

## EXECUTIVE SUMMARY

This is the Executive Summary for the trial simulation in the case of Rossi v. Gray Care Home, et al, conducted on February 28<sup>th</sup> and March 1<sup>st</sup> of 2008 in Dade County, FL. This research meets all ethical requirements of the American Board of Psychological Specialties, the American Society of Trial Consultants (ASTC) and the American College of Forensic Sciences.

Pretrial research in the form of trial simulation was conducted using three mock juries composed of a sample of the population of those persons who would be eligible for jury service in Dade County. There was appropriate representation to reflect that county's jury pool across race, gender and age bracket.

This case was presented to the surrogate jurors on Day One of a two-day project. Presentations for this research were made in the form of live presentations representing the plaintiff and defense. Each side was allowed to make an opening statement with argument. In addition to the attorney presentations, the jurors were provided with medical charts, reports, witness summaries and video presentations of five major witnesses. After opening statements and presentation of evidence, the plaintiff and defense attorneys were each given 15 minutes to make a closing statement, wherein they discussed damages, followed by a short rebuttal by the plaintiff attorney. The surrogate jurors were presented with questionnaires prior to the presentation, at the completion of the uncontested statement of facts, at the completion of the plaintiff's case and at the completion of the defense's case. At the end of the day, they were queried via 40 Likert statements and provided with verdict forms requiring a decision on negligence, elder abuse, damages for each of those categories, and comparative fault among Gray Care Home, Dr. Garibaldi and Dr. Ebersole.

At the end of Day One's presentations and examinations, the jurors were sent home to give them time to settle emotional issues and arrive at considered opinions. The jurors then returned on Day Two, they then deliberated as three separate juries. Each jury was composed of ten persons and all jury deliberations were conducted consecutively.

In an effort to be certain we measured evidence and not attorney skills, the jurors were required to rate the attorneys in seven categories at the end of each attorney's presentation. The scores of the two attorneys were averaged and compared to each other. The overall score for the plaintiff's attorney was **7.8** and the overall score for the defense attorney was **8.3**. As a standard practice, we use a variance of up to 10% between attorneys to establish a reliable base. In this case, the attorneys' scores were within permissible range and gave us a strong indication that the jurors were swayed only by facts and not by attorney skills.

A further validity check of this study was conducted by the use of a juror decision graph. A juror decision graph traces the total number of jurors, followed by their impressions after the uncontested statement of facts, the post-plaintiff position and their position after the defense case. The final indicator is their decision at the close of all evidence. We typically expect this graph to resemble the letter “W” on a slant. There are no anomalies noted in the graph for this case. The graph indicates that there was a positive bias in favor of the plaintiff among the jurors prior to hearing any evidence in the case. The graph indicates that at the end of the plaintiff’s presentation, every juror in the room was in favor of the plaintiff. There was an extremely sharp downturn in the graph, indicating the post-defense position, in which 21 of the 30 jurors had moved from plaintiff to defense. At the close of evidence, the case was at 16-14 in favor of the plaintiff. This means the attorney presentations appropriately swayed people and the changes in jurors’ opinions were measurable. This allows us to determine that the jurors were attending to the presented material and further enhances the probability that this is a valid study.

There is also a juror decision graph on comparative fault. This graph indicates that even though the defense of Gray Care Home did not attack Dr. Ebersole, the jurors spontaneously discovered more fault on Dr. Ebersole as the fault on Gray Care Home declined. This is well-established in the graph and indicates that Dr. Ebersole is likely to receive the majority of the comparative fault in this case.

We conducted an analysis of the individual jurors’ awards and found that the mean total award for all jurors was \$1,996,120; however, this mean was obviously and highly skewed by Juror 307, who awarded \$20,000,000. Even if the skewed mean of \$1,996,120 were to be used as a basis, we find that after it is adjusted by the mean comparative fault of 35% against Gray Care Home, actual damages would only be \$698,642. **We believe the most accurate representation of the individual awards would be through the examination of the median award, which is immune to juror skew. The median of all jurors was \$20,150. This correlates extremely well with the average deliberated jury award of \$23,433. Jury One had an award of \$0, Jury Two had an award of \$20,300 and Jury Three awarded \$50,000.**

We also examined a worst-case scenario; a worst-case scenario is the condition where only the pro-plaintiff jurors were ultimately seated in the jury box. The mean award in a worst-case scenario is \$3,742,725. This would correlate appropriately with an assumption of causation scenario, which was also tested.

For the assumption of causation scenario, we asked the jurors to assume that negligence and elder abuse had been found against Gray Care Home and the two co-defendants. We asked the jurors to assume they were on a jury that wished to pay damages much lower than that juror and for the juror to indicate the minimum award they would make under those circumstances. The mean minimum award for assumed negligence and elder abuse was \$2,016,678. We asked the jurors to stay in the same condition, except that they now

place themselves on a jury that wished to give much more than they did and to indicate the maximum award they would make. The mean maximum award was \$5,338,900. This amount would then be reduced by Gray Care Home's comparative fault of 35%, resulting in total damages to Gray Care Home as a minimum of \$705,826 and a maximum of \$1,868,615, if all allegations against Gray Care Home were substantiated at trial.

Generally, when conducting pretrial research in cases of this type, we are especially watchful for indicators of juror anger at the medical facility. Even though there were rather gruesome photographs, we detected an absence of anger and outrage. The only jurors who expressed anger were jurors who clearly brought agendas with them and were trying to solve their own life's problems through this case.

Case strengths and weaknesses were discovered during the research project and they are discussed in the report in chief. Whenever possible, we have provided strategy changes for consideration prior to trial. We identify case strengths and weaknesses and accompanying methods to reduce the weaknesses and build upon the strengths.

**These results can be affected by variables that cannot be predetermined. Attorneys will be more or less prepared; and evidence used in this project may be excluded, or evidence unavailable to this project may be included. In spite of these variables, this report produces substantial intelligence to guide the decision-making process before and during trial to increase the position of the defense.**