

[Alta David](#)

Style Alma Ronning, Individually and as Representative of all Wrongful Death Beneficiaries and as Representative of the Estate of Alta Irene David, Deceased vs. Heartway Corporation and Sage Health Services, Inc. d/b/a Avalon Place-Texas City, Joan Dugen, Individually, Larry F. Pile, Individually, Virginia Harrell, Individually, Glendine Cuff, R.N., Individually and B. J. Lee, R.N., Individually

Attorneys P - [David T. Marks](#), [Henry P. Giessel & Nirja S. Aiyer](#) of The Marks Firm, Houston; [Tim Lee](#) of Ware, Snow, Fogel, Jackson & Greene, Houston; [Robert M. Moore](#), Galveston

D - [Ed Burbach & Denise Haugen](#) of Griggs & Harrison, Houston (Heartway & Individuals)

D - [Wendi R Ervin](#) of Chalker, Bair & Associates, P.C., Houston (Sage Health)

Type of Claim **NURSING HOME NEGLIGENCE/WRONGFUL DEATH**
 - Alta Irene David, a 79-year-old stroke victim, entered into Defendant nursing home in September 1996. Ms. David, who was debilitated, initially received physical therapy and speech therapy and showed signs of improvement. She developed an extreme pressure sore on her coccyx that was so painful she could not continue with her therapy. The nursing home was to provide restorative care, however, Ms. David never received such care. Ms. David's condition deteriorated and the sore became a Stage IV decubitus ulcer. The nursing home failed to assess the bed sore and notify the physicians. After they did notify physicians, the follow through was allegedly poor and Ms. David did not receive the care she should have.

In February 1997, she was taken to the hospital in poor condition, completely bedridden, dehydrated and suffering multiple infections in the sore. The hospital recommended to the family that she be placed in the care of a hospice, which they did. She returned to the nursing home only to have to return to the hospital in March of 1997, dehydrated and infected. Ms. David subsequently died on April 2, 1997, in the nursing home.

Defendants contended that Ms. David was in the final stages of life. She had diabetes and a history of strokes which caused the sore. Defendants conceded the nursing home had problems, but asserted they fixed them.

The Texas Department of Human Resources performed an extensive inspection of the nursing home and submitted a 50-page report outlining the deficiencies. One-third of their report involved Ms. David alone and noted there was a serious breakdown of nursing care in the home.

Interstate Insurance Group provided \$6 million in coverage to Heartway Corporation, Sage Health Services, Inc. and individual Defendants. During depositions taken in the case, Plaintiffs' attorneys obtained admissions of repeated neglect committed by individual Defendants and managerial agents. Interstate Insurance Group contended that such repeated neglect amounted to "habitual neglect" so as to void coverage. However, the term "habitual neglect" was not defined anywhere in the insurance policy.

Interstate Insurance Group took the position that regardless of the outcome of trial and any subsequent appeals, Interstate Insurance Group would refuse to pay the affirmed judgment based on the "habitual neglect" exclusion. In order to avoid the necessity of two trials, Plaintiffs' attorneys proposed binding arbitration on the issue of coverage after the parties had agreed that \$5 million was a reasonable settlement, given the facts of the case.

Damages Death due to neglect of 79-year-old Alta Irene David.

Experts P – [James A. Reinarz](#), M.D., infectious diseases, Galveston

[David E. Mansfield](#), M. D., family practice, Beaumont

[Kevin Hefley](#), R.N., Borger, Texas

[Karl L. Shaner](#), Ph.D., Texas Department of Human Resources, Head of Nurse Aide Registry, Austin

D – [Alan J. Grabber](#), M.D., internal medicine, endocrinology, Houston

[Judy Farness](#), R.N., Houston

[Glenn Rowe](#), CPA, Houston

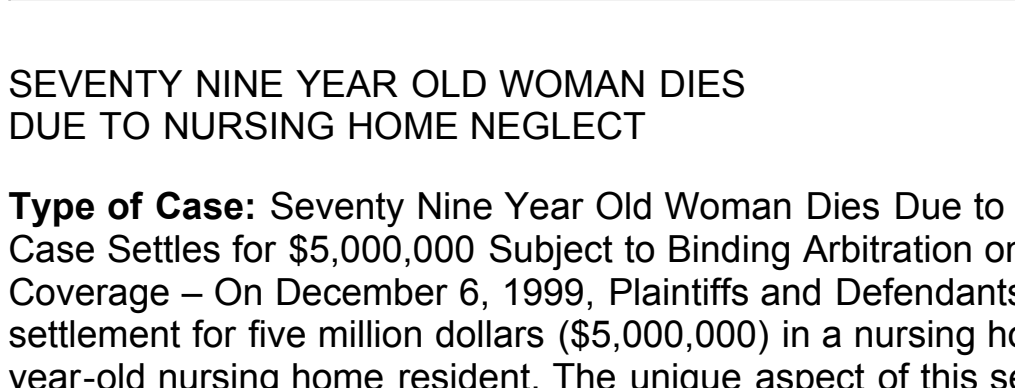
[Drury Woodman](#), M.D., internal medicine, Dickinson

Verdict Settled for \$5,000,000 subject to binding arbitration

Pre-settlement demand: \$6,000,000

Sidelights Under the terms of the arbitration agreement proposed by Plaintiffs' attorneys, the winner takes all. If Defendants prevail on the coverage issue, Plaintiffs will receive nothing. If Plaintiffs prevail on the coverage issue, Plaintiffs will receive \$5,000,000.

There are no cases in Texas or any other jurisdiction which interpret the term "habitual neglect" as applicable to insurance coverage. Texas law, however, does provide that: 1) all ambiguities in an insurance policy are decided in favor of coverage [*Glover vs. National Insurance Underwriters*, 545 S.W. 2d, 761 (Tex. 1977); *National Union Fire Ins. Co. of Pittsburgh, Pa. vs. Hudson Energy Co., Inc.*, 811 S.W. 2d 552, 555 (Tex. 1991); *Gonzalez vs. Mission American Ins. Co.*, 795 S.W. 2d 734, 737 (Tex. 1990)]; and 2) there can be no clause in an insurance policy that substantially voids coverage [*Trinity Universal Ins. Co. v. Cowman*, 945 S.W. 2d 819, 828 (Tex. 1997); *E & L Chipping Co., Inc. vs. Hanover Ins. Co.*, 962 S.W. 2d 272, 276 (Tex. App. – Beaumont, 1998, no writ)].



SEVENTY NINE YEAR OLD WOMAN DIES DUE TO NURSING HOME NEGLECT

Type of Case: Seventy Nine Year Old Woman Dies Due to Nursing Home Neglect: Case Settles for \$5,000,000 Subject to Binding Arbitration on Issue of Insurance Coverage – On December 6, 1999, Plaintiffs and Defendants entered into a settlement for five million dollars (\$5,000,000) in a nursing home death case of a 79 year-old nursing home resident. The unique aspect of this settlement is that Defendant's insurance company took the position that the facts in the case were so egregious as to constitute "habitual neglect" by the nursing home.

Interstate Insurance Group provided coverage to Heartway Corporation, Sage Health Services, Inc. and individual defendants which totaled six million dollars (\$6,000,000.00). During depositions taken in the case, Plaintiffs' attorneys obtained admission to repeated neglect committed by individual defendants and managerial agents. Interstate Insurance Group contended that such repeated neglect amounted to "habitual neglect" so as to void coverage.

Interstate Insurance Group took the position that regardless of the outcome of trial and any subsequent appeals, Interstate Insurance Group would refuse to pay the affirmed judgment. In order to avoid the necessity of two trials, Plaintiffs' attorneys proposed binding arbitration on the issue of coverage after the parties had agreed that five million dollars (\$5,000,000.00) was a reasonable settlement, given the facts of the case.

Under the terms of the arbitration agreement proposed by Plaintiffs' attorneys, the winner takes all – if Defendants prevail on the coverage issue, Plaintiffs will receive nothing; if Plaintiffs prevail on the coverage issue, Plaintiff will receive five million dollars (\$5,000,000.00).

There are no cases in Texas or any other jurisdiction which interpret the term "habitual neglect" as applicable to insurance coverage. Texas law, however, does provide that : 1) all ambiguities in an insurance policy are decided in favor of coverage [*Glover v. National Insurance Underwriters*, 545 S. W. 2d 761 (Tex. 1997); *National Union Fire Ins. Co. of Pittsburgh, PA v. Hudson Energy Co. Inc.*, 811 S. W. 2d 552, 555 (Tex. 1991); *Gonzalez v. Mission American Ins. Co.*, 795 S. W. 2d 734, 737 (Tex. 1990)]; and 2) there can be no clause in an insurance policy that substantially voids coverage [*Trinity Universal Co. v. Cowan*, 945 S. W. 2d 819, 828 (Tex. 1997); *E & L Chipping Co., Inc. v. Hanover Ins. Co.*, 962 S. W. 2d 272 276 (Tex. App. – Beaumont, 1998, no writ)].

Plaintiff Experts:

James Allen Reinarz, M.D.
 David E. Mansfield, M.D.
 Kevin Hefley, R.N.
 Karl L. Shaner, Ph.D.

Defendant Experts:

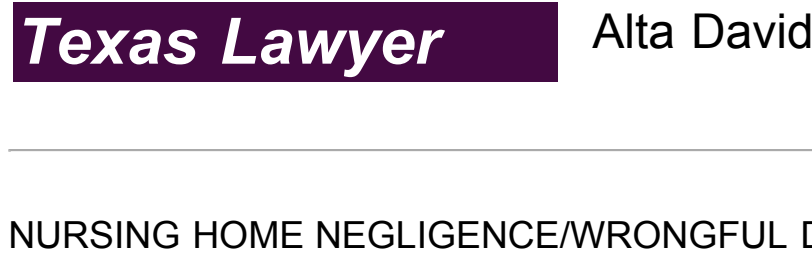
Alan Garber, M. D.
 Judy Farness, R.N.
 Glenn Rowe, CPA
 Drury Woodson, M.D. (treating M.D.)

Original Settlement Demand:

Six Million Dollars (\$6,000,000).

Final Settlement:

Five Million Dollars (\$5,000,000) subject to binding arbitration.



NURSING HOME'S NEGLIGENCE/WRONGFUL DEATH

Ronning v. Heartway Corporation, et al.

212th District Court in Galveston County/Judge Susan Chriss

Settlement signed Dec. 9

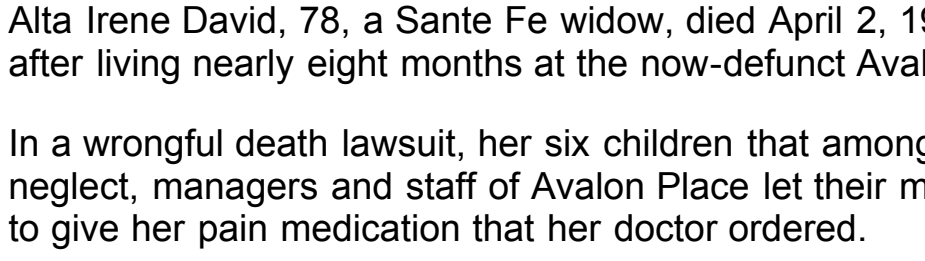
Attorneys for the plaintiff: David T. Marks, Henry P. Giessel and Nirja S. Aiyer of The Marks Firm, Houston; Timothy F. Lee of Ware, Snow, Fogel & Jackson, Houston; and Robert M. Moore, Galveston.

Attorneys for the defense: Edward Burbach and Denise Haugen, of Griggs & Harrison, Houston (Heartway Corp. and Joan Dugen, Larry F. Pile, Virginia Harrell, Glendine Cuff and B. J. Lee); and Wendi R. Ervin of Chalker, Bair & Associates, Houston (Sage Health Services, Inc. d/b/a Avalon Place-Texas City); David Taylor and Harrison Yoss of Thompson, Inc. d/b/a Cousins & Irons, Dallas (Interstate Insurance Group).

Experts for the plaintiff: James A. Reinarz, M.D., infectious diseases, Galveston; David E. Mansfield, M. D., family practice, Beaumont; Kevin Hefley, R.N., Borger; and Karl L. Shaner, Ph.D., Austin. Rick Goldberg, visual communication consultant, Tri-Coastal Legal Technologies, Houston.

Experts for the defense: Alan J. Garber, M.D., internal medicine and endocrinology, Houston; Judy Farness, R.N., Houston; Glenn Rowe, CPA, Houston; and Drury Woodson, M. D., internal medicine, Dickinson.

Settlement: Take-nothing judgment against all defendants, except Interstate. The plaintiff settled for \$5 million subject to a binding arbitration against Interstate on the issue of coverage. Under the terms of the arbitration agreement against Interstate on the plaintiff's attorneys, if the defendant prevails, the plaintiff receive nothing. If the plaintiff prevails, she receives \$5 million. The arbitration is set for Feb. 10.



NURSING HOME'S INSURER TO PAY FAMILY IN WRONGFUL DEATH SUIT

The family of a woman said to have died from neglect suffered in a Texas City nursing home will get \$5 million from the home's insurers.

Alta Irene David, 78, a Sante Fe widow, died April 2, 1997, in a Texas City hospital after living nearly eight months at the now-defunct Avalon Place nursing home.

In a wrongful death lawsuit, her six children that among numerous other forms of neglect, managers and staff of Avalon Place let their mother suffer sores and failed to give her pain medication that her doctor ordered.

Nursing home staff ignored for 34 days the development of one pressure sore that rotted David's flesh to her coccyx bone, her children alleged in court documents.

In November 1999, Chicago Insurance Co. claimed that Dallas-based Heartway Corp., the nursing home's owner and Indiana-based Sage Health Services, Inc., which managed the home, had violated their insurance contract by allowing continued neglect of David and other patients at the nursing home.

The family, represented by Houston attorneys Henry Giessel and David Marks, dropped their claims against Heartway, Sage and the firm's owners and nursing home staff, agreeing to let a three-member arbitration panel decide whether Chicago Insurance should honor its contract and pay the estate \$5 million.

The arbitration panel agreed with them and signed the award papers Monday.

All of David's six children still live in the Santa Fe area of western Galveston County. They are Alta Ronning, Marie Delesandri, Donald David, Henry David, Jr., Willie David and Betty Langer.

Ronning said Thursday she was pleased that the arbitrators decided the insurers had to stand behind the policy they sold the nursing home firms.

"Maybe this will wake up some of these other nursing homes and make them decide they'd better clean their acts up," said Ronning, who operates a convenience store and restaurant.

Delesandri added that family members knew David was having medical problems at the nursing home but didn't realize how serious they were. "They kept telling us that she was going to get better, but she just kept getting worse," Delesandri said.

During negotiations, the family's lawyers accused Heartway and Sage of failing to properly staff Avalon Place and failing to properly feed, clean and medicate David and others at the home.

"She didn't get turned as the doctor ordered and she didn't get medicine as the doctor ordered," Giessel said of David's stint at the nursing home. " She also didn't get fed much and didn't get water; so she lost weight and she was dehydrated."

The root cause of all the problems was lack of staff," Giessel said. "They had about half the staff they were supposed to have, for purely financial reasons."

Heartway, like most nursing home firms, is set up as a non-profit corporation. Industry critics maintain the firms try to give the impression that they are charitable in nature.

Heartway and Sage denied any negligence.

"The position of Sage was that there was no negligence, that there was no liability and, more significantly, that this was a decubitus ulcer case," Sage attorney Wendi Ervin of Houston said Thursday. "The defendant had prior medical conditions which made her predisposed to the development of decubitus ulcers."

"The standard of nursing home care was provided to her in all instances," Ervin said.

Attorneys for David's children maintained, however, that from Feb. 18, 1997, until her death in April, David received less than 40 percent of prescribed pain medication.

Virginia Harrell, the home's former administrator and one of the original defendants in the case, admitted during a deposition that conditions and problems at the home as noted in a highly critical 50-page state inspection report constituted neglect.