

## **NURSING HOME LOSES \$83 M FOR WRONGFUL DEATH, FRAUD**

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CASE TYPE: negligence, fraud

CASE: Holder v. Beverly Enterprises Texas Inc., 95437 (Dist. Ct., Rusk Co., Texas)

PLAINTIFF'S ATTORNEYS: David T. Marks, of Houston's The Marks Firm: David Hill, of Henderson, Texas' Wellborn, Houston, Adkinson, Mann, Sadler & Hill; and Timothy Lee, of Houston's Ware, Snow, Fogel, Jackson & Greene

DEFENSE ATTORNEYS: Deanna Smith and Nathan Rymers, of Houston's Carlson & Smith

JURY VERDICT: \$83 million

RUTH WAITES was 83 years old when she began living at the Borger Nursing Center, in Borger, Texas, in 1993. At the time, said plaintiffs counsel David T. Marks, Ms. Waites was mentally alert, but largely unable to walk and a diabetic. While at the Borger home, he said, Ms. Waites became severely dehydrated and was hospitalized. After she returned to the center, she developed pressure sores and was hospitalized again. These bed sores were so severe, he said, that hospital staff "cut out hunks of rotten tissue," from her body. Ms. Waites died Oct. 29, 1994; the cause of death, Mr. Marks said, was "infected pressure sores."

Her estate sued Beverly Enterprises Texas Inc., which owned and operated the Borger Center and its parent, Beverly Enterprises Inc., charging negligence, gross negligence and fraud. Ms. Waites' dehydration "was caused by a failure to provide water," Mr. Marks said, which in turn was caused by lack of available nursing home staff. During the weeks before she died, Mr. Marks said, there was an "epidemic" of medical problems in the center, with 18 patients sent to the hospital. "There was an avalanche of complaints," he said, but the center did not cut back on patients and instead offered a bounty to its staff to bring in more.

The plaintiff contended that the nursing home committed fraud by "concealing the fact that the staffing was inadequate," Mr. Marks said. "There was no fraud," said defense attorney Deanna D. Smith. As for the negligence charge, Ms. Smith said, "the pressure sore, which the plaintiff contended killed Ms. Waites, formed in the hospital and became infected in the hospital. [Ms. Waites] was a brittle diabetic who had gotten to the point where her systems were shutting down. She died of a cardiac event."

A Henderson, Texas, jury, finding negligence and fraud, awarded the Waites estate \$13 million Nov. 18; the following day, the jury added \$70 million in punitives. Post trial motions are pending.