

CAUSE NUMBER**Rusk County District Court**

4th Judge J. Clay Gossett
 95-437 Julia Bird Williams and
 Leonard Williams, coexecutors of
 the Estate of Ruth Waites,
 deceased

vs.

Beverly Enterprises Texas, Inc.,
 Beverly Enterprises, Inc.,
 Beverly California Corp., a/k/a
 Beverly Healthcare Center, d/b/a
 Borger Healthcare Center, a/k/a
 Borger Nursing Center

ATTORNEYS

P David T. Marks of the Marks Firm, Houston; David Hill, Henderson

D Deanna Dean Smith & Nathan M. Rymer of Carlson & Smith, Houston; G. R. "Randy" Akin, Longview

TYPE OF ACCIDENT ALLEGED INJURIES

Nursing Home Malpractice/Survival/Intentional Fraud/Neg./Gross Neg.

Ruth Waites, an 83 year old dependent diabetic, was admitted to the Borger Nursing Center in June of 1993. She died on 10/29/94 suffering from a Stage 4 decubitus ulcer. Plts alleged the pressure sore was due to neglect in the nursing home. They further claimed intentional fraud caused widespread injury to other similarly situated residents. Plts offered Defs' own documents and testimony by direct care givers employed at the facility to support the latter contention.

Ms. Waites was first transferred to a hospital on 9/25/94 to be treated for dehydration. No bed sores were documented upon admission. However, seven hours later the hospital documented earlyforming decubitus ulcers on the patient's coccyx and both heels.

The decedent was taken back to the nursing home on 10/1/94. She remained in the home until 10/19/94 when she was transferred back to the hospital where she remained until her death 10 days later.

Defenses:

- Denied any neglect, contended the massive pressure sore formed during her stay in the hospital, not while she was in the nursing home.
- The nursing home "held the line" and the sores did not deteriorate while decedent was at Def. facility.
- The sores dramatically deteriorated, while Ms. Waites was hospitalized the last 10 days of her life.

No damages were sought for mental anguish or emotional trauma as the case involved no wrongful death beneficiaries. Ms. Waites had never married, Her only relatives were Julia Bird Williams, her 83 year old niece and Leonard Williams, her 65 year old greatnephew.

EXPERT WITNESSES

P Elma Holder, founding director for the National Citizens Coalition for Nursing Home Reform, Washington, D.C., re nursing regulation

Danita Alfred, RN, Longview

Paul Katz, GER, New York, NY

Joe Nelson, CPA, cert. fraud examiner, Houston

Milton Frankfort, J.D., CPA, Houston re piercing the corp. veil and punitive damages

D Allen Garber, IM specializing in diabetes, Baylor College of Medicine, Houston

Theresa Savoy, RN, Pasadena

VERDICT OR DISPOSITION

Jury found for Plts on all issues, allocated responsibility at 70% Beverly Enterprises and 30%

Beverly Enterprises Texas. Additionally, found that both Defs had engaged in intentional fraud.

Awarded:

\$12,000,000 pain & suffering.
 \$ 1,000,000 disfigurement.
 \$70,000,000 punitive damages.
 \$83,000,000 Total Award.
 11 1 (20 day trial)

Medical malpractice statute 4590i requires a reduction in the judgment. Judgment was entered on 12897:

\$1,316,500 actuals Beverly Enterprises
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 \$36,400,000 punitive Beverly Enterprises
 \$15,600,000 puni. Beverly Enterprises TX
 \$54,633,000 Total Judgment

Pretrial demand: \$4.7M

Pretrial offer: \$3.5M

Sidelights:

- During second phase of the bifurcated trial, Defs argued to the jury that it had already sent a strong message to the corporate defendants.
- Defs indicate they plan to appeal on multiple grounds including change of venue back to Borger. (Judge Donald Ross denied Defs' motion to transfer the case back).
- Beverly Enterprises, Fort Smith, Ark., is the largest operator of nursing care facilities in the U. S.