



An ALM Publication

## TENNESSEE

## NURSING HOMES

## Wrongful Death — Survival Damages

## Nursing home resident choked on meal, family alleged

**SETTLEMENT** \$1,200,000**CASE** Timothy G. Nelson, as Administrator of the Estate of Clay Nelson, and Timothy G. Nelson, Ricky Nelson and Daphne Nelson, Individually and for the Use and Benefit of the Wrongful Death Beneficiaries of Clay Nelson, Deceased v. ABC Nursing Home**COURT** Confidential, TN**NEUTRAL(S)** Russell Parks**DATE** 6/25/2010**PLAINTIFF****ATTORNEY(S)** Jacques G. Balette (lead), Marks, Balette & Giessel, P.C., Houston, TX  
Deanna Dean Lovett, Arlington, VA  
Robert D. Massey, Law Offices of Robert D. Massey, Pulaski, TN  
Kenneth L. Connor, Marks, Balette & Giessel, P.C., Leesburg, VA**DEFENSE****ATTORNEY(S)** H. Lee Barfield, III, Bass Berry Sims, Nashville, TN  
E. Steele Clayton, Bass Berry Sims, Nashville, TN  
John B. Curtis, Jr., Leitner, Williams, Dooley and Napolitan, Chattanooga, TX  
Joseph W. Henry, Jr., Henry, Henry & Underwood, Pulaski, TN  
Andrea Taylor McKinney, Bass Berry Sims, Nashville, TN**FACTS & ALLEGATIONS** On Feb. 24, 2008, plaintiffs' decedent Clay Nelson, a resident of a nursing home in south central Tennessee, was found unresponsive during dinner at the nursing home facility. Staff initiated CPR and called 911. When paramedics arrived at the scene, they suctioned multiple pieces of baked pear from Nelson's airway, including one piece the size

of a golf ball. He was transported to a hospital and pronounced dead a few hours later.

The death certificate initially gave the immediate cause of death as acute myocardial infarction, but it was later modified to say asphyxiation by food in the larynx.

Nelson's family sued the facility for nursing home negligence. They claimed that the nursing home failed to follow dietary recommendations that called for Nelson to be supervised while eating. The plaintiffs also claimed that the nursing home was dangerously understaffed, having too few certified nursing assistants to deliver basic care. They alleged that as a result, there was not enough staff to assist during feeding.

The nursing home, in which its name was withheld as confidential, contended that Nelson had a heart attack, which led to asphyxiation and death. It also contended that the staffing levels were adequate.

The matter was scheduled for binding arbitration with arbitrator John Russell Parks, in Pulaski.

**INJURIES/DAMAGES** *asphyxia; death*

Nelson died and left behind three children; two sons and one daughter.

The family sought damages for Nelson's wrongful death, including mental anguish and loss of companionship and society. They also sought damages for Nelson's conscious pain and suffering.

The nursing home argued that Nelson was conscious for no more than four minutes after he began choking and that the medical expenses were minimal. According to plaintiffs' counsel, the nursing home also argued that Nelson's life had no "pecuniary value" under Tennessee law. Therefore, the defense argued, the damages should be minimal.

**RESULT** The case settled for \$1.2 million a few days before arbitration was to begin.**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

—John Schneider