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Update: Judge Denies Relator's Attempt to Freeze Nursing Home's Assets Pending Appeal

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On January 23, 2018, the same judge who two weeks ago set aside a $350 million jury verdict against a nursing home operator denied a new emergency motion by relator to freeze the defendant's assets pending the relator's appeal of the court's order granting judgment as a matter of law.

The relator argued that the defendant should be enjoined from engaging in transactions outside the ordinary course of business during the pendency of the appeal to protect "Relator's, the United States', and the State of Florida's interests during the time the appeal is pending." Relator asserted that she has a "strong likelihood of success" on appeal and that the defendant could attempt to "thwart judgment" by transferring assets to related parties while the appeal is pending.

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Litigation / Trial Practice
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11th Circuit (incl. bankruptcy)

The judge denied Relator's motion, serially rejecting each of Relator's arguments, with frequent references to the deficiencies in Relator's case that ultimately led the court to overturn the jury's verdict. First, the court concluded that it had effectively "extinguished" the governments' interest in the nursing home's assets when it overturned the $350 million verdict against the nursing home. Citing *Grupo Mexicano de Desarollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), the court concluded that "equity prohibits an injunction intended to increase the likelihood that a non-judgment creditor can collect on a future money judgment."

The court went on to reject Relator's argument that the US government and the state of Florida will likely suffer an irreparable injury absent an injunction. The court flatly rejected Relator's assertion of a high likelihood of success on appeal, noting that the "corporate scheme" that forms the basis for $331 million of the overall $350 million verdict was "wholly unsupported in the evidence," and, further, that the judgment depended on the "diciest possible form of sparse and attenuated statistical sampling." The court reasoned that any theoretical injury to the government was, therefore, merely a "possibility" and not "likely," as is required for an injunction. The court also noted that the purported injury would only arise "if the Eleventh Circuit reverses the January 11 order, finds a new trial unwarranted, and reinstates the now-vacated judgments." The court went on to find that an injunction would inflict a "disabling injury" on the defendants by restraining their business operations, and that the public interest would not be served by impairing the operation of nursing facilities that provide care to patients.

The case is noteworthy because the district court's dramatic reversal of a jury verdict on the basis of the *Universal Health Services, Inc. v. Escobar* materiality standard and will result in yet another appellate decision construing that standard. The significance of the issues on appeal was insufficient, however, to compel the District Court to freeze the defendant's assets pending review, perhaps signaling that at least this particular court feels the *Escobar* standard is clear, at least as applied to the facts in this case.