

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
FORT SMITH DISTRICT

STEVE A. BRIGANCE, A PERSONAL
REPRESENTATIVE OF THE ESTATE OF
MAURICE BRIGANCE, JR., DECEASED; AND
ON BEHALF OF THE WRONGFUL DEATH
BENEFICIARIES OF MAURICE BRIGANCE, JR. Plaintiffs

vs. Case No. CV-2009-651 (VI)

THE BROOKFIELD AT FIANNA OAKS,
LLC, D/B/A THE BROOKFIELD AT FIANNA OAKS
(PARENT CORPORATION); WILSON, DARNELL
AND MANN, P.A., CRAWFORD CONSTRUCTION
COMPANY; AND CRAWFORD CONSTRUCTION COMPANY,
INC. Defendants

VIDEO DEPOSITION OF STEVE BRIGANCE
TAKEN ON THE 11TH OF AUGUST, 2009
9:07 A.M.

APPEARANCES: ON BEHALF OF:

Mr. Rex W. Chronister Plaintiffs
Chronister, Fields & Flake
309 North 7th Street
Post Office Box 66
Fort Smith, Arkansas 72902

Mr. Andy C. Clausen
Alford, Clausen & McDonald
One St. Louis Centre, Suite 5000
Mobile, Alabama 36602

Mr. James W. Tilley Crawford
Watts, Donovan & Tilley Construction
200 S. Commerce Street, Suite 200 Company
Little Rock, Arkansas 72201

Appearances continued.....

1 Mr. Mark W. Dossett The Brookfield
Davis, Wright, Clark, Butt & Carithers at Fianna Oaks
2 19 E. Mountain Street
Post Office Box 1688
3 Fayetteville, Arkansas 72702-1688

4
5 Mr. Paul D. Morris WDM Architects
Wright, Lindsey & Jennings
6 200 West Capitol Avenue
Little Rock, Arkansas 72201

7
8 ALSO PRESENT: Mitzi Bailey, Robert Brooks, John Brewer,
9 Peggy Brigance, Ben Freeny - Videographer

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1 Deposition of STEVE BRIGANCE was taken on 11th of
2 August, 2009, at Chronister, Fields & Flake, 309 North 7th
3 Street, Fort Smith, Arkansas.

4 STIPULATION

5 IT IS HEREBY STIPULATED AND AGREED by and between
6 counsel for the parties hereto that the deposition testimony
7 of STEVE BRIGANCE, may be taken before Laurence D. Martin, a
8 Certified Court Reporter and Notary Public, at the above
9 captioned time and place.

10 Said deposition is taken pursuant to Rule 32(a)(3),
11 Arkansas Rules of Civil Procedure, (Rule 30, Federal Rules of
12 Civil Procedure), with the specific understanding that any
13 objections as to relevance, immateriality, or incompetency are
14 reserved and may be made at the time the deposition is first
15 offered into evidence. Objections as to form of questions are
16 to be noted at the time of taking of the deposition. All
17 formalities with reference to taking, transcribing, forwarding
18 and filing of said deposition are waived.

19
20
21
22
23 *REPORTER'S NOTE: "Uh-huh" denotes an affirmative
24 response; "Unh-unh" denotes a negative response.

25

1 "Deposition of STEVE BRIGANCE taken on the 11th day of
2 August, 2009."

3 THE VIDEOGRAPHER: This is the videotaped
4 deposition of Steve Brigance taken on behalf of the
5 defendant in the matter of the Estate of Maurice Brigance,
6 Junior, versus The Brookfield at Fianna Oaks and others.
7 The case number is CV-2009-651 in the Sebastian Circuit
8 Court in Fort Smith, Arkansas. Today's date is August the
9 11th, 2009. The time is 9:07 a.m. And we are now on the
10 record.

11 Would Counsel please introduce themselves and
12 state who you are representing starting with Mr. Tilley.

13 MR. TILLEY: Hi, my name is Jim Tilley. And I
14 represent Crawford Construction Company.

15 MR. MORRIS: Paul Morris representing WDM
16 Architects.

17 MR. DOSSETT: Mark Dossett representing
18 Brookfield.

19 MR. CHRONISTER: Rex Chronister on behalf of the
20 plaintiffs.

21 MR. CLAUSEN: Andy Clausen on behalf of the
22 plaintiffs.

23 THE VIDEOGRAPHER: Are there any stipulations that
24 any of you would like to get on the record at this time?

25 MR. CHRONISTER: Standard, I suppose.

1 MR. TILLEY: Are ya'll -- I -- I wasn't here
2 yesterday. Are you all reading and signing?

3 MR. CHRONISTER: I think we waived that yesterday.

4 THE WITNESS: I would like to read and sign.

5 MR. CHRONISTER: He would. Okay.

6 THE VIDEOGRAPHER: Thank you. Would the court
7 reporter please swear in the witness.

8 STEVEN A. BRIGANCE, the witness herein named, having been
9 first duly sworn, testified under oath as follows:

10 DIRECT EXAMINATION

11 BY MR. TILLEY:

12 Q. Mr. Brigance, for the record, would you tell me
13 your full name, please, sir.

14 A. Good morning, Mr. Tilley.

15 Q. Okay.

16 A. My name is Steven A. Brigance.

17 Q. Are you Steve?

18 A. I am Steve.

19 Q. Is it all right if I call you Steve?

20 A. Please.

21 Q. Thank you. Steven, I know you're a lawyer and I
22 know you have probably deposed a lot of folks. This is
23 easier for me if I just treat you as a civilian and not a
24 lawyer.

25 A. That's what I am here.

1 Q. Okay. So I want to -- I want to do with you as I
2 do with everybody and have for years and years and give you
3 some, I guess, admonitions, if that word is correct. What
4 I need to do is communicate with you today. I need to ask
5 you good questions. Please make me do that. If what I ask
6 of you does not make sense, if I mumble, I stumble, if it's
7 just not coming through to you, please ask me to stop and
8 repeat the question. I promise you that I am not
9 intentionally trying to mumble or stumble or ask you a bad
10 question. So if I do that, just say, Jim, stop and reask
11 or repeat the question. I will be happy to do that. As
12 you know, it's important that we all understand you and
13 hear you. In conversation you and I will head nod at each
14 other and say uh-huh or unh-unh. If you do that today, I
15 may ask you to speak up or give me an audible response.
16 Please know that I am not trying to be rude or discourteous
17 with you, but I want to make sure we all understand you.

18 My understanding is that yesterday's proceedings
19 were a little bit long, so we may be here awhile today. If
20 at any time you'd like to take a break, get a glass of
21 water, visit with your attorneys, catch your breath or just
22 say, hey, Jim, I need a minute, you, please, tell me to do
23 that, and we'll -- we'll do that. I know this is not
24 pleasant. And I know it's going to be a hard day for you.
25 And I don't want to make it anymore difficult than it has

1 to be. So if you need a chance to catch your breath, you
2 just tell me that and we will do that. Okay.

3 A. I appreciate that.

4 Q. Steve, the easiest way for -- for me to do this is
5 to start by learning a little bit about you. And then I'm
6 going to make you a family historian, so to speak, for a
7 few minutes.

8 A. Okay.

9 Q. Tell me your date of birth, please, sir.

10 A. September 2, 1952.

11 Q. And where were you born?

12 A. Mobile, Alabama.

13 Q. Tell me just a little bit about you, Steve, where
14 did you grow up and go to school?

15 A. Grew up in Mobile, Alabama. Went to Kate Shepard
16 Elementary School. I went to Davidson High School, where
17 my wife went, who testified yesterday. And I went to
18 undergraduate school at the University of South Alabama and
19 to law school at the University of Tennessee.

20 Q. What's your undergraduate degree?

21 A. Poli science and major.

22 Q. Okay. And when -- when did you get your BA or BS?

23 A. It was a BA. In 1974.

24 Q. Okay. And then did you go from undergraduate
25 school straight into law school?

1 A. I worked a couple of years.

2 Q. Okay. What -- what type of work were you in?

3 A. Worked at Teledyne Continental Motors in Mobile.

4 They made -- manufactured aircraft engines for mostly
5 single engine aircraft.

6 Q. Okay. And then started law school when?

7 A. 1976.

8 Q. Okay. Graduate?

9 A. 1978.

10 Q. At the University of Tennessee?

11 A. Yes, sir.

12 Q. Take the bar at that point?

13 A. Yes.

14 Q. Okay. The Tennessee bar?

15 A. Yes.

16 Q. Or did you go back to Alabama?

17 A. No. I stayed in Tennessee and took the Tennessee
18 bar.

19 Q. Okay. Licensed to practice in Tennessee?

20 A. Yes.

21 Q. Still currently licensed?

22 A. Yes.

23 Q. All right. Any other states, Steve, that you're
24 licensed to practice in?

25 A. It's not a state, but the District of Columbia.

1 Q. Okay.

2 A. At one time, I was admitted in Virginia, but I let
3 that lapse. I have been admitted in Texas. And I think
4 that's all that's current right now.

5 Q. Okay. Have you ever been licensed in Arkansas?

6 A. No, sir.

7 Q. Okay. How about Alabama?

8 A. No, sir.

9 Q. All right. Law school is up in '78. Tell me
10 about your life after that.

11 A. Well, I was married in 1973, so we were married.
12 I went to work as an attorney, trial attorney for the
13 Tennessee Valley Authority, a seven state regional and
14 federal entity, that basically was charged with navigating
15 and -- and making navigable and taming the Tennessee River,
16 but mainly we were in the power production end of things.
17 And so I worked for them for about four and a half years in
18 Knoxville.

19 And then we moved to Washington, D.C., in 1982,
20 where I went to practice with a large firm in Washington
21 called Steptoe & Johnson. I was there -- or we were there
22 five years. Two of your children were born in Knoxville.
23 Our third was born just before we moved from the D.C. area.
24 In 1986, we moved to Texas, where I became general counsel
25 of litigation for the Burlington Northern Railroad. I did

1 that for probably five years. Then I became sort of head
2 of the strategic planning department at Burlington
3 Northern. Then I became assistant to the COO and the
4 chairman of the company doing special projects like
5 reorganizing the marketing department and various strategic
6 planning efforts for the railroad.

7 I left in 1983. Went back into private practice
8 with a law firm called Leboeuf, Lamb, Greene & MacRae
9 then -- I think it's now called Dewey & Leboeuf -- out of
10 New York and Washington, D.C. I opened a small Texas
11 office for them in Arlington, Texas. I practiced there
12 until 2000. I then became an outside consultant for
13 Beverly Enterprises, which at that time was the largest
14 elder care facility or -- or elder care company in the
15 country that was headquartered here in Fort Smith.

16 Q. Was that 2000, Steve?

17 A. That was 2000.

18 Q. Okay.

19 A. The last quarter, the fourth quarter of 2000.

20 Q. Okay.

21 A. I then went under their employ in January of 2001.

22 I was head of litigation, senior vice-president. I -- I
23 did what you do. I defended the nursing home all across
24 the country in about 34 states where we were -- we were in.

25 I left in 2006, in March. The company had been

1 taken over by a group in San Francisco, California. And I
2 chose to leave, as did most of the senior executives of the
3 company. And then established a business consulting office
4 here. I do not practice law in Arkansas. You noted I'm
5 not admitted in Arkansas. My clients are national. So
6 when I work, I generally have to travel.

7 Q. Okay. Tell me about Beverly. When you actually
8 went in their employ after 2001, tell me what your job was
9 with them.

10 A. I was head of litigation.

11 Q. Okay. Were you actually trying lawsuits, or were
12 you supervising people who were trying the lawsuits?

13 A. I started -- I basically stopped trying lawsuits
14 for the most part several years before I went to work for
15 Beverly. I was brought in -- we had at any one time
16 probably 650 pieces of litigation --

17 Q. Uh-huh.

18 A. -- scheduled for trial. At any point, I would
19 have 18 to 20 trials scheduled a year. So, no, I was not
20 trying the cases. I established a regional counsel
21 structure around the country. I -- I plotted the strategy
22 as how to defend the company. But I also spent much of my
23 time working with senior management to change the way we
24 operated, the way we gave care to -- to what we called our
25 residents, and changed the way the industry behaved.

1 And -- and that was much of my job to try to head off the
2 things that lead to litigation at the same time while
3 defending litigation through the people that I hired.

4 Q. Okay. You were -- you were seeing what Wilkes &
5 McHugh was doing in trial and trying to figure out
6 strategies against that?

7 A. Yes. Very much so, yes.

8 Q. Okay. I know you know that name.

9 A. I know that name and they know my name.

10 Q. I bet. Now, '06, tell me about your life and your
11 career at that point, Steve.

12 A. I -- I basically went back into private practice,
13 established an office here. I have two specialties. One
14 is health care. The other involves railroads and
15 utilities. I had a very large client before I went to work
16 for Beverly, which is now called Golden Living, I think.
17 By the way, if you've heard the name Golden Living
18 that's -- that's the subsequent company for Beverly.

19 But I established my business, did what people do
20 when you establish businesses, made old contacts,
21 resurrected one of my large utility clients in Chicago and
22 several long-term care companies, one in particular in the
23 State of Oregon.

24 Q. Okay. Let me jump ahead, Steve. I had -- I had
25 flagged -- in the answers to interrogatories, there's a

1 document from Sunwest Management and its amendment dated
2 6/1/08. Tell me what this retainer agreement is.

3 A. Went to work for Sunwest Management as outside
4 counsel probably in January of '07. They are a large
5 assisted living facility company. At that time, probably
6 had 350, 400 facilities in a number of the same states that
7 Beverly had facilities where I was used to practicing law
8 and defending cases probably in 34, 35 states. And they
9 had a number of issues involving the State of California
10 with seeking to debar them from being able to run homes in
11 California. They had a couple of attorney general
12 investigations going on. And they had a number of -- of
13 resident care actions, including some class actions against
14 them.

15 They had heard of my reputation at Beverly. They
16 called me and they asked me to handle specifically the
17 California matters. We got those cleared up. They came to
18 me sometime after that. And I'm not -- I don't have this
19 off the top of my head. I think you said that was an
20 amendment. At some point in '07, or perhaps earlier '08,
21 we entered into an agreement. What they asked was, we want
22 a certain amount of your time. And I said most lawyers
23 know -- most business people know you try to spread it out,
24 so that if they lose any one client, you have got other
25 clients that -- that fill up the gap. They wanted more of

1 my time. I -- I could only work so many hours. I have a
2 very small office. It's me and a -- and a part-time
3 secretary. And it's by design. So I -- I agreed to
4 curtail some of my other representation in exchange for
5 entering into an agreement with them. I don't know off the
6 top of my head what that amendment says in 2008. There
7 have been several amendments to -- to our contract over
8 time. But essentially it's a retainer agreement that buys
9 a certain number of hours -- a minimum of a certain number
10 of hours that I am available to them to help them, whatever
11 they need. That is included advising the Board on matters
12 related to the strategy of the company. It includes
13 handling their litigation. It includes handling any
14 attorney general's actions or attorney's general actions,
15 state actions or anything else. Basically I'm -- I'm there
16 to try to allow them to have the opportunity to do what
17 nursing homes and assisted living facilities should do,
18 which is take care of the people that are in the homes.

19 Q. Okay. Let me shift gears on you a minute and
20 we'll come back to that in a little bit, Steve. You were
21 married in 1973?

22 A. Yes.

23 Q. No separations or divorces?

24 A. No.

25 Q. Children?

1 A. Three.

2 Q. Tell me names and ages.

3 A. Brian Thomas, who just turned 30. He lives in
4 Atlanta, is married, two children. My daughter, Jenny, is
5 28, almost 29. Her name is Jennifer Ann. She also lives
6 in Atlanta. And my youngest son is Christopher Steven. He
7 is a senior at Fayetteville and spends part of his time
8 with us. And he is -- just turned 23.

9 Q. Okay. Did you come to Arkansas as part of your
10 job with Beverly?

11 A. I came to Arkansas as -- totally as part of that.
12 That was the reason we came to Arkansas.

13 Q. Was that 2000 or '01?

14 A. I went to work, as I said, as an outside counsel
15 in 2000, fourth quarter. I became an employee January 1
16 and I reported during the days with that ice storm here.
17 And basically spent seven months on the road getting to
18 know our facilities, getting to know the counsel that we
19 had retained over time, making the changes. And then my
20 wife and I moved to Fort Smith in May of '01.

21 Q. Chris is here, your wife is here, mom is here.
22 Any other family by blood or marriage?

23 A. That live in Fort Smith?

24 Q. That live in Arkansas.

25 A. No.

1 Q. Let me go back and visit with you a little bit
2 about your other family. Tell me a little bit about your
3 dad. Where was he born?

4 A. Mobile, Alabama.

5 Q. Okay. Educational background?

6 A. Went to high school at Murphy High School, which
7 was a competitor of Davidson High School. He was a Murphy
8 Panther. Still one of the few surviving members of the
9 class of -- I guess it was 1930 was his class. And that
10 was all of his education. He went to -- to work. This is
11 almost the time of the depression. His father gave him an
12 option of -- of going to school or starting a bakery. And
13 my dad started a bakery just before the depression, so.

14 Q. Okay.

15 A. That was all of his formal education.

16 Q. How long was he in the bakery business?

17 A. Not very long. I think I found when I moved him
18 up here and went through some of his papers, probably about
19 a year and a half.

20 Q. Okay. What do you know about his work life after
21 that?

22 A. Quite a bit.

23 Q. Okay. Tell me.

24 A. Just start?

25 Q. Just launch off.

1 A. Sure. From the bakery business, he worked in the
2 jewelry business. My granddad was, I think, Lowenstein's
3 Jewelers. He worked there. He worked part-time at
4 Brookley Air Force Base as a civilian employee. Then he
5 became full-time there. But that was just before -- I
6 forget whether it was John Kennedy or Lyndon Johnson who
7 shut down all the air force bases and so he lost that job.

8 He went into the mutual fund business. And within
9 two years of that, there was the collapse of the mutual
10 fund industry with a lot of fraud that went on. It's not
11 just today that we have those issues. The people back in
12 the 1950s late remember those days. And my dad lost
13 basically everything in that and -- and struggled for a
14 number of years after that. And finally was able to get
15 a -- to get a job as an office manager with my mother's
16 brother in Mobile, Standard Equipment Company, where I
17 worked my summers in the -- the sweltering warehouse out
18 there. And he worked there for 22 years until his
19 retirement, I think, in about 19 -- well, I don't know the
20 year, but he was, I think, about 67, 68 when he retired.

21 Q. Was Standard Equipment his, I guess, longest
22 running employment?

23 A. Oh, yes, absolutely.

24 Q. You have mentioned the jewelry business. How long
25 was he in that line of work?

1 A. I -- I was not even born then. I -- I hear it
2 anecdotally. Not that long.

3 Q. Okay. And Brookfield -- is that right? Was it
4 Brookfield Air Force or Brookley?

5 A. No, Brookley.

6 Q. Brookley. I can't read my own writing. Was he
7 out there part-time and then went full-time with them?

8 A. Yes.

9 Q. Okay. And what was -- what was his line of work
10 there, Steve?

11 A. He was a civilian administrative type.

12 Q. Got you. About when would he have retired? What
13 year would that have been?

14 A. Back into the time I would say 19 -- I graduated
15 in 1970 -- 1980, give or take a year.

16 Q. Okay. All right. Any particular reason for
17 retirement, health issues, or was it just time to hang up
18 the spurs?

19 A. My uncle offered him a partnership in -- in the
20 business. And my dad and I -- because we were always
21 close. He came up -- first child had just been born and he
22 came up to talk to me about that. And he really wanted to
23 take it. He had never been an owner of anything. He had
24 done well over these 20 years. He felt it was the right
25 thing to do. And he asked me about it. And we spent a

1 long weekend talking about it. And my uncle was -- was
2 probably going to be retiring and it was a new generation
3 coming up. And I had worked with those people in the
4 warehouse. I didn't think my dad would like working with
5 them. And so my advice to him after a long weekend was you
6 don't need it, you got great health, you and your mother
7 want to travel -- my mother, your wife want to travel,
8 don't go for this. And my dad never did anything for ego
9 biscuits. He -- he never accrued a -- a lot of money. He
10 wasn't in it for the money. And so he went back and prayed
11 about it and made his decision and dad said he was going to
12 retire and he retired.

13 Q. Okay.

14 A. And my mother and dad just did nothing but travel
15 for the next 10 or 15 years.

16 Q. Okay. Tell me about that just a little bit. I
17 mean, are we talking about in North America or were they
18 all over the globe?

19 A. Yes, yes.

20 Q. Some of the above?

21 A. And never -- never took us or their grandchildren.
22 They started -- for example, they had never been to Europe.
23 My mother -- and they didn't speak languages. My mother
24 dabbles with French, still does. But they started up in
25 Amsterdam and went to the tip of Italy and then to Greece

1 with my aunt and uncle. And they were gone, I think, a
2 month and didn't speak any language. I know they met my
3 brother in Paris. And my dad was quite cheap and they
4 stayed in a bad district in -- in -- in Paris because it
5 was cheap. And, you know, that was the way my dad
6 traveled. So they went to Europe several times. My mother
7 still calls it the Holy land. They went to the Holy land.
8 And she'll still talk in -- in her lucid moments about
9 riding camels and how Jack wouldn't ride the camels. And
10 so they went to the Holy land and spent quite a bit of
11 time. If -- if you want to go to her apartment, she'll
12 show you those films.

13 They -- you mentioned North America. My dad in
14 1982, '83 -- I forgot the exact dates -- was diagnosed with
15 prostate cancer. That was the first cancer in our family
16 and it was -- it was a blow to us. I went over, talked to
17 his doctors, spent time with him. They were very confident
18 that it was contained within the prostate, they'd get it
19 out one piece of surgery, no follow-up radiation. The
20 doctor told me he'll last -- outlast me for a long time and
21 he has and he did. But it was within three weeks of that
22 that my dad went to his oncologist -- because his
23 oncologist called me -- and said my wife and I have been
24 wanting to take a trip around North America for many years.
25 I know you won't let me go to Europe, but I want to go. He

1 said, well, what kind of trip do you want to make. And
2 we're going to go in Mobile and we're going to go up the
3 east coast and we want to go across Canada and we want to
4 come down the west coast and then through the southwest.
5 And it was about, I think, 12,000 miles. My dad had the
6 trip ticker. And the doctor says if -- if you think you
7 can make it, you go for it. And then the doctor said --
8 and I probably shouldn't say this on this, but the doctor
9 said and your dad had one more question. And I said what's
10 that. And he said your dad wants to know if it's okay
11 if -- if he and his -- his wife have sex while they are on
12 the trip. And I said that's more information than I ever
13 wanted to know.

14 Q. Thanks a lot.

15 A. But he advised him the best you can advise him.
16 And they took a trip for a month --

17 Q. Okay.

18 A. -- three weeks after his surgery.

19 Q. Let me -- at that point of demarcation, Steve, in
20 '82, '83, had your dad had any health issues in his
21 lifetime?

22 A. He was on a high blood pressure pill at some
23 point, I believe, a long time ago.

24 Q. No -- no bypasses, no stents, anything like that,
25 just controlled through medication?

1 A. My dad had one surgery before the prostate surgery
2 and that was a tonsillectomy. I am sure the doctor is long
3 since dead. And my guess is it occurred in Mobile
4 Infirmary. Other than that, my dad had nothing.

5 Q. Do you know how long he took high blood pressure
6 medication?

7 A. No, I don't.

8 Q. Okay. Who his cardiologist might have been?

9 A. He didn't have a cardiologist. He has a G.P. His
10 name is Chad Alford. He is a cardiologist, but they used
11 him as a general practitioner, because my mother taught
12 Chad Alford and they were family friends and my dad did not
13 particularly like doctors and didn't like to go to doctors,
14 but as long as he knew the doctor, he would go to the
15 doctor. And he knew Chad and he liked Chad and Chad was
16 just a kid, so my dad could go in and tell Chad whatever he
17 thought Chad ought to know and then basically prescribe for
18 Chad.

19 Q. He trusted him. You mentioned mom. Let me take a
20 detour. Tell me about mom. Grow up in Mobile?

21 A. No. She grew up in Birmingham, Alabama.

22 Q. Okay. How did she you and your dad meet?

23 A. She was 15 and my dad was 20. My dad was best
24 friends with her brother. This is the same brother that
25 helped my dad into business after the stint at Brookley Air

1 Force Base. They were best friends and my mother's brother
2 invited my dad up to their -- they had a country home for
3 awhile that had a tennis court. And my mother played
4 tennis and -- and rode horseback. And my uncle brought my
5 dad up to meet my mother, never thinking they would be
6 romantic, because my mother was only 15. And my mother
7 will tell you stories about when they met, but that's when
8 they first met.

9 Q. Okay.

10 A. And that would have been 1935.

11 Q. When did they marry?

12 A. They married 68 years ago. It would be 69 years
13 in October. I only do lawyer math, so. I put it in the
14 interrogatories. But it was October 19, whatever the day
15 was.

16 Q. Okay.

17 A. I'm sorry. Whatever the year was.

18 Q. 1940.

19 A. I can tell you that Tennessee and Alabama played
20 that day and Tennessee won.

21 Q. Okay. Mom was a schoolteacher?

22 A. Yes.

23 Q. Tell me about her education.

24 A. My mother was at Howard -- what was then Howard
25 College. They were big Baptists in Howard College with a

1 large Baptist college in Birmingham, a private school. My
2 mother went there for a year and a half, I believe. She
3 was a beauty queen there, but then they got married. And
4 so she dropped out of school and within a couple of years
5 had my sister and never went back to school.

6 When I was in the 5th grade, my mother's mother
7 became very ill after her husband was killed in a drunk
8 driving accident and they brought my mother's mother down
9 to live in our home. And my mother had wanted to go back
10 to school. And they did not expect my -- my grandmother to
11 live very long, but it turned out my mother was a great
12 caregiver, kept her alive for eight years. And -- and once
13 she died, my mother wanted to go back to school. And I
14 think she was 45, 47, and went back to school, having
15 almost no credits preserved, and went straight through and
16 got her teaching degree and then taught for 20 years.

17 Q. Where was her bachelor's degree?

18 A. University of South Alabama.

19 Q. And she taught 20 years?

20 A. 20 years.

21 Q. What -- what grades or what --

22 A. 4th, Fonde Elementary School in Mobile.

23 Q. Was she -- was she retiring about the time your
24 dad retired?

25 A. I think about a year after, about a year after. I

1 think she was afraid that he would get under foot and so
2 she kept working, but --

3 Q. I got you.

4 A. -- but finally decided they could do it together.

5 Q. Did -- after 1980, '81, did either of them work
6 again, Steve, outside the home?

7 A. No.

8 Q. I didn't know if he had done some consulting or
9 she had done some tutoring or anything like that?

10 A. No, sir.

11 Q. Just traveled?

12 A. They loved retirement.

13 Q. Okay. Tell me about her health, not currently --
14 we'll get there in a minute -- but just as an adult, any
15 serious issues?

16 A. No. I am not sure whether my mother ever had high
17 blood pressure or not. My mother was very healthy. I grew
18 up in a matriarchy. I mean, my mother ran the house. We
19 all depended upon my mother, so she was -- you know, I just
20 remember my mother just being very strong, very healthy,
21 never remember her going to a doctor. So that's -- that's
22 my general -- I remember she had a -- a hysterectomy in
23 her -- in her 40s. I know she was having some problem. We
24 didn't talk about that --

25 Q. Sure.

1 A. -- growing up in a Baptist home, but I know it was
2 the only time that I ever saw her out of the home was the
3 those two days she was in the hospital.

4 Q. Okay. No -- and I guess I am going back '70s,
5 '80s, and maybe even into the early '90's, no medication or
6 routine visits for anything?

7 A. I -- I really don't know much about her
8 medication. I mean, we gave you guys, you know, access to
9 the doctors that I know she had. I don't remember her
10 taking anything.

11 Q. Okay. You remember her being healthy?

12 A. Yes, yes.

13 Q. Okay. For either of them, I guess through their
14 adult life, any emotional or psychological issues, care or
15 treatment?

16 A. Oh, no, no.

17 Q. Okay. Mentally healthy? Emotionally healthy?

18 A. Yes, yes.

19 Q. Okay. At some point in time, did they go in
20 assisted living, Steve?

21 A. Yes.

22 Q. Tell me roughly when that is.

23 A. 2004.

24 Q. Okay. Tell me what's going on at that point.

25 A. Well, I'll back you up.

1 Q. Okay.

2 A. Because it -- it has a more complete story. My
3 mother's stroke -- and -- and you guys have the records. I
4 have not reviewed the records, but it was sometime in 2003.
5 That's the real first health issues that -- that I ever
6 remember with my mother.

7 Q. Were they living independent?

8 A. No, they were -- yes, independent together in
9 their home.

10 Q. Right.

11 A. Where they had lived for -- I was born in that
12 house, so 55 years. At that time, it would have been 53
13 years. It's a large house, three stories, like two acres
14 of property, a lot of property for them to keep up, but my
15 dad was doing it. He mowed the yard every day. My dad's
16 real hobby was working in the yard.

17 My mother had a stroke one morning and -- and it
18 scared my dad to death. I don't know how long she was in
19 the hospital -- it was -- it was quite awhile -- and then
20 went into rehab. And it really upset my dad. As I've said
21 before, my dad depended on my mother for so much. And
22 it -- it was mutual, particularly after the stroke. But --
23 but it was just a home where my mother made everything
24 right. And my mother was not there any longer. And then
25 when she came home, she was aphasic. She could not speak

1 very well. She could not move part of her body. And my
2 sister, who is also a caregiver, she was an emergency room
3 nurse, she worked in the long-term care setting for a
4 little while, and she's --

5 Q. What -- what do you call sister?

6 A. Marcelena. I call her Lena.

7 Q. Lena?

8 A. Right.

9 Q. Okay.

10 A. But it's -- Marcelena is her formal name. She has
11 no middle name. And she also has a master's degree in
12 counseling, so she's in health care. And because we were
13 in Arkansas and mother was in Mobile, Lena became -- Lena
14 was actually living in the home at that time.

15 Q. They're still in the family home at that point?

16 A. Yes. Lena was there because Lena was not working.
17 She was going back to school. And my dad was basically
18 supporting her and sending her to school for her master's
19 degree.

20 Q. How old would Lena have been at that point?

21 A. Well, Lena is 11 years older than I am. And I am
22 56 -- 57 -- 63.

23 Q. So it was late career education for her?

24 A. Most -- I find most counselors are. They tend to
25 do it second career.

1 Q. Okay.

2 A. Yes.

3 Q. Had she been married? Divorced?

4 A. Three times.

5 Q. Okay.

6 A. And she's single and has not remarried since her
7 last divorce probably 15 years ago.

8 Q. Now, I just -- late 50s, early 60s, and she had
9 the freedom to go live with mom and dad, that suggested to
10 me that maybe she was divorced and --

11 A. Yes.

12 Q. -- and had had the opportunity?

13 A. Yes, yes.

14 Q. She had children?

15 A. Two. At the time they both lived in Seattle,
16 Washington.

17 Q. Got you.

18 A. So do you want me to go back to where I was -- I
19 think I was --

20 Q. Yes, sir.

21 A. -- in setting up how they got to the assisted
22 living facility?

23 Q. Yes, sir.

24 A. My mother was in the home. I would go to Mobile
25 as often as I could, probably twice a month, during this

1 period, see her, check on her. The last time I went, which
2 was in December of '03, I believe, I didn't like the way
3 the circumstances were.

4 Q. Where were they?

5 A. In -- in -- in my mother's home, but she was down
6 in what we called the mother-in-law apartment, which was on
7 the third level.

8 Q. Okay.

9 A. She was isolated. She could not sleep with my
10 dad. My dad and my mother always slept together, so she
11 could not sleep with my dad. She could not go up for
12 meals, because it -- it -- it took navigating a couple of
13 steps and her -- her therapy was going very slowly. And
14 she had constant, around-the-clock caregivers that -- that
15 doted on her and would not allow -- allow her the freedom
16 that I thought she needed.

17 Q. Like CNA types?

18 A. Yes.

19 Q. Okay.

20 A. Yes, LPNs, CNAs.

21 Q. How long was she in -- in formal rehab, Steve?

22 Best idea.

23 A. Three to four months would be my guess, but that's
24 just a guess.

25 Q. Absolutely. And then home with caregivers?

1 A. Another two to three months.

2 Q. Okay. Then tell me what happened.

3 A. Again, best guess. So I was there in December and
4 I -- she could -- she could not speak very well. We
5 communicated mainly through eyes the little bit I could
6 understand. But she -- she had tears in her eyes and I --
7 I said you're not happy, are you. And she just shook her
8 head. And I said do you -- do you want to come out of the
9 home. I said where do you want to go. (Indicating). She
10 pointed to me. And I said okay. I said what about dad.
11 And I -- I couldn't understand what she said. So I said
12 I -- I will go back and I'll talk to Peggy, we'll bring you
13 up there, and -- and -- and we'll just see how things go.

14 So I went and I talked to my dad and my sister and
15 I said I think mother needs some freedom. I think there's
16 too much going on here for her. I believe she needs to get
17 better. We disagreed over that. Dad -- excuse me.

18 Q. Sure.

19 A. Dad clearly did not want me to take mother out of
20 the house. But sometimes, you know, as they say in weight
21 training, no pain, no gain.

22 Q. Is this '04, '05 now?

23 A. This is '0 -- this is late -- this may have been,
24 like, December of '03.

25 Q. '03. Okay.

1 A. And so I said I'm going to come back early January
2 and get mother. I said it will be temporary. We'll see
3 how she does in our home. We'll see how she does. She
4 wants -- I know she wanted to go visit her aunt -- I mean,
5 my aunt, her sister, who she is very close to, in Indiana.
6 And it -- it would just make a go of it. It was an
7 uncomfortable scene. They both said yes, but they were not
8 happy with me. So I took mother. Mother stayed with us.

9 Q. Here in Fort Smith?

10 A. In Fort Smith in our home. I don't know, month,
11 two months, three months, whatever it was. We had a little
12 bit of help on the side. Peggy was full-time in school. I
13 was still traveling. I tried to do what I could do with my
14 work, but I was -- I was quite busy at -- at Beverly. And
15 we took care of her and -- and she got better. She began
16 to converse more. I would walk with her in the afternoons.
17 Every -- it was slow, but we would walk around Fianna
18 Hills. And she got better. She got stronger. And she was
19 able to talk about what she wanted. Indeed she wanted to
20 go see her sister in Indiana. Peggy flew her up there. We
21 left her for a week or two, but Eleanor -- this is the name
22 of her sister, who died just a couple of months ago --
23 said, hey, I can't keep her, she's -- she's too much for
24 me. We bought her back.

25 Now, I'll just tell you honestly, Peggy and I have

1 had this discussion many times. I grew up in a family
2 where my grandmother was. And -- and there was a three
3 year period where I hardly saw my mother and my father.
4 And it was tough. It was tough. And we had children. We
5 had things going on in our lives. We didn't -- my wife's
6 mother is -- is 80. And -- and Peggy has a very badly
7 disabled sister. We thought about bringing them to our
8 home, but it's sort of the pact we made, we're not equipped
9 to do that.

10 Q. Right.

11 A. Some people are. I wish I were. I'm just not. I
12 wish I were. And I -- I believe it's a failing on my part.
13 I wish I were better. I'm just not a caregiver in that
14 sense, the day in and day out. I -- I just -- I don't --
15 I'm not wired like that. But I love them, so I want the
16 best for them, and I knew the best thing for her was not to
17 stay in my home. I asked mother when we brought her back
18 what do you want to do. And she said I want to go back to
19 Mobile and I want to go into an assisted living facility.

20 Q. Let me freeze you right there.

21 A. Please. I -- I'm sorry to be --

22 Q. No, no, you're fine, you're fine. Learning from
23 you, which is exactly what I wanted to do today. In '04,
24 when mom comes and stays with you --

25 A. Yes.

1 Q. -- your dad stayed?

2 A. In Mobile.

3 Q. Okay. Independent at that point?

4 A. In his home.

5 Q. Okay.

6 A. With my sister.

7 Q. All right. Now, how much care, Steve, if any, is
8 sister providing for your dad at that point?

9 A. Again, growing up in a matriarchy, he need -- he's
10 not a cook.

11 Q. That's what I suspicioned.

12 A. And he never was. My mother was a great cook. I
13 am blessed to have a wife that is a great cook. I just
14 don't -- I -- I have my dad's lack of heart in that regard,
15 so my sister cooked for him.

16 Q. Okay.

17 A. It was a big house. My dad was very lonely. My
18 dad and I didn't talk a lot during those days. He was mad
19 at me. We talked occasionally. I -- I would update him on
20 how mother was. I'd let them talk.

21 Q. Was he still driving?

22 A. Yes.

23 Q. I mean, he would -- he would --

24 A. Oh, yeah.

25 Q. He was independent in terms of feeding himself --

1 A. Oh, sure.

2 Q. -- clothing himself, all that?

3 A. Yes, yeah. He just -- yes. He didn't -- he just
4 didn't cook.

5 Q. Right.

6 A. And didn't like to empty wastepaper baskets.
7 Somebody was supposed to do that for him, just like in the
8 facility. I mean, it just -- he just -- there's some
9 things he didn't do. My sister did those things.

10 In terms of health care, no, there was nothing.
11 She was full-time in school. She was gone probably 20
12 hours a day, but she would make him a meal, put it on the
13 stove. They did have a microwave. And he did wash dishes,
14 so he was able to do that. That's what he did. And I kept
15 in contact with him so he would know how mother was doing.
16 And they would always talk and -- and, you know, I love
17 you, I miss you. But what dad wanted back was my mother
18 the way she had been.

19 Q. Okay.

20 A. And I thought we were getting her closer to that,
21 but still it wasn't -- she wasn't going to be able to cook
22 meals. She wasn't going to be able to do the things that
23 my dad would expect of her. So mother -- I said to mother
24 do you want to go back in the house. And she said, no, I
25 want to go in an assisted living facility. And I said,

1 well, I'll -- you know, I'll talk to dad about that and see
2 what he's willing to do. He was absolutely opposed to
3 that. He was I'm never going to leave the house. I don't
4 want to leave the house. I'm never going to leave the
5 house. And that's the way it was for three months. And he
6 said I don't want you to take Dot to an assisted living
7 facility. And I said, dad, it's what she wants. And I
8 said at the end of the day if I thought you and Lena were
9 equipped to deal with her like they could in an assisted
10 living facility -- I said maybe this will only last three
11 months, you know. Maybe she gets some more care, she comes
12 back and she's who she always was. That's what we hoped
13 for. But we've got to do what we've got to do to get to
14 the point where you can -- you can have what you've always
15 had. And he never really accepted that. And so I went
16 back, put her in the assisted living facility.

17 Q. In Mobile?

18 A. In Mobile.

19 Q. Okay. Tell me the name of that.

20 A. Gordon Oaks.

21 Q. Okay.

22 A. And it's in west Mobile as close to dad as I could
23 get it, only five minutes away. And I -- I went out with
24 her. We shopped for her furniture. I moved it all in. I
25 moved her possessions, went to the house. They -- they had

1 changed the locks on the door. I couldn't get in the
2 house. So we set up a time where I would go into the house
3 and get my mother's possessions. And I took them back to
4 the facility and I set her up there.

5 And while I was still down there, I got a call
6 from the Discover card. My dad had cancelled her Discover
7 card that we had charged her airlines ticket on to go to
8 Indiana, and so I had to pay that and -- and figure out
9 what was going on. He had reported that they had been
10 fraudulently used, so all of a sudden I had Discover
11 knocking on my door. And I had my mother's Durable Power
12 of Attorney, so I had signed the credit card, you know.
13 And so all of the sudden, I was having to produce
14 documentation. And so I -- I -- I called dad and I said
15 what are you doing. He said I'm going to cut all the
16 credit cards and I'm going to take the money out of the
17 bank. I said why are you doing that. And he said I -- I
18 don't like what you're doing. So we had the discussion
19 again. And -- and I am telling you, it's a sort of
20 discussion a son should never have with a father,
21 particularly a father that you've considered your best
22 friend since I was 18. But, you know what, it -- I had --
23 I had to file for support for my mother, because I did not
24 have enough money to keep her going all this time.
25 Although we did until I was able to get the support. I

1 hired an attorney to sue my dad for divorce, because that's
2 what -- I went to my mother in her condition and I said
3 here's where we are, what do you want me to do. And what
4 she said was I want to live with your dad. I said I
5 understand that, but we can't do that right now, we're
6 going to get there, but -- but this is what I want to do.
7 It's what I think is necessary to get us to where we need
8 to be. She said okay and she signed the papers.

9 Q. Was it actually a divorce, Steve, or separate
10 maintenance?

11 A. It was a divorce.

12 Q. Okay.

13 A. And I don't remember why we did that. I hired a
14 lawyer in Mobile that understood what I was trying to do.
15 It was a lawsuit designed to get my parents back together.
16 I think it lasted a couple of months. I was there in June.
17 My mother, I think, went into the facility, like, March, a
18 month either side of that.

19 Q. '04?

20 A. '04, yes.

21 Q. Uh-huh.

22 A. By this time, they had been apart for several
23 months. I went into the facility that day.

24 Q. Do you want to take a break?

25 A. No.

1 MR. TILLEY: Let's take a break for a minute,
2 Steve.

3 THE VIDEOGRAPHER: The time is 9:40 a.m. and we
4 are off the record.

5 (Off the record).

6 THE VIDEOGRAPHER: The time is now 9:56 a.m. and
7 we are back on the record.

8 Q. (BY MR. TILLEY) Okay. Please don't apologize to
9 me for being human at any point today. Okay. And I want
10 to make this as easy for you as I possibly can. There's
11 something that's welling up inside of you. Let's get by
12 this, if we can, Steve, so we -- we can go back. Talk to
13 me.

14 A. Well, that day my mother was dressed. I had told
15 her I was coming in for lunch. I would surprise her and I
16 would come down two or three times a month to see her in
17 the facility. Usually try to see my dad and my sister.
18 And they -- they didn't give me another key, but I was able
19 to meet them at different places, but never together with
20 my mother.

21 And so I expected to be in the facility with my
22 mother and eat with her. She always ate alone as -- as she
23 preferred then. And I walked into the dining center and
24 there was my dad. There was his brother, Jimmy Brigance,
25 who I had not talked to since all this started. My dad and

1 his brother were very, very close, 10 years apart, but just
2 very, very close. They were like -- really like the Jack
3 Lemmon and Walter Matthau characters. I mean, it just --
4 just the odd couple. And he was there. The preacher, who
5 my dad was very close to and who ended up preaching my
6 dad's funeral in Mobile, and had tried to broker some
7 reconciliation, was there. And it just -- it blew my mind.
8 I walked into the room and my -- my mother was dressed up.
9 She always dresses up, but she had a particular, like,
10 I'm-going-to-church dress on. And I -- I walked out. I
11 remember walking out and went I'm not ready for this. I --
12 I didn't know what was going to happen. So I went and I
13 told Peggy, I said, I think I'm going to fly back. And she
14 said you go back in there and you do what you got to do.
15 So I walked in and I just greeted everybody like we were
16 one, big happy family and the last three months had not
17 transpired at all. And everybody was pleasant. It was
18 cordial, not even that tense, even though lots of Brigance
19 meetings can be tense. That's why I don't play cards
20 anymore, because our games got tense.

21 Q. How about religion or politics?

22 A. No. We didn't discuss those either.

23 Q. Okay.

24 A. But long story short is, it was cordial. And
25 mother got up and -- and I said, well, I'll walk you back

1 to your room. And she said, no, I'm going home. And I
2 said okay. I said, dad, are you ready for this. And he
3 had seen her for the first time in awhile. He talked to
4 her every few days at the facility, but did not go over and
5 visit, because he didn't -- he was afraid of assisted
6 living facility. He was afraid, I think, somebody would
7 get him and keep him in there.

8 Q. He was afraid he was going in?

9 A. Right, exactly. And so he felt -- he felt he had
10 all that company that day. And, see, they did not know I
11 was going to be there. My mother forgot that she had
12 invited my dad and -- and because she still had and still
13 has memory problems and didn't remember that anybody had
14 been invited, didn't know I was coming, but she knew she
15 was going to ask the staff that day to take her home.
16 And -- and so dad was seeing her for the first time and
17 hoped, in my discussions, that she would be like the old
18 Dot, you come home and take care of me. And he just looked
19 at her and said I -- I want to let her come home, but I
20 don't think she's ready. And -- and -- and mother sat down
21 just deflated and so it crushed her. And that's -- that's
22 what was going on. I was just thinking, you know, through
23 that whole experience and that's -- that's what caused me
24 to get that way.

25 Q. Let me take a detour. You mentioned church.

1 Where did they attend?

2 A. Cottage Hill Baptist Church. My dad was a charter
3 member there and that's where we had his funeral.

4 Q. I -- I -- suspicioned what you were telling me,
5 they were long-time members --

6 A. Yes.

7 Q. Okay. -- and participants there?

8 A. His dad, who was also killed in a drunk driving
9 accident when I was eight, was buried in the same chapel.

10 Q. Okay. This is '04?

11 A. Yes. This is June of '04.

12 Q. So mom stays in Gordon Oaks?

13 A. Uh-huh.

14 Q. Take me forward from there.

15 A. Sure. We meet -- I -- I asked dad -- I took him
16 outside and I just hugged him, and I said, dad, I love you.
17 And -- and he said -- I said, how about we meet tomorrow
18 for breakfast. I'll bring mom out. All right. I like to
19 eat at Krystal. Okay. Let's eat at Krystal. And we met
20 at 8:00 that morning at Krystal. And my dad just, you
21 know, they -- they hugged and they kissed and sat there
22 holding hands as they always did. And I said to him, I
23 said, don't you miss mom. Absolutely. And I said, mother,
24 you miss dad. Absolutely. I said, dad, you have seen
25 mother, you know the house, three floors with Lena in it

1 isn't where you guys need to be. For the first time in any
2 of -- of the last six months, he said -- it was the ice
3 breaker -- he said I don't know what to do. And I said,
4 well, what you could do is move in with mom. I don't know
5 how I would do that. I couldn't afford it. I've got the
6 house. I've got all these responsibilities. I mean, you
7 know, as you get -- I'm finding as you get older, it's --
8 it's -- just no matter how little you really have to do,
9 you got more to do.

10 Q. It seems overwhelming?

11 A. Exactly. And -- and my dad had too much. I mean,
12 he had two acres of yard. I couldn't keep up with two
13 acres of yard. Three -- three --

14 Q. Is he still mowing --

15 A. Yes.

16 Q. -- and doing all that stuff?

17 A. Yes, yes, and still take my uncle out for
18 hamburgers and driving around every day. I mean, but he
19 missed my mom. But -- but he gave me that opening. And I
20 said I'll say -- I'll tell you what I'll do. I'll come
21 down here and I'll spend the time, I'll go through the
22 house. And we had an attic with stuff in it that nobody
23 had seen for 30 years. And it had asbestos in it, too.
24 Shouldn't maybe have said that, because we sold the house.
25 But, in any event, I went up there, got the stuff out of

1 the attic, spent long days of sweating through it. We
2 hired a person -- an estate sale person to come in. We
3 took the family through, you guys pick everything out. We
4 did all of that. I sold the house. I -- I moved him out,
5 into the facility. And I think that's sort of June, late
6 June. And the night they moved in I had dinner with them
7 and they were as happy as if the previous four and a half
8 months had never occurred. And that's the way it was until
9 the day he died.

10 Q. Okay. They're at Gordon Oaks --

11 A. Yes.

12 Q. -- I guess from '04 until '08?

13 A. Until I moved them up here to Fort Smith May 31st
14 of '08 and into the facility the first day of June, which I
15 think was the first day they opened.

16 Q. Okay. We were talking about your dad's health
17 earlier. He was diagnosed with prostate cancer '82, '83
18 area. How did that condition do over the next 20 years,
19 Steve?

20 A. No problems.

21 Q. Nonexistent as far as you know?

22 A. Right.

23 Q. Still taking high blood pressure medication?

24 A. No, I don't think -- it ended. I mean, again, I
25 wasn't living with them and I was never there for med

1 rounds. They would do that at Gordon Oaks very, very
2 early. My remembrance is he had been off of blood pressure
3 medication for quite awhile.

4 Q. Okay.

5 A. It's -- it's in the records, whatever it is.

6 Q. Sure. And -- and just testifying to what you
7 know, by '04, '05, as far as you know, not taking any
8 medication?

9 A. He didn't take anything.

10 Q. Okay.

11 A. In those days, to my knowledge, he took nothing.
12 I got him on a baby aspirin and -- and a multi-vitamin,
13 because I think everybody ought to take multi-vitamins.

14 Q. Right.

15 A. And that wasn't easy to get him to do that.

16 Q. Okay. Mom, by the time that she comes up here in
17 '08, tell me about her functioning level.

18 A. You know, I haven't been married 68 years, but
19 I've been married almost 36 now, and, you know, it's --
20 it's like you complete one another's thinking and you --
21 you do things. Well, I found -- and I never been around a
22 stroke victim before. I found it particularly true. It's
23 almost like -- and I -- I don't mean this in a bad sense.
24 A lot of people talk about crutches and they mean that in a
25 bad sense. But it was like my dad, when they were back

1 together -- and, I mean, from the first night of holding
2 hands and he always sang to her, wherever he was. He
3 couldn't sing -- my mother thinks he sings very well, but I
4 never thought he sang very well. I know I don't and that's
5 why I can't sing to her. But it was -- it was like she was
6 better almost immediately. She had gotten better during
7 that time in the assisted living facility. We gave her
8 some speech therapy. They had a pretty good occupational
9 therapy person there on staff and -- and because they had
10 RNs. Alabama is regulated differently than Arkansas, so
11 there was a better -- not a better, a different, a higher
12 level of care than you get in an assisted living facility
13 here in Arkansas for example. And she was better, but she
14 still, you know, definitely needed help walking.

15 Q. Would she dress herself?

16 A. Oh, yeah. My mother -- yes. My mother is a --
17 the word I use is regal. I remember my mother vacuuming as
18 a kid -- no joke -- in -- in a dress and high heels, and
19 also the kind of person that always would move the
20 refrigerator. I don't think I have moved a refrigerator in
21 any house we have ever lived in to dust behind it, because
22 I don't need to know what's behind it. I just figure it's
23 dust. But my mother always has dressed herself. Now, she
24 needs help --

25 Q. That's what I was really asking.

1 A. -- particularly -- particularly now to -- because,
2 you know, to -- because she doesn't see that well to match
3 colors, but she's always dressed up. I mean, she needs
4 help.

5 Q. She can get her clothes on or does she need help?

6 A. I've never been there doing that. I would say
7 she -- certainly now she needs help. And my guess is when
8 she came here, she needed help.

9 Q. Does she -- did -- again, a year ago, Steve, did
10 she feed herself?

11 A. Yes, yes.

12 Q. Okay.

13 A. She couldn't cook. And she knows her medication.
14 I mean, she has an amazing -- I mean, I heard Cheryl or
15 somebody talk yesterday the difference between a -- a
16 skilled nursing facility and ALF, one of them is -- is
17 people are supposed to know their medications. Well, I
18 know in that facility some don't, but my mother can tell
19 you what every pill is. And -- and -- and so -- and she
20 takes a fair number, most of them minerals and supplements.
21 She got hooked on that a long time ago and -- but, no, she
22 needs -- she needs help transferring, toileting, showering.
23 The caregivers, I will tell you, at the facility do great
24 by her on that. She loves them.

25 Q. Does she -- and I have not met mom. Does she use

1 a walker?

2 A. My mother will never use a walker. I mean,
3 whatever happens, she will never use a walker.

4 Q. You say that resolutely. What's --

5 A. If you ever talked to my mom, even in her
6 diminished state now, you will know when my mother says --
7 and there have been other things where she's drawn lines
8 that have been very painful for me over the last four
9 months, but. For example, I've been trying to get her to
10 eat vegetables for the last year. And it's the same story.
11 I'm 88 years old -- she's now had to change -- I'm 89 years
12 old and I have never eaten vegetables, I won't start now.
13 But I had the same conversation with her every meal that
14 I'm there.

15 I wanted my mother to move out of this facility
16 the day I got back from burying my dad. She was going to
17 have none of that. This is my home. This is my family.
18 They're not going to make me move. They're going to move.
19 That's what she would say.

20 Q. Okay.

21 A. So my mother, she uses too much makeup. Mitzi
22 knows this. She uses way too much powder. I mean, just
23 little things. I'd like her to stop using powder. I mean,
24 because I have to go out -- and Mitzi now buys it, lots of
25 powder. She doesn't need the powder and the makeup, but my

1 mother has routines every day.

2 Q. That's just what she's going to do?

3 A. When I am there at 7:00 a.m., she's getting her
4 shower cap out if it's a Monday, Wednesday or Friday for
5 her bath -- for her shower at 6:00. And I can't stop that.
6 There -- there are just -- those are her routines. She was
7 a lot less routinized -- and this goes back to your
8 question. I'm sorry -- a lot less routinized back then
9 because my dad set the routine. He watched CNN all day
10 long. He watched -- he fed his birds. He did one thing
11 after another and she went with him.

12 My -- when my mother and dad got back together,
13 she improved up to a point, but it was a good point. She
14 was much better. And it was like somebody had given her a
15 crutch. My dad would cue her. My mother doesn't still --
16 didn't then particularly, but it's gotten worse -- hear
17 very well. My dad would tell her what people had said,
18 would sometimes, but not overly irritatingly so, answer for
19 her, assist her. My mother never knew she had -- because I
20 talked to her about this one time, because when dad was in
21 the hospital, she was trotting off to go to the dining
22 center by herself. And I -- I just don't want that. I
23 couldn't have another accident in my family right now. And
24 so I said you really need help. Dad always gave you help.
25 Well, not really. Her concentration, when she walked with

1 my dad, was just holding his hand and listening to him
2 sing. It was, like, she didn't even have -- like, you
3 know, the song on the -- on the Wings of a Dove. My dad
4 was like that to her. And -- and so and -- in every real
5 sense, she improved up to, I believe, the maximum
6 improvement that she was ever going to have, which is --
7 was never going to be like she was.

8 Q. Okay.

9 A. But he accepted that and loved her.

10 Q. Hold that thought.

11 A. Sure.

12 MR. TILLEY: Your turn.

13 THE VIDEOGRAPHER: The time is now 10:10 a.m. and
14 we are off the record.

15 (Off the record).

16 THE VIDEOGRAPHER: The time is now 10:10 a.m. We
17 are back on the record.

18 Q. (BY MR. TILLEY) Steve, at some point I'll probably
19 get to meet your mom. What -- you have told me or talked
20 to me about her speech. What is her ability to articulate
21 at this point?

22 A. Very poor. I wanted you to meet my mom for the
23 last several months. I mean, you know, we tried to get --

24 Q. Right.

25 A. -- those dates, because I knew -- I think Cheryl

1 said it yesterday -- my mother continues to decline. I
2 wanted -- she wanted to testify. She -- she's --

3 Q. Would I understand her? Could -- could I talk to
4 her about the weather, about things at this point?

5 A. If you asked her about the weather, she's just as
6 likely -- as likely to tell you about CNN --

7 Q. Okay.

8 A. -- and Barack Obama. On a good day, she might
9 tell you about the weather, but then she will tell you
10 about an event that happened 30 years ago.

11 Q. Okay. Would I understand her talking? I mean,
12 her speech?

13 A. She talks very low and sometimes she is aphasic
14 again. I mean, I have been on the road, for example, back
15 in March, where I was very disturbed. I know Mitzi called
16 me as well. She was non-understandable. So there are days
17 when she's not understandable and there are days when she
18 is. But if you ask her about events -- I mean, we tried.
19 I wanted her to testify. Trust me, I wanted her to
20 testify. She cannot talk to you about these things. And
21 to some extent, she's moved on. She misses my dad
22 terribly, but she doesn't talk about him every time I'm
23 there and she no longer talks about the accident.

24 My mother was very, very angry, very angry. And
25 my mother is not an angry person and she doesn't -- she's

1 never been an angry person. It's just not part of her, not
2 part of -- any part of her personality, but she was angry.
3 She's not angry now. She's in a peaceful place, but she is
4 in a place where I -- I -- I've got to tell you, I would
5 fight to have her deposed now for her own health. And if
6 it comes to that, that's what I will do for my mother.

7 Q. I don't understand what you're telling me.

8 A. I don't want -- I don't want anybody talking to my
9 mother about the accident.

10 Q. I see what you're saying. Okay.

11 A. My mother is in a different place.

12 Q. Okay. You don't want her to have to relive this?

13 A. Right.

14 Q. Okay.

15 A. Because she won't -- you can go through the events
16 with her and she will flare and she will, yes, I remember
17 that. I mean, the questions were asked -- let's just get
18 it on the table now. The questions were asked, did my
19 mother see the accident. The best I can tell from talking
20 to my mother when she was quite lucid and close to the
21 event, my mother did not see my dad fall.

22 Q. Was she in the other room?

23 A. She was -- no, she was in -- I don't know if you
24 have been to the room. The foyer area, for lack of a
25 better term, from the door is barely visible to her chair

1 where my dad fell. She would have been able to see and she
2 did see him, but it was only as a result of the commotion.

3 Q. Okay.

4 A. She heard the big bang -- this is her saying --
5 heard the big bang, heard dad yell, and she looked up and
6 was startled and got up. That's -- that would have been
7 her testimony in February.

8 Q. Okay. My analogy is somebody who hears a crash
9 and looks up and sees the --

10 A. Yes.

11 Q. -- color of the light at the intersection.

12 A. Yes.

13 Q. She hears it and then turns and --

14 A. Yes.

15 Q. So even in February to ask her what happened, she
16 wouldn't have known?

17 A. She would have said just what I said.

18 Q. Okay.

19 A. And she would have said the same thing that my dad
20 said throughout. She -- she -- if you bring it up,
21 she'll -- she still feels guilt about it. Why did I ask
22 him to put the slippers up. You know, it's just one of
23 those things.

24 Q. Okay.

25 A. And -- and I've -- I think she's come to peace

1 with it. She doesn't have to deal with that each day. Her
2 problems now are she doesn't like the person she's eating
3 with or she still doesn't want her vegetables. That's a
4 good place for my mother to be.

5 Q. Okay. Steve, let me while I'm asking or we're on
6 this theme, what -- you told me what she knows or has
7 reported to you about the event. Let's take one step back
8 from that. What does she know or did she remember about
9 the door itself?

10 A. My mother, as far as I know, never touched that
11 door.

12 Q. Okay.

13 A. My dad did all the -- that -- that was his role.
14 I mean, he came up in that generation of you always open
15 the door for a lady. And -- and my mother was his lady.
16 And so I never saw my mother open a door in there or close
17 a door.

18 Q. Okay.

19 A. That was my dad's job.

20 Q. And so then I understand that she hasn't reported
21 or given you any kind of history of I knew there was a
22 problem with the door or --

23 A. She knew Jack complained about it. I think Cheryl
24 said it yesterday. Jack was not, you know, was not a
25 person to hide his complaints. If Jack had a problem,

1 as -- as I would hear time after time, well, they -- they
2 haven't fixed my bird feeder or they haven't fixed the
3 shelves, and he had just told them yesterday. And I said
4 the maintenance man only comes in once a week, dad, but I
5 would -- five days would go and each day he would say they
6 haven't fixed it yet. I know they haven't fixed it. So it
7 was that sort of thing. She would hear -- my mother would
8 never say anything about it. That wasn't my mother's role.
9 My mother, that -- that just -- she's not a complainer,
10 was -- hasn't been a complainer. She's been complaining a
11 bit more since my dad's death, but I think she kind of
12 thinks that's her role now.

13 Q. Okay.

14 A. Somebody in the family has got to do it.

15 Q. So in terms of a history or report to you of her
16 firsthand knowledge about the doors, she didn't have any?

17 A. No.

18 Q. Okay. Let me -- let me back up and we'll come
19 back to that thought or that theme in a minute, Steve. In
20 '04, mom and dad start living together at Gordon Oaks?

21 A. Yes.

22 Q. Why the move to Arkansas?

23 A. My mother and dad were really liking Gordon Oaks,
24 but it's an old facility. My client acquired the
25 facility -- my large client in Oregon acquired the

1 facility.

2 Q. Now, who would that be?

3 A. That's Sunwest Management.

4 Q. Sunwest. Okay.

5 A. Now, I'm not telling tales out of school, but I
6 came into Sunwest Management because it had problems.

7 Q. Okay.

8 A. Gordon Oaks had been long owned by a local family,
9 the Saad family, S-A-A-D, the Saad family. I don't know
10 them, but my mother knew of them in Mobile, a well-known
11 family. It was a for-profit and it -- it had independent
12 living, assisted living, and skilled nursing all on one
13 campus. And they liked the facility. It was close to
14 their home. It was -- it was the one that just fit my
15 mother's need when she decided she wanted to move back
16 there in February of '04. It was two story, so they always
17 had to ride an elevator.

18 And as I've mentioned before, Alabama law is
19 different than Arkansas law. And I'm not an expert on
20 Arkansas law. But, as I understand it, there are two
21 levels of assisted living facilities here. This is a Level
22 1. And so it's -- it's less care. In Alabama, their
23 assisted living facility was run a lot like a skilled
24 nursing facility, meaning it was staffed differently. You
25 have a lot of the same kind of people. I mean, acuity

1 levels cross between skilled nursing facilities and
2 assisted living facilities as anybody who has ever been in
3 this facility or any other facility knows, but the --
4 the -- the patient level down there was much different than
5 it is at Gordon Oaks.

6 Older building. They were on the second floor. I
7 could never get them on the first floor. They didn't like
8 riding the elevator. There were -- seemed to constantly be
9 problems with the elevator. And, again, my dad didn't like
10 problems. He would always call me, Steve, the elevator
11 doesn't work. Okay. I'll take care of it. Would never
12 call Lena locally. He'd call me. And -- and so I'd be
13 dealing with them.

14 Now, what I did is, when my company took over, I
15 helped hire the administrator down there and went down and
16 helped hire the nursing staff, and so they all knew me and
17 they knew my parents. And they got great care. I mean,
18 they got -- still couldn't get them on the first floor, but
19 they got great care. But they weren't as happy as they had
20 been, because my -- my group took over, my client. You
21 know what people do when they take over facilities. They
22 tend to cut budgets. And the food wasn't as good. And my
23 mother can tell you -- it's like when Chuck at the facility
24 stopped making my mother peanut butter pie. He didn't stop
25 making it. He changed one ingredient according to my

1 mother. I don't know. My mother says it's not the same
2 peanut butter pie. So she -- they'd call me and say the
3 food is not as good, you know, there's less of it, and it
4 was, it had changed. So I monitored that over time. I
5 would go down, I'd eat with them. I'd always eat with my
6 parents. I would eat with them down there. Their food was
7 pretty good. Once my client took over, it was not as good.
8 And so there was a lot of complaints.

9 About the same time, my sister decided to move to
10 San Antonio. Her daughter was there and having trouble.
11 And my sister and I, we don't talk a lot. It's not that we
12 are unfriendly. It's just that we are not close. We are
13 11 years apart in age. I didn't grow up with her. But
14 it -- it was -- I didn't even know she had gone. She was
15 just gone. And they called me up one day and said -- my
16 dad always would say did you know that so and so had died
17 down there. I'd go, no, I didn't know, it wasn't in the
18 paper up here. But did you know Lena had left. No, I
19 didn't know Lena had left. So what I did was -- okay. Is
20 she coming back. Don't know. And, now, Lena down there
21 was never their caregiver. My wife used that term
22 yesterday, the primary caregiver. I've always been their
23 primary caregiver wherever I am. I have the powers of
24 attorney. I had the health proxies. I'm the guy that they
25 always went to. Now, my sister was the person that went

1 into the facility every couple of days and took my mother
2 to tea and took my dad to do his little shopping at the
3 Dollar General store. That's what she did. And once in
4 awhile she would call me and say call lights aren't working
5 or the elevator is not working again, handle it. And I
6 would handle those things. But she was gone and so was
7 that contact.

8 Now, she has -- my sister has one daughter there
9 in Mobile, Alana. Alana had just graduated school. She's
10 a great young lady. You know, she's 40. That's still
11 young by my standards. And she loves my mom and pop. But
12 I had been talking to her throughout that period even
13 before Lena left, because they saw Alana less and less.
14 And my dad had given Alana -- actually loaned money to
15 Alana. And -- and dad said I don't think she's coming
16 around because she doesn't want to pay me back. I said I'm
17 sure she's busy for other reasons, whatever, you know,
18 don't worry about the money. And she admitted she just
19 could not see them very often. She'd travel over
20 Louisiana. She's an EMT. Travels to Louisiana, to
21 Florida. She's always on the road.

22 And so I thought here -- here we are. My parents
23 are 600 miles away. I am only getting down there a month
24 or two -- every month or two -- strike that -- once or
25 twice every month. And it's probably going to be less,

1 because I'm not sure how long my client is going to keep
2 this facility. And that's what was getting to me over the
3 last couple of months at this time. Down there -- I could
4 go down there anytime I wanted and see them and check on
5 them. So I talked to Peggy and I said my parents really
6 aren't happy. And Peggy said I think they're doing okay.
7 I mean, what she said was they're happier than my mother
8 and sister. And I said you're right, but, nevertheless,
9 we -- we've got to do something.

10 And so after talking about it, I went down and --
11 and, coincidentally enough, I had been driving by this new
12 facility that was being built. And I -- I went into the
13 cleaners -- our cleaner is right across the street -- and I
14 said what's that building going to be over there, because
15 there was no sign up at that time. And they said -- she
16 said I think it's going to be a nursing home. I said
17 really. I'm not necessarily -- my wife believes in these
18 sorts of things, but I'm not sure I do, but call it
19 serendipity or whatever. I said that's two minutes from
20 the house. It's right here. So I went back. We had a
21 long discussion that weekend, my wife and I. And I said
22 I'll see if they want to move here, you know. And I got to
23 tell you, I kind of hope they don't, because I'll keep
24 working it out and maybe Lena will come back. Honestly,
25 that's easier for me.

1 Q. It was -- was there any kind of event in Alabama
2 per se, Steve, where you just said I got to get them out of
3 there --

4 A. No.

5 Q. Or is it just --

6 A. No. I'm telling you the process exactly how it
7 happened.

8 Q. Okay. Not -- not any -- not any great blowup
9 or --

10 A. No.

11 Q. -- or problem?

12 A. No.

13 Q. It was just desire to get them where some family
14 member can have more contact with them?

15 A. Yes, yeah.

16 Q. Okay.

17 A. And if Lena had filled the bill --

18 Q. They'd --

19 A. -- I would -- now, I would have still had to deal
20 with their growing and my growing concern about the level
21 of care down there.

22 Q. Right.

23 A. But I was working on that. For example, I had
24 negotiated a different room finally on the first floor. My
25 mother, if -- if you talk to her, she'll take you back

1 there immediately and say -- talk about Senator Sessions'
2 mother was in that room. And I think she had to move onto
3 the skilled nursing facility. That room finally opened up,
4 like, two days before I was going to move them. Well, by
5 that time, I had the U-Haul rented. I had had everything
6 done, everything, you know, was getting packed at this end
7 for them, and -- and -- and had done the deal with the
8 Brookfield folks, Mr. Brooks. And it was -- it was a done
9 deal at that point.

10 But what I did is, I simply called them one
11 Saturday afternoon and I said how are things, same thing.
12 I had -- not a litany, but a list of things that I -- I
13 said I'll work with them on that Monday. But I said here's
14 what we got. I don't know when Lena is coming back, Alana
15 is busy, are you guys missing the family contact. Yes,
16 we'd like to see you more. I said okay. I said I probably
17 can't get down there anymore than I'm doing now, there's a
18 new facility up here, would you like to move here. And I
19 was about to say you guys think about it. I was talking
20 just to my dad. And immediately he said yes. So,
21 unbeknownst to me, either they had been thinking about it
22 or things were so bad they were ready to go. And I took it
23 really -- and once I got them up here, I took it as -- as
24 they really missed Lena. They missed Lena. And -- and so
25 I said okay.

1 I had back surgery scheduled three weeks from that
2 date, I think. This was -- this was early May, maybe --
3 maybe before, maybe April. April, May. I forget. I don't
4 know if there's anything in the record. But whenever Bob
5 and I, Mitzi first started talking, you know, about the
6 room and looking at the room, they had -- you know, I had
7 the interest first. I wanted to see if I could get them up
8 here and if I could -- if we could afford it, get all of
9 that done and so I -- I wasn't offering them something I
10 couldn't deliver on. So our conversation occurred in May.
11 It was after I had worked things out and thought we could
12 make a go of it at Brookfield. And it was getting closer
13 to completion. It looked like it was going to be amazingly
14 completed on time. And it just worked. And -- and so what
15 I said is I'll cancel my -- I'll put off the back surgery.
16 And my wife said third -- she hasn't had them -- it's my
17 fourth. And so I said I'll put it off and we'll get -- get
18 you up here, but the week after I move you in -- you know,
19 I'm going to get you settled and we're going to get you in,
20 but then I'm going to be gone for awhile. I'm going to be
21 in the hospital and I'm not going to be able to even come
22 down and see you, but you can come see me. And they said
23 that's great.

24 Q. What are we doing to your back?

25 A. I -- I ruined it in martial arts many years ago,

1 several different fusions.

2 Q. I was wondering if fusing --

3 A. Harrington rods and --

4 Q. Low back?

5 A. Up -- up almost to the -- to the middle of the
6 back now.

7 Q. Wow. Okay.

8 A. So, you know, we -- we got them up here. It was
9 like moving them to heaven. That's what my mother would
10 say. They were the only residents in the facility -- I
11 don't know -- for the first couple of months. And so it
12 was beautiful. When I was out of commission recovering
13 from the back surgery, they would come up and -- and wave
14 to me in the hospital. My mother had never liked hospitals
15 and my dad didn't particularly like hospitals either,
16 because he never had to go in them. I mean, they would
17 come and wave at me in the room and actually came up one
18 day and -- but that -- things were great. They had
19 one-on-one care for all practical purposes.

20 Q. When -- when your dad gets up here in '08, is --
21 is he still driving at that point, Steve?

22 A. No. I -- I talked -- he still had a car. But my
23 dad had an accident, he and my uncle -- this was Walter
24 Matthau and Jack Lemmon like.

25 Q. Is that Uncle Jimmy?

1 A. That's Uncle Jimmy. And they were out for one of
2 their Thursday hamburger meetings and my dad wanted to go
3 by the post office. And it's one of those things that you
4 read in the paper -- in fact, he made the paper I think --
5 where he mistook the brake pedal for the gas and stepped on
6 the gas and went right through a couple of store fronts.
7 Luckily, nobody was killed; nobody was hurt.

8 Q. Was that down in Alabama?

9 A. Alabama, yes. And so I went down after that and
10 talked to him. It shook him up pretty good. But, you
11 know, I've done dumb things in a car. I can't -- you know,
12 I -- I didn't know -- so I had -- had talked to his docs
13 and talked to his insurance company, who didn't even
14 degrade him, I mean, nothing. And so we talked about it,
15 went out driving with him. And, you know, neither Uncle
16 Jimmy nor dad drove very well, but they -- they had always
17 not driven very well. So you can't really -- I -- I wasn't
18 in the position -- my mother did not drive. I mean, after
19 the stroke --

20 Q. Sure.

21 A. -- I had those conversations with her and she
22 understood she -- but my dad was driving her around. It
23 got to the point really where they were coming here. I'm
24 two minutes away. We'll take them anywhere they need to
25 go. They had a van at the facility, which Gordon Oaks did

1 not have. It's an expense. But the real reason he was
2 willing to give it up is my sister needed a car. And I
3 said, look, Lena needs a car, let's let her get rid of her
4 old Toyota. You give her this car, because my dad liked to
5 give away things. Let's give her this car. And, well,
6 what am I going to do. I have a car. I'll drive you
7 anywhere. And it was pretty easy. And once he came up
8 here, he never talked about driving.

9 Q. With your -- your knowledge of nursing homes and
10 that industry, did you tour the facility before your folks
11 went in?

12 A. Yes.

13 Q. I mean, you want to meet the people?

14 A. I met Bob and -- and Mitzi down there several
15 times.

16 Q. Okay. Interviewed them?

17 A. I don't interview people. I -- I -- I do a
18 handshake. And Bob had a firm handshake and he was polite
19 and he was interested in who my parents were and asked
20 questions. That was all I needed to know.

21 Q. Okay.

22 A. Mitzi had RN training, which I thought was good,
23 you know, because I knew they weren't going to have a nurse
24 on staff. I mean, Peggy is a nurse practitioner and we are
25 two minutes away. I figured they would be covered. But,

1 no, it was -- it was easy meeting them. The physicality,
2 the layout of everything, was great. One floor, wide
3 hallways, lots of things that -- that Gordon Oaks did not
4 have, a new building that just smelled new. There was
5 always, you know, not every -- you know, a lot of people
6 think every facility has odor -- SNFs do more than ALFs --
7 but there are things you can do about that. Gordon Oaks
8 had gotten to the point where there was not a -- my parents
9 didn't notice it, but when you came in from the outside --
10 this building smells new. I mean, it's a good smell.
11 And -- and the fact that nobody was there yet, I figure
12 my -- my parents were on the ground floor so to speak.

13 Q. Right.

14 A. They are -- they are always going to be the
15 charter members. My dad was a charter member of his
16 church. He liked being the -- the banty rooster. My dad
17 liked being noticed. He loved it whenever his name got in
18 the paper. Like his name got in the paper because the
19 mayor came and met him and gave him a proclamation. And
20 he, you know, talked about meeting the mayor forever. He
21 lived in Mobile for 60 -- 90 -- 80 -- 92 years and never
22 met the mayor. So he came to Fort Smith and met the mayor.

23 Q. Why?

24 A. It was the grand opening.

25 Q. Oh, okay. I got you.

1 A. And they were the only residents. I mean, you
2 know, you can't -- you can't dodge the only residents at
3 the time, so.

4 Q. Do -- do you -- in that move-in process or in the
5 early months, do you ever have any contact with anybody
6 from Crawford?

7 A. That question was asked yesterday and I thought --
8 and I laughed, yes, but having nothing to do with this.

9 Q. Okay.

10 A. As I mentioned, across from the facility is our
11 dry cleaner. The road is a cul-de-sac and it was never
12 particularly well maintained. But once the construction
13 started and through the winter months -- you know, in Fort
14 Smith, we have a lot of rain. And the potholes got bigger
15 and bigger and it was like just falling off the edge of a
16 cliff just to go get my cleaning. And the poor, little
17 lady, her son had committed suicide, and her business was
18 dwindling. I said, because, you know, I -- I -- I'm at a
19 point now where I -- I think I am risking life and limb
20 coming down this road, because there was only one lane.
21 And so you would come down that -- that road and people
22 would just pull -- because they weren't going to get in the
23 holes and they would pull and you would be face to face.
24 Literally twice I was stopped, like, in the proverbial
25 Mexican standoff where nobody is going to move. And it

1 just got to be an exasperation, so I called Crawford. And
2 I don't remember who I talked to, but I said something has
3 got to be done about this road. And they basically said
4 when we're finished, it'll get done. And I said that's not
5 good enough. So I ended up calling the mayor -- the mayor
6 that signed the proclamation for my parents -- and said
7 anything you can do, mayor. Long story short, it didn't
8 get changed until it was finally finished. And I think
9 even Mitzi and Bob had to get with the city, because it was
10 the city that had to get it done. But that's the only --
11 that's the only time I talked to Crawford with one
12 exception.

13 My memory, the day that I had the last -- what I'd
14 just call walk-through. Apartment is ready. It's the
15 first time I had been in it. It was finally -- I wasn't
16 doing a punch list, but just make every -- make sure
17 everything worked. My parents were moving in in a couple
18 of days. And the closet door was stuck. And it -- it --
19 it -- I believe -- and I don't know whom I was with. I
20 know I was with Bob and I think there were two other
21 people. And I -- I'm pretty sure -- I don't know -- subs
22 from -- but I was introduced to a person that was a
23 Crawford person. And we quickly, three minute
24 walk-through, everything looked great, finished out great.
25 I just knew my parents were going to love the room. I went

1 and opened the door, God, this is big closet. In Gordon
2 Oaks they had a little bitty closet. Went to the -- to the
3 closet in the front and it -- it just -- I was able to get
4 it open, but then I couldn't quite get it back shut. And I
5 said you need to get that fixed. Bob said no problem,
6 we'll get it fixed.

7 Q. Name --

8 A. There was a Crawford person there. I didn't -- I
9 didn't -- I'm sure he heard that conversation. I didn't --
10 I shook his hand. I didn't talk to him. I don't -- I have
11 no idea what his name was. It wasn't a big deal. It was
12 just I was walking through to see a two bedroom apartment.

13 Q. Any description that you can give to me?

14 A. No, sir, I can't.

15 Q. Young? Old? White? Black?

16 A. He was white, middle age. But then everybody
17 looks middle age to me except me.

18 Q. Any other distinguishing features?

19 A. No.

20 Q. Okay.

21 A. No.

22 Q. And the issue, the door was sticking?

23 A. Yeah. It just -- it didn't open and close right.

24 Q. Okay. Wasn't coming off the track? It wasn't --
25 just --

1 A. Uh-huh, no.

2 Q. -- just was stiff?

3 A. Like it always -- it -- it did it quite a bit. It
4 was just -- listen, I have been around bifold doors. I
5 mean, I come from a lot of nursing homes.

6 Q. Sure.

7 A. It's probably one of the common complaints in
8 nursing homes around the country. Bifold doors just have
9 problems.

10 Q. Okay.

11 A. It was no big deal to me.

12 Q. Didn't give it a second thought?

13 A. No, sir.

14 Q. Okay. Let's -- let's stay with this, Steve, while
15 we are on it.

16 A. Sure.

17 Q. Mom and dad move in. Is -- is that door a
18 continuing issue?

19 A. And when they moved in, it was the first thing I
20 checked.

21 Q. Okay.

22 A. Worked fine.

23 Q. Okay. When did it not work fine next?

24 A. You know, I answered the -- the interrogatories as
25 best I could. I know early on -- and, again, they were

1 there in June, June 1. I could not get out of the house --
2 once I got home from the hospital, could not get out of the
3 house until early July. So I didn't go down there at all
4 in June. And I do not remember my dad complaining about
5 that. My dad -- in fact, I don't remember my dad
6 complaining about anything during the month of June. My
7 mother would tell you -- I would tell you -- it was like
8 heaven on earth. I was not getting any late night calls
9 from staff telling me my dad was complaining about
10 something or nothing. It was just -- it was -- it was
11 great. I missed seeing them, but they would come up to the
12 house and so everything was fine.

13 I don't specifically remember anything in July.
14 But I remember in the summer that I was at breakfast with
15 dad -- I think it was breakfast -- and he -- he said the
16 door is not working. Now, he didn't even know that there
17 was a problem before. He just said the door is not
18 working. I said which door. He said when you come into
19 the room. I said, okay, I'll tell whomever, whoever was at
20 the desk that morning -- I don't know who I told. It's not
21 a big deal. I just -- whoever I told that was sitting at
22 the desk. I mean, there's been a lot of employees come and
23 go during this time and -- and part of it is just brain,
24 I -- I can't remember all the names of the people. I know
25 the names of the people that are there, but I don't

1 remember the people that worked there six months ago. So I
2 went by and said would -- would you check on my parents'
3 door.

4 Q. Any -- any diagnosis, Steve, for instance, dad
5 says it's --

6 A. It -- it -- it doesn't open or close right. It's
7 sticking.

8 Q. Okay. I mean, that's --

9 A. Because in those days, quite honestly, with my dad
10 in the room -- and it's not -- you know, compared to their
11 Gordon Oaks room, it's a great room, the sitting area, but
12 it's not overly big. And my mother and dad liked that time
13 together. And so I usually spent most of my time during
14 the early days when I was -- I was back out of the house
15 after back surgery eating with them and being in there, so
16 he would just tell me.

17 And it wasn't the only thing. The bird feeder
18 fell once. The bird feeder fell. I said, okay, well, tell
19 them to put the bird feeder up. He had some -- he had
20 whoever the maintenance person was put a -- a shelf that
21 held these boats. My dad wasn't a boat person, but
22 somebody at Gordon Oaks gave them to him, so he wanted to
23 put those up. So I got them unpacked, went to the storage
24 unit, found them and brought them in, and they had, you
25 know, they were good enough to have the maintenance man put

1 them -- pick them up -- put them up. One day at breakfast
2 he said my boat is falling. What does that mean your boat
3 is falling. It's sinking. That's what I said, it's --
4 it's sinking. No, it's not sinking. It's coming off the
5 wall. I said -- I said have you told somebody knowing the
6 answer before I even asked. Yes, I've told somebody, but
7 they haven't fixed it. When did you tell somebody. On the
8 way down to breakfast. I said you haven't even been back
9 to the room yet, dad, you don't know. We'll get it fixed.
10 And they did. I don't know. It took a day or two to get
11 it fixed.

12 Q. This summertime of '08, and the -- the
13 observation/complaint about the door sticking, was it --
14 was it fixed? Do you know?

15 A. He didn't complain to me.

16 Q. Okay.

17 A. I mean, I did not go back to and -- to see. I
18 mean, my dad -- again, it -- it was his roost. Once I got
19 them moved there and -- and, you know, stayed with them --
20 I don't mean slept there, but stayed with them until late
21 and got them into bed, once they were comfortable there,
22 that was his lair. That was -- that was his roost.

23 Q. Okay.

24 A. And it's like Cheryl said yesterday -- I mean, I
25 loved the question, was your dad a tinkerer. My dad never

1 tinkered on anything. I grew up in a family where
2 everybody had two left hands. We don't work on things.
3 We're a danger to work on things. And I -- I'm a little
4 better than my dad. I do at least have a set of tools.
5 They don't come out of the shed much, but I -- I've got a
6 set of tools. But I am kind of like my dad, when something
7 goes wrong, that's why I have a phone book. And he has a
8 big phone book of everybody to call. And -- and like
9 Cheryl said yesterday, he had no trouble telling us when
10 there were problems.

11 Q. Okay.

12 A. And usually I was the first one he told.

13 Q. Your thought by the fact that he wasn't
14 complaining or mentioning it, it was working?

15 A. Everything was fine. Good news -- no news is good
16 news with my dad.

17 Q. Okay. Steve, that's we are guessing the hot
18 summertime of '08, that there was an observation or
19 complaint about the door. But was there a follow-up
20 complaint or observation?

21 A. I know in the fall there was. Day, week, month, I
22 have no idea. Same thing.

23 Q. Okay. Sticking?

24 A. Yeah. And then there was a -- a time later, could
25 have been early fall where I noticed it. I was in their

1 room and I was going to get the bird feed and the bird feed
2 was in -- in that closet.

3 Q. Okay.

4 A. And I got it. And it -- it wasn't doing like it
5 did when I met Bob that day before the walk-through, you
6 know, the walk-through before the time --

7 Q. Tell me what you mean by that.

8 A. I -- I just opened it and didn't seem right. I
9 mean, you know, a -- a bifold door ought to, to me, as a
10 lay person, just ought to be frictionless, right. I mean,
11 because these look like grand -- grandly-designed doors.
12 So it -- to me, it ought to -- it shouldn't be -- like, my
13 son has an apartment in Fayetteville and it's got these
14 cheap bifold doors and they never work. And it's like you
15 expect it. I mean, you open it and that's just the way it
16 is. And I asked him one time, I said, have you ever
17 pointed this out to the people. No, you know, because it's
18 a college room and nobody really cares about it, but.

19 So, to me, it -- it just -- it was like it was
20 sticking. Like I -- I could get it open. I could get it
21 closed. But it -- I'd just open it, you know, open it,
22 right, got the bird seed, put it back and came back, and so
23 I said something, I think, when I went by the front desk,
24 whoever was there. There was one time I told Mitzi. I
25 don't remember when that was. I -- I mean, I did

1 everything I could in the interrogatories to think about
2 which time was which. I told Mitzi at least one occasion,
3 I think two, but it was just, you know, like I would do a
4 lot of things, you know, like I'd said, dad's bird feeder
5 fell.

6 Q. The -- the complaint or the observation was the
7 door was sticking?

8 A. Yeah.

9 Q. Did it ever come off the track?

10 A. Not that I saw.

11 Q. Or -- or fall?

12 A. No, no. That would have been -- obviously for
13 anybody, that would have been a whole different --

14 Q. Sure. And that's why I asked the question. Just
15 the sticking issue?

16 A. No. Never -- never dreamed it would fall. I
17 mean, seriously.

18 Q. Right. And so, again, it -- it was just not as --
19 moving as smoothly?

20 A. Right.

21 Q. Okay. We -- we now know that there were some
22 repairs made. Did you know anything that was taking place
23 in terms of what was being done or how it was being done at
24 the time, Steve?

25 A. The two times I -- I believe two times that I -- I

1 mentioned it to Mitzi, she just said I'll Joe look at it
2 when he comes in. And that's fine.

3 Q. Okay.

4 A. No. And I was never there when they worked on
5 them. Didn't have any idea. But each time and -- and I
6 did go back the one time. And I saw some of the documents
7 yesterday, it seemed like it was October 12, 18, whatever
8 it was. It might have been one of the two times where I
9 went back and just, it worked, that's fine.

10 Q. Whatever the remedy was, it worked?

11 A. Yep.

12 Q. Okay. Going into December of '08 and January of
13 '09, any complaint dad is making about the door?

14 A. As I am sitting here today, without having
15 reviewed any of the discovery, that again I wrote, I cannot
16 remember in December.

17 Q. Okay. And -- and really truly what I'm trying to
18 find out is more close in time to when the accident --

19 A. No.

20 Q. -- actually happens --

21 A. Right.

22 Q. -- if you remember he brought it back up again?

23 A. Right. I was -- we went over to see our
24 grandchild after Christmas for several days and so I wasn't
25 here. In fact, it was after New Years I think. We got

1 back two days before the accident as I remember. Peggy
2 said she saw -- Peggy testified yesterday she saw my dad
3 that night and that was the night he had tripped over some
4 cords, which I had also once tripped over trying to do
5 something in the back of the chairs. But I didn't remember
6 that it was that close, but I knew nothing. I talked to
7 them each -- I mean, he did not mention and he would have.
8 I -- I would have remembered the closet doors not working.
9 I -- there was no mention of that in those few days we were
10 over in Atlanta in January leading up to the 7th.

11 Q. Okay. And -- and your tracking with where I am
12 is --

13 A. Right.

14 Q. -- is close in time to when the accident happens,
15 it's not back on his complaint list?

16 A. I -- again, I have to put two and two together.
17 If I didn't know about it, it wasn't on his complaint list.

18 Q. Okay. Fair enough. Now, regarding you -- you
19 mentioned to me mom -- mom did not see what happened. But
20 you did talk to your dad?

21 A. Oh, yes.

22 Q. Tell me what he explained to you or told you.

23 A. Well, I saw my dad -- I don't know. I can wait
24 for the questions, you know. I mean, you mentioned I'm a
25 lawyer. There was a lot of testimony about -- yesterday

1 about calls and who called what. Long story short, here's
2 what happened. I had been on, like, a four hour conference
3 call. I had been back in the office two days. And I'd
4 worked a long 12 hour day. I got back about 6:15, 6:20.
5 The phone was ringing in the house. I had left my cell
6 phone at the house that day. I walked into the house and
7 it went to the recorder. I picked up the recorder. It was
8 the facility calling saying that my dad had been injured in
9 a fall.

10 Now, he had had a fairly recent fall. As far as I
11 remember, he had only one at Gordon Oaks, one fall five
12 years ago.

13 Q. What -- what happened there?

14 A. He fractured ribs. He got up, I think, in the
15 middle of the night to go to the bathroom and my mother
16 left something out in the middle of the room and he tripped
17 over it.

18 Q. Okay.

19 A. And -- and he fractured ribs. And that was --
20 that was -- but he recovered from that. But, you know, in
21 terms of being a fall risk, as I would say it, my dad was
22 not a fall risk.

23 Q. Now, you mentioned something about tripping over
24 some cords?

25 A. Yeah. Peggy testified about that yesterday.

1 He was -- we -- my dad liked silly things at Christmas.
2 And so he always liked bells that -- that did tunes, you
3 know, that played like Have a Merry Christmas or whatever.
4 And so I had found in the attic bells and I had taken them
5 to him and I plugged them in and had them back there so all
6 they had to do was reach behind the chair and turn them on.
7 He decided since I had been out of town and they hadn't
8 cleaned up their Christmas stuff that we had put up for
9 them, that he get the bells out and go ahead and put them
10 up. Well, they've got these huge reclining chairs. And
11 I -- I have done the electrical work back there; i.e., just
12 plugging in the lamp and -- and all the chairs that have
13 electrical gadgets in them. And it's a mess. And, again,
14 I went back there one time to try to jiggle the phone thing
15 that wasn't working and I tripped coming out of there. So
16 he tripped. He fell back. He didn't have any injury. All
17 right.

18 And so I thought -- when I heard the message, it
19 was your dad has fallen, there's been an accident, please
20 call us. I immediately called Mandy. And I got Mandy back
21 and I said what's going on. I had not talked to Peggy. I
22 had no idea they were trying to call Peggy. I said what's
23 going on, is he -- is he hurt. He seems to be hurt. And I
24 said how badly. And she said I can't tell at this point.
25 And I said what happened. And she says the door fell on

1 him. And I knew the doors had to be fairly heavy. At that
2 point, I didn't know how heavy. But I said is he -- is he
3 in a lot of pain. Yes. And I -- and I also know my dad
4 doesn't like to go to the hospital. I said to her, you
5 have the training. I don't. I'll get in touch with Peggy.
6 She's not here at the house. I don't know whether to take
7 him to the hospital or not. You guys make the decision,
8 but I said mainly just ask him. And she was there. She
9 said, Jack, Mr. Jack, do you want to go to the hospital.
10 And I could hear him groan and it sounded like he was
11 saying no. I said I'll come right down.

12 By the time I put my stuff down, changed my
13 clothes, I heard from Peggy. Peggy says I'm going by the
14 facility, I'll stop by, I'll see what's going on with dad.
15 I think by the time she got there, the ambulance had
16 already been called and he was on his way to the hospital.
17 She came home. I had not -- I don't eat that much. I
18 don't usually eat breakfast. I never eat lunch. So we got
19 a quick bite to eat, because he was en route and we knew
20 with emergency rooms -- I've been through this with other
21 relatives -- you just can't walk in and see anybody you
22 want to see until they have processed them. I said we'll
23 get down there. So we got down there I would say within an
24 hour of him arriving. His doctor who was on call, was
25 already seeing him, so we knew he was in good hands. He

1 was in the emergency room, in, you know, a room in the
2 emergency room. And I went in and talked to him. That's
3 the first time I talked to him after the accident.

4 Q. Let me stop you. You said that -- that it was
5 reported to you that the door fell on him?

6 A. Yes.

7 Q. And -- and the way I took your response is, you
8 know -- knew what door?

9 A. I didn't know.

10 Q. Okay.

11 A. They just said a door fell on him.

12 Q. Okay. Did you have any idea what they meant or
13 how they meant?

14 A. They -- well, I knew enough to know this, I knew
15 it wasn't the front door, because that thing is triple
16 hinged. And -- and I just -- no, I had no idea what door
17 in the apartment.

18 Q. Okay. All right. So you talked -- talked to him
19 that night --

20 A. That night.

21 Q. -- about the event?

22 A. Yes.

23 Q. What did your dad tell you?

24 A. Same thing he told me for the next 22 days. I was
25 putting Dot's slippers up and the door fell on me. Exact

1 words. He would always follow it up with why did it do
2 that.

3 Q. And any -- any other description at all, Steve?

4 A. No, sir.

5 Q. I was pulling on it? I was tugging on it?

6 A. No, sir. In fact, I went to him -- the second day
7 after the accident, I went to Mitzi at the front desk and I
8 said I want that door isolated. There's a problem with
9 that door. I don't know what the problem is. I don't
10 know. But I know there are other doors like that in this
11 facility. My dad I knew at that point -- I -- I mean, I
12 sure hoped it wasn't a mortal injury, but he was in bad
13 shape. I said I want that door isolated. I want to know
14 what every other door in this facility looks like and if
15 there's a problem, so you keep that door. And I said I
16 don't want anything else touched in that room and I do not
17 want that door to go back up. Those are my instructions.

18 She said how is Jack. She had been, I think, to
19 see my dad that morning. And -- and I said, well, you saw
20 him. I've been there. You saw him. He's hurting and --
21 but we hope he's going to be okay. She then said to me I
22 hear that he pulled the door down on himself. I had talked
23 to my dad throughout the evening in the emergency room.
24 And that was just -- to me, was an inconsequential
25 difference. You know what, if doors can be pulled down by

1 a 125 pound man, you've got a problem in an assisted living
2 facility. So, to me, it didn't make any difference except
3 my dad and I, we parse words. We say it just like it is.
4 So I said who told you that my dad fell. And -- and she
5 didn't say anything. And I said, well, I'll tell you what,
6 did you ask him this morning what happened. And she said
7 no. I said, well, ask him. If you go back again, ask him.

8 I went to the hospital immediately after that,
9 because I had come over to the facility to bring him some
10 pajamas and -- and to take him things that mother wanted me
11 to take him. I asked him, I said, dad, how did the
12 accident occur. And like my dad, when you ask him one time
13 too many, he goes (indicating). And I said, dad, Mitzi
14 says that you pulled the door down on top of yourself, that
15 you fell. He said that never happened. The door fell on
16 me. He said I told you that a dozen times last night. I
17 did not fall. My dad was very proud. He never denied --
18 he never denied the fall in Gordon Oaks. He didn't deny
19 the fall over the electrical. My dad didn't lie. My dad
20 would not lie to you about anything any time. My dad told
21 it just like it was. He told the caregivers that night --
22 because when I have talked to Mandy, Mandy said that's
23 exactly what he told her while he was lying there in pain.

24 Q. That?

25 A. That -- that putting -- as he was putting Dot's

1 slippers up and he went to open the door and it fell on
2 him.

3 Q. Okay.

4 A. He told Dr. Henry that night. He told people
5 throughout his stay in the hospital, every sitter that came
6 in. The story never varied. It never got longer. It
7 never got shorter. It never got different.

8 Q. Okay. I'm going -- I'm going to let the people
9 from the facility, their attorney, ask you questions.

10 A. Okay.

11 Q. My purpose and my question at this point, Steve,
12 is after the accident --

13 A. Right.

14 Q. -- do you ever talk to anybody from Crawford?

15 A. About this, no.

16 Q. Okay. About anything?

17 A. Well, I told you about the --

18 Q. That's -- that's before.

19 A. I'm not sure. It might have been after.

20 Q. Okay.

21 A. It was still going on, but it didn't get paved
22 until like June or -- it wasn't you guys, Crawford I know,
23 the city, but --

24 Q. Okay.

25 A. -- it was July, I think, when they finally got the

1 road paved. But I was -- I was still talking and one of
2 those times could have been after Christmas -- it could
3 have been after this fall, but it had nothing to do with my
4 dad.

5 Q. Okay. And -- and specifically so that I --

6 A. Is that the question I got off on, that we were --
7 boy, I went a long ways with that one.

8 Q. Who knows where we were. You and I walked off in
9 the tall weeds together.

10 A. I'm sorry.

11 Q. What I am trying to find -- I'm trying to do the
12 lawyer thing here and find out is if you ever had any
13 discussion with anybody from Crawford --

14 A. No.

15 Q. -- about what happened or how it happened?

16 A. No, sir.

17 Q. Or specifically whether they made a statement to
18 you or anybody else about what happened or how it happened?

19 A. And when -- not to parse words with you --

20 Q. Sure.

21 A. -- but when you say Crawford, how broad do you
22 want that? I have never talked to anybody employed by
23 Crawford.

24 Q. You've talked to Dick Wasson?

25 A. Yes, sir.

1 Q. Okay.

2 A. Extensively.

3 Q. Okay. Tell me what Dick has told you.

4 A. I -- the first time I talked to Dick was
5 probably -- and I asked Mitzi to talk to the insurance
6 people, because I knew this was going to be -- from day
7 one, I knew this was going to be expensive. I -- I never
8 had a claim with my parents that I've had to manage, but I
9 knew they were living on a shoestring and -- and some into
10 my budget. And so I said, Mitzi, I want to talk to the
11 insurance people. And -- and she said I'll get them to
12 call you.

13 Probably two or three days later Dick Wasson
14 called and left me a message. I had been at the hospital.
15 I called him back a couple of days later and I said to
16 him -- the same thing I told Mitzi -- I want to know about
17 the doors in this facility. I -- I just -- you know, I'm
18 scared that -- that this could happen to somebody else.
19 And if you guys look at them and you tell me that it's just
20 this door, great, that's great. That takes a load off my
21 mind, because I'll tell you, I know most of the residents
22 in that facility. I know them by name or knew them by name
23 at that time. I don't sit at their tables and talk to them
24 every day, but you get to know people by personalities --

25 Q. Sure.

1 A. -- and the way they ingress and egress out of the
2 dining center, and you know their peccadillos, and it's --
3 it's -- it's a people watching time. And so I didn't want
4 anybody to be hurt and so I told Dick that. And I said
5 what I want is a report. I said what I'm due on behalf of
6 my parents is a report about what happened, why it
7 happened, what you're going to do about it and, most
8 importantly, beyond my dad, what else is going on in that
9 facility, if anything, that's a danger to the residents.
10 And he said I will get that done.

11 Q. Okay.

12 A. We then next -- and -- and I said I really
13 don't -- he says how is your dad. He asked me about his
14 injuries and so on and so forth. And I told him. He was
15 very nice and -- and I -- I said I will talk to you when I
16 know more.

17 The next time I talk to him was the day -- came
18 back the day -- the day after we buried my dad in Mobile.
19 And I called him and I said where are we. And he says we
20 have -- we have basically concluded our report and our
21 report says the following. That there's only been one
22 incident in the facility. That was in your dad's room. It
23 appears that it has the wrong track. We made a mistake.
24 We want to settle this and we'd like to meet with you. And
25 I said what I want to know, Dick, is more about the other

1 rooms. And he said we've looked at every room and there's
2 not a problem in any other room and there's never been a
3 problem in any other room. I knew nothing more or less
4 than that. And I said that's good news. I said I would
5 like to see what you have done, just wanted to see. I
6 mean, that's the lawyer in me, right. He's representing
7 somebody. I want to see what you've done. He said I will
8 show it to you.

9 Q. Now, you're asking for a report --

10 A. Yes.

11 Q. -- or a tour of the facility?

12 A. No, no, no. I said I want to see the doors.

13 Q. Sure.

14 A. He said you can see the doors any time. That
15 didn't hold true. But I said I want to see the doors,
16 because -- because evidently -- I heard the testimony
17 yesterday -- I didn't know this -- evidently the doors
18 stayed out in the hallway for awhile. I never noticed the
19 doors in the hallway. If I had, I would have inspected
20 them there. I would have looked at them. But I -- they
21 were just gone. My mother and my dad were 24/7 at that
22 point. I was just taking care of them. So I -- with --
23 with Dick, I just wanted -- I just wanted to be assured.
24 My mother was asking me to be assured. My dad had asked me
25 to be assured. Whatever -- whatever, you know, happens to

1 this, my dad was a big believer in the story of Joseph in
2 Genesis, that, you know, bad things can happen, but good
3 things can come out of bad things. That was one of my
4 dad's mantras. He had several in his lifetime, but that
5 was one of his things. And it's probably the last thing
6 that I remember cognitively him saying, alert and
7 cognitive, before he -- before he got really bad the last
8 two days, was just make something good out of this. And so
9 that's -- that was the job.

10 So when I am talking to Dick, I am going to make
11 sure this never happens to anybody else. And -- and -- and
12 so that was the way it was left. He promised to send me
13 some things. He said I -- I want to see medical
14 authorizations from your dad. I said that's great. I
15 understand that. I've been through this representing many
16 clients, so just send me whatever you need. I'll sign it.
17 He asked me a little bit about my dad and I told him and
18 anecdotally about my dad. And I never heard from him
19 again.

20 And then three weeks later I called him. And he
21 had sent me none of the stuff and none of the
22 authorizations. And, at that point, I asked him -- because
23 he said, listen, we want to settle this. I said, well,
24 what do you think it's worth. And he said, well, what do
25 you think it's worth. And I said I have no idea. I said I

1 have no idea. I -- I said we just need to talk. And I
2 said what -- what are your -- I mean, this is what, as you
3 know, attorneys always ask for in these kind of cases,
4 what's your limits of liability. He said I won't tell you
5 that over the phone, but I'll send it to you in writing. I
6 said great. He said have you retained counsel yet. I
7 said, no, I don't want to retain counsel. I said the last
8 thing I need is a lawsuit. I said -- I said I defend the
9 industry. This is what I do for my job. I'm not a
10 plaintiff's lawyer. I don't want to be doing -- I want to
11 settle this, get it over with. I know out of pocket what
12 my mother is already out. I know what I'm going to do to
13 try to maintain some semblance of life, at least in the
14 near median term to -- to try to replace my dad. I am
15 trying to do that, but I can't do it. And that -- that
16 leads to the sitter that a lot of questions were asked
17 about yesterday and I am glad to talk about that.

18 But at the end of the day, I never heard back from
19 Mr. Wasson until I had hired Mr. Chronister, and it was
20 because -- the reason I hired Mr. Chronister is I walked
21 into the facility one night and I just happened to look up
22 and the track had been replaced.

23 Q. In your mom's room?

24 A. Yeah, on this door where there was no door,
25 because that was one of the -- I mean, I had told you, as I

1 said before, both to Mr. Wasson, and a letter went to
2 Mr. Wasson, and I told Mitzi the day afterwards, don't
3 change anything in that room. First of all, do not put a
4 door back up. I don't know whether these doors are safe or
5 not. I don't know anything about them. I'm not a door
6 man.

7 Q. Let me stop you there --

8 A. Sure.

9 Q. -- Steve. Over time have you learned of any other
10 incidents involving --

11 A. Oh, yeah.

12 Q. -- involving --

13 A. Keeps coming up. I learned yesterday. That's why
14 I said if we have 10 more of these, there will probably be
15 10 other instances. I mean, that's -- that's what really
16 bothers me more than anything about this. It starts off
17 yesterday, the testimony was from Joe, the maintenance man.
18 He seemed like a fine fellow. And I am not -- I don't
19 think he's lying at all. I just don't think he can
20 remember everything, but he talks about two rooms. And
21 then -- and then Cheryl comes in there, two other rooms.
22 And you go back to what Mr. Wasson told me -- I don't care
23 whether it happened before or after my dad's accident,
24 there are incidences with the doors. And you can minimize
25 it all you want and say, well, it was just a pin popping

1 out and it was just this and I did this and, well, I always
2 had logs, but then I didn't have a log if it happened like
3 that. At the end of day, sir, my dad is dead because a set
4 of doors fell on him. And, you know what, it had never
5 fallen before, but there were problems with the door.

6 Q. Where I was trying to ask the question, Steve, was
7 if you had gained information before --

8 A. I think I asked -- before?

9 Q. Before --

10 A. Yes.

11 Q. -- yesterday's testimony?

12 A. Oh, yes.

13 Q. Okay. What did you learn before yesterday?

14 A. Well, from Mandy Broughton, I learned that there
15 had been at least several other incidences.

16 Q. With doors falling or sticking?

17 A. One with a door falling. One with a door -- one
18 door almost falling and other problems. I didn't get into
19 detail with her, but there were other problems. That's all
20 I needed to know. You know what, it's -- it's like
21 anything else. When you've got a product -- this is 100
22 pound door. Why it's in an assisted living facility, I
23 don't have a clue. It shouldn't be in my opinion. If it
24 falls, if it fails -- and most of the time things just
25 don't combust. They -- over time things happen. You know,

1 at the end of the day -- just in listening to Joe
2 yesterday, in his experience -- we haven't talked to the
3 Crawford people yet. Nobody that I know has. I sure would
4 have involved Crawford, because they put the doors in. You
5 know what, did it have to fall before somebody did
6 something about it. That's just a basic question. Did
7 the -- did the gas tank have to explode before you -- you
8 knew there was problem. There were problems with these
9 doors that they knew about that I didn't know about.

10 Q. Who is "they"?

11 A. The people at the facility.

12 Q. Okay.

13 A. At least by my count -- and it's a rough count,
14 because we all have to get our timelines and put the
15 matrices together, but at least six incidences that I now
16 know about that happened either before or after -- and, you
17 know what, this is a six month -- at this time, a six month
18 old building with only 47 rooms and you got six incidences
19 involving these sorts of doors.

20 Q. Who -- who is the historian for that, Steve?

21 A. It's all on your side, sir, not mine. Dick Wasson
22 started it by telling me there was only one incident.

23 Q. Okay.

24 A. And that's not true.

25 Q. Let's -- let's take a break.

1 A. Okay.

2 THE VIDEOGRAPHER: The time is now 11:02 a.m. and
3 we are off the record.

4 (Off the record).

5 THE VIDEOGRAPHER: The time is now 11:19 a.m.
6 We're back on the record.

7 THE WITNESS: Can I say one thing, please?

8 MR. TILLEY: Sure.

9 THE WITNESS: First of all, you have been very
10 kind to me this morning. And -- and in less than two
11 hours, I have gotten emotional twice showing in different
12 ways. I apologize for that. This is not on the advice of
13 counsel, but I get started and sometimes I digress. I'm
14 here to answer your questions. You have a job to do and I
15 know. I'm not trying to make it harder for you.

16 MR. TILLEY: Don't -- don't ever apologize for
17 being human.

18 THE WITNESS: Thank you.

19 MR. TILLEY: I -- I sensed something a minute ago
20 and I just want to give you an opportunity --

21 THE WITNESS: I've never had a person do like --
22 something like you did for somebody else in a deposition
23 like this, and I appreciate that.

24 MR. TILLEY: You're welcome. I'm sorry you're
25 here. I truly am.

1 THE WITNESS: Thank you.

2 Q. (BY MR. TILLEY) What I think I heard, Steve -- and
3 I want to move to a different direction. What I heard is,
4 since your dad's accident and event, whatever we call it,
5 is that you have gotten reports or heard of other instances
6 with the doors?

7 A. With doors at this facility.

8 Q. Right. Any other injuries or accidents that you
9 have heard of?

10 A. Not that I've heard of, no.

11 Q. Okay. And let me follow up with -- with a
12 question. In the great scheme of life I don't know if it
13 makes any difference. When -- when Dick Wasson reported to
14 you I guess in late January or early February that he -- he
15 knew of only one, do you suspicion he was being dishonest
16 with you or it -- is that what he truly knew at that point?

17 A. I mean, obviously, that calls for speculation, but
18 I am willing to give it to you.

19 Q. Okay.

20 A. Is that okay?

21 Q. Yeah.

22 A. Because I don't know Mr. Wasson well. And I have
23 nothing against him. And, again, he was kind to me in his
24 conversations as we went through this and -- and at least
25 on the phone very sharing. I think he was telling me what

1 he had learned, which is another thing that bothers me, but
2 it's also consistent with my experience in this industry.

3 I -- I have an old saying in -- in these kind of
4 cases, and it's very different than the way I used to try
5 cases and litigate cases before I came into this industry,
6 and that is these cases tend not to improve with age.
7 Ex-employees come forward, things happen, anecdotal things
8 get -- get -- get coming forward and my cases never got
9 better.

10 I believe Mr. Wasson, for example, did not know
11 that the hardware had been removed. He seemed totally
12 aghast at that, had no knowledge that the bracket had been
13 removed after our explicit directions not to do so.

14 Q. When you -- when you were talking about coming
15 back from the funeral and finding it?

16 A. Yes, yeah, yes. And -- and I think he was -- I
17 have no doubt -- because I was on the phone with him, with
18 Mr. Chronister, I have no doubt he was genuinely surprised
19 and upset by that fact. And -- and so I have no reason to
20 believe, other than the fact, as I said before, that he --
21 he promised certain things and didn't give them to me.

22 Q. Right.

23 A. I have a feeling, having been on that side of the
24 table representing clients across the United States, that
25 he was -- he was learning of things serially and -- and

1 that that's why the communications with him stopped.

2 Q. Okay.

3 A. That's my speculation.

4 Q. Fair enough. I -- I -- I will read the medical
5 records, have read some at this point, Steve, and I -- I
6 guess what I want to ask of you is a historian about your
7 dad's stay in the hospital. I am not trying to make you a
8 doctor. I am trying to get a son's observations. Okay.

9 A. Yes, sir.

10 Q. I know this is hard.

11 A. I have never tried to play a doctor.

12 Q. Okay. He was lucid initially?

13 A. Until the last two days.

14 Q. Okay. And he was able to communicate to you about
15 the event? We talked about that.

16 A. Yes.

17 Q. Other communications that stick out in your mind?

18 A. Well, Peggy mentioned it yesterday -- and Peggy is
19 the -- sort of a doctor. She's a nurse practitioner. And
20 she was there a lot, too. When he developed the
21 problems -- and my guess is close -- or about day seven or
22 eight, when he could not swallow, and they did one or two
23 swallow tests that were quite painful to him, and -- and he
24 did not talk well for a couple of days there. But other
25 than that, he would -- he was very communicative the first

1 14 days.

2 When we got him to Hospice, he talked less. Very
3 alert. He -- he -- he loved watching TV. But when we got
4 him to Hospice -- because, you know, there was not even
5 trying to eat or anything else. You just -- it's -- it's
6 what I call just the long, hopeless, helpless hours,
7 knowing you're dying, what do you have to say. I once told
8 my dad, you know, that we've lived our lives together --
9 and this is many years ago -- leaving nothing unsaid. You
10 know, some people would look at that time and say I got a
11 lot of catching up to do, right, I got so many things to
12 tell you, my dad to me. It was just a lot of hand holding.
13 My dad loved to have his head scratched. He talked less
14 and less. But whenever I just couldn't deal with the
15 silence anymore, he was fine to talk, but he didn't want to
16 talk about news. Always liked to talk about news. He
17 liked to talk about politics. He liked -- loved to talk
18 about Alabama football and what was going to happen with
19 Tennessee. But the humor just left him when we got to
20 Hospice. And I think probably the last couple of days on
21 the general ward, it -- it became hopeless and helpless.

22 I -- I remember I would let my mother speak to him
23 every night. She came to see him five times during those
24 24 days. Every night I would hold the phone up to his --
25 his ear. And probably day 19 he was talking and -- and my

1 mother said when are you coming home. And he -- and he
2 teared up and he just looked up to me and he says you need
3 to ask Steve, just -- just ask Steve. And I told -- and
4 when we finished, I just said you're -- you're going home.
5 It's just not what mom means. So he -- he communicated.
6 The last two days -- really started Wednesday afternoon is
7 when he got very restless. I was with my brother and made
8 the life-and-death decisions about him at the end of his
9 life. Seems to be my -- my lot in life in our family. But
10 he was more -- he was more drug filled.

11 My dad and I made a pact early on. First of all,
12 my dad never liked to take medication. He's one of these
13 crazy people that would go to the dentist and have a
14 filling or have a partial and he would not let them give
15 him Novocain. Now, that's just -- that's old school to me.

16 Q. That is old school.

17 A. Me, I'd rather be put to sleep, do whatever you
18 want, wake me up and tell me what you did. That's the way.
19 My dad never wanted to be put to sleep, never. And -- and
20 so I asked him early on -- because as Peggy testified,
21 correctly so, but particularly after the first couple of
22 days and -- and particularly after the rehab when they were
23 trying to get him up, because that was very painful for
24 him, but just sitting in a bed, not moving, he -- he was
25 not -- particularly before the CAT -- not a lot of pain,

1 but they were turning him every hour or two. And I -- I
2 don't remember -- certainly until his older years, like the
3 last two or three, where he would get emotional like with
4 my granddaughters or whatever, I -- I -- I never saw him
5 cry. And I saw him cry and I saw him cry out whenever they
6 would turn him. And then when he developed the decubitus
7 ulcer in the Hospice and that was bleeding, that upset him.
8 And -- and I know when he became incontinent of bowel and
9 bladder -- my dad was always big into cleanliness. He
10 would shower. He'd be showering at 4:30 in the morning. I
11 would always say wait until they come get you. No, got to
12 get up. And so as these things -- what I call -- and I'm
13 not trying to gild the lily here -- these indignities to
14 him increased, he had less to say. But he -- he took very
15 little medication because he wanted his head to be clear.
16 And so we were able to have, you know, incredible, long
17 hours together.

18 I know I'm rambling, but I -- you want a
19 historian's view. I -- the last -- somebody mentioned
20 yesterday, you know, like 24/7 sitters, because I -- I did
21 not want my dad to be alone. I didn't want him to depend
22 upon Hospice. I have been in the hospital. And I don't
23 care, even in -- in Hospice these days, you don't get
24 one-on-one care. And I couldn't let my dad be alone. And
25 I only have so much energy in terms of my mom and my dad

1 and my own health that -- that -- that was not very good at
2 the time. And I -- you know, so we hired sitters.

3 But we had these snow storms during that last week
4 of his life when he was in Hospice. My dad loved the snow.
5 All he wanted to do when he came -- I really believe one of
6 the main reasons he wanted to come to Arkansas other than
7 to see us, he wanted to see snow. He loved snow. And that
8 night there was white all over, and, of course, he had
9 tubes and -- and he was in the bed. And I thought we're in
10 Hospice, what else have we got to risk. And I was, you
11 know, warned don't move him, don't do this. I'm thinking,
12 you know, come on. And I said would you like to see the
13 snow. It's like 2:00 a.m., because we -- Peggy stayed one
14 night all night long and then I -- I stayed the next night.
15 And it was about 2:00 a.m. and he was wide awake, of
16 course, and -- and I pushed his bed over -- and this gets
17 to your point and there is a method to the madness I
18 hope -- and I pushed him over and I had to elevate the bed
19 and he could just see out and all he said was it's
20 beautiful. And so he was -- that was -- that was just a
21 couple of days before he died and -- and probably 24 hours
22 before he went into what caused me -- because he started
23 tearing his garments and -- he still knew me, but -- but he
24 clearly -- it had gotten past the point if there was
25 anything he wanted to say or I wanted to say or my mother

1 wanted to say. And -- and -- and I did take -- somebody
2 asked about pictures -- and I'm sure you guys will today --
3 I took one -- two pictures while they were in the hospital,
4 their last kiss. And then I took the picture of the
5 calendar, January 28th. It was the last time I took my
6 mother there. And they talked. But the next day was when
7 he started just ripping his clothes, could not get
8 comfortable. And -- and I think, you know, the medical
9 records will show it. I think other than perhaps the first
10 day or two that was the only time he -- he got any
11 substantial medication for the pain. And so that's the
12 long way to come back to -- I think I answered your
13 question. I hope.

14 Q. Okay. He was -- he was out or -- and I don't want
15 to use the word comatose -- at the time he passed away,
16 Steve?

17 A. Yes.

18 Q. He was not lucid?

19 A. Yeah. I -- I left about -- probably 8:00 that
20 night. And -- and I remember because it was the first
21 time -- he had this great room in the Hospice. It's a
22 shame what Sparks has done to -- to Peachtree Hospice,
23 kicking them out now. But he always bragged he had the
24 best room at -- at the facility. He had the best room in
25 the Hospice, so his -- his first and last rooms here were

1 the best, and I believe that.

2 And, you know, he just -- he was starting to drift
3 in and out that -- that -- that Friday, so I really didn't
4 have much time, but it was a beautiful sunset. And I tried
5 to wake him up and -- and he didn't -- and I think that was
6 probably the last time he was -- he was -- sentience is not
7 the right word -- he was -- he was conscious, because we
8 got the call at 1:00 a.m. and he died -- I know the
9 birth -- the death certificate says 4:45 -- he died at
10 4:43, because it was a couple minutes before I went to get
11 anybody to pronounce it.

12 Q. You were actually with him?

13 A. Oh, yeah.

14 Q. Who was in the room?

15 A. Peggy and me.

16 Q. Okay. Did he just stop breathing?

17 A. And I did better then than I'm doing now. I'm
18 sorry. When I got there, I -- I'm a technician, you know,
19 I'm not a doctor. How do you know when somebody is going
20 to die. Peggy had a sense. All I can count was
21 respirations, so I got my watch the first hour we were
22 there, how many respirations. And you could see it going
23 down each 20 minutes. And so we knew we were there, didn't
24 know long it would last, but, yeah, you could -- you know,
25 the last 20 minutes it was -- it was just very shallow and,

1 you know, five or six breaths a minute. So, yeah, and I've
2 never -- I think I'm slow enough for you now, aren't I --
3 I've never been good with death and time. But over the
4 last -- and that's primarily because of the -- of the
5 grandfathers I lost as a kid. I never understood why
6 people died randomly.

7 The question was asked yesterday does your -- to
8 my wife, does your husband have a problem with death and
9 dying, you know, why is he reacting so badly to his dad's
10 death. It was because it was random. It was because it
11 was preventable. My granddads were killed by drunk drivers
12 that made choices to drink and drive and it was a
13 randomness to that. And it's taken me 30 years to get over
14 them. I watched a squirrel die once in my hands and I
15 nearly went crazy as a kid, but I watched my dad die. I
16 really didn't shed a tear that night. He had gone on.

17 Q. Did you feel a sense of peace for him at that
18 point?

19 A. Yes, absolutely.

20 Q. That's what I've sensed.

21 A. Yes.

22 Q. He was out of his suffering, whatever?

23 A. Mind seemingly I thought maybe it was over, but it
24 was just begun at that point. And that -- I'm glad I
25 didn't know that. I'm glad we don't have crystal balls.

1 Q. Right.

2 A. I -- I hoped that was the closure for all of us.
3 I knew it wouldn't be for my mother. I knew -- I knew
4 going from there to tell my mother would be the biggest
5 surprise in her life. I mean, my mother is big into
6 prayer, big into miracles. When she asked my dad when are
7 you coming home two nights, three nights before he died,
8 she meant that. Despite all the preparation I had done,
9 she was -- you -- you could have knocked her over with a
10 feather. She just could not believe he died. So, yeah,
11 but I knew he was at peace. There's no question about it.

12 Q. All right. How did mom react?

13 A. Did I anticipate your question or did you just
14 happen to pick up there?

15 Q. You did.

16 A. She was blown away. She -- again, and -- and I
17 have seen it enough, you know, my brother died. We have
18 had a lot of relatives in our family die. You know, people
19 react to death and dying differently. It's like when you
20 see an automobile accident, two people see the same
21 accident and they tell it different ways. Well, how much
22 more terrible is death and dying. And so I freely admit
23 there are people out there -- my wife has handled this
24 better than I ever could. She lost her dad at 47, 48.

25 God, I -- how -- but my mother is a person of

1 deep, deep faith, and -- and so that's what I had appealed
2 to her during -- I mean, we had 24 days. And certainly
3 after a day, in my mind, having been around this -- this
4 business long enough, you know, when you -- when you had
5 the injuries that my dad had -- and those first several
6 days in rehab just -- he -- he looked terrible. I just
7 knew then it wasn't -- this was not going to end in any way
8 other than death. It was just a matter of when. She never
9 accepted that even though when she would go to the
10 hospital, she would just get ill, almost physically ill,
11 she would just say he looks terrible. But she had that
12 hope.

13 My sister is a big prayer. They both -- when I
14 called my sister to tell her, I mean, it was like -- like
15 pictures of the Middle East where, you know, in that
16 culture, where you see people just wailing. And I think
17 we, as westerners, go that's -- that's so not acceptable or
18 understandable. But my sister was sort of like -- like the
19 wailers. My grief is more silent. My mother's was just
20 absolute utter shock and it was -- she didn't say it
21 exactly, but it was my takeaway, what did you do, you know.

22 Q. What did you do?

23 A. Yeah. I thought this -- I thought this was going
24 to be all right. And I told her, I said, mom, we've talked
25 about this. You know, I have told you for awhile now

1 that -- that it didn't look good. Yeah, but. I mean, I'm
2 the family fixer. That's what I do, you know. Whether
3 it's the divorce or deaths or whatever it is, that's what I
4 have done in the family. And I think my mother felt I had
5 one last fix in me.

6 Q. Did -- did she ever uncork, Steve? I mean, did
7 she ever let it out?

8 A. Well, what you would mean by uncork and what I
9 would mean by uncork, knowing my mother -- again, the
10 wailing and that sort, no.

11 Q. That -- that was sister?

12 A. That was sister. My mother -- probably growing
13 up, I saw my mother cry twice, I think. I don't remember
14 her dad's funeral. I'm sure she cried there. I saw her
15 cry at -- at my second granddad's funeral, my dad's
16 mother -- my dad's father. And I saw her cry one other
17 time when she lost her mother. My mother is pretty --
18 pretty resolute. She's the old south. She's as sturdy as
19 a rock. And she got up from the chair. I mean, she was
20 weeping. She didn't want me to see it. She went in the
21 bathroom and was on the commode for awhile. And I asked
22 her after awhile do you want me to get somebody in, so I --
23 I rang the call button and somebody came in and helped her.
24 And she came back honestly dry eyed, dry eyed, and sat
25 down. And she just kept, you know, we -- we -- we

1 conversed. I mean, I tried it -- I don't know whether it
2 was the right thing to do, but I -- I said, you know, we
3 got to make plans. Because my biggest fear -- I mean,
4 obviously, I had been thinking about this throughout the
5 time in the Hospice. I knew my dad would not want to be
6 buried here. There's a family plot back there where I took
7 my brother back after he died in '97. And I knew my dad
8 would want to be buried by him and his mother and his dad.
9 I also knew my mother could not, not even in those days,
10 travel. Getting her up here from Mobile was the trip to
11 bountiful. That was the one trip. I mean, there wasn't
12 another one in her.

13 Q. There wasn't another one?

14 A. But I just felt my mother would demand to go. And
15 I didn't know how I was going to handle that. So what I
16 immediately took it into, okay, let's deal with
17 practicalities. We're going to have a service here. None
18 of the family is going to be able to come. We'll have a
19 service here, but we'll have it for you and Randy, the
20 pastor that you met at the hospital, and the chaplain, I'll
21 have our chaplain friend, and that will be your good-bye,
22 are you okay with it. And she wanted to know where his
23 body would be prepared. And I said here. I'll be able to
24 see him. Yeah, sure. And so we handled those -- those
25 necessities, those details. And -- and she was okay. I

1 mean, she -- and then she had to talk to Lena and -- and
2 all the people that I had called started calling. And so
3 it was very vivid to her through the weekend, but she --
4 she's regal. She doesn't like to be seen crying anymore
5 than I like to be seen crying. It's just -- she's regal.

6 Q. How has she dealt with -- with your dad's passing
7 over the last six, seven months?

8 A. Well, it's different. You'd have to look at it as
9 epics. I would say the first weeks, just the overriding
10 pay thoughts was one of anger. She was very, very angry.

11 Q. Just that it happened?

12 A. She was angry at Mitzi. I've got to tell you
13 that, just angry at Mitzi. Mitzi is just a lightning rod
14 for my mother. And, you know, and -- and -- and I never
15 told my mother any of the details, not as I learned them.
16 My mother doesn't know these facts. She doesn't know
17 there's been other -- as far as I know, I have said nothing
18 to her about other doors, anything that's happening. I
19 said nothing to her about this for three or four months.
20 But for the first month I did, because she constantly
21 asked, who are you going to hire.

22 Now, again, I'm a lawyer, but our family, we
23 never -- my family never sued the drunk drivers that hit
24 my -- my -- my granddads. And we're just not an
25 eye-for-an-eye kind of family. And so my dad's reaction a

1 bit -- which was always -- the other part he would always
2 tell me -- and I think I mentioned this -- was just make it
3 right, make something good come out of this. And -- and my
4 mother expressed it differently. We're going to get even.
5 My mother does not -- well, I've never heard my mother say
6 the words get even. I don't believe I've heard my mother
7 cuss twice in my life. Both times the word damn and I'm
8 sure both times about me. But the word hell just became
9 part of her natural lexicon for about six weeks. I want
10 you to -- to give them hell. She was angry. She would not
11 talk to Mitzi. Mitzi and I had that discussion. Every
12 time -- I met with her multiple times a day. She would
13 start talking about the -- that it should have never
14 happened to Jack. We moved here to be safe, that should
15 have never happened to Jack. Mother that's over, that's
16 over. I want you to -- I want you to, you know, when are
17 you going to hire the lawyer. Mother, I'm hoping not to
18 have to. I -- I'm talking to insurance people. We're
19 going to do whatever we're going to do. We are going to
20 make this right. We are going to do what dad wanted. We
21 are going to -- well, you are going to hold people
22 accountable. That's fine. We'll do that, too. So my
23 interest was keeping her not angry, because she doesn't
24 deal with anger.

25 Q. So she went through that terrible period of anger?

1 A. I asked her to read the books, you know, the --
2 the denial, you know, rejection, anger. Then, you know,
3 with Shirley, the sitter, coming in -- and, again, I -- I'm
4 glad to answer the questions that were posed by Michael
5 yesterday or anybody else why I have a sitter, you know.

6 Q. Really not interested in --

7 A. That's fine.

8 Q. Mom's emotions?

9 A. Mother got better with the sitter being there. I
10 didn't know how long I'm going to have to pay the sitter --
11 the question was asked 20 times yesterday, how much do I
12 pay. It's about -- right now just part time, because it's
13 all I can afford -- about \$2,500 a month. That's what I am
14 paying. I'd like to have her there longer, because mother
15 wants her there longer. But she sings with mom. She does
16 things when I'm not there with mom. And -- and so that's
17 just the way it is. And -- and that's helped mother's
18 emotional side. I think she's less angry. I don't see the
19 anger flare. I had Shirley work on it with her. You talk
20 to mother about her religion and her faith and hope and --
21 and those things. And -- and I think that she's gotten to
22 the point now where she was doing pretty well, emotionally
23 very scarred. Cheryl said it yesterday, just depressed.
24 My mother would never use the word depressed in our -- in
25 our family and -- and it's why I refused to say it about

1 myself until recently. Mom has just been sad, but she's
2 extremely depressed, but she's not going to take anything
3 for me it. And -- and so we just deal with her. Shirley
4 helps. And she -- she doesn't talk -- talks about my dad,
5 but she doesn't talk about the accident anymore.

6 Q. Okay. Steve, it's not an articulate question, but
7 does mom still have the will to live?

8 A. Well, and it's a great question, because, you
9 know, you hear so often about spouses -- I think if it had
10 been the other way, if my mom had passed first, my dad
11 would not have survived it for all the reasons I've talked
12 about.

13 Q. Right.

14 A. My mother gave dad something to live for. I think
15 I'm finding early on that I -- I was a little surprised
16 that it might work the other way, too, because I felt she
17 had none. But then we started doing the things we were
18 doing and we got the family together and I had her
19 grandchildren call her and we started putting pictures up
20 inside and, you know, outside, and send her E-mails and
21 doing this stuff. And she was doing pretty -- pretty well
22 until her sister died. She would talk to her sister
23 Eleanor every couple of days. Eleanor was like a twin
24 sister to her.

25 Q. Right.

1 A. She lived in Indiana. It's the sister she went
2 to --

3 Q. Right.

4 A. -- and stayed with a month or so before she went
5 into the assisted living facility. And they were very,
6 very close. Eleanor evidently was sick. We didn't know
7 how sick. She actually was in a Hospice, too. We didn't
8 even know that. But she died -- I don't know -- a month
9 and a half ago, two months ago.

10 Q. It's been hard on her?

11 A. Oh, and, I mean, we -- it's like, you know, a
12 curve, a curve -- we have been building mother up, not to
13 this place here, but to here, and, boy, just -- and I --
14 and I told Peggy at that time I don't think she's going to
15 make this, you know, with -- with -- with Eleanor dying
16 now. My grandmother was the last one in her family.
17 And -- and I remember my grandmother talking about it time
18 after time how sad it was being the last person in your
19 family. All of my -- my mother's siblings are gone, her
20 husband is gone.

21 And, again, the questions were asked yesterday
22 about her eating alone. She ate with my dad. She ate with
23 my dad. And, now, she can't eat with my dad. And that's
24 why almost every day for however many weeks after it was
25 over for as long as I could keep going in that dining

1 center and thinking about him, sitting in my dad's place,
2 and trying to replicate my dad, I would be there with her
3 so she wouldn't have to eat alone. And -- and I have
4 gotten to her. I mean, Mitzi and them have done a good job
5 trying to put people there. But my mother is one of these
6 people when she looks around the room doesn't believe she
7 should be in that facility. She believes she is 55 years
8 old. You know, I keep pictures of her when she was a
9 debutante and she's a beautiful lady. But when she looks
10 in the mirror, she does not see what you and I see.

11 Q. Okay.

12 A. And -- and so she's a loner, you know. And I look
13 at it now, Peggy and I are best friends. I wouldn't be
14 sitting with somebody else if Peggy -- something happened
15 to her, God forbid. I understand what my mother -- I don't
16 know if it's going to be like that forever. God, I'll tell
17 you, I don't think about forever these days. I think about
18 tomorrow. I was a strategic planner. Long-term planning
19 to me is next week. So my life has sort of been inverted.
20 I just deal day to day with the vagaries as they come.

21 Q. How about Uncle Jimmy?

22 A. Jimmy is -- every family, at least in the south it
23 seems to me, at least in the Southern Baptist family, has
24 that one funny uncle that's just a little crazy. He's
25 always worn weird clothes and he's just been a funny guy.

1 I got my first rod and reel from him, just a great guy.
2 But he's not right. Hasn't been probably for three or four
3 years. Dementia, I believe.

4 Q. Is he in a facility?

5 A. Nope. He won't go to a facility. I'm his
6 guardian, too. I'm everybody's guardian in the family. I
7 mean, I -- I'm it. If you got a problem, I'm it. And, so,
8 in fact, during -- during the first two days my dad was in
9 the -- the rehab unit, I had been scheduled to go down and
10 handle a -- a commitment hearing for my uncle for my dad
11 before all this happened. I needed it just like a hole in
12 the head. I mean, it's just another family issue that I've
13 got to go to Mobile for. My parents are now up here. I
14 deal with Peggy's mother's issues in Mobile. But dad --
15 dad and his uncle -- and my uncle, his brother, remain very
16 close. And dad knew Jimmy was -- was not what he used to
17 be. Jimmy needs help and Jimmy had had everything he had
18 in life stolen from him from two -- by two caregivers. So
19 I had to go down and handle that and deal with the
20 authorities for two days while my dad was up in -- in the
21 facility, I mean, in the hospital. But we handled that.
22 We got him committed. I became his guardian -- guardian.
23 I've got him a conservator down there. We recouped a
24 little bit of his money, but that's -- that's something I
25 take care of. He is -- he is --

1 Q. Does he know where he is?

2 A. Not -- he knows he's in his home. But beyond
3 that, not much.

4 Q. Does he know you?

5 A. He knows me, but if you were to -- you know, he
6 knows that I am Steve. Does he know I'm Jack's son, no.

7 Q. Does he know Jack is gone?

8 A. Yeah, yeah. He took that a little hard, but it
9 was -- it was -- was there any wailing there, no. The
10 exact words, I am not sure I could remember, but it was --
11 it was like -- because he knew that Jack had gotten hurt.
12 I had prepared everybody.

13 Q. Right.

14 A. Particularly as we got what -- what appeared to be
15 the inevitable end. I didn't want this to be a surprise,
16 so I talked to his housekeeper, you're there, you know, get
17 him ready for this, let him know. I would talk to him,
18 Jimmy, you know, you hear what I'm saying. Yeah, Jack is
19 sick. I hope he's going to be okay. I'll pray for him.
20 And then when I called, he's dead. And then according to
21 the house sitter, he moped for a couple of days. She
22 called. They took him to a doctor. He's never as far as I
23 know -- I've never seen his medical records. He's never
24 been taken to -- to a doctor to have dementia diagnosed,
25 but you don't -- you don't need it.

1 Q. That's what it is?

2 A. He has dementia. I know the state -- because the
3 state was going to involuntarily commit him and take him
4 out of the house because he couldn't care for himself. And
5 that's when I went down and took over the guardianship and
6 said, all right, I'll take responsibility for all of this.
7 And so -- because that was his one wish. He went to my
8 parents' facility for three days and he -- he would not
9 stay there.

10 Q. Did he go to your dad's funeral?

11 A. Yes.

12 Q. Did he -- did he know where he was?

13 A. Yes.

14 Q. I mean, he --

15 A. He -- he knew because he remarked -- he walked in
16 and said this was where daddy was buried. It was the
17 same -- as I said, it was the same church where my granddad
18 had his huge funeral after he was killed.

19 Q. How much contact do you have with him now, Steve?

20 A. You know, it's -- I hate to say this like it
21 sounds, but it's -- it's the squeaky wheel. With all else
22 going on, it's --

23 Q. Sure.

24 A. -- it's maybe once a month with -- twice a month
25 with the conservator maybe. Once or twice a month with the

1 sitter and maybe once a month with him. I'll just talk to
2 him, just how are you doing, do you need anything.

3 Q. Does he -- does he talk about his brother's death
4 at this point?

5 A. No, not -- not to me.

6 Q. Does he know he's gone at this point?

7 A. I've got to tell you, I haven't asked him.

8 Q. Okay.

9 A. And I haven't asked his sitter.

10 Q. Fair enough.

11 A. I mean, my conversations with him really only go
12 to -- to his needs --

13 Q. Sure.

14 A. -- are you getting what you need.

15 Q. Sure, sure. Tell me about sister. I -- I know
16 she's the wailer.

17 A. And don't mean that anymore than I meant to -- to
18 criticize people in the Middle East. I mean, people react
19 to things differently. She took dad's -- dad's death real
20 hard. Lena was always the perfect child. I was never the
21 perfect child. It seems to -- turned out people depended
22 on me a lot, but my sister was the perfect child.
23 Grandparents doted over her. She was the first. My mother
24 and -- and she always had some rub -- and I'm not Freudian.
25 Don't want to go there. But I think it was because of

1 difficulties with -- with my grandparents that lived right
2 across the street. And they were both matriarchs.

3 Q. Right.

4 A. So things were always a little difficult with my
5 sister and my mother. Not with my dad. My dad and my
6 sister were very, very close. So much so that, boy, when
7 she moved back from the West coast, I got -- I did the best
8 I could in the interrogatories about time. I'm thinking
9 late '90s, like '98, he wanted her to move in. It's great
10 to have Lena back. Mother not so much, mother not so much,
11 but accepting of it. But dad just loved having her there.
12 They were just very, very close.

13 Now, when -- when I took -- when I took dad out of
14 the home, my sister did not support that decision. She
15 felt her goal in life was to keep him in the house, because
16 just like my uncle, Jimmy, that was dad's wish.

17 Q. Uh-huh.

18 A. And, look, as long as my dad said that was his
19 wish -- and I would have the conversations with him, I
20 don't think it's best for you. But just like with my
21 mother, I can't -- these people are not turtles. They are
22 not animals. They were not vegetables. They are people
23 with brains. And -- and while my mother has -- has some
24 dementia, she still -- as Cheryl said, relative to most of
25 the people in that facility, she's -- she's pretty well off

1 and she has the ability to make certain choices.

2 My dad's choice was to stay there until he finally
3 said I don't want to stay here anymore. So I went home
4 that day to tell Lena that. And, boy, it -- it was not
5 pretty. She accused me of interfering with them, of -- of
6 keeping them apart, you know, that mother needed to be back
7 in the home. And I said all I'm doing is what they tell me
8 they want. I don't have an independent wish here other
9 than my wish is for them to be happy.

10 Q. I talked to Michael last night and she mentioned
11 that your sister had been here recently --

12 A. Yes.

13 Q. -- and there wasn't any communication.

14 A. Having seen Michael for a day, I'm sure that's
15 what she told you.

16 Q. And -- and --

17 A. That's not exactly what was said.

18 Q. No, that's my paraphrasing. Minimal
19 communication.

20 A. Okay. Well, that's right.

21 Q. Minimal.

22 A. And -- and I'll be glad to tell you about that.

23 Q. Is she still -- my question is --

24 A. No, she's not here.

25 Q. No. The windup in the pitch is, is she still mad

1 at you for moving --

2 A. No, no. And I will tell you that we converse. We
3 had an extended conversation at the gravesite. I kept her
4 in touch with dad. She talked to dad every night in the
5 hospital. She called more than that, but I only let dad
6 talk once a day, because he only had so much energy. She
7 called every day in the hospital. She has called them, as
8 far as I know, every day since they moved here. So her
9 communications were -- but I don't get involved in them.
10 She has her relationship with my parents and has certain
11 memories and I have certain memories and relationships. We
12 choose to disagree on subjects, but we are not
13 disagreeable.

14 I will tell you, I would have had her in our home.
15 And I tell you, I feel badly that she stayed in a motel.
16 It's an embarrassment to me. But I'll also tell you that
17 right now I'm doing what every doctor is telling me to do.
18 And what they are telling me to do is to basically stay
19 along with my life, don't travel, don't work, don't get
20 around people that are going to bring up this subject. And
21 having my wife and her daughter in my home, they talk a
22 blue streak. They never stop talking. I just don't do a
23 lot of talking these days. I know it doesn't seem like it
24 here. Maybe it's because I have been saving up. I just
25 don't feel like talking. I don't want to talk. I don't

1 want to talk about what happened during -- I don't want to
2 talk about mother's care right now.

3 I'm sure my sister -- I mean, it happened Saturday
4 that my sister saw something. And I told Mitzi about it
5 yesterday and we'll handle it. But it was like it's a huge
6 deal. They're not answering the call lights right. You
7 need to do something about it. I'm down there more than
8 anybody. I know what the call light situation is. I know
9 the industry. I know my parents aren't there -- my mother
10 is not the only person in that facility. And so I accept
11 things that my sister finds intolerable. And so I just
12 can't deal with friction right now. I can't deal with
13 somebody who wants to point out flaws. Because I got to
14 tell you, I'm thinking I'm doing everything that the --
15 what sanity remains that I have is allowing me to do for my
16 mother and my uncle and for my family.

17 Q. Okay.

18 A. So, no, I didn't talk to her a lot. I saw her
19 three times in the facility and I talked to her several
20 times.

21 Q. Okay. It was a conscious decision to -- to limit
22 the contact?

23 A. It was an ordered decision. I follow orders these
24 days. I am typically not good at following orders. I am
25 following everything I can to a T.

1 Q. Steve, I find that hard to believe.

2 A. Well, that I would paint outside the lines?

3 Q. Yeah. Has she -- she being sister -- been for
4 help?

5 A. Yes.

6 Q. Tell me what you know.

7 A. Not attributable to my dad.

8 Q. Oh, okay.

9 A. My sister -- I don't know if this came out
10 yesterday. I -- I guess maybe the right question wasn't
11 asked, because I know Peggy was instructed, listen to the
12 question -- unlike me, listen to the question and answer
13 the question.

14 Q. I don't know that I have asked many today.

15 A. Lena had some psychological problems last summer.
16 I don't know the depth of them. I don't know the reasons
17 for them, but I think she had had all she could being
18 that -- the family member with responsibility in her mind.
19 And I mentioned she just left one day. I mean, that's
20 literally true. She just left. And the next thing I knew,
21 she had been institutionalized and was in, I believe,
22 Houston.

23 Q. And did it have to do with your mom and dad and
24 the --

25 A. I don't know what it had to do with.

1 Q. Okay.

2 A. I mean, the little bit of conversation I had with
3 her this time, she tried to commiserate with me, you know,
4 you -- you do look terrible, you sound terrible, I know
5 this because I have been through this. And I'm thinking,
6 no, you really haven't, but that's big in my family, too.
7 Everybody tries to be empathic. You know, I've been there,
8 done that. And I just -- never -- I have always told
9 people that -- that I have taught -- as part of my healing
10 process years ago, I taught a large class on death and
11 dying. And I said, please, don't ever tell somebody, no
12 matter what you think you've experienced, you know how they
13 feel, because you don't.

14 Q. Okay.

15 A. And -- and so, you know, my sister just said a lot
16 of things wrong. She has daughters that have problems.
17 Even seeing -- you know, we have talked before about how
18 the older you get, that the -- the more you feel like life
19 is just speeding up and you don't have enough hours in the
20 day and I've got to go down and see mom, but I can't today.
21 And -- and I think that weighed on her. And I think the
22 fact that her daughter in Mobile had some problems, that
23 weighed on her. So I think she just thought she would get
24 away from the problems for awhile. I got to tell you, I've
25 had that thought once or twice. But, you know, at the end

1 of the day, you don't.

2 Q. So since your dad's death, I mean, no counseling?

3 A. Because of my dad's death, no.

4 Q. Okay.

5 A. And she has been on -- to get out of the
6 institution, she had to agree to be on her medication.

7 And -- and in my interaction with her this week, I would
8 say she was on it.

9 Q. What's she taking?

10 A. I haven't a clue. Again, I'm not a doctor or a
11 nurse or --

12 Q. She hadn't shared that with you?

13 A. I'm sure she's tried.

14 Q. I hear you. I hear you. Okay. So I think you
15 have abundantly answered the question, number one, no
16 specific treatment for sister?

17 A. Right.

18 Q. She's been truly saddened by your father's
19 passing?

20 A. Yes.

21 Q. But no specific, either medical or psychiatric,
22 treatment?

23 A. Correct.

24 Q. Okay. How does she look?

25 A. She looked pretty good I thought. Lena is -- Lena

1 is -- she's the brains of the outfit, you know, super
2 genius level IQ, tightly wrapped, you know, emotional, you
3 know. We go back to the wailer kind of thing. Pretty
4 volatile, but very, very smart. And -- and so when you say
5 how she looked, kind of like the weight of the world is on
6 her shoulders. And I am sure some of that had to be coming
7 up and seeing mom for the first time.

8 Q. Right.

9 A. I mean, you know, Lena went to dad's funeral. You
10 didn't ask that question. But Lena and the girls went to
11 dad's funeral, but couldn't come up here. Couldn't go to
12 both places, because Lena has an old car and it -- it
13 barely made it here. And so they chose to come obviously
14 to Mobile. But mother wasn't there. So she had not seen
15 mother since she left April of '08. And so I think that
16 was hard, but I think -- I should just answer these in
17 short-winded things. But, in my mind, physically I thought
18 she looked well.

19 Q. And she's in San Antonio still?

20 A. Yes.

21 Q. Okay.

22 A. Same address that I put in the interrogatories.

23 Q. Yeah. I guess the question, Steve -- and I
24 thought about this for a long time to ask you -- is why are
25 you where you are now? I mean, I know -- I know enough to

1 know that you're struggling. Why? And I don't mean to
2 slight the fact that you've had your father pass away, I
3 mean, but you are struggling.

4 A. It's -- it's -- it's been a nightmare. Why? Are
5 you ever going to ask me a yes or no question?

6 Q. Probably not.

7 A. You probably have and I just won't give you one.
8 This is not going to be a yes or no question.

9 Q. Don't expect --

10 A. I can only give you -- because I'm not prepared to
11 tell you, but I'll tell you just what I've gone through.
12 And I'm not trying to gild the lily here again, but to try
13 to get to the bottom of that.

14 Q. Sure.

15 A. I'll take you back to my granddads -- the one that
16 lived across the street. I remember the morning like it
17 was yesterday. Eight years old, third week of my -- of the
18 second grade. My brother woke me up, granddad has been in
19 an accident. Same words I heard the night that I got the
20 call about my dad. But I had gotten other calls about my
21 dad and my mom as we've talked about. And so accident
22 didn't mean the same thing. But when I grew up, an
23 accident meant death. It had happened the year before, but
24 I was not close to that grandfather. And -- and -- but
25 what happened to the family after that is -- and not

1 only -- they lost everything. They were marginally, by
2 Birmingham standards, well off. You know, like I
3 mentioned, they had a second home. Well, they lost that.
4 They lost their home in Birmingham. They had to move my
5 mother's mother down. And so life changed dramatically.
6 And, in part, I lost a mother during that period.

7 And -- and I'm a pretty bright guy. I mean, I
8 don't say that -- I'm not as bright as my sister, but I --
9 I have a lot of deep thoughts. And therein lies part of
10 the problem. Some of us are wired more simply than others.
11 And I don't mean this derogatorily. My wife is wired one
12 heck of a lot better than I am. Far simpler, but a lot
13 better. I'm -- I'm wired in a way that's complex. I spent
14 years trying to figure out justice in my mind, about why my
15 family -- and I wasn't a lawyer then. I was a kid. Why
16 didn't they -- these people chose -- I was listening the
17 other day, the woman that went on the Long Island Parkway
18 and killed all these people, blood alcohol level over
19 twice what -- the woman that killed my granddad had drunk
20 for -- had consumed alcohol for 12 straight hours and had
21 triple and drove on the wrong side of an interstate five
22 minutes from my house, a place where I had to cross every
23 day going to school.

24 And -- and so I wondered why, why is that, why is
25 the randomness of life and why do these things happen.

1 And -- and so these two deaths back to back wired me to
2 have a problem with death and dying. So from early on, I
3 did lots of reading, delved into all kinds of things, what
4 every region in the world has said about death and dying
5 and afterlife. I mentioned that squirrel that died in my
6 hands. I would have just wonderment about does it have a
7 soul, where does it go. I mean, all this sounds sick.
8 It's not. I mean, I never saw a psychologist. Didn't
9 think I needed one. I'm just -- I'm wired in a way to get
10 answers.

11 So when Michael asked the question yesterday of
12 Peggy, I think, well, he's lost other people, hasn't he,
13 why he is having such a problem here. It starts with the
14 way I'm wired. It starts with -- with my background, who I
15 am. I mean, my psychologist and psychiatrist have now told
16 me you never get away with that. I mean, if you want to
17 talk Humean talk, we can talk shadows and what's in your
18 background and your subconscious and all these things. I
19 don't want to get to be an expert on that.

20 All I'm looking for is a little peace here. Part
21 of this process is to get answers. But you know what,
22 yesterday I didn't get more answers. I got more questions.
23 You mentioned a number of incidences. I still don't know
24 how many incidences. And this isn't the only building that
25 has these door in them. So I am sitting here wondering

1 does somebody else have to die or are there other buildings
2 out here with these same doors where people are having
3 things pop out of place and the next thing that happens is
4 somebody going to die. I feel like that's on my watch.
5 When my dad said to me bring something good out of this, he
6 wasn't just focusing on himself. He was going. He knew
7 that. Make something live beyond this, so. I don't have
8 justice here.

9 Q. Is that -- is that the commandment, Steve, that
10 your dad said, Steve, make something good?

11 A. I don't think he would have had to say it. It's
12 just the way I was raised. I was raised with certain
13 principles and values. And I know -- you know, I hear with
14 all this Muslim turmoil we have and we talk about everybody
15 having the same values. In dealing with my neighbors or
16 dealing with certain people in life and in these lawsuits,
17 I know we all don't share values. One of my values is you
18 just don't ever lie. That was my dad's value, that you --
19 that you always make things right. But justice, no, and
20 that's my religious background, which I accept.

21 Q. And let me -- let me tell you what I'm hearing.

22 A. Okay. Please.

23 Q. I hear --

24 A. Maybe it will help me.

25 Q. I'm not a counselor. I hear a guy that is mad --

1 A. Angry?

2 Q. Sure.

3 A. You -- you bet I've been angry.

4 Q. Okay. -- because an event has occurred and your
5 father has died and there is suffering that's come from
6 that. And so if you walk in today and you tell me that I'm
7 in therapy because I am hidey-ho pissed off, I got that,
8 Steve. But what I hear also is that you're -- you are
9 struggling with depression?

10 A. Oh, yes.

11 Q. So I -- I am trying to make these two things work.
12 I mean, the mad -- the mad I got. But the depression?

13 A. You are going to have to talk to my doctors. I am
14 sure they can explain it to you.

15 Q. Does that go back to what you experienced as a
16 child?

17 A. I have -- I mean, we've talked about that in our
18 sessions. The only diagnosis I have gotten is that I am
19 extremely depressed. Hence, the requirement that I
20 journal, which I never do. I don't like to talk about
21 myself. I don't talk to myself.

22 For example, right after this, I said, I mean, at
23 the moment of my dad's death, you know, there may have been
24 a few tears, but I didn't cry like a baby like I would have
25 expected to. And at -- and at that point, it was okay.

1 Now, I have a job to do. What's the first job. I've got
2 to go tell my mother and I got to get my dad buried and
3 I -- so I'm like Martha, the New Testament biblical Martha,
4 had a job to do. I couldn't be the Mary. I had to be the
5 Martha, again, in my family.

6 But lurking in the background was, I had lost my
7 dad. And I didn't lose him. Somebody took him. That's
8 just a fact. However, this comes out, it's a fact he did
9 not die a natural death. My grandmother died a natural
10 death. I had no problems with her death. No problems. My
11 aunt died recently, natural problems. I was very close to
12 my aunt. She was, in essence, the Godfather of our
13 children. I had no problem. In the depression I'm in, I
14 had no problem with her death.

15 Q. Is the -- is the resolution, Steve, for you
16 finding out what happened?

17 A. It's all that, yeah, yeah.

18 Q. I mean, let me tell you what I hear. I mean, you
19 and I have practiced at this for 30 years. And do you want
20 the doors changed?

21 A. I don't know, because I don't, you know, I don't
22 know if -- there are all these problems.

23 Q. Okay.

24 A. See, I'm like the Apostle Paul, I see through a
25 glass darkly. And having been there 24 days with my dad

1 and watched that needless suffering and those helpless
2 hours, I want some answers.

3 Q. Okay.

4 A. And you know what, I'm not getting them. What I
5 get is a -- a maintenance guy -- again, I have nothing
6 against Joe. It's like he said -- I think he overstated.
7 He didn't feed the birds every week, because I fed them and
8 they couldn't be that hungry. But, in any event, he -- he
9 liked my parents. I think everybody in that facility likes
10 my parents.

11 And so, you know, I just -- there are these doors
12 in that facility, but this owner and this -- this architect
13 and this construction company have built other facilities
14 that have used these doors, but I don't know when and I
15 don't know where and I don't know how many. And you know
16 what, I really don't believe -- because I -- I don't know
17 what the law of averages are, because I'm not a
18 statistician either -- but that the only six or four or
19 eight problems with these doors are in this facility.

20 That keeps me -- yesterday Cheryl -- and I'm going
21 to try not to get excited. Yesterday Cheryl said it just
22 right -- even better than I could have -- when asked has
23 your -- has Ms. Dot -- that's my mother -- has she changed
24 since Jack's accident. And she said, well, yeah. She's
25 depressed. And the only other words she used to describe

1 it was she said she's scared. What is she scared of.
2 She's scared of the doors. And I thought -- over there
3 listening to that, I thought so am I. So am I. I'm scared
4 of the doors. But what I've got right now is no
5 accountability about the doors. What we've got is we're
6 not going to tell you about these other buildings. We're
7 not going to tell you about what happened. We're not going
8 to tell you why we put 100 pound doors up where everybody
9 who looks at it that knows if it falls in an -- in an elder
10 care facility, it's going to kill somebody. It did. So,
11 yeah, there's no -- and I don't want to use the word
12 justice, because I grew up in a family with grace. When I
13 think about God, I think about a God of grace. I sure hope
14 he's a good of love and grace. And that's where I need to
15 get to.

16 And if you ask me about my depression -- and I'm
17 not a shrink, although I've gotten to know them better than
18 I would ever have liked to -- I've never met a shrink until
19 this -- I would say I'm having to live a life that's at --
20 at -- at odds with where I want to be. I want to be at
21 love and grace. But over that trail, I got to get beyond
22 forgiveness. And the lawyer in me, the way I was brought
23 up, says I have got -- and the way I'm wired, that I won't
24 take simple answers, I wouldn't be brushed aside, I've got
25 to know the answers. So, yes, I can get a point to

1 forgiving. I can get a point that I can get beyond this.
2 I don't know when that will be. I don't know how it will
3 be.

4 I can tell you one of the reasons I'm angry -- and
5 it's not your fault. It's not anybody's fault in this
6 room. It's probably my fault. And -- and I told them
7 before I think you came on board, when Mr. Dossett and some
8 others, Mr. Wasson sat in here, and I wanted this case to
9 settle -- and I am sure I went about it all wrong. And
10 that's my fault. But the reason I did is, I wanted to get
11 to that grace stage real fast. I wanted to get some
12 answers and I wanted to move on. And what I'm seeing right
13 now is we're going to be at this for a long time. And,
14 see, I -- I think God doesn't give us a crystal ball
15 because it really would depress us. If somebody had given
16 me a crystal ball about what would happen to my dad, of
17 course, maybe I would have simply said I won't move him up
18 here, but you know their life wouldn't have gotten any
19 better in Mobile. So that -- that was a choice that had to
20 be made. At the end of the day, I would not chose this. I
21 would not wish it on anybody. But it's -- it's the hand I
22 have been dealt because of who my dad brought up and what
23 he instilled in me. It will take perhaps every last dollar
24 I have, every last ounce of blood, tears, but I'm going to
25 get the answers, whatever that means, whenever it comes.

1 And you know what -- back to your question -- I
2 always try to remember what they are -- if it means that
3 the door -- every door like this in every facility anywhere
4 whoever built it is going to be changed, that will be the
5 answer. On the other hand, if in all of this, despite the
6 odds, there were really only six events, they're really
7 only here, they're really okay -- see, a lot of work has
8 been done on those doors that I know nothing about after my
9 dad's accident. Two or three times crews have been into
10 multiple rooms in that facility, if not all of them, making
11 repairs. I don't know. I asked Dick -- Dick Wasson what
12 was going on. I got nothing. So, you see, I don't know
13 enough to answer your question. It could be all doors,
14 which may take the rest of my life. It may be some doors.
15 It may be no doors. But at the end of the day, there will
16 be a resolution of this so that my -- my upbringing, what
17 my dad instilled in me, which is not a hunt for justice --
18 I hope to God God does not dispense justice to me. I
19 don't -- I don't deserve any -- if I get justice, that's
20 bad. I want grace. I want love. And I can't get there.
21 I can't see it from where I am.

22 And if you want to ask me as a layperson, my
23 journaling and everything I have been through, what I have
24 come to, that's the best I got. This is the way I'm cut
25 out and this is what I've got to go on for the next however

1 long it's going to take. I couldn't bring a swift
2 resolution to this despite the fact that the way I practice
3 law is what I just said. I'm a very different lawyer.
4 When we were talking painting outside the lines, I
5 settled -- and I told them this -- I settled probably
6 seven, ten, multi-million dollar cases for Beverly before a
7 lawsuit was ever filed. I can promise you, I am the only
8 one in this country -- because I know all the insurance
9 carriers that represent them -- I'm the only one that ever
10 did that. Why did I do that. I did my homework early on.
11 I went in and I found out the kind of things you're going
12 around the table. You want to know about my family. Am I
13 a good guy or a bad guy. Were we at fault or were we not
14 at fault. Did we do something wrong. I don't play games.
15 In 32 years of practice -- I'm not saying you are at all,
16 Mr. Tilley, and I'm not saying anybody else here in this
17 room is. You all -- you guys all have your jobs to do.
18 I'm just saying the way I approach things. And I would
19 have to go to the Board of Directors at Beverly, and they
20 would say you must be crazy, make them sue us.

21 I have been in conversations, sir, where --
22 that -- that the client would say he's going crazy, just --
23 he'll peter out. I've been in conversations where they
24 have no money, they can't keep at this, let's don't do
25 anything now. I don't live like -- that way. And, again,

1 I am not suggesting you guys are. I am just saying that if
2 I had been in your seat for the general counsel of Beverly,
3 senior vice president general counsel of litigation, which
4 I was for eight years, and I settled thousands of cases, I
5 would have settled this one. But, you know, we walked away
6 from that mediation, what I call a mediation. And Peggy
7 said you did fine, too talkative. If she never tells me
8 anything but you're too talkative --

9 Q. I bet you hadn't heard that before.

10 A. -- but you did fine, but, you know what, nothing
11 is going to happen from that. And I said why do you say
12 that. And she said there was -- and I'm just saying it --
13 there was no Steve Brigance in that room. I'll admit I am
14 a one all thinker. And I trace that back to my dad.

15 And, you know what, I -- I'd never lost a dad. I
16 have had people tell me and -- and again, getting back to
17 people telling, I've lost my dad, too. And my answer,
18 maybe out of my depression, is so. I don't want to talk to
19 you long to see if we really have anything in common. It's
20 so. That's an event. Tell me about you. Tell me about
21 how it happened. If my dad had died of natural causes, I
22 promise you, I would not have anything going on like this.
23 It happened because of -- just like I have laid out, I have
24 now had to dichotomize my life -- and I know there's no
25 such word. It's split in two. I'm a dual personality.

1 And not even the Greeks did very well dealing with that.
2 So at the end of the day, I've got to live two lives. And,
3 in the meantime, I have to go in every day, multiple times
4 a day and I see my mother. I see her in the room. I pass
5 the closet where my dad was killed. I have to go in and
6 sit with my mother. And I say have to, I don't mean I have
7 to have to. I've got to go in a facility that I begged her
8 to leave after this, let's get out of this building.

9 MR. TILLEY: Sorry. We're out of tape.

10 THE VIDEOGRAPHER: Excuse me, Counsel. We've gone
11 as far as we can. The time is 12:18 p.m. and we are off
12 the record.

13 (Off the record).

14 (Lunch break).

15 THE VIDEOGRAPHER: The time is now 1:17 p.m. and
16 we are back on the record.

17 THE WITNESS: One quick caveat. I keep having to
18 say this. I mentioned Board conversations that I had been
19 privy to over my time. I want to make sure it's clear on
20 this record that they did not involve Boards of my clients,
21 neither Beverly Enterprise, nor Sunwest Management. It did
22 involve the people that were in the chain that I did not
23 represent. So even though I did not specifically identify
24 any of the particular Boards, I want to make sure it's
25 clear.

1 Q. (BY MR. TILLEY) You needed to get a disclaimer out
2 there?

3 A. I did indeed.

4 Q. And good time to ask, Steve, I mean, we have been
5 plowing at this for several hours. Is there anything else
6 that came up while we took a break that you'd had --

7 A. They didn't even talk to me. They went to lunch.
8 And that was the only thing that weighed on my mind at this
9 point.

10 Q. That's okay. Fair enough. I just wanted to give
11 you an opportunity.

12 A. Thank you.

13 Q. Yeah. What I want to do for a few minutes -- and
14 we kind of launched off in it in -- in my haphazard fashion
15 and so I want to take you back and make it a little bit
16 more of a progression for me to understand your grieving
17 process or where you have been in the last six or seven
18 months, because we talked about mom in that fashion.

19 A. Right.

20 Q. And -- and it will help me to understand. Time of
21 dad's death you said you shed a few tears, but not as much
22 as you thought you would?

23 A. Yes.

24 Q. Kind of in that time frame, end of January, first
25 of February, where were you, Steve?

1 A. He died January 31st. We buried him on, I think,
2 February 4th, without looking at a calendar. Where was I,
3 I don't think I was depressed then. I was busy as I
4 mentioned.

5 Q. You had stuff to do?

6 A. I had a lot on my plate and so I went into action.
7 And that's what I needed to do. I had to take care of
8 mother. I was going to try to get her out of the facility,
9 get her to move, get, you know, get on with things. I had
10 to get, you know, a marker for my dad and deal with my
11 sister and just all my dad's paperwork, and so, you know,
12 so I really didn't think about much for a period of time.
13 And -- and I can't tell you the day, I can't tell you
14 the -- the reason or why, but it was clear to me that I was
15 quite angry. I was angry about a lot of things.

16 And I got to tell you, each time that -- that what
17 set me off was something about the facts that I've alluded
18 to earlier. I mean, for example, when Mr. Wasson first
19 called Rex and said, you know, that it was just -- just the
20 one door, just the one door, and -- and so I had to start
21 thinking about that. Well, you know, one door. Was it
22 really one door. It gets backs to, again, to the way I was
23 wired. So I tried to put that aside and not deal. I
24 didn't -- I didn't want to deal with those issues. I
25 wanted to deal with my work. My work was very busy. My

1 clients, Sunwest Management in particular, had tremendous
2 needs for my time, and so I tried to stay busy, but there
3 were aspects of this thing that just kept coming back.

4 One Friday afternoon I -- I ran into another
5 former employee from the facility that had something to
6 tell me, and then I, you know, I got the call from Mandy.
7 So each time somebody is giving me information. And the
8 more information I get, the angrier I get, because there's
9 obviously more to the story than what I have been told
10 about the one door incident. So I guess -- and I don't
11 know the stages of depression. I have not tried to become
12 an expert on depression. Don't ever -- I hope I don't ever
13 have to become an expert on one. But it started getting
14 into -- it was interfering with work number one.

15 Q. How so, Steve?

16 A. Well, I would walk into my office, for example,
17 and I am not the most -- I am not the most organized
18 person. I'm a -- what I used to call my boss at Beverly
19 was a -- was a vertical stacker and I am a horizontal
20 stacker. If you walk into my office, I'll have at any one
21 time 20 or 25 stacks. They don't get too high. Otherwise,
22 I would be a vertical stacker, but I'm a horizontal
23 stacker. It was apparent to me one day, end of February
24 probably, for the first time, my office is a wreck. And --
25 and I don't like wrecks. I mean, I like -- I like

1 organization even if it's my style. I don't care if
2 somebody else thinks this looks like a mess, it's what I
3 think is a mess. And it wasn't a mess. It was organized.
4 And, now, all of a sudden, it was everywhere. It was like
5 I hadn't even have been in the office. I don't know where
6 I had been, because it had been getting like that, but I
7 hadn't noticed it. So normally what I would do is clean it
8 up. And I just sat down in my chair that day and I just
9 had no energy. I just -- I wasn't thinking about anything.
10 I wasn't dwelling on anything. I just -- I had no energy.
11 I guess a couple of days later I get together with my
12 pastor and the former chaplain at Sparks, Jack Pollard.

13 Q. Where do you attend church?

14 A. First Christian Church. Randy Jay is the pastor,
15 a very, very good friend. And the former chaplain at
16 Sparks for 30 years is Jack Pollard and he's a very good
17 friend. They come over -- have for some time -- once a
18 week and -- and we talk and intellectualize, I guess,
19 and -- and just -- because I don't have a lot of friends.
20 I don't need a lot of friends. I mean, I've got a
21 scattering of friends around the country. And I am sort of
22 demanding of friends and they of me and so I'm not big into
23 acquaintances. These are friends. And they told me
24 that -- that I seemed depressed. And I said, you know, I'm
25 sad, but I am -- I'm not depressed. And then it --

1 March -- I'm not good at the time frames here.

2 Q. You're doing fine.

3 A. But March, you know, there were just -- there were
4 times where I would vent with Peggy. And it was always
5 about -- she would come home from work and our normal
6 pattern is to sit down and talk and just catch up. And we
7 would be doing that. And she would come home oblivious to,
8 you know, to the few things during the day that had
9 happened, but it was always something about the accident,
10 about the case, about the facts. It was something about
11 that and I would just -- I would just get angry. And she
12 would try to settle me down and -- and -- and I would get
13 angry.

14 Early April -- I don't know the dates -- the
15 records will reflect it -- I -- I had resisted seeing
16 anybody. I've never seen anybody. I don't want to see
17 anybody. And that, to me, would be a failure. I mean, one
18 of the realizations I've come to have at this point is
19 seeing a psychiatrist is not -- is not a failure.

20 Q. No.

21 A. Taking medication -- which I never thought I would
22 do -- is not a failure. What is a failure -- and we were
23 talking to it about the break -- would be not getting to
24 the end of this and having the answers and having the
25 resolution and getting back to the -- to the grace in life.

1 That would be the failure. And anything that stands in the
2 way of that would be a failure. And these things are aids
3 to me.

4 Q. Who -- who was the first -- not the -- the pastor
5 or the preachers, but who was the first physician or
6 psychiatrist, psychologist that you saw?

7 A. Phillip Barling.

8 Q. Okay.

9 A. And he is a psychologist.

10 Q. Okay. March? April?

11 A. It was April.

12 Q. April. Who convinced you to go or did you
13 convince yourself?

14 A. I would say no to me convincing myself. I really
15 did it to appease other people.

16 Q. Okay.

17 A. Mainly my wife, because I knew I -- I mean, she
18 told me, you're having an effect on our relationship. I
19 mean, she just -- she screamed -- my wife is not a
20 screamer. She's not a -- she is a cryer, but she's not a
21 wailer. But, you know, although I think I have cried more
22 today than she did yesterday. She's doing better than I've
23 done. But at the end of the day, she got in my face and
24 she said you are hurting us and the people you love. Well,
25 who are you talking about. Your family. Chris, you know,

1 Chris has noticed this. You know, you sit and it's -- it's
2 like you're not with us. And that hurt. But, see, I -- I
3 really believe -- all right. I'll focus on that. I'll do
4 better. I didn't know I was doing that, but I'll do
5 better. So point it out and I'll -- I've always been a big
6 believer that it's just mind over matter. You know, you
7 fix things.

8 There is an old -- I'm sorry. I'm doing it again.
9 But there's an old Bob Newhart episode where this woman
10 comes into the office and he's playing the part of the
11 shrink and she tells him all these litany of problems. And
12 he says, okay, I think I can help you. And she says okay.
13 And he says what are you doing. She says I'm getting a pad
14 out to write down the prescription. He said I don't think
15 you'll need that. It's a short prescription. She said
16 okay. And he went through, he said, okay, you have this,
17 this, this, this and this. And she said yes. And he said,
18 okay, listen. She said I'm listening. Stop it. And
19 that's the way I've always been with myself.

20 Q. Get over it.

21 A. You stop it. That was the way my dad was with me.
22 When I had the problems with my squirrel, I remember him
23 telling me just stop it. So I figured I'd just stop it. I
24 didn't -- and it was probably -- that was a weekend.
25 Probably the next Monday, Tuesday, Jack and Randy were

1 over, and I told them what Peggy had said and I said but
2 I'm -- I'm going to work on it. And they -- they took me
3 outside -- we were inside. There was nobody else inside,
4 but they took me outside and set me down and they kind of
5 looked at one another, and I figured, okay, it's like the
6 surgeon telling you you're terminally ill or something,
7 and -- and Jack said, well, it's been voted I go first.
8 And he says you need to see somebody. And so I -- to
9 appease them, I said, okay, Jack, both of you are
10 counselors. You know, Jack has his Ph.D. and Randy is --
11 has counseled a lot of people. You're my friends, counsel
12 me. They went back in the house. They huddled. They came
13 back out and they said we're not qualified. First of all,
14 we're your friends. What we're telling you, as your
15 friends, is you need more than we can give. And so they
16 suggested Dr. Barling.

17 And I guess it was the three, Peggy, me taking
18 what two very good friends were telling me that had no ax
19 to grind, nothing to make -- particularly when they said we
20 won't do it, you know, because I was willing to pay them.
21 They won't do it, but here's where we want to send you.

22 Q. By April problems with sleep?

23 A. I'll say two things. I've never been a great
24 sleeper. I don't need a lot of sleep. I have never been a
25 great sleeper. The sleep problems were all through

1 January -- the sleep problems have continued unabated.
2 They started with my dad. I mean, I would -- I would go
3 up -- a number of my visits during my dad's hospitalization
4 would start at 2:00 a.m. I'd just drive over to the
5 hospital. I didn't have to, you know, mess with the
6 traffic on Towson and nobody was on the streets and you
7 could look at all the neon signs and just go down and sit,
8 because he didn't sleep a lot. And so since January the
9 sleep has been less. I am -- I'm on Lunesta, I guess it
10 is, for sleeping. For a couple of weeks it's -- it's a
11 little better, but, you know, my sleeping has always been
12 somewhat irregular. It's gotten a lot worse, but I --
13 it's, you know, it is what it is.

14 Q. Food? I learned you don't eat. You remind me of
15 a camel.

16 A. I -- I drink okay. I -- I've set patterns. I try
17 to -- I mean, with everything falling apart on me, I try to
18 eat healthy. I -- I eat fruit in the morning. If it's a
19 real big morning, cereal with it. I almost never eat
20 lunch. I work through lunch. Because I really have
21 typically, since I left Beverly -- I mean, I spent my whole
22 career, like most people in this room, working around the
23 clock. I mean, just long hours.

24 When I left Beverly, I wanted to go back in
25 practice, but I did not want to continue working the 75, 80

1 hours a week that I worked for seven years. When I was in
2 private practice, I wanted to work -- I wanted to work -- I
3 mean, I have a good work ethic, but I didn't want to work
4 that hard. So I tried to get through early -- early
5 meaning by the time Peggy is finished -- and -- and so that
6 means I don't take an hour for lunch. And -- and my back,
7 I have to carry less weight than would be optimal, but,
8 yeah, I have lost weight. I probably since January --
9 nobody is listening -- but probably since January, 13, 14
10 pounds, something like that. But I eat all right. I mean,
11 I eat at night. I always eat a good meal. I don't -- I
12 don't think food is a problem.

13 Q. Okay. Phillip works with you for awhile and
14 then --

15 A. Still is.

16 Q. Yeah. And you get to a psychiatrist?

17 A. Yeah.

18 Q. Tell me what -- what the thought is there.

19 A. Peggy is a big believer in medication. I guess
20 medical people like medication. I don't like medication.
21 After my back surgeries, I don't like -- I mean, I take
22 whatever they give me through an IV in a hospital. Really
23 coming out, I don't -- I don't take much of any medication.
24 It's got to be really bad pain. And over 15 years, I have
25 had a lot of bad pain in a year or two, so I don't -- I

1 don't pop pills. Peggy started talking probably in that --
2 that mid to late March time frame, I'd really like you to
3 consider taking some sort of antidepressant. And that was
4 just -- that -- no, no, I don't need -- that would be
5 another failure.

6 Q. Right.

7 A. No, I will not even consider that. So I kind of
8 thought, quite honestly, another motivating factor to see
9 Dr. Phil would be, okay, I'll do that instead of
10 medication. And I also knew he was not a psychiatrist. He
11 could not prescribe medication, so I felt kind of a little
12 safe haven. And -- and, honestly, until June he never
13 mentioned medication. I thought that was good. I was
14 doing my journaling and stopped traveling, stopped working
15 as much, stopped reading anything heavy, stopped watching
16 heavy movies. And, again, the way I'm wired, I watch -- I
17 don't read for enjoyment. I read for edification. I tend
18 to read heavy stuff and so -- and I change all of that, I
19 began obeying what they are telling me to do. And it --
20 and it got better for awhile, fewer outbursts. I didn't
21 feel as angry, but the journaling helped. It helped me
22 deal -- it -- it closed the door, because I didn't --
23 everybody will say you haven't yet grieved your dad,
24 because you have been doing all these things.

25 Q. Right.

1 A. And -- and I spent a weekend and did the
2 journaling of that, of -- of things I might have said. I
3 mean, that sort of stuff. But I keep getting back to it.
4 There wasn't a lot of left unsaid, but it -- it helped me,
5 because I -- I know subconsciously I put off dealing with
6 my dad, because I really was afraid of that. I didn't know
7 whether it would bring back my old problems with death. I
8 didn't know. I just didn't know. And so, you know, in
9 this instance, the devil I didn't know was better than the
10 devil I might know. But I went through that and that was
11 okay, and I dealt with that. And -- and so I thought I was
12 improving. And then there was just, I don't know, a week,
13 ten days, I don't remember much about them, but evidently I
14 wasn't very good.

15 Q. What -- what happened? I mean, is there an event
16 or something that triggered, Steve?

17 A. I don't know.

18 Q. Okay.

19 A. I don't remember. Peggy was asked that yesterday.
20 I mean, again, I am speculating, but I am assuming it was
21 something about the lawsuit or some things about the
22 lawsuit, about having to pursue this, whatever it was,
23 and -- and I just -- I got -- I -- I was in a fog. I mean,
24 the best -- the only metaphor I have for it I was in a
25 fog -- I have used the term a hole -- that I couldn't stop

1 it, that I couldn't climb out of. And I could feel it,
2 like a cloud descending on me. I would go into the office
3 and not only would I not clean up, I just wouldn't do
4 anything. I didn't know why I was there.

5 Q. We are talking about May?

6 A. Talking about June.

7 Q. June?

8 A. My clients couldn't find me. I -- I -- I wouldn't
9 answer a phone. I wouldn't call anybody. And so, you
10 know, Peggy said I want you to go see Dr. Balis. Dr. Balis
11 is just our GP. I am not afraid of GPs. I'll go see a GP.
12 So we went down to see Dr. Balis. And he's a typical GP,
13 comes in and sees you for 10 minutes and leaves. An hour
14 later he was still there. I was still there. We were
15 talking through things. And he asked me a question that
16 Jack Pollard had asked me that very week. And I really --
17 I don't know. I probably understood the import of it, but
18 I didn't -- it wasn't something I gave a lot of thought to,
19 was before you hurt yourself or somebody, would you call
20 me. This is Dr. Balis asking me this. And I thought about
21 it. I said, well, I said, the rational side of me would
22 surely, because I don't want to hurt myself and I don't
23 want to hurt anybody else. Yeah, I've been angry, but the
24 rational side of me does not want to do anything to anybody
25 else. I have -- I've got to do what I've got to do, but

1 it's in the context of what I'm doing. But I said, I got
2 to tell you, 10 days ago I would have left the answer
3 there. I said the last 10 days I don't remember much of.
4 And I got to tell you, based on what Peggy is telling me, I
5 think I have been in a fit of irrationality, because I
6 don't know what's been going on, but what she tells me is
7 not good. And he said I want you to consider taking
8 medication. And I said, Dr. Barling has not mentioned
9 medication to me. I have been seeing him religiously.
10 That's the guy you told me to go -- you all told me to go
11 to.

12 Q. Weekly to see him?

13 A. Yes. And sometimes a couple of times a week,
14 but -- but weekly is the main pattern. I said I -- I don't
15 want to take anything. But like a lot of physicians that
16 you keep reading about, he gave Peggy a bunch of samples
17 and said consider it. And I said, all right, I'll consider
18 it. And I wasn't going consider it. I -- I was going to
19 talk to Dr. Barling about it. So I talked to Dr. -- also,
20 Dr. Balis said I think you need to see Max Baker. I don't
21 know who Max Baker is. Peggy knows Max Baker. I said who
22 is Max Baker. Max Baker is a psychiatrist. And I said,
23 well, why do I need to see him when I am seeing Dr.
24 Barling. Different doctors for different things. He says
25 I'm -- this is Dr. Balis talking -- I'm not a psychiatrist.

1 I can prescribe medication, but you're already under the
2 treatment with a psychologist. I would feel better if we
3 could triangulate this. Back to, okay, I'll follow orders.

4 We were told we could not get in to Dr. Baker for
5 some long period of time, which is not unusual in Fort
6 Smith. And I had -- Randy Jay, my pastor, had actually
7 pulled strings to get me in to see Dr. Barling in a week or
8 10 days as opposed to -- I think that was a six or eight
9 week wait as well. And -- and Dr. Baker, his -- I don't
10 know what you call them there. I don't think they're
11 nurses, but their receptionist sort of took an oral history
12 of me, then Dr. Barling evidently sent a report over that I
13 haven't seen. And -- and Dr. Baker made room for me sooner
14 rather than later, so I got in to see him. I guess we have
15 just been there one time. I have another appointment
16 coming up whenever. And he took -- he spent an awful lot
17 of time with me. Then at that point, I might have started
18 the drug. I don't remember. I started the drug on a
19 Wednesday, the Lexapro. And I may have done it just
20 because Barling said, okay, take it until you see Dr.
21 Weber, and then let him advise you. So I think I had
22 started the medication. As I understand it, it's secreted,
23 so it's not a happy pill. As I know now, it's not a magic
24 pill. And so I think I started taking it and then saw Dr.
25 Baker. Yes, I did, because he asked how I felt. And I

1 said, you know -- and this is probably day eight or 10 of
2 the medication. And, again, I could be off a day, two or
3 three days --

4 Q. Sure.

5 A. -- but whatever magnitude and -- but Peggy went
6 with me. And I said Peggy is a better judge. I can just
7 tell you, I'm not the best judge. I'm the patient here.
8 I -- I'm not the best judge of how I've been. I'll tell
9 you how I feel after she says it. And Peggy says he's been
10 better. You know, none of these urges, none of these
11 outbursts. He seems better. And -- and I said I would
12 agree with that. On the other hand, what I feel like is
13 like I have been -- I've just had a personality flatline.
14 There's nothing to draw on here, but -- but my life and --
15 and this came out in some of the psychological stuff that I
16 have done is -- they give you rating scales of what your
17 life was like before. And -- and my life -- everybody has,
18 you know, ebbs and flows. My normal state has -- has been
19 pretty high I -- I'm now led to believe. There must be a
20 lot of people with problems in the world. And my -- my ups
21 are good and my downs are not too low below that -- that
22 constant line.

23 Now, how would you describe since January. Well,
24 it's -- I'd still say I have, you know, some happy moments,
25 sure I'm grieving, but the highs were not nearly as high,

1 but the spikes were much below, but still the baseline was
2 more or less the baseline. Now, I feel like the baseline
3 is way down here (indicating). And -- and I have almost no
4 up blip from that baseline, but almost no down blip either.
5 And I'm just using colloquialisms here. I'm not a shrink.
6 I'm just telling you how I feel. I feel sort of like I
7 just -- and I am a passionate person. I practice law as a
8 passionate person. I -- my -- I can be overly passionate
9 for people. I -- I know I chase people off because I feel
10 things strongly. And not just my dad's case. I feel
11 things strongly. When I represent clients, I feel as
12 strongly for them. And I just -- and I think I am doing
13 okay, particularly with my big client on the West coast.
14 But I've had to reduce substantially what I can work for
15 them, but I think I am functioning. I don't get any
16 pleasure. I mean, you know, we have won some -- some
17 big -- not trials. I haven't had a trial during this
18 period, but some really big motions recently, huge for the
19 company. I get them and tell them. And that's it. I used
20 to, you know, I would get stoked about it. Hey, it's
21 great, you know. I'd call and we'd have a conference call.
22 I don't conference with them anymore. I hate being on the
23 phone. I hate talking to people. I basically sit out in
24 the backyard with Peggy. So Peggy as she testified she --
25 she leaves later in the morning. She comes home earlier at

1 night. And the night got to be real bad for awhile.
2 Michael wanted to know why. I don't know why. You know,
3 people talk about serotonin deficit and all that. I don't
4 understand the chemical part of this. I don't know. I
5 don't think I am crazy. I think I've got a problem. And I
6 am doing everything I can possibly do to deal with it.

7 And I do believe there will come a time on the
8 other side of this that I will be better than -- than going
9 in. I mean, that's -- that's something -- I've thought
10 about those words of my dad. I mean, you know, it may have
11 been one thing at one time or one thing to him and it means
12 different things to me different days, but bringing
13 something good out of bad. I can't go through this and
14 come out the same person. I've got to come out a better
15 person. That's bringing something good out of bad. That
16 would honor my dad. So, you know, and -- and you -- back
17 to that point in depression, I think it's that dichotomy
18 between what I -- what I aspire to be and to do and -- and
19 where I am and what I've got to do in the meantime. It's
20 just -- it just -- but I -- I have not been in a fog. I
21 have not felt the cloud descending. I would say I am on
22 that relative flatline, really no holes, no clouds, no fog,
23 just not a lot of sun.

24 Q. Are you better now?

25 A. Than?

1 Q. 60 days ago.

2 A. I think I am. I know Jack and Randy have said I
3 am and -- and my wife has said I am. And that's -- that's
4 what counts. I think my mother is very concerned about me
5 and that's -- that bothers me. My mother is very
6 intuitive. And I don't mean this in a demeaning way.
7 She's like a cat. Like a lot of mothers, she has a lot of
8 senses and the sixth or seventh one has kicked in and so I
9 do everything I can around her. I mean, she doesn't know
10 all this. I mean, things are fine. But I think everybody
11 that's close to me that's seen me -- with the exception of
12 our friends that were just up, but then they hadn't seen me
13 in the last 60 days, they saw me six months ago, and, of
14 course, they were, according to Peggy, quite distressed
15 about me, but everything is relative. You put the time
16 frame, yes, I feel I am better than 60 days ago. And
17 I've -- not to give myself any credit, I've got a great
18 team, but I have worked real hard to do exactly what they
19 tell me to do.

20 Q. Do you see light at the end of the tunnel?

21 A. Another good question. I have -- I have tried.
22 I -- I come from this school like a lot of trial lawyers.
23 I mean, again, you guys may like trying cases. To me, it
24 was always work. I mean, it's competition and all that
25 stuff, but, you know, I wanted to get through with it.

1 And -- and so I would always say, okay, it might be a four
2 month trial, but at the end of four months, Peggy and I
3 will take a vacation and I will get back to seeing my kids
4 and life will get back to normal. I mean, that's -- so I
5 have this mantra, the old Persian saying, this too shall
6 pass. And I think for a long time I could never see this
7 passing. And I think that's part of the hopelessness, that
8 it's just going to go on. I may not get to the other side.
9 I -- I have been hopeless about my mother about that. I
10 just -- back to her will to live. And -- and I just
11 feel -- burden is the wrong word -- that it's dependent
12 upon me, that I am the difference between that will to live
13 and not to live. And that's a burden. And I think I have
14 gotten to the point now where I can no more replace my dad
15 nor keep her alive. I can only do what I can do the best I
16 can do. That gives you some hope.

17 Q. Uh-huh.

18 A. It lets you off the hook a bit. I do believe
19 that -- that something good will come out of all of this
20 mess at some point. And -- and so, yes, I believe -- your
21 metaphor was the light at the end of the tunnel. We used
22 to talk about in the railroad business it was always an
23 oncoming freight train. And -- but I think it's not an
24 oncoming freight train. I believe it is, you know, that
25 sun, yeah.

1 Q. Steve, where -- where is, I guess, the end game in
2 this? Is it the answer to your questions or is it a
3 financial settlement or both?

4 A. It's -- and truthfully -- I mean, look, I come
5 from the same background as you do, heard a lot of
6 plaintiffs say it's not about the money. H. L. Mencken
7 once said when they say it's not about the money, it's
8 about the money.

9 Q. It's about the money.

10 A. Yeah. This is not about the money, but I must
11 tell you that money is not an irrelevancy. My mother and
12 dad didn't have a lot of money and -- and I don't know. I
13 mean, we haven't hired an expert yet, an actuarial expert.
14 But I'll tell you, if my mother really gets -- and she is a
15 fighter and she does sustain this will to live and she's
16 gotten really, other than me, nobody else to lose, she can
17 be around a long time. So the money is not an irrelevancy.

18 But -- and -- and -- and I do believe -- I mean, I
19 know -- it's what my dad talked about. I know exactly what
20 my dad would want me to do with his money. We didn't talk
21 about that. I just know my dad tithed every day from the
22 day he was an adult at 18 and earned his first money at the
23 jewelry store. I know he always wanted something done in
24 his name at Cottage Hill Baptist Church. And he always
25 talked about people that had money and could give money, so

1 the money is not an irrelevancy to me because my dad never
2 said what bringing something good out of something bad is.

3 I know that my dad -- for example, we're not a
4 family of money. We got the most money in the family
5 honestly and it goes to seemingly all of our kids and --
6 and then everybody else. It seems like sometimes I support
7 everybody in our family. But I know my dad wanted to -- at
8 Christmas, it was when I finally basically had to tell him
9 he couldn't write checks anymore, not because he was
10 impaired, but because he wanted to give away his money. He
11 wanted to write this big check to the church and -- and I
12 am already saying I'm paying this stuff for you, I -- I
13 can't make up more here. And he wanted to give Sue money,
14 Peggy's mother. I mean, these are two people that are
15 poorer than anybody I know and they're in my family. I
16 know my dad wanted to do. So is money an irrelevancy,
17 absolutely not. I -- I would be lying to you -- and --
18 and -- and I don't lie to anybody about anything. Is it an
19 irrelevancy, no. Is it the number -- would I settle with
20 you and your clients for any amount of money and bury the
21 doors, the answer is no. Meaning get no answers on the
22 doors. So if I can invert the question, I'm going to
23 answer it like that.

24 Q. Well, and, see, that's interesting, because I
25 thought that's what you tried to do early on. I meant, I

1 thought that's what you communicated by having the
2 mediation in this room in March or April, wherever it was,
3 trying to settle early --

4 A. Yes.

5 Q. -- and bury the doors.

6 A. Well, hold on. No, no. At that meeting -- and
7 anybody who was here knows at that meeting -- and I did it
8 over Rex's objection. I said there are conditions that
9 come with this. And I said, number one, the doors. I
10 said, number two, it's the accountability with respect to
11 this state reporting. I don't know the answers to that.
12 But I'll tell you one thing I never tolerated at Beverly,
13 and I did fire people at Beverly, and it does exist in the
14 industry -- I am not saying it does or doesn't here -- I
15 don't know enough to know. I have not prejudged that. But
16 I have had plenty of administrators with my clients lie to
17 the state. And there's always one answer back to me,
18 you're fired, you lose your license. So there's
19 accountability there. That was the second issue I raised.

20 I did make a demand, because I was asked to by
21 Mr. Wasson. But I -- I laid down the gauntlet in terms of
22 the other points. I will not walk away with impunity on
23 the reporting to the state if something were done wrong. I
24 will not walk away not knowing the answers to the doors.
25 And I made it clear in this facility as well as other

1 facilities. And I also said as a personal issue here and
2 that's with Mandy Broughton, who was my mother's favorite
3 caregiver. To this day, my mother, if she -- probably
4 second only to -- to me and to Lena, she asked the most
5 about Amanda, her favorite caregiver, who was fired right
6 about the time of my dad's funeral along with another
7 caregiver without explanation. Summarily not allowed on
8 the property and threatened with criminal prosecution if
9 she came back to the property. This was my mother's main
10 caregiver. And I said there have to be accountability
11 about that. If there's some good reason, tell me, come to
12 the family.

13 When I advise clients -- I call them communities,
14 you know, a lot of people use that antiseptic word
15 facility. It's a bad word. These are peoples' homes. It
16 should be a community. That's one thing that's lacking
17 and -- and I am not going to point a lot of fingers because
18 I can't. As I have said before, the food is great and my
19 mother loves the caregivers, wish she weren't there, but
20 not because of it's a bad facility. There are some things
21 that need answers to. But at the end of the day, community
22 is about sharing the good times and the bad. And -- and my
23 mother -- and I think it's the reason that she, to this
24 day, distrusts Mitzi is because Mandy brought -- my mother
25 took that as a personal affront. Not only would my mother

1 say that Mitzi never came in and apologized to me or said
2 I'm sorry or said anything about my husband -- and I don't
3 know whether that's true or not. I don't know, because I
4 am not there every day. I don't know what Mitzi did. I've
5 never asked Mitzi. I know my mother will tell you what I
6 just said. That's not a community. And -- and, you know
7 what, my mother felt alone and felt a lot of anger. And --
8 and I had to make up that with Amanda and I still -- I
9 still want Amanda in that building, but I just wasn't
10 willing to push the issue. Will they really call 911 on a
11 poor, little girl that was my mother's favorite, that has
12 the right to come into my mother's room and see her, but
13 she's been threatened with criminal prosecution. Those are
14 things that I said at that meeting had to be answered. And
15 I made it clear to everybody who was in that room. I never
16 made a naked demand. Won't make one now. Won't ever make
17 one.

18 Q. Any demands of Crawford?

19 A. I have not talked to anybody separately.

20 Q. Okay. Income, what's happened with your income
21 over the last six, seven months?

22 A. Well, as I told you earlier, Mr. Tilley, over the
23 last couple of years, I have narrowed my practice. Dumb
24 thing to do, admit it, fess it, dumb thing to do. But I am
25 and have been a relationship person. I said I don't have

1 that many friends, but I will tell you some of the best
2 friends I have around the country are former clients and
3 current clients.

4 I once heard the president of Motorola say that --
5 that one of the finest experiences he ever had was when one
6 of his attorneys in Washington D.C. that was -- that --
7 that officed next door to me became his friend. A lot of
8 lawyers say I don't want to get too close to my clients.
9 I'm sorely the opposite. So I got to know the CO and I
10 got to know the CEO and I got to know the vice-presidents
11 and how that company was struggling. And each time they
12 came to me and said we want to go up to 175 hours of your
13 time, up to 200 hours. And, now, I am looking -- I really
14 don't want to work more than 200 hours a month. But
15 there's also a client in Chicago, I can't judge them.
16 They're not a big client, but they've been a long-term one
17 and two of my best friends I go back 20 years with, used to
18 be Commonwealth Edison. Now, it's a sister of Southern
19 California Edison called Midwest Generation, good client,
20 good friends, but very little business.

21 I'm getting to your question. So my business is
22 really contoured around one client, X number of hours, and
23 it was based on a retainer agreement. You use the hours,
24 that's great. I go over the hours -- and the last retainer
25 amendment -- and I don't know whether you have been given

1 that, but I have provided it to Rex, but the client did not
2 want it provided except subject to a confidentiality
3 agreement. In fact, what you just had -- and I understand
4 we don't have a confidentiality agreement in place, but they
5 would not like the fact that that was out there, so I hope
6 you treat that confidentially. But what we had was an
7 agreement at its height that I was paid on the basis of
8 \$375 an hour, which in this market sounds like a lot, but,
9 again, mine is a national market. Steptoe & Johnson, the
10 law firm I brought in to supplement what I do, charges \$700
11 an hour on the average. So they think they are getting a
12 break from me at 200 -- 200 hours. That was the retainer
13 agreement that was in place at the time of my dad's
14 accident. And so if you just do the math -- in fact, I can
15 do it -- it was \$50,000 a month. That's far less than I
16 made at Beverly, but that's a lot of money. And -- and it
17 was enough for me to establish and have my practice and let
18 the other clients come or go, except the clients that I --
19 I -- I refused to accept back. So I had only two or three
20 other clients that -- ships in the night. They would come
21 in, go out, and a 10 hour project here or whatever. But it
22 was -- the anchor store in the mall, so to speak, is
23 Sunwest Management.

24 And it was clear -- I mean, you asked where I was,
25 what was going on, from the 7th to the 31st of January, my

1 dad's stay in the hospital and in the Hospice, I worked
2 very little. Out of necessity, I worked very little. But
3 I tried to respond to them, but I wasn't keeping up. They
4 came to me I believe middle of February -- and when I say
5 they, I'll give you the name, Steve Stradley. He is the,
6 you know, call him a vice-president, but for all intents
7 and purposes, he's that and more.

8 Q. Strayley?

9 A. Stradley.

10 Q. Stradley.

11 A. S-T-R-A-D-L-E-Y. And he came to me and said,
12 look, we love you, we want you back, but we need the hours
13 that we bought, we bought time from you. And we understand
14 if we don't give you time. In other words, we're paying
15 you for 200 hours, but if we don't ask for the 200 hours,
16 that's the retainer agreement, you get paid. But if we
17 need 250 hours, you agreed to do that, and we're not
18 getting the 200 hours. Well, this is back to one of my
19 principles. I have always worked more than I got paid.
20 That's just an ethic. And I said you're right. I said
21 what do you -- what do you think. He said, well -- I
22 said -- and I told him, I said, why don't we just cancel
23 the contract. And the contract, by the way, is an
24 evergreen contract. It runs June to June with a six month
25 cancellation. So they had an opportunity to cancel in

1 December, you know. Had it been a month later, they might
2 have cancelled. But in December I was working, oh,
3 probably 300 hours in December, a holiday month. It's a
4 lot of work. And now all of a sudden in February, it was
5 less than 100 hours. So they said, well, let's -- let's
6 look at this, what's fair. And that's the way I approach
7 things, what's fair, not what I got you -- what I can hold
8 you to, what's fair. They said what can you give us. I
9 said how about let's redo the rate a little bit downward
10 and let's talk about 100 hours. I think I can do 100
11 hours. And if I work any more, it's free. And they said
12 great. And that's where we did the amendment that I gave
13 Rex sometime back. That was done affective March 1. And
14 the rate went from \$50,000 a month to \$30,000 a month. And
15 so that became the contract that, again, is just like -- it
16 has all the other terms, not that they are incorporated, in
17 essence, by reference, because it's, you know, it's the
18 base contract and then your amendments. So my agreement
19 right -- now right now is \$30,000; whereas, until March it
20 was \$50,000. The fly in the ointment is I'm not giving
21 them 100 hours.

22 Dr. Barling has twice told me to reduce my
23 workload. They -- because they are in Oregon, I mean,
24 that's a long way away from Fort Smith. Like the movie
25 Brother, Where Art Thou, and George Clooney said strange,

1 this place is -- is two weeks away from anywhere.
2 Sometimes Fort Smith feels like that. But when you're
3 flying transcontinentally, it takes a long time to get
4 there. It takes me eight to 10 hours on a plane. That's
5 if things go right in Fort -- in Fort Worth and usually
6 they don't.

7 Q. Right.

8 A. I am just one of those lucky travelers.

9 Q. Yeah.

10 A. That's why very few people want to travel with me.
11 If bad things can happen, they happen with Steve, like
12 sleeping in the airport in DFW and cancelled flights and
13 all the other stuff. They have been begging me to come out
14 since February. Peggy mentioned in her testimony
15 yesterday, I had a mock trial that I put on for the
16 industry that had been in the works since last December,
17 January, before my dad's accident. I was the guy. I
18 brought it altogether. It was the first of June. I had to
19 do that. I had to do that. We had another person, who had
20 an illness in her family, who's father-in-law is -- is
21 about dead now, and I had to do it, so I went out there for
22 four or five days. Peggy actually took off work part of
23 the time, because, again, they did not want me traveling.
24 But from -- from April to June no travel. They won't let
25 me travel. And right now -- and I asked Phil Barling about

1 this last week, because they want and need me in -- in
2 Salem, which is where the client is. They are
3 restructuring. They are going through a whole lot of
4 changes. They are downsizing. I mean, this is -- this is
5 where I do my thing. This is what I do. I mean, far more
6 than litigation now the older I get. The transactions, the
7 operations, how do you run the facilities, how do you hire,
8 how do you train, how do you keep people from -- from doing
9 bad things, so that's what I do. That's what they need me
10 to do now. And I can't go out there.

11 Q. Why don't they want you to travel, Steve?

12 A. I can put it in -- in their parlance. I think
13 they are not -- and I am just putting words into their
14 mouth. I mean, you're welcome to talk to the two of them.
15 I believe they still believe I'm a threat to myself.

16 Q. Are you?

17 A. I don't think I am right now. And -- and that's
18 why I asked Dr. Barling last week, can I travel. And he
19 said are you going to go over to South Carolina, because we
20 do have that travel coming up, but I'm just going with
21 Peggy for Perry's mother's 80th birthday and to see my two
22 grandchildren. Somebody is going to be with me. I mean,
23 Peggy mentioned a trip to South Carolina. I mean, I think
24 this is where it derives from their concern. But, again, I
25 am just putting words in their mouth. South Carolina is

1 our getaway home. It's been in Peggy's family forever.
2 Peggy loves the place. Her mother loves the place. The
3 family loves the place. It's right outside of Atlanta.
4 It's a gathering point where we see our children. In
5 April, it was really bad, and I wasn't on any medication,
6 but I wanted to get away, so Peggy agreed to go two or
7 three days and my kids agreed to come up two or three days,
8 so I really wasn't going to be alone. Kids -- one of the
9 grandkids got sick, they couldn't come up. And so Peggy
10 had to get back to work and for four days I was alone. By
11 the third day, it was -- I was in a bad hole and I just got
12 in the car and drove home. So we went through that. I
13 mean, we had our session over that. And that -- that
14 really began or was in the middle of that period that led
15 to the medications and seeing Dr. Baker and everything
16 else. I felt then, yeah, I was a danger to myself.

17 Q. Past that?

18 A. Again, I -- I don't feel like I am a danger to
19 anybody sitting here.

20 Q. Good.

21 A. I think that's good.

22 Q. I think it's great. You know, the first question
23 is about to you --

24 A. Okay.

25 Q. -- suicidal. The second one -- and you brought

1 this up awhile ago -- homicide.

2 A. Right, yes.

3 Q. Not a danger to yourself or others?

4 A. I don't believe so.

5 Q. Okay. What can I do to help, Steve?

6 A. I would say simply, first of all, you have struck
7 me as a good man, as an honest person. I mean, we all see
8 it, right. In fact, this morning when -- I would have
9 referred, although I didn't, that -- that you glad-handed
10 me. You were a stranger and you sought me out. I have had
11 plenty of those that don't turn out to be those people.
12 But Rex vouches for you and you have -- you have made, so
13 far today -- and I -- I know it's still not over -- a lot
14 easier than it could have been.

15 As I said today, strategic planning for me is a
16 day-to-day, week-to-week affair. I have marked these two
17 days on my calendar forever. They will be done. This too
18 will pass today. Tomorrow will be another day and we'll
19 see what happens.

20 Q. Okay.

21 A. You told me what you could do today and I
22 appreciate it.

23 Q. Thanks for being here.

24 A. Thank you, sir.

25 Q. These other lawyers may have some questions for

1 you.

2 A. I am sure they do. I can't wait for Mr. Dossett.

3 THE VIDEOGRAPHER: The time is now 2:04 p.m. and
4 we're off the record.

5 (Off the record).

6 THE VIDEOGRAPHER: The time is now 2:15 p.m. and
7 we are back on the record.

8 THE WITNESS: Do you mind if I say something?

9 MR. DOSSETT: Say whatever you would like.

10 THE WITNESS: In the same vein that I ended with
11 Mr. Tilley. I was here for my wife's deposition yesterday
12 and -- and that was not easy to sit through. In fact, this
13 one is a lot easier simply because it's me talking. The
14 first time I met you, including through yesterday, and I
15 know I say this -- and you might be ready to light me on
16 fire -- but you were kind to my wife in discharging your
17 responsibility, and I appreciate that.

18 MR. DOSSETT: Well, you're welcome and I
19 appreciate that. It's not my style to get mean with
20 anyone. And I intend for that to be our manner of
21 discussion today also.

22 THE WITNESS: Great.

23 MR. DOSSETT: But I appreciate your words.

24 CROSS EXAMINATION

25 BY MR. DOSSETT:

1 Q. I had a question about something that you and
2 Mr. Tilley finished with there at the end, and that was the
3 discussion about concerns you had previously or maybe your
4 doctors had had previously about the potential that you
5 could harm other people. When in your -- in your course
6 was -- were you having those type of issues?

7 A. Is that a course when -- since January?

8 Q. Yes, sir.

9 A. I would say late February, certainly through
10 March, and it wasn't like every day. It wasn't an
11 obsession. It was when things would spark. April, May, in
12 May.

13 Q. You mentioned that you would have these thoughts
14 sometimes when things would spark. What type of events
15 sparked these thoughts?

16 A. Not that Rex is a bad guy, but it would be a call
17 from Rex about something.

18 MR. TILLEY: He does that to me, too, Steve.

19 THE WITNESS: I tend to have that effect on people
20 as well. You know, a call from Andy, when I was still
21 talking to Mr. Wasson, Mr. Wasson, a call from -- because I
22 am just one of these people if you tell me you're going to
23 do something -- that's another ethic I got from my dad. My
24 wife once said that if I ever have an epitaph, it will be
25 he said it, he did it. And -- and so I am very impatient

1 with people who tell me they are going to do something --
2 particularly when you don't have an obligation to do it.
3 Mr. Wasson did not have an obligation to do what he did or
4 say what he said or commit to do what he committed to do.
5 And I felt it was in good faith that he was doing that.
6 And so that in particular, which was sort of a launching
7 point, and then you know how discovery is. So just things
8 would come up.

9 There was one thing in particular that I
10 remember -- the last I remembered I was in the pool and
11 Peggy came home. And it -- it would have been, as I said,
12 May -- I can't say if May was the end point, because I was
13 in the pool the first of June. And that was evidently a
14 bad night. And there was something that had happened that
15 day, but it was related to the case. And so it's those
16 things. Work is -- there's not a lot going on at work. I
17 mean, there's nothing else.

18 Q. (BY MR. DOSSETT) When you would have those
19 thoughts, were they directed towards anyone in particular,
20 or did it change?

21 A. Well, they always try to concretize things. Even,
22 you know, in fictional writings, you tend to read
23 fiction -- which I don't read much -- but this character is
24 like this character. No, I would say that the -- the
25 images were there are people that are causing this to

1 happen. I don't really know who. Again, I don't know the
2 story about the reporting to the state. I don't know that.
3 I know I have talked to Mandy and I know how she feels. I
4 don't know why Mandy was fired, but I know Mandy can no
5 longer with be my mother. I know my dad was killed, but I
6 don't know all the Xs and Os of that. And so if -- if I
7 could find them, if I could find them and know them,
8 because I -- I just -- I mean, I hate to say this. I sound
9 like a terrible person. I do believe it's the irrational
10 side of me talking. I don't talk like this rationally. I
11 would never have taken myself out alone. And that's why I
12 made it -- I didn't say any of this voluntarily to my -- my
13 psychologist, psychiatrist, doctors. They drew it out of
14 me that -- that I would not -- I would not have just gone
15 in a closet and do it alone. That would have been the
16 ultimate, because I know -- I know as soon as I do that,
17 there's nobody with the will to find any of these answers.
18 And that's not to -- to cast dispersions on anyone. This
19 is my lot in life. I am the surviving son. This is my
20 dad. This is my mother. There's no one that can take this
21 gauntlet up. And -- and so that was the rational side.

22 When I would get into the irrational side, I would
23 always try to bring myself back to the rational side and
24 say it, that -- now -- and Peggy would talk to me and say
25 you don't think about me, the effect on our children, and

1 Jack Pollard, his wife's dad committed suicide and she
2 still lives with that. And she gave me a speech one night,
3 don't do that to your children. And so it was all those
4 factors. But ultimately I got to tell you it was I'm the
5 son who gets things done. If -- if I do any of that, all
6 of this is over. And my dad -- the one wish, bring
7 something good out of bad, I don't know how any of that is
8 good. So the rational side kept bringing me back.

9 I think where I finally consented to see Dr. Baker
10 was the irrational side was taking more time and I found it
11 harder and harder to get back. It was like, oh, well, what
12 does it matter. But, again, back to the question from
13 Mr. Tilley, I do not have those thoughts now.

14 Q. How long has it been since you have had suicidal
15 or homicidal thoughts?

16 A. This is August. I saw Dr. Baker on the
17 medication, I would say, first of July. Well, I can back
18 it up. Friends came here. And, again, they were the
19 friends that we have known for many, many years, close
20 friends, but not seen me in six months. And each of
21 them -- when -- when Peggy and I thought I was doing
22 better, they thought I was doing terrible, so I can tell
23 you that was July 4. I was starting medication the end of
24 June. I didn't feel better right away, but I would say by
25 July 4th. I -- I know I had some of the zoning out,

1 because obviously that's what they were commenting on, but
2 no suicidal thoughts, no -- nothing -- nothing violent.

3 Q. Okay. So we are here today, and I guess it's
4 August the 12th, so you haven't had any suicidal or
5 homicidal thoughts in a month or so?

6 A. Is it the 11th?

7 Q. Is it the 11th? Okay. Good.

8 A. Good. I had it on my calendar. If it's the 12th,
9 I missed a day somewhere.

10 Q. So we have a day back. I have a day back I didn't
11 know I had, so. But it's been a little over a month you
12 think since you have had any of these thoughts?

13 A. Yes.

14 Q. Has there ever been a time where -- where the
15 employees at the facility were -- were the object of your
16 feelings, your homicidal feelings?

17 A. No, not in any particular sense. Where it -- was
18 there a time when I was angry with Mitzi and Bob, sure,
19 yeah. I am over that aspect of it. I mean, you know,
20 again, as part of being in the business, I trained my
21 people. I mean, Mitzi and her staff were good enough to
22 come to the funeral. Although, I must say that made my
23 mother mad, because she evidently had not had any
24 colloquy -- any dialogue with them. And I tried to get her
25 over that. I was glad they were there. They came to the

1 funeral. And that's what I cancelled my clients to do.

2 I think when Bob and I met, you know, in a
3 non-planned meeting one night with Mitzi and -- and I'm
4 sure I did not react very well to that. There had -- and
5 Bob said it, I wished I had said something sooner. That's
6 what I -- I expect things of people. And so there was some
7 anger there. But no -- and, particularly, I mean, I can
8 tell you that the care -- the caregivers there -- and there
9 have been too many that come and go, but that's part of the
10 industry as well. A lot of -- again, names I can't even
11 remember, but faces and -- and activities they did for my
12 mother and my dad I remember.

13 I've always thought that the long-term care, elder
14 care providers are angels. Mitzi's job as an
15 administrator, I have always believed an administrator is a
16 very tough job. It's not -- it's not the care and it's the
17 management and it's the budgets and all the other things,
18 so I don't expect from Mitzi what I expect from the
19 caregivers. But what we have gotten by and large from the
20 caregivers, they are under a lot of strain. I think they
21 are overworked. I think they are short staffed, but I
22 don't mean that in any legal sense. And this isn't a
23 short-staffing case. I mean -- I wish there were times
24 that -- that there were more of them. But what they got,
25 they are heroes to me.

1 Q. Let me ask you a couple of questions about what
2 you just told me. You mentioned an unplanned meeting with
3 Bob and Mitzi?

4 A. Yeah.

5 Q. Let's talk about that. When did it take place?

6 A. Sitting here, I have no memory.

7 Q. Do you remember where it took place?

8 A. Oh, yes, in the anteroom. I don't know what they
9 call it there. It used to be Mitzi's office. And it's
10 their meeting room, whatever it is, right behind the front
11 desk.

12 Q. Tell me how it came about that the three of you --
13 well, first of all, was it just the three of you?

14 A. Yes.

15 Q. Tell me how the three of you came to have this
16 meeting.

17 A. Well, I mean, in those days, again -- so it must
18 have been February, March, I would guess, in that period.
19 It wasn't early February like when I buried dad. May have
20 been late February, so sometime in that. And Bob came to
21 the facility and I always spoke to Bob. From the very
22 beginning, I found Bob friendly. Again, that handshake
23 and -- and so -- and he did -- he did a nice thing by my
24 parents. I think he gave them a good room rate. And so I
25 always looked forward to seeing him. But it was during

1 that period when I was eating most every meal with mother
2 that I just -- I don't know. It all added up. I was in my
3 dad's place. I didn't want to be there. I didn't want my
4 mother to be there. I didn't want to see the facility
5 where my -- my dad spent, as Peggy said yesterday, most of
6 his time talking about food, what he ate. Every time I
7 talked to my dad, I knew everything he had for breakfast
8 and how many bites he took. And that was just one of his
9 ways of breaking the ice every morning. I was there. I
10 hated it.

11 And so I saw Bob come in. And I remember that
12 night, I turned my back to the room. I normally would sit
13 where my dad would sit facing the room, because I like
14 to -- to see the residents. I specifically got up, turned
15 around and my back to him. And when I got up, because I
16 asked mother -- it went like this, mother, do you see
17 Mr. Brooks. Huh. Because my mother does not hear very
18 well. So finally I was going to have to yell and I finally
19 said forget it. I don't know if he is back there or not.
20 So I got up specifically with my back to the room,
21 because -- let me back up very quickly.

22 I asked Bob in an E-mail that I wrote him -- and
23 we have exchanged very few E-mails. This may have been the
24 only one -- did you hear about my dad's accident. Because
25 Bob had always been friendly to my parents and -- and not

1 having heard from him, surprised me. And the next day he
2 just wrote back and said, you know, sorry about the
3 accident and hope everything is going to be okay. And I
4 know the way he meant that, but I always know the way I
5 took it and -- and the way -- he wasn't here and he wasn't
6 going through what we were going through. And so I felt --
7 particularly, my mother felt we had been slighted by them.
8 That really -- the staff basically never said a word to my
9 mother. Nobody talked to me. It was like there was a -- a
10 gag order in the building. And that's back to that
11 community thing I was thinking about. In the buildings of
12 my clients, we talk about deaths. Even when there might
13 be, you know, some liability out there, we talk about
14 deaths, because these are their relatives, in quotes, this
15 is their family, you got to talk about this stuff. We have
16 services in my clients' buildings, because that's what you
17 do.

18 And so I just -- back to the story. I didn't want
19 to see Bob that night. I -- I also knew I was not in a
20 good place. I was angry. Nobody had talked to me about
21 anything, nothing. I had not dealt with my dad's death. I
22 had not seen a counselor, taken no medication. I was not
23 in a good place and I did not want to see anybody. And for
24 awhile, I had been ignoring Mitzi, not -- not talking to
25 her. I mean, I knew we would -- my mother is still in the

1 facility. I was still hoping my mother would get out of
2 the facility so maybe I wouldn't have to interact with
3 Mitzi or Bob, so I just -- another day goes by and maybe
4 I'll have her out tomorrow. So I -- I just put it off. I
5 didn't want the -- the interaction with Bob. And I knew I
6 was Vesuvius, ready to go on. It was whoever would have
7 been there and asked me tell me about your dad's death.
8 And so I was getting up, helping mother out, kind of
9 position myself to never look toward the front desk. And,
10 it was, as I remember, a pat on the back, and I turned
11 around and it was Bob, and he shook my hand and he said do
12 you have a few minutes to talk. And I --

13 Q. So he sought you out?

14 A. Yes.

15 Q. Okay.

16 A. And I said sure. I said let me walk mom back
17 and -- and I'll be glad to talk to you. I had no idea what
18 he wanted to talk about or what he said. I'm not -- I
19 don't think I had hired a lawyer then. I -- I didn't want
20 a lawyer. I had been talking to Dick Wasson. And I think
21 that's right. The only person I had talked to was to Dick
22 Wasson. And, again, I didn't have -- you know, some of
23 these concerns -- actually, the firing of Mandy, I think is
24 relatively close to that, but I could be off. Some of the
25 things that were coming to light, Wasson's statement about

1 only one incident and now me learning at least anecdotally
2 that was not true. So I was just not in a good place. And
3 I didn't know what Bob needed. But on the other hand, my
4 mother is in the building. Maybe he wants to talk about my
5 mother.

6 I'll give you -- I will give you -- honestly,
7 there was a side of me, I was ambivalent. I -- I
8 desperately wanted my mother out of there, but I was going
9 to have to move her, you know, and she moves into a new
10 family, and I have been through that, you know. I have
11 been through that with facilities I have represented. And
12 moving is tough for these people. And -- and so there was
13 a side of me that thought -- because I've had clients do
14 stuff like this, and I think I might even have asked them
15 that night, are you going to give my mother a 30 day
16 notice. There would have been a side of me that would have
17 kind of been ticked off. There would have been a side of
18 me that goes, now, I can go to mother and say they want you
19 out of here. And they said, no, quite -- and I don't
20 remember whether it was Bob -- I think it was Bob, because
21 I think he did most of the talking -- no, quite the
22 opposite, what we want to do is -- is to see what we can do
23 for your mother. And I got to tell you, you know, it's
24 like when you say tomato and I say tomato. Because the
25 next thing that I remember Bob saying was how are you

1 doing. And it's like you type an E-mail and you mean one
2 thing and somebody gets it and they take something totally
3 out of context or they assume an attitude or whatever else.
4 I think Bob meant in the context of this how -- how is your
5 mother doing, how are you doing. I took it to mean how am
6 I doing, because, quite honestly, it was the first time
7 anybody had asked since this happened to my dad.

8 Q. Anyone had asked you how you were doing?

9 A. Yeah.

10 Q. And Bob -- Bob was the first one to do that?

11 A. Yes. And I let him know.

12 Q. Okay. So you were honest with him? You answered
13 his question and told him how you were doing?

14 A. Yeah. And I'll tell you, you know, now, I'm
15 thinking -- I think maybe I had retained Rex now that I
16 think about it, because -- and so it may have been into
17 March. Because Rex called me and said, you know, we are
18 getting this feedback you threatened Bob Brooks. And I
19 said I didn't threaten him. I mean, people deal with
20 people different ways. Bob and I are -- I don't know him
21 that well, but we are different styles. We are different
22 professions. We are different training. We don't know
23 each other that well.

24 I will never surprise people. I mean, I am
25 what -- you see what you get. You like it or you don't

1 like it. I don't play games. I don't deal at different
2 levels. I don't spend a lot of time hoping or thinking how
3 can I act so that people like me. I just try to do the
4 right thing every day and you let the chips fall the way
5 they will. I wanted to tell Bob that night that I'm in a
6 bad place. My mother is in a bad place. And I don't mean
7 the facility. I mean, we're just in a bad place. And, you
8 know, there's some things that are developing here, like
9 the firing of Mandy, that just incensed me. I don't know
10 what's going on. You have got Dick Wasson who is telling
11 me he will send me all this information and doesn't and
12 doesn't communicate with me anymore and won't return calls.
13 When he was the one first calling me, now he won't return
14 my calls.

15 And so it just -- I don't know how long it lasted,
16 but I never -- I think I told Bob my vision of the future,
17 because by that time I had seen it. I got people here that
18 I believe are lying to me, that there's more going on here,
19 that people are hiding the ball. And they are just dealing
20 with the wrong guy, you know. And I don't mean that as a
21 threat. I really do not mean that as a threat. If it had
22 happened to my wife, my wife could get over that, not
23 necessarily in a minute, but she would get over it. I
24 can't. I -- I am just not built like that. So my
25 intent -- and I told Rex, I am not -- I have no intent --

1 in fact, I said I'll call him and apologize. Oh, no, you
2 don't. You don't call him. I said, okay, I won't. I said
3 I won't. I won't have any more interaction with him. I
4 said I'm still going to deal with Mitzi as long as my
5 mother is in there. My mother's care comes first. This
6 case be damned, anything, even the doors -- the one thing
7 that's over the doors is my mother.

8 And -- and so I felt badly about that
9 conversation. It was not intended to be threats. I don't
10 threaten anybody. I have never threatened anybody in the
11 history of litigation. Have I told them the next shoe
12 that's going to drop. You bet you, because I don't want to
13 surprise you. And that was my only intent that night. It
14 was anything but preplanned. If I could have done anything
15 to have fallen in a hole before Bob patted me on the back
16 and asked me could he talk to me a few minutes, I would
17 have done it.

18 Q. You understand, of course, that sometimes we, as
19 lawyers, we make statements to people that we think are
20 matter of fact and they take it as a threat? You
21 understand that?

22 A. Look, if I had been Bob and Mitzi that night
23 remembering what I remember of that, I would have taken it
24 as a threat.

25 Q. What do you remember Bob saying to you during that

1 meeting? If anything.

2 A. He mainly listened. I don't remember. I -- I
3 mean, maybe Mitzi said something. I don't remember
4 anything. I remember him seeming to be bothered by the
5 fact that -- that Dick Wasson wasn't returning my calls.
6 And -- and I do remember he said I will contact him. You
7 know, it -- it seemed like let's get this over, you know.
8 We -- I mean, I think I said this. If I didn't, I meant to
9 in setting it up that I hadn't heard -- he started to say
10 it's been too long. I -- I'm sorry for your loss. And so
11 it was that -- in that vein, it was -- I mean, again, I
12 don't know him that well. But having admitted what I just
13 admitted, that I would have taken it -- he seemed somewhat
14 ashened, quite surprised. I am sure he went in thinking I
15 am going to have a conversation about Dot Brigance. And
16 that would have been a different kind of conversation, but
17 it wouldn't have been a happy conversation. Because I can
18 just tell you, my mother was in a terrible, terrible place
19 then compared to where she is now mentally and -- and
20 spiritually and all of this. But it would have been a
21 different conversation.

22 Q. Was this the first time you had seen Bob since
23 your father's incident?

24 A. To the best of my knowledge, yes.

25 Q. Was this the first opportunity that Bob would have

1 had to face to face tell you that he was sorry for your
2 loss?

3 A. Face to face, as far as I know. I mean, I will
4 say this. I was told by somebody when I came in to get my
5 dad's clothes like the third day -- it may have been the
6 weekend. It may have been the following Monday -- that --
7 because I asked, I said, you know, when is the next time
8 Bob is coming down. And they said he's just been here.
9 So, I mean, he was in the building. If he had wanted to
10 seek me out -- if I were him, I don't know what I would
11 have done. I don't. I am not judging him on that. It's
12 water under the bridge.

13 MR. CHRONISTER: Steve, you're thumping.

14 THE WITNESS: I am sorry.

15 Q. (BY MR. DOSSETT) You -- you made mention of this
16 awhile ago, but let me make the record clear. Do you
17 recall anything that Mitzi may have said during that
18 meeting?

19 A. Now, that I just said my mother was in a bad
20 place, it seemed like that -- that Mitzi's focus, as it
21 should have been, was on my mother, that my mother had --
22 was not -- wouldn't talk to her, wouldn't interact, that,
23 you know, what are some things we can do to make it. And
24 I -- and I do believe -- now that I'm thinking about
25 this -- that Mitzi said something like we have activities

1 here, we have other things, might have even said you don't
2 need a sitter. And that -- that set me off as well.
3 Because I remember her saying -- right now I'm talking
4 about replacing my dad and I'm trying my best and I can't
5 do it. I can tell you bingo is not going to do it,
6 activities that they didn't participate in when my dad was
7 alive are not going to do it. It's like the question that
8 Michael asked yesterday -- and I know this. I mean, there
9 are lots of sad stories. I mean, we all get older. Things
10 happen. People lose their loved ones, you know.

11 Again, my mother didn't loss -- lose my dad. He
12 was taken. And it's a whole different -- it's a whole
13 different dynamic. It certainly is for me and I think I
14 get my wiring from my mother. It's a lot like the way my
15 mother processed this. Except with her dementia, she had
16 some protections that I don't have. Plus, she's not
17 responsible for doing what my dad wanted. My dad put me in
18 charge of that, so. At -- at -- at the end of the day, my
19 mother -- I am trying to protect my mother while I make
20 decisions and so it was really -- I would have lashed out
21 there because it's not your business about a sitter. I'm
22 having a tough -- it would be like my sister, if my sister
23 had called and said the same thing, I would have had the
24 same reaction. Come live in my shoes for even 24 hours and
25 then I'll -- I'll listen to you. Live it for a week, I

1 might pay attention to you. Live it for a month, I might
2 do what you suggest. But it -- it just wasn't what I
3 needed at the time. But I know Mitzi was saying, look,
4 she's here, and -- and I think, again, rightfully so, we
5 got to work together for the good of your mother. And --
6 and the best I remember I -- that's right.

7 Q. Okay. Anything else you remember her saying?

8 A. No. I mean, if we kept talking about this for the
9 next three hours, it might creep back in, but that's what I
10 remember.

11 Q. Do you remember anything that you might have said
12 during that meeting as to what your concerns were about how
13 your investigation to the cause of the accident was going
14 or any of those types of issues?

15 A. Well, again, if I knew exactly when that meeting
16 was, I could -- although, I don't remember the first time
17 that Mandy ever called me. It was after Mandy was fired.
18 That was really the first time I knew that what Dick Wasson
19 had said, at least by somebody else's version, was not
20 true. And -- and so the meeting that we had with Bob was
21 sometime after that, but before subsequent conversations
22 and before anything else transpired between Wasson, I
23 believe. I don't remember. I can't freeze frame and know
24 exactly what I -- I knew that day. Whatever I knew, I knew
25 more than -- that there was one incident in one room and

1 that there were no other problems. And I had clearly
2 gathered by that time that Dick Wasson, despite early
3 indications, I want to help you and your family get rid of
4 this, you know, we're ready to settle, we just need to
5 meet, and I said, fine, when and where. And then to never
6 get calls back. I am sure that this meeting occurred after
7 that. And -- and, so, yeah, honestly, even though it was
8 impromptu, I took the opportunity I was given or cursed
9 with to say this is serious business, let's do something
10 about that. And to his credit, I mean, he came back to me
11 later. I went back to my mother's room and then came back
12 later, and he says I've contacted Dick Wasson and I have
13 told him to work with you. And I appreciated that.

14 Q. You have mentioned a couple of times that you felt
15 like you were lied to at some point and that you have also
16 mentioned that that is something that you -- that you have
17 a particular problem with. You don't like to be lied to.
18 Most people don't. Tell me, if you would, I would kind of
19 like to make a list of things that you believe you were
20 lied to about as it relates to your father's incident and
21 who you think told you those lies.

22 A. Okay. And I will -- I will do the best I can off
23 the top of my head there. And I will also including in --
24 this list will include -- because I am one of these who
25 believe that -- that silence in the face of facts equates

1 to a lie. I'm not a Bill Clinton-like person. I'm not
2 going to parse words. I'm going to -- you know, if you
3 know something and you don't tell me, to me, that's a lie.

4 Q. Okay.

5 A. I guess the first thing was -- was Dick Wasson. I
6 was asked today do I believe he was lying to me. In
7 thinking about it now -- again, I don't know him. I met
8 him once. I don't know whether he was lying. I don't know
9 what's in his heart. But I was -- I was lied to in the way
10 I thought at the time of this meeting by Dick Wasson.
11 There's only been one incident.

12 I was lied to in the sense that I made it clear
13 orally and Rex in writing that nothing was to be disturbed
14 in my mother's room regarding these doors. And lo and
15 behold, without notice to me, my mother was not in that
16 room when that -- that tracking that has the shims and all
17 the other repairs that we could never duplicate was taken
18 out. And it -- and it infuriated me. I was looking at a
19 death scene and somebody took it out. So I was lied to
20 there, that they wouldn't do that. Somebody did that. I
21 still don't know who. I don't know why. There were no
22 doors in the room. There was nothing going on. Why would
23 you take that track out other than to hide the evidence, so
24 I took that as an -- look, I've been in spoliation cases.
25 I've defended them. I'm sure you have. I have been

1 accused of a lot less than this. This was, to me, active
2 spoliation. Somebody destroyed evidence for no reason, no
3 reason.

4 Q. No reason that you can think of?

5 A. I am waiting to hear the reason. And I -- I have
6 a suspicion when I hear it, it's not going to make a bit of
7 difference to me. It may to them, but it won't to me. So
8 that -- that was an act.

9 I -- I was told by Dick Wasson repeatedly I could
10 view the doors. Never got to view the doors. I was told
11 repeatedly that he wanted to settle and that he would tell
12 me his limits of liability, promised to send to it me on
13 three occasions. Never did. I was told that he would
14 provide me with medical authorizations -- authorizations,
15 which I knew he would need and I knew would slow us all
16 down. I was ready to sign them the first day he ever
17 called me. Those didn't come. So that's basically -- oh,
18 Dick Wasson, when I called him back about the door track
19 being removed denied it. He basically called me a liar.
20 And -- and I didn't take tremendous umbrage at that,
21 because I had seen it, been there. It was, like, I didn't
22 know whether he was thinking I was too stupid to have
23 noticed the difference or what, because that's the way I
24 took it. Somebody is going to switch it -- if they found
25 that, let's hide the ball now, because nobody had come to

1 me at this point and said it was the wrong track.

2 Q. Did it ever occur to you that perhaps Mr. Wasson
3 was unaware?

4 A. As soon as he responded as he did with some
5 expletives and said if this is F-ing true, I'll get to the
6 bottom of it. And he did and called Rex back later and
7 said it was not our people. Whatever that meant. Now, if
8 you add this up, his people -- as I understand it, he
9 represents Colony, is an employee of Colony or an agent of
10 Colony, that's Crawford, so that told me Crawford removed
11 it. Subsequent to that, I have been told that it's
12 otherwise. But I sat here yesterday and Joe said he didn't
13 remove it, so it's still a hidden ball for me.

14 Q. Have you looked to see what's there in that door
15 now?

16 A. Yes.

17 Q. What's there now?

18 A. It appears to be the tracking that should have
19 been there originally.

20 Q. Is that the same tracking that would be in the
21 closest doors in the bedroom?

22 A. Yes, yes, yes.

23 Q. And we are referring to the -- to the piece of
24 hardware that goes up at the top of the door frame?

25 A. Yes, yes.

1 Q. Is that still there today?

2 A. The --

3 Q. Is that piece of tracking there today?

4 A. The new one they put in?

5 Q. Yes, whatever came in after --

6 A. Yes.

7 Q. -- after the removal?

8 A. Yes. No doors, just the tracking.

9 Q. Okay. Now, I interrupted you a little bit. You
10 were going through a list --

11 A. Right.

12 Q. -- and you made some mentions of
13 misrepresentations that you thought you had received --

14 A. Right.

15 Q. -- from Mr. Wasson. And are you done with that
16 list?

17 A. With Mr. Wasson, yes.

18 Q. Okay. Let's go to the next person.

19 A. The next person would -- would be Mitzi and the
20 firing of -- of Mandy. Again, you know, turnover is -- is
21 typical in this industry. People are underpaid,
22 overworked. It's hero's work. Not everybody wants to be a
23 hero, but I know Mandy did. And I know the night she
24 called my mother and I -- I came back -- I think I had been
25 out of town for a day and I came back in. And I'm working,

1 you understand, I'm working with my mother day in and day
2 out to keep her anger level down, to get her to focus on
3 the future, give her that will to live, all these things.
4 She's sitting there crying, crying probably more than I'd
5 seen her crying when my dad died. And I am walking into
6 this, what's going on. Mandy has been fired. Her sitter
7 stayed with her late that night to calm her, because she
8 said I can't leave Dot, you know, Dot has been like this
9 all day down. And I said what do you mean Mandy has been
10 fired. Mandy has been fired. Mandy called her blah, blah,
11 blah. And -- and I said, well, what happened. And that --
12 we don't know. Nobody will talk about it, you know. And I
13 understand that. I mean, they're employees. I understand
14 that.

15 But at this point -- and, you know, I don't know
16 if it's a lie. I am sorry, but I -- I'll just put it into
17 the box of wrongs. I mean, a lie is a lie. A lie goes
18 back to what's in somebody's heart. I don't know what's in
19 anybody's heart. I don't. But I know the wrongs that
20 result from lies. Nothing was said to my mother about
21 Mandy. And everybody in that facility -- as Cheryl was
22 asked yesterday, who was Ms. Dot's favorite caregiver.
23 Mandy. Everybody knew that, everybody. She was summarily
24 gone. And I said, well, listen, we can't -- because I am
25 trying to deal with my mother. We can't get into hiring

1 and firing decisions here. I don't know what happened
2 here, but we'll get Mandy back to visit you. No, she can't
3 come. And I said why can't she come. She's been told that
4 she will be arrested if she comes back on the property.
5 And I said, well, that's not right, we'll work that out,
6 because this is your room and unless Mandy -- I mean, I
7 know the -- the law and I know -- I have faced this before.
8 If she's not a threat to other people, she can come to
9 visit my mother in her home. So, you know, a day or two
10 went by and I'm still trying to deal with mother, tried to
11 called Mandy, tried to get some facts. I asked some people
12 at the facility. Nobody would tell me anything. And --
13 and so, you know, that -- that was a problem.

14 Then I get a call directly from Mandy. And I --
15 by this time, I have reported to the state I don't think
16 everything is right here. I don't know. I am hearing
17 things. It's like Cheryl said I don't know how many times
18 yesterday, because anybody who has worked in an elder care
19 environment, there's not a better rumor mill anywhere.

20 Q. That's exactly what it is, though, a rumor mill,
21 right?

22 A. Well, it's, you know, rumors -- it was rumored
23 that Michael Jackson died. He did. So I don't -- again,
24 we started the factual development process. Sure,
25 everybody is going to be able to ask questions. And that's

1 part of the dynamic that I talked about with Mr. Tilley,
2 but, yeah. And that's why I turned it over to the state,
3 because, you see, I am not the investigator. I am not the
4 person charged with that. I have worked with the state a
5 lot of times. I have had -- I have defended administrators
6 who have been falsely accrued. I have fired administrators
7 for doing exactly what was being alleged here.

8 Q. Did you make a referral to the state?

9 A. Yes, twice.

10 Q. Twice. Twice about different things or twice
11 about the termination of Mandy?

12 A. The second one was about the termination of Mandy.
13 And I have given you -- I have given my counsel and I am
14 assuming they have given to you the two E-mails I wrote to
15 Mr. Hicks, I think his name is, who I talked to before my
16 dad ever moved in, so I had something of a relationship
17 with him.

18 Q. I didn't mean to get you off track too much. You
19 were mentioning the firing of Mandy.

20 A. Right.

21 Q. You put that as the first item on your list of
22 wrongs. Well, did you have anything else to say about
23 that? I'm going to come back and ask you about that in a
24 moment --

25 A. No.

1 Q. -- but I would like to finish my list if I could.
2 What other items are on the list?

3 A. Well, again, the allegation of a lie is -- and
4 let's start with the state report. I love -- because, see,
5 I never heard from the state. That's what I didn't
6 understand. I am the complainant on behalf of my dead
7 father. I never heard from the state, but they did. They,
8 the facility. I was -- the first one I heard about it from
9 was Mr. Wasson. I don't understand this. I -- I have seen
10 flawed state processes. And I believe there's a flawed
11 state process here. I'm -- I'm going to do what I can to
12 prove that. I may or may not be right. Again --

13 Q. Do you mean --

14 A. -- it's assumption.

15 Q. Do you mean that the process that was followed in
16 Arkansas you believe is flawed, or do you believe that the
17 process was improperly followed in this case?

18 A. The latter, the latter. So the -- the lie is
19 there. I mean, Mandy -- I guess we'll talk to her. Mandy
20 says that I was instructed to fill out or to sign a
21 different incident report. And, again, if you look at the
22 facts, whether a door fell from the sky or it fell with my
23 dad pulling on it, the 100 pound doors in elder care
24 facilities shouldn't fall whoever pulls on them. So I -- I
25 didn't understand. So for me lying about non-events or

1 irrelevancies really make me angry, particularly when it
2 involves my dad. So what I get from Mandy is, I was told
3 to sign a different incident report. Well, by whom.
4 Mitzi. Well, Mitzi wasn't even there. The only thing she
5 learned is from you. What did you tell her. I told her
6 exactly what Jack said. So, now, I am thinking I don't --
7 I don't understand, which prompted my second report. The
8 first report is just, please, investigate. And it was all
9 about the doors. There are problems here. And I have read
10 that report, as you might imagine, 100 times and it still
11 doesn't make any sense to me. But what really doesn't make
12 sense was the second. And I never -- again, I never got a
13 copy of that report.

14 Q. Have you seen it to this day?

15 A. Yeah.

16 Q. Okay.

17 A. I think Mr. Wasson had it sent to me. Very nice
18 of him, but I couldn't get it from the state. Couldn't get
19 it from the local Ombudsman. Right. The Ombudsman here in
20 Fort Smith by definition is the advocate for the residents.
21 I know, because I deal with them all over the country. She
22 went into the facility, tried to get Mandy in there, and
23 just stopped returning my calls, too. So I am not getting
24 a lot of cooperation from the people that you would turn to
25 to say handle this for me, do your job, let me comfort my

1 mother and deal with my dad's loss and my family issues and
2 get on with things. People weren't taking up that
3 gauntlet.

4 So in -- the state's report that's very succinct
5 states the allegation that there was influence attempted to
6 be made by -- I don't remember if they said employee number
7 one or by the administrator -- they never use names, of
8 course -- against employee number one. And they -- they go
9 through it and answer is yes. She was asked to sign a
10 different incident report. That's what the state found,
11 but yet concluded that the complaint was unsubstantiated,
12 which made no sense to me. I'm a very logical human being.
13 And at the end of the day if, in fact -- the complaint was
14 somebody tried to get her to sign something different.
15 The -- the complaint was not that she was successful.
16 Because, see, I never saw the incident report either,
17 because I couldn't get anybody to show me the incident
18 report on my dad. Nobody would talk to me. So I never saw
19 the incident report. I am just dealing with people who
20 know more than I do, but may not know everything. And so
21 they have the allegation properly posed. The
22 investigation, which you would then expect to find -- it
23 would be like a special interrogatory to a jury, here are
24 the interrogatories, and then, okay, that leads to a guilty
25 verdict. Nope. Innocent. It made no sense to me. I

1 tried to follow up with the Ombudsman with the state.
2 Can't get anywhere. So we'll go the formal process. So I
3 believe that -- and, again, I don't know is what I told the
4 state then and I am telling you now. Seven months later, I
5 still don't know. So I am not telling you what the facts
6 are. I don't know what the facts are. I know what I have
7 seen on the -- on the basis of a lot of experience, more
8 than any other long-term care facility aggregated than
9 anybody else in this room, and I have seen it. Doesn't
10 mean that it happened that way. It means I have a reason
11 to believe it could have happened that way. And so far
12 after seven months, I am no closer to knowing that truth
13 than I was the day my dad took his last breath. And that
14 still makes me angry. I wish it weren't so, but I am
15 dealing with the anger better for the reasons that I have
16 stated and with the help that I have gotten.

17 Q. So if I understand you correctly, you did report
18 it to the state?

19 A. Yes.

20 Q. You allowed them to investigate it?

21 A. Yes.

22 Q. You provided them the allegation that you had
23 heard?

24 A. Yes.

25 Q. And you just -- you disagree with the conclusion

1 that they came to?

2 A. The first conclusion, which was that there --
3 basically there were no problems with the doors. Well, it
4 would be interesting if they were to come back in, because
5 obviously based on the testimony, if Joe has got his
6 timeline right, and we still have got more discovery to do
7 on that, there's still stuff going on in that building.
8 This is not -- this is not water under the bridge. This is
9 still water hanging over a bridge.

10 Q. I was referring specifically -- and I apologize.
11 I asked a bad question. I was referring to the other
12 complaint.

13 A. I disagreed with both of their conclusions.

14 Q. On both complaints?

15 A. Yes, sir. That was as close as I have gotten to a
16 yes or no question, isn't it -- I mean, yes or no answer.
17 I am sure there have been many yes or no questions, but.

18 Q. We're -- we're on the list of wrongs that you
19 attribute to Mitzi. We have the firing of Mandy. We have
20 the allegation of the change in the state report. I guess
21 we would be on -- if there's any others, we would be on
22 number three.

23 A. Well, there's another employee. And, again, I am
24 not good with names, but I -- I may have mentioned it
25 today, but I think her name is Cathy DeSantez (spelled

1 phonetically). Another person my mother really liked,
2 although she didn't really trust her because of her accent.
3 It was like a Brooklyn accent. And -- and my mother thinks
4 none of us down south have accents, so she -- but -- but
5 she liked Cathy. And I noticed afterwards -- mother asked
6 me a couple of times, where's Cathy. I don't know. I
7 mean, again, people come and go. Let's concentrate on who
8 is here. And mother keeps getting up with each of the
9 caregivers. I mean, they are just -- my mother depend
10 upons them -- depends upon them. They are good to her.
11 They do things I could never do. And -- and so they are
12 just -- my mother loves them. So each one that's come in,
13 her family keeps changing, but she accepts it.

14 But -- but Cathy almost literally ran into me in a
15 parking lot of Harps -- I have never seen her before or
16 since -- and see says to me how are you doing. And I said
17 fine. And she said you don't look too good. Great,
18 thanks. You know, I haven't showered today or whatever.
19 But she said is everything okay, how -- how -- she said
20 specifically how is Jack doing. And I said Jack died.
21 And -- and she said how did that happen. And I told her.
22 And she said there's something wrong with those doors over
23 there. And she said, you know, have you talked to Mandy.
24 And I said, yeah, I have talked to Mandy. And she said
25 there's some other people that have seen problems with

1 doors over there. She said here's my phone number. I'd --
2 I'd like to talk to you sometime. So, you know, where did
3 it happen. So my question is, where are you, have you been
4 on vacation. Mitzi fired me the day of or the day after my
5 dad's funeral. We were still out of town. And I came back
6 and there was no Cathy. And now Cathy believes -- again, I
7 am not an HR person. I am not trying to get into their
8 business. She believes she was fired for retaliation. I
9 have no idea why she was fired. I have no idea why Mandy
10 was fired. I'm just telling you it looks suspicious to me,
11 because Cathy says I stood up on several occasions when
12 Mitzi said there's nothing wrong with these doors and this
13 is what we're going to do about the Brigance situation and
14 I registered a complaint and then I'm fired. She called me
15 the same way she called Mandy and fired me from home.
16 Didn't have -- just told me don't come back in. Evidently,
17 she didn't threaten her like she did Mandy.

18 But that's -- that's another situation where
19 somebody has told me -- I didn't make this up. I didn't
20 know who Cathy was. I didn't suspect anything. But she's
21 telling me that there was a discussion of my dad's incident
22 and -- and that facts were being jiggered. And I don't
23 want facts to be jiggered. I just want them to be the
24 facts. And -- and so I would add that to the mill of just
25 the conspiracy, if you will. And conspiracies are just

1 that. Some conspiracies are really conspiracies. Others
2 are not. But, to me, knowing what I know from my long-term
3 care experience, eight long years of representing some
4 people who have done some really dumb things that just
5 don't make sense, a lot dumber than any even any of this,
6 is it -- is it likely, yes. Is it more probable than not,
7 I don't know. Is it true, I don't know.

8 Q. When you talk about your experience, I guess what
9 you're relating is because you have seen it before in other
10 cases with clients of yours, you believe that there's at
11 least a possibility that it could have happened here?

12 A. Yes.

13 Q. But you're basing it upon the conduct and the
14 events occurring at other facilities?

15 A. No. I am basing it on what I have been told by
16 people who were at that facility by the one person --
17 actually by the two people, now that I've heard Cheryl's
18 deposition, the two people that were with my dad. I am
19 basing it on just facts. Mitzi saying to me on the second
20 day after my dad's accident, I hear that your dad fell and
21 pulled the door down on him. I have -- that's whole cloth.
22 That's whole cloth. A, that's a direct lie. I don't know
23 whether Mitzi heard it, but I can tell you the only two
24 people that were there never said it. I don't know who
25 else said it. I know my dad didn't say it. And then Mitzi

1 had the opportunity -- you know, what we do in
2 investigations for my clients, we interview the family.
3 You know what, in the state investigation, I never got
4 interviewed. They showed up to interview my mother, who
5 has dementia, without giving me any notice.

6 Q. The state did?

7 A. The state did. Never talked to me. Never showed
8 me the report. Never told me they were going to interview
9 my mother. In fact, my sitter -- the sitter was there and
10 said I need to call Steve. No. They didn't want Steve
11 there. Didn't want a family member there. Didn't want the
12 complainant there. Never talked to me. Mitzi never went
13 back to talk to my dad.

14 When we do investigations at our facility, whether
15 it's through Andy or any of the other counsel I use around
16 the country, we talk to everybody. And you want to know
17 who I talk to first, the really only eyewitness that was
18 there, Jack Brigance. And they never asked him. So it's
19 back to the whole truth. And maybe the -- the lies of the
20 wrongs are in what's not asked, what's not done. That's
21 another one.

22 Q. Have you addressed those concerns with the state
23 about how they conducted their investigation?

24 A. I tried. I tried. I have not written them
25 anymore.

1 Q. They haven't responded to you?

2 A. No, sir. Nobody will return my calls. The
3 Ombudsman will not return my call even though my mother is
4 in a local facility that she represents.

5 Q. Are there any -- I am still making my list here.
6 Are there any more we need to put under Mitzi's name?

7 A. Not that I can think of right now.

8 Q. Okay. Are there any other persons you believe
9 that have either misled you somehow or lied to you or
10 committed some wrong with regards to the providing of
11 information?

12 A. You're not asking me about my assumptions or
13 anything? You're asking me specifically about wrongs or
14 lies from people that I can identify?

15 Q. Yes.

16 A. Not that I can think of.

17 Q. What assumptions do you have?

18 A. I assume that first we may not have a total
19 inventory of the incidences -- thank you, sir -- involving
20 these doors at this facility, number one. May or may not.
21 But what I do know is that Crawford somebody spent time
22 repairing doors after this fact. What I had was Mr. Wasson
23 still telling me that the problem was limited to your room
24 at the time that people were in the facility and what
25 appeared to me in going in and out of every room working on

1 these and other doors in -- in the rooms while one hand is
2 telling me it's just your dad's room. And look at the
3 discovery you guys answered. That's -- that's the defense.
4 It's limited to this. Yes, Crawford says we have put in
5 the wrong thing, we screwed up -- going back to
6 Mr. Wasson -- but it's the only problem. But what we have
7 learned in the last two days, it wasn't the only problem,
8 not the only problem. That's -- so my assumption is, we
9 still don't have the bottom of all of this at this one
10 facility. What I do know, not an assumption, what I do
11 know is we don't know -- and I mentioned this when
12 Mr. Tilley was cross examining me -- we don't know about
13 all the other facilities. I don't know how many other
14 facilities there are. You guys have -- and you're just
15 doing your job. You don't want to produce other facilities
16 designed by the same architect, built by the same
17 construction company, operated by the same owner, using the
18 same doors. And -- and what that leads to me to assume is
19 somebody -- A, that other things have happened out there,
20 and, B, that people know about that, and, C, that it's the
21 last thing you want me to know about.

22 Q. Any other assumptions? I -- I wrote down that may
23 not have the total inventory, there may be other facilities
24 with this door, hardware or problems -- other problems at
25 other facilities. Any other assumptions?

1 A. My assumption about this litigation -- and it's
2 part of the way I just -- I have tried to get into that
3 zone, so to speak, to get through the next two years or
4 whatever -- is every bit of resolve that I have expressed
5 here today exists on your side and that we are going to --
6 this is going to be a battle and it's going to be rough and
7 that the truth will out.

8 Q. Let me ask you about -- I'm going to ask you about
9 your first two assumptions.

10 A. Okay.

11 Q. But let me ask you about the second one first, the
12 idea that there may be other problems or incidents out
13 there at a different facility. Are you open to having your
14 assumption to be disproven?

15 A. Open? I would love for it to be the case.

16 Q. What about the idea that there is an inventory of
17 other incidents at Brookfield here in Fort Smith that would
18 in some way be similar to your father's, are you open to
19 having that disproved?

20 A. Look, I'm not -- and I know it's a yes or no
21 question, but.

22 Q. Answer it any way you like.

23 A. I'm not a scientist. And I -- I even got lost --
24 Cheryl was beyond me in talking about the pins and all the
25 other stuff. As I said, my dad is not a tinkerer. I am

1 not a tinkerer. And -- and God's creation is better for
2 that. The answer is yes with this caveat, because, again,
3 I sat there yesterday and -- and, again, pins popping
4 out -- and it sounds so innocuous. But I listened to
5 Cheryl where the thing actually came out and was tilting
6 forward.

7 Failures are failures. That's what I call them.
8 I get back to the design. And -- and this is true to me.
9 I have got to tell you, I have never been in a home,
10 million dollar homes of other people that have doors like
11 this. In our home, which is not a million dollar home, we
12 have two sets of solid core doors that don't weigh as much
13 as this. They're triple hinged. They're triple hinged. I
14 have never been in a place -- and, you know, you go into
15 hotels, bifold doors are a dime a dozen that -- that go
16 with the kind of equipment just like in here. I don't know
17 what you call that, but it's metal, you know, plastic
18 coated. What goes with those are hollow core doors,
19 cheaper doors. But you know what, they are doors that if
20 they fall -- and things happen. They have happened in this
21 building. If they happen, they don't kill people. If
22 these doors fall again -- and, Mark, there's no way you or
23 I can sit there or any of these experts say there's not
24 going to be another door to fall. One has already fallen.
25 If it happened once, it can happen again. How can anybody

1 satisfy me there, that they are perfectly safe when they
2 weren't in my dad's room. You'll come back to, I know, and
3 say, but it was a different -- it was a different tracking
4 system. So I am open to somebody walking me through it and
5 proving it, yeah. And I'll tell you, it would make my life
6 so much easier. It would. So I am not only open to it,
7 but I would love it. But I get back to the design. And I
8 have done the, you know, kind of the jaywalking thing,
9 where obviously I -- I have talked to friends and
10 colleagues and people I know and family, just telling them
11 about doors like this. And their reaction is, well, what I
12 think everybody's reactions to it this is crazy. I
13 wouldn't -- I wouldn't put these doors in an olympic
14 training system, in a gymnasium where athletes are,
15 because, you know what, stuff happens.

16 And what I am saying to you here is these
17 failures, popping out of pins or this and that, they are
18 preludes to a failure. You know, the O-ring disaster for
19 the Challenger didn't start -- that wasn't the first time.
20 There were little things, but none of them looked just like
21 that failure, right, but then the failure came. I don't
22 know the science of it, but I am telling you the design to
23 me -- and I'm really trying not to be at all using words
24 to -- to make anything sound worse than it is. For me,
25 these doors are a death trap. Somebody else is going to

1 die --

2 THE VIDEOGRAPHER: Excuse me, Counsel. We have
3 five minutes left.

4 THE WITNESS: -- unless something is done.

5 MR. DOSSETT: Let me try to get two questions in
6 here before the tape ends.

7 THE WITNESS: I'll try to help you.

8 Q. (BY MR. DOSSETT) You have mentioned the weight of
9 the door being 100 pounds.

10 A. I have said 80 to 100 at different times.

11 Q. Is that an estimate --

12 A. Well --

13 Q. -- or have you weighed it?

14 A. Five minutes. I have not weighed it. I'll tell
15 you what I have done.

16 Q. All right.

17 A. Joe mentioned that the doors were in his
18 maintenance shed or room in the facility. Lots of times
19 when he walks, that door is wide open. I walked by it one
20 time, there were a set of doors in there. I was pretty
21 sure they were my dad's doors. I hadn't seen them since
22 the accident or since before accident. I didn't see them
23 when they were out in the hallway. Mr. Wasson had told me
24 100 times I could look at them any time, but it wasn't
25 coming through. I went in there for one purpose, to try to

1 lift them. Now, four back surgeries and I'm not the
2 strongest guy in the world, I could not lift the doors. I
3 can lift 50, 60, 70 pounds. So what I have estimated from
4 the beginning today, I probably said 100 pounds. I think
5 the weight limit by the manufacturer's spec is 100 pounds.
6 To me, they're freaking heavy doors, that when they fall on
7 somebody that's elderly and impaired, they are going to do
8 exactly what they did to my dad. They are going to crush
9 him.

10 Q. You're basing that upon your attempt -- and I
11 assume that you have actually not tried to weigh any, for
12 example, the doors on the other closets?

13 A. I haven't inspected them. I haven't weighed them.
14 Look --

15 Q. I mean, they will be weighed at some point and we
16 will know exactly how much. I just wanted to know.

17 A. No, I have not. I have done no investigation like
18 that. I would be the last person to do that.

19 Q. And the other question I wanted to ask -- and we
20 can get into the details of it, I guess, after we switch
21 tapes, but from listening to your explanation awhile ago,
22 it sounds to me as if you are concerned about how heavy the
23 doors are, is that right?

24 A. Yes.

25 Q. Are you also concerned about -- and I'm talking

1 about what's out there now --

2 A. Yes.

3 Q. -- is what causes you a safety concern?

4 A. Yes.

5 Q. Are you concerned about the hardware used to hold
6 the doors up currently?

7 A. I don't know enough about that.

8 Q. Okay.

9 A. Because, see, I -- I don't know the hardware that
10 was on that. It's gone.

11 Q. We will talk about that here some more after we
12 switch.

13 THE VIDEOGRAPHER: The time is now 3:13 p.m. and
14 we are off the record.

15 (Off the record).

16 THE VIDEOGRAPHER: The time is now 3:35 p.m. and
17 we're back on the record.

18 Q. (BY MR. DOSSETT) Right before our break we were
19 discussing the two dangers that you perceive or that you
20 worry about with regards to the doors in the facility going
21 forward. And we mentioned how heavy the doors were. And
22 we also -- we just started talking about the hardware
23 and -- and how that works. Do you have an understanding
24 that the door which came down in your father's room had
25 different hardware than other places in the facility?

1 A. The simple answer is yes. The longer answer is I
2 know the track was different. I have seen the pictures. I
3 have not seen the picture of the hardware, which means the
4 doors themselves. I'm sure you have produced it. I just
5 have not seen it.

6 Q. Have you compared the track to the other -- to the
7 track that's on the other closet doors in your mother's
8 room?

9 A. Compared which track?

10 Q. The track that used to be up there, the track that
11 was there --

12 A. Haven't seen it.

13 Q. Did you notice the track that was present whenever
14 the door came down in your father's incident? Did you ever
15 go and examine that or inspect it afterwards?

16 A. Well, I saw it. I mean, when you say examine it,
17 I saw it, went into my mother's room and noticed
18 immediately it was different.

19 Q. Did you take any photographs of it yourself?

20 A. No.

21 Q. Do you know -- at the time that you went and
22 looked at it, did you also go look at the other rail on the
23 other closet doors in her room?

24 A. The track?

25 Q. Yes, sir.

1 A. That's what I did. I mean, I compared the two.

2 Q. And you could -- you could tell that they were
3 different?

4 A. Sure.

5 Q. Have you had the opportunity -- I don't know if
6 this opportunity presented itself or not. But have you had
7 an opportunity to go in any of the other rooms and look --

8 A. No.

9 Q. -- at the tracks there?

10 A. No.

11 Q. Okay. I wanted to go back. We made a list of the
12 items that you thought you were misled about or that there
13 were some things done wrong that we attribute to Mitzi. I
14 wrote down three of them. And I'd just like to take them
15 one at a time and ask you some questions about those.

16 A. Sure.

17 Q. The first was Mandy's termination.

18 A. Yes.

19 Q. How did you first learn that Mandy had been
20 terminated?

21 A. I thought I told you. But I came home from, I
22 believe, a one day trip and my mother was crying and the
23 sitter was there after her normal hours and said that they
24 had been called by Mandy and Mandy said she could not come
25 back.

1 Q. I think you did tell me that. Did they relate
2 anything else to you that Mandy said?

3 A. That she couldn't come back because she would be
4 arrested. Because mother said, well, can you come see me
5 tomorrow, and she said, Ms. Dot, they'll arrest me if I
6 come back.

7 Q. Have you ever gone and talked to Mitzi about or
8 attempted to talk to Mitzi about Mandy's termination?

9 A. I have raised it in the meeting, in quotes, that
10 Bob and Mitzi and I had. I -- I didn't feel it was up to
11 me to go back to -- to Mitzi. At that point, there had
12 been enough silence from that end. I didn't feel like I
13 was going to take on yet another -- I -- I really, quite
14 honestly, depended upon the Ombudsman. I didn't need
15 another fight.

16 Q. Okay.

17 A. I just didn't.

18 Q. I understand. In the meeting that you had with
19 Bob and Mitzi, this impromptu meeting, is that the one you
20 are referring to?

21 A. Yes. The only one we've had, the three of us.

22 Q. Did you get any type of explanation?

23 A. No.

24 Q. I assume that you have had one or more
25 conversations with Mandy?

1 A. Yes.

2 Q. How many times have you talked to her on the
3 telephone?

4 A. Probably two or three.

5 Q. How many face-to-face meetings have you had with
6 her?

7 A. I am thinking. Peggy mentioned the clothes. I
8 dropped off my dad's clothes that mother wanted Mandy and
9 her mother to have for their church, so I had face to face
10 there, but there was no conversation, you know, about my
11 dad's case.

12 Q. Yes, sir.

13 A. How are you doing, here is my dad's clothes, so on
14 and so forth. Here at Rex's office, Peggy and I were
15 basically observers at that meeting. I think she said
16 yesterday she didn't talk. And I don't remember talking.
17 And I think that's the only face-to-face meeting. And I
18 think two or three calls, phone calls.

19 Q. Okay. Has there been any other form of
20 communication between the two of you, letters, E-mails,
21 anything?

22 A. No, no. She did -- it must have been -- I think
23 it was when -- I was wondering if there was a third time I
24 actually met her, but she gave me a plaque for my mother, a
25 friendship, a love plaque. But I think that was when I

1 dropped off the clothes or so. We just met at my office --
2 not in the office, just in the parking lot, and she gave me
3 that. So I think there was only two times and maybe three
4 calls.

5 Q. Tell me, if you would, what Mandy told you about
6 the circumstances of her termination.

7 A. She said she was called at home by Mitzi and told
8 she was fired and that if she came back on the property,
9 they would call 911 and have her arrested.

10 Q. Did Mandy tell you anything as to why she was
11 fired?

12 A. No.

13 Q. Did you ask her?

14 A. Yes.

15 Q. And what was her response?

16 A. She didn't know.

17 Q. She told you she didn't know why she was fired?

18 A. Right.

19 Q. There were some questions yesterday asked of
20 Cheryl about whether Mandy had been written up or been
21 coached or anything. Did you ask -- before being
22 terminated. Did you ask Mandy if she had gone through any
23 process where she had received any coaching or any
24 write-ups before being terminated?

25 A. Write-ups meaning like things you had done wrong?

1 Q. Yes, sir. Where it would be put in writing and
2 put into her personnel file?

3 A. I didn't ask her that, but it came up when she was
4 at Rex's office. And what I remember her saying was
5 that -- that I can't -- that she wouldn't work a double
6 shift or something and she had been written up on that.
7 And I think that was only answer that she gave about that.

8 Q. Okay. Was -- was there ever any discussion
9 between -- when you were present -- between anyone and
10 Mandy as to whether or not her termination was some type of
11 retaliation?

12 A. Certainly Mandy never used that word. And I don't
13 think that word has been used. Was it -- I'm not sure
14 Mandy -- she's -- I mean, again, I only know her as I know
15 her, as my mother's caregiver. I would come in and see her
16 oiling my mother's legs and all the things these heroes do.
17 And so I am not saying she's an angel. I am just saying
18 she's a hero for me for what she did for my mother. But I
19 don't think Mandy drew conclusions.

20 I think Cheryl said yesterday in answer to the
21 question was Mandy angry, and I think her answer back was
22 she was disappointed. I think that's the word she used.
23 And I think that's the -- the sense I got from Mandy,
24 that -- that there was just no explanation. And I
25 really -- I could be over, you know, attributing her love

1 for my mother. But, I mean, I have never -- I've seen a
2 lot of caregivers obviously, been in a lot of facilities,
3 and Mandy was just this and that much more in -- in the way
4 she bestowed love on the residents. And it wasn't just my
5 mother. It was the people I -- I saw, you know, and I
6 heard her off shift or back when the facility was small and
7 didn't have that many people in it, talking, just overheard
8 her talking about what, you know, what -- what drove her,
9 what motivated her. I say all that to say, I'm not sure I
10 have seen a malevolent bone in Mandy's body, so she never
11 used the word retaliation. She never said to me, the best
12 I can remember, that Mitzi fired me because I wouldn't lie
13 to the state. Honestly, I put two and two together. She
14 was fired almost immediately after telling the state, after
15 telling Mitzi -- again, according to Mandy -- telling Mitzi
16 that she would not sign a different incident report and she
17 was fired. My conclusion is, because I have seen it, as
18 you have seen in our practices, an awful lot of
19 retaliation. I am not sure I have ever used that word in
20 the context of this discussion. Maybe I have. I don't
21 know. But it's -- to me, it's like lots of other things
22 that are going on here. There's smoke. Is there fire, I
23 don't know.

24 Q. So if I am understanding you correctly, during the
25 conversations that you had with Mandy or when you were

1 present when she was describing her events, she never
2 stated herself that she felt like she was terminated
3 because of anything that happened with regards to your
4 father?

5 A. I do not remember it. I would -- two caveats I
6 would say. Peggy was there. Sometimes her memory is a lot
7 better than mine, particularly these days. And Rex and
8 Mandy were meeting for quite some time before -- I'm never
9 late, except that day I was late. And we were 45 minutes
10 late. I think Mandy got here early, so there was
11 discussion before that. I do not remember her saying that
12 before me.

13 Q. And that's all I can ask you, of course, is what
14 you remember. You don't remember her saying anything like
15 that?

16 A. No.

17 Q. And you have -- you have developed this curiosity
18 about that based upon circumstances you have put together?

19 A. I am not sure I would use the word curiosity. I
20 would go suspicion.

21 Q. Okay.

22 A. It's beyond curious. But suspicion, yes.

23 Q. Okay. Is this one of those items where you are
24 open to being persuaded that perhaps there was grounds to
25 terminate Mandy that had nothing to do with your father?

1 A. I am open to anything. I will suggest to you
2 and -- and the answer is yes. I mean, if, in fact,
3 unbeknownst to Mandy seemingly, or anybody who knows Mandy,
4 because you heard the testimony of Cheryl yesterday, that
5 somehow she was fired because she was a danger, a present
6 threat and danger to the residents of the facility. You
7 know, it would have been -- I still would say it was
8 handled very poorly in the context of everything. And I
9 would tell that to any client I had. Not Mitzi, not to
10 take it against Mitzi. Under -- if I had a resident in the
11 facility whose husband had just been killed in that
12 facility and a favorite caregiver was being fired for
13 reasons I couldn't -- I'd go talk to them. I wouldn't say,
14 you know, she's a heroin abuser or whatever else -- I am
15 making this stuff up, of course --

16 Q. Sure.

17 A. -- but I've had to do this, but we are going to
18 get you some -- you understand what I'm talking about.
19 Communication is better than no communication, particularly
20 in these circumstances. So I'm not open to being told that
21 this couldn't have been handled better. I am open, because
22 I do not know the facts of why she was terminated or why --
23 I think Cheryl said it. And I got to tell you, in all the
24 firings that I have been involved in for my clients, I have
25 probably -- I can certainly count on two or three fingers

1 the number of times people have been told under the threat
2 of criminal trespass that you don't come back to the
3 property. It's a high hurdle. People jump high hurdles
4 all the time.

5 Q. Have you ever, in your experience, had a situation
6 where employees have, let's say, for example, made a scene
7 when they were in trouble in front of the residents?

8 A. Can you flush that out a little more for me, Mark.

9 Q. Where they would be raising their voice, yelling
10 and screaming at their supervisors, those type of things in
11 front of residents?

12 A. Sure.

13 Q. And there's really no room for that to go on in a
14 the facility, would you agree?

15 A. No, I couldn't agree. I mean, I have counseled --
16 I -- I agree that that's not good. An analogy, a poor one,
17 particularly by pay standards would be a football player
18 arguing with a coach on the sidelines, I find that
19 unacceptable, or in a courtroom when I was attending a
20 trial and I had lead counsel doing a trial, that there was
21 a dispute there. But, to me, it's a context and it's what,
22 it's when, it's where, it's why.

23 Q. Certainly.

24 A. And so I couldn't say yes simply to that question.

25 Q. Okay. That's a fair answer. Is it fair to -- is

1 it -- is it fair for me to say that your suspicion
2 regarding why she is not allowed back onto the -- back onto
3 the facility grounds has to do partially with the fact that
4 you don't know what the reason for that is? You don't
5 know -- you don't know if there's a good reason or not? Is
6 that fair to say?

7 A. I am sorry. I think I lost --

8 Q. Is it -- is it fair to say that you don't know if
9 there is a good reason or if there is not a good reason for
10 instructing Mandy not to come back?

11 A. I know you're want a yes or no answer, but try
12 to --

13 Q. Answer it any way -- however you feel you need to.

14 A. Quickly I'll say for the termination, absolutely.
15 For the not coming on the property, that's a much higher
16 bar. And going back to your example -- and it may have
17 been just a hypothetical, but if she were fired for arguing
18 with a supervisor, to me, that doesn't get anywhere close.

19 Q. Yeah, I'm not representing that.

20 A. That's fine. That's fine. But, yes, to the first
21 part. Yes, with the qualification that it's a much higher
22 bar to go to that level when you tell somebody you can't --
23 even with supervision and being accompanied by somebody,
24 you cannot go into a room.

25 Q. Okay. Let's talk about the second item on the

1 list that we made, which was -- had to do with the
2 allegation that the state report was changed or that Mitzi
3 attempted to exert some type of influence over Mandy, what
4 she wrote down.

5 A. Right.

6 Q. Tell me what Mandy told you about that. And I am
7 talking whether she told you in one of the telephone
8 conversations or in a face-to-face meeting.

9 A. Basically she said that -- and I don't remember
10 the time --

11 Q. Okay.

12 A. -- when it occurred. My dad was injured on the
13 7th. We buried him on the 4th of February, so sometime in
14 there. And I don't remember exactly. I am pretty sure
15 Mandy -- well, I don't know when Mandy was fired, so it was
16 sometime in that time frame. And what I remember Mandy
17 saying was that she was presented -- and this could be
18 wrong.

19 Q. Okay.

20 A. But she was presented a form to sign that had it
21 different than what she had it. Indicating to me there
22 were two incident reports at some point. One prepared by
23 Mitzi; one prepared by Mandy.

24 Q. Let me make sure I understand that. From what you
25 understood from -- from Mandy was she was actually

1 presented a completed incident report with all the
2 information filled in and was asked to sign it?

3 A. That's my impression. And, again, it could be
4 wrong. It's been six and a half months since I talked to
5 Mandy about this.

6 Q. Did Mandy indicate to you what was on that revised
7 report?

8 A. Probably been five months since I talked to Mandy
9 about this. Time flies. Say it again. I am sorry.

10 Q. No, that's fine. Did Mandy ever tell you what was
11 on this other report that -- that somebody else prepared
12 and presented to her?

13 A. That Jack pulled the door down, that fell -- Jack
14 fell and pulled the door down himself. The same words that
15 Mitzi used to me the morning or the second morning after my
16 dad's accident.

17 Q. Okay. Did Mandy tell you whether she signed it or
18 not?

19 A. She said she refused to.

20 Q. Did --

21 A. And that's where I'm a little vague, that Mandy --
22 and, again, that's an assumption -- that Mandy said I would
23 not sign it. I guess -- I don't remember whether she said
24 it was a completed form in answer to your earlier question,
25 or whether I would not sign it a different way. So I was

1 told by Mandy that she would not sign a different version
2 that Mitzi wanted her to sign. Whether there was a
3 completed form or not, I don't know.

4 Q. Okay. What you -- what you do remember Mandy
5 saying to you is that she refused to sign a second report
6 period?

7 A. A different report, yes.

8 Q. She had already prepared hers and she signed it
9 and when she was asked to sign a different report, she
10 refused to do it?

11 A. That's the best of my memory.

12 Q. Okay. Now, I believe you've made -- you've made
13 reference to the fact that you've seen the conclusion from
14 the state's investigation regarding your complaint --

15 A. Yes.

16 Q. -- on the preparing of the form?

17 A. On the -- I am sorry. On the what?

18 Q. On preparing the form.

19 A. Yes.

20 Q. Do you recall -- and I am just asking you what you
21 recall. We can get the document if we need to. Do you
22 recall whether Mandy told them she completed a second form
23 or not?

24 A. That Mandy completed a second form?

25 Q. Uh-huh.

1 A. I don't remember that.

2 Q. You don't remember. Okay.

3 A. You're talking about from the report?

4 Q. Yes, sir, from the state's report.

5 A. I don't remember that.

6 Q. I'm going to show you what we marked previously as
7 Exhibit 1 to your wife's deposition. This is the three
8 pages that Mandy -- Mandy's three pages of handwritten
9 statements.

10 A. Do you want me to read it all the way through,
11 because I can tell you I have not read this.

12 Q. No, sir, I don't need you to. I was going to ask
13 you some questions about it. Do you remember her
14 presenting that at this meeting that you had here at this
15 office with her?

16 A. It was already done when I got there.

17 Q. Okay. So you don't know for -- or maybe you do.
18 Let me ask you. There are three pages. If you'll look at
19 the first two, I believe there's a signature at the end of
20 the signature. Is there or is there not? I can't read --

21 A. I guess that's a signature. It looks like it.

22 Q. And then there's a third page that seems to have
23 what I would call an addendum. It's dated the same day.

24 A. Right.

25 Q. And it contains another signature at the bottom.

1 A. Right.

2 Q. Do you know the circumstances as to how there came
3 to be two signatures?

4 A. No idea.

5 Q. You have no idea?

6 A. No.

7 Q. That was all done before you got there?

8 A. It wasn't done in my presence and I wasn't told
9 when or where, before or after.

10 Q. And you have never looked at Mandy's statement?

11 A. No. Rex had it. I mean, he -- he said she's done
12 a statement. He may have handed it to me that day. I
13 just -- I was there to listen.

14 Q. Okay. Is there any particular reason why you
15 haven't read her statement?

16 A. The same reason I haven't looked at all the
17 discovery and gotten into the weeds. I have been told -- I
18 mean, I have described where I am and where I have been and
19 I have been told to stay away from this case. I -- I don't
20 want to read -- I don't want to read anything unless it's
21 an absolute necessary thing.

22 Q. Okay.

23 A. And this is whatever it is, it is.

24 Q. Right.

25 A. Rex sends me stuff. I don't read it.

1 Q. Okay.

2 MR. CHRONISTER: As most of my clients apparently
3 don't.

4 THE WITNESS: I mean, I am a client. I am not
5 wearing a lawyer's hat. I mean, today, something like
6 that, I guess, but, you know, a little bit of lawyer hat
7 on, but I can't help that.

8 Q. (BY MR. DOSSETT) Do you -- do you believe -- and I
9 understand that if -- that you would take issue with anyone
10 trying to influence Mandy on what to put in her report. I
11 understand. I am not arguing with you about that. But
12 would you agree with me that if one assumes that that
13 happened and Mandy whatever she told you was the truth,
14 would you agree that that didn't cause any harm to your
15 father?

16 A. Do I agree that her attempting to do that --

17 Q. If one assumes that's true, that it did not injure
18 your father in a legal sense?

19 A. Now, you caveat it in a legal sense and --

20 Q. I will ask you both ways. Let's do legal sense
21 first.

22 A. Well, I am not an Arkansas lawyer. I can tell
23 you -- I don't want to -- and I know you're asking a
24 legitimate question and I want to give you a legitimate
25 answer. My answer back would be, my father lived for 93

1 years and the one thing of many he was about was absolute
2 honesty and truthfulness, whatever -- whatever becomes of
3 that. If he knew of that before he died, it would have
4 damaged him. He did not know about it. Neither did I. So
5 in that sense, no damage. But my dad -- dad's legacy lives
6 on. Part of it is tied up in this unfortunately. His
7 legacy lives on. So it's part of a process that, in my
8 opinion, has been flawed at every level that I just can't
9 understand. It's what I did at Beverly to straighten out
10 an industry. Not that Beverly was doing all things wrong.
11 We could do things better. Everybody can do things better.
12 And -- and so -- but did it kill my dad, no, it did not
13 kill my dad. And -- and from a standpoint, like I say, to
14 me, it's an irrelevancy. It doesn't matter whether he fell
15 and pulled it down, this door -- which to his last breath
16 he adamantly said differently. And that's why I say I
17 believe my dad, because he never told me anything but the
18 truth -- or it fell on him. Doors shouldn't fall anymore
19 than airplanes shouldn't fall out of the sky.

20 Q. Let's talk about Cathy. And I am going to
21 mispronounce her name. I know it.

22 A. DeSantez.

23 Q. DeSantez?

24 A. I think.

25 Q. Let's talk -- let's use that since we can both

1 pronounce that. Tell me -- you mentioned that she gave you
2 her phone number or wanted to give you her phone number so
3 that you could contact her later?

4 A. You say that in such a bad way.

5 Q. No, I don't mean it that way. But she -- as I
6 understand it, when you saw her in the parking lot --

7 A. Yes.

8 Q. -- she gave you her phone number and said I would
9 like to talk to you about this sometime?

10 A. Yes.

11 Q. And did you have that conversation with her?

12 A. No.

13 Q. You never called her back?

14 A. Never called her.

15 Q. So whatever you learned from Cathy DeSantez was
16 learned in that parking lot conversation?

17 A. Yes, after she almost hit me.

18 Q. And have you -- you have already described to us,
19 I believe, what was said in that conversation, or is there
20 more?

21 A. All I remember. It was very brief.

22 Q. Okay. I believe one of the things that -- that
23 you reported her telling you was that she had stood up on
24 several -- in several situations and voiced that there was
25 a problem with the doors in the facility?

1 A. If I said several, I misspoke.

2 Q. Okay. That's what I wrote down.

3 A. I don't remember a number -- a number associated
4 with it. Just she had -- she had taken issue with -- with
5 the official version. I use that word, but it's what I
6 gathered she said. It was sort of an official version
7 going around this is the way it will be, and she said, no,
8 that's not right.

9 Q. And did she give any information as to how this
10 official version was presented, whether it was at an
11 employee meeting or one on one or anything like that?

12 A. No, the meeting was so fast. I mean, essentially
13 what she said was it -- it -- it was from Mitzi. But, no,
14 she didn't -- I don't remember her saying anything about
15 the context in which it occurred.

16 Q. And is it fair to say that you -- you're just
17 unaware of any of the circumstances of her termination?
18 Her being Cathy DeSantez.

19 A. Yes.

20 Q. Tell me some more about the conversation that you
21 had with Mitzi at the -- I believe you said it was at the
22 nurse's station -- I mean, at the front desk or something
23 where she said to you I heard your father --

24 A. Yes.

25 Q. -- pulled the door down on himself or something to

1 that effect.

2 A. Right.

3 Q. What I would like to know -- and I know you talked
4 with Jim about it, Mr. Tilley, some, but I kind of want to
5 start over at ground zero about that conversation. Okay.

6 A. That's fine. That's fine.

7 Q. Do you recall the day that it happened in
8 reference to your dad's incident?

9 A. The accident was on the 7th. It was within a day
10 or two when I was making, I believe, my first run back to
11 get items for him. I mean, it was -- mother wanted me to
12 take certain things, so I went -- I went back and got them.
13 I don't think it was beyond the second day.

14 Q. And who was present during this conversation? Who
15 would have overheard it?

16 A. All I remember is Mitzi and me. There could have
17 been over people there.

18 Q. Those are the only two you recall?

19 A. Yes.

20 Q. And tell me the best you can exactly what Mitzi
21 said to you.

22 A. Do you want to give me the context or just --

23 Q. Sure, go ahead.

24 A. We were just talking. And she said how is Jack.

25 And I said, well, I know you were there, he's, you know,

1 he's hurting, but, you know, we'll play it one day at a
2 time. Peggy would have said he's great. I'm a pessimist,
3 I guess. I mean, I just saw that he was not doing too
4 good, but we all hoped for the best, so it was a cordial
5 exchange. I did say I want the doors isolated. I said,
6 look, I'm -- I'm not saying you guys have done anything
7 bad, but there's something wrong with these doors.
8 Something is just not right. And dad had already primed me
9 with that over and over again. The first day and half it
10 was those doors are going to kill somebody, they are going
11 to kill somebody, they are going to kill somebody. So I --
12 I said that the doors are a problem. I don't want anything
13 moved in that room until we can take a look at it. And I
14 want your -- you to report it to the insurance people,
15 because I want some sort of report done.

16 I mean, Mitzi is an administrator. She doesn't
17 have time to do investigations. I know in a lot of my
18 clients, the administrators try to do investigations.
19 And -- and so we don't want any of that. We want real
20 people coming in. I don't remember if I mentioned, you
21 know, get the construction company, whoever we've got to
22 get in here, find out what's going on. She said -- and it
23 was some -- my best memory, but again --

24 Q. That's all I am asking for.

25 A. -- it was a long time ago.

1 Q. That's all I am asking for.

2 A. It was -- it was to the effect that, well, almost
3 she didn't believe there was a problem with the doors.
4 And, again, I am not saying that in a bad sense. Just
5 that, well, I hear that he -- he was falling and pulled the
6 door down on himself. And my immediate reaction was
7 twofold. First of all, she's not getting what I'm saying.
8 And I guess my first reaction was that they are calling my
9 dad a liar already. And that -- that -- that was just
10 making me mad. But I didn't get angry with her. I -- I
11 said that's not the way it happened according to my dad.
12 And by that time, according to my mom. So I said -- and I
13 hadn't talked to Mandy or anybody else. It was just my
14 dad. And, again, if my dad told me the sun came up in the
15 west today, I'd believe him. And so, you know, I didn't --
16 it was quick. It was in and out. It was -- it was
17 designed to say I believe there's a problem. We need to
18 find it. Let's get a report. Let's get the right people
19 in. Let's do the right thing. Same thing I would tell any
20 client, even if it weren't my dad. So there wasn't, you
21 know, a backhand to her or you're lying. And it wasn't,
22 well, who told you because you weren't here. It wasn't an
23 argument or anything. It was just a quickly that's not the
24 way it happened, but I said talk to dad.

25 Q. As you were telling Mitzi that you would like

1 items to be preserved and the right people to be
2 contacted --

3 A. Right.

4 Q. -- you were thinking like a lawyer at that point,
5 right?

6 A. I was thinking like what?

7 Q. Like a lawyer.

8 A. You tell me. I am thinking about --

9 Q. You say that's the advice you would give your
10 clients.

11 A. Yeah. But I would give it to people because it's
12 the right thing to do. I would give it to an administrator
13 who is not a lawyer. This is the way you think when you
14 operate a business. When something goes wrong, you
15 preserve what goes wrong -- not a legal thing. You got to
16 find out the answer. Somebody was seriously injured. And
17 the first thing I got back was we heard he fell, which
18 sounds like, to me, a lot of what I get from a lot of our
19 administrators around the county, which is we didn't do
20 anything wrong, because that's just the way the operation
21 works. And I wanted to make sure -- he didn't fall, may or
22 may not be anything wrong with the door, but, no, my dad's
23 not a lawyer or wasn't a lawyer.

24 Q. No, what -- I asked a bad question obviously.
25 What I meant was, in your mind, you're processing the

1 situation like a lawyer at that point and what you're
2 asking Mitzi to do are things that your lawyer mind is
3 telling you needs to be done?

4 A. I guess the answer is yes. I mean, my dad is
5 saying -- not in these words, because he didn't use words
6 like this, but get to the bottom of it, find out what
7 happened, somebody else is going to get hurt. Yeah, 32
8 years of practice in law, it's easy for me. I frame it.
9 This is what we need to do, don't move anything, don't
10 destroy anything, get the right people in to investigate
11 it. But I got to tell you, I know a lot of people -- Peggy
12 is not a lawyer. That's what she does in the hospital
13 environment.

14 Q. With regards to the idea that -- you used the
15 words that -- you used the phrase that you believe Mitzi
16 was lying at that point, whether she was calling your
17 father a liar and how she described --

18 A. I didn't say Mitzi was lying.

19 Q. Okay. You did use the phrase -- and I know that
20 you -- it hit you as if she was calling your father a liar?

21 A. Implicitly.

22 Q. Okay. Do you believe that she -- she had --

23 A. Because I had --

24 Q. -- that she was -- that she was saying what your
25 father has told you is untrue? Is that how you were taking

1 it?

2 A. Yes.

3 Q. Okay.

4 A. That that's why I immediately came back and said
5 have you talked to my dad, have you asked my dad. No.

6 Q. That was her response to that question?

7 A. No. And I asked dad when I got in 20 minutes
8 later, Mitzi was in to see you. Yes. And I think she came
9 in one more day. Did Mitzi talk to you about this. No.
10 Which is consistent with Mitzi not talking with me or my
11 mother by the way.

12 Q. Was it your impression -- was it your
13 impression -- I am just asking you what your impression
14 was.

15 A. Sure.

16 Q. What is your impression that Mitzi was trying --
17 was making something up, was adding to the story herself?

18 A. You know, look, I've been around on the railroad
19 side -- I mean, administrator is in operations. They run
20 the building. They are not clinical. Even though Mitzi
21 has an RN background, she's not clinical. She's not
22 hands-on care. She runs the building. She's operations.
23 I find it in health care, I find it in the railroad
24 business, operations people are can-do people and they
25 don't like -- nobody likes to take blame. If you've got an

1 acceptable answer to which -- two ways of looking at
2 things, then you always start from the standpoint of I
3 didn't do anything wrong. It's almost human nature. So I
4 got it from that perspective, that I do not believe -- I
5 don't know who would have told her. And this is more on
6 reflection than me thinking in that one moment of all of
7 this, it didn't -- I mean, my brain is not that quick. My
8 sense was that -- that she was trying to -- to deflect
9 blame. And I wasn't talking about blame. I was talking
10 about what happened, so it doesn't happen to somebody else.

11 And, implicitly, by the way, my mother is still in
12 that room. And there are a set of -- two sets of closet
13 doors, which immediately I pried open and ultimately put
14 signs on them, but my mother never did the closet doors
15 anyway. I want to make sure her room is safe, but we need
16 to find out what everybody's room is doing. And I had this
17 same conversation and told these same things to -- to
18 Mr. Wasson when he called me three days later or so.

19 Q. You -- you just made the statement that you put
20 signs on the doors.

21 A. Yes.

22 Q. Tell me about that, please.

23 A. I came in one day several months ago and there --
24 two different types -- first of all, there are no doors --
25 there are two closets in the apartment. One has no doors

1 and the other one had doors, which, again, gets back to the
2 design issue. There is a sliding single door into the
3 bathroom. And immediately upon things, my mother was
4 instructed and encouraged and the sitters, do not close
5 that bathroom door. My mother is a private person, so,
6 okay, a sitter does it. But I did say I don't know about
7 these doors. And they did work on those doors subsequent
8 to this event as they did in other rooms. But I said my
9 mother gets nowhere near these doors. She can get near
10 triple hinged doors. So we finally put -- because I came
11 in one day and that door was shut, you know, with my mother
12 on the commode. I asked mother how she got in there. She
13 said so and so brought her in -- and I forgot which
14 caregiver -- and put her on the toilet. And I -- after
15 that, I instructed Shirley to make up signs and put them on
16 there. And anybody that came near any of those doors with
17 my mother in tow, that they were not to touch the doors.

18 Q. What did the signs say?

19 A. Don't touch the doors or don't close the doors or
20 don't move the doors. I forget exactly what it says.

21 Q. What doors were those signs placed on?

22 A. All of them. All of them meaning the hanging
23 doors, the solid core hanging doors from tracks.

24 Q. That includes the sliding door at the bathroom?

25 A. Yes.

1 Q. And that would include a set of bifold doors on
2 the closet in the bedroom?

3 A. Two sets of bifold doors.

4 Q. One in each bedroom?

5 A. No. The bedroom is a six foot as opposed to the
6 three foot in -- in the foyer. So there are two sets of
7 sliding doors. They are on both doors in her room.

8 Q. So when we talk about a set, you're talking about
9 the two doors in the set, the doors with the signs on them?

10 A. Talking about four doors.

11 Q. Four doors?

12 A. Yes. They both pull back and they stay open. The
13 signs are there.

14 Q. Is it four panels, two doors? Is that what you're
15 telling me? Or were there actually four --

16 A. In the bedroom.

17 Q. Okay.

18 A. Two doors, one panel in the foyer.

19 Q. Okay.

20 A. But, again, those doors are not in the apartment.

21 Q. They are not up. Okay. With regards to the
22 description that your father used of what happened, did you
23 ever hear him use the phrase that he lost his balance and
24 the door -- where he said I lost my balance and the door
25 fell on me?

1 A. On this?

2 Q. Yes, sir.

3 A. Absolutely not. I tried to use those words with
4 him. My dad never said to anybody any time that he lost
5 his balance. I promise you that.

6 Q. Have you seen the emergency room record?

7 A. No.

8 Q. I'm going to represent to you that that phrase is
9 in the -- the description written by medical care provider.
10 And I am just wondering if you have any idea where that
11 might have come from?

12 A. I have worked with hospital clients, too. And
13 they weren't treating him for losing his balance. They
14 were treating him for fractures that occurred. And whether
15 he lost his balance or the door -- nobody was taking it
16 down that night and my dad never said that to anybody any
17 time. I still say it's an irrelevancy, Mark. I mean, I
18 don't know why we tiptoe around this one --

19 Q. I am not arguing.

20 A. -- but it's an irrelevancy to me.

21 Q. I am not arguing with you.

22 A. But I am telling you -- and I was the first one to
23 saw -- see him before anybody else there and I saw him more
24 than anybody else, and we had this conversation dozens of
25 times. And I am only getting hepped up, because it's the

1 same way my dad treated me the second time I asked him. My
2 dad -- and I said, dad, you did fall the other day. Yes.
3 My dad didn't deny the two times that I know he fell. My
4 dad never denied anything he did. There was no reason for
5 him to. My dad is not a lawyer. He wasn't thinking about
6 lawsuits.

7 Q. And I am not even saying that he made that
8 statement.

9 A. No. And I have not reviewed a single hospital
10 record and won't unless somebody wants me to do it for this
11 deposition.

12 Q. And I am not going to -- I am not going to make
13 you go through that. I am just trying to get a feel if --
14 if you will assume for a moment that that statement is in
15 there, where it may have come from?

16 A. I have reviewed, and I know you have, many things
17 in hospital records where people paraphrase what they
18 heard. They heard what's important, a door fell on him.

19 Q. Okay.

20 A. I can tell you my dad, as far as I know, never
21 used the phrase lost my balance, just not in his lexicon.

22 Q. Let's switch gears for a minute. Let's talk
23 about -- let's talk about your tour of the facility, your
24 tour or tours that you did prior to deciding to move your
25 parents in there. How many times did you go down and

1 actually look at the facility?

2 A. First of all, before preparing a proposal to make
3 to my parents -- I didn't make the decision to move them.
4 They made that decision.

5 Q. Thank you.

6 A. Two or three. Two or three would be my guess.

7 Q. How many times -- before making the proposal to
8 your parents, how many times did you actually go into the
9 particular room that was chosen for them?

10 A. Probably each time.

11 Q. And I didn't follow this exactly in your prior
12 testimony. Was -- did they ever view the room before the
13 decision was made?

14 A. No.

15 Q. No. Just relied on your description of it and
16 your judgment?

17 A. Yes, yes.

18 Q. And in either of those times that you were in the
19 room --

20 A. It could have been three.

21 Q. Okay. Two or three, which -- however many there
22 were, did you ever notice a problem with any of the closet
23 doors?

24 A. First of all, the first two there were no closet
25 doors.

1 Q. So that's at a point in time where the closet
2 doors aren't even up yet?

3 A. Right. It was still under construction the best
4 of my memory. I know they were in the last time.

5 Q. Do you have any recollection as to whether the
6 track hardware was in or not during the first two visits?

7 A. No.

8 Q. Let's talk about the last visit then.

9 A. I don't know if that was audible. I said no.

10 Q. Let's -- I don't -- let's talk about the last
11 visit then.

12 A. Sure.

13 Q. Were the doors up the last time you went?

14 A. Yes. And the room was basically finished.

15 Q. Did you notice any problem with -- with any of the
16 closet doors at that time?

17 A. Yes.

18 Q. And I believe you described what your problem was,
19 but I want you to do it for me again so I can understand.

20 A. I just went in each of the bedrooms, opened them.
21 Yeah, that's nice. Went to the other closet, opened it.
22 It stuck, didn't come down. Nothing as far as I know
23 popped off, and it opened. But I knew, you know, mother
24 and dad would have a problem.

25 Q. And it was while you were attempting to open the

1 doors as opposed to closing it?

2 A. I can't be sure. It stuck coming or going.

3 That's all I remember.

4 Q. At that time, was there anything about the way the
5 door operated that caused you to fear it was going to come
6 down?

7 A. Absolutely not.

8 Q. And you have already talked with Mr. Tilley about
9 the other times that you were made aware from your father
10 that there was --

11 A. As best I can remember.

12 Q. We are not going to rehash all those, but --

13 A. That's fine.

14 Q. -- at any time that you were dealing with that
15 door, did it -- did you notice anything about it that --
16 where you were concerned that the door might come down?

17 A. No.

18 Q. Did you ever notice a difference in the hardware
19 prior to the incident?

20 A. No. I wish I had.

21 Q. You had used the phrase earlier that your father
22 had told you that those doors are going to kill someone?

23 A. In the hospital after everything.

24 Q. And I just want to make sure that was clear for
25 the record. That was a statement made after the fact?

1 A. Oh, yes. Oh, yes.

2 Q. Okay. He never voiced to you a concern about the
3 doors being dangerous prior to the incident, right?

4 A. Only just being miffed by it, they didn't work
5 whenever they didn't work. But no, no.

6 Q. Would you agree with me that at that point
7 whenever you would go and report to the folks there at
8 Brookfield that there was a problem, it did not occur to
9 you at that time that it was a safety concern? Would you
10 agree?

11 A. Yes.

12 Q. And you did not report to Brookfield that there
13 was a safety concern?

14 A. No.

15 Q. Thank you.

16 A. Am I getting points for all these yes, no answers?

17 MR. TILLEY: Where were you when I was here?

18 THE WITNESS: You asked broader questions.

19 Q. (BY MR. DOSSETT) Have you ever been in any
20 other -- inside any of the other rooms at Brookfield?

21 A. At any time?

22 Q. Patient rooms, yes -- not patient rooms. Pardon
23 me. Resident rooms.

24 A. Not when there were any residents there, but Bob
25 and I toured several different rooms. I mean, I looked at

1 all the varieties they had.

2 Q. Did you open and close any doors in any other
3 rooms?

4 A. Again, my memory is, the first couple of times I
5 went, there were not doors anywhere. The only time that I
6 remember -- and I could be wrong, and the construction
7 people can, you know, figure it all out if we need to pin
8 that down. But the answer -- no, I don't remember doors
9 ever being up anywhere. Again, I am not a tinkerer. I am
10 not an engineer. What I was looking for was ambience,
11 ingress and egress. It was a great room, because my dad
12 always had the best room in the building, and, you know,
13 just the easy flow.

14 I mean, if you'd seen the Gordon Oaks facility, I
15 mean, it was -- I mean, it's amazing my parents were there
16 for four years and didn't have a fall every week. It -- I
17 nearly fell every time I went in there. There was cords --
18 I mean, it was a lot of stuff. Everything they have now
19 and more actually in a room half the size, so they -- they
20 loved it.

21 Q. They loved Brookfield?

22 A. Yes.

23 Q. You have made mention of this some, but let's make
24 sure the record is clear on it. Do you have any criticisms
25 of the care that your parents have been provided there

1 prior to your father's fall?

2 A. When you say any -- I mean, I mentioned call
3 lights. But it's -- I've told Bob, you know, obviously
4 before the accident that I'd be glad to do any advertising
5 for them, and they did. I mean, people came in and met my
6 parents. No, it's a great facility. It's a great
7 property. The caregivers, I wish there was more
8 continuity. I don't -- I don't know whether that's just
9 the nature of the industry or part Mitzi. I have never
10 worked for Mitzi. So, I mean, I was a -- there's some hard
11 bosses. There are some easy bosses. I don't know.

12 Call lights is probably -- and, you know, I have
13 mentioned a few things to Mitzi. Like over the last couple
14 of weeks, I was in with mother and they were late picking
15 her up, which is a function of staff. And it's a lot more
16 crowded thankfully. They need the residents. You only
17 make money in the business by having residents. I
18 understand that. You really make money by giving good
19 care.

20 And my answer to your question is, I think that
21 they -- by assisted living standards in this country and my
22 experience with my clients, I think they give good care.

23 Q. And other than the issue with the door, do you
24 have any criticisms about the facility itself, the building
25 and its improvements?

1 A. No. I think it's a -- I really think it's -- I
2 mean, my Oregon client has some really new, good
3 properties. Other clients tend to have older building that
4 have been retrofitted and are problematic. I think the
5 property is a wonderful property. The outside yard could
6 use a different -- a little different trimming. There's a
7 dead tree in the hallway there, but -- in the courtyard,
8 but no. The care is good and the caregivers are good. If
9 it weren't that, my mother wouldn't be there. I mean, she
10 loves the caregivers.

11 Q. Let me ask you about your -- just a few follow-up
12 questions about your father's medical history. You
13 mentioned that he had had surgery for prostate cancer
14 around -- in the early '80s, I believe?

15 A. That's the best of my memory in terms of the time
16 frame, yes.

17 Q. Just rough?

18 A. Yes.

19 Q. Has he had any treatment for -- for his prostate,
20 whether it be cancer or otherwise, since that you're aware
21 of?

22 A. No.

23 Q. Has -- has it -- to your knowledge, has he been
24 advised by any of his doctors that he might have a return
25 of his prostate cancer?

1 A. I think Dr. Chad Alford in Mobile indicated that
2 he -- he was a little concerned about his PSA. And I
3 actually talked to Dr. Alford about that when he came up
4 here. And then I talked to Dr. Henry about it.

5 Q. And what did Dr. Henry say about it?

6 A. Forget about it.

7 Q. Why is that?

8 A. I -- I don't think he has anything. I treat him
9 by symptoms. He has no symptoms. PSAs can be wrong. They
10 come up and down. We can keep testing him, but he's quite
11 healthy. And prostate cancer, even if it's come back,
12 isn't going to kill him.

13 Q. And --

14 A. And I am a pretty conservative person. I like --
15 I mean, I like -- well, I won't get into that. That's good
16 enough.

17 Q. But you -- what you're telling me is that the
18 doctor recommended that there be no follow up on him?

19 A. Yes.

20 Q. And you're talking about the doctor here in Fort
21 Smith?

22 A. Yes. And in my conversation with Chad Alford --
23 not with Chad, but I remember also talking to his nurse,
24 after I talked to Dr. Henry, said that makes sense to us.

25 Q. Okay. Did you ever --

1 A. And I have talked -- I am sorry.

2 Q. No. Go ahead.

3 A. And I talked to my dad about it. And I said, dad,
4 you know, we -- they are not telling you you have to have
5 surgery, let's just do some PSA follow up. No. I know my
6 body. I don't have any cancer. I don't -- I'm fine. So
7 that's -- that was my dad.

8 Q. Did you have any similar conversation with his
9 doctors in Alabama?

10 A. Yes, that's Chad Alford.

11 Q. That's Dr. Alford. Spell that for me, please.

12 A. A-L-F-O-R-D.

13 Q. Okay. And Chad Alford is located in Mobile?

14 A. Yes.

15 Q. What kind of physician is he?

16 A. I thought I testified about that this morning.
17 He's a heart doctor, but my dad went to him because he
18 doesn't like to go to doctors and my mother taught him in
19 school and they were family friends.

20 Q. I remember you describing him now. He is a
21 cardiologist I believe you told me?

22 A. Yes.

23 Q. And but -- but is willing to see your father --

24 A. Yes.

25 Q. -- as a primary care physician?

1 A. Yes.

2 Q. I remember that. Do you -- are there any other
3 discussions with Mitzi that you had regarding, first of
4 all, your -- how your father's incident happened other than
5 what you have told me about already?

6 A. No, I don't think so, that I can remember.

7 Q. Do you recall any other discussions with Mitzi
8 regarding the -- let me rephrase it.

9 Have you ever discussed with Mitzi this allegation
10 of improper influence on Mandy with regards to the report?

11 A. I don't remember if I mentioned it in the meeting
12 with Bob and Mitzi that night or not. But other than that,
13 that would have been the only time.

14 Q. Do you remember anything that Bob or Mitzi might
15 have said to you in that meeting about it?

16 A. I -- and, again, and I'm apologizing for it. I
17 gave and -- and got little back. I mean -- and I think --
18 I am not saying they were trying to hide anything. I
19 think, as I would have been if I were on their side,
20 stunned.

21 Q. They were doing the listening and you were
22 doing --

23 A. Yes.

24 Q. -- most of the talking?

25 A. Yes.

1 Q. Have you ever had a conversation with Mitzi about
2 Mandy's termination?

3 A. Not to my knowledge. I think you asked me that
4 earlier and I said I just didn't feel like seeking Mitzi
5 out. There was enough silence coming from the other side,
6 so I didn't.

7 Q. How -- how about Bob Brooks, did you ever discuss
8 Mandy's termination with him?

9 A. Oh, no.

10 Q. Did you ever discuss --

11 A. Well, other than in the meeting.

12 Q. Yes, sir.

13 A. I mean, again, we were in the meeting. That's the
14 only time I have talked to Bob about anything related to my
15 dad's accident that I can remember.

16 Q. Same answer for discussions with Bob Brooks
17 regarding the completion of the state report?

18 A. Never talked to him. I don't remember. I don't
19 think I knew anything about the state report then, so.

20 Q. And any other discussion with Bob Brooks regarding
21 how the accident happened?

22 A. No.

23 Q. You have mentioned to me that you had the
24 discussions with Mandy, which we have already talked about.
25 You had a brief discussion with Cathy -- Cathy DeSantez.

1 Have you talked to any other former employees from
2 Brookfield about anything to do with your father's incident
3 or his condition afterwards or the investigation?

4 A. No.

5 Q. Have you talked to any current employees of
6 Brookfield about the incident or your father's condition or
7 the investigation other than talking to Bob and Mitzi?

8 A. Yes.

9 Q. How many employees?

10 A. One.

11 Q. Who was that?

12 A. Cheryl Williams.

13 Q. When did that take place?

14 A. She called me several months ago. And I asked
15 her -- it was within a month of Mandy's firing. And I
16 asked her what happened the night of my dad's incident.

17 Q. She called you?

18 A. Yes.

19 Q. Do you know how she got your number?

20 A. I think from the sitter.

21 Q. And what did she say when -- when she got you on
22 the phone, what did she say to you?

23 A. I said that Mandy says that -- same thing my dad
24 always said, that he was putting the slippers up and the
25 doors fell on him. Mandy says that she was pressured to

1 say it a different way. I said how did it happen. She
2 told me -- and -- and I must say she said it differently
3 yesterday. She said she did not remember what my dad said,
4 but she echoed what Mandy said, that my dad was putting the
5 slippers up and the doors fell on him. I believe I asked
6 her if she had felt any pressure to change the story, and
7 her answer was yes.

8 Q. Cheryl's answer was yes?

9 A. Yes.

10 Q. And I just want to make sure the record is clear.
11 Cheryl was indicating she had felt pressure?

12 A. Yes.

13 Q. Did she indicate that the pressure -- what the
14 pressure was to -- that she was being pressured to change
15 it to, what was the story supposed to be?

16 A. I don't think I got into that with her.

17 Q. Did she indicate who was putting the pressure on
18 her?

19 A. Mitzi.

20 Q. Did she give you any details about how that
21 pressure was being exerted?

22 A. No, none.

23 Q. Do you recall anything else that Cheryl said to
24 you during that conversation?

25 A. Very brief and no. I don't recall anything else.

1 Q. Okay.

2 THE VIDEOGRAPHER: We have five minutes left on
3 the tape.

4 MR. DOSSETT: Okay. Thank you.

5 Q. (BY MR. DOSSETT) The lawsuit was filed April 1 of
6 2009. Do -- do you believe that the conversation with
7 Cheryl was prior to April 1 or after April 1?

8 A. It would have been prior to that.

9 Q. Have you had any other conversations with Cheryl
10 about anything to do with this case?

11 A. Yes.

12 Q. Okay.

13 A. Actually, no. But -- I mean, I could have
14 answered it just no.

15 Q. Okay.

16 A. Have I had another conversation with Cheryl, yes.

17 Q. All right. And when was that?

18 A. Last Thursday.

19 Q. And what was the substance of that?

20 A. She called me and she said, Mr. Brigance, do you
21 have a minute. I said yes. She said they've -- they tell
22 me I -- she actually said Mitzi says I have to testify next
23 week. And I said I can't talk to you, Cheryl. I wish I
24 could, but you have a -- you have lawyers and you need to
25 talk to them. Well, is it okay for me to testify. I said

1 you need to do whatever Mitzi and your lawyers are telling
2 you. And she said, well, what should I say. And I said
3 you say the truth, whatever it is. And I said that's all I
4 can say.

5 Q. Is that the sum total of the conversation?

6 A. That is 100 percent the sum total of the
7 conversation.

8 Q. And that was this past Thursday?

9 A. Thursday, I believe.

10 Q. And, again, she called you?

11 A. Yes.

12 MR. DOSSETT: Let's go ahead and change the tape.

13 THE VIDEOGRAPHER: The time is now 4:30 p.m. and
14 we are off the record.

15 (Off the record).

16 THE VIDEOGRAPHER: The time is now 4:40 p.m. and
17 we are back on the record.

18 Q. (BY MR. DOSSETT) You have indicated to me
19 previously you didn't take any photographs of the door?

20 A. Right.

21 Q. Have you taken any photographs of any other
22 location of the facility?

23 A. I don't take photographs.

24 Q. Okay. Have -- has anyone taken any photographs at
25 your request or your direction?

1 A. No.

2 Q. Has any -- other than what's been --

3 A. Tried?

4 Q. What's that?

5 A. Tried. Rex went up to your office, as I
6 understand it, and was going to view the doors and said he
7 had his camera.

8 Q. I was probably gone that day I guess.

9 A. But that wasn't at my direction honestly.

10 Q. But as far as -- you haven't asked anybody else to
11 do that --

12 A. No.

13 Q. -- to go into the facility for example?

14 A. No.

15 Q. Other than the photographs exchanged in discovery,
16 has anyone shown you photographs of the -- of the room or
17 the door or the hardware?

18 A. When you say other than what was produced in
19 discovery, the only thing that I have seen produced by
20 either side, us to you or you to us, was what was an
21 exhibit yesterday of the track. I have not looked at the
22 pictures.

23 Q. Other than those, you're not aware of any
24 photographs?

25 A. No.

1 Q. No one has shown any to you?

2 A. No.

3 Q. Has anyone provided -- other than what's been
4 exchanged in discovery, has anyone provided you with any
5 documents or records from the facility?

6 A. No. And, again, I haven't seen anything exchanged
7 in discovery, but I haven't seen anything from the
8 facility.

9 Q. And you probably understand what I am getting at,
10 but has any -- for example, has any employee or former
11 employee provided you any documentation or records outside
12 of the discovery process?

13 A. Absolutely not.

14 Q. No third person has done that?

15 A. No.

16 Q. Okay. You mentioned with Mr. Tilley that you
17 desperately wanted your mom to leave the facility?

18 A. Yes.

19 Q. Was that because you were mad or what was
20 motivating it?

21 A. As I said, every time I walk into her room, I walk
22 by the site of the accident. It's like every day of my
23 school year I had to ride by where my granddad was killed.
24 It's just a constant reminder. Being in the facility and
25 seeing the caregivers, even the ones I like, it's a

1 constant reminder, because my dad had certain favorites.
2 Being in the -- and, I mean, I ate with my mother for as
3 long as I could. And it's just -- I am having a hard time
4 going back to the dining center right now as nice as it is.
5 I mean, I like Chuck. I love the food. I'd like to do
6 that. I just -- I can't do that. And I knew it would come
7 to that. And -- and so I wanted, for my own selfish
8 reasons, for her to be somewhere else, anywhere else. And
9 I had that discussion with her innumerable -- you could
10 number them, I guess, but a lot of times, certainly the
11 first several weeks. Then I will tell you, I have not had
12 them over the last couple of months simply because it's
13 back to I don't have the ability to do what I need to do
14 for her at a new facility, with a new family and everything
15 else.

16 And -- and -- and, you know, if you're going
17 where -- what about the safety issue. We have talked about
18 the doors. We have talked about the signs. We have talked
19 about everything else. But I have always been a
20 believer -- somebody -- one of my pilot friends used to
21 tell me the safest airline to fly is the one that had the
22 last accident. And so, you know, there is no absolute
23 safe -- I can't put my mother in a bubble. But I think she
24 is in as safe a place as I can make it. And I simply at
25 this juncture do not have the mental or physical energy to

1 move her even if she would come to me. For example, she's
2 worried about money and -- and I don't need her worried
3 about anything. She -- she and the sitter, Shirley
4 Hamilton, I think went to Mitzi or Karen somewhere there a
5 couple of months ago and said we want to move to a smaller
6 room. And so I briefly talked to Mitzi about that and all
7 the paperwork and then I got to move, and I said, mom,
8 yeah, it would save us some money, but right now it's me.
9 It's up to me again and I can't do it, so.

10 Q. Has she ever wavered at her desire to stay?

11 A. Only slightly recently.

12 Q. And in what way?

13 A. Well, she asked me where else could we go just
14 kind of out of the blue, where else could we go.

15 Q. When did that happen?

16 A. I don't know. Within the last couple of weeks.

17 Q. Is that single occasion the only time she has
18 wavered?

19 A. Yeah, I think so. And -- well, you didn't ask me
20 something.

21 Q. Well, go ahead.

22 A. Well, I was going to say it was at a time where
23 she really just -- I don't think there was anything
24 particular. I think she -- she sat on the commode a couple
25 of times and it just kind of made her mad. But I think it

1 was mainly -- and I won't mention her name here -- the
2 dining mate she had. And she just thinks that person -- it
3 was driving her nuts. And she would argue with me each
4 time. She said you wouldn't sit with her, you know. And I
5 said you're right, I wouldn't, but, you know, you're
6 helping her. I mean, I told Mitzi that. I know she's
7 helping. I know, you know, you got to balance things, but
8 maybe if we could move this person around. But evidently
9 my mother took it on herself, not even with the sitter, I
10 mean, the sitter was surprised, evidently just got up one
11 night and moved to a new table to be alone. But, no, I --
12 I think that's the only time just out of the blue sort of
13 where would we go.

14 Q. As I understand it, your mother refuses to use a
15 walker?

16 A. Yes.

17 Q. Do you think she would benefit from a walker?

18 A. Would she be more stable on a walker, yes. But
19 then you got to, you know, go through all the things you go
20 through. It would affect her. She would feel -- again, my
21 mother doesn't see what you and I see if you were to meet
22 her. She doesn't see in the mirror what you and I see.
23 Her brain doesn't work like it really does work. She would
24 see a walker -- and it gets back to Mr. Tilley's -- the
25 will. I believe she would be -- I mean, I watch some of

1 those people around there. There are a couple of people I
2 promise you particularly -- I won't mention names here, but
3 people could beat me in a race, straight up. They got the
4 walker, they would beat me. My mother is -- she's not a
5 klutz, but she's -- she would have a hard time getting used
6 to that. But it really mainly goes to the psychology of
7 it. My mother would view that as -- just like my dad would
8 never use a cane. When he fractured his ribs, he would
9 never use a cane down in -- in -- at Gordon Oaks. He would
10 not use a cane. It was -- whatever reason. It was a
11 signal this is, you know, I am really what I do see in the
12 mirror.

13 So it's a broader question, would I like her to be
14 on one if she could accept it psychologically, you bet you.
15 Although some of those people in those facility are pretty
16 dangerous with their walkers I've got to tell you. One
17 lady in particular that hits me every time I go in there.

18 Q. If you know, tell me, and if you don't know, tell
19 me you don't know, but when you were describing with
20 Mr. Tilley what your mom reported to you about how she
21 heard the commotion and looked over there and saw your
22 father --

23 A. Right.

24 Q. -- did she ever explain to you how she got to the
25 door --

1 A. No.

2 Q. -- to the doorway?

3 A. No. My mother was quite confused that night, very
4 upset. But she gets confused in certain circumstances, you
5 know, not caused by anything, but a lot of activity. She
6 doesn't multi-task well. And -- and I know Michael
7 yesterday pressed Peggy on it, you know, why didn't you ask
8 your mother-in-law. Well, first of all, Mandy was the
9 caregiver. Mandy was there. That's why you ask Mandy and
10 Mandy is 30 or whatever she is and has more of her brain
11 active than my mother. But my mother really, when I
12 pressed her, was just confused by that. She did not know.

13 Q. Okay. Whenever your parents were at the assisted
14 living -- living facility in Alabama called --

15 A. Gordon Oaks.

16 Q. Gordon Oaks. I don't know why I keep wanting to
17 call it Golden Oaks. But did they have caregivers there
18 that stayed with them?

19 A. With them, no, no. My mother and my dad was each
20 others caregivers. Let me back up and restate that. When
21 my dad fractured his ribs, he was basically bound to the
22 room. And my mother always liked to go to the dining
23 center. And I believe -- I ended up paying the bills, but
24 I believe my sister had some arrangement with some sitters.
25 It may have been CNAs.

1 Q. Okay. And that -- what you're recalling is the
2 time frame when your father fell and broke his ribs?

3 A. Yes. He had to have a -- a double assist really
4 to get to the bath, because the bathroom was tiny, and --
5 and was a fall hazard. My sister made the call on that one
6 to have a sitter. I deferred to her. I -- I asked mother.
7 She didn't think dad needed one, but dad thought he did, so
8 we just -- we went with what dad and Lena wanted.

9 Q. Do you recall them having a sitter or caregiver
10 with them at any other time when they were at Gordon Oaks?

11 A. No.

12 Q. I may have asked you this before, but do you have
13 any information that one of the doors with the intended
14 hardware -- that any door with the intended hardware ever
15 fell down, came down all the way to the floor?

16 A. I have no knowledge. I -- I will say Mandy
17 indicated to me that one had. I don't know if it's the
18 same door that Cheryl was talking about yesterday, but I
19 think Cheryl made it clear to everybody that that door, you
20 know, came off, came out, but did not fall down because of
21 whatever -- I don't know how it wouldn't have fallen,
22 because I don't know what that door looked like.

23 Q. Let me -- let me ask this specifically then. How
24 many incidents of door problems did Mandy tell you about?

25 A. I can't tell you. Several. But I -- I -- I

1 didn't do a count and I don't know if it's in her
2 statement. I -- I don't know.

3 Q. Do you know if -- or do you recall if Mandy told
4 you how these incidences she was telling you about broke
5 down as being before your father's incident or after your
6 father's incident?

7 A. All I know is generally there were some before. I
8 am not sure -- I know there were some before. She was gone
9 right about the time my dad died, but that would have been
10 a 24 day period. I -- I don't know what happened from the
11 7th to the 31st.

12 Q. Was there -- you indicated that Mandy told you
13 there was one incident where the door -- another door
14 actually fell off?

15 A. Yes.

16 Q. Did Mandy indicate whether that was before or
17 after your father's incident?

18 A. I don't remember.

19 Q. What did Mandy tell you about that incident?

20 A. That, I think, Cheryl was there. I think she
21 mentioned Cheryl was there. That it almost fell on her and
22 that they reported it to Joe Martin.

23 Q. That it almost fell on Cheryl?

24 A. Yes.

25 Q. Is that why you think it may have been the one

1 that Cheryl talked about yesterday?

2 A. Yeah. That's the only time that I heard anybody
3 other than Mandy mention it.

4 Q. I wanted to make a list here, if I could, so I
5 know it's complete. What sources have told you or where
6 have you heard about problems with doors? For example, you
7 told me that Mandy told you about some problems with doors,
8 correct?

9 A. Yes.

10 Q. You told me that Cathy told you about some
11 problems in the parking lot, Cathy DeSantez?

12 A. DeSantez. She told me about the problems in the
13 parking lot?

14 Q. She told you about --

15 A. Oh, that's where I was. Okay.

16 Q. Yes, sir. Bad question. I'm sorry.

17 A. I didn't know of any parking lot problems.

18 Q. Let's not make this case any broader than it has
19 to be. So we have Mandy and we have Cathy. Who else?

20 A. Dick Wasson.

21 Q. Okay. Who else?

22 A. Cheryl.

23 Q. All right. That's all. And, of course, we all
24 know this, but Joe also in his deposition --

25 A. I never talked to Joe. I may have said hey, but I

1 have not talked to Joe.

2 Q. Did you recognize him yesterday?

3 A. You know, I am usually pretty good with faces, but
4 if -- if he had been outside here -- or when he came to the
5 door, I did not know it was Joe, so.

6 Q. All right. You had no interaction with him at
7 Brookfield?

8 A. No, no.

9 Q. I am not sure that this was able to be picked up
10 on the video earlier, but I know that there are occasions
11 where you have to wear a device on your -- on your torso?

12 A. Yes.

13 Q. And I was concerned that might be picked up by the
14 camera at some point, and I thought maybe we should explain
15 for the record what that was in case it creates a
16 curiosity. What was that device?

17 A. Mr. Brooks attacked me off the record. And that's
18 a joke. I had a back -- another back fusion last June
19 after I moved my parents here. The fusion seemed to be
20 working until January. And since January no bone has
21 grown. So the doctor first started talking about a fifth
22 back surgery. And we came up with this -- with this idea
23 as a bone stimulator. It is designed to keep me from
24 having another surgery in the hope that this fusion when
25 some of the stress level is reduced and everything else I

1 am doing and with this thing, that my back gets to be the
2 way it should be.

3 Q. Okay. Thank you.

4 A. I like the Bob Brooks story better, but he's a big
5 man.

6 Q. You mentioned that your mother was initially very
7 angry at Mitzi?

8 A. Yes.

9 Q. Did she explain to you why she was angry with
10 Mitzi?

11 A. Well, it -- it starts with politics as most things
12 do with the Brigances. Mitzi and my mother are -- are --
13 have different party affiliations.

14 Q. Political party affiliations?

15 A. Yes. And, obviously, it was a heated election and
16 mother felt Mitzi was intruding. I mean, I don't talk
17 politics, the same reason I don't play cards with my
18 family. I have my own strong views, but we all know them,
19 and it just -- and plus my parents, I don't want to
20 influence them. And I think my mother took umbrage at
21 that. My mother reacts to people intuitively. She was
22 fine with Mitzi. And then I got to believe it was the
23 political thing. I really do. Then I think, you know, she
24 had to -- she really took umbrage that Mitzi -- again, I
25 don't know this to be a fact, if Mitzi ever said anything

1 to my mother. I only know my mother says categorically to
2 this day, Mitzi never talked to me, never said sorry about
3 Jack, never came down and talked to me. So that was number
4 two. And, number three, the firing of Mandy without
5 explanation. Mother took that as a -- as a full-frontal
6 assault.

7 Q. When you say without explanation, you mean without
8 explaining to your mother?

9 A. Yeah. Even that she was gone, that she got a call
10 from Mandy. It was like grieving all over again. I mean,
11 again, the community concept, her husband of 68 years was
12 gone, and now she's trying, with my help, to transfer some
13 loyalties and get some footing and all of a sudden, within
14 a week of burying my dad, her favorite person is gone
15 without explanation and cannot come back to her room.

16 Q. How often does your mother leave the facility?

17 A. Less and less. You know, my sister took her out a
18 number of times this past week and -- and -- and really
19 tired her out. But, you know, my sister thought that
20 was -- I mean, my sister was only up here for a week and so
21 wanted to entertain mother and I think over-exhausted her.
22 We asked mother, you know, to go out to Sunday brunch with
23 her or come up to the house. She's been willing to do that
24 less and less.

25 Quite honestly, dad didn't like to leave the

1 facility a lot. I mean, we have got a picture of him, I
2 don't know, it was produced in discovery, but my last
3 favorite picture was just a couple of months before the
4 accident where we went out for their 68th wedding
5 anniversary for lunch, but he couldn't wait to get back to
6 the facility. They -- they loved the facility. It was
7 their cubicle. It was their cocoon. They felt safe there.
8 And -- and so she does not -- she likes to go out less and
9 less particularly since my dad's death.

10 Q. If somebody were to come and get her, though, if a
11 family member or someone were to do that, is she physically
12 capable of going to dinner or to your house to visit or
13 anything?

14 A. Yes, but it's not easy. I mean, my mother is a
15 very proud woman in terms of continence. She has some --
16 some slips. And if that happens out, she's very
17 embarrassed by that. So she's better in our home, but we
18 don't have a handicapped bathroom, so. She refuses to use
19 the rails in her own bathroom, because she doesn't need the
20 rails, right, she just needs the help. She's able to
21 physically go out. I mean, I took her to my office a month
22 and a half ago and pretty -- I don't know -- eight, 10, 12
23 stairs with a pretty good grade, she beat me up there. But
24 over the last six weeks, a lot less. Like we had her out
25 at the 4th of July and she didn't want to go down the

1 stairs to the deck and -- and there weren't as many.

2 And this past week where we had Chris' 23rd
3 birthday, my son, her favorite grandson, she would not come
4 over for that and -- and so -- and we tried. Everybody
5 went down. I went -- at different times. Peggy goes down.
6 Chris goes down. I go down. We could not get her to
7 leave. And, again, I am back to just even when my dad was
8 alive, just I want them to do what they want to do. My
9 sister and I have a little bit of a different philosophy
10 about that. And the only thing I am a little obstinate
11 about is those vegetables, but she wins.

12 Q. Has your mother been to visit Mandy outside the
13 facility?

14 A. No. I mean, not to my knowledge.

15 Q. Okay.

16 A. The sitter is with her, you know, during the day
17 when I am not there. But, no, I don't -- I am sure my
18 mother would tell me.

19 Q. Okay. I made a note that you indicated you're
20 paying about \$2,500 a month for the sitter?

21 A. On average. I mean, you guys have -- and I've
22 brought a bunch more bills, but that's about right in when
23 you aggregate it.

24 Q. Is that based upon an hourly rate?

25 A. Yes.

1 Q. And what's the hourly rate?

2 A. It's in the bill. \$15 maybe, \$14, \$15, \$15.50,
3 something like that.

4 Q. Does it change at all?

5 A. Not that I have noticed.

6 Q. Not the hours from this time of day to that time
7 of day?

8 A. Well, we don't have Shirley at night.

9 Q. All right.

10 A. Shirley is the -- the sitter and she works her
11 normal shift. She will come in -- since I have just not
12 been willing to eat as much in the dining center, she now
13 comes in for breakfast, and so she comes in about 7:30 and
14 leaves about 3:00. Mother would like her to stay until
15 bedtime.

16 Q. You mentioned with Mr. Tilley that whenever Lana
17 came to visit --

18 A. Lena.

19 Q. Lena. I apologize.

20 A. That's okay.

21 Q. Whenever she came to visit recently, that it was a
22 personal embarrassment to you that she couldn't stay with
23 you?

24 A. Yes.

25 Q. And I understand. Did you ever look into having

1 her stay at Brookfield?

2 A. Actually, I didn't. This trip was planned -- I
3 didn't even know when she was coming. I -- I learned
4 everything through my mother. And, you know, she was
5 supposed to come, I think, a couple of months ago, and then
6 they put it off. And then she was coming in October and
7 then they moved it up. So all I knew was like the day
8 before she was to leave, she was to be here the next day.
9 I knew she was coming sometime. But my mother had
10 mentioned that she had inquired -- I don't know if with
11 Karen -- I doubt it was Mitzi, but Karen -- as to whether
12 they could bring a cot in. Again, I did not. And I think
13 she at least heard them say yes, but it would cost so much
14 a day. And I know when I did the re-up -- the new contract
15 or the new care plan with Karen, that Karen offered if --
16 if Lena wants a cot in here, that will be free. And I said
17 that's great, that's fine. And I took that news back to
18 mom. And the next thing I knew, they were -- they were
19 trying to book a hotel, a motel.

20 Q. Okay. Do you have any recollection of making any
21 inquiries about perhaps renting any vacant room?

22 A. No.

23 Q. Do you know if anyone else did?

24 A. Beats me. My mother might have. Anybody might
25 have. But I can tell you, I don't have the money to pay

1 for renting a room, no.

2 Q. I apologize for jumping around. These are just
3 some notes I made when you were testifying earlier.

4 A. That's fine.

5 Q. I do not -- didn't understand completely the
6 circumstances under which you left employment with Beverly.

7 A. Uh-huh.

8 Q. Could you explain that to me again?

9 A. Yes. I quit.

10 Q. Okay. And why did you quit?

11 A. I didn't like the new people that took over our
12 company.

13 Q. Where were they from?

14 A. San Francisco.

15 Q. What was the name of that company?

16 A. Well, the -- gentleman's name who runs the
17 company -- it's now privately held -- is a fellow by the
18 name of Ron Silverman. His group is called something
19 Capital, but I can't -- I try to forget anything about him.

20 Q. Okay.

21 A. As I am sure he does me.

22 Q. I will try not to bring up too many bad memories.

23 A. It's all right.

24 Q. Was there anything in particular that caused the
25 split between you and your former employer, Beverly? Was

1 there any particular incident or circumstances or event?

2 A. Well, we were in an 18 month hostile takeover.

3 Given the Brigrance luck, we were the only hostile takeover
4 happening in the USA, right here in Fort Smith, during that
5 18 months. It was a terrible 18 months. All of us who
6 worked it and -- and tried to keep the company running and
7 to try to keep care and service number one, we had a hard
8 time doing it. We were treated, as a management team, as
9 shoddily as any management team I have ever seen treated.

10 And I have been through a number of mergers. He
11 particularly did not like the job I had done. He felt I
12 spent too much money. I settled too many cases, mentioning
13 Wilkes & McHugh. We had a certain strategy. It was a
14 long-term strategy at Beverly. We had achieved it. When I
15 came into the company, we were two bucks a share. We sold
16 out at 13 a share. We had 650 lawsuits. When I left, we
17 had under 300. That's still a lot, but we cut them in
18 half. We were spending 250, \$300 million a year on
19 indemnity and expense payments. Again, we were a thousand
20 unit -- one thousand facility company at that time. We had
21 cut that by two-thirds. So we had a lot of success.

22 And this gentleman did not come from the long-term
23 care industry. Did not know anything. He was an equity
24 player. I tend not to like equity players. I am not a
25 money person. My dad never was a money person. We don't

1 live for money. In this business, you take care of people.
2 And that's -- and these people coming in I felt did not --
3 and I am not opining. I have nothing to do with them now.
4 They may be the greatest company in the world. I know my
5 counsel would say -- I am just telling you the truth of my
6 dealings with these people coming in. I would not work for
7 them. My dad would not have worked for them. I would not
8 work for them, so I chose to leave with eight of the ten
9 top executives in the company. We had done our job.

10 Q. You used the phrase in your explanation whoever
11 the person was that you weren't getting along with felt
12 that you spent too much money?

13 A. Yes.

14 Q. Is that in reference to settling lawsuits?

15 A. Settling lawsuits, losing lawsuits. I mean, we
16 won more than we lost. That wasn't true when I went in.
17 But, you know, these long-term care, elder care, cases
18 involving the elderly are very -- as you know, as the
19 people in this room know -- are very dangerous cases. And
20 we did one heck of a job of creating this -- first of all,
21 we made the company better. But, you know what, you can do
22 everything right in this industry and there are still
23 people out there that will sue you. And so we created a
24 litigation network that defended -- I mean, my -- my
25 philosophy is clear. We do something wrong, you try to get

1 rid of the case, you settle it, you do the right thing. If
2 you can't settle it, then you defend aggressively. That's
3 what I do.

4 He felt in any instance -- I mean, he told me face
5 to face at one point, these cases -- and I presented him a
6 decubitus ulcer case. You don't have those in the assisted
7 living facility arena. Thank God. But I showed him a
8 decubitus ulcer case in Hinds County, Mississippi, and said
9 what do you think that's worth, and I was told \$25,000. So
10 my answer back is, that's fine, make it your opinion, bring
11 it in, good luck. And, again, I know nothing about the
12 company. They -- this fellow, I could have been wrong
13 about him. He could be running the greatest company in the
14 world. They could care only about care. I don't know. I
15 don't want to know about them. I don't think about them.
16 I hope they don't think about me.

17 Q. Okay. With regards to your current income, you
18 discussed that with Mr. Tilley. You -- you discussed --
19 and we won't go over it all again. But you discussed how
20 your agreement changed over time and the different --

21 A. Yes.

22 Q. -- hourly rates and number of hours. Were there
23 any reasons that you cut back on your hours other than your
24 father's death and coping with that?

25 A. No.

1 Q. That was the only reason?

2 A. Well, me coping the first two months. And then
3 after that, it's been upon the advice of, in particular,
4 Dr. Barling.

5 Q. But none of the other stress factors in your life
6 have played into that, such as your -- your back, for
7 example?

8 A. Oh, no. Well, no. And that should be a yes or no
9 answer. But after moving my parents here and going through
10 what was a pretty stressful period for us all and
11 everything worked great and nobody died in that process, I
12 looked forward -- in past back surgeries, I have a month to
13 repair and to recover. Usually a week in the hospital and
14 three weeks where I don't take calls, I don't have stress.
15 I always use it to do the great books or listen to tapes,
16 something. Two days after that surgery -- and it went
17 better than any of the previous surgeries -- I was working
18 10 hours a day from the hospital bed. So, no, my back has
19 never been a problem in terms of interfering with my work.

20 Q. Are there any other factors that caused you to
21 modify the terms of your agreement with Sun Management --

22 A. Sunwest Management.

23 Q. -- Sunwest Management other than coping with your
24 father's passing?

25 A. No.

1 Q. Have -- other than this lawsuit, have you ever
2 been a party to a lawsuit before?

3 A. Yes.

4 Q. How many times?

5 A. I think twice.

6 Q. Which ones are --

7 A. No, three times.

8 Q. Okay. Could you list them for me?

9 A. Sure. Peggy mentioned yesterday we were sued
10 some -- by some friendly neighbors. When Peggy did the
11 next door neighbor a favor 20 some odd, 30 years ago,
12 whenever it was, and kept their child for an afternoon, and
13 the -- the child grabbed our dog from behind and choked it
14 and the dog bit her. We got sued on Christmas Eve.

15 Two lawsuits here. When I moved -- and I think
16 somebody mentioned it yesterday. Peggy would not have
17 known about it. I mean, well, she knew about it, but would
18 not have remembered it. When I went to work for Beverly,
19 Beverly was not in the business of buying houses, but
20 things have changed corporately. In the old days,
21 railroads would move you around, buy your house, pack it,
22 everybody wanted to move, because you made money moving.
23 Beverly was not in the business. They didn't have the
24 money to buy houses. But I wasn't coming to Fort Smith --
25 we had a house that was way underwater. I made a deal with

1 the chairman of the company and the board, you'll buy my
2 house. And so there came a time under the contract, they
3 took over my loan, were to pay it off, and I continued to
4 live in the house until we moved. And that was about a
5 nine month period. Everything worked swimmingly. I got my
6 money out of the house. Everything worked fine until --
7 and that was, like, September, October -- until like New
8 Year's Eve, I think it was, I got a notice that I was being
9 sued by the mortgage company, because my mortgage had not
10 been paid since September. That was Regions Bank. And so
11 I went to Regions Bank and the relocation company and said
12 make this right, whatever it takes, make it right. They
13 told me they would. Two months later, I think I got the
14 actual lawsuit where I was now being sued. They still had
15 not paid off the loan. So I went to them again and said
16 get it done. So it went along for awhile and they finally
17 did pay it and I got the letter of apology and everything
18 was right, right. And I know enough about credit reports,
19 because I deal with them with my kids all time, make sure
20 it doesn't get -- I don't get dinged on my credit report.
21 Well, guess what, six months later it was all over my
22 credit records. And you know what, they wouldn't change
23 it. They the credit companies. And you know what, all the
24 people that had screwed up at Regions, their jobs had
25 gotten changed or they were no longer there. Nobody knew

1 me from Adam and nobody would help, so I sued them.

2 Q. What was the outcome of that case?

3 A. They paid me money.

4 Q. Did they correct your credit report?

5 A. Yes.

6 Q. Who were -- you were the plaintiff in that case?

7 A. Yes.

8 Q. And who were the defendants?

9 A. Regions, my bank.

10 Q. Anyone else?

11 A. No, not that I remember.

12 Q. Do you remember where that was filed?

13 A. Here, Sebastian County.

14 Q. Sebastian County. And there was a third case you
15 were thinking of?

16 A. Yes. It's still here in this house. We've had --
17 you would think we are in the antediluvian period, but we
18 are in the diluvian period in our house. We have had four,
19 I think, major leaks. One of them was caused when we
20 had -- I am -- because I don't tinker. When the seasons
21 change, when it goes from heating to air conditioning
22 system, again, having the Brigance luck, I just go bring
23 somebody in and have them check it out. So we had a good
24 guy, an Asian fellow that I liked and had done our work
25 since we moved here, came in -- or he sent his crew in,

1 checked all of our air conditioning system. Everything is
2 fine. Two days, three days later we left for a wedding in
3 Fort Worth. I got a call at 11:00 on Saturday night from
4 our dog sitter, who said your house is flooding. And I
5 looked outside. And I said, well, it's not raining here in
6 Fort Worth, is it there. Oh, no, it's not raining. I said
7 where is the water coming from. Right above the piano in
8 the living room. Well, the only thing there is the air
9 conditioning unit. Ended up basically losing about
10 \$100,000 of goods and being out of our house for months.

11 To repair all of this, brought somebody in, an
12 expert. Again, all I know is -- not as a lawyer -- just
13 what happened. Came in and they looked at the unit and
14 they came in and took pictures and showed me the pictures.
15 The people who went up in the attic didn't do anything.
16 The -- the drain was blocked up with the insulation that
17 was in the very pan that they were -- part of the service
18 job. So I called the air conditioning company and for
19 weeks tried to deal with them. You know, I went to my
20 insurance company. They represented the air conditioning
21 company. And insurance companies just -- I don't have to
22 deal with them a lot because of my clients, but they are
23 not my favorite people as a rule. And it wasn't here. It
24 was not unlike this process. Nobody wanted to straighten
25 it out. So I finally said, well, I will get everybody's

1 attention and I filed a lawsuit against them.

2 Q. Where was that?

3 A. Here in Sebastian County.

4 Q. Is it still pending?

5 A. Oh, no.

6 Q. How did that -- what was the outcome?

7 A. They both settled within a very short time, months
8 before any answers might have been filed. And -- and I
9 think in the -- in the air conditioning case, we
10 actually -- I think Peggy -- I gave a deposition. I don't
11 think anybody has asked me if I have ever been deposed
12 before, but I gave a deposition in that case. It went to
13 one or two depositions and they settled. And, again, it
14 was -- it wasn't anything -- I didn't get any money. But
15 it's just again about the right thing. You know, if the
16 guy had ever come to me and said I screwed up, but --
17 because it was the insurance money. I was playing with
18 their money. But I -- it was just you got to make sure
19 people -- in my opinion, right things have to happen. And
20 they did. That's it. Is that it for you?

21 Q. I'm getting very close. We are getting to the
22 point now of the questions I have saved for the very end,
23 so.

24 A. These are the big ones. This is like the 4th of
25 July where they save the big fireworks to the last.

1 Q. Well, not exactly that. Hopefully not. I have
2 some photographs that I have been provided that are of your
3 father --

4 A. Yes.

5 Q. -- in Hospice, I believe, in his bed. You
6 described to Ms. -- to Mr. Tilley, I believe, one that was
7 taken of your mother giving him a kiss?

8 A. Yes.

9 Q. But I have others. Do you know who took those?

10 A. If there are others, I would have taken them on my
11 phone. I did not remember taking pictures of my dad.

12 Q. I am not going to show them to you at this time,
13 because I --

14 A. I remember. I remember. Now, that you mention
15 it, I remember. He was just lying in the bed and he was
16 asleep.

17 Q. Do you remember when they were taken?

18 A. Toward the end. It may have been the same day
19 after my mother left. It may have been a day later.

20 Q. There's one photograph in particular where he is
21 rolled on his side and there's a picture of his back. I
22 think it's to show some bruising.

23 A. That was not taking in the Hospice.

24 Q. Where was that taken?

25 A. In the mortuary.

1 Q. So that was postmortem?

2 A. Yes. There were no pictures -- I took -- now that
3 you have remind me -- maybe four pictures. I can't produce
4 the phone, because it dropped in the pool and it's gone.
5 But I know the pictures. I took maybe two different angles
6 of my dad lying peacefully, because that was the way I
7 wanted to remember him. I took the picture that I knew
8 would be my dad and mom's last kiss. They did not know I
9 took it. And I took a picture of the calendar. All of the
10 other pictures were postmortem taken by the mortuary. I
11 think I may have looked at them once.

12 Q. Taken by the mortuary?

13 A. Yes.

14 Q. Did you ask them to take them?

15 A. Yes. I asked them, though, specifically not to
16 take the picture of the decubitus ulcer. I have been
17 that -- through that with too many people. And I don't
18 like that. I didn't want a picture of my dad with that.

19 Q. Okay. We have talked about numerous statements
20 made by representatives or employees, both current and
21 former, of Brookfield. Are there any other ones that come
22 to mind as we sit here other than what we have already
23 discussed?

24 A. I think you've been pretty exhaustive, including
25 helping me to remember things I would not have remembered

1 voluntarily, so, yes -- no, I don't remember other
2 conversations.

3 Q. Okay. The final topic that I would like to cover
4 with you is something unusual, but I would like you to try
5 to help me with it if you could. You had mentioned earlier
6 that as you tried to cope with your grief, that there was a
7 time where you were concerned about yourself being a danger
8 to yourself or others?

9 A. Yes.

10 Q. And I just want you to tell me do you feel like
11 those times are past you now?

12 A. First of all, I never used that term to
13 describe -- others have, my wife and both of my -- my
14 psychologist and psychiatrist. Do I think I am now? I
15 think -- Mr. Tilley didn't grill me, but I -- I think out
16 of -- and I attribute the same good emotion to you -- no, I
17 do not have those feelings.

18 Q. And --

19 A. And I hope never to have them again.

20 Q. As -- and I am asking you to kind of step in my
21 shoes for a minute.

22 A. Sure.

23 Q. Do you feel that you are -- for example, if you
24 were to go to the facility, do you feel like there would be
25 anything there that would trigger any of these feelings and

1 make it difficult for you if you were --

2 A. Beyond what already happened?

3 Q. Yes, sir.

4 A. I mean, so that I would cause somebody injury?

5 Q. Yes, sir.

6 A. No.

7 Q. You don't feel any inclination --

8 A. Oh, if somebody attacked my mother --

9 Q. Right.

10 A. -- whoever it would be. But no.

11 Q. Nothing -- for example, if you saw the closet

12 door --

13 A. No.

14 Q. -- or saw Mitzi or anything?

15 A. No.

16 Q. You don't feel any --

17 A. No.

18 Q. -- any risk of that at all?

19 A. None, no.

20 Q. And I just wanted to make sure that's -- that that
21 was the case. That was the impression I got, but I wanted
22 to confirm that with you.

23 A. Yes.

24 MR. DOSSETT: You have answered a lot of questions
25 for me, and I appreciate it. That's all I have. I'll pass

1 the witness.

2 THE WITNESS: Thank you again for your courtesy.

3 MR. DOSSETT: You're welcome.

4 MR. TILLEY: I got a chuckle out of \$25,000 in
5 Hinds County, Mississippi. How did that end up?

6 THE WITNESS: I can't answer that.

7 MR. TILLEY: Did it go to trial?

8 THE WITNESS: No.

9 MR. TILLEY: It wasn't 25 grand either, was it?

10 THE WITNESS: No, I don't think so.

11 MR. TILLEY: I have a little familiarity with
12 Hinds County.

13 THE WITNESS: I have way too much.

14 CROSS EXAMINATION

15 BY MR. MORRIS:

16 Q. Mr. Brigance, I know it's been a long day. Again,
17 I am Paul Morris. We meet several hours ago.

18 A. Yes.

19 Q. I'm going to be skipping around and trying not to
20 ask anything that's already been asked once or twice, but I
21 won't promise.

22 The house that your -- that you grew up in that
23 your parents --

24 A. Yes.

25 Q. -- parents moved from to the assisted living in

1 Mobile --

2 A. Yes, sir.

3 Q. -- do you recall the address for that?

4 A. Yes.

5 Q. Can you tell us, please?

6 A. Sure. 1005 Hillcrest, H-I-L-L-C-R-E-S-T, one
7 word, Lane, Mobile, Alabama 36693.

8 Q. Did -- did you handle the sale of that property?

9 A. Yes, yes.

10 Q. What -- what happened to the -- the proceeds from
11 that sale? Like, where did that end up?

12 A. Ended up in the care of my parents down there. I
13 think he made some loans to my sister.

14 Q. Okay.

15 A. I think he made some loans to my dad. He had no
16 caregivers to run off with it like my uncle's sitters did.

17 Q. Do you recall what the proceeds were in terms of
18 the dollar amount?

19 A. No.

20 Q. It sounded like -- I believe my recollection from
21 this morning is, three stories and several acres. Was it
22 a -- are we talking about a half million dollar piece of
23 property, or are we talking about something more or less?

24 A. We are talking in the neighborhood of \$65,000.

25 Q. Okay. Was that -- how has the assisted living

1 facility care been paid for both in Alabama and up here?

2 Where is that money coming from?

3 A. My parents get insurance from -- my -- my mom and
4 dad get long-term care insurance that we have explained in
5 the interrogatories, half of which went away when my dad
6 died. From that, from some of my funds, and from their
7 retirement. My mother has a check -- I think we explained
8 this in the interrogatories -- checks that come in from the
9 Alabama retirement system as well as now she gets my dad's
10 Social Security, but lost hers. And I make up the
11 difference.

12 Q. The funds from the -- the sale -- I am just trying
13 to get an idea of what your -- your mother's financial
14 situation is now --

15 A. It's dwindling.

16 Q. -- now that your father is gone. Are the funds
17 from that sale, are they no longer available to help
18 support her at this point?

19 A. She has a little bit of money that -- that I have
20 dragged back into accounts for them. If you want the
21 amounts, I can tell you.

22 Q. That's okay.

23 A. I could -- I mean, if we're in a war of
24 attrition -- I mean, as I say, she's got -- being able to
25 contribute to what I already pay -- probably six months

1 left of any money. But I like her to have some money in
2 her account even -- even if it's my money I put in there,
3 because she likes to look at her statement occasionally and
4 say she's got some money.

5 Q. Do you recall ever having -- well, have you had
6 any conversations, whether oral or written, E-mail or
7 letters, with anyone from WDM Architects?

8 A. No.

9 Q. You, I think, told us about earlier this morning
10 the walk-through with someone from Crawford at some point?

11 A. Yes.

12 Q. Was -- to your knowledge, was anybody from WDM a
13 part of that walk-through?

14 A. No.

15 Q. Have you ever -- has anyone told you about any
16 conversations or statements or anything that was said by
17 anyone through WDM?

18 A. No.

19 Q. So, as we sit here today, you -- you can't tell me
20 anything that WDM has ever said about this project, about
21 your father's incident, anything like that, is that
22 correct?

23 A. That's correct.

24 Q. When you were -- went through the -- I guess what
25 I'll call the final walk-through before you moved your

1 parents in once the doors, the closet doors were up --

2 A. Right.

3 Q. -- did you also open and shut the -- did you check
4 all the closet doors, including the ones in the bedroom
5 that aren't an issue -- that aren't involved in the
6 lawsuit?

7 A. When you say the word check -- and yesterday
8 Michael used the word inspect -- I didn't check or inspect.
9 It was just cursory everything worked and the lights are
10 on, boom.

11 Q. I didn't mean to imply you got on a ladder and
12 checked everything out.

13 A. I understand.

14 Q. But when you opened and shut the doors, there were
15 no issues were those doors?

16 A. Right.

17 Q. No concerns you had?

18 A. No issues with which doors?

19 Q. No issues with the bedroom closet doors?

20 A. Not that I remember, no.

21 Q. No concerns were raised --

22 A. No.

23 Q. -- by the doors at that time to you?

24 A. No.

25 Q. I think -- I'm sure I am paraphrasing here, but I

1 have a note that says that you stated earlier that you
2 didn't believe a 100 pound door should be used in an
3 assisted living facility. Is that a fair paraphrase of
4 your opinion?

5 A. Yes. I think I also went down to 80 pounds, just
6 extraordinarily heavy doors where there are alternatives.

7 Q. Let me start by just confirming that you've --
8 you've -- well, are you aware of -- I know you are not an
9 expert witness in this case. I hope you won't charge me
10 your consulting fee. But are you aware of any regulations
11 that govern assisted living facilities that mandate a
12 certain weight door or prohibit a door over any certain
13 weight in a facility?

14 A. Well, you're right, I am not an expert. But I
15 spent about a day down with the city permitting fathers and
16 walked through all the diagrams and drawings and -- and
17 verified with them there were no regulations. I looked
18 through the code, both the National Code and the Arkansas
19 Fire Code. I know there are code provisions with respect
20 to exterior doors, but not closet doors. For example,
21 there need be no door there at all.

22 Q. And I -- I failed to add a word. What I was
23 meaning was, you're not being offered as an expert witness
24 in this case?

25 A. God, I hope not.

1 Q. I mean, I understand you've got some knowledge
2 from your time in the industry. And that's kind of what I
3 am getting to. Based on your time in the industry, you're
4 not aware of any regulations, whether it be a HUD
5 regulation or a state regulation or anything like that,
6 that governs the weight of the door?

7 A. Of a closet door?

8 Q. Of a closet door in an assisted living care
9 facility.

10 A. No.

11 Q. Can you tell me what the weights are -- well,
12 first of all, while you were working for Beverly or for
13 this --

14 A. Sunwest Management.

15 Q. Thank you. -- Sunwest, do any of the facilities
16 that you have some responsibility for and that you -- that
17 you worked on projects for, are those assisted living
18 facilities? Do they include those?

19 A. First of all, if it's okay with you -- and -- and
20 I don't want to be argumentative, but I'd rather not
21 discuss Beverly, but we can deal -- how about we just deal
22 with current clients?

23 Q. Well, what I am really getting to is, I want to --
24 I am curious if you know if -- the weights of any doors in
25 any of the facilities that you have ever been responsible

1 for?

2 A. I'll -- I'll get to your question. I just want to
3 demarcate off, I don't want to talk about Beverly if it's
4 okay with you. But I will also say they really didn't have
5 maybe one or two, five -- I have no idea what they have
6 now. It was a skilled nursing facility environment.

7 Q. Okay.

8 A. So let's talk about current clients, because they
9 are all primarily ALFs, A-L-Fs, assisted living facilities.

10 Q. That will be fine.

11 A. It varies. I -- I can tell you this. Of all of
12 the facilities -- because not long after this happened, and
13 I spent the day in the permitting office here, I called the
14 COO, who is also one of my clients, at Sunwest Management.
15 And at that time, they had 375 facilities. Many of them
16 new. Some acquired and that would be older. But I asked
17 do you have any solid core door or doors on overhead
18 tracking, one failure systems. His answer was no. I don't
19 know whether he was thinking of all 354 or anything else.

20 Q. Did he review -- did he give that answer to you
21 off the top of his head?

22 A. Yes. Now, I want you to understand, the COO, this
23 was the founder of the company, or co-founder of the
24 company, who acquired most of the buildings, so. And he
25 has been to every one they got, so.

1 Q. What weight in -- in your opinion -- and I realize
2 that you're not an architect.

3 A. Sure.

4 Q. But what weight, in your opinion, becomes too
5 heavy in a facility, assisting living facility?

6 A. I think you start with who is in the building.
7 You know, in a motel environment, for example, you don't
8 know who. They got handicapped rooms, but you don't know.
9 So you -- you build it so that whatever weight it is, if it
10 falls, if it fails, serious injury is not likely to result.
11 You can't prevent it. I mean, even a 13 pound door might
12 fall at an angle, hit somebody, knock them up against --
13 anything can happen. So it's -- it's what makes sense.
14 It's a reasonable person's standard to talk about legalese
15 terms.

16 In this instance, you know by looking at them,
17 that heavy doors, 60, 70 pounds -- I mean, my dad, again,
18 was one of the healthier ones in this facility. You look
19 at some of those people -- and I can mention them by
20 name -- that -- that would have been crushed worse than my
21 dad. But at the end of the day, when you've got doors that
22 weigh more than a resident -- and there are people in that
23 facility that don't weigh 100 pounds -- that's -- that's a
24 flag.

25 You shouldn't have something -- in my opinion --

1 and I am not the expert. You should not have something
2 that's a single failure system that weighs more than the
3 resident, who is frail to begin with. It just -- I mean,
4 and -- and -- and God knows we all learn. I should -- I
5 should have thought about that. I should have. I -- I
6 often -- I don't -- I sometimes think -- and I don't think
7 I did have this conversation, Bob. But I did note that
8 solid core doors, you know, just -- and I didn't say it
9 doesn't make any sense to me. It's just, first of all,
10 it's a huge expense. They are not cheap. Most of the
11 doors in my house are not solid core doors. And, again,
12 the few I have are triple hinged.

13 But, no, I can't draw you that line. I think you
14 start with what's the use of the building. In this
15 instance, I think WDM on its website talks about
16 specializing in -- in elder care facilities. They built a
17 lot of them. My golly, I've gone to people on the street,
18 not literally, but just people that don't know anything
19 about it and mention it to them, and the reaction is
20 universal. That sounds unbelievable. I don't have those
21 in my home. So, you know, for me, it's not -- it's not a
22 50 or 60 pounds. I would go back to just a -- a single
23 fail -- what I call single failure tracking system is --
24 would be a red flag to me, and anything heavy, anything
25 more than the sort of things you see in a motel or a hotel.

1 Even nice hotels, those doors are not solid core. They are
2 not real heavy, because they do fail.

3 Q. And I am not trying to argue with you. I want to
4 be sure I understand.

5 A. No, I understand. I understand.

6 Q. Even if the track that's specified is designed to
7 hold the weight of the door, you would still be critical of
8 using a door of the weight that was used in this facility?
9 Is that -- is that a fair statement?

10 A. Can I say yes. And then, as I am always doing,
11 add something?

12 Q. Say whatever you want and need to.

13 A. They could put a gorilla in the room and put a
14 cage designed for a zoo to hold a gorilla. The gorilla
15 shouldn't be in the room of an elder care facility. In my
16 opinion, just like a gorilla, that door should not be in
17 there, because whatever the design is, designs can fail.
18 And you've got to design what happens if it fails. That's
19 just the way you do it. Particularly, if you serially
20 built these buildings. You have met not once, twice, 10
21 times, 20 times -- I don't know how many of these have been
22 built.

23 I just know when I brought it up to my experienced
24 COO out in -- in Salem, Oregon, his immediate reaction
25 was -- and he's been in the business 12 years now and built

1 a heck of a lot of facilities. He said why in the world
2 did they do that.

3 Q. What is that gentleman's name?

4 A. Darryl Fisher.

5 Q. Is that N-E-C -- F-I-S-H-E-R or --

6 A. Not a good speller. I don't think so.

7 THE VIDEOGRAPHER: Counsel, we only have five
8 minutes left on the tape.

9 THE WITNESS: I believe it's just F-I-S-H-E-R.

10 MR. MORRIS: That's a good spot to stop. Let him
11 switch.

12 THE WITNESS: That's fine.

13 MR. MORRIS: Nobody move.

14 THE WITNESS: Yeah, don't let Rex move.

15 THE VIDEOGRAPHER: The time is 5:36 p.m. and we
16 are off the record.

17 (Off the record).

18 THE VIDEOGRAPHER: The time is now 5:38 p.m. and
19 we are back on the record.

20 Q. (BY MR. MORRIS) Mr. Brigance, despite the fact that
21 we were only off the record for a couple of minutes, I
22 don't remember exactly where I was, but I know you had
23 mentioned a gentleman named Mr. Fisher.

24 A. Darryl Fisher.

25 Q. Darryl Fisher. And then you had previously

1 mentioned that you had, I guess, kind of in passing, for
2 lack of a better way of put -- putting it, to mention the
3 solid core doors being used and -- and some individuals
4 that expressed some surprise. Are you okay there?

5 A. I'm hurting a little bit. I'm fine. I am sorry.
6 I am not wincing at you.

7 Q. Do you need to stand up?

8 A. I'm okay right now. Thanks.

9 Q. Can you give me the identity of or the names of
10 these other individuals who you have talked to?

11 A. I mean, they were just friends, not people in the
12 business, not -- I am not looking -- I haven't been looking
13 for an expert. I am just -- I mean, I keep looking for
14 somebody to say, yeah, that makes a lot of sense.

15 Q. Are any of them architects or engineers?

16 A. I have talked to architects through people, but
17 not directly.

18 Q. Do you know what architects through people you
19 have spoken to?

20 A. By name, no.

21 Q. Did Mr. Fisher or any of these individuals you
22 have spoken with reference any sort of -- again, I'll --
23 code, regulations, any sort of authority that gave
24 Mr. Fisher and these other individuals information that
25 specified that these doors were what I'll call too heavy or

1 should not have been solid core doors?

2 A. Not for closet doors.

3 Q. No one gave you -- no one gave -- no one
4 identified specifications that closet doors couldn't be
5 solid core? That was a terrible question. Let me try that
6 again.

7 In your conversations with Mr. Fisher or any of
8 these other individuals, did they reference any code or
9 regulations that prohibited the use --

10 A. I'm sorry to interrupt. Do you mind if I stand.
11 I'm having some sort of spasm I fear. Don't -- nobody
12 leave. I should have done that at the break. I am sorry.

13 Q. That's all right.

14 A. Okay.

15 Q. I'll try again.

16 A. I am sorry.

17 Q. That's okay. If you need to take a second, we
18 can. In your conversations with Mr. Fisher or these other
19 friends and neighbors, have any of them when they expressed
20 surprise or indicated to you that there's no reason to use
21 these solid core doors or that they were inappropriate, did
22 any of them reference any sort of regulation or code or
23 anything from a governing body or agency, that kind of
24 thing, that specified that solid core doors or -- were
25 inappropriate or that only doors up to a certain weight

1 were appropriate --

2 A. Mr. --

3 Q. -- on closet doors?

4 A. Well, Mr. Fisher mentioned -- and I call him
5 Darryl. Darryl mentioned that you would want to look into
6 the codes that govern. He said I'm not aware of any on
7 closet doors, but you might want to check. And that's what
8 sent me down to the city fathers for a day.

9 Q. But he -- he couldn't provide you with a citation
10 I guess?

11 A. No.

12 Q. In your research or search for such a code, you
13 were unable to find anything that made -- made such a
14 specification for closet doors --

15 A. No.

16 Q. -- is that correct?

17 A. Yes. And let me just say one other thing. I
18 don't know if you have been to the -- to the room. I think
19 there are only a couple of rooms like my parents' room
20 there at the facility. There are two bedrooms. There are
21 two identical closets, basically identical. One has a set
22 of doors; one does not. So you start with the idea or the
23 premise does it have to have a door at all. If it does,
24 it's merely aesthetics. And -- and, to me, aesthetics are
25 sort of the end of the level of interest I have. In

1 particular elder care facilities, it's safety. So you
2 start with why a door at all. So if there were -- and I do
3 not believe there was based on the big books I have looked
4 through and the guidelines I went over with the permitting
5 office there that govern in this state -- other states -- I
6 understand other states -- and there's a national code. I
7 know of no such code or regulation for closet doors, even
8 if they have to be hung. But, in this instance, I know
9 they didn't have to be hung.

10 Q. Well, to be sure I understand what you're telling
11 me. In the bedroom that your -- your parents -- your
12 mother sleeps in --

13 A. Yes.

14 Q. -- there -- there are similar closets doors to
15 what we are talking about?

16 A. Yes, yes.

17 Q. In the spare bedroom or the other bedroom --

18 A. Yes.

19 Q. -- there's a closet, but no doors on it at all?

20 A. Yes.

21 Q. Were they -- were there every doors on it?

22 A. No. It was not designed to have doors.

23 Q. Okay.

24 A. Let me add one other thing going back to your --
25 your weight issue. I would have -- and, again, as a

1 layperson -- an engineer might say it's really no safer,
2 but it seems like it to me. I would have no problem with
3 the weight of doors if they are triple hinged. On a one
4 track, what I call, a single failure, that's a whole
5 different issue. And that's what we have here.

6 Q. You have used that term several times, single
7 failure. Can you tell me what you mean by that?

8 A. Well, we have heard the testimony about the
9 problems with the other doors in the facility and the minor
10 problems in my dad's room until the day it came off. That
11 was a single failure. He didn't have a second chance. It
12 didn't come off and -- and sit perpendicular in his room,
13 which would have flagged it for me. I didn't know about
14 that. It came off. One -- one shot.

15 Q. Is that a term that somebody you have talked to
16 has used or is that your term?

17 A. That's my term. I usually don't use other
18 people's words or terminology.

19 Q. It's not a term that I have known, but it doesn't
20 mean it's not an industry term. That's why I'm asking.

21 A. I have never used it before today, but --

22 Q. Okay.

23 A. And I have never come up with the gorilla metaphor
24 before today either, so forgive me. I wing it sometimes
25 late in the day.

1 Q. Do you -- do you make -- I'm trying to figure out
2 how to ask this. Do you make a distinction in your mind --
3 let me back up. Joe told us about yesterday some instances
4 where the -- one side of the top of the door had come out
5 and he had to snap it back in. Do you remember what I am
6 talking about?

7 A. Yes, yes.

8 Q. And, at least in my mind, that sounds different
9 than what happened with your father's incident, both in
10 kind and degree, I guess. Do you make any distinction
11 between those two or, in your mind, should one have led
12 the -- all the folks that are involved in this case to
13 believe there might be some issue with -- that would have
14 caused a door to actually fall down?

15 A. I think I understand that question. Let me try it
16 address it.

17 Q. I'm winging it this late in the day, too. I
18 apologize.

19 A. That's fine. Let me see if this answers your
20 question. First of all, I don't know if there's a real
21 difference, because I don't -- I haven't seen, looked at
22 the doors, the tracking. I can't go back and replicate
23 what happened. I don't know whether it was the door shims
24 that caused the problem. I don't know. It's funny that
25 there's been so far in what we've heard one door that fell,

1 one single failure event that -- that killed a man, and
2 there was no popping out or popping in the best I know, but
3 it failed. Why it failed, I don't know. It appears to
4 be -- I didn't hear Joe mention shims anywhere else -- that
5 maybe it's the shims that caused that to be a problem.
6 That would go to the explanation of what happened in my
7 dad's room, which I don't know, because the -- the brackets
8 are gone and the doors are gone and we haven't seen them.

9 With respect to the other doors, I don't know. I
10 mentioned -- and it's a bad analogy I am sure, but the
11 O-rings on the Challenger. You know, there were a number
12 of -- of failures, door pops, if you will, before the --
13 the final one melted through. There were so many
14 indicators. I mean, if you look at that and read that
15 report after the fact, in retrospect, there were many
16 indicators.

17 Here's my problem. Right now what I'm sensing
18 over the last two days is that those are just one-offs.
19 They're not precursors of something more dangerous. Now, I
20 have said before I have seen, the sitter has seen, my
21 mother has seen crews in there on two or three occasions
22 since my dad's death or since my dad's accident working on
23 those doors. I don't know what they've been doing. I know
24 they put some more screws in the -- in the tracking. I
25 know they have done -- as Joe said the other day, he put a

1 piece that never was on the -- on the bathroom door. He
2 said sometimes it comes loose or -- there was never a piece
3 on the bathroom door, but now there is. So things are
4 being done, but I don't know if that's solving -- this is
5 like a quality issue, right. It's like the Challenger
6 disaster. Have you gotten to the root cause or is
7 everybody simply saying these things pop out, they pop back
8 in, and nothing ever is going to happen. See, I don't know
9 that. And that's why I continue to have fear for these
10 doors.

11 Q. The -- you mentioned a couple of times now about
12 seeing somebody in the facility working on the doors?

13 A. Yes.

14 Q. Do you know which door in the room that's being
15 worked on?

16 A. All three. Well, when you say in my room, again,
17 there are only the two bifolds in the bedroom up and the
18 one bathroom door that all stay open. The other door is
19 not there. But I am told they were working on all three
20 sets of doors in various, if not all, rooms on two or three
21 occasions.

22 Q. Let me break that down a little bit to be sure I
23 understand. It's been your observation in your mother's
24 room that there's been work done on the bedroom closet
25 door?

1 A. Yes.

2 Q. And when did you observe that?

3 A. I didn't observe it personally. My sitter -- my
4 mother's sitter did.

5 Q. Okay. Do you know when she observed that?

6 A. Off the top of my head, I don't. It was a couple
7 of months or more ago. And I can tell you what they were
8 doing. They were putting additional screws in the
9 tracking. Because once I started looking at all of this --
10 and I don't know anything about the engineering. It may be
11 done to spec. I don't know why they were doing, because I
12 know it's not what caused my dad's accident. But if you
13 look up at the tracking, you got the little holes where you
14 mount it. All the holes were not filed with screws. Now
15 they are. As I told you, the -- the bathroom door was --
16 had no -- no center guide ever. And now it does. I told
17 you they replaced the tracking in -- in -- in our room. So
18 they have been in our room. And I know my sitter, she
19 asked more questions than I do. Because, again, I have
20 made it a deliberate choice throughout this not to try to
21 harangue anybody. I don't like that. I have seen it done
22 against my clients and I don't like it. There is a right
23 way to do things and a wrong way. I don't go behind
24 people's backs. I don't try to secrete information. I
25 didn't talk to any of those people. But my sitter said

1 that she talked to them and they were in each of the rooms
2 and they were making repairs is what they were told on the
3 doors.

4 Q. Did I understand you to say that on the closet
5 doors -- the bedroom closet doors you actually observed --

6 A. I did not actually observe.

7 Q. No.

8 A. I am sorry I interrupted you.

9 Q. That's okay. You -- you actually observed the
10 track at some point --

11 A. Yes.

12 Q. -- that -- where there were holes --

13 A. Yes.

14 Q. -- with no screws in them?

15 A. Yes, yes. In all -- all of the doors, closet
16 door, bathroom door, and the bedroom door.

17 Q. Did you bring that to anyone's attention?

18 A. No. Again, I knew enough to know -- because when
19 I went in and looked at my -- at my dad's tracking before
20 they took it down and replaced it, I mean, I pulled on it.
21 There was nothing -- there were not all those screws in
22 there, but that wasn't the problem. So wasn't -- maybe it
23 should have. I don't know why it was somebody else's
24 interest, but it tells me something went on in -- in
25 looking at these doors.

1 Q. Now, I'm confused.

2 A. I am sorry.

3 Q. No. It's my fault. You -- I think I just
4 understood you to say that you observed the track, both the
5 track for the door that this lawsuit is about --

6 A. Right.

7 Q. -- as well as the track in the closet door in the
8 bedroom to have holes that --

9 A. Were not --

10 Q. -- for screws that did not have screws in it?

11 A. Yes.

12 Q. And that was before this incident, before your
13 dad's incident?

14 A. Before my dad's incident, oh, no.

15 Q. That was afterwards?

16 A. Yes. And what I am saying is they now have screws
17 in them.

18 Q. Got you.

19 A. Two different teams came through over a week's
20 period and put screws in, including the newly-mounted track
21 where they mounted it the same way the others have been
22 mounted, which -- not fully complemented with screws.
23 Which, again, I am not saying is a problem. I -- but I
24 don't know why they were doing it if there hasn't been a
25 problem somewhere else like that.

1 Q. Okay. Do you know who those -- I'll use your
2 word -- teams were with?

3 A. Not a clue. I wanted to see if Joe was doing
4 that. And I heard Joe say yesterday if there's a problem
5 with doors, we call Crawford. Kind of wish they had done
6 that before. But at the end of the day --

7 Q. Sure.

8 A. -- Joe said it wasn't him.

9 Q. Okay. I have not been to the facility and I don't
10 know exactly how the dining area is set up. The tables
11 that the residents, like your mom, eat at, are they tables
12 for four? Are they big, long lunch --

13 A. Pretty much. No, they -- they are tables for
14 four. And sometimes I think they put -- like when you have
15 families and stuff, they'll move tables around and make it
16 eight.

17 Q. And so your mom was sitting at a table for four
18 with this Alzheimer's patient at one point and -- and now
19 sits at a table for four by herself, is that --

20 A. Or with her sitter or with me, yes.

21 Q. Okay. I just wasn't sure how it was set up, so.

22 A. And I understand -- you know, Mitzi and I have
23 talked about this. It was fine when they were the only
24 ones there, it's like you go into a restaurant and pick a
25 table, any table. And -- and now, you know, it's a

1 community. You're trying to get people to move around
2 and -- and so I understand that. My mother prefers to eat
3 alone, but I also understand she's in a community
4 environment and I will work with her and the staff to make
5 it work for everybody. I think that's the last thing I
6 told Mitzi in an -- in an E-mail exchange, we'll work
7 together, we'll make it work. Then my mother decided on
8 her own to just pick up and leave and go to another table.

9 Q. The -- I think you told us earlier -- and I'm not
10 quibbling with you about it. I just want to explain where
11 my question is coming from -- you would resist any attempt
12 or -- or you would likely resist an attempt by any of us to
13 try to take your mom's deposition in this case?

14 A. I would.

15 Q. I take it from that that you do not plan to call
16 her as a witness at trial?

17 A. No.

18 Q. Okay. And so we -- we don't have to worry -- if
19 we're not going to take her deposition, we don't have to
20 worry about seeing her or hearing from her at a trial as a
21 witness?

22 A. No, unless she has some miraculous recovery. But
23 I've never seen one. My sister constantly prays for one in
24 the world, but I have not seen it and don't expect it here.

25 Q. Well, if she -- I certainly hope she has one.

1 A. Me, too.

2 Q. And if she does --

3 A. If she does, you will be the first one I'll tell.

4 Q. Just let -- well, you can let Mr. Chronister know.

5 A. Okay.

6 Q. You told us earlier about -- I think you were
7 talking about it with Mr. Tilley -- that in addition to a
8 monetary outcome for this case, that you had questions that
9 you wanted to see answered. And I'd like for you to tell
10 me the questions that you need answered from WDM. What --
11 what information do you need from them to get to the bottom
12 of some of the issues that you've got in this case?

13 A. Well, I think we asked it in some of the
14 interrogatories or document requests. But specifically
15 I -- I want to know how many buildings did they design for
16 Mr. Brooks. I mean, that's the way I start with this. I
17 mean, I am -- I am not starting a class action here. This
18 is about a facility owned by Mr. Brooks. Now, the
19 interpretation by counsel -- and, again, it's what lawyers
20 do -- is that we're just suing the one facility. I -- I am
21 suing -- you know, well, I'm not going to get into the law,
22 because these guys are the lawyers and -- and I am not in
23 the case. But we're suing beyond this one facility. And
24 if we've got to add people or do whatever, we'll do it,
25 that's what we are going to do.

1 But what I want to start with is the relationship
2 between Crawford, WDM, and Mr. Brooks and his partners, how
3 many of these buildings or similar buildings have been
4 built and how many of these doors are out there. That's
5 number one. Number two, it would be what your
6 experience -- and I don't mean the architects' experience.
7 I mean, I have no idea whether anybody from WDM knows about
8 any failure. I would suggest to you that it seems that
9 even this one facility, not everybody knew about the
10 failures. I -- I have mentioned before, particularly in
11 this environment, word gets around about things, rumor
12 mill. Rumors can be rumors. Rumors can turn to facts or
13 are based on facts. You never know until you've
14 investigated.

15 Where I plan on going with all this is, I'm going
16 to talk to formers at other facilities. We're going to do
17 that investigation, because it's not just good enough to
18 ask WDM do you know of any failures. We got to dig into
19 that. Just like we asked Mr. Wasson, who -- who recorded
20 Mitzi and did other investigation and came back to me, I
21 believe probably truthfully, and said one incident. Well,
22 now we know by talking to other people, including
23 ex-employees, former employees, that there were more than
24 one incident at this facility. So it's -- it's a root
25 cause analysis, what do we have going on here, and you got

1 to start with what's the universe. So for purposes of this
2 suit, I -- I would like to note that and -- and to get help
3 instead of stonewalling. Because whatever the stonewalling
4 takes, I'm going to get around the walls if -- if I can.
5 Legally, I'm going to get around the walls to find that
6 out.

7 Now, beyond that, I'm going to want to take the
8 next step. Quite honestly, I have asked Darryl and the
9 risk manager at Sunwest Management to look into their
10 situations. I continue to be told we don't have any single
11 failure tracking hollow -- solid core doors. But it's now
12 an interest of mine. It's kind of like, you know, how did
13 MADD get started, because somebody, you know, had a son or
14 a daughter that was killed by a drink driver. I won't say
15 it's a cause for me, but it is back to my dad's thing make
16 something good out of this.

17 I'd like to then start with or go next to WDM as a
18 collaborative process. I would rather this not be an
19 adversarial process, because that's only going to make me
20 go to the next step of going after a class action on these
21 doors nationally, whether that involves Beverly buildings
22 or whatever it involves. It doesn't matter to me. I
23 believe these doors are a threat. Now, I told Mark that
24 I -- if somebody can prove me wrong -- I'm not a scientist.
25 And -- and that's part of, to me, the collaborative

1 process. Don't hide it from me. Work with me. I want to
2 work -- I want to be part of that solution. So at the end
3 of the day, that's what I would like to see from WDM.

4 MR. CLAUSEN: I need to jump in and be sure that
5 everybody is clear. I appreciate your question. And I
6 certainly understand Steve's answer, but I don't want
7 anybody to construe his answer as a limitation in terms of
8 theories that we may need to pursue or particular arguments
9 that we may need to make. We are still at the very
10 beginning of this process. I don't want his testimony to
11 be misperceived by anybody as a limitation with regard to
12 what we may need to do in the case.

13 MR. MORRIS: I didn't take it that way. I -- I --

14 THE WITNESS: Nor a threat.

15 MR. MORRIS: I want to get -- I want to know what
16 information that he -- he's looking for. But I appreciate
17 what you're saying. And I don't have -- I don't construe
18 this as a limitation.

19 THE WITNESS: Nor is it a threat on my part at
20 all.

21 Q. (BY MR. MORRIS) The -- well, let me do like Mark
22 and keep my list going here. Any other classification of
23 information that you're looking from WDM as part of this
24 process?

25 A. Not that I can think of right now.

1 Q. You -- you used the word stonewalling. And I'm
2 not -- I'm not arguing with you about it.

3 A. I grew up in the Watergate era.

4 Q. I'll just -- is there some bit of stonewalling you
5 believe that's been done by WDM in this case to this point?

6 A. I haven't gotten into the -- into it to answer it.
7 I just know there were -- and, again, it's -- it's as Joe
8 South used to sing, it's the games people play in -- in
9 terms of objections. But, yeah, there's a lot of
10 information out there yet to be had. I'm not going to --
11 I'm not the expert. I can't tell you off the top of my
12 head who made all the objections. There are a lot of them.
13 And -- and so there -- there's a fertile field out there.

14 Q. Let me see if I understand what you're telling me.
15 When you used the word stonewalling, at least in this
16 sense, you're talking about that there's been some
17 objections asserted, be it by WDM or others, in the
18 discovery process, and that those have yet to be resolved
19 one way or the other, is that --

20 A. I don't -- so I am clear, I'm not calling that
21 stonewalling. That's -- that's the stuff lawyers do.

22 Q. Okay.

23 A. But I also know, as I talked about, this could be
24 a real long road. And -- and to some extent, we can
25 cooperate and have confidentiality agreements and the other

1 things, or you -- you can keep saying no and -- and I'm
2 going to keep saying to my guys, yes.

3 Q. Okay.

4 A. And -- and at some point, I would say we're not
5 trying to work together for the good of either my dad's
6 legacy or my mother or residents at Brookfield or any
7 senior that is in a house or facility that has these kinds
8 of doors in it until we have nailed it all shut and we know
9 it's safe.

10 Q. I don't have the discovery responses memorized.
11 But if WDM has indicated in discovery that it knows of no
12 other injury incidents like this or incidents of door
13 problems at other facilities, do you have any information
14 that would dispute that as we sit here today?

15 A. No.

16 Q. Have you -- has anyone -- do you have any
17 knowledge, whether it be firsthand or -- or things you
18 heard from others, that WDM was aware of any of the
19 problems with the doors that we have been discussing over
20 the last couple of days at the Brookfield facility prior to
21 the accident involving your father?

22 A. No.

23 Q. So, as far as you know, the first WDM heard about
24 any problems with the doors was after your dad had had his
25 accident?

1 A. As far as I know.

2 Q. Do you have knowledge of anyone at any time ever
3 telling WDM, either in the design phase or even after the
4 fact, that the solid core doors were inappropriate for an
5 assisted living facility like this?

6 A. No.

7 Q. If this was covered, I apologize. Since your
8 dad's passing, how many business trips have you taken?
9 I -- I know you have talked about some of them. I don't
10 necessarily need to know all the details. I am just
11 curious how many that was.

12 A. I mentioned the one in June that I couldn't get
13 out of.

14 Q. Talking about just a little over a month ago?

15 A. Yes, to -- to conduct a mock trial in Portland. I
16 believe I was out in Oregon within two weeks of my dad's
17 death for a couple of days. That's all I can remember.

18 Q. With respect to the care and treatment you have
19 been getting from -- and I failed to jot their names down,
20 but your psychologist and your psychiatrist, have you been
21 given any indication as to how long that treatment -- they
22 expect to be continuing that treatment?

23 A. No.

24 Q. Okay.

25 A. No. I hope not long.

1 Q. When you were talking with Mr. Dossett, you
2 mentioned -- I jotted this down -- new care plan, which I
3 took to mean was maybe another contract with Brookfield for
4 your mom's stay. Is that -- is that what you were talking
5 about?

6 A. I don't know how they consider it. I -- I guess
7 you have a contract of care. I mean, it's basically month
8 to month there. But every year, you know, and -- and more
9 often, if there's a change in condition, but mother had
10 been there a year, and so you get together and discuss what
11 the facility sees and changes, what's going on, what's
12 needed, what -- it's just sort of an annual thing.

13 Q. So that was executed in July or so of '09?

14 A. Yeah. My mother would have been there a year in
15 June. Whatever was happening in June, I guess that was the
16 mock trial and I couldn't do it. And then Mitzi was gone
17 for a week or whatever. And I ended up doing it with
18 Karen, but I think it was late June.

19 Q. Of 2009?

20 A. Yes.

21 MR. MORRIS: I think that's all the questions I
22 have got. Thank you for your courtesy.

23 THE WITNESS: Thank you for courtesy.

24 MR. MORRIS: Anybody else?

25

1 RE CROSS EXAMINATION

2 BY MR. DOSSETT:

3 Q. I have to ask a few follow-ups. I apologize. I'm
4 going to keep it quick.

5 A. Sure.

6 Q. Have you -- have you been a party -- let me
7 rephrase. Have you filed any lawsuits on behalf of your
8 parents or any other family members?9 A. I -- I mentioned the divorce action I filed on
10 behalf of my mother against my dad.

11 Q. Any others?

12 A. I have threatened insurance carriers that would
13 not pay their assisted living facility bills, but I don't
14 think I ever sued them.15 Q. Where would -- if you did have to file something,
16 where would it have been?

17 A. That would have been in Alabama.

18 Q. Alabama. What -- what -- in the Mobile area?

19 A. Yes.

20 Q. Okay.

21 A. But I don't think I did.

22 MR. CHRONISTER: Steve, was there one -- I know
23 there was some discussion. Was there one between -- that
24 you brought on behalf of your uncle to regain some home or
25 money that a caregiver had taken away from him?

1 THE WITNESS: We didn't -- we didn't file a suit.

2 MR. CHRONISTER: Okay.

3 THE WITNESS: We objected to the state trying to
4 institutionalize my uncle.

5 MR. CHRONISTER: That's --

6 THE WITNESS: No, I've not filed a suit on behalf
7 of my parents that I can remember.

8 Q. (BY MR. DOSSETT) No other ones on behalf of any
9 other relatives come to mind?

10 MR. CHRONISTER: You did file an action to
11 establish guardianship with respect to Jimmy.

12 THE WITNESS: Okay. And --

13 Q. (BY MR. DOSSETT) And where would that have been?

14 A. Mobile.

15 Q. Whose name would that be initiated in?

16 A. Jimmy's?

17 MR. CLAUSEN: I don't know. It's filed in Mobile
18 County Probate Court. I can get a copy of the pleading for
19 you.

20 MR. DOSSETT: If you can just get the style of it,
21 that would be good enough.

22 MR. CLAUSEN: Okay.

23 Q. (BY MR. DOSSETT) Any others that come to mind?

24 A. No, not that I filed.

25 Q. Maybe we can pause for a minute and see if the

1 lawyers remember anything. All right.

2 As you have been testifying today, have you
3 been -- have you been on -- taking any medications for
4 pain?

5 A. For pain, no.

6 Q. How about any mood-altering medications or
7 medications prescribed by your psychiatrist?

8 A. Yes.

9 Q. And would you just list them for me?

10 A. Just one, Lexapro.

11 Q. And did you -- was that one dose today or --

12 A. I took two.

13 Q. Okay. And did you take it at the beginning of the
14 day or throughout or how did --

15 A. Regular time, which was the beginning of each day.

16 Q. Have you been able to take any vacation since your
17 father's passing? Let me back up. Since your father's
18 injury?

19 A. Define vacation.

20 Q. A trip for pleasure as opposed to business.

21 A. I guess you could call the South Carolina trip
22 that started as pleasure.

23 Q. All right. I've heard about that. Any others
24 that come to mind?

25 A. Not that I can recall.

1 Q. Have you been on, for example, a cruise or
2 anything like that?

3 A. I don't go on boats.

4 Q. Okay. That's a no. All right. Did you -- what
5 documents did you review to prepare for your deposition
6 today?

7 A. I reviewed each of the responses --

8 Q. The discovery responses?

9 A. -- by the defendants, the discovery responses and
10 objections. I reviewed my -- my signed interrogatory
11 responses. I did not review any of the documents we have
12 produced. And I reviewed a couple of E-mail exchanges I
13 had with Mitzi.

14 Q. Okay. Do you remember the nature of those E-mail
15 exchanges?

16 A. Yeah. One of them was -- I mean, it was mentioned
17 yesterday. I think maybe you asked the question of -- of,
18 you know, of Peggy, were you aware that there had been a
19 request that Dot eat alone. And I've not made a request
20 for Dot to eat alone. And -- and I wanted -- I went back
21 to review a recent exchange I had had with Mitzi on that
22 very subject, that I -- I had tried to make it clear to the
23 staff and I -- I made it what I thought was clear in that
24 E-mail that mother had a problem with Marjorie. And it
25 just was a continuing problem for me. And I understood

1 that mother couldn't necessarily have a table by herself.
2 That was okay. I want her to be as social as we can make
3 her be, but Marjorie is a problem. So I am not looking to
4 isolate my mother.

5 Q. I understand. It wasn't the intent -- you're
6 saying the intent of your request was not that your mother
7 be alone, but just that she not have to eat with this
8 particular person?

9 A. Yes.

10 Q. Okay.

11 A. And then the other exchange, I think, had to do
12 with my dad back last year when I was in -- on business in
13 Portland and my dad evidently hurt some feelings of people,
14 and I wrote her apologizing for that and saying I would
15 work with dad when I got back. And she pointed out what I
16 thought was obvious, but -- but Peggy had sort of
17 disagreed, that my dad worried about me when I traveled
18 and -- and so I said I would do something about that.
19 Those were the two E-mails I reviewed.

20 Q. Any other documents that you reviewed?

21 A. No.

22 Q. I asked you earlier if you had asked anyone to
23 take photographs for you and you answered that question.
24 But have you asked any -- any third person to take notes or
25 keep a log of events that take place inside The Brookfield?

1 A. Have I asked anybody, no.

2 Q. Has anyone done that and provided you the
3 information?

4 A. No.

5 Q. The final thing I wanted to ask you is: When you
6 were answering questions just a minute ago, did you
7 indicate that at one point you attempted to pull on the
8 track?

9 A. Well, I didn't pull -- I -- I didn't mean to
10 interrupt you.

11 Q. That's what I am -- that's the point of the
12 question.

13 A. I just, you know, is there a problem, was it
14 loose, and it -- it seemed to be affixed.

15 Q. Was this the track that was up at the time the --

16 A. Yes.

17 Q. -- door fell?

18 A. Yes.

19 Q. And did you notice anything about the track that
20 was loose?

21 A. No. I mean, there was a spring mechanism or
22 something that seemed to be askew, but I didn't pay any
23 attention to that. It may have looked like it was supposed
24 to look. I don't know.

25 Q. Did the rail itself, when you touched it, did it

1 seem to be solidly affixed --

2 A. Yes.

3 Q. -- to the top of the door?

4 A. Yes.

5 MR. DOSSETT: That's all I have.

6 RE CROSS EXAMINATION

7 BY MR. MORRIS:

8 Q. Sorry. I have two more things that I meant to
9 ask. They will be very quick. I promise.

10 I -- I notice in your diary or journal entries
11 that you provided us there were -- I forgot now -- probably
12 four or five different days worth of entries --

13 A. Yes.

14 Q. -- is that right?

15 A. Yes.

16 Q. What triggers -- I mean, it's obvious you're not
17 doing it every day, I guess, is that right?

18 A. I've pretty much stopped.

19 Q. Okay. What -- what cause -- it looked like there
20 was maybe one in March and a couple in April and a couple
21 in May. What -- what caused you to decide to journal that
22 day I guess is my question?

23 A. Usually that was the week that the psychologist --
24 because he's the one that's had me keep the journal --
25 advised me to do that.

1 Q. Okay.

2 A. When he felt there was some need for me to deal
3 with something. I will tell you that I stopped -- even
4 though he's tried to get me back -- because, you know, I
5 think I'm a pretty good lawyer, but it never occurred to me
6 that somebody would look at my journal. And so as soon as
7 we got the discovery requests -- nothing unfair about that
8 and I surely should have seen it coming. I can't bifurcate
9 myself. I'm a lawyer. And there's no reason to journal if
10 you think somebody else is going to look at it.

11 Q. Okay.

12 A. So that exercise has pretty much stopped.

13 Q. And last thing -- and, Rex, feel free to answer
14 this, if you'd rather -- if you know better than
15 Mr. Brigance does. I know you may not have everything yet,
16 but just so I can have it for later when I try to look, can
17 you tell us what the medical bills situation is?

18 MR. CHRONISTER: My secretary went through them
19 today and tried -- we finally got in these UBE-92s, or
20 whatever they are, that are the actual billing statements.
21 But my secretary went through those. And as best we could
22 come up with -- I'm not going to say they are all of them,
23 but it's \$69,902 are the medical that we've got in these
24 forms to date. And I have got to double check with her to
25 be sure we have all of them and she's logged them all in

1 and things of that nature.

2 MR. MORRIS: Is that -- I see an orange post-it
3 note. Is that the Medicare payments? Or have you got that
4 figured yet?

5 MR. CHRONISTER: I don't know. That is on -- here
6 is what she's got down here, total --

7 MR. MORRIS: Okay.

8 MR. CHRONISTER: -- and then this is just on this,
9 so this may just be through one provider, which may be
10 through Sparks. This just may be the Sparks bill itself.

11 MR. MORRIS: You -- you don't have a total yet in
12 front of you --

13 MR. CHRONISTER: No.

14 MR. MORRIS: -- of the Medicare?

15 MR. CHRONISTER: No.

16 MR. MORRIS: Okay. Fair enough. That's it.

17 Thank you, sir.

18 THE WITNESS: Thank you.

19 MR. CHRONISTER: Before we stop. And you can take
20 the video off at this point in time.

21 THE VIDEOGRAPHER: The time is now 6:15 p.m. and
22 we are off the record.

23 MR. CHRONISTER: Keep it on the record. I don't
24 need to be on camera doing this.

25 Steve had asked me to do something. And, Steve,

1 as long -- since we have been so long, I'm going to ask you
2 to trust me. I am taking the liberty of editing this down
3 as it pertains to your dad.

4 THE WITNESS: Okay.

5 MR. CHRONISTER: Steve had prepared a tribute to
6 his parents -- and he was very insistent this morning --
7 and I think in light of his testimony some of this is very
8 telling to tie into the things he's testified to as to his
9 feelings relevant to this case.

10 MR. MORRIS: Can I ask what was the occasion for
11 preparing it?

12 MR. CHRONISTER: What this was, I am going to --

13 MR. MORRIS: Sorry.

14 MR. CHRONISTER: In fact, it's styled a tribute to
15 my mom and dad on occasion of their 55th wedding
16 anniversary. And this was done October 15, 1995, so --
17 '05, '06, '07, '08 -- some 13 and a half to 14 years before
18 this event. And it pertains to both his mother and father.
19 But it is fairly long, but I wanted -- with Steve's
20 permission, I would like to edit it just to the things
21 relevant to your dad.

22 THE WITNESS: It's your call.

23 MR. CHRONISTER: So bear with me and let me just
24 track this a moment.

25 I never felt there was anything unsaid between us.

1 It's not like we ever went through a period of rebellion
2 when I didn't like you. I have always liked you, loved
3 you, and respected you. And because of this reality, our
4 communication has, in my opinion, always been good,
5 complete, and satisfying at least for me. So I don't
6 anticipate that when one of us is forced to say that final
7 earthly good-bye to the other, there will be much to say
8 beyond thanks, I love you, good-bye. That's because we
9 have all said it at this point in time almost.

10 As an adult, I want to tell you in one place at
11 one time exactly what I have tried to tell you in fits and
12 starts, bits and pieces for a number of years. And in this
13 tribute I will attempt to paint it as clearly as I can in
14 words the picture in my mind of both of you. And, again, I
15 am editing this as to his father. But I love you for all
16 you have done in fulfilling your role as my parents in all
17 phases and in each epic of my life to this point. My
18 remembrances of you are many and your teachings internal.
19 You taught me how to love and respect another person,
20 including perhaps particularly myself. You displayed
21 through what must have been very difficult days and years
22 for us as a family the two great commandments, the love of
23 God and the love of others as ourselves. You taught me as
24 best you could how to be a gentleman. Beyond that simple
25 characteristic, you didn't demand too much of me.

1 Dad, I am blessed or perhaps cursed with your gift
2 of impatience with people and things when they go wrong.
3 When I think of the specific things I saw and remember in
4 you, I think of the word perseverance. Perseverance in the
5 face of what must have been very difficult days of career,
6 financial uncertainty, and family crisis. I constantly
7 think of the way that I have always observed you as being
8 the same to everyone regardless of position or stature.
9 This is true in work, church, or community, and family.
10 You showed us all the importance of loving others by the
11 way you loved my mother. Your actions make words, which
12 are often few, unnecessary. Without knowing it, you have
13 perhaps instilled in me one of the most sobering points of
14 my life, the overwhelming lesson in honoring commitments
15 when you showed me the notes payable you had given to your
16 former customers who lost money in the mutual fund crisis.
17 I was instructed to take care of these notes if something
18 ever happened to you. It would have been easier by far to
19 simply walk away from those self-imposed obligations. You
20 didn't. Always, whatever the circumstances, I observed you
21 doing the ethical, right thing, never the expedient thing.
22 You, at least for me, never questioned your faith or values
23 when things got tough. Even though you didn't often have
24 the time to go to my ballgames, you made time for me. You
25 did what was right.

1 Finally, I remember going to your room on several
2 occasions and trying on what seemed to be the biggest pair
3 of brown shoes I had ever seen. I always liked them
4 because they had leather heels and made neat noises when
5 you walked in them. But they were always too big. Well,
6 dad, I am still trying in many ways to fit into those big
7 shoes and they still seem too big. You have instilled in
8 me, through your exhibit, either genetically or
9 conditioning, the perseverance to try to do what is right.
10 This is still true as a child, as a student, as a husband,
11 as a father, you have always tried to instill in me to do
12 the right thing. I have always felt your presence and
13 remembered your teachings. This is true even though we may
14 be miles and worlds apart. This feeling will never change.
15 Thank you for your involvement, support, and your
16 character. These things I will always remember and
17 cherish. One day years hence when you lie down and breathe
18 your last, rest assured that as parents and my best
19 friends, you have given me the greatest legacy anyone could
20 have given, life, love, and an undeniable straight-arrow
21 sense of the need to be loving, honest, humane, and
22 trustworthy in everything I do. Your son, Steven A.
23 Brigance. 6:19 p.m.

24 Did I do all right in my editing?

25 THE WITNESS: That's fine.
 (Witness excused at 6:20 P.M.)

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SIGNATURE PAGE

Now, on the _____ day of _____, 2009, I
have had submitted to me for examination a transcription of
testimony given by me under deposition; and after having
read same, I hereby certify that the foregoing
transcription is true and correct, with the exception of
the corrections as noted, if any.

STEVE BRIGANCE

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CERTIFICATE

STATE OF ARKANSAS)
COUNTY OF CRAWFORD)ss

I, Laurence D. Martin, a Certified Court Reporter, a notary public in and for the aforesaid county and state, do hereby certify that the witness was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me stenographically and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

LAURENCE D. MARTIN, CCR
Certified Court Reporter
and Notary Public
State Certificate No. 326

My Commission Expires:
March 23, 2012