcos street, a 34-year-old mother and her two young children were struck by a truck/cement mixer driven by an employee of a construction company. The plaintiff driver suffered multiple injuries, including a concussion and a large laceration to her arm. She was immediately transported to a local trauma hospital where surgery was performed to repair the laceration. Her children also suffered injuries including bruising, swelling and lacerations to their arms and legs. After protracted litigation, *Berman & Riedel, LLP*, was able to obtain a \$144,000.00 settlement on behalf of plaintiff and her minor children.

Auto Accident/Rear-End Collision — A 35-year old woman was driving with her husband on Highway 76 in North County San Diego when she was rear-ended by defendant. At the time of the incident, plaintiff's vehicle was properly stopped at a red light at the intersection of Highway 76 and Fousset Road when defendant, who admittedly was not paying attention to traffic conditions around him, struck plaintiff's vehicle from behind while driving at a high rate of speed. Although the plaintiff driver was fortunate to have suffered only minor soft-tissue injuries, her husband, who had turned to look behind him when he heard the defendant's brakes squeal, suffered severe injuries to his neck and back, including a herniated disk which required surgery. *Berman & Riedel, LLP*, made a policy limits demand of \$50,000.00, which defendant's insurance company immediately accepted. ★

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Newsletter/Advertisement For Marketing Purposes

Disclaimer: The receipt of this Newsletter is not intended in any way to form an attorney-client relationship. Furthermore, this Newsletter and its articles are not intended to constitute legal advice, but rather, are provided for informational purposes only. Should you have any legal questions arising from the materials contained herein, please feel free to contact an attorney with the firm Berman & Riedel, LLP.

Breast Cancer *(Continued)*

in exchange for a \$5.00 donation to the Susan G. Komen Breast Cancer Foundation, the nation's largest breast cancer organization which over the past 20 years has raised over \$750 million. One hundred percent of every dollar raised through Lee National Denim Day® goes directly to the Komen Foundation to support breast cancer research and community outreach programs. For more information about Lee National Denim Day® visit www.denimday.com.

The San Diego Breast Cancer 3-Day Walk, benefitting the Susan G. Komen Breast Cancer Foundation and the National Philanthropic Fund, is taking place on October 14, 15, and 16. Each participant must earn the honor of walking in the event by raising at least \$2,100.00. Over the course of three days the walkers will cover 60 miles of San Diego streets, ending on the third day in downtown's Embarcadero Park with the beautiful and emotional closing ceremonies. Firm Partner Kelley Riedel participated in the San Diego 3-Day Walk in October 2004 with three of her friends, raising over \$12,000.00 between the four of them.

Due to overwhelming response, the 2005 San Diego 3-Day Walk has closed registration for walkers and volunteers. However, we encourage you to honk your horn or even stop to congratulate the walkers when you see them on the 20-mile route. Employees of *Berman & Riedel, LLP* will be out on Friday, October 14, near the firm office in Del Mar to cheer on the walkers. For more information or to make a donation to the 3-Day Organization, visit www.the3day.org.

The San Diego Susan G. Komen Foundation is also sponsoring the 2005 Race for the Cure on Sunday, November 6, in Balboa Park. The events begin at 8:00 a.m., including a 5k Run/Walk, a Senior (65+) 5k Run/Walk and a kids event. For more information call the San Diego Komen Foundation at (760) 692-2900 or log onto www.sdkomen.org. ★



From left: Firm Partner Kelley Riedel & friends Jocelyn Hadley, Lindsay St. Clair & Mary Sanchez-Roberts during the 2004 Breast Cancer 3-Day Walk.

We Appreciate Your Referrals

We would like to express our sincere gratitude to the many of you who continue to refer your friends and family to our office for legal representation.

Thank you.

We take pride in knowing that you have confidence in our ability to represent those in need. Let us assure you that we will continue to fight vigorously for the rights of our clients.