

## LITIGATOR of the WEEK

**'Deliberate Indifference' Leads to \$2.4M Verdict**

From the outset of a five-day trial, long-time civil rights litigator David Bernsen knew he had to persuade the jury that Orange County officials had shown “deliberate indifference” to Robert Montano, a county prisoner who died of renal failure in jail after spending days in a cell without running water or a toilet.

“The burden of proving deliberate indifference is difficult. The standard is above gross negligence but a little bit under intentional harm. At times that was a hard sell, but we were able to get over that hurdle because of the evidence,” said Bernsen of the Bernsen Law Firm in Beaumont.

The jury issued a verdict agreeing that Orange County’s jail policies showed deliberate indifference and were the “moving force” leading to Montano’s inadequate medical care. The jury awarded Bernsen’s clients, surviving relatives of Montano, \$2.4 million in damages. On Feb. 23, the plaintiffs filed a motion seeking an additional \$440,000 in attorney fees. With the interest, Bernsen predicts the final judgment may exceed \$3 million.

Douglas Manning, an assistant district attorney who represents the county, did not return a call for this story.

The county has filed a motion proposing a reduced judgment and in a July 28,



**David Bernsen**

2014, motion for summary judgment, denied the allegations. The county argued in that motion that Montano died from “toxicity” after ingesting bath salts, and that the Texas Rangers Service had conducted an investigation and found no wrongdoing by the county or its employees.

During jury selection, Bernsen tried to find people who recognize that “addiction is a disease” and “under the constitution all people in jail are entitled to adequate medical care.”

At trial, Bernsen asked county officials on the stand about the allegations that they put Montano in a holding cell with no water or toilet, didn’t take him to a physician when he cried out in pain, and even put paper sheets on the observation windows of Montano’s cell so they wouldn’t have to look at him crawling on the floor in his own waste.

“They watched a man die in a cage full of his own urine,” Bernsen told the jury about county officials.

This was enough information for the panel to conclude that Orange County’s actions qualified as deliberate indifference.

—MIRIAM ROZEN

To suggest a **Litigator of the Week**,  
email [hnevitt@alm.com](mailto:hnevitt@alm.com).