

Tenczynski

SETTLEMENT	\$1,500,000
CASE	Estate of Leo Francis Tenczynski, Deceased, by and Through Michael Tenczynski as Successor Independent Executor; Helen Tenczynski, Dolores Tenczynski, John Tenczynski and Michael Tenczynski, individually v. Nissi Care Homes, a Texas Corporation; Gloria Kauffman, d/b/a Nissi Care Homes; Vitas Healthcare Corp., Vitas Holdings Corp., Vitas Healthcare of Texas, L.P., Mary Crow, M.D., and James Skelton, M.D., Defendants; Nissi Care Homes, a Texas Corporation, and Gloria Kauffman, d/b/a Nissi Care Homes, Third Party Plaintiffs v. Terminix International, Inc., Third Party Defendant, No. 1999-29188 v.
COURT	Harris County District Court, 129 th , TX
JUDGE	S. Grant Dorfman
DATE	5/12/2003
PLAINTIFF ATTORNEY(S)	<p>David T. Marks, The Marks Firm, Houston, TX</p> <p>Jacques G. Balette, The Marks Firm, Houston, TX</p> <p>Henry P. Giessel, The Marks Firm, Houston, TX</p> <p>Jason Young, The Marks Firm, Houston, TX</p>
DEFENSE ATTORNEY(S)	<p>Joseph M. Heard; Heard & Medack; Houston, TX (Gloria Kauffman d/b/a Nissi Care Homes, Nissi Care Homes)</p> <p>Bridget Riestra Brinson; Heard & Medack; Houston, TX (Gloria Kauffman d/b/a Nissi Care Homes, Nissi Care Homes)</p> <p>Michael D. Siemer; Heard & Medack; Houston, TX (Gloria Kauffman d/b/a Nissi Care Homes, Nissi Care Homes)</p> <p>Rick Callaway; Callaway & Associates; Houston, TX (James Skelton, M.D.)</p> <p>Mary-Olga Ferguson; Thompson & Knight; Houston, TX (Mary Crow, M.D.)</p> <p>William A. Gage, Jr.; Buck, Keenan & Gage; Houston, TX (Terminix International Inc.)</p> <p>L. Boyd Smith; Vinson & Elkins; Houston, TX (Vitas Healthcare Corp., Vitas Healthcare of Texas L.P., Vitas Holdings Corp.)</p>
FACTS ALLEGATIONS	<p>& The plaintiffs' decedent, Leo Francis Tenczynski, 81, suffered from multiple health problems, including dementia and hardening of the arteries. He lived at Nissi Care Center, in Houston, an assisted care living facility. A hospice nurse came regularly to provide specific hospice for him.</p> <p>On the morning of Aug. 18, 1998, an attendant found him in bed, covered with fire ants. He had thousands of bites. He was transferred from Nissi to an outpatient facility and died August 24.</p> <p>Tenczynski's estate, his widow Helen, and his adult children sued Gloria Kauffman d/b/a Nissi Care Center, the hospice organization, Vitas Healthcare Corp., of Miami; and two related companies, which were treated as one entity at trial. The plaintiff's also sued James Skelton, M.D., Tenczynski's admitting physician at the inpatient hospice facility.</p> <p>Against Nissi, the plaintiffs alleged negligence, gross negligence and malice. They alleged that Nissi employees had seen fire ants at the facility on previous occasions. They also argued that the facility had negligently put Tenczynski in the wrong bed, and that, after the attack, the nurse who found him did not succeed at removing al of the ants from his body.</p> <p>Nissi impleaded Terminix International Inc., with which it had pest-control agreement, seeking contribution for failure to control and notify Nissi of the ants. Although it had had a monthly pest-control service for years, it had never been told of a fire ant problem and had no way of knowing that the problem existed, Nissi alleged.</p> <p>Terminix contended that it met the standard of care and that Nissi had failed to notify Terminix that ants had been seen in the facility.</p> <p>Nissi also alleged that any ants that its employees saw on previous occasions were only sugar ants and carpenter ants.</p> <p>Against Vitas, the plaintiffs alleged that Tenczynski was not a proper candidate for hospice care and that Vitas failed to fill out his hospice paperwork properly.</p> <p>Vitas denied the allegations.</p> <p>The Vitas defendants' attorney was telephoned for comment but did not respond.</p> <p>The allegations against Crow were that she withheld treatment, but treatment was prohibited by a valid do-not-resuscitate order signed by Helen Tenczynski, and Crow's attorney.</p>
INJURIES/DAMAGES	<p><i>Death; Dehydration</i></p> <p>The plaintiffs alleged that Tenczynski died of system failure secondary to insect envenomation, suffering thousands of fire ant bites. There was also evidence that he had no appreciable hydration for six days after the attack, during which time he was heavily medicated. Nissi contended that his death resulted form extra stress caused by this alleged dehydration. The family claimed wrongful death damages, and the estate claimed conscious pain and suffering. For the estate, the plaintiffs' attorneys asked the jury for \$22 million.</p>
RESULT	All claims against Skelton and Crow were dropped, without payment, long before trial. The adult children, Helen Tenczynski's estate (she died while the case was pending), and Leo Tenczynski's estate settled their claims against the Vitas defendants for \$3.5 million months before trial, the plaintiffs' attorneys said. The adult children and Helen's estate dropped their claims against Nissi before trial. Terminix settled with the plaintiffs for \$125,000 on the second day of trial. The jury considered only the estate of Leo Tenczynski's survival claim against Nissi. The jury found Nissi 44% negligent, Terminix 44% and Vitas 12% and found damages of \$1.5 million. The jury found no malice or gross negligence. The judge entered a take-nothing judgment, due to settlement credits.
Leo Francis Tenczynski (Estate)	\$15,000,000 conscious pain and suffering
DEMAND	\$500,000 to Nissi (policy limit)
OFFER	\$50,000 by Nissi
TRIAL DETAILS	<p>Trial Length: 2 weeks</p> <p>Jury Deliberations: 2 days</p> <p>Jury Poll: 10-2</p> <p>Jury Composition: 6 male; 6 female</p>