

Two nursing homes in Texas have recently agreed to pay a total of \$9.5 million to settle separate wrongful death actions. Attorneys with The Marks Law Firm in Houston represented the families in both cases. < citation> *Dixon, Individually and as Representative of the Estate of Earl Dixon v. South Park Rehabilitation and Nursing Center et al.*, No. 00-278-B, settlement entered (Tex. Dist. Ct., Nueces County, Feb. 1, 2001); *May, Individually and as Representative of the Estate of Kate May v. Diamond Care Inc. et al.*, No. 00-05-19720, settlement entered (Tex. Dist. Ct., Ward County, Jan. 3, 2001).

A case involving Earl Dixon, an Alzheimer's resident of South Park Rehabilitation and Nursing Center in Corpus Christi, Texas., who died at 63 after allegedly suffering from a diabetic coma, pressure sores and malnutrition, settled for \$6.97 million. Dixon's family said the home's chronic understaffing led to the negligent care.

"The contention was made — as it frequently is — that Alzheimer's patients don't feel pain," said **Henry P. Giessel of The Marks Firm**, who represented the plaintiffs, along with David T. Marks and Nirja S. Aiyer. "It's not 'open season' on Alzheimer's patients," he said, even if they have a "lower level of consciousness."

A case against Monahans Senior Care Center stemming from the death of 86-year-old Kate May settled for \$2.475million just weeks before a scheduled trial date of Jan. 22. A charge nurse at the home allegedly ignored signs that May was suffering from a heart attack and then failed to call an ambulance.

"Even at age 86," Giessel said, "life is valuable."

#### **Dixon v. South Park Rehab. and Nursing Ctr.**

Earl Dixon, who lived for several years at South Park, had numerous medical problems including Alzheimer's, end-stage diabetes, hypertension, coronary artery disease and renal disease.

In April 1998, Dixon was admitted to a hospital in a diabetic coma. The wrongful death and survival action filed by his wife and children alleged that the nursing home had ignored Dixon's rising blood sugar and repeatedly violated physician's orders to test for blood sugar levels and administer insulin. Dixon, who had previously been an ambulatory resident, became totally dependent and bedridden. In the year following the incident, he developed severe pressure sores and suffered from dehydration and weight loss.

The nursing home denied the allegations, blaming Dixon's poor health.

"Mr. Dixon's medical condition spoke for itself," said defense attorney **Joel Resendez of Chaves, Gonzales & Hobbit** in Corpus Christi, Texas.

Specifically, the defense maintained that Dixon's coma was caused by his uncontrolled diabetes. Because of his progressing Alzheimer's disease, Dixon refused to drink and eat, leading to malnutrition, dehydration and skin breakdown.

Despite sufficient medical information in its favor, the nursing home opted to settle the case because the plaintiffs had graphic photos of the pressure sores, Resendez said.

"Its very difficult to explain away Stage IV decubitus ulcers," he said. "A jury of 12 laymen have a hard time believing that it's anything but neglect."

The parties agreed to settle the case in November 2000, following an original offer of \$8 million.

Stephen R. Darling of Chaves, Gonzales & Hobbit also represented the defendants in the case. Curry Cooksey of Orgain, Bell & Tucker in Houston represented the excess insurance carriers, including Admiral Insurance Co., Gulf Insurance Com., Royal Insurance Co. and Reliance Insurance Co. Neither side designated experts in the case.

#### *May v. Diamond Care*

On the morning of Feb. 4, 1999, Kate May, a resident of Monahans Senior Care Center, started complaining of persistent nausea, which was not unusual because she had a history of compression fractures and was taking a pain-relief drug that often upset her stomach. At 5:30 a.m., she was pale and said she had pain in her chest and between her shoulders. Her blood pressure had dropped and she had 3+ pitting edema. Between 5:20 and 6:00 a.m., she asked three times to be taken to the hospital. The staff ignored these requests until 6:10 a.m., when the charge nurse, JoAnn Maddox, LVN, contacted the hospital emergency room, started working on the transfer papers and called May's grandson. Maddox, however, never called an ambulance, admitting in a deposition that she had taken a smoking break. May died in the home at 6:20 a.m.

Her two sons filed a wrongful death and survival action alleging that Maddox failed to recognize and respond to the classic signs and symptoms of a heart attack. They also asserted a negligent-hiring claim against Monahan's Senior Care Center because the facility knew that Maddox had been fired from another job for improper and inadequate care.

According to The Marks Firm, the defendants denied that Maddox was negligent, claiming that May's symptoms were masked by her medical history and the pain medication.

Further, they denied that she suffered from a myocardial infarction but instead said she suffered from a massive pulmonary embolism, which was untreatable and imminently fatal.

"It was speculation as to which one it was," plaintiffs' attorney Giessel explained, because no autopsy was done in the case. However, he said, two local internists, Hoon Rowe, M.D. and Anand Cholia, M.D., believed that May suffered from a myocardial infarction. They both testified at depositions that May would have survived the heart attack if she had been taken to the hospital in a timely manner.

About six months after May's death, Maddox was indicted on abuse charges from this case and subsequently pleaded guilty, Giessel said.

Experts for the defense included: Edward Racht, M.D.; Brant Mittler, M.D.; and Rose Ireland, M.D.

David Hill of Wellborn, Houston, Adkison, Mann, Sadler & Hill in Henderson, Texas and Hal Upchurch of Monahans, Texas, also represented the plaintiffs in the case. Carla Connelly and Chris Scott of Black & Connolly in Austin, Texas, represented defendants Diamond Care Inc.; Terrick Inc. d/b/a Monahans Senior Care Center; Priscilla H. Nelson; Tanya Haynes, LVN; and JoAnn Maddox, LVN. Connelly could not be reached for comment. Jim Price of Houston represented defendant Debbie Price, the director of nurses.

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