

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION

STEVEN A. BRIGANCE, as personal
representative of the Estate of
DOROTHY BRIGANCE, deceased;
and on behalf of the wrongful
death beneficiaries of DOROTHY
BRIGANCE,

Plaintiff,

vs.

Case Number CV 2010-1365

THE BROOKFIELD AT FIANNA OAKS, LLC,
d/b/a THE BROOKFIELD AT FIANNA OAKS;
ROBERT "Bob" BROOKS; and MITZI BAILEY,

Defendants.

VIDEOTAPED DEPOSITION OF DAVID
DEVEREAUX, taken on behalf of the
Defendants, at the law offices of
Chronister, Fields & Flake, 309 North
Seventh Street, Fort Smith, Arkansas,
on Tuesday, April 19, 2011, at 1:38 p.m.

A P P E A R A N C E S

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For the Plaintiff:

REX W. CHRONISTER, ESQ.
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(As indicated in the transcript.)
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Also present:

NIKKI KIRBY, VIDEOGRAPHER

I N D E X

TESTIMONY BY DAVID DEVEREAUX

PAGE

Examination by Mr. Dossett	4
Deposition Concluded	66
Court Reporter's Certificate	67

E X H I B I T S

NUMBER

MARKED

1	March 7, 2011 letter to Rex W. Chronister	17
	from David R. Devereaux and Patrice K.	
	Acosta; March 7, 2011 report	

1 TUESDAY, APRIL 19, 2011; FORT SMITH, ARKANSAS; 1:38 P.M.

2
3 THE VIDEOGRAPHER: This is the videotaped
4 deposition of David Devereaux, taken on behalf of
5 the defendants in the matter of Dorothy Brigance
6 versus The Brookfield at Fianna. Today's date is
7 April 19th, 2011, and the time is 1:38 p.m., and
8 we are on the record. All counsel present for
9 previous depositions in this matter are again
10 present for this deposition, and stipulations
11 will carry forward.

12 Would the court reporter please swear in the
13 witness.

14
15 DAVID DEVEREAUX,
16 having been called upon to testify in the form of a
17 deposition, and having been duly sworn or affirmed,
18 testified as follows, to wit:

19
20 E X A M I N A T I O N

21 BY MR. DOSSETT:

22 Q. Could you please state your name for the record?

23 A. Sure. David Devereaux.

24 Q. Mr. Devereaux, my name is Mark Dossett. We just met.

25 I'm an attorney from Fayetteville. I represent The

1 Brookfield and Mitzi Bailey in the lawsuit that we're here
2 about today filed by Steve Brigance on behalf of his
3 mother. Okay?

4 A. Okay.

5 Q. Have you ever given a deposition before today?

6 A. Yes.

7 Q. Approximately how many times?

8 A. About a hundred.

9 Q. Okay. So you're a veteran at this process. Let me
10 just remind us of a couple of things, if I could, and that
11 is it's very important that we not talk over one another.
12 If you are still answering your -- still giving your
13 answer, and I go on to my next question, I somehow
14 interrupt you, if you will indicate that to me, I will be
15 quiet and let you finish because I want to hear what you
16 have to say today. Okay?

17 A. Okay.

18 Q. If I ask a bad question, let me know. I'll be happy
19 to rephrase it or repeat it. Okay?

20 A. All right.

21 Q. And if you need to take a break at any time, for any
22 reason, let me know. Okay?

23 A. Okay.

24 Q. Finally, if there are any documents that you feel
25 like you need to look at in order to answer any of the

1 questions or refresh your memory or just do what's
2 necessary to give the best answer you can, then if you'll
3 indicate that to me, I will help you get that document,
4 and we'll take a break if necessary until we find it.
5 Okay?

6 A. All right.

7 Q. Where do you live?

8 A. I live at 323 East Wisconsin Avenue, Neenah,
9 Wisconsin.

10 Q. And how long have you lived there?

11 A. I've owned the home now for about five years, and
12 been living there since April of last year.

13 Q. Okay. Where did you live before April of last year?

14 A. In Chicago.

15 Q. And what caused you to move?

16 A. I donated that home to the university, and moved back
17 home to another home in Wisconsin.

18 Q. What are you currently doing for a living?

19 A. I am a partner in three nonemergency medical
20 transportation businesses.

21 Q. Nonemergency transportation?

22 A. Yes.

23 Q. How long has it been since you've been in the
24 long-term care industry?

25 A. I'm still in the long-term care industry. I service

- 1 nursing homes every day with my businesses.
- 2 Q. With regards to the transportation of residents from
3 one place to another?
- 4 A. That's correct.
- 5 Q. How long has it been since you've been involved in
6 the administration or operation of long-term care
7 facilities?
- 8 A. Are we talking as a paid employee or as a consultant?
- 9 Q. Let's do paid employee.
- 10 A. Since 2006.
- 11 Q. And where was your last place of employment in that
12 regard?
- 13 A. At Beverly Healthcare.
- 14 Q. Did you ever work for Beverly after it changed over
15 to Golden Living?
- 16 A. No.
- 17 Q. Was the termination of your employment or the ending
18 of that employment, did it have anything to do with the
19 changeover in ownership?
- 20 A. Yes, it did.
- 21 Q. In what way?
- 22 A. It was completely due to the change in ownership.
- 23 Q. Were you offered a position at Golden Living?
- 24 A. No, I was not.
- 25 Q. What was your last position at Beverly?

1 A. I was president of Beverly Healthcare.

2 Q. And Golden Living bought it, and they had their own
3 executives, and you moved on to other things?

4 A. Along with other executives, yes.

5 Q. How long did you work for Beverly?

6 A. Eight and a half years.

7 Q. Kind of rattle off for me, if you could, the
8 different positions you held there.

9 A. I was hired as a senior vice president in charge of
10 half of the company back in 1998, and then the company
11 reorganized in 2001, and I was senior vice president for
12 the coastal division, and then three months later was
13 promoted to become president of all Beverly Healthcare and
14 chief operating officer.

15 Q. And I think you just told me, but when did you get
16 promoted to chief operating officer?

17 A. 2001.

18 Q. 2001. What month?

19 A. It was at the end of financial first quarter, so that
20 would have been April.

21 Q. Okay. And after April of '01 until you left the
22 company in 2006, was that your position?

23 A. Yes, it was.

24 Q. In your position with Beverly, did you come to know
25 Steve Brigance?

1 A. Yes.

2 Q. And what was your interaction with him in your role?

3 A. He was general counsel for litigation.

4 Q. How often did you work with him?

5 A. On occasion.

6 Q. Did you have interaction with him on a regular basis?

7 A. You're going to have to define "regular." I said "on

8 occasion."

9 Q. Okay. How about every day?

10 A. No.

11 Q. Every week?

12 A. No.

13 Q. Month?

14 A. Yes.

15 Q. Okay. And in what way would your two positions

16 interact?

17 A. He was general counsel for litigation. I had between

18 4- and 700 facilities that were under my operation.

19 Q. Do you have any clinical background?

20 A. You're going to have to define "clinical" for me.

21 Q. Have you ever been an LPN?

22 A. No.

23 Q. RN?

24 A. No.

25 Q. Medical care provider?

1 A. Medical care provider you mean as a certified nursing
2 assistant?

3 Q. Okay. Let's do CNA. Have you ever been a CNA?

4 A. No.

5 Q. Have you ever held a license that allowed you to
6 provide hands-on care to a person?

7 A. No.

8 Q. Have you ever been -- held a license as an
9 administrator of a skilled nursing facility?

10 A. Yes.

11 Q. What states?

12 A. States of Pennsylvania and Missouri.

13 Q. Do you currently hold those licenses?

14 A. No.

15 Q. Let's start with Pennsylvania. What were the
16 effective dates of that license?

17 A. It was effective in April of 1986.

18 Q. Okay. And when did you allow that to -- or when did
19 it cease to be effective have?

20 A. I can't recall.

21 Q. Why did it cease to be effective?

22 A. Because I moved.

23 Q. So you moved from the Pennsylvania area, and you just
24 allowed it to lapse?

25 A. Yes.

1 Q. Other than allowing it to lapse because you
2 essentially no longer needed it, did you ever have your
3 license suspended, revoked or limited in any way while in
4 Pennsylvania?

5 A. No.

6 Q. In what years were you licensed in Missouri?

7 A. From 1988 until a year I can't recall.

8 Q. And why did that license terminate?

9 A. For the same reason.

10 Q. And prior to you allowing it to lapse, was it ever
11 suspended or revoked or limited in any way?

12 A. No.

13 Q. As I understand it, you've never held a license as an
14 administrator of a skilled nursing facility in any other
15 state; am I correct?

16 A. Yes.

17 Q. Have you applied for or tested for an administrator
18 license in any other state?

19 A. I tested for one in the State of Wisconsin many years
20 ago.

21 Q. And did you receive it?

22 A. I passed. I decided not to apply.

23 Q. Okay. Any other states?

24 A. No.

25 Q. Tell me a little bit about your educational

1 background. Where did you go to college?

2 A. I went to college in Cornell University in Ithaca,
3 New York.

4 Q. When did you graduate?

5 A. 1984.

6 Q. What degree or degrees did you receive?

7 A. A bachelor of science in hotel administration.

8 Q. Do you have any further post-high school education?

9 A. Yes.

10 Q. Tell me about that.

11 A. I have a master's in business administration with
12 concentration in health administration from Temple
13 University in Philadelphia, Pennsylvania.

14 Q. What year?

15 A. 1986.

16 Q. Any other?

17 A. Any other what?

18 Q. Education.

19 A. No.

20 Q. Do you have any other degrees?

21 A. No.

22 Q. Have you ever been an administrator of an assisted
23 living facility?

24 A. As a stand-alone facility?

25 Q. Yes, sir.

- 1 A. No.
- 2 Q. Have you ever been -- held an administrator's license
3 for assisted living?
- 4 A. No. I've supervised many, but never run a single
5 facility.
- 6 Q. Have you ever supervised any in Arkansas?
- 7 A. I would have to check the records of Beverly to see
8 what their licensure requirements were.
- 9 Q. If we looked at -- let's say, for example, when you
10 were CEO of Beverly, if it had assisted living facilities
11 in Arkansas, would they be under your umbrella of
12 responsibility?
- 13 A. Yes.
- 14 Q. Have you ever been a state surveyor?
- 15 A. No.
- 16 Q. How about a federal surveyor?
- 17 A. No.
- 18 Q. Have you ever reviewed the Arkansas assisted living
19 facility regulations?
- 20 A. I've probably read them at one time in my career,
21 maybe not from cover to cover, but been familiar with
22 them, yes.
- 23 Q. Did you review them in connection with developing
24 your opinions in this case?
- 25 A. Only what was stated in the state document.

1 Q. Okay. So as you reviewed the state file, if they
2 would summarize or quote a regulation, you would become
3 familiar with it that way?

4 A. I would read it that way, yes.

5 Q. But in developing your opinions and conducting your
6 review, you did not go, for example, and get the set of
7 regs, and study them?

8 A. No.

9 Q. How would you characterize your relationship with
10 Steve Brigance since the time you left Beverly?

11 A. We communicated very intermittently by e-mail.

12 Q. On a professional basis or a personal basis or both?

13 A. On a professional basis.

14 Q. In what way did your professional work and his
15 interact?

16 A. He contacted me in calendar year 2007 or 2008 on
17 behalf of outside counsel in Florida to go to a facility
18 in Charleston, South Carolina to spend three days to do an
19 analysis and evaluation of that facility, based on some
20 issues that had surfaced.

21 Q. Okay.

22 A. And that was the first time I heard from him after
23 the company was going through the change of ownership.

24 Q. Have you and Steve Brigance ever had a friendship
25 relationship outside of your work at Beverly?

1 A. No.

2 Q. Would it be accurate or inaccurate to describe the
3 two of you as friends during your time at Beverly?

4 A. I think anytime you work together you create
5 friendships, so it's fair to say we're friends.

6 Q. Do you know his wife?

7 A. I have met his wife.

8 Q. Whenever your engagement with Beverly ended when
9 Golden Living took over, were you provided any type of
10 buyout or severance?

11 A. Yes.

12 Q. Have you ever been an expert witness in a case
13 before?

14 A. No. I've also been on the defense side.

15 Q. Have you ever been an expert witness for the defense?

16 A. No.

17 Q. How many times have you testified in court?

18 A. About six.

19 Q. Have you ever testified in Arkansas?

20 A. No. No, that's not right. Yes, I did.

21 Q. Okay. Where in Arkansas?

22 A. In Fort Smith.

23 Q. How long ago was that?

24 A. Oh, years.

25 Q. Was it related to your position at Beverly?

1 A. I testified in my capacity, but it was not a patient
2 care-related lawsuit.

3 Q. Okay. Was it some type of business issue?

4 A. It was an employment lawsuit.

5 Q. How did you get contacted to do a review in this
6 particular case?

7 A. I sent an e-mail to Steve because Patrice and I were
8 interested in creating a business, and I asked him if he
9 would give me some advice on whether that made good sense
10 or not, and he sent me an e-mail back, and asked me if I
11 would call him. I e-mailed him back, said I would, met
12 for lunch, talked about a couple of things, and then
13 subsequently asked if I would be interested in getting
14 involved with this situation.

15 Q. What documents have you been provided to review in
16 this case?

17 A. The state file.

18 Q. I know, from deposing Patrice earlier, that she, at a
19 later point in time, received a handwritten log from the
20 sitters. Did you review that?

21 A. I have it. I have not yet reviewed it.

22 Q. Was -- did she focus more on those type of issues
23 when you all were doing your review?

24 A. Which type of issues?

25 Q. The type of issues that would be direct-care issues

1 mentioned in the sitter log.

2 A. No, I wouldn't characterize it that way.

3 Q. Then why is it that you -- is there any particular
4 reason that you haven't reviewed it prior to today?

5 A. Reviewed what, sir?

6 Q. The log.

7 A. No. Time.

8 Q. Any other reason?

9 A. No.

10 Q. Have there been any documents in this case, as you've
11 done your review, that you felt like you needed, but you
12 haven't been provided?

13 A. No.

14 Q. Any that you've requested that haven't been provided?

15 A. No.

16 Q. Have you reviewed any depositions in this case?

17 A. No.

18 Q. And when I say "depositions in this case," I mean --
19 that would include depositions from -- that may have been
20 taken in another lawsuit, but you reviewed them in
21 preparing your opinions in this case?

22 A. I understand your question. The answer is still the
23 same.

24 (Exhibit 1 was marked for identification.)

25 BY MR. DOSSETT:

1 Q. I have what I am going to mark as Exhibit 1 to your
2 deposition. It's a copy of the two-page cover letter of
3 March 7, 2011, and the detailed report that you and
4 Ms. Acosta prepared in this case, and I'm going to ask you
5 to take a look at it, and see if that appears to be a copy
6 of it.

7 A. Yes.

8 Q. Okay. If you would -- I want to ask you to notice a
9 couple of things about it. First of all, there's some
10 language highlighted, and I'm going to clarify for the
11 record that those were highlights that I made prior to
12 making the photocopy, so those are my notes. On the pages
13 there are brackets on the right-hand side with some
14 letters written next to them, either a "P" or a "C," and
15 I'm going to represent to you that those were made by
16 Ms. Acosta during her deposition, a "P" representing her,
17 and a "C" representing a paragraph that she collaborated
18 on with you in the text of it. Okay?

19 A. Okay.

20 Q. What I'm going to ask you to do, we're going to go
21 off the record here in just a moment to give you as much
22 time as you need, and I'm going to ask you to review the
23 report and, essentially, go through the same exercise,
24 although I don't need any "Cs," I just need you to put
25 your initial next to any paragraphs that you were

1 responsible for drafting, as best you can recall. And if
2 you notice any that you think you collaborated on with
3 Ms. Acosta that she didn't mark, if you would mark those
4 as well, I would appreciate that, and then when you're
5 done, we'll come back to the record. Okay?

6 A. That's fine.

7 THE VIDEOGRAPHER: The time is 1:59 p.m.

8 We're off the record.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: The time is 2:04 p.m.,

11 and we are back on the record.

12 BY MR. DOSSETT:

13 Q. Okay. Mr. Devereaux, we're back on the record, and
14 the court reporter and videographer are taking down what
15 we say. Okay?

16 A. Okay.

17 Q. I'm flipping through here, looking for any notations
18 that you made. Did you make any notations?

19 A. No.

20 Q. So as you went through Exhibit 1 to your deposition,
21 were you able to identify any paragraphs which you felt
22 you had primary responsibility for drafting?

23 A. Other than those that are marked without any
24 notation.

25 Q. Okay.

1 A. Those would be the ones.

2 Q. Okay. So if we go through here and there's not a
3 notation next to it, then that would be yours?

4 A. Yes.

5 Q. Let me start by directing your attention to the
6 second page of Exhibit 1, which is the signature page for
7 the cover letter.

8 A. Yes.

9 Q. Is that your signature there under "David Devereaux"?

10 A. No.

11 Q. Did Ms. Acosta sign that for you?

12 A. Yes.

13 Q. Did she have your permission to do it?

14 A. Yes.

15 Q. Prior to signing that on your behalf, had you had an
16 opportunity to review the contents of the letter?

17 A. Yes.

18 Q. And did you agree with those contents?

19 A. Yes.

20 Q. Other than your availability to sign or convenience
21 sake, was there any reason why you didn't sign it
22 yourself?

23 A. No.

24 Q. Tell me, if you would, what, if anything, do you
25 believe that The Brookfield or its employees did or failed

1 to do to cause injury to Mrs. Brigance in this case?

2 A. I think the report states it, but I would summarize
3 it in a number of areas, and I think it has to do with the
4 primary bullet point found on Exhibit 1, page unnumbered,
5 the cover page, it's largely a function of their
6 leadership, their ownership, and their lack of either
7 oversight, communication or quality assurance. Those
8 would be the variables I looked at and felt that
9 contributed to the injuries not only to Mrs. Brigance, but
10 also Mr. Brigance, so there's a pattern of that, in my
11 estimation.

12 Q. Okay. Let me ask you a few things about your report,
13 and see if I understand it correctly. The cover page,
14 which consists of the first two pages of Exhibit 1,
15 summarized your opinions in this case, the details of
16 which are contained in the detailed report that follows;
17 am I correct?

18 A. Yes.

19 Q. Do you consider your report to be finalized?

20 A. Do I consider it to be finalized? It's completed.

21 Q. Yes, sir. And I'm just wondering if this is a draft
22 or if this the final version as you sit here today.

23 A. This was the version provided to counsel upon
24 request, based on the information that we had.

25 Q. At the time that you provided it, did you consider it

1 complete?

2 A. Yes; otherwise, it would say "draft" on it.

3 Q. Okay. And the copy I have doesn't say "draft," but
4 I'm just making sure that what I have is what you consider
5 to be your final work product delivered to Mr. Chronister.

6 A. Okay.

7 Q. And am I correct in assuming that it is?

8 A. I think we said that, yes.

9 Q. Have you made any changes or revisions to Exhibit 1
10 since you turned it over to Mr. Chronister?

11 A. No.

12 Q. Do you plan on making any revisions to it?

13 A. No.

14 Q. Is it fair for me to assume that your opinions, and
15 the basis for those opinions that you would render in
16 front of a jury, are contained within Exhibit 1?

17 A. Yes.

18 Q. If, after you leave here today, any of your opinions
19 change or you add new opinions or you delete any of the
20 opinions contained in Exhibit 1, will you please notify
21 Mr. Chronister so he can let me know?

22 A. Yes.

23 Q. Okay. What is your professional opinion of Steve
24 Brigance, as far as him as a professional?

25 A. I think he's a good lawyer.

1 Q. Does he have any particular area of expertise?

2 A. He was our general counsel for litigation. That was
3 the job that I was most familiar with him in.

4 Q. And how knowledgeable is he in legal matters relating
5 to long-term care?

6 A. Legal matters or long-term care?

7 Q. Yes, sir, legal matters.

8 A. I won't answer the legal matters. I'm not a lawyer;
9 won't pretend to be. Long-term care, I think he's very
10 familiar.

11 Q. And so do you believe that he provided good counsel
12 to Beverly?

13 A. Yes.

14 Q. Would you consider him an expert in long-term care?

15 A. An expert in long-term care?

16 Q. Yes, sir.

17 A. No.

18 Q. Have you worked out any arrangements with
19 Mr. Brigance as to what your rates will be?

20 A. No.

21 Q. Do you intend to charge for your services in this
22 case?

23 A. Yes.

24 Q. So as you sit here today, how much time have you put
25 into this case?

- 1 A. About 20 hours.
- 2 Q. Do you know how much of that would be devoted to
3 review, and how much of it would be devoted to other
4 matters?
- 5 A. "Other matters" meaning what?
- 6 Q. Such as preparing your report.
- 7 A. Probably two-thirds to the detail, and then the
8 balance to the report.
- 9 Q. Is there any particular reason why you haven't worked
10 out the financial arrangements with Mr. Brigance?
- 11 A. No.
- 12 Q. Does it not seem odd to you that you have gotten
13 20 hours into the case without coming to an arrangement as
14 to what your fee will be, and how it will be paid?
- 15 A. No.
- 16 Q. Do you have any other businesses that you operate
17 where you provide the service before you come to a
18 decision as to what the compensation is going to be?
- 19 A. Yes.
- 20 Q. What would those be?
- 21 A. My own.
- 22 Q. Your own?
- 23 A. My own business.
- 24 Q. Your transportation business?
- 25 A. Yes.

1 Q. Do you have -- even though the details haven't been
2 worked out, do you have any type of range or informal
3 understanding as to what you will be paid in this case?

4 A. No. We have an understanding that we'll be paid.

5 Q. Okay. Is that good enough for you?

6 A. Yeah.

7 Q. Does the fact that that's good enough for you have
8 something to do with your level of comfort with
9 Mr. Brigance?

10 A. Comfort in what way?

11 Q. Knowing that you'll be paid. Do you feel like you're
12 familiar enough with him, personally and professionally,
13 that you can make that decision?

14 A. I believe he's a worthy credit risk. Let's put it
15 that way.

16 Q. I know that Ms. Acosta and you collaborated on this
17 report which is Exhibit 1 to your deposition; am I
18 correct?

19 A. Yes.

20 Q. In addition to a professional relationship with
21 Ms. Acosta, do you have a personal relationship?

22 A. Yes.

23 Q. And what is that?

24 A. We're partners.

25 Q. In what sort of way do you use the word "partner"?

1 You don't mean business partners?

2 A. In business and domestic.

3 Q. Okay. How long have you been domestic partners?

4 A. Since 2003.

5 Q. How did you meet her?

6 A. I met her at work.

7 Q. You consider yourself a resident of Wisconsin?

8 A. Yes.

9 Q. How often do you come to Arkansas?

10 A. Frequently. I lease a place here in Fort Smith, and

11 have for many years.

12 MR. DOSSETT: Okay. Let's go off the record

13 for just a second.

14 THE VIDEOGRAPHER: The time is 2:13 p.m. and

15 we are off the record.

16 (A brief recess was taken whereupon

17 Mr. Chronister left the proceeding and Mr. Flake

18 joined the proceeding.)

19 THE VIDEOGRAPHER: The time is 2:13 p.m.,

20 and we're back on the record.

21 BY MR. DOSSETT:

22 Q. And, sir, we're back on the record, and the court

23 reporter and videographer are recording what we say.

24 Okay?

25 A. Okay.

- 1 Q. We were talking about how often you come to Fort
2 Smith, and I think you just mentioned you have a place
3 leased here.
- 4 A. Yes.
- 5 Q. You come here once a week?
- 6 A. No.
- 7 Q. Once a month?
- 8 A. Many times.
- 9 Q. Many times a month?
- 10 A. No, many times once a month.
- 11 Q. Okay. And what's the nature of why you come back to
12 Fort Smith?
- 13 A. Because Patrice lives here.
- 14 Q. Oh, okay. Do you have any business that brings you
15 back to Fort Smith on a regular basis?
- 16 A. Well, I do today.
- 17 Q. Other than getting to answer a lot of questions from
18 a lawyer today, do you come back to Fort Smith on a
19 regular basis for business?
- 20 A. No.
- 21 Q. Do you intend to come back to Arkansas for the trial
22 in this case in September?
- 23 A. If I'm asked.
- 24 Q. Have you been asked yet?
- 25 A. No.

1 Q. You would be willing to do that, though, if you were
2 asked to do that?

3 A. Yes.

4 Q. Am I correct in assuming that you haven't worked out
5 any details of what your fee would be for coming to trial?

6 A. That's correct.

7 Q. Do you have any opinions, other than what's disclosed
8 in Exhibit Number 1?

9 A. Opinions to what?

10 Q. As related to this case.

11 A. No.

12 Q. Do you have any basis for your opinions, other than
13 what is disclosed in Exhibit Number 1?

14 A. What's disclosed in Exhibit 1 is based on the
15 information in the state file. If there's additional
16 information, I may expand that opinion, based on that
17 review.

18 Q. Okay. If, after you leave here today, you do review
19 any additional information, or any additional information
20 comes to you from any source that relates to your opinions
21 in this case. Will you let Mr. Chronister know so he can
22 notify me?

23 A. Yes.

24 Q. And I think we may have said this, but just to remind
25 you, if your opinions change, modify, get deleted or added

1 to in any way after we leave here today, let
2 Mr. Chronister know so he can notify me. Okay?

3 A. Okay.

4 Q. I wanted to ask you about a few of the particulars in
5 the report in the detailed portion of the report. If you
6 could turn to page 7, please.

7 A. Uh-huh.

8 Q. As you go down to the bottom of the page, the very
9 final paragraph starts with the phrase "In either case."
10 Do you see that?

11 A. Yes, I do.

12 Q. Could you please read those two sentences?

13 A. "In either case, the performance level is very poor.
14 What is even more important to determine is the motivation
15 behind these deficits."

16 Q. What do you mean by the phrase "what is even more
17 important to determine is the motivation behind these
18 deficits"?

19 A. This is a summary remark related to the paragraphs
20 above it related to the incident reporting which begins
21 back on page 6, and there are a number of statements made
22 based on the evaluation of the incident report involving
23 Mr. Brigance dated January 7, '09, a memo dated 10/30/09,
24 involving an employee named Angela Ruckman, and a resident
25 in Room 411, who is unnamed in the memo, but is believed

1 to be Mrs. Brigance, and the incident/accident report
2 involving Mrs. Brigance on 11/19/09. So if you take a
3 look at that and go through the balance of the detail
4 between the segment titled "Brookfield Incident and
5 Accident Reporting," and everything that comes out after
6 it, that's the basis for that statement.

7 Q. In what way did that information cause you to
8 question the motivation behind the defects that you
9 recite?

10 A. I think the detail about each of the items cited in
11 the introductory paragraph of that section bring me to
12 that point. And by all appearances, based on the
13 information in the state file, the incident report
14 involving Mr. Brigance appeared to have flaws or defects
15 or would be inconsistent with what one would think a
16 completed incident report would have.

17 The memo involving Ms. Ruckman was proposed in the
18 state file, it appeared to be an incident report, yet it
19 wasn't even on an incident report form, and it didn't name
20 the resident by name. I found that highly irregular. And
21 then the incident report involving Mrs. Brigance itself
22 was also incomplete.

23 And when you have a facility the size that Brookfield
24 was, with the level of care that it was licensed or
25 appeared to be licensed to provide, and to have those

1 issues not addressed consistently, completely or factually
2 correctly, that would give a person a reason to come to a
3 conclusion that the performance level was poor, and then
4 try and understand why that was. Was it because there's a
5 training issue or lack of administrative oversight or
6 something even worse. And that's why the statement is
7 where it is, and those are the reasons why.

8 Q. Something even worse being what, intentional conduct?

9 A. Well, it appears, based on evaluating those forms,
10 that more than one person signed it. There were arguably
11 different dates and times that sections of those reports
12 were completed. Those would raise questions. I'm sure
13 they raised questions with you. I imagine they raised
14 questions with counsel. I know they raised questions with
15 me.

16 Q. And I take it, from your answer, that you did not
17 find satisfactory explanation to those questions?

18 A. No. Especially when the incident report involving
19 Angela Ruckman, they don't even state the resident by
20 name. They do it by room.

21 Q. Why is that so odd to you?

22 A. Why is it so odd to me? Well, Brookfield had an
23 incident/accident report form. Why was it not filled out?
24 Why was that report not used? There's a box in the
25 incident/accident report that has resident name. Why was

1 that not filled out? Those are just the beginning
2 questions.

3 Q. What difference does it make, in your opinion, to
4 use -- to identify the resident by their room number as
5 opposed to by name?

6 A. Well, how do I know? How do you know?

7 Q. Who do you know to be in Room 411?

8 A. Exactly. Exactly.

9 Q. You don't know?

10 A. No, I think I know who's in there.

11 Q. Okay.

12 A. But based on that, nobody can tell.

13 Q. Okay.

14 A. And if you've got a form and a process for an
15 organization, you would like to think that they follow the
16 organization's form and process. Much like your
17 invoicing, sir, in your law firm. Do you have different
18 invoices or do you use a standard invoice form?

19 Q. Okay.

20 A. I know I do for my company.

21 Q. Okay. Let me take you back to -- while we're on this
22 topic, let me take you back to the very first page of
23 Exhibit 1 which has the bullet point summaries of your
24 opinions.

25 A. Okay.

1 Q. In the first bullet-pointed paragraph, about midway
2 through that paragraph there's a sentence that starts with
3 the word "additionally." Would you read that sentence,
4 please?

5 A. "Additionally, there's a very strong belief that a
6 small group of individuals behaved with protection of
7 Brookfield as a primary purpose, with personal integrity
8 as a secondary consideration."

9 Q. Who were the members of this, quote, small group of
10 individuals, close quote?

11 A. I believe that the administrator of the facility and
12 people that were involved in some of the documentation are
13 behind that sentence.

14 Q. Does that include anyone from OLTC, when you use that
15 phrase, were you trying to include them?

16 A. No. No, because I have OLTC in a second bullet
17 directly below.

18 Q. That's how I understood it, too, but I wanted to make
19 sure.

20 A. That's exactly how it was written.

21 Q. Okay. These people that are in this, quote, small
22 group of individuals, close quote, that you've identified,
23 have you ever met any of them?

24 A. No.

25 Q. Have you ever interviewed any of them on the

1 telephone?

2 A. No.

3 Q. Have you ever read any of their depositions?

4 A. No, but I have read some of the stuff that they've
5 completed or filled out or attempted to, and not done
6 particularly well.

7 Q. Okay. But based upon the information you have, and
8 the fact that you haven't met them or interviewed them, do
9 you have any pause in describing the issue as a lack of
10 personal integrity?

11 A. Not at all.

12 Q. Okay. When I see the phrase that there may be a lack
13 of personal integrity, that causes me to believe that
14 someone thinks they're lying or cheating. Is that your
15 opinion?

16 A. Or behaving in an inappropriate way, yes.

17 Q. A person can try to do their job best, and make a
18 mistake. That's not a personal integrity issue, is it?

19 A. No. People make mistakes, Counsel.

20 Q. Right.

21 A. I'm sensitive to that.

22 Q. When it rises to a level of personal integrity, that
23 implies that there is some component that the person is
24 doing something intentionally, to me. Did you mean it
25 that way when you wrote it?

1 A. What I mean is there's another reason for their
2 behavior other than simple mistakes.

3 Q. Good way to put it.

4 Let's go to the next bulleted paragraph that talks
5 about the Office of Long Term Care. It lists -- we could
6 read it all, but is it a fair summary of that paragraph to
7 say that in your opinion, the Office of Long Term Care did
8 not do a comprehensive and adequate investigation of the
9 complaints raised by the Brigances?

10 A. I believe that to be true.

11 Q. And we don't have to go over all the ways. The ways
12 that you believe the investigations were incomplete or
13 inadequate are contained in the detailed portion of your
14 report?

15 A. Yes.

16 Q. During your time at Beverly, I assume that it was
17 common for the facilities for which you had responsibility
18 would receive surveys, whether they be annual surveys or
19 complaint surveys?

20 A. Yes.

21 Q. And was it routine for the facilities to receive
22 citations during surveys?

23 A. At times.

24 Q. Was it often -- did it often occur that there would
25 be a survey with no deficiencies?

- 1 A. There were instances, yes.
- 2 Q. Would you agree that it's more common than not that
3 some deficiencies are written?
- 4 A. It's more common, yes.
- 5 Q. I would assume that during your time at Beverly,
6 given the number of years and the number of facilities for
7 which you had responsibility, that there must have been
8 thousands of citations issued to facilities for which you
9 had ultimate responsibility?
- 10 A. There were thousands of surveys, thousands.
- 11 Q. And thousands of citations?
- 12 A. If there's one per survey, there's thousands of those
13 also.
- 14 Q. Okay. Did you think that the existence of those
15 citations reflected poorly on the job you were doing?
- 16 A. No. And I didn't agree with all of them, and we
17 appealed many.
- 18 Q. I'm sure there were some that you didn't agree with
19 that you decided not to appeal as well?
- 20 A. That's correct.
- 21 Q. Have you ever been named individually in a lawsuit,
22 based upon your capacity in Beverly?
- 23 A. Yes.
- 24 Q. How many times?
- 25 A. Can't recall.

1 Q. Too many to count?

2 A. Yes.

3 Q. Were there times when you felt like you were sued,
4 and you shouldn't have been sued?

5 A. Don't we always?

6 Q. Usually. You would agree with me, wouldn't you, that
7 sometimes in your respons- -- in your role, given you were
8 the CEO, people would name you as a defendant because you
9 had ultimate responsibility, but you weren't the one
10 actually giving the hands-on care to your residents?

11 A. That's right.

12 Q. You understand the difference, obviously?

13 A. Yes, I do.

14 Q. In the lawsuits that you were involved in on behalf
15 of Beverly, were there ever occasions where you disagreed
16 with the plaintiff's version of the case?

17 A. Yes.

18 Q. Were there occasions where, based upon the way the
19 plaintiff was presenting the case, you know it, quote,
20 unquote, looked bad, but you felt as if maybe the reality
21 was something different?

22 A. You're going to have to rephrase that one, Counsel.

23 Q. Were there cases in which plaintiff's attorney, from
24 their side of the case, were presenting the case in a way
25 that made a set of facts look particularly bad, but you

1 felt, based upon the information you had, that the reality
2 was something different than what was being portrayed by
3 the plaintiff's counsel?

4 A. Facts are facts. You can't change facts, so does
5 sentiment and emotion on defense side take over and wish
6 it wasn't true, didn't think it was true, didn't think it
7 to be? Sure. But the facts don't change.

8 Q. Would you agree with me that sometimes people, when
9 they don't have all of the facts, can get an incomplete
10 picture of what's going on?

11 A. Yes.

12 Q. And when one has an incomplete picture, based upon
13 incomplete facts, one can come to an incorrect conclusion?

14 A. Well, there's facts and then there's additional
15 facts. I don't know that there's such a thing as an
16 incorrect fact.

17 Q. What I'm asking you is -- let me rephrase my
18 question.

19 Do you agree with me that if you don't have all the
20 facts, sometimes you can come to the wrong conclusion?

21 A. Depends on the issue.

22 Q. It sure does. And that would vary from case to case,
23 obviously?

24 A. Surely.

25 Q. But if, for example, you were reviewing a set of

1 facts because you're trying to reach a conclusion, you're
2 trying to form an opinion, and you don't have all of those
3 facts, there could be something out there that would prove
4 you wrong, prove your conclusion or opinion wrong,
5 something you don't know about.

6 A. So your question is?

7 Q. Your opinion, your conclusions, are only as good as
8 the information you're provided?

9 A. I think it's important I approach any matter with an
10 open mind, and if there's additional information with an
11 open mind, anything can happen.

12 Q. Okay. Are you surprised at the fact that with
13 regards to the complaint, Mr. Brigance's accident, that
14 that was substantiated without deficiencies being written?

15 A. Completely.

16 Q. Why?

17 A. I've never seen it. I've never seen it happen.

18 Q. What does that mean to you?

19 A. That means in my experience in nearly 30 years in the
20 nursing home business, I've never known that to occur.
21 That's a fact.

22 Q. You've never known the complaint to be substantiated,
23 but without a deficiency?

24 A. That's correct.

25 Q. When the complaint is substantiated, what does that

1 mean to you?

2 A. That means that a complaint was made, and it was
3 found to be factually true.

4 Q. And you've never run into a situation where the
5 investigators went out and found that the event did occur,
6 but there's no violation of the regs?

7 A. I've had situations where a complaint has been filed,
8 the allegations have been unsubstantiated, and no
9 deficiency cited, but I've never come across a situation
10 where an allegation has been made, a complaint has been
11 investigated, it has been substantiated, and no deficiency
12 was cited.

13 Q. There are some statements made in the report
14 questioning the friendliness between OLTC folks and
15 ownership of The Brookfield. Do you remember those
16 comments?

17 A. You would have to direct me to that, Counsel.

18 Q. Look, for example, final bulleted paragraph on
19 page 11.

20 A. Okay.

21 Q. This is one of the -- in fairness to you, one of the
22 paragraphs that Patrice noted was primarily her
23 contribution, and so wouldn't be primarily your
24 contribution; however, I would ask you just to take a
25 second to read it to yourself. You can read it out loud

1 if you want, but I just want you to familiarize yourself
2 with it.

3 Based upon -- and this is the paragraph that I'm
4 wondering about, but based upon your review of the
5 information and the documents in this case, did you come
6 to a conclusion that there was a lack of objectivity on
7 the part of OLTC?

8 A. There was a lack of a lot on the part of OLTC.

9 Q. Did that, in your eyes, in your opinion and
10 conclusion, include a lack of objectivity?

11 A. I think there is some questions that were raised on
12 page 11 that are fair questions to raise.

13 Q. Okay. At the end of the day, did you come to a
14 conclusion that there was a lack of objectivity or some
15 bias on the part of OLTC?

16 A. Bias toward what?

17 Q. Towards Brookfield in favor of Brookfield and, I
18 guess, against Mr. Brigance.

19 A. Are you asking me if I think OLTC turned a blind eye?

20 Q. However you would like to phrase it.

21 A. I don't know. I would like to know, but I don't
22 know.

23 Q. Are you concerned about that in this case?

24 A. It's not my primary concern.

25 Q. What is your primary concern?

1 A. My primary concern is how did this facility that was
2 licensed in the State of Arkansas, how did they operate in
3 a way where not one person, but two people died horrible
4 deaths, and how did that happen without any real sanctions
5 on the part of the state, and without any real
6 institutionwide efforts at improving, over an extended
7 period of time, with the same person in a leadership
8 capacity, with, based on the information, no ownership
9 intervention, how did that occur? How does that occur?
10 That's what I'm interested in knowing because based on the
11 information that I saw, that's what I think went on.

12 Q. Okay. Let's get back to the part about OLTC. Do you
13 believe in this case that OLTC was somehow turning a blind
14 eye to what was going on at The Brookfield?

15 A. I think that's a question for OLTC. We raise the
16 questions for counsel, understanding the context of this
17 report.

18 Q. Okay. I take it, from your answer, that you're not
19 going to come in, in front of the jury, and suggest that
20 there was some type of conspiracy or coverup on the part
21 of OLTC?

22 A. No, I'm not.

23 Q. Do you believe there was an effort made on the part
24 of Brookfield to cover up?

25 A. Yes.

1 Q. And what do you see that caused you to come to that
2 conclusion, what specific facts?

3 A. Okay. Let's see. Let's look at page 3.

4 Q. Okay.

5 A. Okay. And we'll go about midway down the page about
6 the 11/19/09 progress notes for Mrs. Brigance. And I
7 won't read this. That information is right in front of
8 you, but looking at that material, how is it that a
9 medical record involving a situation pertaining to a
10 resident who sustains an injury, how does that happen
11 without any real explanation or intervention? And it
12 would be one thing if this were the first occurrence, but
13 this also happened in some form or related fashion when
14 Mr. Brigance was injured. It wasn't obliterated, but
15 there's at least enough information available that one
16 could conclude that there was some manufacturing of
17 documentation, but that's the first example.

18 Q. Okay.

19 A. Okay. We went through the detail earlier on all the
20 incident reporting, and all I would be doing is repeating
21 myself, but that pretty much speaks for itself.

22 Q. Okay.

23 A. And I know that there are other instances around here
24 involving the e-mail communication between Steve Brigance
25 and the administrator of the facility, and, in my

1 estimation, she was evasive, didn't demonstrate a lot of
2 character or leadership in addressing an issue, solving a
3 problem, or serving a customer.

4 And then I think there's information involved here
5 related to the denial of resident's rights to
6 Mrs. Brigance following Mr. Brigance's death, and a CNA or
7 a patient care assistant that was terminated and barred
8 from coming to the facility. OLTC didn't look at that,
9 but neither did Brookfield, and if Brookfield was an
10 advocate for their residents, resident's rights would have
11 been one of the primary points of emphasis. I didn't see
12 a lot of that going on in any of the materials that I
13 reviewed. Those are just a couple examples why I think
14 Brookfield may have been operating with a little less than
15 complete integrity.

16 Q. Let's talk about -- specifically about the 11/19
17 entry on page 3.

18 A. Okay.

19 Q. This is the one I think you were indicating. It's
20 about two-thirds of the way down.

21 A. Yes.

22 Q. In what way do you believe that there was a
23 manufacturing of documentation?

24 A. Did you see the chart, Counsel? Did you see that
25 record where I'm making reference to?

- 1 Q. Are you wanting me to respond?
- 2 A. I'm curious.
- 3 Q. I thought it was a rhetorical question.
- 4 A. No, it's not rhetorical.
- 5 Q. Okay. I've seen it, yes.
- 6 A. And I don't know how it is in the world of law, but
- 7 in health care, and we talked earlier about errors, people
- 8 make errors, and good people make errors, and those things
- 9 happen. That's part of the human condition. But for
- 10 someone to do what one person did to that medical record
- 11 was not something that you're trained to do, whether
- 12 you're a nurse or not a nurse, administrator or not an
- 13 administrator, it's simple enough to draw a line through
- 14 it, write "error," put initials and date it as opposed to
- 15 carving it up with a pen, and trying to obliterate the
- 16 record, and then making a simple statement on the page
- 17 directly behind it that oh, I rewrote it and I wrote it
- 18 the same way. I'm not buying it. It's really hard to --
- 19 it's really hard to buy.
- 20 Q. How many medical records have you completed in your
- 21 career?
- 22 A. How many have I completed?
- 23 Q. Yeah, filled out.
- 24 A. I've made entries in a few in my career.
- 25 Q. In what role?

1 A. As an administrator.

2 Q. Okay. You weren't providing hands-on care to people,
3 were you?

4 A. No. I think we established that earlier.

5 Q. Right. And so have you ever had to provide hands-on
6 care to people, and then go record what you did in a
7 medical record?

8 A. No. But that's not the only instance where you make
9 an entry into a medical record, Counsel.

10 Q. Sure. Have you -- have you ever encountered, in your
11 career, somebody writing in the wrong person's chart, they
12 think they're writing in Resident Number 1's chart, but
13 they're writing in Resident Number 5's chart?

14 A. Yes.

15 Q. I mean, that can happen, given the number of people
16 you're dealing with?

17 A. Yes.

18 Q. Do you rule that out as a possibility in this case as
19 to what may have happened?

20 A. In this case, I certainly do.

21 Q. And on what grounds?

22 A. On the grounds I made earlier. People make mistakes,
23 and there are methods to articulate that in the chart, and
24 I think I just went through that. And that wasn't done.
25 So why wasn't it done? That is rhetorical, but I don't

1 know the answer to it.

2 Q. I'm just curious as to whenever you're deciding what
3 happened on this 11/19 entry on the 3:00 to 11:00 shift,
4 have you ruled out the possibility that this was written
5 in the wrong person's chart, and somebody went back and
6 discovered that at a later time?

7 A. I haven't ruled that out.

8 Q. So would you agree with me, then, that is one of the
9 possibilities as to what happened here?

10 A. Slight.

11 Q. And let's --

12 A. But let me continue on that answer.

13 Q. Go ahead.

14 A. What I think we -- what I know in my mind can't be
15 changed is that around documentation, on multiple fronts
16 in this facility, there was a practice inconsistent with
17 what would otherwise be expected. And that's a pattern,
18 and I don't know if it's a pattern of poor training, poor
19 leadership, disinterest, or something far worse.

20 Q. And in your eyes, did those errors in documentation
21 cause injury to Mrs. Brigance?

22 A. I think it speaks to a larger issue. It's a symptom
23 of something greater. And if you want to go down the
24 direction, well, is poor documentation indicative of poor
25 training? Maybe. Is it indicative of poor oversight?

1 Maybe. Could those things have caused Mrs. Brigance's
2 injury? Certainly.

3 Q. Tell me your understanding of how Mrs. Brigance's
4 accident occurred.

5 A. It's very difficult to determine, based on the
6 incident reports. The information that I have is that she
7 fell. She fell and was severely hurt.

8 Q. That's the sum total of what you know about her
9 accident?

10 A. Based on the state file, there wasn't a whole lot
11 more there that could be put together coherently --

12 Q. Go ahead?

13 A. -- based on what the facility provided.

14 Q. So based upon the information that you've had to
15 review, that is all you know about how her accident
16 occurred?

17 A. The how part? I don't know how it occurred. I don't
18 know that anybody knows.

19 Q. Okay.

20 A. What I do know is that she fell, she was hurt badly,
21 and later on she did die.

22 Q. Okay. How about the why part of why she fell?

23 A. How about the why part?

24 Q. The why to her fall, do you know anything else about
25 that?

1 A. No.

2 MR. DOSSETT: We have to change tapes.

3 THE WITNESS: That's fine.

4 THE VIDEOGRAPHER: The time is 2:45 p.m.,
5 and we are off the record.

6 (A brief recess was taken.)

7 THE VIDEOGRAPHER: The time is 2:54 p.m.,
8 and we are back on the record.

9 BY MR. DOSSETT:

10 Q. Mr. Devereaux, we're back on the record. The court
11 reporter and videographer are taking down what we say.

12 Okay?

13 A. Okay.

14 Q. I wanted to go to another topic mentioned in the
15 detailed portion of your report. It's on page 5, the
16 bottom portion of it. It mentions -- that last paragraph
17 talks about the occupancy rate of The Brookfield, profit
18 and loss statements likely not to show a profit due to the
19 low occupancy rates. Do you see that?

20 A. Yes.

21 Q. Are we on the same page? Could you read for me the
22 remainder of that paragraph, going over to page 6 that
23 begins with the phrase "it is possible"?

24 A. "It is possible, and not extraordinary, that
25 Brookfield would go to extremes to protect its overall

1 occupancy percentage, keeping residents that otherwise
2 might have been better suited for a higher level of care
3 (skilled nursing), in an attempt to protect its revenue
4 sources. The contemplation of this operating strategy is
5 a constant threat to assisted living facility residents,
6 and on an individual level, it would be important to
7 review service level agreements and any assessment tools,
8 to determine whether care needs are being assessed
9 correctly and the resident(s) was placed in the most
10 appropriate care setting."

11 Q. Are you going to give an opinion in this case as to
12 whether or not Dorothy Brigance was fit for the assisted
13 living facility she was in?

14 A. In order to do that, I need more information. I
15 don't have any evidence or there was none provided in the
16 state file that Brookfield did an assessment that showed a
17 level of care change.

18 Q. As you sit here today, have you formed any opinions
19 in that regard?

20 A. No.

21 Q. And that just goes along with what we said earlier,
22 if you form any opinion in that regard moving forward,
23 please let Mr. Chronister know.

24 A. We discussed that earlier.

25 Q. Yes. And I'm just reminding you on this particular

1 topic as well.

2 A. I'm reminded.

3 Q. Thank you.

4 If you look -- this is a concept, the idea that

5 people might be kept at an assisted living facility, even

6 though they really needed to move on to maybe a more acute

7 care setting. Did that happen at Beverly?

8 A. It's not a concept.

9 Q. Okay. What do you mean?

10 A. It's an occurrence.

11 Q. Did it occur at Beverly?

12 A. At times.

13 Q. Did it occur because Beverly was trying to keep its

14 occupancy rates up?

15 A. No.

16 Q. Why did it occur?

17 A. It occurred because administrators tried to keep

18 their occupancy level up, and we had patient care

19 specialists often working as consultants to go in there

20 and evaluate patient care populations so that people were

21 in the correct setting, and oftentimes that -- the next

22 steps were to work with the administrator and their team

23 to assess people correctly, and get them placed where they

24 belonged.

25 Q. It does happen, doesn't it, where a person qualifies

1 for assisted living, they go into an assisted living
2 facility, and they, for lack of a better phrase, they age
3 in place, and their needs change where they're no longer
4 suited for an assisted living facility?

5 A. Yes.

6 Q. And that, typically, doesn't -- sometimes it's hard
7 to know the exact moment when that occurs, they kind of
8 age in place and it happens over time?

9 A. Depends on how well educated your staff members are
10 and what your evaluation process is.

11 Q. Whenever a resident has -- they come into the
12 facility qualifying for assisted living, but over time
13 they have developed greater needs, how should a facility
14 go about identifying that and discussing it with the
15 family?

16 A. There should be an evaluation process in place.
17 Oftentimes, it depends on state regs or the organization's
18 policy, but in some instances, many instances, it occurs
19 quarterly, and then at a care conference that service plan
20 is reviewed with the family by the facility team,
21 oftentimes including the administrator, to communicate
22 whether or not that resident still meets the care
23 qualifications for that location or whether they need to
24 anticipate a move to a higher level of care or a different
25 location inside the facility.

1 Q. And this is a conference -- are you talking about the
2 care conference that takes place between members of the
3 facility and the family?

4 A. Yes.

5 Q. It's not appropriate for a facility to make a
6 unilateral decision without consulting the family, would
7 you agree?

8 A. I think unilateral communication about resident care
9 is an opportunity for problems to occur.

10 Q. Okay. What is the difference between an assisted
11 living facility and a skilled nursing facility, as you
12 understand it?

13 A. They have different licenses.

14 Q. Is that it?

15 A. They have different licenses, so they have different
16 licensure requirements.

17 Q. Okay. Any other differences between the two that
18 you're aware of?

19 A. Physical structure may vary by building. Oftentimes,
20 they are the same. There are organizations that
21 intentionally build assisted living facilities to meet
22 skilled nursing code so if one strategy doesn't work, the
23 other one can be used, so it goes back to my earlier
24 answer.

25 Q. How about with regards to the population?

- 1 A. The population of who?
- 2 Q. The residents.
- 3 A. The resident population, sometimes they vary,
4 sometimes they're very much the same.
- 5 Q. Okay. Have you done any investigation to determine
6 the overall resident population, and their level of
7 functioning at The Brookfield during this time period?
- 8 A. No.
- 9 Q. Do you have any information in that regard?
- 10 A. No.
- 11 Q. You are aware of the fact, I believe, that assisted
12 living facilities and skilled nursing facilities have
13 different regulations which govern them?
- 14 A. I said that just a minute ago.
- 15 Q. And are you aware of whether or not the regulations
16 are the same from state to state or do they vary state to
17 state?
- 18 A. They vary state to state.
- 19 Q. Have you ever undertaken to compare Arkansas
20 regulations to, say, Pennsylvania or Missouri?
- 21 A. I have not.
- 22 Q. Or any other state?
- 23 A. No.
- 24 Q. In your role at Beverly, what was your level of
25 participation in surveys?

- 1 A. Surveys?
- 2 Q. Surveys.
- 3 A. You're going to have to define that a little more
4 clearly for me.
- 5 Q. Whenever the state would come in and conduct a survey
6 of, for example, one of your assisted living facilities,
7 what would your level of involvement be in that process,
8 if any?
- 9 A. To be made aware.
- 10 Q. Is that it?
- 11 A. Yes.
- 12 Q. Were you ever involved in what I would call internal
13 investigations which I would describe as being conducted
14 by or on behalf of Beverly, as opposed to the state doing
15 it?
- 16 A. Yes.
- 17 Q. And what would your level of involvement be in those
18 type of investigations?
- 19 A. Depends on the nature.
- 20 Q. Did you ever go participate in the onsite
21 investigation yourself?
- 22 A. At times.
- 23 Q. What would cause you to do that?
- 24 A. The severity of an issue.
- 25 Q. How is it that you believe the matters relating to

1 Mr. Brigance's fall relate to Mrs. Brigance's fall?

2 A. I think I stated earlier there appears, based on the
3 state file that I reviewed, and some of the e-mail
4 dialogue, a pattern of poor leadership, poor oversight,
5 almost no quality assurance measures in place. And when
6 you try and run an organization whose job is to take care
7 of people, and you don't have those fundamental elements
8 in place, then I think they are interrelated.

9 Q. What makes you think there was no quality assurance
10 process in place?

11 A. There wasn't any proof of it, and they were cited on
12 it in a survey.

13 Q. It's your understanding they were cited on not having
14 a quality assurance process?

15 A. Based on the documents that OLTTC produced.

16 Q. Do you recall what the nature of the citation was
17 regarding quality assurance?

18 A. Failure to have a quality assurance process.

19 Q. Okay. Are you aware of whether or not that
20 deficiency was cleared by later review?

21 A. It was -- I believe it was noted that the
22 administrator said it was either cleared or it was
23 satisfied the day following the citation or within less
24 than 10 days of that citation, and I found that
25 extraordinary.

1 Q. That they got on it that fast?

2 A. No. That they were able to create a process where
3 they had none before, and have it working.

4 Q. Right. If they had no process before, that would be
5 pretty hard to do, wouldn't it?

6 A. You wouldn't have a quality assurance process because
7 it's longitudinal.

8 Q. If you had no process at all, it would be hard to
9 create it in a day or a week?

10 A. That's right.

11 Q. Do you disagree with the conclusions reached by the
12 state investigators with regards to their investigation of
13 Jack Brigance's accident?

14 A. Yes.

15 Q. Do you believe that the investigators that actually
16 conducted the investigation interviewed the people, went
17 to the facility, would be in a better position than you to
18 determine if there were any deficiencies?

19 A. I believe that they didn't completely do the job that
20 they were paid to do. Why, I don't know, but I find it
21 incredible, as we talked earlier, that you could
22 substantiate a complaint, and not cite a deficiency. I
23 also read the record or the e-mail dialogue between two
24 senior officials within OLTC, and for a facility operating
25 for more than six months to have no responsibility for a

1 physical plant-related issue that resulted in the death of
2 another man, and have that all placed on the construction
3 company, I find highly irregular. And my experience with
4 OLTC, that would never have occurred, so I find that
5 irregular.

6 Q. You would find it -- so you disagree with the
7 conclusion of the OLTC investigators that the
8 responsibility for the door falling was on the contractor?

9 A. I think it's a shared responsibility, Counsel.

10 Q. So you would disagree with their conclusion?

11 A. Yes, I would.

12 Q. And are you aware of the fact that a jury here in
13 Sebastian County, Arkansas came to that same conclusion?

14 A. Which conclusion?

15 Q. That it wasn't the responsibility of The Brookfield.

16 A. You've asked me the question.

17 Q. Yeah. Are you aware that that issue was tried to a
18 jury here in Sebastian County, and they ruled -- and that
19 jury ruled that there was no fault on the part of The
20 Brookfield with regard to the door falling?

21 A. Well, there's a difference between due process of
22 law, I think, and applying an administrative code to a
23 facility to whether or not they've satisfied those codes.
24 I hope you're not implying that OLTC is the same as a case
25 being heard by a jury of their peers.

1 Q. What I'm wondering is are you aware that the case was
2 tried to a jury, and that the jury found no fault on the
3 part of The Brookfield?

4 A. I'm aware that a suit was filed, and a decision
5 rendered, but it goes back to my earlier remark.

6 Q. So I know that you disagree with the OLTC
7 investigators. Do you disagree with the jury?

8 A. The jury heard the case that was presented to them.
9 I wasn't present there. I don't have an opinion one way
10 or the other.

11 Q. Okay. With regards to -- let's go back to the OLTC
12 investigators on this incident, then. I understand you
13 believe their investigation was incomplete and
14 insufficient. I understand that, but what investigation
15 did you do beyond the information provided by the
16 investigators?

17 A. Let's talk about that for a minute. Okay? If I read
18 the state file correctly, and you can correct me if I'm
19 wrong, there was issues -- let's look at page 10.

20 Q. Of your report?

21 A. Yes.

22 And based on my review of the state file, there was
23 an issue with the Brigance door on the 11th, and it was
24 fixed, and then on the 12th, and it was not fixed until
25 the 19th, so there's an arguably six- or seven-day span

1 when that door was not fixed in that room. And based on
2 some of the information that I read, and statements from
3 the maintenance director and others, the appearances are
4 that that door remained in the room, not on its hinges.
5 Some of the other information was that the maintenance
6 person indicated that it was two people that it required
7 to carry the door out of the room, so it was a heavy piece
8 of wood. And these are old people.

9 So I'm drawing a mental picture here's a door off its
10 hinge in the room, not secure, here's two old people, and
11 that door could fall on them, and a seven-day period
12 passes by, and there's people providing care to not one
13 persons, but two, there's an administrator in there in
14 that organization responsible for the daily oversight and
15 care of the residents, and there's no quality assurance
16 process. So for all these things to occur and the
17 facility does not receive a deficiency, even though the
18 complaint was substantiated, I find incredible.

19 Q. What I'm wondering is, don't you think that the
20 people who did the investigation, went to the facility,
21 saw the door, interviewed the witnesses, are in a better
22 position than you to determine whether or not a citation
23 should be issued?

24 A. You asked me if I believed OLTC did their job. I'm
25 telling you no. I gave you the reasons why.

1 Q. I'm wanting to know if you will concede that they
2 were in a better position than you to determine if a
3 deficiency existed.

4 A. No.

5 Q. Let's talk about -- let me ask you this: Have you
6 ever been to the facility?

7 A. No.

8 Q. I assume that you didn't interview Mrs. Brigance
9 about her husband's --

10 A. Obviously.

11 Q. You didn't interview the maintenance man?

12 A. No. As I stated earlier, I've read the state file.
13 I've articulated that to you. But as we go back through
14 the things I just explained, don't you find that highly
15 irregular? Don't you find that incredible? That's not
16 rhetorical.

17 Q. You want me to answer your question?

18 A. I do. I find that incredible.

19 Q. You want me to answer your question?

20 A. Certainly.

21 Q. I find it incredible your version of events. Let's
22 put it that way.

23 Let's go on to Mrs. Brigance's fall. Do you disagree
24 with the results of the investigation for Mrs. Brigance's
25 fall?

1 A. I don't think I have anything in there about
2 disputing their investigation of her fall. What I do --
3 the remarks I did make, though, was that I find it
4 incredible that the facility was not cited for neglect as
5 it related to the care of Mrs. Brigance. And there's
6 information in there that explains that.

7 Q. Do you disagree with the ultimate conclusion of that
8 investigation?

9 A. I think it's incomplete.

10 Q. Okay. I'm going to represent to you that the
11 conclusion that the investigation came to, the
12 conclusions, were that the complaints were
13 unsubstantiated. Do you disagree with those conclusions?

14 A. The conclusion is what they decided. Do I agree with
15 it? No, I don't.

16 Q. And, once again, do you not think that they are in a
17 better position than you to know whether there's been a
18 deficiency?

19 A. I don't believe that.

20 Q. Do you have an understanding -- strike that. I think
21 you've already answered that.

22 I need to get a little background information I
23 forgot to ask you. What is your date of birth?

24 A. 3/17/62.

25 Q. Have you ever been convicted of a crime?

1 A. No.

2 Q. Ever been charged with a crime?

3 A. No.

4 Q. Has any court ever declined to recognize you as an
5 expert?

6 A. No.

7 Q. About your current patient transfer business, what
8 states -- state or states are the businesses located in?

9 A. Missouri and New Mexico.

10 Q. Not Arkansas?

11 A. No.

12 Q. Are you -- other than your consulting business, do
13 you have any other lines of work you're currently doing?

14 A. As a director of companies, yes.

15 Q. Okay. What type of companies?

16 A. There's a company called Telemedicine Solutions
17 that's involved with wound care for the elderly.

18 Q. I think I saw that on your CV. What does that
19 company do?

20 A. They use handheld technology to do wound and skin
21 care assessments and prevention documentation for the
22 elderly. We work in nursing homes.

23 Q. What states do they work in?

24 A. It's a national company.

25 Q. Is this providing a device or technology to different

1 nursing homes?

2 A. Yes.

3 Q. Any other businesses you're involved with right now?

4 A. Not that I can think of.

5 Q. Does your consulting business, do you just operate it

6 under your name, or do you have a business name for it?

7 A. No, we operate it under our names.

8 Q. Do you advertise your consulting business anywhere?

9 A. No.

10 Q. Have you kept a file relating to your review of this

11 case?

12 A. A file?

13 Q. Yes, sir, where you put papers and things.

14 A. No.

15 Q. Have you had any e-mail correspondence with anyone,

16 including Ms. Acosta?

17 A. Yes.

18 Q. About this case, I mean.

19 A. About the case?

20 Q. Yes, sir.

21 A. Just to send an attachment of the draft of the report

22 that sits in front of you.

23 Q. I'm going to ask you, if you would, to please provide

24 a copy of that e-mail and its attachment to

25 Mr. Chronister, and I'll ask him for it.

1 A. If you would provide a lineup card of anything that
2 you're asking for to Attorney Chronister, we'll provide it
3 for you.

4 Q. We will do that. Thank you.

5 Do you have an understanding as to whether or not the
6 federal regulations that are applicable to nursing homes
7 are applicable to assisted living facilities?

8 A. I don't believe that they are.

9 Q. Did you review any documents to prepare for your
10 deposition today?

11 A. Only the report that sits in front of me.

12 Q. Did you bring any documents with you to your
13 deposition today?

14 A. No.

15 MR. DOSSETT: Give me just a moment to look
16 over my notes. I apologize for the delay, but
17 I'm going to do that, and try to wrap this up.

18 THE WITNESS: Okay.

19 MR. DOSSETT: Let's go off the record just a
20 minute.

21 THE VIDEOGRAPHER: Time is 3:17 p.m., and we
22 are off the record.

23 (A brief recess was taken.)

24 THE VIDEOGRAPHER: The time is 3:21 p.m.,
25 and we are back on the record.

1 BY MR. DOSSETT:

2 Q. Mr. Devereaux, when we were going through your
3 administrator licenses, I was a little bit confused about
4 the timing of that. Were you licensed in Missouri after
5 Pennsylvania or before?

6 A. After.

7 Q. Did you work in Missouri as a licensed nursing home
8 administrator?

9 A. Yes.

10 Q. Do you remember when the last year it was that you
11 worked as a nursing home administrator?

12 A. 1991, '90 or '91.

13 Q. Okay. Do you remember when you were last licensed as
14 an administrator?

15 A. In which state?

16 Q. Any state.

17 A. Probably 1992.

18 MR. DOSSETT: Okay. I appreciate your time,
19 sir. That's all the questions I have.

20 THE WITNESS: Okay.

21 THE VIDEOGRAPHER: Time is 3:22 p.m., and we
22 are off the record.

23 (Deposition concluded at 3:22 p.m.)

24 -o0o-

25

1 COURT REPORTER'S CERTIFICATE

2

3 STATE OF ARKANSAS)

) ss

4 COUNTY OF BENTON)

5

6 I, BETH A. KALTENBERGER, Certified Court Reporter
7 in and for the State of Arkansas, do hereby certify that
8 the witness, DAVID DEVEREAUX, was duly sworn by me prior
9 to the taking of testimony as to the truth of the matters
10 attested to and contained therein; that the testimony of
11 said witness was taken by me stenographically and was
12 thereafter reduced to typewritten form by me or under my
13 direction and supervision; that the foregoing transcript
14 is a true and accurate record of the testimony given to
15 the best of my understanding and ability.

16

17 In accordance with Rule 30(e) of the Rules of
18 Civil Procedure, review of the transcript was not
19 requested by the deponent or any party thereto.

20

21 I FURTHER CERTIFY that I am neither counsel for,
22 related to, nor employed by any of the parties to the
23 action in which this proceeding was taken; and further,
24 that I am not a relative or employee of any attorney or
25 counsel employed by the parties hereto, nor financially

1 interested or otherwise in the outcome of this action; and
 2 that I have no contract with the parties, attorneys, or
 3 persons with an interest in the action that affects or has
 4 a substantial tendency to affect impartiality, that
 5 requires me to relinquish control of an original
 6 deposition transcript or copies of the transcript before
 7 it is certified and delivered to the custodial attorney,
 8 or that requires me to provide any service not made
 9 available to all parties to the action.

10
 11 IN WITNESS WHEREOF, I have set my hand and
 12 affixed my seal on this 2nd day of May, 2011.

13
 14
 15
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 17
 18
 19 _____
 BETH A. KALTENBERGER, CCR, RPR, CRR
 20 Arkansas LS No. 679
 California CSR No. 9231
 21 Nevada CCR No. 505
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COURT REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, BETH A. KALTENBERGER, LS No. 679, Certified Court Reporter in the State of Arkansas, Certify that the foregoing pages 1-68 constitute a true and correct copy of the original deposition of DAVID DEVEREAUX taken on April 19, 2011.

I declare under penalty of perjury under the laws of the State of Arkansas that the foregoing is true and correct.

Dated this 2nd day of May, 2011.

Beth A. Kaltenberger, CCR, RPR, CRR
Arkansas LS No. 679
California CSR No. 9231
Nevada CCR No. 505