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IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION

STEVEN A. BRIGANCE, as personal representative
of the Estate of Maurice Brigance, Jr., deceased;
and on behalf of the wrongful death beneficiaries
of Maurice Brigance, Jr. PLAINTIFF

v. Case No. CV 2009-651 (V)

THE BROOKFIELD AT FIANNA OAKS, LLC, d/b/a
THE BROOKFIELD AT FIANNA OAKS; (parent corporation)
WILSON, DARNELL AND MANN, PA;
CRAWFORD CONSTRUCTION COMPANY;
and CRAWFORD CONSTRUCTION COMPANY, INC. DEFENDANTS

VIDEOTAPED DEPOSITION OF ROBERT BROOKS

Taken at the law offices of Kutak Rock, located at 234 East
Millsap Road, Suite 400, Fayetteville, Arkansas, on Tuesday, the
28th day of September, 2010, at 9:25 a.m.

APPEARANCES

ON BEHALF OF THE PLAINTIFF:
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MS. MEGAN PREWITT
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Fort Smith, Arkansas 72902
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APPEARANCES

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ON BEHALF OF THE BROOKFIELD AT FIANNA OAKS, LLC, d/b/a
THE BROOKFIELD AT FIANNA OAKS, and ROBERT BROOKS:

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ALSO PRESENT: Robb Helt, Videographer.
Via Telephone: John Brewer.

I N D E X

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S T I P U L A T I O N S

1
2 The videotaped deposition of ROBERT BROOKS in the above-
3 styled cause was taken before Rebecca Sanderson, CCR-CVR, a
4 certified court reporter and notary public within and for Benton
5 County, Arkansas, at the law offices of Kutak Rock, located at
6 234 East Millsap Road, Suite 400, Fayetteville, Arkansas, on
7 Tuesday, the 28th day of September, 2010, at 9:25 a.m., pursuant
8 to Arkansas Rules of Civil Procedure.

9 Counsel waive all formalities, including the signature of
10 the witness; however, counsel reserve the right to object, other
11 than to the form of the questions, to testimony on the grounds
12 of competency, relevancy or immateriality at the time of trial.

P R O C E E D I N G S

ROBERT BROOKS

14
15 Having been called for examination by counsel for the
16 Plaintiff, and having been first duly sworn, was examined and
17 testified as follows:

18 THE VIDEOGRAPHER: This is the videotaped
19 deposition of Robert Brooks taken on behalf of the Plaintiff.
20 Today's date is September 28, 2010. The time is 9:25 a.m., and
21 we are on the record.

22 All counsel present for previous depositions in this matter
23 are again present for this deposition.

24 Would the court reporter please swear in the witness?

EXAMINATION BY COUNSEL FOR PLAINTIFF

1 BY MR. CHRONISTER:

2 Q. Would you state your name for us, please, sir?

3 A. Robert Brooks.

4 Q. Mr. Brooks, my name is Rex Chronister. I think we've met
5 before in some previous depositions in this case. We're here to
6 take your deposition. Just a few ground rules. When I ask you
7 -- I'm going to be asking you questions about this case and the
8 facts and circumstances. I'm not going to be trying to do any
9 Perry Mason or any trick-ups or anything like that. I just want
10 to know what your knowledge is of what happened regarding
11 Steve's dad. If I ask you a question you don't understand, will
12 you stop me and tell me you don't understand it before you
13 answer it?

14 A. Yes.

15 Q. You're doing an excellent job right now, but also let me
16 ask the question before you answer it, and I'll let you answer
17 it before I say anything else. That way, the court reporter and
18 the video is clear on what's being said, okay?

19 A. Yes.

20 Q. If you need to stop and take a break at any point in time
21 and talk to Mr. Dossett, you can do that. I just want to get
22 the facts of what happened here, okay?

23 A. Yes.

24 Q. What is your home address?

25 A. 330 North Lancaster Drive, Wichita, Kansas.

1 Q. Tell me a little bit about yourself. Are you married?

2 A. I am married.

3 Q. How long have you been married?

4 A. Forty-four years.

5 Q. Any children?

6 A. Four.

7 Q. What do your kids do?

8 A. What are their names?

9 Q. Yeah, what are their names and what do they do?

10 A. I have a daughter named Allison who is a social worker. I

11 have a daughter named Joy who is a stay-at-home mother. I have

12 a daughter who works for a company called Pinnacle Foods that

13 sells to Wal-Mart. And I have a son who is an armed guard in a

14 nuclear power plant.

15 Q. Kept at it until you got a boy?

16 A. Sorry?

17 Q. Did you keep at it until you got a boy?

18 A. The boy was in between.

19 Q. The only reason I say that is, I have two girls followed by

20 a boy.

21 A. Okay.

22 Q. If he had been born first, he would have been an only

23 child, I can tell you that. But in any event, tell me a little

24 bit about your education.

25 A. I hold a bachelor's degree from the University of Illinois

1 in geology, a master's and a Ph.D. in geology and geochemistry
2 from Louisiana State University.

3 Q. When did you get the degree from LSU?

4 A. The master's degree in 1969, Ph.D. in 1970.

5 Q. So, tell me a little bit about prior work experience from
6 college forward.

7 A. I spent four years with Continental Oil Company, Conoco,
8 working as a liaison between the research department and the
9 minerals department, primarily working on uranium deposits.

10 After that, I worked for the U.S. Geological Survey in
11 Denver, Colorado, where I was the head of the new uranium
12 province team, looked all over the United States for new areas
13 to look for uranium deposits.

14 Following that, I went to work for a company called Energy
15 Reserves Group, which is based in Wichita, Kansas. I was vice
16 president of minerals and mining. We operated five uranium
17 mines, a coal mine, and discovered a gold mine in Canada.

18 I left there after a merger with BHP, the largest company
19 in Australia. And after a year of flying to Melbourne,
20 Australia, on a regular basis, I decided to leave and start my
21 own company.

22 I started a company called Team Resources, took it public
23 on the Vancouver Stock Exchange. Ran that for a couple of
24 years. And when the oil price hit \$8 a barrel, I decided to
25 look for another career. At the time, I had a mother and a

1 grandmother who needed assisted living, this was 1991 or '2,
2 built the first assisted living in a suburb of Wichita, and I've
3 been doing assisted living ever since.

4 Q. So, you actually built or had built your company -- did you
5 form a company to build this assisted living?

6 A. I did.

7 Q. What was the name of that company?

8 A. Masters Operating Company.

9 Q. You say that you built, so did you build a facility from
10 the ground up?

11 A. I did.

12 Q. Who was the architect that built that and who designed that
13 facility for you?

14 A. WDM Architects.

15 Q. And that would have been in what, 1991, did you say?

16 A. I believe it was '92, actually.

17 Q. And then that facility opened sometime in '92, right?

18 A. To the best of my recollection, either '92 or possibly '93.

19 Q. Was that a corporation, an LLC, an LLP? What was the legal
20 status of that particular business?

21 A. I don't remember.

22 Q. Do you still have an interest in that first assisted living
23 facility?

24 A. I do not.

25 Q. When did you sell that interest?

- 1 A. In the mid '90s. I don't remember the date.
- 2 Q. How many -- first of all, tell me any other -- what
3 businesses do you own, have an interest, or work for at this
4 particular time?
- 5 A. I have an interest in an assisted living facility in Chico,
6 California.
- 7 Q. What is the name of that business?
- 8 A. It is called The Courtyard at Little Chico Creek.
- 9 Q. Is that something that you own individually or own within
10 an LLC, a corporation, an LLP? How is that set up?
- 11 A. I don't remember.
- 12 Q. Is that one -- was that built new also?
- 13 A. It was.
- 14 Q. And who was the architect building that facility?
- 15 A. It was a gentleman named Boller, B-O-L-L-E-R.
- 16 Q. And where is Mr. Boller located?
- 17 A. Colorado Springs.
- 18 Q. What other business interests do you have?
- 19 A. I have an interest in Marion Assisted Living, M-A-R-I-O-N.
- 20 Q. All right. Where is that located?
- 21 A. Marion, Kansas.
- 22 Q. And is that an LLC?
- 23 A. It is an LLC.
- 24 Q. And are you the general partner in that?
- 25 A. I am the manager.

- 1 Q. Who are the partners in that particular facility?
- 2 A. Partners are a group of investors from the city of Marion.
3 Would you like their names?
- 4 Q. If you've got them and you know them.
- 5 A. There's Mrs. Pierce, Mr. and Mrs. Vatt, V-A-T-T,
6 Mrs. Regnier, R-E-G-N-I-E-R, Mrs. Morse, M-O-R-S-E,
7 Mr. and Mrs. Wilson. I don't remember the other ones offhand.
- 8 Q. When did you obtain the interest in this Marion Assisted
9 Living? How long have you had that?
- 10 A. Approximately, six years.
- 11 Q. What other businesses or interests do you have?
- 12 A. I have an interest in Council Grove Assisted Living.
- 13 Q. Where is that located?
- 14 A. Council Grove, Kansas.
- 15 Q. And again, is that an LLC, corporation, LLP? How is that
16 set up?
- 17 A. It is an LLC.
- 18 Q. Are you the manager of that one also?
- 19 A. I am.
- 20 Q. What about any others?
- 21 A. We have Bella Vista, Arkansas. We own one called
22 Brookfield Assisted Living.
- 23 Q. Is that in Bella Vista?
- 24 A. Yes, sir.
- 25 Q. The one in Bella Vista, you say "we." Is that, again, an

- 1 LLC?
- 2 A. It is an LLC.
- 3 Q. Are any of the owners or partners, however you want to
4 define them, in either the Marion Assisted Living or the Council
5 Grove Assisted Living, are any of the partners in those two
6 facilities also partners in Bella Vista?
- 7 A. No.
- 8 Q. So, is it a different set of partners in Bella Vista?
- 9 A. Yes.
- 10 Q. Are each of these different -- these three assisted living
11 facilities you have told me about -- or actually, four, you
12 still have the one in -- you said Little Chico?
- 13 A. Little Chico Creek, yes, sir.
- 14 Q. You still have an interest in that, the one in Marion,
15 Council Grove, Bella Vista. And all of those -- are each of
16 those individual LLCs separate and apart from each other?
- 17 A. They are.
- 18 Q. Other than a possible overlap of some of the partners, they
19 are not under the same business entity?
- 20 A. That's true.
- 21 Q. Other than -- after Bella Vista?
- 22 A. Well, Fort Smith Assisted Living. It's actually called
23 Brookfield Assisted Living-Fort Smith, LLC.
- 24 Q. So the legal name is Brookfield Assisted Living --
- 25 A. Hyphen, Fort Smith, LLC.

- 1 Q. And I'll come back to that one in a minute. Any others?
- 2 A. Brookfield Assisted Living-Hot Springs, LLC.
- 3 Q. And is that one open yet?
- 4 A. No.
- 5 Q. That is the one that has been under construction?
- 6 A. Yes, sir.
- 7 Q. Any other LLCs or other assisted living facility groups?
- 8 A. No other assisted living facilities, no.
- 9 Q. So the assisted living facilities that you have an interest
10 in through any LLC or any other form of legally recognized
11 ownership would be the one of Fort Smith, Hot Springs, Bella
12 Vista, Council Grove, Marion, and Little Chico Creek. Are there
13 any other assisted living facilities you have any interest in
14 whatsoever?
- 15 A. No.
- 16 Q. How about any other business interests that develop or
17 build or work within the assisted living industry?
- 18 A. I'm not sure I understand your question.
- 19 Q. Have you ever heard of a company called Brooks Development?
- 20 A. Oh, yes.
- 21 Q. Tell me about Brooks Development.
- 22 A. Brooks Development is a company that I founded in the early
23 1990s. The ownership, I believe, right now is held by Brooks
24 Holding, LLC.
- 25 Q. What is Brooks Holding, LLC?

- 1 A. It's a holding company.
- 2 Q. That you have an interest in?
- 3 A. I do. Well, no. My trust does.
- 4 Q. Well, let me go back. Let's put Brooks Development on
5 pause just a minute and go back. The ownership interests that
6 you have talked about here for the different assisted living
7 facilities at Little Chico, Marion, Council Grove, Bella Vista,
8 Fort Smith, Hot Springs, are those ones that you personally have
9 an interest in, or are they through a trust set up for you?
- 10 A. I would have to look at the documents to say. I'm not
11 sure.
- 12 Q. Do you have any other interest in any other assisted living
13 facilities that may not be held by you personally but would be
14 held by the trust?
- 15 A. None, other than the ones we've discussed.
- 16 Q. So, there is nothing that you can think of that is just in
17 the name of the trust that you know not to be in your personal
18 name but is owned solely by the trust? There's nothing floating
19 around out there like that?
- 20 A. That's true.
- 21 Q. What is the name of that trust?
- 22 A. I believe it's the Robert A. Brooks Trust.
- 23 Q. And when was that created?
- 24 A. Approximately, 2003.
- 25 Q. And you said, tracking this through, then, Brooks

1 Development is actually owned by a company called Brooks
2 Holdings?

3 A. I believe that's true.

4 Q. And then Brooks Holdings is actually owned by the trust?

5 A. Yes.

6 Q. And are there any assisted living facilities owned by --
7 either owned by or in which Brooks Holdings has an interest,
8 other than the ones we've talked about here?

9 A. No.

10 Q. So, tell me about Brooks Development. What does it do?

11 A. Brooks Development Company, at this time, really does
12 nothing.

13 Q. What has it done in the past?

14 A. It is a company that I have used to essentially report my
15 income from the other facilities and develop new projects. And
16 when the new projects are developed, Brooks Development Company
17 doesn't stay involved, usually.

18 Q. Well, take me through that. When you say other new
19 projects, does Brooks Development deal with the building -- is
20 it, in any way, involved with the building of assisted living
21 facilities, either for other entities that you have an interest
22 in or third-party entities that you're just building or causing
23 to be built assisted living facilities for third parties?

24 A. No.

25 Q. Has it ever built assisted living facilities?

1 MR. DOSSETT: Object to the form.

2 Q. (Mr. Chronister continued.) Has Brooks Development ever
3 built assisted living facilities?

4 MR. DOSSETT: Object to the form.

5 A. (The witness continued.) I'm not sure whether -- I don't
6 believe so. I believe that every company I've ever built we've
7 done as a separate stand-alone LLC.

8 Q. And Brooks Development was not, in any way, involved with
9 that?

10 A. It may have been involved as a manager in some of them. I
11 don't remember.

12 Q. Let's go back to the ones that we've talked about. Who
13 were the architects for the Marion Assisted Living?

14 A. WDM Architects.

15 Q. Council Grove Assisted Living?

16 A. WDM Architects.

17 Q. Bella Vista?

18 A. WDM Architects.

19 Q. Fort Smith?

20 A. WDM Architects.

21 Q. Hot Springs?

22 A. WDM Architects.

23 Q. So, you have actually had WDM as the architect for each and
24 every one of the facilities except the Little Chico Creek? Did
25 I say that correctly?

1 A. He said it correctly, but it's wrong. There were several
2 other ones that other architects have done for me that you
3 haven't asked me about.

4 Q. All right. What other ones, then, have you built?

5 A. I have built one in St. George, Utah.

6 Q. All right.

7 A. I've built one La Junta, Colorado.

8 Q. Keep going.

9 A. I'm thinking. Garden City, Kansas. Two in Hays, Kansas.
10 One in Wellington, Kansas. Two in Colorado Springs. One in
11 Newton, Kansas. Actually, it's the city of North Newton,
12 Kansas. I think that's about it.

13 Q. When you say you built those, did you build them -- you
14 don't have an interest in any of these?

15 A. Well, in the most recent ones we've discussed, I do.

16 Q. The ones I understand you have an interest in are the
17 Little Chico Creek, Marion, Council Grove, Bella Vista, Fort
18 Smith, and Hot Springs. So, you do not, at this time -- let me
19 ask this a couple of ways. You do not, at this time, have an
20 interest in the one, two, three, four, five, six, seven, eight,
21 it looks like nine that you have just named off. Do you have an
22 interest in any of those?

23 A. No, I do not.

24 Q. Have you ever had an interest in any of those?

25 A. They were all separate stand-alone LLCs of which I owned

1 varying interest in.

2 Q. And then sold those interests off?

3 A. I did.

4 Q. Who were the architects --

5 A. With one exception. Just to make the record straight, on

6 the North Newton one, I never did have an ownership interest in.

7 Q. That's Newton, Kansas?

8 A. Yes, North Newton.

9 Q. How did you come about -- were you just a builder for that

10 one?

11 A. I was a consultant.

12 Q. In what areas did you consult?

13 A. Actually, it was essentially a turnkey from start to

14 finish. I assisted on the original layout with, again, WDM

15 Architects, helped with the financing of it. It was built by

16 the Mennonite community up there. I helped with the FF&E and

17 the original marketing.

18 Q. Define FF&E.

19 A. Furniture, fixtures, and equipment.

20 Q. So, WDM did the architectural work on it?

21 A. They did.

22 Q. What construction company built it?

23 A. I believe it was -- I believe it was Pinnacle Construction

24 Group.

25 Q. And you acted as a consultant. Did you interface with the

1 architect and with the construction company on putting the whole
2 thing together?

3 A. I did.

4 Q. And then picking out the furniture and furnishings for it?

5 A. I did.

6 Q. Now, that one was WDM. What about -- when you were listing
7 these off, you said not all of those were WDM, but we know this
8 last one -- is it Newton?

9 A. Yes.

10 Q. Was WDM. What about the one in Utah?

11 A. The one in Utah was a group of architects from Omaha,
12 Nebraska. They changed names several times, and ownership. The
13 two gentlemen I worked with were with the firm most of that
14 time, and they are no longer.

15 Q. What about the one in Colorado?

16 A. There were three in Colorado.

17 Q. Three facilities?

18 A. Yes.

19 Q. And are they all in La Huerta?

20 A. La Junta.

21 Q. La Junta.

22 A. No, that was the same Omaha, Nebraska, architecture firm.

23 Q. What about the other two in Colorado?

24 A. The other two were in Colorado Springs. Those were WDM
25 Architects.

1 Q. All right. The Garden City, Kansas?

2 A. That was the Omaha group again.

3 Q. The two in Hays, Kansas?

4 A. Both of those were WDM Architects.

5 Q. Wellington, Kansas?

6 A. WDM.

7 Q. And then the one in Nevada?

8 A. I didn't mention Nevada.

9 Q. I'm trying to think. I can't read my own handwriting.

10 A. St. George, Utah?

11 Q. No, the last one we talked about you built for the

12 Mennonite community.

13 A. Newton?

14 Q. Newton.

15 A. That was WDM.

16 Q. I had it starting with an N. That was WDM. So, any other

17 facilities that you, either individually or through any

18 business, that you are involved in?

19 A. No.

20 Q. No other assisted living facilities of any other type? Any

21 other place that you can think of, other than these you've have

22 listed for us?

23 A. What are you asking me exactly? Sorry.

24 Q. Well, I'm trying to figure out -- it looks to me like right

25 now -- we've talked about one, two, three, four, five, six,

1 seven, eight, nine, 10, 11, 12, 13, 14, 15, possibly 16
2 different assisted living facilities that you have been involved
3 in either the building of, the consulting on, or actual
4 operation of, and I'm trying to find out, are there any more out
5 there, other than -- and I'm not trying to pin you to this
6 number, these approximately -- these facilities we've talked
7 about.

8 A. You're asking me if I have built any other ones than that?

9 Q. Yes. Any others that you've consulted on?

10 A. I have consulted on other ones.

11 Q. All right. Tell me about those that you have consulted on.

12 A. I have consulted with a company called Aspen Corporation or
13 Aspen Senior Living or something. It was many years ago. I did
14 research and demographics on several cities in California,
15 Wyoming, and Colorado.

16 Q. Did you actually engage in the building of any --

17 A. I did not.

18 Q. -- assisted living facilities in those areas?

19 A. No, sir.

20 Q. So, this was more or less a strategic issue of whether or
21 not the population and demographics were such that an assisted
22 living facility would be appropriate?

23 A. Exactly.

24 Q. Any others?

25 A. No.

1 Q. So, consulted, you consulted with this Aspen group, and
2 then the one for the Mennonite community there in Kansas?

3 A. Right.

4 Q. And other than the one architect at the Little Chico Creek
5 and then it looks like three, the Garden City, Kansas, La Junta
6 --

7 A. La Junta, yes.

8 Q. -- Colorado, and the one in Utah, those three were with a
9 group of architects out of Omaha, Nebraska?

10 A. True.

11 Q. And then the one with Little Calico Creek (sic) was the
12 architect out of California?

13 A. Colorado Springs.

14 Q. Colorado Springs? But the rest were all WDM?

15 A. True.

16 Q. The ones that were built by WDM, other than Fort Smith, is
17 it your understanding that those were all hollow-core interior
18 closet doors?

19 MR. MORRIS: Object to the form.

20 A. (The witness continued.) WDM never built one of my
21 facilities.

22 Q. (Mr. Chronister continued.) Excuse me. The specification
23 provided by the architect for the construction company that came
24 from WDM were always hollow-core interior closet doors, other
25 than Fort Smith?

1 A. I don't know.

2 Q. You don't know what was used in your facilities?

3 A. I do not.

4 Q. Have you had an occasion to go back and look at any of your
5 other facilities following this lawsuit?

6 A. I have not.

7 Q. You're aware that this lawsuit, in part, involves the use
8 of solid-core interior closet doors at the Fort Smith facility?

9 MR. DOSSETT: Object to the form.

10 Q. (Mr. Chronister continued.) Are you aware of that as being
11 one of the contentions in this lawsuit?

12 A. I'm not aware that it was -- as you've stated, that it was
13 based on whether they're hollow core or solid.

14 Q. So, at no time since Mr. Brigance's accident have you had
15 an occasion to go back and check any of the facilities that you
16 have an interest in as to whether they have solid-core or
17 hollow-core interior closet doors; is that what you're telling
18 me?

19 A. What do you mean by check?

20 Q. Have you gone and looked at them?

21 A. I have looked at them.

22 Q. And are the ones in the other facilities hollow-core or
23 solid-core doors?

24 A. I don't know how I can tell by looking at them.

25 Q. Can you tell by -- did you tap on them? Have you knocked

1 on them? Have you felt them? Have you done anything?

2 A. I have.

3 Q. And you're telling me you can't tell the difference between
4 a hollow-core and a solid-core door?

5 MR. DOSSETT: Object to the form.

6 A. (The witness continued.) I don't know that I can with
7 certainty.

8 Q. (Mr. Chronister continued.) Well, in a ballpark range,
9 could you tell the difference?

10 A. Well, it's a binary question. I don't know what you mean,
11 a ballpark range. It's either one way or the other, right?

12 Q. Well, you've sat in on the depositions in this case,
13 haven't you?

14 A. Some of them.

15 Q. Did you sit in on the depositions from the gentlemen with
16 Crawford Construction?

17 A. I did.

18 Q. Did you sit in on the deposition of Mr. Brewer from WDM?

19 A. I did.

20 Q. Did you learn in that deposition that -- I always get
21 confused on the numbers, so I'm not trying to -- but of
22 approximately 140 different facilities, assisted living
23 facilities they have built, all of them except Fort Smith had
24 hollow-core interior closet doors?

25 MR. DOSSETT: Object to the form.

1 Q. (Mr. Chronister continued.) Did you hear that testimony in
2 the deposition?

3 A. I don't recall.

4 Q. Nothing about that comes to your mind as being important or
5 something you would want to check on?

6 MR. DOSSETT: Object to the form.

7 A. (The witness continued.) I'm not sure how to answer your
8 question.

9 Q. (Mr. Chronister continued.) Did you hear anything in the
10 deposition of Mr. Brewer that caused you to go back and check on
11 the interior doors at the Fort Smith facility?

12 A. We did look at the other doors in the Fort Smith facility.

13 Q. And did you determine those to be solid-core interior
14 doors?

15 A. I did, to the best of my knowledge.

16 Q. In light of that, did you then check any of the doors in
17 your other facilities to determine whether or not, to the best
18 of your ability, those were solid-core or hollow-core doors?

19 MR. DOSSETT: Object to form.

20 A. (The witness continued.) To the best of my knowledge, the
21 rest of them were hollow core. I can't guarantee it, but I also
22 did check to see if we had any other doors that had ever had a
23 problem.

24 Q. (Mr. Chronister continued.) In any of your other
25 facilities?

- 1 A. Exactly.
- 2 Q. And had you had problems with any of the doors in any of
3 your other facilities?
- 4 A. We had not.
- 5 Q. And all of those in the other facilities, to the best of
6 your knowledge, are hollow-core interior doors?
- 7 MR. DOSSETT: Object to the form.
- 8 A. (The witness continued.) To the best of my knowledge, the
9 projects that I still own are hollow-core.
- 10 Q. (Mr. Chronister continued.) The Hot Springs facility, what
11 is its stage of completion at this time?
- 12 A. It's probably 98 percent completed.
- 13 Q. Have the interior closet doors been hung in that facility?
- 14 A. They have.
- 15 Q. Have you determined whether those are solid-core or hollow-
16 core doors?
- 17 A. I have.
- 18 Q. And what are they?
- 19 A. They are hollow-core.
- 20 Q. Was there, at one point in time, in the original design or
21 drafting of the materials for the Hot Springs facility, a
22 provision for solid-core doors? Were they, at any time, specked
23 for the Hot Springs facility being solid-core doors?
- 24 A. Not to my knowledge.
- 25 Q. Did anyone -- do you recall anyone from Crawford

1 Construction having some discussions with you or anyone else
2 about the use of solid-core versus hollow-core doors at that
3 facility?

4 A. No.

5 Q. And is Crawford Construction also building the Hot Springs
6 facility?

7 A. They are.

8 Q. Has Crawford Construction built any of the facilities,
9 other than the one in Fort Smith and the ongoing project in Hot
10 Springs?

11 A. None of my projects.

12 Q. The other projects that you have worked with with other
13 architects, the group out of Omaha or the one out of Colorado
14 Springs, do you know if those facilities have solid-core or
15 hollow-core interior closet doors?

16 A. I don't know.

17 Q. When you were involved in the consulting or building of any
18 of these facilities, did you have any discussions with WDM or
19 any other architects regarding what type of doors to use inside
20 the facility?

21 A. No.

22 Q. Did you ever consider the use of hollow-core versus solid-
23 core doors within the facilities? Did you ever balance that out
24 and come to the conclusion of which you wanted or why you wanted

25 --

1 A. No.

2 MR. CHRONISTER: Let's take a break just a
3 minute.

4 MR. DOSSETT: Sure.

5 THE VIDEOGRAPHER: The time is 10:00 a.m. We're
6 off the record.

7 (Wherein an off-the-record discussion was held.)

8 THE VIDEOGRAPHER: The time is 10:10 a.m. We are
9 back on the record.

10 Q. (Mr. Chronister continued.) Mr. Brooks, I had asked you
11 about -- I think I limited my question, actually, to assisted
12 living facilities. Do you have any interest in any other -- I'm
13 going to use the term as a broad term, eldercare facilities such
14 as skilled nursing facilities, retirement communities, any other
15 interests in those type facilities?

16 A. You're speaking ownership interest?

17 Q. At this point in time, ownership interest.

18 A. I do not.

19 Q. Have you had an ownership interest in any that you may have
20 done away with?

21 A. No.

22 Q. Now, the next step, within the envelope of any of your
23 other business entities, Brooks Development, anything like that,
24 have you been involved in the building, consulting, in any way
25 relevant to other eldercare facilities, skilled nursing

1 facilities, retirement communities, anything like that?

2 A. No.

3 Q. What other business interests such as Brooks Development?

4 Has it done any development of any other projects, even outside
5 assisted living or eldercare?

6 A. Yes.

7 Q. And what are those projects?

8 A. Individual family homes.

9 Q. And how many homes have you-all built, approximately?

10 A. Under Brooks Development Company, three or four.

11 Q. What about any other business interests? You said under
12 Brooks Development, which makes me think there might be others
13 under other names.

14 A. When I was very young, my father was in the construction
15 business and I helped him on quite a few other houses before I
16 was age 20.

17 Q. Is that being a framer, a gofer, et cetera?

18 A. Everything.

19 Q. The facilities that you have in Arkansas, the one in Bella
20 Vista, Fort Smith, Hot Springs, those are also three separate
21 legal entities?

22 A. They are.

23 Q. Any overlap of investors between those three facilities?

24 A. There is some overlap.

25 Q. As far as the Fort Smith facility is concerned, who are

1 your investors in the Fort Smith facility?

2 MR. DOSSETT: Object to the form.

3 A. (The witness continued.) I don't know all of the investors
4 personally. There's a list of about 50 of them.

5 Q. (Mr. Chronister continued.) So, there's approximately 50
6 investors in the Fort Smith facility?

7 A. Approximately.

8 Q. Can you provide me with a copy of that list?

9 A. I believe we've already provided Mr. Dossett a copy.

10 MR. DOSSETT: That's one of the items that we've
11 objected to in discovery.

12 Q. (Mr. Chronister continued.) Off the top of your head, who
13 are your bigger investors in Fort Smith?

14 A. I think that everybody came in at about the \$50,000 level,
15 so that most of them are that, a couple of fractional interests.

16 Q. So, you have about 50 investors that each put up
17 approximately \$50,000?

18 A. Roughly.

19 Q. Is the facility in Fort Smith paid for, or is there a
20 mortgage on it?

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) There's a mortgage on it.

23 Q. (Mr. Chronister continued.) Do you recall what the extent
24 of that mortgage is?

25 A. The dollar amount?

1 Q. The dollar amount.

2 A. Not exactly, no.

3 Q. Do you recall what it cost to build the Fort Smith
4 facility?

5 A. Approximately, \$5 million.

6 Q. As far as the financing of the Fort Smith facility, is that
7 -- what type of financing is that? Is it HUD financing?

8 A. It is HUD financed.

9 Q. And with HUD financing -- tell me about the process of
10 getting financing through HUD. What do you have to do to do all
11 of that?

12 A. HUD has changed. What we did in Fort Smith is not what one
13 does today. You're asking me about today?

14 Q. No. Tell me what it was at that time.

15 A. It was Section 232 financing, and HUD provided a guarantee.
16 They didn't actually provide money, but they guaranteed the
17 mortgage. And they would sell the paper, as it were, to some
18 other investment company. We don't even know who that is. HUD
19 would finance 90 percent of the construction cost, and the other
20 10 percent would be equity for the construction. Construction
21 costs broadly includes all hard costs, including land cost.

22 Q. And the figure you gave a minute ago, the \$5 million
23 figure, did that include land acquisition, or was that just the
24 facility itself?

25 A. It included land.

1 Q. What was the contracted cost for construction, do you
2 recall?

3 A. No.

4 Q. Did that contract have a deadline date for completion?

5 A. It did.

6 Q. Or substantial completion?

7 A. Yeah, it did. Sure.

8 Q. Do you recall what that date was for the Fort Smith?

9 A. No.

10 Q. If the facility had not been completed on time, was there a
11 liquidated damage provision in that contract?

12 A. There was.

13 Q. Do you recall what the liquidated damages amount were?

14 A. No.

15 Q. Was it a per-day damage until substantial completion, or do
16 you recall?

17 A. It was per day for substantial completion.

18 Q. Knowing what you know today, would you use solid-core
19 interior closet doors in your facilities?

20 MR. MORRIS: Object to the form.

21 A. (The witness continued.) I would not.

22 Q. Why not?

23 A. Because they wear out too quickly.

24 Q. The solid-core would wear out too quickly?

25 A. Yes.

1 Q. Any other reasons why you would not use solid-core doors?

2 A. No.

3 Q. Does the Fort Smith facility, other than the liability
4 insurance that's involved in this case, do you have any
5 insurance on directors or officers, D&O insurance?

6 A. Repeat the question, please.

7 Q. Other than the liability insurance in place for the
8 facility itself, are there any other insurance policies covering
9 you or any of the investors in the facility?

10 A. I do not believe that there are.

11 Q. Have you checked?

12 A. No.

13 THE WITNESS: May I speak with my attorney for a
14 moment?

15 MR. CHRONISTER: Sure.

16 THE VIDEOGRAPHER: The time is 10:18 a.m. We're
17 off the record.

18 (Wherein a break was taken.)

19 THE VIDEOGRAPHER: The time is 10:33 a.m. We're
20 back on the record.

21 MR. DOSSETT: Before we go any further, let me
22 just say for the record, Rex, that, in response to your
23 discovery requests, my law firm did investigate what insurance
24 coverage was out there. And we contacted the appropriate
25 insurance brokers and things like that to beat the bushes, and

1 we found no other available insurance, other than what we've
2 already disclosed in discovery. Mr. Brooks really doesn't know
3 about that process. He wasn't involved in going out there and
4 searching for that insurance, but we know from looking that we
5 can't find any of it.

6 MR. CHRONISTER: All right.

7 MR. DOSSETT: And if that ever changes, we will
8 let you know immediately, if we happen to find some or learn of
9 something we don't currently know.

10 MR. CHRONISTER: That would be agreeable, and
11 that takes care of that line of questioning. And thank you.

12 MR. DOSSETT: You're welcome.

13 MR. CHRONISTER: Mr. Brooks -- are we ready? Are
14 we on?

15 Q. (Mr. Chronister continued.) Mr. Brooks, let me go back and
16 ask one other question. We talked about the overlap of
17 investors and the number of investors in the Fort Smith
18 facility. Do you recall how many of your investors overlap to
19 any of your other Arkansas facilities?

20 A. In general terms, I can tell you that many of the Bella
21 Vista investors are also in Fort Smith. Some of them are also
22 in Hot Springs. There's more of a coincidence of Bella Vista
23 and Fort Smith than there is in Hot Springs.

24 Q. Any overlap from Fort Smith to Hot Springs?

25 A. Well, I thought that is what I just explained. There is

1 some overlap, but not as much as there is with Bella Vista.

2 Q. Maybe I misunderstood, so let me just kind of rephrase
3 that. Several of the Bella Vista investors are also Fort Smith
4 investors, and a lesser number of Bella Vista investors who are
5 Fort Smith investors are Hot Springs investors. Then you have
6 the Fort Smith investors who are also Hot Springs investors?

7 A. That's true.

8 Q. Kind of a trickle-down from each one?

9 A. It is. Some of the investors have come in and went out and
10 invested in one and not the other. I believe Bella Vista and
11 Fort Smith are almost the same list.

12 MR. CHRONISTER: And that information has been
13 provided to counsel and that's being held subject to the Court's
14 ruling on the evidentiary issues? I'm addressing that to Mark.

15 MR. DOSSETT: Correct. Correct. We have that
16 information and are prepared to produce it if the Court directs
17 us to.

18 Q. (Mr. Chronister continued.) Who is the accountant for the
19 Fort Smith facility?

20 A. You're asking me who prepares our income tax statements?

21 Q. Let's start off with that point.

22 A. That's a firm called CBIZ, Poore, Dameron. CBIZ is the
23 letter C, B-I-Z, Poore is P-O-O-R-E, Dameron, D-A-M-E-R-O-N, in
24 Wichita.

25 Q. Are they the firm that prepares the tax returns for all of

1 these LLCs?

2 A. No.

3 Q. Which ones do they prepare the tax returns for?

4 A. The three Arkansas projects, and Council Grove, come to
5 think of it.

6 Q. I can't help myself. I've just got to ask this question.
7 Is the name Poore an individual in the accounting firm's name?

8 A. Yeah, Gary Poore, P-O-O-R-E.

9 Q. I just find that an interesting name for an accountant, so
10 I had to ask that.

11 You said they prepare the tax returns. Who does the actual
12 bookkeeping and record keeping that is turned over to the CPAs?

13 A. That's done by MDM Management.

14 Q. What is MDM Management?

15 A. It is a group that is owned by two of my partners and
16 perhaps other people as well.

17 Q. What two partners -- are these partners that are also in
18 the Fort Smith facility, the Hot Springs and Bella Vista
19 facilities?

20 A. Yes.

21 Q. Who are those two partners?

22 A. That would be A.J. Schwartz and Ward Schrader.

23 Q. And where do they live?

24 A. A.J. Schwartz lives in Wichita, and Mr. Schrader lives in
25 Salina, Kansas.

1 Q. When you say they are your partners, do they have an
2 interest in both the Bella Vista and Fort Smith facilities?

3 A. They do.

4 Q. Do you recall what their partnership interest in each of
5 those facilities is?

6 A. No.

7 Q. Do they have a substantially higher interest than your
8 other investors?

9 MR. DOSSETT: Object to the form.

10 Q. (Mr. Chronister continued.) Do they have a higher interest
11 than your other general investors?

12 A. Yes.

13 Q. What is your interest in each of these facilities? In the
14 Fort Smith facility, what is your percentile interest?

15 A. You're asking me personally?

16 Q. Either personally or through the trust or through any
17 holding companies that you own or have an interest in.

18 A. At the current time, it's 12 1/2 percent.

19 Q. And is that held by the trust or by you personally or a
20 combination?

21 A. A combination.

22 Q. And how is that combination divided?

23 A. Brooks Holding owns an interest in Metal, LLC. Metal, LLC,
24 owns the interest.

25 Q. That's one I haven't heard, so tell me about Metal, LLC.

1 A. Metal, LLC, is a partnership of Brooks Holding and/or
2 Brooks Development, I'd have to go back and look at the papers,
3 and a company called Iron Mound, LLC.

4 Q. And what is Iron Mound, LLC?

5 A. It's a Kansas limited liability company.

6 Q. Who has the interest in that?

7 A. To the best of my knowledge, it's Mr. Schrader and Mr.
8 Schwartz.

9 Q. So, are Mr. Schrader and Mr. Schwartz individual investors
10 in the Fort Smith facility, or are their interests derivative of
11 this Iron Mound, LLC?

12 A. I believe both.

13 Q. And when you calculate the 12 1/2 percent interest you
14 have, are you reducing that for whatever amount Iron Mound may
15 have within this partnership agreement, or did that question
16 make sense?

17 A. It doesn't make sense to me.

18 Q. Well, it started off with good intentions. I guess my
19 question is this. If I tell you I own 12 percent of something,
20 but that 12 percent that I own is really a partnership between
21 Mr. Dossett and I wherein that 12 percent is divided, 6 percent
22 to him, 6 percent to me --

23 A. I see.

24 Q. -- then my percentage is really not 12 percent, it's 6
25 percent. So, I guess my question to you is, when you say that

1 you have 12 1/2 percent of the Fort Smith facility, is that
2 really meaning 12 1/2 percent that you or your trust actually
3 have?

4 A. It is, yes, undiluted.

5 Q. So, now did the question make sense?

6 A. Yes, it does.

7 Q. Okay.

8 A. Thank you.

9 Q. Are there other business interests that your different
10 entities own and have interests in any of these facilities like
11 this -- what did you say it was, Metal?

12 A. Yeah.

13 Q. Are there any others floating around out there that are, in
14 effect, holding companies for interests in any of these
15 facilities?

16 A. No.

17 Q. Now, so MDM, who is owned, in part, by your two partners,
18 does the bookkeeping for these facilities?

19 A. Uh-huh.

20 Q. And then they turn that over to the CBIZ, Poore, Dameron
21 accountants to put together the tax returns?

22 A. True.

23 Q. And how many different -- the tax return -- there's a tax
24 return for the Fort Smith facility?

25 A. Yes.

1 Q. And then your percentage interest of that and that of your
2 partners are divvied out on individual K-1s or other forms that
3 are generated for their percentile ownership?

4 A. Exactly.

5 Q. And have you provided copies of those tax returns to your
6 attorney in response to the requests in discovery?

7 A. Yes.

8 Q. And I assume --

9 A. I believe I have.

10 MR. CHRONISTER: I assume, Mark, those are being
11 held pending the --

12 MR. DOSSETT: I'm not sure we have those. I'm
13 not sure we've gathered those, but we have objected to them and
14 intend to object to them.

15 MR. CHRONISTER: I want to go ahead and just put
16 this on the record. Assuming the Court overrules that
17 objection, what I am requesting is both the tax returns for the
18 individual facility and all of Mr. Brooks' trust, holding
19 companies, and other entities because of him being named a
20 personal defendant and the possible issue of punitive damages
21 here. If the Court allows them, I'm going to be asking for all
22 of those returns.

23 MR. DOSSETT: Okay. Yeah.

24 MR. CHRONISTER: I just want to clarify what I'm
25 asking for.

1 MR. DOSSETT: Okay. If the Court allows it, I
2 might ask you again to remind me exactly what you want, but we
3 would object to all of those.

4 Q. (Mr. Chronister continued.) As far as the Fort Smith
5 facility is concerned, prior to its opening, was a Life Safety
6 Code inspection done?

7 A. By whom?

8 Q. By anyone required by either the State or the regulations
9 or anyone else. Before you opened the facility, was a Life
10 Safety Code inspection done, to your knowledge?

11 A. We are inspected by several government agencies, and Life
12 Safety is part of that.

13 Q. And were there any deficiencies on the Life Safety
14 inspections?

15 A. No.

16 Q. Have you got -- can you provide me with a copy of that
17 inspection?

18 A. I don't believe I have a copy of it.

19 Q. Can you get one?

20 A. Well, I'd need to know who you want it from.

21 Q. From the State when they did the inspection.

22 A. The State does not provide me with one, no, sir.

23 Q. They do one before you open, right?

24 A. Yes, our building is inspected by the Office of Long-Term
25 Care. A gentleman by the name of Maynard Vogelgesang comes and

1 inspects the building, but he does not issue me a report.

2 Q. He just tells you whether or not there are any deficiencies
3 that have to be followed up on before you can open?

4 A. He does.

5 Q. And were there any deficiencies at the Fort Smith store?

6 A. No.

7 Q. I keep using "store" -- facility. I'm sorry.

8 A. Yes.

9 Q. Who is the managing partner for Fort Smith?

10 A. I am.

11 Q. And how often are you actually onsite and actively involved
12 in the management of that facility?

13 A. I'm not actively involved in the management.

14 Q. Then can you tell me who makes up the membership of the
15 governing body for the facility?

16 MR. DOSSETT: Object to the form.

17 Q. (Mr. Chronister continued.) Do you have a governing body?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) No, I don't think we do.

20 Q. (Mr. Chronister continued.) Well, just looking at the regs
21 for a Level I facility, and this is under Regulation 501, "Each
22 assisted living facility must have an owner or governing body
23 that has ultimate authority for the overall operation of the
24 facility, adequacy and quality of care," and there's a laundry
25 list of different things.

1 If you're the manager, but you're not handling the overall
2 operation in day-to-day affairs of the facility, there's
3 supposed to be, under the regulations, a governing body that
4 does that. So, do you have a governing body?

5 MR. DOSSETT: Object to the form.

6 A. (The witness continued.) No.

7 Q. (Mr. Chronister continued.) So, there is no governing body
8 that does any follow-ups, inspections, reporting on the day-to-
9 day handling and management of the facility?

10 MR. DOSSETT: Object to the form.

11 A. (The witness continued.) There is no such body.

12 Q. (Mr. Chronister continued.) What about a Quality
13 Assessment Unit? Who are the members of the Quality Assessment
14 Unit?

15 A. That's set up by the director, and the director does the
16 quality assessment.

17 Q. Who are the people that -- at the time of Mr. Brigance's
18 injury, can you tell me how many people made up the Quality
19 Assessment Unit for the Fort Smith facility?

20 A. No.

21 Q. Do you know who the people were on the Quality Assessment
22 Unit at the Fort Smith facility?

23 A. Only the director.

24 Q. So, there's no -- the administrator -- when you say
25 "director," are you meaning administrator?

1 A. I do.

2 Q. So, the only person at the facility that constituted the
3 entire Quality Assessment Unit was just the administrator?

4 MR. DOSSETT: Object to the form.

5 A. (The witness continued.) That's not what I said. I said
6 the only one I can tell you was the director.

7 Q. (Mr. Chronister continued.) Where do you have the
8 documents? Because we haven't found in any of the stuff
9 provided in discovery the names of any people forming the
10 Quality Assessment Unit. Where can we find that information?

11 MR. DOSSETT: Object to the form.

12 A. (The witness continued.) If the information exists, it
13 would be in Fort Smith, in the facility.

14 Q. (Mr. Chronister continued.) Was there, to the best of your
15 knowledge, a Quality Assessment Unit?

16 A. To the best of my knowledge, the director formed and
17 undertook quality assessment reviews regularly. As to whether
18 it was a unit, I can't answer.

19 Q. Just a second. Give me just a minute to look at something.
20 I'm referring to Section 506 of the regulations for a Level I
21 facility. And at least the requirement -- well, I'll just read
22 this to you. "The assisted living facility shall develop and
23 maintain a Quality Assessment Unit. This unit shall meet at
24 least quarterly to identify issues with respect to which quality
25 assessment, assurance, activities are necessary to develop and

1 implement appropriate plans."

2 And it goes on throughout the rest of 506 to talk about the
3 actions of that particular Quality Assessment Unit and the
4 safety issues in the facility.

5 As the manager of this facility, did you do anything to
6 develop or be sure that your administrator had developed a
7 Quality Assessment Unit?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) The administrator's
10 responsibilities included doing the quality assessment, and I
11 expected her to do it.

12 Q. (Mr. Chronister continued.) Are you aware of that
13 regulation?

14 A. I've read it.

15 Q. Were you aware of that regulation at the time that the Fort
16 Smith facility opened?

17 A. I had read it prior to that.

18 Q. Does the facility in Bella Vista have a Quality Assessment
19 Unit?

20 A. The same answer. The director is responsible for quality
21 assurance, and I don't get involved in it.

22 Q. Are you the manager that facility?

23 MR. DOSSETT: Object to the form.

24 A. (The witness continued.) I am the manager of the --

25 Q. (Mr. Chronister continued.) The Bella Vista facility?

- 1 A. No, sir, I'm not. I'm the manager of the company.
- 2 Q. All right.
- 3 A. The manager of the facility is the director.
- 4 Q. You are the manager of the LLC which owns the facility?
- 5 A. Exactly.
- 6 Q. And you are the manager of the LLC that owns the facility
7 in Bella Vista?
- 8 A. True.
- 9 Q. Are you the manager of the LLC that owns the facility in
10 Fort Smith?
- 11 A. I am.
- 12 Q. And as the manager of that owner, have you undertaken any
13 review to be sure that either the Fort Smith or Bella Vista
14 facility are in compliance with the regulations of the State of
15 Arkansas for a Level I assisted living facility?
- 16 MR. DOSSETT: Object to the form.
- 17 A. (The witness continued.) The steps I have taken have been
18 to hire a director, make sure the director has passed the
19 appropriate courses to be certified, and is expected to follow
20 all of the regulations.
- 21 Q. (Mr. Chronister continued.) Do you ever go back and check
22 to be sure that your director that you hired is following the
23 regulations?
- 24 MR. DOSSETT: Object to form.
- 25 A. (The witness continued.) The regulations?

1 Q. (Mr. Chronister continued.) Well, let me just take these
2 one at a time. Does the facility in Bella Vista have a
3 governing body?

4 MR. DOSSETT: Object to the form.

5 A. (The witness continued.) And my answer was previously, "I
6 don't know."

7 Q. (Mr. Chronister continued.) And the one in Fort Smith?

8 MR. DOSSETT: Object to form.

9 A. (The witness continued.) The same answer.

10 Q. (Mr. Chronister continued.) You don't know. You're the
11 owner and you don't know?

12 MR. DOSSETT: Object to the form.

13 Q. (Mr. Chronister continued.) What do you think is your
14 responsibility as an owner of these facilities to be sure they
15 are in compliance with the regulations and laws of the State of
16 Arkansas?

17 MR. DOSSETT: Object to the form. Calls for a
18 legal conclusion.

19 Q. (Mr. Chronister continued.) Do you think you have to do
20 anything to check on your facility?

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) Yes.

23 Q. (Mr. Chronister continued.) What do you do?

24 A. I make sure that my director is qualified and knows the
25 regulations and is responsible for running them.

1 Q. And after you get a director, is there any oversight by
2 you, as the owner, on your director? Do you check them?

3 MR. DOSSETT: Object to the form.

4 A. (The witness continued.) I do.

5 Q. (Mr. Chronister continued.) What do you do to check on
6 your director to be sure that your facility is doing what it's
7 supposed to be doing?

8 A. The director is responsible for the running of the
9 facility. We check and make sure that the residents are being
10 properly attended to. As far as adherence to the state
11 regulations, we do not go through and check each and every one.
12 The state does surveys of us. If we are out of compliance, we
13 hear about it pretty quickly.

14 Q. Until today, had you considered whether or not you should
15 or should not have a governing body at the Fort Smith facility?

16 MR. DOSSETT: Object to the form.

17 A. (The witness continued.) Yes.

18 Q. (Mr. Chronister continued.) When did you consider whether
19 you should or should not have a governing body at the Fort Smith
20 facility?

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) When we read the regulations.

23 Q. (Mr. Chronister continued.) When did you read the
24 regulations?

25 A. The first time?

1 Q. Yes, sir. Well, the first time you thought about a
2 governing body.

3 A. It would have been probably six or seven years ago.

4 Q. That would have been well before the Fort Smith facility
5 was even built, right?

6 A. True.

7 Q. So, were you aware of the need to have either an owner who
8 was involved in all of these decisions or a governing body when
9 you built or had the Fort Smith facility built?

10 MR. DOSSETT: Object to the form.

11 A. (The witness continued.) Yes.

12 Q. (Mr. Chronister continued.) Is that a "yes"?

13 A. Yes.

14 Q. And do you believe that, as the owner with your involvement
15 in the company, that you meet the requirements of not having to
16 have a governing body?

17 MR. DOSSETT: Object to the form.

18 A. (The witness continued.) I don't understand your question.

19 Q. (Mr. Chronister continued.) Well, I think the regulations
20 says that this facility has to have an owner that -- the owner
21 has to be able to do all of these management and running things
22 or it has to be a governing body if the owner is not doing all
23 of this themselves. You've already told me you don't do these
24 things yourself. So, why don't you have a governing body?

25 MR. DOSSETT: Object to the form. It's

1 argumentative and calls for a legal conclusion.

2 Q. (Mr. Chronister continued.) I'm just asking you to tell me
3 why you don't think -- you said you read the rules. I'm not
4 asking you for a legal conclusion. I'm asking you to give me
5 your thought processes of why you decided you didn't need a
6 governing body for this facility.

7 MR. DOSSETT: Object to the form.

8 A. (The witness continued.) Well, I suppose you could
9 consider that I am the governing body. It doesn't require that
10 it have multiple people in it.

11 Q. (Mr. Chronister continued.) So, how often did you meet
12 with your administrator to go over all of the issues relevant to
13 the running of this facility?

14 A. I met with the regulator -- I'm sorry, with the director on
15 an average of probably once every three weeks.

16 Q. Once every three weeks? What about the existence of a
17 Quality Assessment Unit?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) What about it?

20 Q. (Mr. Chronister continued.) You didn't have one, other
21 than you said the director did all of that herself?

22 MR. DOSSETT: I object to the form.

23 A. (The witness continued.) I didn't say that.

24 MR. DOSSETT: That misstates the testimony.

25 MR. CHRONISTER: That's what I'm trying to do.

1 I'm trying to clarify the testimony.

2 Q. (Mr. Chronister continued.) So, did you have a Quality
3 Assessment Unit at the Fort Smith facility?

4 A. The director was responsible for setting up the Quality
5 Assessment Unit. Who was in it and how she did that, I did not
6 ever become informed of.

7 Q. Did you ever ask?

8 A. No.

9 Q. Did you think, as the owner, that you should ask?

10 A. Well, I knew that there were quality assessment meetings
11 occurring.

12 Q. How did you know that?

13 A. Discussions with the director.

14 Q. Did you ever sit in on any?

15 A. I did not.

16 Q. So, let's talk about the director. Was Mitzi Bailey the
17 first -- when I use the word "director," I'm trying to overlap
18 what you refer to her as, but just to be sure we're on the right
19 page, are we talking about a "director" and "administrator"
20 being an overlapping term, they mean one and the same thing?

21 A. They do to me, yes.

22 Q. If I say "administrator" and you say "director," we're
23 still talking about the same person?

24 A. Yes, sir.

25 Q. Was Mitzi Bailey the first administrator of the Fort Smith

1 facility?

2 A. She was the administrator from the day it opened.

3 Q. Do you recall what day it opened?

4 A. It was in July of --

5 Q. 2008?

6 A. I think that's right.

7 Q. I think it is.

8 A. Yes, I would accept that.

9 Q. Do you know when Mitzi Bailey obtained her administrator's

10 license?

11 A. No.

12 Q. Was she a licensed administrator when she applied for the

13 position?

14 A. I believe she was.

15 Q. You didn't pay for her to get her administrator's license?

16 A. I don't recall. We have had people that have not had their

17 administrator's license when we opened and there's a period of

18 time that they have to obtain it, and I don't recall with her.

19 Q. How did Mitzi Bailey come to your attention as a possible

20 candidate for being the administrator?

21 A. I ran a number of ads, both locally and nationally, and had

22 several candidates for it. I think the first conversation I had

23 with Mitzi, she called me up and talked about the position.

24 Subsequently, I was doing what we call a mystery shop of one of

25 our competitors and ran into her again and we talked a little

1 bit. She came in for an interview and I hired her shortly
2 thereafter.

3 Q. Kind of go back and break that down. So, you put out ads,
4 both locally and nationally, for the administrator's position?

5 A. Right.

6 Q. Do you recall how many people you had apply for it?

7 A. Probably 50.

8 Q. And of those 50, were some part of them experienced
9 licensed administrators?

10 A. Yes.

11 Q. What made you decide to go with an administrator who had
12 just gotten their license, as opposed to an experienced person
13 with prior administrative skills?

14 MR. DOSSETT: Object to the form.

15 A. (The witness continued.) Just based on the interview that
16 I had with her.

17 Q. (Mr. Chronister continued.) And at the time you
18 interviewed her, what did she tell you her qualifications were
19 to be the administrator of this facility?

20 A. Again, I'm not sure that she actually had her license in
21 hand. My recollection is that she did, but I don't recall.

22 Q. If she did not have her license in hand, but was in the
23 process of getting it or taking the tests for it, what made her
24 stand out as being more qualified than other applicants?

25 A. She came with very good references.

1 Q. I think Ms. Bailey said in her deposition that she actually
2 got her license approximately May of '08, immediately after she
3 was hired.

4 A. Well, that would have been before we opened, then, right?

5 Q. That would have been whenever you hired her. Do you recall
6 when you hired her?

7 A. No.

8 Q. She said in her deposition that she got her license
9 immediately after she was hired. So, at the time you
10 interviewed her, she didn't have her license?

11 A. The first telephone conversation we had with her, I don't
12 recall whether she had it or not. When I interviewed her
13 following my mystery shop -- I stand corrected. I thought she
14 had it. Evidently, she did not.

15 Q. Define a mystery shop.

16 A. A mystery shop is when I or when somebody goes in and just
17 tours the competition to see what kinds of services they offer,
18 what their rates are, and that sort of thing.

19 Q. And what facility was that that you -- do you recall what
20 facility you mystery shopped?

21 A. It was Willowbrook.

22 Q. So, she was working at Willowbrook at the time?

23 A. She was.

24 Q. Do you know what her job duties were at that time?

25 A. She was in a nursing administration position. Exactly what

1 her title was, I don't recall.

2 Q. What does a nursing administrator do?

3 A. Well, I'm not exactly sure where she fit in there. She had
4 several nurses and she was involved with them and oversaw their
5 activities.

6 Q. Did you understand her to be a nurse?

7 A. Yes.

8 Q. Did you understand her to be a registered nurse?

9 A. No.

10 Q. Did she ever represent herself to you as a registered
11 nurse?

12 A. No.

13 Q. So, what type of a nurse did you understand her to be?

14 A. An LPN.

15 Q. So, you made the decision to hire her?

16 A. Yes.

17 Q. And she got her license. So, at that point in time, this
18 was her first facility, first job as an administrator?

19 A. As an administrator of an assisted living facility, that's
20 true.

21 Q. Do you know of her being an administrator of any other type
22 of eldercare facility?

23 A. Well, you know, in the broadest sense, I would say that her
24 duties as a nursing administrator or director might qualify in
25 your question.

- 1 Q. Did you ever question how someone could be a director of
2 nurses who wasn't -- who was just an LPN?
- 3 A. No.
- 4 Q. What type of facility is Willowbrook? Is it a Level I, a
5 Level II, or do you know?
- 6 A. I believe it's Level I.
- 7 Q. The facility you have at Bella Vista, at this time, at the
8 time Mitzi was hired, who was the administrator of that
9 facility?
- 10 A. It would have been a lady named Ellie Garrett.
- 11 Q. And how long had Ms. Garrett been the administrator at
12 Bella Vista?
- 13 A. Oh, approximately eight months.
- 14 Q. When you hired her, did she have any prior administrative
15 skills?
- 16 A. She had just received her license from the State of
17 Arkansas to be an administrator.
- 18 Q. Who was the administrator prior to her at Bella Vista?
- 19 A. She was the opening administrator.
- 20 Q. How long had she been there?
- 21 A. About eight months.
- 22 Q. So, that facility had only been open about 16 months at the
23 time?
- 24 A. No, about eight months.
- 25 Q. About eight months?

- 1 A. Yeah.
- 2 Q. And had she had any prior experience as an administrator?
- 3 A. She had.
- 4 Q. And how long had she been an administrator before you hired
- 5 her?
- 6 A. I think she had been an administrator for more than three
- 7 years.
- 8 Q. When Mitzi was hired, did you have anyone come down here to
- 9 provide training for her in the operation of the facility?
- 10 A. She and Ellie Garrett did get together and talk about the
- 11 building and what was required and that sort of thing.
- 12 Q. And at the time Ms. Garrett was getting together with her
- 13 and talking about this, she had just gotten her license?
- 14 A. No, she'd had it for eight months.
- 15 Q. Eight months. And did she have any training from the prior
- 16 administrator before she took over in those responsibilities at
- 17 Bella Vista?
- 18 A. She did not.
- 19 Q. How hard is it to be an administrator at one of these
- 20 facilities?
- 21 MR. DOSSETT: Object to the form.
- 22 A. (The witness continued.) I can't answer that. It's harder
- 23 for some people than it is for others.
- 24 Q. (Mr. Chronister continued.) I think you told me a minute
- 25 ago that, in lieu of a governing body, the administrator handled

1 all of the responsibilities.

2 MR. DOSSETT: Object to the form.

3 Q. (Mr. Chronister continued.) Is that what you told me?

4 MR. DOSSETT: Object to the form.

5 A. (The witness continued.) Say the question again, please.

6 Q. (Mr. Chronister continued.) When we were talking a minute
7 ago about governing bodies and whether there was or was not a
8 governing body, I think you indicated, at that point in time,
9 that those duties rested on the administrator.

10 MR. DOSSETT: Object to the form.

11 Q. (Mr. Chronister continued.) Is that right?

12 A. (Mr. Chronister continued.) I think what we were talking
13 about, this governing body was coming down to being me. I think
14 that's where we left that subject.

15 Q. And the quality assurance, that's up to the administrator?

16 A. Yes.

17 Q. And the handling of all of the maintenance issues, the
18 coordinating of all of the affairs of the facility, that belongs
19 to the administrator?

20 A. It does.

21 Q. And are you, as the owner, comfortable with putting all of
22 those responsibilities on someone who just gets their license
23 without any other formal training?

24 MR. DOSSETT: Object to the form.

25 A. (The witness continued.) Yes.

1 Q. (Mr. Chronister continued.) You don't think there should
2 be -- do you believe there should be any oversight or review or
3 somebody coming in and going behind them to be sure things are
4 done right?

5 MR. DOSSETT: Object to the form.

6 A. (The witness continued.) What things?

7 Q. The administration and running of the facility. These
8 regulations, whose job is it, as far as you're concerned, to be
9 sure that your facility is in compliance with the regulations?

10 MR. DOSSETT: Object to the form.

11 A. (The witness continued.) I would say it's the director's
12 responsibility.

13 Q. And do you feel like, as the owner, there should be some
14 oversight on your part, especially with a new administrator, to
15 go back and be sure that things are set up and complied with
16 properly?

17 A. Yes.

18 Q. What did you do, then, as the owner, in relation to this
19 facility to be sure that your administrator was in compliance
20 with the regulations?

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) I spoke with my director on a
23 regular basis, responding to questions. I talked to her daily.

24 Q. (Mr. Chronister continued.) Did you talk to her daily?

25 A. I did.

1 Q. And what things did you discuss with her daily?

2 A. There was a wide variety of things.

3 Q. Did you discuss with her the hiring and firing of
4 employees?

5 A. The hiring and firing was her responsibility.

6 Q. Did you ever discuss with her the issues or parameters
7 relevant to hiring or firing?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) Yes.

10 Q. (Mr. Chronister continued.) Tell me about those instances
11 where you discussed -- do you recall any particular employees
12 that you may have discussed issues of hiring or firing with?

13 A. No. Most of the time, you know, I relied on her judgment.
14 Since I was holding her responsible, I wasn't going to get too
15 involved in it.

16 Q. What about maintaining personnel records? Did you talk
17 with her about maintaining personnel records, personnel files,
18 things of that nature?

19 A. Yes.

20 Q. And what all is supposed to be in personnel files?

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) I don't recall everything.

23 Q. (Mr. Chronister continued.) Are any sanctions or notations
24 of problems with employees supposed to go in personnel files?

25 MR. DOSSETT: Object to the form.

1 Q. (Mr. Chronister continued.) To the best of your knowledge?

2 A. Yes.

3 Q. Are written warnings supposed to go in personnel files?

4 A. Yes.

5 Q. Are summaries of verbal warnings supposed to go in
6 personnel files?

7 A. Yes.

8 Q. Did you discuss with the administrator, when you had these
9 daily conversations with her, any issues regarding the
10 maintenance or problems with anything in the structure itself?

11 MR. DOSSETT: Object to the form.

12 A. (The witness continued.) Most of the maintenance issues
13 that came up in the beginning were covered by warranty.

14 Q. sp1 Did you advise the administrator, Mitzi, that things
15 were covered by warranty and to call Crawford Construction if
16 there were issues that needed to be taken care of?

17 A. Most issues. It was a little bit of a judgment call, I
18 mean, our maintenance man could replace light bulbs and sort of
19 routine things like that without calling Crawford Construction.

20 Q. Define "routine".

21 A. Changing light bulbs, things that didn't involve anything
22 to do with the actual construction of the building.

23 Q. Tracks on doors, doors coming off of the pins, were those
24 things that you would consider normal maintenance or something
25 that Crawford Construction should have been called on?

1 A. I think it would have been something that Crawford should
2 have been called on.

3 Q. And would you have told your administrator to call Crawford
4 on those instances?

5 A. It probably would not have come up.

6 Q. It wouldn't have come up?

7 A. No.

8 Q. Does your company have a written safety policy, to the best
9 of your knowledge, for its residents?

10 A. No.

11 Q. It does not?

12 A. We have a -- part of our policy and procedure book has a
13 safety section in it.

14 Q. Is that something that the resident would be made aware of
15 and signed off on as to what your responsibilities are for
16 safety in the facility?

17 A. I think some of the things are included in the resident
18 package, not all of them, necessarily.

19 Q. Let me show you what's noted as Safety and Security. And
20 this is Bates stamped as 00195, and this is dated June 2 of
21 2008.

22 MR. DOSSETT: Let me see it first.

23 A. (The witness continued.) Okay.

24 Q. (Mr. Chronister continued.) And is that a document that
25 sets out safety and related issues signed on by Mitzi Bailey and

1 it appears to be a member of the Brigance family?

2 A. Yeah, it sure appears that way.

3 Q. Let me see it just a minute. We're going to ask to mark
4 this. I want you to look at numbers -- since I don't have a
5 copy of this, let me read it --

6 MR. DOSSETT: Do you want me to make you a copy
7 of it real quick?

8 MR. CHRONISTER: Yeah, please. We'll take a
9 break just a second and do that.

10 MR. DOSSETT: Sure.

11 THE VIDEOGRAPHER: The time is 11:20 a.m. We are
12 off the record.

13 (Wherein a break was taken.)

14 THE VIDEOGRAPHER: The time is 12:29 p.m. We're
15 back on the record.

16 MR. CHRONISTER: We're ready?

17 THE VIDEOGRAPHER: Yes.

18 Q. (Mr. Chronister continued.) Mr. Brooks, before we broke
19 for the lunch break, we were just talking about the Safety and
20 Security form, I think, that Mark ran us copies of, and you have
21 a copy in front of you, right?

22 (Wherein Exhibit 1 was marked.)

23 A. I have a copy.

24 Q. And tell me what this form is, first of all.

25 A. Well, I really think it's kind of self-explanatory. It's a

1 Safety and Security form that both the representative of the
2 resident and the facility manager sign.

3 Q. It sets up, basically, what the facility is going to do, in
4 effect, for providing Safety and Security for the residents,
5 correct?

6 A. Yes.

7 Q. Look at -- I want to say item -- first of all, Item 5 under
8 there. And would you read that one to me?

9 A. "Environmental safety is provided by keeping the facility
10 clean and orderly and includes properly operating doors,
11 protected stairs, and generally good repair of the entire
12 facility."

13 MR. BREWER: John Brewer. I'm on the line now.

14 MR. MORRIS: All right. Thanks.

15 Q. (Mr. Chronister continued.) And then read Number 6 to me.

16 A. "All equipment should be operated according to
17 manufacturer's recommendations and repairs made as recommended
18 by the manufacturer."

19 Q. Whose job is it within the facility itself to be sure that
20 doors are in operating order and that repairs are made as
21 recommended by the manufacturer?

22 A. The director.

23 Q. And in your interfacing with the director, is it part of
24 your responsibility, as the owner, manager, operator, governing
25 body, whatever you want to call yourself, to be kept up to speed

1 on these things and be made aware of what's going on in the
2 facility?

3 A. Yes.

4 Q. Do you recall phone conversations, I think you said on a
5 daily basis that you had with Mitzi, regarding these either
6 problems or issues with the doors?

7 A. No.

8 Q. Do you ever recall discussing problems with the doors?

9 A. No. excuse me. During what time period?

10 Q. Before Mr. Brigance's accident.

11 A. No. No.

12 Q. Were there ever any discussions you had with Mitzi
13 regarding problems with doors before Jack Brigance's fall?

14 A. No.

15 Q. Should there have been?

16 MR. DOSSETT: Object to the form.

17 Q. (Mr. Chronister continued.) To the best of your knowledge,
18 is that something that your administrator should have told you?

19 A. Is what something she should have told me?

20 Q. That there were problems or issues relevant to doors.

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) I would say it's a judgment call
23 whether she thought it was a serious safety hazard or not.

24 Q. (Mr. Chronister continued.) You have seen the memos
25 regarding problems with doors that occurred before Jack

1 Brigance's accident, haven't you?

2 MR. DOSSETT: Object to the form.

3 A. (The witness continued.) I don't know which ones you're
4 talking about.

5 Q. (Mr. Chronister continued.) Let me show you three
6 different ones here.

7 MR. DOSSETT: Are you referring to the
8 maintenance forms?

9 MR. CHRONISTER: The Maintenance Log Forms that
10 were in, I believe, Joe's deposition.

11 Q. (Mr. Chronister continued.) These are Bates stamped as
12 00329, 00330, and 00328. Have you seen those documents before?

13 A. I don't believe I've ever seen that one before. I don't
14 believe I've ever seen that one before. I don't believe I've
15 seen that one before.

16 Q. So, as owner, manager, and I think you said earlier as
17 governing body, those duties fell to you. In no capacity have
18 you ever seen any of these documents pertaining to maintenance
19 issues with the facility?

20 A. That's true.

21 Q. You have seen them since this litigation came up, correct?

22 A. I believe I have, yes.

23 Q. And if these are the documents that have previously been
24 introduced into your maintenance man's deposition as documents
25 maintained at the facility and also they were testified to by

1 Ms. Bailey in her deposition, would you have any reason to
2 question the validity of these documents as being part of the
3 maintenance log or forms used by The Brookfield at Fianna?

4 A. No, sir.

5 Q. Tell me how you understand the maintenance issues at the
6 facility were addressed and handled by the administrator.

7 MR. DOSSETT: Object to the form.

8 Q. (Mr. Chronister continued.) Take me through a maintenance
9 problem at the facility. How, as the owner or governing body,
10 were those things handled?

11 MR. DOSSETT: Object to the form.

12 A. (The witness continued.) Most of the maintenance issues
13 were handled directly by the director with the maintenance
14 person. I seldom got involved. In fact, I would say the few
15 times that I did get involved are things like when I noticed,
16 for example, coming up, that the sprinkler system wasn't keeping
17 the lawn alive and things like that. But I never looked at the
18 maintenance log, ever. I haven't to this day.

19 Q. Do you feel like you have a responsibility, as the
20 governing body, owner, manager of this facility, to ever check
21 on maintenance issues?

22 MR. DOSSETT: Object to the form.

23 A. (The witness continued.) Yes.

24 Q. (Mr. Chronister continued.) And what would involve you
25 checking on maintenance?

1 A. That's a responsibility I delegate to the director. And
2 unless it is something that the director is unable to handle or
3 is otherwise more problematic and more serious, I never hear
4 about it.

5 Q. How do you know that something is problematic or serious
6 unless the director tells you?

7 A. I don't. Well, excuse me, unless I can see that the lawn
8 is dying or something like that, because the sprinkler isn't
9 working.

10 Q. If you personally see something, then you'll address it?

11 A. Yeah.

12 Q. And personally seeing it means you've got to be there to
13 see it?

14 A. I would say so.

15 Q. How often were you at the Fort Smith facility?

16 A. I believe I've already testified to that, once every three
17 weeks or so.

18 Q. And do you believe you have any responsibility, as the
19 owner, to stay on top of potential safety issues?

20 MR. DOSSETT: Object to the form.

21 A. (The witness continued.) Yes.

22 Q. (Mr. Chronister continued.) But you delegate that to the
23 administrator and only get involved if they tell you about the
24 problem?

25 MR. DOSSETT: Object to the form.

1 Q. (Mr. Chronister continued.) Is that what you're telling
2 me?

3 A. Or if I see it myself.

4 Q. So there is no -- I'm going to go back to this governing
5 body, quality assessment. As the owner or manager, you have no
6 protocols in place to do any double-checking of safety for the
7 residents of this facility?

8 MR. DOSSETT: Object to the form.

9 Q. (Mr. Chronister continued.) Other than relying solely on
10 the administrator?

11 MR. DOSSETT: Object to the form.

12 A. (The witness continued.) Or my own visual observation.

13 Q. (Mr. Chronister continued.) If you're there and happen to
14 see it, you'll address it. But other than that, for any safety
15 or maintenance issue, you have no involvement unless the
16 administrator tells you about it; is that what your testimony is
17 here?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) Or unless I hear about it from
20 some other source.

21 Q. (Mr. Chronister continued.) But as far as other source,
22 the quality assurance group, you don't know who is in that, do
23 you?

24 A. I do not.

25 Q. There is no governing body, other than you?

1 A. That's true.

2 Q. So, the only source of information is if somebody in the
3 facility walks up and says, "We've got a problem"?

4 MR. DOSSETT: Object to the form.

5 Q. (Mr. Chronister continued.) Is that what you're telling
6 me?

7 MR. DOSSETT: Object to the form.

8 A. (The witness continued.) No. They can also call me.

9 Q. (Mr. Chronister continued.) Okay. So, the only way you
10 would know about problems the way this is set is for the
11 administrator to tell you?

12 A. Yes.

13 Q. Or for some other employee of the facility or resident to
14 call you or personally tell you of a problem?

15 MR. DOSSETT: Object to the form.

16 Q. (Mr. Chronister continued.) Is that right?

17 A. Yes, that's two of them.

18 Q. How else?

19 A. The State could tell me.

20 Q. Why would the State be in there?

21 A. The State comes in on a routine basis.

22 Q. So, you would wait for the State to tell you about a
23 problem instead of proactively finding it yourself?

24 MR. DOSSETT: Object to the form.

25 A. (The witness continued.) Well, it depends on what the

1 problem is. If I am not made aware of it, I can't very well
2 correct it.

3 Q. (Mr. Chronister continued.) So, I guess that boils down to
4 my question. Do you, as the owner, manager, governing body,
5 believe that there should be some protocol in place for you to
6 have knowledge of potential problems or maintenance or safety
7 issues within the facility?

8 MR. DOSSETT: Object to the form.

9 Q. (Mr. Chronister continued.) And you can break that down
10 any way you want to to answer it.

11 MR. DOSSETT: Object to the form.

12 A. (The witness continued.) Yes.

13 Q. (Mr. Chronister continued.) Explain to me your "yes."
14 What do you mean by that?

15 A. I mean we have at least three mechanisms already in place
16 that issues would come to my attention. One is through the
17 director, one is through residents or staff, and the other one
18 is through the State.

19 Q. And there are no meetings or scheduled discussions to go
20 over any agenda regarding any safety or security issues within
21 the facility, other than the administrator telling you?

22 MR. DOSSETT: Object to the form.

23 A. (The witness continued.) Repeat the question, please.

24 Q. (Mr. Chronister continued.) Do you have any protocols in
25 place to sit down and have a meeting or an agenda to say, "We're

1 going to discuss ABC, XYZ today"? Does that ever occur?

2 MR. DOSSETT: Object to the form.

3 A. (The witness continued.) It does.

4 Q. (Mr. Chronister continued.) And who sets that agenda?

5 A. I do.

6 Q. And is there any time that you set that -- is that ever
7 done in writing where you send an e-mail or have correspondence
8 with the administrator that, "We're going to talk about any
9 safety issues or problems with maintenance or maintenance issues
10 or anything like that"?

11 A. No, sir.

12 Q. Have you ever addressed that with anybody, safety issues,
13 maintenance issues, as far as --

14 A. When it would come to my attention, we addressed them.

15 Q. So, it's a one-way street from the administrator to you?

16 MR. DOSSETT: Object to the form.

17 Q. (Mr. Chronister continued.) Is that what you're telling
18 me?

19 MR. DOSSETT: Object of form.

20 A. (The witness continued.) No. We've already gone through
21 that, that there are two other avenues that I hear about things.

22 Q. (Mr. Chronister continued.) So, the only way anything
23 comes to you is if these other people tell you, you never
24 proactively go out and ask?

25 MR. DOSSETT: Object to the form.

- 1 Q. (Mr. Chronister continued.) Is that right?
- 2 MR. DOSSETT: Object to the form.
- 3 A. (The witness continued.) That's true.
- 4 Q. (Mr. Chronister continued.) When you have your meetings
5 with Mitzi, I think you said you would talk daily, were any of
6 those confirmed by e-mails?
- 7 A. No.
- 8 Q. Did you ever e-mail each other back and forth about --
- 9 A. Oh, yes, sure.
- 10 Q. And how often would you e-mail each other?
- 11 A. We had no regular schedule.
- 12 Q. Would it occur -- I mean, if we went back in time and
13 looked at all of the e-mails, would there be one or 51 or 500?
14 Do you have any idea how many times you and she communicated by
15 e-mail?
- 16 A. Probably more than 10 and less than 100.
- 17 Q. Do you still have the computer that those e-mails would
18 have been generated on?
- 19 A. No.
- 20 Q. What happened to that computer?
- 21 A. I returned it to Dell Computer Company.
- 22 Q. Does the facility still have the computer those e-mails
23 would have been generated on?
- 24 MR. DOSSETT: Object to the form.
- 25 A. (The witness continued.) I think not.

1 Q. (Mr. Chronister continued.) Do you know what happened to
2 that computer?

3 A. Mitzi had a crash on hers.

4 Q. When did that occur?

5 A. I don't know.

6 Q. Now, back to this Safety and Security. Let me rephrase
7 that. Do you know, in the facility, how the maintenance issues
8 were addressed by the administrator?

9 A. She would become aware of a maintenance issue and fill out
10 a Maintenance Request form and the maintenance man would attend
11 to it.

12 Q. Why, in a new facility, would the maintenance man do
13 anything, other than change light bulbs, if there was a warranty
14 on stuff?

15 A. Just for convenience.

16 Q. Did you personally ever call Crawford Construction to have
17 them come repair or redo anything under warranty at the facility
18 in Fort Smith?

19 A. Yes.

20 Q. And what did you call Crawford about?

21 A. For a variety of things over the course of time, things
22 that came to my attention. For example, you know, a light
23 switch in the living room was hot to the touch. I asked them to
24 come and make sure there wasn't a short behind it or something
25 like that. We had issues with the doors that didn't seal

1 properly and we didn't want any rodents coming into our
2 building, and I asked them to come back and make sure all of the
3 doors were sealed properly and things like that.

4 Q. Can you think of any others?

5 A. Given time, I probably could.

6 Q. How did the switch that was hot come to your attention?

7 A. I felt it.

8 Q. No one else had reported it to you?

9 A. No, sir. I had gone over to turn on the -- I think it was
10 a fan in the dining room, and it was warm to the touch.

11 Q. What about the doors not sealing properly? What doors were
12 those?

13 A. Exit doors.

14 Q. Define what you mean by not sealing properly.

15 A. You could see daylight around the edge of the door. If you
16 can see daylight, that means that there's room for insects and
17 rodents to come in.

18 Q. Did you call Crawford yourself on that?

19 A. Oh, I don't remember. I probably did.

20 Q. Or did you instruct Mitzi to call?

21 A. I don't recall.

22 Q. Would Mitzi have known to call Crawford if there were
23 problems with the light switches or doors or plumbing?

24 MR. DOSSETT: Object to the form.

25 A. (The witness continued.) Yes.

1 Q. (Mr. Chronister continued.) Do you know if she ever called
2 anyone regarding problems with doors, either before or after --
3 let's break it down in two ways. Before Jack Brigance's injury,
4 do you know of Mitzi ever calling Crawford Construction
5 regarding problems with the doors?

6 A. You're referring to closet doors or any doors in general?

7 Q. Let's talk about closet doors first.

8 A. I'm not aware that she ever called them.

9 Q. Are you aware of whether she ever called them on any doors?

10 A. Well, I'm not sure whether she contacted them about the
11 issue with sealing them or not, sealing them around the
12 perimeters.

13 Q. The one you told us about a minute ago?

14 A. Yes, sir.

15 Q. So, she may have been the one that called on that?

16 A. Yeah. In fact, Crawford had one of their people that was
17 in the building taking care of a lot of little problems from
18 time to time. And he was over there. She may have mentioned it
19 to him specifically.

20 Q. Do you know whether or not she ever discussed the interior
21 closet doors with the Crawford people?

22 A. No.

23 Q. Do you know -- these maintenance logs, once they are filled
24 out and given to the maintenance man, what happens to them then?

25 A. Well, as I said before, he attends to whatever needs to be

1 done.

2 Q. And does he report back to Mitzi? Does he go back and give
3 her a report of what was done? What does he do?

4 A. He annotates in the file what he has done.

5 Q. And then where does that file go to?

6 A. The director.

7 Q. Are you sure it goes to the director?

8 A. I'm sure she looks at it. I don't know that it -- I think
9 it's physically housed in one of the closets in the back.

10 Q. If Mitzi Bailey testified that it was put back in a book,
11 box, drawer, someplace in the maintenance room and she may or
12 may not have looked at them, very rarely did, would that
13 surprise you?

14 MR. DOSSETT: Object to the form.

15 MR. CHRONISTER: Where's her testimony on that?

16 A. (The witness continued.) Would you repeat it, please?

17 Q. (Mr. Chronister continued.) For the administrator to be
18 doing her job that you have delegated to her to do, should she
19 follow up on repairs done by your maintenance man?

20 MR. DOSSETT: Object to the form.

21 A. (The witness continued.) Yes, she should have.

22 Q. (Mr. Chronister continued.) And in doing repairs -- I
23 think here's what Ms. Bailey said. Let me refer to Page 111 of
24 her deposition. I may want to go back to 110. Here, let me see
25 that. Starting on Page 110.

1 "Once those are done," and I'm talking about now the
2 maintenance man doing his repairs, "as administrator, do you
3 have an occasion to review any of those things and be sure that
4 these repairs are being done by the maintenance man?

5 "Answer: I have on occasion, yes."

6 "Question: Did you do that on a regular basis or just
7 every now and then? How did you do it?"

8 "ANSWER: Not on a regular basis, just, you know, on
9 anything that I might know of, be aware of, that I know
10 verbally, because, a lot of times, they are put in a book and
11 then he would just do it and then put them back in the office."

12 "QUESTION: He would put -- in the office, did you keep
13 them in a certain area in your office?"

14 "ANSWER: In the maintenance office."

15 "QUESTION: In the maintenance office? So did you ever
16 have occasion to look back through any of those forms and note
17 -- had any other problems on any of the doors occurred before
18 Mr. Brigance's accident?"

19 "No. As in the first section?" She's talking there about
20 the stuff she filled out.

21 "In any of it, did you happen to look back at the reports
22 before Mr. Brigance's fall as you were checking what the
23 maintenance man may have done and note, 'Well, here is another
24 problem with the door,' or, 'Here is another problem with the
25 door.'"

1 "No, I didn't."

2 So, I guess my question to you is, was your administrator
3 doing what she was supposed to do, following up on maintenance
4 issues?

5 MR. DOSSETT: Object to the form.

6 Q. (Mr. Chronister continued.) Based on her testimony.

7 A. I think she was. I think that most of the maintenance
8 issues that the maintenance man was handling were things that,
9 if he hadn't done, would have come to her attention again, as
10 they had the first time around.

11 Q. Well, in Mr. Brigance's case, there are at least two memos
12 regarding his door. The first one was that the maintenance man
13 -- excuse me. Let me get what he said. "Snapped it back in the
14 track." The next one was, "Put shims on the track."

15 Let me ask you. Looking at your safety procedure there,
16 what part of repairs up to the manufacturer's specifications
17 include putting shims on a bifold door?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) I haven't read the manufacturer's
20 specifications.

21 Q. (Mr. Chronister continued.) Should somebody have?

22 MR. DOSSETT: Object to the form.

23 A. (The witness continued.) Yes.

24 Q. (Mr. Chronister continued.) Should somebody have called
25 the construction company when it came time to put shims on the

1 track of a door in a patient's -- in a resident's room?

2 MR. DOSSETT: Object to the form.

3 A. (The witness continued.) Your question is, should somebody
4 have called the contractor?

5 Q. (Mr. Chronister continued.) Yes.

6 A. Yes.

7 Q. Do you believe it was your responsibility or your
8 administrator's responsibility to call the construction company
9 when it got to the level of putting shims in a track?

10 A. Well, I'm not exactly sure what you mean by a shim.

11 Q. Should somebody have asked to find out?

12 A. Who?

13 MR. DOSSETT: Object to the form.

14 Q. (Mr. Chronister continued.) I guess that's my question,
15 Mr. Brooks, who? You have a maintenance man -- let me ask you a
16 little about your maintenance man. This facility has how many
17 beds? How many rooms does your facility have?

18 A. Forty-seven.

19 Q. And your maintenance man, are they in a full or part-time
20 position?

21 A. He was part-time.

22 Q. How often was he there?

23 A. I believe about one day a week.

24 Q. So, issues regarding safety of the residents for your
25 maintenance man were being handled one day a week?

1 MR. DOSSETT: Object to the form.

2 A. (The witness continued.) I'm not sure I understand what
3 your question is.

4 Q. (Mr. Chronister continued.) If there is an issue with
5 safety, let's say there is a problem with a door in the
6 facility, you told me it's the administrator's job to handle
7 this; is that right?

8 A. Yes.

9 Q. The way it comes to her attention is, somebody fills out a
10 form and gives it to her; is that right?

11 A. Yeah.

12 Q. And then she puts it in a box or puts it in a place for the
13 maintenance man to come pick it up --

14 A. Yes.

15 Q. -- to do the repairs, right?

16 A. Yes.

17 Q. And the maintenance man comes how often a week?

18 A. Once a week, give or take.

19 Q. So, whatever safety issue, whatever maintenance issue needs
20 to be addressed in the facility, whether it's a problem with a
21 door, a problem with electricity, a problem with plumbing, a
22 problem with a handrail being loose, a problem anywhere, does it
23 wait a week for the maintenance man to come work on it?

24 MR. DOSSETT: Object to the form.

25 A. (The witness continued.) No, it does not. It depends on

1 -- you know, certainly, a plumbing problem, if we had something
2 like that, we would have somebody out there pretty quickly.

3 Q. What about problems with doors?

4 A. Well, I think it's -- whether it was recognized as a safety
5 hazard or not. And I don't think that, necessarily, it was.

6 Q. Would it concern you if you had known about it that your
7 maintenance man chose to put shims in the track of a door?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) I would have preferred he called
10 Crawford.

11 Q. (Mr. Chronister continued.) I think you said a minute ago
12 you don't even know what it means by putting shims in there from
13 what he said, right?

14 MR. DOSSETT: Object to the form.

15 A. (The witness continued.) That's true.

16 Q. (Mr. Chronister continued.) But to the best of your
17 knowledge, after researching and reviewing this, did your
18 administrator, prior to Jack Brigance's injury, ever call
19 Crawford Construction regarding problems with any doors in the
20 facility?

21 MR. DOSSETT: Object to the form.

22 A. (The witness continued.) I don't know whether she called
23 them regarding any doors.

24 Q. (Mr. Chronister continued.) And do you have any knowledge
25 as to whether she called them prior to Jack Brigance's injury

1 for the doors in Jack Brigance's room?

2 A. I do not know.

3 Q. I'm going to go back to the question I've asked you, I
4 think, before to be sure we're up to that point. Should she
5 have?

6 MR. DOSSETT: Object to the form.

7 A. (The witness continued.) Should she have?

8 Q. (Mr. Chronister continued.) Called Crawford Construction
9 after the second time with Jack Brigance's doors and putting
10 shims in the doors. Should Crawford Construction have been
11 called by your administrator?

12 MR. DOSSETT: Object to the form.

13 A. (The witness continued.) Yes.

14 Q. And by not calling Crawford or by not having someone check
15 on these doors, do you believe that the facility was violating
16 the safety and security provisions of the very document that
17 Mitzi Bailey signed for the Brigances?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) Now, your question was?

20 Q. (Mr. Chronister continued.) Look at the Safety and
21 Security form. Under Number 5, there were obviously -- or were
22 there problems -- obviously, problems with Mr. Brigance's room
23 door?

24 MR. DOSSETT: Object to the form. What do you
25 mean by room door?

1 MR. CHRONISTER: The interior closet doors that
2 the two maintenance forms had filled out on.

3 MR. DOSSETT: Thank you.

4 Q. (Mr. Chronister continued.) Were there problems with those
5 doors?

6 A. There was a problem with the one door.

7 Q. It wasn't operating correctly, was it?

8 A. That's my understanding.

9 Q. And were the repairs made as recommended by the
10 manufacturer?

11 MR. DOSSETT: Object to the form.

12 A. (The witness continued.) I have never read the
13 manufacturer's recommendations.

14 Q. That's where you should have probably called the
15 manufacturer, right?

16 MR. DOSSETT: Object to the form.

17 Q. (Mr. Chronister continued.) Or the construction company?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) I'm not sure I understand your
20 question.

21 Q. (Mr. Chronister continued.) We're back to the construction
22 company should have been called to have repairs made in a proper
23 manner.

24 A. I think that's right.

25 Q. Are you now aware of other problems with doors at the

1 facility that occurred before or simultaneously with the doors
2 in Jack Brigance's room?

3 MR. DOSSETT: Object to the form.

4 Q. (Mr. Chronister continued.) During the course of this
5 litigation, have you become aware of other issues with doors in
6 the facility?

7 A. And we're talking closet doors?

8 Q. Interior closet doors, yes, sir.

9 A. Yes.

10 Q. Tell me what things you have been made aware of regarding
11 the interior closet doors.

12 A. Well, I've heard the testimony that's been given. And
13 beyond that, we have some doors that are loose. And that's
14 really the extent of what I know about it.

15 Q. Let's go through that in two phases. Have you tried to
16 keep track of the number of complaints regarding problems with
17 doors in a facility?

18 A. I'm aware of complaints in several of the rooms, yes.

19 Q. Do you have any idea of the number of the rooms you've had
20 complaints on the doors?

21 MR. DOSSETT: Are you talking about after the
22 fact?

23 MR. CHRONISTER: After the fact.

24 A. (The witness continued.) Are you talking about complaints
25 by residents?

1 Q. (Mr. Chronister continued.) Complaints by anybody, whether
2 it's by residents --

3 A. Well, if it is from the staff, it may be comment rather
4 than a complaint.

5 Q. Okay. Comments or complaints.

6 A. I am aware that there were a number of other doors that had
7 become loose.

8 Q. Are you aware of any doors that have actually come loose
9 and either fallen back into the closet itself or have angled out
10 into the room?

11 A. I read the testimony, and I'm not sure I even agree with
12 the testimony.

13 Q. What would you not agree with on the testimony?

14 A. Well, I'm kind of confused as to what she was saying. I
15 think it was the testimony of Michelle.

16 Q. Michelle Lindsay?

17 A. Yes.

18 Q. And is that the two rooms that the doors were off and
19 leaned back into the closets; is that what you're talking about?

20 A. I think that's right.

21 Q. And how about the testimony of Cheryl Williams where the
22 door had come off and angled toward her? Do you have any
23 questions or issues with that testimony?

24 A. Well, I'm not sure that I can quite picture exactly what
25 she was saying.

1 Q. Have you sat down and talked to any of these people
2 yourself to get a clearer picture and to clear your mind as to
3 what exactly they're talking about on problems with these doors?

4 A. No.

5 Q. Have you talked to anyone with either Crawford Construction
6 or WDM Architects regarding the doors?

7 A. Have I had a conversation with them regarding -- yes.

8 Q. Tell me about those conversations you've had with them.

9 A. We were talking about actually replacing the doors.

10 Q. Have the doors been replaced?

11 A. They have not.

12 Q. Why not?

13 A. They haven't been replaced because, frankly, you lawyers
14 have gotten involved, and originally, we thought that we would
15 replace them and that replacement would not be used against us
16 in a court of law. And come to find out that that may not
17 necessarily be the case, so it's a result of your legal
18 wrangling.

19 Q. So, if you didn't think it was going to be used against
20 you, you'd have taken the doors down; is that what you're
21 telling me?

22 MR. DOSSETT: Object to the form.

23 A. (The witness continued.) I would like the doors replaced.

24 Q. (Mr. Chronister continued.) Why would you like the doors
25 replaced?

1 A. Because I think we want the doors that were originally
2 intended to be in there.

3 Q. And those with the hollow-core doors?

4 A. Yes.

5 Q. Do you consider these doors dangerous that are in there
6 now?

7 A. I don't know if they're dangerous or not.

8 Q. And but for this litigation, you'd have them out of there?

9 A. I would.

10 MR. CHRONISTER: Let's take a break just a
11 minute.

12 MR. DOSSETT: Okay.

13 THE VIDEOGRAPHER: The time is 1:06 p.m. We're
14 off the record.

15 (Wherein a break was taken.)

16 THE VIDEOGRAPHER: The time is 1:20 p.m. We're
17 back on the record.

18 Q. (Mr. Chronister continued.) Mr. Brooks, I want to clear up
19 one thing I think you've answered for me. Is it your testimony
20 that, at no time before Jack Brigance's injury, you had been
21 made aware of any problems with any of the interior closet doors
22 in the facility?

23 MR. DOSSETT: Object to the form.

24 A. (The witness continued.) I don't recall ever being aware
25 of it.

1 Q. (Mr. Chronister continued.) And specifically, you were
2 never aware, to the best of your knowledge, of any problems with
3 Jack Brigance's room?

4 A. I don't recall that I was.

5 Q. Did you do a walk-through with Steve Brigance when he was
6 picking out a room for his parents?

7 A. Yes.

8 Q. Were there any issues with the interior closet door that
9 were called to your attention during that walk-through by Steve?

10 A. I don't recall it.

11 Q. Are you saying you don't recall or that there were none?

12 A. I think I said I don't recall it.

13 Q. If Steve's recollection was that that interior door was
14 binding during the walk-through, would you have any independent
15 recollection that you would dispute his memory on that?

16 A. No.

17 Q. You said one of the ways that you would find out about
18 these problems was that some caregiver or employee might tell
19 you about them; is that right?

20 A. Yes.

21 Q. Do you recall Amanda Broughton -- well, let me ask it this
22 way. Do you recall an employee by the name of Amanda Broughton?

23 A. Yes.

24 Q. Do you recall Amanda Broughton ever discussing with you a
25 problem with doors -- interior closet doors in the facility?

1 A. No.

2 Q. Do you remember Amanda ever specifically discussing with
3 you a problem with the door in Jack Brigance's room?

4 A. No.

5 Q. Since Mr. Brigance's accident, have any of the staff come
6 to you regarding problems or issues with doors in the facility?

7 MR. DOSSETT: Object to the form.

8 Q. (Mr. Chronister continued.) Other than what you have
9 learned -- you said you had learned through the depositions.
10 Now I'm asking you, has any of the other employees come to you
11 and given you information regarding interior closet doors?

12 MR. DOSSETT: Object to the form.

13 A. (The witness continued.) Yes.

14 Q. (Mr. Chronister continued.) If you can recall, tell me who
15 has told you about problems and what they have told you.

16 MR. DOSSETT: Object to the form.

17 A. (The witness continued.) Let me think for a second. The
18 only thing I'm aware of is that Meg, our current administrator,
19 has informed the attorney that there were issues with some of
20 the doors.

21 Q. And do you recall how many doors there have been issues
22 with?

23 A. Very minor issues with several doors. There were, I
24 believe, four doors that are not presently on, but not
25 necessarily because they fell off or anything of that ilk. Some

1 of the residents didn't want closet doors on.

2 Q. Any problems with the doors that led to them being taken
3 off, other than the resident's desire not to have a closet door?

4 A. I don't know of any.

5 Q. And who is the administrator now?

6 A. Meg Rank.

7 Q. And how long has she been the administrator?

8 A. Approximately, six months.

9 Q. When did she come on as administrator, approximately the
10 date?

11 A. Approximately, six months ago.

12 Q. May timeframe -- no, March timeframe?

13 A. Probably March.

14 Q. And did she replace Mitzi Bailey as administrator?

15 A. Yes, she did.

16 Q. I'll come back to that in a minute. As far as your
17 maintenance crew, does your maintenance man -- do you still have
18 Joe as your maintenance man?

19 A. No.

20 Q. When did Joe leave?

21 A. Probably about a year ago.

22 Q. Who is the maintenance man now?

23 A. A fellow named Chuck.

24 Q. What's Chuck's last name?

25 A. I don't know.

1 Q. How long has Chuck been maintenance man?

2 A. Probably three months.

3 Q. Is he still -- is that position still a part-time position?

4 A. Yes, I think so.

5 Q. You think so?

6 A. I think so.

7 Q. Is it still one day a week?

8 A. No, it's more than that, and that's why I'm not quite sure

9 whether it's actually full-time.

10 Q. When would it have changed from a part-time, one day a

11 week, to more than one day a week or perhaps into a full-time

12 position?

13 A. When Chuck came on, the position was more than one day a

14 week.

15 Q. And that was in the last three months?

16 A. Uh-huh. Yes.

17 Q. I think that's the first time you've done this today, an

18 "uh-huh" or an "huh-uh." That's good.

19 A. I try not to.

20 Q. Your facility in Bella Vista, does it have a maintenance

21 man?

22 A. It does.

23 Q. Is that a full or part-time?

24 A. Part-time.

25 Q. The facilities that you have an interest in, the ones we

1 talked about at the very first part of this, do all of those
2 have part-time maintenance men.

3 A. Yes.

4 Q. Do any of them have full-time maintenance?

5 A. No.

6 Q. How many beds are at the Bella Vista facility?

7 A. There is 33 rooms.

8 Q. Thirty-three rooms? And is it full?

9 A. Yes.

10 Q. And the maintenance man is part-time?

11 A. Yes.

12 Q. And the Fort Smith facility has how many rooms?

13 A. Forty-seven?

14 Q. Is it full?

15 A. No.

16 Q. How many rooms are occupied at Fort Smith?

17 A. I think it's about 42. My director there has had some
18 surgery, and I'm not 100 percent up to date since her surgery.

19 Q. When I ask part-time, let's kind of break that down. How
20 many days a week do you have a maintenance man at the facility
21 in Bella Vista?

22 A. I'm guessing two days a week.

23 Q. I think we talked about Fort Smith. You're not sure how
24 many Chuck is there?

25 A. I'm not sure.

1 Q. As far as the log forms, or maintenance logs, is this the
2 way you do them in every facility?

3 A. Yeah, or something like that. They not be precisely that
4 form.

5 Q. It depends solely upon the administrator to go find out
6 what was done, what was repaired, and how it was repaired.
7 That's something they are supposed to do?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) Certainly.

10 Q. (Mr. Chronister continued.) And there are no meetings,
11 regular meetings, or sit-downs with anybody to verify what's
12 been reported and what's been done, other than just whenever you
13 go in and look at this book in the maintenance department or
14 maintenance room?

15 A. When I go in and look at it?

16 Q. When the director goes in to look at it. There is no other
17 -- going back to the quality assurance, there's no meetings of
18 any of that type stuff, there is no regularly scheduled meetings
19 where maintenance is discussed or follow-up on maintenance is
20 done, it's all based on these logs and just going to look at
21 that, right?

22 MR. DOSSETT: Object to the form. To the extent
23 that the question calls for the contents of any quality
24 assurance meeting, I'm going to instruct the witness not to
25 answer.

1 But other than that, you can answer. Quality assurance is
2 absolutely privileged under Arkansas law.

3 A. (The witness continued.) I'm not sure where that leaves me
4 in terms of the question.

5 Q. (Mr. Chronister continued.) Well, do you have a governing
6 body at Bella Vista?

7 A. No. Well, I'm it.

8 Q. You're it. Do you have a Quality Assurance Unit at Bella
9 Vista?

10 A. The director is responsible for that, yes.

11 Q. And again, you don't have any idea how many people make up
12 that particular group or how often they meet; is that right?

13 A. They meet on a -- as a group of department heads, on a
14 regular basis. I think it's once a week.

15 Q. And was that done in Fort Smith?

16 A. Yes.

17 Q. How do you know it was done?

18 A. I've been told it was done.

19 Q. I think earlier today, when I asked you about it, you had
20 no clue.

21 MR. DOSSETT: Object to the form.

22 MR. MORRIS: Object to the form.

23 A. (The witness continued.) I think you asked me about
24 quality assurance boards.

25 Q. (Mr. Chronister continued.) Yes.

1 A. What I'm talking about is a meeting of department heads.

2 Q. And that's different than quality assurance?

3 A. Yes.

4 Q. What were Mitzi's duties, if any, outside of the Fort Smith
5 facility?

6 MR. DOSSETT: Object to the form.

7 Q. (Mr. Chronister continued.) Did she have any duties
8 outside Fort Smith?

9 A. Not regularly.

10 Q. What, if any, duties did she have at Bella Vista?

11 A. There was a period of time when we did not have a director
12 up there that she filled in as acting director on a part-time
13 basis.

14 Q. From when to when was that?

15 A. I would have to look at the records.

16 Q. Could you look at the records and let Mr. Dossett know so
17 we can get that information?

18 A. I will.

19 Q. How often was she going, then, from Fort Smith to Bella
20 Vista?

21 A. She would spend a couple of days every week in Bella Vista.

22 Q. Was she doing that -- had she been doing that at the time
23 we took her deposition in December of last year?

24 A. That had been completed.

25 Q. So, she had already done it?

1 A. I think so.

2 MR. CHRONISTER: Give me her deposition.

3 Q. How often would she go there?

4 A. She went up there once a week.

5 Q. And how long would she stay up there when she went?

6 A. It varied. Sometimes a day, sometimes two or three days.

7 Q. Who was the -- how could she function as administrator at
8 Bella Vista one day a week?

9 A. She worked there more -- in Bella Vista?

10 Q. In Bella Vista. You said she was acting administrator in
11 Bella Vista. How could she be an acting administrator one day a
12 week?

13 A. She was doing the best she could.

14 Q. Well, isn't there an Arkansas regulation that requires a
15 Level I assisted living facility to have a full-time onsite
16 administrator 40 hours per week?

17 A. It did, but we didn't have a director, because the director
18 was no longer employed, and we were actively searching for a new
19 director during the time.

20 Q. And so she was there one day a week as the director of that
21 facility?

22 MR. DOSSETT: Object to the form.

23 A. (The witness continued.) I think, officially, she was the
24 director of Fort Smith. She was helping us out up there as much
25 as she could.

1 Q. (Mr. Chronister continued.) Who was the director --
2 doesn't a licensed director have to be named with the Office of
3 Long-Term Care and be licensed in order to have the facility
4 operate?

5 A. Yes, and we had discussed the situation with the State of
6 Arkansas that we didn't have a director and we were looking for
7 one, and they were willing to let us work under this situation,
8 under these conditions.

9 Q. And then, while she was gone from Fort Smith, who was the
10 director or acting director here?

11 MR. DOSSETT: Object to the form.

12 Q. (Mr. Chronister continued.) Or was there one?

13 MR. DOSSETT: Object to the form.

14 A. (The witness continued.) "Here" being Fort Smith or
15 Fayetteville?

16 Q. (Mr. Chronister continued.) "Here" being Fort Smith.

17 A. She was still the director of record there.

18 Q. So, she could do that even though she was not at the
19 facility?

20 A. It was a difficult time for us all.

21 Q. Now, when we deposed Michelle Lindsay, I think her
22 testimony was that Mitzi was gone three times or more a week at
23 Bella Vista.

24 A. Three times or three days?

25 Q. Three times a week, three days a week, or more.

1 A. I'm not sure what she means by three times.

2 Q. We asked her, "On an average, how often was Mitzi gone to
3 Bella Vista?"

4 And she says, "How long was she gone?"

5 And the question was, "How often is she gone?"

6 Her answer is, "A lot."

7 The question was, "Define a lot. Once a week? Three times
8 a week? Monday, Wednesday, Friday? Can you give us a breakdown
9 on that?"

10 "ANSWER: Three times a week or more."

11 So, how is it -- I mean, there's a discrepancy there
12 between the two of them. You're saying she was there maybe one
13 time a week. Another employee is telling me three times a week.

14 MR. DOSSETT: Object to the form.

15 A. (The witness continued.) Excuse me. I think I said she
16 was up there -- often stayed three days, two or three days, I
17 think my testimony was.

18 Q. (Mr. Chronister continued.) Okay.

19 A. And furthermore, I know that she traveled back and forth
20 extensively. So, I don't know that she was -- three times might
21 have been three separate days, or it might have been three days
22 in a row. I don't think Michelle Lindsay knows whether she
23 traveled back and forth or not.

24 Q. What made Mitzi, with her extent of experience, competent
25 to handle both facilities?

1 MR. DOSSETT: Object to the form.

2 A. (The witness continued.) We were in a situation that we
3 had to have somebody there to oversee the operation while we
4 were trying to hire a replacement. Mitzi was doing the best she
5 could to cover both positions. Directors in the state of
6 Arkansas don't grow on trees. So, when we lost one, it took us
7 some time to get another one.

8 Q. (Mr. Chronister continued.) Did you advertise for another
9 one?

10 A. We did.

11 Q. How many applications did you have at that point in time?

12 A. Probably about 30.

13 Q. And how long did it take you to get another administrator?

14 A. Well, I had hired one. It took about a month to find and
15 narrow down to one candidate. Then that candidate required a
16 certain period of time before she could leave her other job.
17 She was down, I think, in the range of two months or something
18 like that.

19 THE VIDEOGRAPHER: We have five minutes left on
20 tape.

21 MR. CHRONISTER: Why don't we stop right now, and
22 then we can switch it out.

23 THE VIDEOGRAPHER: The time is 1:39 p.m. We are
24 off the record.

25 (Wherein an off-the-record discussion was held.)

1 THE VIDEOGRAPHER: The time is 1:44 p.m. We are
2 back on the record.

3 Q. (Mr. Chronister continued.) When did Mitzi cease being the
4 administrator of the facility?

5 A. Probably about seven months ago.

6 Q. And did she -- tell me how that came about.

7 A. How she ceased being administrator?

8 Q. Yes.

9 A. She resigned.

10 Q. Did she resign completely from your employment, or did she
11 merely resign from being the administrator?

12 A. She resigned from my employment.

13 Q. Did she remain the administrator at all times until she
14 resigned from your employment?

15 A. Yes.

16 Q. She never took any other marketing job or other job within
17 the company?

18 A. No.

19 Q. What reasons did she give you for her resignation?

20 A. A better job with better pay and better hours.

21 Q. Did you ever have any discussions with her regarding she
22 needed to resign or would be terminated from your employment?

23 A. Yes.

24 Q. And what were those discussions?

25 A. She actually volunteered to resign thinking that she was

1 the lightning rod for this whole lawsuit.

2 Q. Is there anything that's come out in this lawsuit that has
3 had you question her competency to be the administrator for your
4 facility?

5 A. No.

6 Q. Do you think she did everything right?

7 A. No.

8 Q. Tell me the things you think she did wrong.

9 A. Mitzi is human, like anybody else, and does some things
10 better than others. I think that she was harsh with some of her
11 employees and expected a lot from them and, to some degree,
12 alienated the affection of many of them.

13 Q. Do you think she followed the regs for a Level I assisted
14 living facility?

15 A. I believe she did.

16 Q. Are you aware of her agreeing to have people in the
17 facility who did not qualify as a Level I resident?

18 A. No.

19 Q. Did you hear testimony to that effect in her deposition?

20 MR. DOSSETT: Object to the form.

21 A. (The witness continued.) In her deposition?

22 Q. (Mr. Chronister continued.) In her deposition, did she not
23 testify that she had residents there who were not otherwise
24 qualified to be in a Level I assisted living facility?

25 MR. DOSSETT: Object to the form.

1 A. (The witness continued.) I don't recall that in her
2 testimony.

3 Q. Do you recall that in Michelle Lindsay's deposition?

4 A. No.

5 Q. Would it surprise you if she had people in there who were
6 not supposed to be there?

7 MR. DOSSETT: Object to the form.

8 A. (The witness continued.) We might have some people that,
9 age and place, that get to the point that they are no longer
10 qualified as Level I residents.

11 Q. Can you think of anyone that was there from the start who
12 shouldn't have been there?

13 A. No, I don't know of any.

14 Q. So, there was nothing about the handling of the notice on
15 the doors, there was nothing about any of the maintenance
16 issues, there was nothing that Ms. Bailey did that you found
17 objectionable in the handling of this matter?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) I'm not sure I -- would you
20 repeat that all again, please?

21 Q. (Mr. Chronister continued.) You have investigated this,
22 have you not? Have you personally gone back and looked at the
23 allegations and the issues and the paperwork regarding Mr.
24 Brigance's injury and death?

25 A. I've looked at some of it.

1 Q. And you have sat in on the depositions?

2 A. I have sat in on some of them.

3 Q. You sat in on Mitzi's deposition?

4 A. I did.

5 Q. And in her testimony, was there anything in her handling of
6 this that you found inappropriate?

7 MR. DOSSETT: Object to the form.

8 A. (The witness continued.) Handling of this? You'll have to
9 be more specific.

10 Q. (Mr. Chronister continued.) This incident. This incident,
11 Mr. Brigance's -- the events leading up to Mr. Brigance's fall
12 and the aftermath of his fall.

13 A. I think that Mitzi did everything that she should have done
14 in the timeframe that she had to make the decisions.

15 Q. Other than what you've told us today, and that is that the
16 construction company or someone should have been called after
17 the second incident with this door, right?

18 MR. DOSSETT: Object to the form.

19 A. (The witness continued.) There's a question there?

20 Q. (Mr. Chronister continued.) Yeah, there's a question
21 there. Basically, you said you had found nothing wrong with
22 what she had done, but earlier in your deposition, when we
23 talked about notice to the construction company following the
24 placing of shims in the door by the maintenance man, I think
25 your testimony was that the construction company should have

1 been called on that.

2 MR. DOSSETT: Object to the form.

3 A. (The witness continued.) Okay.

4 Q. (Mr. Chronister continued.) Is that correct?

5 A. Yes.

6 Q. So, that would have been a failure on her part, wouldn't
7 it?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) I think that I'm making that
10 decision in retrospect after a considerable amount of time and
11 thought has gone into it. I think that, at the time that she
12 made the decisions that she made, they were appropriate for what
13 she knew at that time.

14 Q. (Mr. Chronister continued.) So, you're now telling me it
15 was appropriate for her not to call the construction company
16 after the second problem with Mr. Brigance's door?

17 MR. DOSSETT: Object to the form.

18 A. (The witness continued.) What I'm saying is, it's easy to
19 Monday morning quarterback. I think, in her position at that
20 time, that she was considering that this was a minor problem
21 with the door and that it was being handled in an appropriate
22 fashion at that time. In retrospect, it was probably not.

23 Q. (Mr. Chronister continued.) Do you even know whether or
24 not she went back and checked what was done to the door the
25 second time?

1 MR. DOSSETT: Object to the form.

2 A. (The witness continued.) No, I don't know.

3 Q. (Mr. Chronister continued.) Was it appropriate for her --
4 if she didn't do it, was that inappropriate?

5 MR. DOSSETT: Object to the form.

6 A. (The witness continued.) I think that, in retrospect, it
7 was. At the time, I would not have expected her to go back to
8 check on the adjustment of a closet door which didn't represent,
9 in anybody's mind at that time, in nobody's mind represented a
10 safety hazard, any more than I would expect her to go back
11 around and check to see if all of the light bulbs were replaced.

12 Q. (Mr. Chronister continued.) What about destroying an
13 original incident report?

14 MR. DOSSETT: Object to the form.

15 A. (The witness continued.) What about it?

16 Q. Are you aware that the original incident report was
17 destroyed?

18 A. I don't think I'd characterize what I've read that way.

19 Q. Well, tell me how you would characterize what you've read.

20 A. My understanding of the situation is that the incident
21 reports are intended to report factual information, and the
22 original incident report was done by -- I believe it was Amanda
23 Broughton, and she had put in there what amounted to -- not
24 being a lawyer, you'll excuse me, hearsay evidence, that it said
25 that -- I think Mr. Brigance had actually said the door fell on

1 him, and she put that in there without knowing it to be a fact.

2 I believe that, at that time, Mitzi asked her if she would like

3 to amend it to just include facts, and she did so.

4 Q. That's the way you interpreted Mitzi's testimony?

5 A. Yes, sir.

6 Q. How did you become aware of this incident?

7 A. I'm sure it was a telephone call, although I don't really
8 recall it.

9 Q. Do you recall who it was a telephone call from?

10 A. It would have been from Mitzi, I'm sure.

11 Q. Do you recall her telling you how the incident occurred?

12 A. No, I don't.

13 Q. Do you recall anyone telling you how the incident occurred?

14 A. I remember a lot of discussion about the door falling and
15 probably falling on Mr. Brigance. I had heard that from several
16 people that weren't there to witness it.

17 Q. Who did you hear that from, and how did you --

18 A. Well, I read it in Chuck's testimony, Chuck Geske.

19 Q. Uh-huh.

20 A. And Mitzi had talked about it.

21 Q. I'm talking about at the time of the incident itself.

22 Let's say in the day or two or three following the incident.

23 How did you get information of what occurred?

24 A. It would have all been by telephone from Mitzi.

25 Q. I'm sorry. Did you come down at all?

1 A. Not immediately.

2 Q. So, you recall getting a phone call from Mitzi?

3 A. Yes.

4 Q. Do you recall how she told you the accident occurred?

5 A. She told me that Mr. Brigance had fallen and that the door

6 had fallen on him or about the same time, and that's all she

7 knew about it.

8 Q. Did she portray to you that he fell and pulled the door on

9 top of himself?

10 A. I've heard that, Mr. Chronister. I don't remember whether

11 she told me that or whether somebody else did.

12 Q. Did you receive an e-mail from Steve Brigance telling you

13 what had happened? I think that e-mail was sent Friday, January

14 9. Do you recall receiving that e-mail?

15 A. Yes, sir.

16 Q. And you sent a responding e-mail. What was the date and

17 time of your response?

18 A. What was it?

19 Q. The e-mail you sent back.

20 A. It was January 9, 2009, 12:50 p.m.

21 Q. And read me your response.

22 A. "Yes, I was very sorry to hear about his fall. I hope he

23 has not experienced discomfort and that he will recover quickly.

24 I hope your mom is doing well. Maybe the chocolate peanut

25 butter pies will give her some enjoyment. Bob."

1 Q. How did you come to the conclusion in your response that he
2 had suffered a fall as opposed to what Steve told you, the doors
3 fell on him?

4 MR. DOSSETT: Object to the form. Steve told --

5 Q. (Mr. Chronister continued.) I'm just wondering about your
6 particular choice of words there.

7 A. I'm not sure I understood the question.

8 Q. Your e-mail said that you were sorry to hear about his
9 fall.

10 A. Yes, sir.

11 Q. By January 9, had Mitzi or someone already told you that
12 this event occurred because of him having a fall versus the
13 doors falling on him? I'm just trying to get a choice of your
14 particular choice of words.

15 MR. DOSSETT: Object to the form.

16 A. (The witness continued.) Yes, I had heard about it before
17 Steve's e-mail.

18 Q. (Mr. Chronister continued.) Had you heard that the doors
19 fell on him or that he fell and pulled the doors on him?

20 A. I don't think anybody offered a conclusion at that time.

21 Q. Did you subsequently do any investigation yourself as to
22 how this event occurred?

23 A. We had numerous discussions between myself and Mitzi about
24 what actually happened, yes.

25 Q. Tell me about those discussions.

1 A. Well, she said she didn't know exactly what had happened,
2 that he was originally found having fallen with evidently the
3 door across part of him. I don't know if she speculated or we
4 speculated together whether he had pulled the door down or how
5 it managed to get on top of him. There was a discussion that
6 his pelvis had been broken and that he had had a fall, I
7 understand, the day before and we weren't sure, you know, when
8 that fracture had occurred.

9 Q. Did you have some reason to believe he would be up and
10 walking with a fractured pelvis? When you speculated on that,
11 did you have any reason to believe that he would have been up
12 and walking with a fractured pelvis?

13 MR. DOSSETT: Object to the form.

14 A. (The witness continued.) It didn't occur to me. I mean,
15 people walk around with broken bones.

16 Q. Okay.

17 A. He had had a fall, I understand.

18 Q. Would it make any difference to you whether or not the door
19 fell on him or he fell and the door came off while he was
20 holding onto the door? Should that door come off --

21 MR. DOSSETT: Object to the form.

22 Q. (Mr. Chronister continued.) -- if a person holds onto it?

23 MR. DOSSETT: Object to the form.

24 A. (The witness continued.) It should not have come down on
25 him.

1 Q. (Mr. Chronister continued.) What was your relationship
2 with Steve Brigance like prior to this?

3 A. It was cordial. We had had some discussions before his
4 parents moved in and one or two brief conversations after that.

5 Q. Had he actually given you some, I guess, pro bono legal
6 advice along the way on some areas?

7 A. Not that I recall.

8 Q. But there was no antagonism between you-all, was there?

9 A. No.

10 Q. And as far as Jack Brigance, tell me your observations of
11 Jack Brigance.

12 A. Mr. Brigance was our first resident, very beloved by my
13 staff. They treated him very well. I had only one or two
14 conversations with him, ever.

15 Q. I think some of the other depositions have referred to him
16 as being spry; he would get around and do what he wanted to do.
17 Was it Chuck that said Banty rooster of the facility or words to
18 that effect? Do you know of any physical limitations that he
19 had on his ability to get around to do the things he wanted to
20 do?

21 A. No.

22 Q. And, in fact, was he used in some of your -- he and
23 Mrs. Brigance used in some of your promotional literature on the
24 facility?

25 A. Evidently so.

1 Q. Yeah. Let me ask you if you recognize this. Is that
2 Mr. and Mrs. Brigance and their grandson in the bottom right-
3 hand corner?

4 A. Yes.

5 MR. DOSSETT: Can we make that page an exhibit so
6 we'll know what he's looking at there?

7 MR. CHRONISTER: Yes, we can do that. I meant to
8 do that. Let's do that. Let's also make that e-mail one.

9 MR. MORRIS: So, the ad is 2 and the e-mail is 3?

10 MR. CHRONISTER: Yes. That's fine.

11 (Wherein Exhibits 2 and 3 were marked.)

12 Q. (Mr. Chronister continued.) After this accident, were
13 there some discussions as to whether or not any additional
14 repairs or modifications needed to be made to any of the door
15 hardware in the facility for the interior closet doors?

16 MR. DOSSETT: Object to the form.

17 A. (The witness continued.) The hardware?

18 Q. (Mr. Chronister continued.) Yes, sir. Did you have some
19 discussions with either Crawford Construction or WDM?

20 A. Yeah. I think I've already testified to the fact that we
21 had discussions about replacing the door, and that would include
22 the hardware.

23 Q. Before that, were there some questions about putting extra
24 screws and so forth?

25 A. Yes, there were.

1 Q. And in the course of doing that, the hardware in the
2 Brigance room, did you tell the people from Crawford to take
3 that down?

4 A. Take the door down?

5 Q. To take the hardware down?

6 A. No.

7 Q. Do you know how that hardware came to be taken down?

8 A. I don't.

9 Q. Were you aware that it had been taken down?

10 A. Only during the proceedings of this lawsuit.

11 Q. Only in the depositions did you become aware of that?

12 A. I think I became aware of it before the depositions, but
13 I'm trying to remember exactly when I did find out about it. I
14 didn't know about it when it occurred, and I didn't know where
15 it was.

16 MR. CHRONISTER: Let's take a few minutes' break.
17 I think there's some things I just need to wind up with Steve.

18 THE VIDEOGRAPHER: The time is 2:04 p.m. We are
19 off the record.

20 (Wherein a break was taken.)

21 THE VIDEOGRAPHER: The time is 2:16 p.m. We're
22 back on the record.

23 Q. (Mr. Chronister continued.) Mr. Brooks, let me go back and
24 clear up a few things and I think we'll be through here.

25 When you were having Mitzi go back and forth between Bella

1 Vista and Fort Smith, splitting time in those places, you said
2 you had had some communications with the Office of Long-Term
3 Care and told them what your situation was. Do you recall who
4 you talked to there and who approved splitting of time for Mitzi
5 between the facilities?

6 MR. DOSSETT: Object to the form.

7 A. (The witness continued.) It was Jim Hicks.

8 Q. (Mr. Chronister continued.) Jim Hicks?

9 A. And it wasn't so much an approval as information.

10 Q. Explain to me what you mean by that.

11 A. He wasn't required to give approval. I told him what we
12 were doing.

13 Q. The new administrators both in Bella Vista and in Fort
14 Smith, the Fort Smith one, is that -- you told me her name was?

15 A. Meg Rank.

16 Q. Meg Rank? Has she had any prior experience as an
17 administrator?

18 A. Yes.

19 Q. How long has she been an administrator?

20 A. She was an administrator for a year or so.

21 Q. Before coming --

22 A. Before joining our company.

23 Q. And what about the administrator that you ultimately had in
24 Bella Vista?

25 A. She had been an administrator of a residential care

1 facility, which is almost the same as assisted living.

2 Q. How much experience did she have in that?

3 A. She had been doing that for eight or nine years.

4 Q. When you and Mitzi were discussing the different things you
5 discussed on a daily basis, did the hiring and firing of
6 employees come up?

7 A. Yes.

8 Q. Did any of those come up before the fact, or were all of
9 those after the fact?

10 A. After the fact of the incident?

11 Q. After the fact of the termination, or were there some
12 discussions with you before the termination?

13 A. They were both.

14 Q. Amanda Broughton, do you remember her?

15 A. Yes.

16 Q. Do you know that she was terminated?

17 A. I believe she was terminated.

18 Q. Were you involved at all in any of the discussions to
19 terminate her?

20 A. Yes.

21 Q. Were you involved in those before she was terminated?

22 A. Yes.

23 Q. Tell me what information you had when making the decision
24 to terminate her.

25 MR. DOSSETT: Object to the form.

1 A. (The witness continued.) What information I had about her?

2 Q. (Mr. Chronister continued.) Yes. What were you told about
3 her to justify her termination?

4 A. Well, I looked at my role in the termination and hiring
5 process as advise and consent. I don't get involved too much.

6 Amanda had had a history of problems in our employment.
7 Some of them, I was actually personally involved in, and that
8 had to do with the locking of the doors. She worked the evening
9 shift, and oftentimes, when I am in town, I will stay at our
10 facility, save the company 100 bucks on the cost of a room.
11 I'll stay in one of the model rooms. And oftentimes, I'll
12 arrive late at night.

13 I arrived one time at ten o'clock at night and all of the
14 doors were open. That is a violation of our policy and
15 procedure. I was quite unhappy and talked to Amanda and said,
16 you know, "First of all, we've got the safety of our residents
17 to worry about, and then we have your safety. You're a 98-pound
18 girl, and anybody can come into this door at ten o'clock at
19 night. It wouldn't be hard to overpower you. And I want those
20 doors locked at eight o'clock."

21 I came back sometime later, I don't remember whether it was
22 a month or so, and came in again late and the doors were open
23 again. And I was unhappy, and Mitzi and I had discussions about
24 terminating Amanda at that time.

25 And one other incident she had had that I was not involved

1 in involved some -- her mother coming in and causing a
2 disturbance in our dining room, upsetting some of our residents.
3 That was also unacceptable.

4 So, when it came time to -- Mitzi had basically had her
5 fill of those problems and wanted to terminate her, I didn't
6 have a problem with it.

7 Q. Are you aware of any of the issues that you're telling me
8 about, late in the evening and the doors being open, are you
9 aware of any of that ever being placed in her personnel file?

10 A. I don't know if it was or not.

11 Q. Should it have been?

12 A. Yeah, it should have been.

13 Q. And was Mitzi -- when she set schedules for people, who was
14 the -- how many people worked at night at the facility?

15 A. Two.

16 Q. Two? So, there were two caregivers for the residents at
17 night?

18 A. Yes.

19 Q. And as between those two caregivers, was one of them of a
20 higher priority or designation than the other, or were they
21 equal?

22 A. I don't know.

23 Q. Well, who was the other person at night who was on duty
24 with Amanda when you came in and the doors were open?

25 A. Her name was Cheryl.

- 1 Q. Is that Cheryl Williams?
- 2 A. I think that was her last name.
- 3 Q. Did you have an equal discussion with Cheryl?
- 4 A. They were both present, yes.
- 5 Q. And would there have been something, perhaps, that should
6 have been placed in Cheryl's file about any of that?
- 7 A. Yeah, in retrospect, there should have been.
- 8 Q. Are you aware of Amanda doing anything at the facility in
9 your discussions with Mitzi that made her a danger to any of the
10 residents at the facility?
- 11 A. I'm aware of the disturbance she had caused.
- 12 Q. That was her mother, actually, wasn't it?
- 13 MR. DOSSETT: Object to the form.
- 14 A. (The witness continued.) It was her mother, but I believe
15 she was present at the same time and didn't try to restrain her
16 mother.
- 17 Q. (Mr. Chronister continued.) But she wasn't terminated on
18 that event at that time?
- 19 A. She was not, but I think the disturbance had to do with a
20 potential termination.
- 21 Q. It's been a while since I've looked, but I want to say that
22 was maybe six months, seven months that incident was before she
23 was terminated.
- 24 A. Could be.
- 25 Q. So, was something that occurred six or seven months

1 previously an issue for concern when she was terminated?

2 A. Yeah, that would have been part of the consideration.

3 Q. And the issues that you had coming in at night with the
4 doors being open, when did those occur?

5 A. I don't remember the exact dates.

6 Q. Were they close in time to her termination, or were those
7 three, four, five, six month earlier?

8 A. They were a couple of months earlier.

9 Q. So, what led -- to the best of your knowledge in discussing
10 this with Mitzi, what was the straw that broke the camel's back
11 for Amanda's termination?

12 MR. DOSSETT: Object to the form.

13 A. (The witness continued.) As I recall, Mitzi -- Mitzi
14 stated to me that Amanda was basically becoming uncooperative
15 with her as a supervisor and spreading unrest and fermenting
16 unrest amongst the other employees to the point that it was as
17 much as Mitzi wanted to take.

18 Q. Is any of that documented in Amanda's personnel file?

19 A. I've never looked at her personnel file.

20 Q. Are you aware of any employee of the facility, after
21 termination, being told, if they came back, the police would be
22 called on them, other than Amanda Broughton?

23 A. No.

24 Q. What, in your opinion, justified calling the police if
25 Amanda came back to that facility?

1 MR. DOSSETT: Object to the form.

2 A. (The witness continued.) I don't believe the police ever
3 were called.

4 Q. (Mr. Chronister continued.) Whether they were called or
5 not, my question to you is, what justified telling not only
6 Amanda, but Steve Brigance, that, if Amanda came back to see his
7 mother, the police would be called?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) Well, taking Amanda out of the
10 equation for a moment, it is very difficult for us when ex-
11 employees come back into the building. We have had ex-employees
12 come in and try to befriend some of the residents that they had
13 taken care of to the point that they'll actually check them out
14 of the building, take them out to lunches and that sort of
15 thing, not being aware of the dietary restrictions. Oftentimes,
16 we are very suspicious of some ex-employees that recognize some
17 of our residents may have more assets than they do and are
18 looking for a way to get at some of those assets. We've had
19 that with ex-employees. We have had employees that have come in
20 with family members and caused some disruptions.

21 So, in general, since all of this occurred, we now have a
22 policy as part of our employment package that ex-employees are
23 not allowed in the building at all without the approval of the
24 director just for some of these causes. Our primary
25 responsibility is to all of the residents and their safety.

1 Now, in the case of Amanda, as you asked me, she had
2 demonstrated she had a chip on her shoulder and was antagonistic
3 toward Mitzi and causing problems with other employees. And
4 while it's true we did not have that policy in effect at that
5 time, we did not want her back in the building.

6 Q. What, in her personnel file, is there to indicate that she
7 had any problems with any other employees?

8 MR. DOSSETT: Object to the form.

9 A. (The witness continued.) I haven't read her personnel
10 file.

11 Q. (Mr. Chronister continued.) Do you find it suspicious that
12 an employee who was a witness to this incident who was asked to
13 change an incident report was terminated under these
14 circumstances?

15 MR. DOSSETT: Object to the form. Misstates
16 prior evidence and testimony in the case. Calls for
17 speculation.

18 Q. (Mr. Chronister continued.) You can answer.

19 A. The question was, do I find it suspicious?

20 Q. Yes.

21 A. No.

22 Q. You don't?

23 A. No.

24 Q. A terminated employee to the extent that, if you tell them
25 that, if they came back, the police would be called, would you

1 characterize that termination as a termination for cause?

2 MR. DOSSETT: Object to the form.

3 Q. (Mr. Chronister continued.) That they were terminated for
4 misconduct in conjunction with their work?

5 MR. DOSSETT: Object to the form.

6 A. (The witness continued.) Yes.

7 Q. (Mr. Chronister continued.) So, in your position with the
8 company or the facility, do you believe that Amanda Broughton
9 was terminated for cause or misconduct in connection with her
10 work?

11 MR. DOSSETT: I'm going to object to the form.
12 Are you asking this in the sense that it relates to unemployment
13 compensation?

14 MR. CHRONISTER: I'm just asking him if he thinks
15 she did something wrong in relation to her work.

16 MR. DOSSETT: I know. I'm asking you, when you
17 use the phrase "for cause or misconduct," I think that's vague.
18 I'm trying to find out if you're asking it with regards to how
19 it might apply in context of unemployment compensation, because
20 if it does, I'm going to object on the grounds that it calls for
21 a legal conclusion.

22 MR. CHRONISTER: I'm going to ask him about
23 unemployment.

24 MR. DOSSETT: Is that what you're asking him now?

25 MR. CHRONISTER: I'm going to ask him about

1 unemployment.

2 MR. DOSSETT: Is that what you're asking him
3 about now is the question.

4 MR. CHRONISTER: Not now.

5 MR. DOSSETT: Okay. Object to the form. Go
6 ahead.

7 A. (The witness continued.) I'm sorry. I got lost in all of
8 that.

9 Q. (Mr. Chronister continued.) Tell me just again, in your
10 own words, why Amanda was fired.

11 A. Because she was an insubordinate unruly employee that
12 caused problems for the management.

13 Q. And you haven't looked at her personnel file to see if
14 anything in there justifies what you just said, right?

15 A. Well, I know some of it firsthand, as I just explained to
16 you.

17 Q. Because the doors weren't locked?

18 A. Yeah.

19 Q. Three or four months before she was terminated?

20 A. Absolutely.

21 Q. So, if Amanda applied for unemployment and was given
22 unemployment without objection by the company, would that be
23 inconsistent with what you just told me?

24 MR. DOSSETT: Object to the form. Calls for
25 legal conclusion also. Go ahead.

1 A. (The witness continued.) We don't object to everybody that
2 files for unemployment with our company.

3 Q. (Mr. Chronister continued.) Do you object to anybody that
4 files for unemployment?

5 A. Some we do, yes.

6 Q. So, an insubordinate employee who was causing and stirring
7 unrest within the company, you would not contest their
8 unemployment?

9 MR. DOSSETT: Object to the form.

10 A. (The witness continued.) I would normally think that we
11 would have objected to that.

12 Q. (Mr. Chronister continued.) Do you know whether you did or
13 didn't in this case?

14 A. I don't recall.

15 Q. Would that have been Mitzi's call?

16 A. It would have been.

17 Q. Do you know how long Jack Brigance was in the hospital?

18 A. Somewhere around 24 days, I believe.

19 Q. Other than the e-mail that you sent to Steve on January 9,
20 did you have any other communication with the Brigance family
21 during the course of Jack's hospital stay?

22 A. I don't recall that I did.

23 Q. Did you ever make any inquiry as to how either Jack or
24 Dorothy Brigance were doing during that 20-some-odd-day period?

25 A. I talked to Mitzi about how Mrs. Brigance and Mr. Brigance

1 were doing.

2 Q. But no direct contact with Steve or Ms. Brigance?

3 A. No.

4 Q. Did you come down to the Fort Smith facility during that

5 20-some-odd days that Jack was in the hospital?

6 A. I don't know.

7 Q. When was the next communication that you recall having with

8 either Steve or Dorothy Brigance following the accident? Was it

9 after Jack's death?

10 A. I only spoke with Mrs. Brigance once and just offered my

11 condolences.

12 Q. Do you recall approximately when that was?

13 A. Well, it would have been after his death.

14 Q. Was it a month? Two months? Three months?

15 A. I would say within a month.

16 Q. Did you send flowers from the facility to the funeral?

17 A. I believe they did, and I believe a number of my employees

18 attended the funeral.

19 Q. Did you attend the funeral?

20 A. I did not.

21 Q. Did you ever stop and talk to Steve about his dad's death

22 or situation?

23 A. We did have a conversation about it, yes.

24 Q. When was that?

25 A. I don't remember the date.

1 Q. How did it come about?

2 A. I was there one evening, six o'clock or something like
3 that. Steve was over with his mother, still in the dining room.
4 I went over and talked to Steve and asked him if he would like
5 to talk to us, to me, and he said, "In a little bit." And by
6 and by, he came in and sat down and talked to us for about an
7 hour.

8 Q. Did you ever offer an apology on behalf of the facility,
9 for yourself or Mitzi, for his dad's death?

10 MR. DOSSETT: Object to the form.

11 A. (The witness continued.) Not an apology, no. I told him I
12 was sorry about it.

13 Q. (Mr. Chronister continued.) Do you think that the facility
14 did anything wrong here?

15 MR. DOSSETT: Object to the form.

16 A. (The witness continued.) No.

17 Q. (Mr. Chronister continued.) You don't think that anything
18 leading to that door falling off and landing on Jack Brigance
19 was something that the facility had any responsibility for?

20 MR. DOSSETT: Object to the form.

21 A. (The witness continued.) I believe, at the time, we did
22 everything we could to ensure the safety of our residents.

23 Q. By not calling the construction company, putting shims in
24 the door, and you believe you followed your own safety policy
25 here?

1 MR. DOSSETT: Objection to the form.

2 A. (The witness continued.) Yes.

3 MR. CHRONISTER: I don't think I have anything
4 else. Nothing further.

5 MR. DOSSETT: No, I don't have any questions.

6 THE VIDEOGRAPHER: Do you have a mic? They're
7 down there. He needs a mic. They're down there.

8 MR. DOSSETT: Here's one. Here's one right here.

9 EXAMINATION BY COUNSEL FOR CRAWFORD CONSTRUCTION

10 BY MR. TILLEY:

11 Q. Dr. Brooks, my apologies up to this point. I had no idea
12 that you were a Ph.D. Let me ask you about one area that you
13 discussed. I'm going to use -- I'm paraphrasing, if I might,
14 Doctor. There is a long-involved contract between your company
15 and Crawford Construction Company over construction of this
16 beautiful facility in Fort Smith, many pages; fair statement?

17 A. Fair statement.

18 Q. In one of the contracts or in the contracts, it says -- and
19 again, I'm paraphrasing, that, if construction is not
20 substantially completed by a particular day, then there are
21 liquidated damage provisions; fair statement?

22 A. Yes.

23 Q. Now, substantial completion doesn't mean that everything
24 from the alpha to the omega has to be done, but simply that
25 there is substantial completion?

- 1 A. True.
- 2 Q. Assume for me, if you will, that the hardware for the
3 closet door in the Brigance's room had not been in place on the
4 date that the contract says substantial construction should have
5 been completed. Would the absence of that hardware have invoked
6 the liquidated damage provision?
- 7 A. I am not a lawyer, and that might get involved in some
8 legal, but my opinion is, no, it would not.
- 9 Q. Hardware on one closet door is not going to all of a sudden
10 invoke a liquidated damage provision?
- 11 A. That's true.
- 12 Q. It would take a multitude or major items, at least in your
13 opinion or thoughts, before that would occur?
- 14 A. Yes.
- 15 Q. I assume that, when it came time for the completion of this
16 contract, whatever that date was in 2008, there was still a
17 punch list or things that were going on?
- 18 A. Yes.
- 19 Q. I mean, this is a multi-thousand-square-foot facility, and
20 not everything was perfect on opening day?
- 21 A. Right.
- 22 Q. Given that fact, was the liquidated damage provision
23 invoked against Crawford Construction Company?
- 24 A. No, it was not.
- 25 Q. So, from your position, and I assume that of your

1 architects as well, there had been substantial compliance and
2 completion of the contract such that there was no penalty
3 involved?

4 A. Yes.

5 MR. TILLEY: Thank you, sir. That's all.

6 EXAMINATION BY COUNSEL FOR WILSON, DARNELL AND MANN

7 BY MR. MORRIS:

8 Q. Dr. Brooks, there was a question from Mr. Chronister
9 towards the end about some extra screws being put into some of
10 the -- or maybe all of the closet door hardware. Do you recall
11 that question?

12 A. Yes, I do.

13 Q. And the question was phrased to include both Crawford and
14 WDM the way the question came out, and I just want to clarify
15 that, at least to your knowledge, WDM was not involved in any
16 decision to put the additional screws or involved in actually
17 putting the screws into the additional -- the additional screws
18 into the hardware; is that correct?

19 A. I don't remember whether WDM was there or not.

20 Q. Okay.

21 A. There was a group of -- several of us that went around and
22 observed that there were screw holes that didn't have a screw in
23 them, and I just don't remember whether John Brewer or Duane
24 Ellis was part of that group or not.

25 Q. Fair enough. As far as the other -- you were asked -- I

1 don't think they were made an exhibit.

2 MR. CHRONISTER: We can make them exhibits.

3 MR. MORRIS: You do want to?

4 MR. CHRONISTER: Yeah, let's make them an
5 exhibit. We can do it as a unit.

6 MR. MORRIS: We'll make collective Exhibit 4
7 BAFO330 through -- excuse me, 328 through 330.

8 (Wherein Exhibit 4 was marked.)

9 Q. (Mr. Morris continued.) You were asked questions about
10 maintenance logs from some of the other door issues in other
11 room that preceded the incident involving Mr. Brigance. To your
12 knowledge, was WDM aware of any of these other -- or anyone with
13 WDM aware of any problems with any closet doors in the facility,
14 specifically in Mr. Brigance's room, prior to this incident,
15 other than what may have been discussed during a punch list and
16 that kind of thing?

17 A. I don't believe that they were.

18 Q. More specifically, with respect to these maintenance log
19 items, do you have any reason to believe WDM would have been
20 alerted to anything in these maintenance log items?

21 A. I don't believe they were.

22 MR. MORRIS: I don't have any other questions.

23 Thank you.

24 THE WITNESS: You're welcome.

25 MR. CHRONISTER: I just have one. Mark, did you

1 have anything?

2 MR. DOSSETT: No, sir. Thank you.

3 REEXAMINATION BY COUNSEL FOR THE PLAINTIFF

4 BY MR. CHRONISTER:

5 Q. On the walk-through, were you present when the walk-through
6 was done at the end of the construction as the place was getting
7 ready to open up?

8 A. There were several walk-throughs. I attended parts of
9 several of them, but not all of them.

10 Q. Tell me how the walk-throughs occurred. What did you do?

11 A. Well, there's a walk-through by the City of Hot Springs and
12 their engineers.

13 Q. You mean Fort Smith?

14 A. I'm sorry, Fort Smith. Thank you. There's a walk-through
15 by the Office of Long-Term Care. There is a walk-through by the
16 HUD representative. And then there is a walk-through that's
17 done by the architect, usually in conjunction with an employee
18 of the construction company.

19 Q. And does that go room to room? Do you randomly choose
20 rooms? How do you do that?

21 A. The Office of Long-Term Care is the only one that probably
22 doesn't do every single room.

23 Q. So, the one with the construction company and the architect
24 would have been a room-to-room?

25 A. Yes.

1 Q. And when you do the -- when you go through there and do
2 your walk-through room to room, do you check every door? Do you
3 open and close every door? Do you turn on water? How does that
4 come about?

5 MR. DOSSETT: Object to the form.

6 A. (The witness continued.) It's the intention to check every
7 one of them, I mean, check all of the water faucets, flush all
8 the toilets, turn on the showers, turn on the light switches,
9 observe whether the carpeting is properly laid, whether the
10 walls are properly painted, or there's gaps in the -- carpentry
11 work is done properly, and opening and closing the doors is part
12 of it. And I can't tell you whether each and every door always
13 gets opened and shut.

14 Q. (Mr. Chronister continued.) As far as the track for the
15 closet door in Mr. Brigance's room, when did you become aware
16 that it was the wrong track, the wrong hardware system?

17 A. During the course of this lawsuit, or about that time.

18 Q. And was it visually different than any of the other
19 hardware in the facility?

20 A. Yes.

21 Q. But through these different walk-throughs, no one caught
22 the fact that it was different; is that a fair statement?

23 A. Well, nobody mentioned it to me.

24 Q. And you didn't notice it when you went through there?

25 A. I didn't notice it at all, no, sir.

1 MR. CHRONISTER: I don't have anything else.

2 MR. MORRIS: I don't have anything. Thank you.

3 MR. CHRONISTER: Okay. We're through.

4 THE VIDEOGRAPHER: The time is 2:45 p.m. This
5 will conclude the deposition.

6 (Wherein the deposition was concluded at 2:45 p.m.)

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