

SETTLEMENT **\$5,300,000**

CASE Elijah Rockwell, as Executor of the Estate of Gertrude Hollins, Deceased v. Cleaver Memorial Convalescent Center, in its Assumed or Common Name; 22 Keystone Services, L.P., d/b/a Cleaver Memorial Convalescent Center; 22 Keystone Services, Inc.; 22 Texas Services Limited Partnership; 22 Texas Partners, Inc.; 22 Texas Services, Inc.; 22 Texas Partners, Limited Partnership; Complete Care Services of Texas, Inc.; Complete Care Services, Limited Partnership; Complete Care Services, L.P., d/b/a Texas — Complete Care Services; 22 Keystone Services, L.P.; Andre Williams, Individually; Carolyn Marry, Individually; Brigitta Morris, Individually; Theerica Rivers, Individually; Brenda Joyce Flakes, Individually; Sita Devulapalli, M.D., Individually; and dietician Jane Doe, Individually, No. 2001-425

COURT Rusk County District Court, 4th, TX

JUDGE Clay Gossett

DATE 11/26/2002

PLAINTIFF ATTORNEY(S) **David T. Marks;** The Marks Firm; Houston, TX

Henry P. Giessel; The Marks Firm; Houston, TX

Jacques G. Balette; The Marks Firm; Houston, TX

David Hill; Wellborn, Houston, Atkinson, Mann, Sadler & Hill; Henderson, TX

DEFENSE ATTORNEY(S) **Thomas M. Farrell;** Nickens, Keeton, Lawless, Farrell & Flack; Houston, TX (22 Keystone Services Inc., 22 Keystone Services L.P., 22 Texas Partner Inc., 22 Texas Partners Limited Partnership, 22 Texas Services Limited Partnership, Andre Williams, Brenda Joyce Flakes, Brigitta Morris, Carolyn Marry, Cleaver Memorial Convalescent Center, Complete Care Services L.P., Complete Care Services of Texas Inc., Sita Devulapalli, M.D., Texas Complete Care Services, Theerica Rivers)

Sean Breen; Herman, Howry & Breen; Austin, TX (dietician Jane Doe)

Frank Alvarez; Hermes Sargent Bates; Dallas, TX (Sita Devulapalli, M.D.)

Michael L. Hurst; Hermes Sargent Bates; Dallas, TX (Sita Devulapalli, M.D.)

FACTS The plaintiff was the estate of Gertrude Hollins, who died at age 89 after residing in a Longview nursing home for 32 months. Hollins' nephew, on behalf of her estate, sued the owners and managers of Cleaver Memorial Convalescent Centers, as well as numerous affiliated companies; five nurse employees; a registered dietician whose identity is protected by a confidentiality agreement, and Sita Devulapalli, Hollins' physician, for gross negligence. Neither the dietician nor Devulapalli were employees of the home.

The lawsuit alleged that the nurses failed to turn and reposition Hollins and ignored Hollins' severe and ongoing pain caused by massive pressure sores. It claimed that the home engaged in a pattern and practice of dangerous understaffing, destroyed personal files and time cards to cover up the understaffing, sought heavy-care patients despite understaffing, and falsified staffing records. The home generally denies these allegations and argued that the staffing was sufficient.

Devulapalli stated that it was one of the worst cases of neglect that she had ever seen, said the plaintiff's attorneys. Also, they said, the Texas Department of Health and Human Services cited the home for neglect of Hollins and repeatedly warned it about dangerous care practices.

In deposition, charge nurses and the dietician testified that the home grossly neglected Hollins. The dietician also testified that the nurses were grossly negligent.

The plaintiff alleged that the dietician failed to monitor Hollins' caloric intake properly and failed to make appropriate dietary recommendations.

The dietician denied any wrongdoing by her. The home failed on numerous occasions, according to her, to implement dietary recommendations that she made or to bring certain conditions to Devulapalli's attention, as she recommended.

INJURIES *Bed Sores; Death; Decubitus Ulcer; Dehydration; Malnutrition*

Although her physician, Sita Devulapalli, had determined that she needed nursing home care, when admitted, Hollins allegedly was alert and oriented, could ambulate, was stable, and had no history of pressure sores, dehydration, malnutrition or end stage disease.

During her residency, she allegedly developed a 10-inch diameter, stage IV sacral/coccyx pressure sore that was infected and had sloughing, yellow drainage; developed a total of eight avoidable in-house pressure sores; was hospitalized four times for dehydration; and lost 90 pounds in two years. She allegedly suffered excruciating, continuous pain for the last eight months of her residency, at the end of which she died. The estate claimed \$95,765 in medical bills and also sought punitive damages.

Devulapalli said that she had no doubt that Hollins had experienced "severe and unrelenting pain" for over seven months "from the deep, eroding pressure sores," said the plaintiff's attorney Jacques Balette. According to Balette, Devulapalli said that she was never informed by the home that her orders were not being followed, and that every time she called the home, they would lie to her, but that she later found out what was really happening.

The defense argued that the injuries were clinically unavoidable, said Balette.

RESULT The case settled before trial for \$5.3 million. Devulapalli was dismissed without any payment.

The attorney for the nursing home employees and entities was telephoned for comment, but did not respond.

INSURER(S) United National Insurance Co.

Caliber One Insurance Co.