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CLOSING STATEMENT



THE RIGHT CAUSE

Jenner & Block pro bono team comes through for dying inmate and his family

BY JOHN MCNALLY

Jenner & Block partner and firm chairman Craig Martin knew William Kent Dean's federal pro bono case against Wexford Health Sources needed a battery of strong lawyers. He's thankful to have a deep and passionate roster within his firm's walls, especially for pro bono cases.

"All of us believe there is a responsibility that comes along with the privilege of practicing law," Martin said. "We believe we have an obligation to do these types of cases as lawyers. That's part of our DNA as lawyers."

After being appointed to Dean's case in 2017 — *Dean v. Wexford Health Sources, et al.* — Martin tabbed fellow partner Joel Pelz and associates William Strom, Chloe Holt and Nathaniel Wackman to assist him. Paralegals Eric Herling, Dan Rooney and Kevin Garcia also helped on the case. They all quickly got to work.

"After we took the case, we basically amended the complaint because it was a pro se," Martin said. "We amended the complaint to articulate the claims we wanted to articulate, which were the two Eighth Amendment complaints and the institutional negligence complaints."

Dean, who has terminal stage 4 metastatic kidney cancer, was (and continues to be) imprisoned in the Taylorville Correctional Center in central Illinois, started showing signs of serious illness while incarcerated in late 2015. Dean's symptoms included visible blood in his urine, but he did not receive proper diagnostic testing for four months and did not have surgery for seven months.

After a seven-day trial in front of U.S. District Judge Sue Myerscough in the Central District of Illinois, Dean and Jenner & Block won a \$11 million verdict Dec. 17 from a unanimous jury. The verdict including a \$10 million assessment in punitive damages.

Wexford was found to have violated Dean's Eighth Amendment rights from deliberate indifference and committed institutional negligence and medical malpractice under state law.

The Jenner & Block attorneys challenged Wexford's policy of "collegial review." Wexford's website states the utilization management process is: "a proactive, physician-led process designed to reduce offsite-care costs. Using video and/or telephone conference calls, site clinicians and Wexford Health [m]edical [d]irectors and UM [n]urses confer to review the patient's medical history and determine the most clinically appropriate and financially responsible approaches to inmate health-care issues."

On Dec. 23, 2015, blood was found in Dean's urine, but he didn't get a CT scan until April 10, 2016. Martin argued that delays in receiving treatment, stemming from the collegial review process, allowed for Dean's kidney cancer to metastasize to his liver.

"The process caused delay with regards to the diagnosis and treatment," Martin said. "Also, the decisions made were motivated by cost control as opposed to what was medically appropriate."

"For example, to get a CT scan you have a go get approval, to get a referral to a urologist you have to get approval when you look at the delays that are built into that process you would find they contributed, we thought, to the systematic delay in (Dean's) diagnosis and treatment."

"The conduct we thought, and the jury thought, was deliberately indifferent to him."

Martin handled the opening and closing statements as well as the adverse examinations of Wexford's expert witnesses with Pelz. Martin let Strom, Holt and Wackman manage the direct examinations.

Holt, a graduate of Harvard Law School, cross-examined a defendant and direct examinations of the plaintiff's witnesses. Strom had never participated in a jury trial, according to Martin. He handled the direct examination of Dean and some of expert witnesses. Wackman also did some cross-examination and direct examinations.

"Everyone made a contribution and the associates made very meaningful contributions," Martin stated.

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Photo by Rena Naltsas. From left: Jenner & Block's associates Chloe Holt and William Strom, partner Joel Pelz, firm chair and partner Craig Martin, paralegal Eric Herling and associate Nathaniel Wackman.