

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 CIVIL DIVISION

3
4 STEVEN A. BRIGANCE, as personal
representative of the Estate of
5 MAURICE BRIGANCE, JR., deceased;
and on behalf of the wrongful
6 death beneficiaries of MAURICE
BRIGANCE, JR.,

7 Plaintiffs,

8 vs.

Case No. CV 2009-651(V)

9
10 THE BROOKFIELD AT FIANNA OAKS, LLC,
d/b/a THE BROOKFIELD AT FIANNA OAKS
(parent corporation); WILSON, DARNELL
11 and MANN, P.A.; CRAWFORD CONSTRUCTION
COMPANY; and CRAWFORD CONSTRUCTION
12 COMPANY, INC.; ROBERT "Bob" BROOKS;
and MITZI BAILEY,

13 Defendants.
14
15
16
17

18 TRANSCRIPT OF AMANDA BROUGHTON VIDEO
19 DEPOSITION TRANSCRIBED FROM DVD, taken at
20 Chronister, Fields & Flake, 309 North
21 Seventh Street, Fort Smith, Arkansas, on
22 Friday, November 5, 2010, at 1:19 p.m.
23
24
25

A P P E A R A N C E S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Plaintiffs:

REX W. CHRONISTER, ESQ.
MEGEN C. PREWITT, ESQ.
CHRONISTER, FIELDS & FLAKE, PLLC
309 North Seventh Street
Post Office Box 66
Fort Smith, Arkansas 72902
(479) 783-4060 Phone
(479) 783-1571 Fax

For the Defendants The Brookfield at Fianna Oaks,
LLC, d/b/a The Brookfield at Fianna Oaks; Robert
Brooks, and Mitzi Bailey:

MARK W. DOSSETT, ESQ.
KUTAK ROCK, LLP
234 East Millsap Road
Suite 400
Fayetteville, Arkansas 72703-4099
(479) 973-4200 Phone
(479) 973-0007 Fax

For the Defendant Wilson, Darnell and Mann, PA:

PAUL D. MORRIS, II, ESQ.
WRIGHT, LINDSEY & JENNINGS LLP
903 North 47th Street
Suite 101
Rogers, Arkansas 72756
(479) 986-0888 Phone
(479) 986-8932 Fax

A P P E A R A N C E S

(Continued)

For the Defendants Crawford Construction
Company and Crawford Construction Company, Inc.:

JAMES W. TILLEY, ESQ.

WATTS, DONOVAN & TILLEY, P.A.

200 River Market Avenue

Suite 200

Little Rock, Arkansas 72201-1769

(501) 372-1406 Phone

(501) 372-1209 Fax

Also present:

ROBB HELT, VIDEOGRAPHER

I N D E X

TESTIMONY BY AMANDA BROUGHTON

PAGE

Examination by Mr. Dossett	6
Examination by Mr. Morris	115
Deposition Concluded	120
Court Reporter's Certificate	121

E X H I B I T S

NUMBER

MARKED

1	1/7/09 Incident and Accident Report	39
2	2/28/09 Handwritten Report	42
3	Office of Long Term Care State Regulated Facilities Complaint Narrative Report	55
4	1/6/09 Incident and Accident Report	74

1 FRIDAY, NOVEMBER 5, 2010; FORT SMITH, ARKANSAS

2 1:19 P.M.

3
4 THE VIDEOGRAPHER: This is the videotaped
5 deposition of Amanda Broughton, taken on behalf
6 of the plaintiff. Today's date, November 5th,
7 2010. The time is 1:19 p.m., and we are on the
8 record.

9 Would counsels introduce themselves and
10 state whom you're representing, beginning with
11 Mr. Dossett.

12 MR. DOSSETT: Mark Dossett for The
13 Brookfield, Mitzi Bailey and Bob Brooks.

14 MR. MORRIS: Paul Morris for WDM Architects.

15 MR. TILLEY: Jim Tilley for Crawford
16 Construction Company.

17 MS. PREWITT: Megen Prewitt for Steven
18 Brigance.

19 MR. CHRONISTER: Rex Chronister for Steve
20 Brigance and the Estate of Maurice Jack Brigance.

21 THE VIDEOGRAPHER: Thank you.
22 My name is Robb Helt. I'm the videographer.
23 There is no court reporter present today;
24 however, it has been agreed by the parties that I
25 will be shooting the video, as well as swearing

1 in the witness, at which time when the deposition
2 is concluded today, I will be taking the DVDs
3 that are being recorded live, I will be giving
4 them to Attorney Mark Dossett, and from then
5 Mr. Dossett will be taking those to a court
6 reporter in which to have transcribed.

7 Is that agreed by all parties?

8 MR. DOSSETT: Agreed.

9 MR. MORRIS: Yes, agreed.

10 MR. TILLEY: Yes.

11 MR. CHRONISTER: Yes.

12 MS. PREWITT: Yes.

13 THE VIDEOGRAPHER: Thank you.

14 And would you raise your right-hand, ma'am.

15
16 AMANDA BROUGHTON,

17 having been called upon to testify in the form of a
18 deposition, and having been duly sworn or affirmed, by the
19 videographer, testified as follows, to wit:

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

22 BY MR. DOSSETT:

23 Q. Would you state your name for the record, please?

24 A. Amanda Broughton.

25 Q. Ma'am, my name is Mark Dossett. I'm an attorney from

1 Fayetteville, and I represent The Brookfield and Mitzi and
2 Bob in this lawsuit that's been filed.

3 Have you ever given a deposition before today?

4 A. No.

5 Q. Let's talk a little bit about what the process will
6 be, then. It will help us both. I'm going to ask you a
7 series of questions and, hopefully, you're going to answer
8 my questions. The videographer is going to record our
9 questions and answers. It's very important that we try to
10 follow a few guidelines, and those would be that, first of
11 all, we not talk over one another. That way it will be
12 clear on the video exactly what your answer is and exactly
13 what my question is. Okay?

14 A. Okay.

15 Q. Sometimes I do not do a good job of that, so if I cut
16 you off, and you're still trying to finish your answer, if
17 you'll indicate that to me, I will be quiet and let you
18 finish because I do want to hear your answer. So if I do
19 that, and you have more to say, let me know, and I'll be
20 quiet and let you finish.

21 A. Okay.

22 Q. It's very important that as you give answers that you
23 try to give verbal answers as opposed to pointing or
24 shaking your head or shrugging your shoulders. It's
25 important that all of our answers be words. Okay?

1 A. Okay.

2 Q. You're doing a very good job of this, but if you want
3 to answer a question, if you want to answer it "yes" or
4 "no," try to say "yes" or "no" as opposed to "uh-huh" or
5 "huh-uh." Sometimes when we look back at it, we're not
6 sure which was which. All right?

7 A. Okay.

8 Q. If I catch you doing that, I might just remind you or
9 ask you if that was a "yes" or ask if that's a "no." I'm
10 not arguing with you, I'm just trying to remind you to
11 give that type of answer. Okay?

12 A. Okay.

13 Q. If I ask you any questions that you don't understand,
14 for any reason, if I just ask a confusing question or a
15 bad question or we're not on the same page, if you'll
16 indicate that to me, I'll be happy to rephrase it or
17 repeat it or do whatever is necessary so that you and I
18 are on the same page. Okay?

19 A. Okay.

20 Q. And, finally, if you need to take a break for any
21 reason at all, if you'll let me know that, we'll break
22 just as often as you need to. Okay?

23 A. Okay.

24 Q. What is your address?

25 A. 801 North J Street.

1 Q. In Fort Smith?

2 A. Fort Smith.

3 Q. How long have you lived in the Fort Smith area?

4 A. Ten years, around ten years. I'm not sure.

5 Q. Who lives with you there?

6 A. My mom.

7 Q. Okay. Is this your mother that's here with you
8 today?

9 A. Yes.

10 Q. Do you -- what is your date of birth?

11 A. 4/3/88.

12 Q. Are you currently employed?

13 A. No.

14 Q. Where were you last employed?

15 A. Willow Brook.

16 Q. Okay. And what were you -- when did you stop working
17 there?

18 A. I'm not sure.

19 Q. What did you do at Willow Brook?

20 A. Took care of elderly people, assisted them with daily
21 living.

22 Q. What type of facility is Willow Brook, is that a
23 skilled nursing facility, is it an assisted living
24 facility?

25 A. Assisted living.

1 Q. And when did you go to work there?

2 A. I'm not 100 percent sure.

3 Q. At Willow Brook -- did you go to Willow Brook after
4 working at Brookfield?

5 A. Yes.

6 Q. And do you have your CNA certificate?

7 A. No.

8 Q. So you were not a CNA at Willow Brook?

9 A. No.

10 Q. How long did you work there?

11 A. A couple months or so.

12 Q. Who was your supervisor there?

13 A. I can't remember her name.

14 Q. Do you remember who the administrator was?

15 A. She was the same person.

16 Q. Okay.

17 A. I can't remember her name right now.

18 Q. Even her first name?

19 A. No.

20 Q. Did you graduate high school?

21 A. No.

22 Q. What grade did you complete?

23 A. Eighth.

24 Q. And where did you complete the eighth grade, where
25 did you go to school?

1 A. I was home-schooled.

2 Q. What was the reason that you stopped getting your
3 education in the eighth grade?

4 A. Not really a reason.

5 Q. Okay. What did you do after you stopped your
6 education?

7 A. I started working.

8 Q. Where did you go to work?

9 A. Well, at first I was baby-sitting, and then the first
10 place I worked at was Brownwood Life Care Center.

11 Q. What life care center?

12 A. Brownwood Life Care.

13 Q. Brownwood?

14 A. Yes.

15 Q. Is that in the Fort Smith area?

16 A. Yes.

17 Q. Is that an assisted living or nursing home?

18 A. It's with handicapped people.

19 Q. And how long did you work there at Brownwood?

20 A. A few months.

21 Q. All right. And what did you do after that?

22 A. I think Atlantis Plastics.

23 Q. Okay. What did you do at Atlantis Plastics?

24 A. I worked on machinery.

25 Q. Did you operate a machine or did you repair the

1 machine?

2 A. I operated.

3 Q. What did they make?

4 A. Plastic pieces.

5 Q. Let's go back to Brownwood for a minute. Whenever

6 you left there, why did you leave?

7 A. Because I couldn't deal with the type of work that I

8 was doing. It was too hard for me.

9 Q. And what about it was too hard?

10 A. Not being able to get them to eat or stuff like that.

11 Q. When you say "it was too hard," do you mean that it

12 was too physically hard or it was too hard emotionally?

13 A. Emotionally.

14 Q. Did you quit or were you fired from there?

15 A. I quit.

16 Q. Then you went to Atlantis Plastics?

17 A. I think it was Atlantis Plastics, but if not, it was

18 a recycling place in Fort Smith.

19 Q. Okay. And how long did you work there?

20 A. Five or six months.

21 Q. And why did you quit?

22 A. I think I went to Atlantis Plastics then.

23 Q. You went from the recycling place to Atlantis

24 Plastics?

25 A. I believe so.

1 Q. Were you terminated or fired from the recycling
2 place, or did you quit?

3 A. I quit.

4 Q. And why did you quit?

5 A. Because it was a better paying job at the other one.

6 Q. At Atlantis?

7 A. Yes.

8 Q. And so you left the recycling facilities to go to
9 Atlantis Plastics, and how long did you work there?

10 A. A couple months.

11 Q. And were you terminated or did you quit?

12 A. I quit.

13 Q. And why did you quit?

14 A. Because my ride quit, and we lived in Van Buren, so
15 that was my transportation.

16 Q. You didn't have any way to get to work on your own?

17 A. No.

18 Q. Were you relying on a coworker?

19 A. Yes.

20 Q. And when the coworker stopped working there, you
21 couldn't get to work?

22 A. Yes.

23 Q. And you weren't terminated for attendance issues
24 there, were you?

25 A. No.

1 Q. So where did you go after Atlantis Plastics?

2 A. I think Willow Brook.

3 Q. Okay. This would be the first time you worked at
4 Willow Brook; is that correct?

5 A. Yes.

6 Q. And what did you do at Willow Brook the first time?

7 A. I assisted people with daily living.

8 Q. Did you have a title?

9 A. Resident assistant.

10 Q. How long did you work at Willow Brook this first
11 time?

12 A. Six months.

13 Q. Who was your supervisor there?

14 A. Gloria Schneider.

15 Q. And why did you leave Willow Brook?

16 A. I was recruited to Brookfield.

17 Q. What do you mean you were recruited to Brookfield?

18 A. From Mitzi.

19 Q. Mitzi Bailey?

20 A. Yes.

21 Q. She asked you if you wanted to come work at
22 Brookfield?

23 A. Through a coworker, yeah.

24 Q. Tell me about that. How did that happen?

25 A. Michelle Ensey was working at Willow Brook at the

1 time, and she transferred to Brookfield, and before that
2 she was over there visiting Mitzi, and Mitzi had asked her
3 to ask me to come over there.

4 Q. So you left Willow Brook to go work at Brookfield,
5 essentially, at Mitzi's request?

6 A. Yes. But I was working at both places at the same
7 time for a little bit.

8 Q. Okay. How long?

9 A. Maybe a week or two.

10 Q. Now, when you left The Brookfield, did you go
11 immediately to work at the Willow Brook, or did you go do
12 something in between?

13 A. I left Willow Brook to go to Brookfield.

14 Q. Okay. And then I know at some point you worked for
15 Brookfield for a while, and at some point you were
16 terminated there, and we're going to talk about that.

17 A. Yeah.

18 Q. And what did you do after you were terminated from
19 Brookfield?

20 A. I tried to get jobs in Fort Smith and Van Buren, and
21 I couldn't get any, so then I went back to Willow Brook
22 because I worked there before, and I gave notice, so I
23 should have been able to get my job back, and they gave me
24 one.

25 Q. So let me see if I follow you. After Brookfield, you

1 tried to get a few jobs unsuccessfully, and eventually you
2 ended up back at Willow Brook?

3 A. Yes.

4 Q. How much time passed between when you last worked at
5 Brookfield then you worked at Willow Brook?

6 A. I'm not sure, months, but I'm not sure how long.

7 Q. More than one month?

8 A. Yeah.

9 Q. Did you do anything to make money to get by during
10 that period of time?

11 A. No.

12 Q. How did you make ends meet?

13 A. My mom.

14 Q. Was there ever a period of time -- has there ever
15 been a period of time when you worked for Steve Brigance?

16 A. No.

17 Q. Do you live in Sebastian County now?

18 A. Yes.

19 Q. Are you married?

20 A. No.

21 Q. Have you ever been married?

22 A. No.

23 Q. Do you have any children?

24 A. Yes.

25 Q. How many?

1 A. One.

2 Q. And I understand it's an infant; is that right?

3 A. Yes.

4 Q. Congratulations.

5 A. Thank you.

6 Q. Now, I think we've gone all the way through your
7 employment there, and we've got you back to Willow Brook
8 the second time, and I know you're no longer working
9 there; is that correct?

10 A. Yes.

11 Q. But that is the last job you had?

12 A. Yes.

13 Q. And why did you leave Willow Brook the second time?

14 A. There's not really a reason. I got upset and left.

15 Q. Why did you get upset?

16 A. Because I wasn't getting enough hours to make ends
17 meet.

18 Q. And who did you get upset with?

19 A. No one specifically.

20 Q. Okay.

21 A. Just not getting any hours.

22 Q. Did you give notice?

23 A. No.

24 Q. You just -- did you come in and tell them you were
25 quitting, or did you just not show up?

- 1 A. I just didn't show up.
- 2 Q. And did you ever -- did they ever contact you, and
3 ask you if you were coming back?
- 4 A. No.
- 5 Q. Just one day you decided you weren't going back, so
6 you didn't?
- 7 A. Yes.
- 8 Q. Do you know if Willow Brook would -- would they
9 consider you to have quit or to have been terminated or
10 not coming to work, do you know?
- 11 A. I'm not a hundred percent sure.
- 12 Q. Have you tried to go back to Willow Brook since then?
- 13 A. No.
- 14 Q. And so if you weren't getting enough hours at Willow
15 Brook to make ends meet, what did you do to make ends meet
16 after you quit?
- 17 A. I didn't do anything.
- 18 Q. How are you making ends meet right now?
- 19 A. My mom is helping me.
- 20 Q. I had asked you earlier who lived with you. You live
21 with your mother now; is that right?
- 22 A. Yes.
- 23 Q. Nobody else lives in the house?
- 24 A. No.
- 25 Q. How about your baby?

1 A. Yes.

2 Q. Okay. And so it's you, the baby and your mother?

3 A. Yes.

4 Q. Nobody else?

5 A. Huh-uh.

6 Q. Is that a "yes"?

7 A. Yes.

8 Q. Okay. All right. Tell me -- let's talk a little bit

9 about what training you have since high school. Have you

10 had any type of training to become a CNA or anything else?

11 A. Yes.

12 Q. And what training did you have?

13 A. Brookfield sponsored me to go to CNA classes at PRN.

14 Q. Okay. And did you complete the classes?

15 A. Yes.

16 Q. Did you take the test to get your certificate?

17 A. No.

18 Q. So you've had the classes, but you just haven't taken

19 the test?

20 A. Yes.

21 Q. Do you have any plans to take the test?

22 A. Plans?

23 Q. Yes, ma'am.

24 A. I have to go back through classes now.

25 Q. Because too much time has passed?

1 A. Yes.

2 Q. Why didn't you take the test back when you took the
3 classes originally?

4 A. Because I wasn't notified that it would be extra
5 money to pay to go -- to take the test.

6 Q. Okay. So The Brookfield sponsored you -- you didn't
7 have to pay to go to classes, did you?

8 A. No. They paid for it.

9 Q. The Brookfield?

10 A. Yes.

11 Q. And when it came time to take the test, were you
12 still working at The Brookfield?

13 A. Yes.

14 Q. And were you going to have to pay your own money for
15 the test?

16 A. Yes.

17 Q. Brookfield was not going to sponsor that part of it?

18 A. No.

19 Q. And you chose not to do that?

20 A. No. I kept asking when I was going to be able to
21 test, and I wasn't told. Mitzi always had to talk to Bob
22 about it, and then after time went by, I found out that
23 you had to pay, like, \$80 to take the last test.

24 Q. And you just didn't have the money?

25 A. Huh-uh, no.

1 Q. Okay. Have you had any other training?

2 A. No.

3 Q. And I think I know the answer to this, but let me ask
4 to make sure. So you never have been a CNA; is that
5 right?

6 A. No.

7 Q. You haven't?

8 A. No.

9 Q. When you were working at Brookfield, what were your
10 job duties?

11 A. We did the dishes, assisted elderly with everyday
12 living, we did the laundry, housekeeping, locking doors,
13 and that's pretty much it, answering the phone.

14 Q. What was your title at Brookfield?

15 A. Resident assistant -- or personal care assistant.

16 Q. PCA?

17 A. Yeah.

18 Q. Do you know Steve Brigance?

19 A. Yes.

20 Q. How did you get to know Mr. Brigance?

21 A. Through Dorothy Brigance and Jack Brigance.

22 Q. Dorothy Brigance and Jack Brigance were residents at
23 Brookfield?

24 A. Yes.

25 Q. Do you know their relation to Steve?

1 A. Yes.

2 Q. What is it?

3 A. Their son.

4 Q. Okay. And how is it you got to know Steve through
5 Dorothy and Jack?

6 A. He came up there all the time to visit them.

7 Q. So you would see Steve whenever he was visiting his
8 parents?

9 A. Yes.

10 Q. And did you interact with him at that time?

11 A. Yes.

12 Q. Why don't we talk a little bit about what happened to
13 Jack Brigance. Tell me what you remember about that
14 incident.

15 A. We were -- me and Cheryl were in the dining room,
16 putting away everything, and then after a while we went --
17 we were going down the hallway, and you could see the door
18 open, Jack laying on the floor with the door on top of
19 him, and Dot in the background. She looked panicked, but
20 she didn't call for anybody. I can't remember if Cheryl
21 helped me lift the door up and against the wall or if I
22 lifted it myself.

23 Jack was -- Jack's knee, right knee, was injured, you
24 could tell. I pulled his pants up and looked. He said
25 that he was opening the door to put his wife's shoes up

1 for her, and it fell, causing him to fall.

2 Q. Whenever you were coming down the hall, where were
3 you and Cheryl going?

4 A. I was going to Dot and them's room, and I don't know
5 where she was going for sure.

6 Q. So you were heading to the Brigances' room?

7 A. Yes.

8 Q. And when you first saw the door open, what could you
9 see through the door?

10 A. Jack and Dot, and the door on top of Jack.

11 Q. You could see that through the door before you got
12 into the room?

13 A. No. The door was -- I think the door was open, and
14 Dot was by the door.

15 Q. Was Dot standing in the doorway?

16 A. Yes, I believe so.

17 Q. And as you looked through the open doorway, what did
18 you see before you entered the room?

19 A. Jack laying on the floor with the door on him.

20 Q. How much of him could you see?

21 A. The door and his legs, I believe.

22 Q. And what door was it that was on top of him?

23 A. Not the front door, but the closet door in the first
24 room in the kitchen.

25 Q. And when you got into the room, what was the first

1 thing you did?

2 A. I pulled the door off of Jack.

3 Q. Now, you mentioned that you're not sure if Cheryl

4 helped you or not. Why is it that you're not sure?

5 A. Because it was an accident, and I was nervous and

6 just -- yeah.

7 Q. You recall moving the door, you're just not sure if

8 you did it or you and Cheryl did it together?

9 A. Yes.

10 Q. Whenever you got the door off of Jack, was he

11 talking?

12 A. Yes.

13 Q. What did he say to you?

14 A. He said that he was putting up his wife's shoes, and

15 that the door fell on him, causing him to fall, and that

16 he wanted to get up, but he couldn't -- we couldn't let

17 him get up because you could tell he hit his head, and he

18 just said that his leg hurt, and I can't really remember

19 anything else.

20 Q. You mentioned that you looked at his right leg?

21 A. Yes.

22 Q. Why did you look at his right leg?

23 A. Because he said that it hurt.

24 Q. What was he wearing?

25 A. I believe tan pants, khaki pants, but I'm not sure.

1 Q. You mentioned that you pulled his pant leg up on his
2 right leg?

3 A. Yes.

4 Q. And you looked at his knee?

5 A. Yes.

6 Q. How far up did you pull his pant leg?

7 A. Just above his knee.

8 Q. And what did you see?

9 A. It was already bruised and a little swollen.

10 Q. And did you touch it or anything?

11 A. No.

12 Q. Did you try to move him at all?

13 A. No.

14 Q. Did you examine any other parts of his body to see if
15 he was hurt anywhere?

16 A. His head.

17 Q. What did you do when you looked at his head?

18 A. Didn't -- I just looked. He was, like, laying
19 against the counter, so I just, like, looked around it
20 because we're not supposed to move them or get them up.

21 Q. And you didn't, did you?

22 A. No.

23 Q. When you say he was laying against the counter, what
24 part of his body was touching the counter?

25 A. His head.

1 Q. And was he laying flat on his back or was he propped
2 or was he kind of sitting up against the counter?

3 A. He was kind of sitting up against the counter.

4 Q. So was that where he was when the door was on him or
5 is that where he got after the door was off of him?

6 A. That's where he was the whole time.

7 Q. Okay. So as you came in, came down the hall, you
8 were able to see Jack's legs with the door on top of him;
9 is that right?

10 A. Yes.

11 Q. And then he -- you moved the door off of him, and he
12 was kind of sitting up against the cabinets?

13 A. Not sitting up all the way, but his head pretty much
14 propped up a little bit.

15 Q. Was he bent at the waist, sitting up?

16 A. No.

17 Q. He wasn't sitting up that much?

18 A. No.

19 Q. Were his shoulders against the cabinets?

20 A. I don't know for sure.

21 Q. Did you ask him where it hurt?

22 A. Yes.

23 Q. What did he tell you?

24 A. His knee hurt, and that's all he complained about.

25 Q. Did Cheryl come in the room with you?

1 A. Yes.

2 Q. What about Dot, what was going on with her at the
3 time?

4 A. She was just pretty much panicked. She wasn't doing
5 anything, saying anything, she was pretty much just
6 looking and worried.

7 Q. Did you ask her what had happened?

8 A. Yes.

9 Q. What did she say?

10 A. She said the same thing Jack said.

11 Q. Which was what?

12 A. That he was putting up her shoes, and the door fell
13 on him, causing him to fall.

14 Q. Did either one of them tell you how or why the door
15 fell?

16 A. No.

17 Q. They just said that he was putting the shoes up, and
18 the door fell?

19 A. Yes.

20 Q. Did you ever ask him if he hit his head?

21 A. Yes.

22 Q. What did he say?

23 A. He said no, but you could tell he did.

24 Q. What do you mean by that?

25 A. His head was on the counter, so he would have had

1 to -- you would think he had to hit it whenever he fell.

2 Q. Did you notice any cuts or bruises or knots or
3 anything on his head?

4 A. No.

5 Q. You were just assuming that because of where his body
6 was?

7 A. Yes.

8 Q. Okay. After you got the door off of him and assessed
9 him, what did you do then?

10 A. Cheryl stayed with him while I went and got Chuck to
11 move the door because he was scared that it was going to
12 fall back on him because he had to stay in the same spot.
13 I called the paramedics, I called Mitzi and I called Steve
14 because Mitzi told me to call Steve.

15 Q. Okay. Let's back up for just a minute. You said
16 something about he was afraid the door would fall back on
17 him?

18 A. Yes.

19 Q. Who was "he"?

20 A. Jack.

21 Q. And where was the door in relation to him?

22 A. It was across from him and laying against the wall.

23 Q. Was it standing up against the wall or was it laying
24 down on the ground?

25 A. No, it was, like, propped against the wall but up.

1 It was still standing up.

2 Q. So either you or you and Cheryl picked the door up
3 off of Mr. Brigance, and then set it up against the wall
4 standing up?

5 A. Not picked it up. We just, like, pushed it against
6 the wall because it was heavy.

7 Q. Okay.

8 A. I'm not sure if it was us or just me.

9 Q. Okay. And so rather than just lay it down on the
10 ground against the wall, somebody stood it up against the
11 wall?

12 A. Pushed it up, yes.

13 Q. And it was either you or you and Cheryl?

14 A. Yes.

15 Q. And you guys were able to do that?

16 A. Yes.

17 Q. Who next moved the door?

18 A. Chuck Geske.

19 Q. So when Chuck came in, the door would have been in
20 whatever position that you or you and Cheryl had put it?

21 A. Yes.

22 Q. Now, you talked about going and calling people.
23 Where did you do that?

24 A. At the front desk, the nurses station.

25 Q. Why did you do it there?

1 A. Because that's where all the papers were to get ahold
2 of anybody.

3 Q. That's where the telephone numbers and those things
4 would have been?

5 A. Yes.

6 Q. So who did you call first?

7 A. The first person I called was Mitzi, and the second
8 person I called was Steve because she told me to call
9 Steve. He refused to go to the hospital.

10 Q. Mr. Brigance, Jack Brigance, did?

11 A. Yeah. He didn't want to go.

12 Q. Okay.

13 A. And then I called the paramedics.

14 Q. Okay. When you called the paramedics, did you call
15 911 or who did you call?

16 A. I think I called 911.

17 Q. Whenever you got ahold of Mitzi, what did you tell
18 her?

19 A. I told her what had happened, and she told me to
20 call -- since he didn't want to go to the hospital, Jack,
21 then to call Steve and see what he wanted to do.

22 Q. Okay. And I assume as soon as you hung up with
23 Mitzi, you called Steve?

24 A. Yes.

25 Q. Whenever you -- you had a number, I assume, to call

1 Mitzi. Do you know if it was her cell phone number or her
2 home number?

3 A. Her cell phone number.

4 Q. Did she answer when you called her?

5 A. Yes.

6 Q. And did you ask her any questions?

7 A. Not that I know of.

8 Q. Whenever you hung up with Mitzi, you called Steve
9 right away; is that correct?

10 A. Yes.

11 Q. Did you get ahold of Steve?

12 A. Yes.

13 Q. And what did you say to him?

14 A. I told him that Jack had fallen, and that he needed
15 to go to the hospital, but he didn't want to go.

16 Q. Okay. And what was his response?

17 A. He said to see if Jack wanted -- he pretty much said
18 see what Jack wanted to do.

19 Q. Okay. And at that point, did you know whether Jack
20 was going to go to the -- whether he wanted to go to the
21 hospital or not?

22 A. I knew that he didn't -- not -- I don't think I knew
23 then yet. I'm not sure, though.

24 Q. So whenever you called Steve, Steve's response was,
25 "Ask my dad what he wants to do, and if he wants to go,

1 send him"?

2 A. Yeah. Because it was just pretty much the knee
3 injury that was knew of.

4 Q. Okay. And so whenever you talk about the knee
5 injury, you're referring to whatever you saw, it was
6 swollen --

7 A. Yes.

8 Q. -- and whatever else was wrong with it that you could
9 see?

10 A. Yes.

11 Q. Now, at the time you looked at Jack's knee in the
12 room there when you first moved the door, you told me it
13 was swollen, and I can't remember whether you told me it
14 was bruised or not. Did you see any bruising?

15 A. Bruised.

16 Q. And did you see any other sign, visible sign, of
17 injury on him?

18 A. No.

19 Q. Did Steve say anything else to you during that
20 conversation, other than go ask his dad what he wanted to
21 do?

22 A. No.

23 Q. Where did you get ahold of Steve?

24 A. I think his cell phone.

25 Q. Did you try calling his house first?

1 A. Yes.

2 Q. Did you get an answer there?

3 A. No.

4 Q. What did you do, did you leave a message or did you
5 just hang up and call the next number, or what did you do?

6 A. I can't remember if I left a message.

7 Q. Okay. Did you attempt to call Peggy?

8 A. I think so.

9 Q. Did you get ahold of her?

10 A. No.

11 Q. So after you got this instruction from Steve that you
12 should go ask his dad, what did you do then?

13 A. I went back to Jack and asked him if he wanted to go
14 to the hospital because he needed to. He didn't want to
15 go, but after a while, I talked him into going.

16 Q. And whenever you went to call people and try to find
17 out what to do, did anybody stay with Jack and Dorothy?

18 A. Cheryl.

19 Q. Was Cheryl still there when you got back?

20 A. Yes.

21 Q. Had Jack been moved at all?

22 A. No.

23 Q. So he was -- he stayed where he was until you got
24 back?

25 A. Yes.

- 1 Q. Now, I know at some point you went and got Chuck.
- 2 A. Yes.
- 3 Q. When did you get Chuck?
- 4 A. Before the phone calls.
- 5 Q. And what did you say to Chuck?
- 6 A. I told him that there was an accident, a door was
7 down, and it needed to be moved out of the way.
- 8 Q. And what happened when you said that to him?
- 9 A. Chuck went and moved the door.
- 10 Q. Was he doing that while you were making the phone
11 calls?
- 12 A. Yes.
- 13 Q. When you got back to the room after making your phone
14 calls, where was the door?
- 15 A. It was in the hallway on the opposite side of the
16 room.
- 17 Q. So you didn't see Chuck move it?
- 18 A. Yes.
- 19 Q. You did see him move it?
- 20 A. I was in there because I took him to the room.
- 21 Q. Okay. Let me make sure I'm understanding. So you
22 went up front and got Chuck, and took him back to the
23 room?
- 24 A. Uh-huh.
- 25 Q. And he moved the door at that time?

1 A. Yes.

2 Q. And then you went and made the phone calls?

3 A. Yes.

4 Q. And do you recall where the door was when Chuck
5 picked it up?

6 A. Yes.

7 Q. Where was it?

8 A. It was against the wall in the room.

9 Q. Okay. Same place you had left it?

10 A. Yes.

11 Q. What happened next?

12 A. Chuck drug the door into the hallway and laid it
13 against the other side of the hallway.

14 Q. Did he stand it up or did he lay it on the ground?

15 A. It was sideways, and laid on the ground against the
16 wall.

17 Q. All right. After you got back and you talked to
18 Jack, and convinced him that he should go to the hospital,
19 what did you do at that point?

20 A. I called the ambulance.

21 Q. Did you call from his -- did he have a telephone in
22 his room?

23 A. Yes.

24 Q. Did you call from his telephone?

25 A. No.

1 Q. You went back up front?

2 A. Yes.

3 Q. And after you called for the ambulance, what did you
4 do while you were waiting on them to arrive?

5 A. I went back to the room and stayed with Jack and Dot.

6 Q. Where were you when the paramedics got there?

7 A. In the room.

8 Q. And when the paramedics got there, what did you do?

9 A. I was just telling Dot that it was okay, and that it
10 was going to be all right.

11 Q. You were comforting Dot?

12 A. Yes.

13 Q. And kind of let the paramedics do their job?

14 A. Yes.

15 Q. Tell me what you saw the paramedics do.

16 A. They lifted him up and put him on the little thing.

17 Q. The stretcher?

18 A. Yeah.

19 Q. And whenever they left -- I assume at some point they
20 left the room with him; is that right?

21 A. Yes.

22 Q. Did you go -- did you follow them out to the
23 ambulance, or what did you do?

24 A. I don't know. I didn't follow them out to the
25 ambulance. I stayed there.

1 Q. So after Jack left the room on the hospital -- I mean
2 on the ambulance gurney, did you see him again that night?

3 A. No.

4 Q. So after the paramedics leave with Jack, what did you
5 do at that point?

6 A. We got Dot ready for bed.

7 Q. Who is "we"?

8 A. Me and Cheryl.

9 Q. And what was involved in getting her ready for bed?

10 A. Dressing her, helping her dress, toileting her, her
11 brushing her teeth, stuff like that. And I'm not sure if
12 it was we or if it was just me because I think she already
13 went back by then.

14 Q. Cheryl had already gone back?

15 A. Cheryl, yes.

16 Q. After you got Dot ready for bed, did you help her get
17 into bed?

18 A. After a while, yes.

19 Q. Did any of the family show up to talk to Dot that
20 night?

21 A. I don't think so.

22 Q. Did you have any trouble getting her to go to bed?

23 A. No.

24 Q. Was she upset, I assume?

25 A. Yes.

1 Q. So after you got her in bed, what did you do then?

2 A. I kept working in other areas.

3 Q. Just went back to doing your job?

4 A. Yeah.

5 Q. When was the first time you talked to Steve Brigance
6 about what had happened?

7 A. What had happened about the incident?

8 Q. Yes, ma'am.

9 A. Whenever I called him on the phone that night.

10 Q. Okay. I mean after that.

11 A. We weren't allowed to talk about it.

12 Q. Well, I know at some point you did visit with him
13 about what had occurred, didn't you?

14 A. I don't think so.

15 Q. Have you talked to Jack -- have you talked to Steve
16 Brigance about what happened to his father at all since
17 that night?

18 A. Yes.

19 Q. Okay. And when did you next talk to him?

20 A. A long time afterward, after I was fired.

21 Q. Okay. After you were fired at Brookfield?

22 A. Yes.

23 Q. All right. We'll talk about that in just a minute,
24 but is it your testimony that you didn't talk to Steve
25 about the incident anymore while you were working at The

1 Brookfield?

2 A. No.

3 Q. Is that what you're telling me?

4 A. Yes.

5 Q. Now, I understand that you had prepared an incident
6 report; is that right?

7 A. Yes.

8 Q. When did you prepare the incident report?

9 A. The night of the incident.

10 Q. What shift did you work that night, do you remember?

11 A. Second shift.

12 Q. Which is what?

13 A. 3:00 to 11:00.

14 Q. 3:00 to 11:00. And about what time did this happen,
15 about 6:00 in the evening, sound about right?

16 A. Around that time, yes.

17 (Exhibit 1 was marked for identification.)

18 BY MR. DOSSETT:

19 Q. I'm going to show you what we will mark Exhibit 1 to
20 your deposition, and ask you just to take a look at that.
21 I'm going to ask you some questions about it.

22 Okay. Did you have a chance to look at it?

23 A. Yes.

24 Q. Up in the top right-hand corner of the document is
25 some handwriting that, I believe, comes from the state

1 investigator, and so -- where it says, "Copy 2/26/09 NJ"?

2 A. Uh-huh.

3 Q. Other than that notation, is all of the handwriting
4 on this document yours?

5 A. Yes, besides "Resident at Sparks" and "Mitzi Bailey."

6 Q. Okay. So let me make sure I understand. If we go to
7 the very bottom of the document, it contains Mitzi
8 Bailey's signature?

9 A. Yes, from here down, that's not my handwriting.

10 Q. There is a line towards the bottom of the page that
11 talks about "Physical Functional Level/Impairments."
12 Do you see that?

13 A. Yes.

14 Q. Are you telling me that everything under that is
15 somebody else's handwriting, and everything above that is
16 your handwriting?

17 A. Yes, besides my signature and the date.

18 Q. Okay. Now, do you see your signature on the report?

19 A. Yes.

20 Q. And is that your -- is that the signature that you
21 made?

22 A. Yes.

23 Q. And what's the date of it?

24 A. What's the date?

25 Q. Yes, ma'am.

1 A. 1/7/09.

2 Q. And is that the date that Mr. Brigance fell?

3 A. I believe so, yes.

4 Q. Help me figure out what time of day you prepared this
5 report. When did you prepare it?

6 A. Right after the fall, between 6:00 and 7:00.

7 Q. And so sometime between 6:00 and 7:00 that night, you
8 sat down and completed your portion of the incident and
9 accident report?

10 A. Yes.

11 Q. Now, you've had a chance to look at the incident
12 report here that we have marked Exhibit 1. Is this the
13 report that you filled out that day between 6:00 and 7:00?

14 A. Yes.

15 Q. It has been suggested in this case that you completed
16 a second accident report?

17 A. Yes.

18 Q. When did you complete the second accident report?

19 A. The same day.

20 Q. So it was on the 7th as well?

21 A. Yes.

22 Q. What time of day was it?

23 A. The same time. You have to fill out two incident
24 reports or two papers at the same time whenever someone
25 falls or has an incident.

1 Q. Two copies of the same report or two different
2 reports?

3 A. They're kind of like two different pieces of paper.

4 Q. Do they have the same information on them?

5 A. Not exactly.

6 Q. What is the other document that you prepare?

7 A. Basically stating what happened, what happened and
8 the date and signature, but that's it.

9 Q. How is it different from this incident and accident
10 report that we've marked as Exhibit 1?

11 A. It doesn't have any of this.

12 Q. Doesn't have any of that information on it?

13 A. No.

14 Q. What does it have on it?

15 A. I believe just pretty much lines so you can fill in
16 what happened.

17 Q. Just like a written narrative of what you remember
18 happening?

19 A. Yes.

20 Q. And did you complete that that night?

21 A. Yes.

22 Q. Do you have a copy of it?

23 A. No.

24 (Exhibit 2 was marked for identification.)

25 BY MR. DOSSETT:

1 Q. Let me show you three pages that we're going to mark
2 as Exhibit 2 to your deposition.

3 Is this your handwriting on these three pages?

4 A. Yes. Yes.

5 Q. Are either one of these three pages the piece of
6 paper with the lines on it that you're talking about?

7 A. It could be.

8 Q. It has been suggested in this case that at some point
9 in time, you came along and rewrote the incident and
10 accident report.

11 A. Yes.

12 Q. When did that happen?

13 A. I don't know the exact date, but not very long after
14 the incident.

15 Q. Was it the same day?

16 A. No.

17 Q. It was sometime after that?

18 A. Yes.

19 Q. Was it within a week?

20 A. Yes.

21 Q. Do you know if it was the very next day or three days
22 or four days?

23 A. I think -- I think it was the very next day.

24 Q. Tell me how that came about.

25 A. I was at home. I didn't have to work until third

1 shift, which is 11:00 to 7:00. Mitzi called me on my cell
2 phone and told me that I had an important paper, and I
3 told her I was busy, and she was saying that she would
4 bring it to my house, and then after a while I said that I
5 would go ahead and go up there. I went up there, and come
6 to find out, she had my W-2 paper, and she wanted me to
7 rewrite the incident report with the one that she had
8 already written.

9 Q. Okay. You're going to have to back up and help me
10 fill in some of these details. When you got there, you
11 said she had your W-2 paper?

12 A. Yes.

13 Q. What do you mean?

14 A. That that was the important paper that she was
15 talking about over the phone.

16 Q. Oh, that you had not completed your W-2, she needed
17 you to fill out your W-2?

18 A. No. It was the W-2 to give me for filing my taxes.

19 Q. Oh, okay. So you had not picked that up?

20 A. Uh-huh, no.

21 Q. So when you came that day, she said, "I wanted to
22 give this to you," and she gave you the W-2?

23 A. Yes.

24 Q. And then what else did she have with her?

25 A. The incident report that she wrote.

- 1 Q. Okay.
- 2 A. And my incident report that needed to be rewrote.
- 3 Q. You're saying that she had an incident report that
4 she had completed?
- 5 A. Yes.
- 6 Q. And was it on the same form as Exhibit 1?
- 7 A. I believe so.
- 8 Q. It was on the same form here that you completed
9 previously?
- 10 A. I'm not positively sure.
- 11 Q. What parts of it were filled out?
- 12 A. All of it.
- 13 Q. Whose handwriting was it in?
- 14 A. Mitzi's.
- 15 Q. And what did it say, did you read it?
- 16 A. I'm not positively sure.
- 17 Q. You just don't remember?
- 18 A. No, not right now.
- 19 Q. Okay. So Mitzi had your incident report, which was
20 Exhibit 1, right?
- 21 A. Yes.
- 22 Q. And she had another incident report in her
23 handwriting; is that correct?
- 24 A. Yes.
- 25 Q. And then was there a third blank report?

- 1 A. Yes.
- 2 Q. And what did she ask you to do?
- 3 A. To rewrite what she wrote on the blank piece of
4 paper.
- 5 Q. Okay. And did you do that?
- 6 A. No, not exactly. I rewrote it, but I didn't write it
7 like she wanted.
- 8 Q. So you completed a new report?
- 9 A. Yes.
- 10 Q. And did you change anything in the contents of that
11 report?
- 12 A. I believe I changed "voiced" to "stated" or "stated"
13 to "voiced."
- 14 Q. Okay. So the first time you think that it either
15 said "resident voiced" and you changed it to "resident
16 stated"?
- 17 A. Yes.
- 18 Q. Or it started out as "resident stated," and you
19 changed it to "resident voiced"?
- 20 A. Yes.
- 21 Q. And that's the only changes that you made?
- 22 A. Yes.
- 23 Q. Is it your testimony under oath that Mitzi wanted you
24 to write something different on that line?
- 25 A. Yes.

1 Q. What did she want you to write?

2 A. I don't know for sure, but it had to do with an
3 incident before where he fell, and she wanted it to look
4 like it happened because he pulled the door down.

5 Q. I'm not following you. What do you mean an incident
6 before where he fell?

7 A. Around Christmas, he lost his balance trying to fix
8 some Christmas lights and fell back, and she wanted this
9 new incident report to look like he had pulled the door
10 down on him himself.

11 Q. What did she say to you that made you think that?

12 A. She was telling me that she believed that he pulled
13 it down on himself because I wasn't there, and I didn't
14 see what happened.

15 Q. Was there anyone else in the room at this time?

16 A. I think Karen Hill, Karen Brown.

17 Q. Okay. Anyone else that you can remember being in the
18 room?

19 A. No.

20 Q. So did Mitzi talk to you about what she wanted you to
21 write?

22 A. Yes.

23 Q. And what, exactly, did she tell you?

24 A. The piece of paper was there. She read off the piece
25 of paper.

1 Q. And what was it that she read to you? That's what
2 I'm trying to find out. What were the words that she said
3 to you?

4 A. I can't remember for sure.

5 Q. Your memory is that she wanted you to rewrite the
6 report, this blank report, so that it would say what? I'm
7 not understanding what you were supposed to write on
8 there.

9 A. It was making -- I don't know for sure. All I know
10 is that she was trying to make it look like he pulled the
11 door on himself instead of it falling down.

12 Q. Okay. So you don't remember specifically what she
13 wanted it to say, is that what you're telling me?

14 A. Not exactly, no.

15 Q. All that you could really tell me is you felt like
16 she was trying to blame it on Jack; that he pulled it on
17 himself?

18 A. Not felt like. That's what she said.

19 Q. That's what she said?

20 A. Yes.

21 Q. Okay. And you refused -- did you tell her you
22 weren't going to do it?

23 A. Yes.

24 Q. And what did she say?

25 A. She just kept telling me to rewrite it.

1 Q. Okay. And you did rewrite it?

2 A. Yes.

3 Q. And did you make any changes in it, other than

4 "voiced" to "stated" or "stated" to "voiced"?

5 A. No.

6 Q. Did Mitzi do anything to try to put pressure on you

7 to change the report at all?

8 A. She was before I changed it, but I didn't change it

9 exactly, I just changed it "voiced" to "stated" or

10 "stated" to "voiced," and then she realized I wasn't

11 changing it like she wanted.

12 Q. Okay. So she let you complete it the way you wanted

13 to complete it?

14 A. She just let me leave, yeah.

15 Q. Okay. All right. So what you're telling me is that

16 she asked you to change the language of it to say that he

17 pulled the door on himself, right?

18 A. Yes.

19 Q. Did you tell her you weren't going to do that?

20 A. Yes.

21 Q. But you still agreed to rewrite the report?

22 A. Yeah.

23 Q. Why would you rewrite the report if you weren't going

24 to change anything in it?

25 A. Because we were talking in between me writing it.

1 Q. I'm sorry?

2 A. We were talking in between me writing it.

3 Q. Why did you think you were rewriting it?

4 A. Because she was pressuring me to rewrite it.

5 Q. In what way?

6 A. She was my boss, and telling me to change something

7 that I knew I wasn't supposed to change.

8 Q. Okay. I'm not following you. Let's get back and

9 start over. Okay? So you have come into the office, and

10 Mitzi has -- you're telling me Mitzi had a report in her

11 handwriting; am I correct?

12 A. Yes.

13 Q. She had Exhibit 1, which was the report you filled

14 out that night?

15 A. I believe so, yes.

16 Q. And she had a blank report?

17 A. Yes.

18 Q. And she wanted -- she told you to start rewriting the

19 blank report?

20 A. Yes.

21 Q. And so where did you get the information to put onto

22 the blank report?

23 A. She had her own paper filled out herself with her

24 handwriting.

25 Q. Did you start copying the information from Mitzi's to

1 the blank report?

2 A. No.

3 Q. Okay. You never did do that, did you?

4 A. No.

5 Q. And as you completed the blank report, where were you
6 getting the information to fill in those lines?

7 A. Off my paper.

8 Q. And at the time you started to complete the report,
9 had she asked you to change anything?

10 A. What do you mean?

11 Q. At what point did she ask you to change something?

12 A. When I walked in.

13 Q. So she asked you to make a change before you started
14 completing the new report?

15 A. Yes.

16 Q. And you told her you weren't going to do that?

17 A. Yes.

18 Q. So why did you rewrite the report? Why didn't you
19 just say I've already completed the report, here it is?

20 A. Because she kept telling me to rewrite it, so I felt
21 like I needed to write something.

22 Q. All right. So Mitzi was telling you to rewrite it.
23 Was she telling you to rewrite it with the different
24 information?

25 A. With her information, yes.

1 Q. She was telling you to do that?

2 A. Yes.

3 Q. And you did rewrite it, but you just used your
4 information?

5 A. Yeah. It was similar to mine.

6 Q. So at the end of the day, I assume that you left
7 without putting anything in the report you felt to be
8 untrue?

9 A. Yes.

10 Q. And so at the end of the day, Mitzi did not cause you
11 to write anything false in the report?

12 A. No.

13 Q. And do you recall Mitzi telling you that -- during
14 this conversation that if you saw what happened, you write
15 down what happened, and if somebody told you what
16 happened, then you would write down the resident stated
17 what happened; do you remember that conversation?

18 A. No.

19 Q. You don't remember anything like that?

20 A. No.

21 Q. Why did you change it from "voiced" to "stated" or
22 "stated" to "voiced," why did you change that?

23 A. Because I felt like I had to change something. She
24 was breathing over my neck. She was right beside me,
25 standing up, telling me to change the paper.

1 Q. So Mitzi is standing right next to you, leaning over
2 you?

3 A. Yes, watching me.

4 Q. Watching you?

5 A. Yes.

6 Q. And so you felt like you had to change something?

7 A. Yes.

8 Q. Did it satisfy her when you changed the word "voiced"
9 to "stated" or "stated" to "voiced"?

10 A. No.

11 Q. And why did you pick that word to change?

12 A. Because I didn't want to change anything.

13 Q. So because Mitzi is telling you you've got to change
14 something, you just switched those two words?

15 A. Yes.

16 Q. Whenever you finished completing the report, what did
17 Mitzi say to you?

18 A. I can't remember. I got to leave. That's all I
19 remember.

20 Q. So after you completed this third report, your second
21 report?

22 A. Yes.

23 Q. You completed it, and what did you do, give it to
24 Mitzi?

25 A. I just left it on the table.

1 Q. And did she ask you to rewrite it again?

2 A. No.

3 Q. And then you left?

4 A. Yes.

5 Q. And went home?

6 A. Yes.

7 Q. As we look here at Exhibit 1, is that the first
8 report you did or the second report?

9 A. The first.

10 Q. How do you know that?

11 A. Because of the summary of the accident, I was nervous
12 whenever I wrote it, trying to do it really fast, and you
13 can see my errors.

14 Q. And so what would -- the version of the report that
15 we have today as Exhibit 1 is the report that you made by
16 yourself that night, immediately following the accident?

17 A. Yes.

18 Q. And this document here that we have that is Exhibit 1
19 is not any document that you made at the request of Mitzi
20 Bailey; am I correct?

21 A. No.

22 Q. Am I correct in that?

23 A. Yes.

24 MR. DOSSETT: We have to change the tape.
25 We're going to take a little break.

1 THE VIDEOGRAPHER: The time is 2:12 p.m. We
2 are off the record.

3 (A brief recess was taken.)

4 THE VIDEOGRAPHER: The time is 2:25 p.m.
5 We're back on the record.

6 BY MR. DOSSETT:

7 Q. Let's -- before we took our break we were talking
8 about the two incident reports you prepared --

9 A. Yes.

10 Q. -- right?

11 And as I understand your testimony, you prepared one
12 by yourself, and then you came in some days later and
13 prepared a second one at Mitzi's request.

14 A. Yes.

15 Q. And these two incident reports contain the exact same
16 information, except you may have said "stated" versus
17 "voiced"?

18 A. Yes.

19 (Exhibit 3 was marked for identification.)

20 BY MR. DOSSETT:

21 Q. Okay. I'm going to show you what I'm going to mark
22 as Exhibit 3, which is a report from the State Office of
23 Long Term Care where they looked into the issue of the
24 preparation of the second report. Okay? I'm going to
25 show you that and just ask you to look at it. I'm going

1 to ask you a couple questions about it.

2 Okay. Have you had a chance to look at it?

3 A. Yes.

4 Q. All right. If we'll look here at this second
5 paragraph it says, "During an onsite investigation
6 conducted by Nancy Jeffers and Betty Wheeler on 2/26/09, a
7 telephone interview was done with Employee Number 1, who
8 was terminated from employment with the facility on 2/25
9 which was prior to the investigation date."

10 Do you remember having a telephone conversation with
11 the investigators?

12 A. Yes.

13 Q. State investigators?

14 A. Yes.

15 Q. Where were you when they called you?

16 A. At my house.

17 Q. Who was there with you when they called, if anybody?

18 A. My mom.

19 Q. Had you already been fired from Brookfield at this
20 time?

21 A. Yes, I think so.

22 Q. And what did the investigators say to you?

23 A. They were just asking questions, but I wasn't sure
24 who they were, so I wasn't really giving much information.

25 Q. Did you tell them the truth?

1 A. Yes.

2 Q. Did you keep information from them?

3 A. No, but I didn't talk too much. I didn't know who
4 they were.

5 Q. Did they tell you who they were?

6 A. Yes.

7 Q. They introduced themselves on the phone?

8 A. Yes.

9 Q. Did they tell you they were from the State Office of
10 Long Term Care?

11 A. Yes.

12 Q. Did they tell you that they were investigating
13 Mr. Brigance's accident?

14 A. Yes.

15 Q. Now, you know what a surveyor is, don't you?

16 A. No.

17 Q. You don't. Have you ever worked at Willow Brook or
18 The Brookfield when a survey was done?

19 A. I don't think so.

20 Q. How about an investigation by the Office of Long Term
21 Care where they send their people in to investigate?

22 A. No.

23 Q. You've never been part of that process?

24 A. No.

25 Q. So whenever these ladies -- was there one person on

1 the phone with you or two during this telephone
2 conversation?

3 A. I think two at the same time.

4 Q. Okay. You think two at the same time?

5 A. I think.

6 Q. Was anyone on the phone with you at your house?

7 A. No.

8 Q. Just you?

9 A. Yes.

10 Q. It says here that during this telephone
11 conversation, I'm looking at the last two sentences there,
12 it says, "the employee stated she did complete a second
13 report but put exactly the same information on it that she
14 had put on the original report."

15 Did you tell them that?

16 A. Yes.

17 Q. Is that a true statement?

18 A. Yes.

19 Q. Next sentence says she stated, quote, "I did not
20 change a thing," period close quote.

21 Did you tell us them that?

22 A. I think so, yes.

23 Q. Is that a true statement?

24 A. The only thing I changed was what I said I changed.

25 Q. The word "voiced" to "stated" and "stated" to

1 "voiced"?

2 A. Yes, but pretty much the same thing to me.

3 Q. So why did you not tell these investigators that back
4 on the 26th of February, 2009?

5 A. Because it was a telephone interview. I didn't know
6 who they were for sure. I didn't know to trust them or
7 not.

8 Q. When they told you who they were, did you not believe
9 them?

10 A. I didn't know.

11 Q. Did you ask -- did you do anything such as ask them
12 for identification or ask to meet them in person, or
13 anything like that?

14 A. No.

15 Q. You didn't tell them lies, did you?

16 A. No.

17 Q. So I want to be fair to you. Whenever you were
18 talking to the investigators, in your mind, was it
19 essentially the same thing to say "resident voiced" and
20 "resident stated"?

21 A. Yes.

22 Q. So for you to say, "I did not change a thing," to
23 you, that's, essentially, the same thing?

24 A. Yes.

25 Q. All right. Now, as I understand what you've told me

1 today and what you told the investigators in February of
2 '09, you did write two reports?

3 A. Yes.

4 Q. Now, did you come here to Mr. Chronister's office a
5 couple of days after that?

6 A. After me being fired?

7 Q. Yes, ma'am.

8 A. I don't think so.

9 Q. Did you meet with Mr. Chronister somewhere?

10 A. No.

11 Q. We have Exhibit 1 to your deposition, which are three
12 written pages, and these are in your handwriting; is that
13 correct?

14 A. Yes.

15 Q. And there's a date at the top of it. What's the
16 date?

17 A. 2/28/09.

18 Q. Is that the date that you wrote that down?

19 A. That I wrote what down?

20 Q. These words that are on this piece of paper.

21 A. I assume so.

22 Q. And why did you write that down?

23 A. I think for Rex. I'm not sure.

24 Q. For Rex Chronister?

25 A. Yes.

1 Q. Where were you when you wrote them down?

2 A. Here.

3 Q. At his office?

4 A. Yes.

5 Q. This is Exhibit 2 to your deposition. Thank you.

6 Thank you. It's Exhibit 2 to your deposition.

7 So tell me about that. How did you get down here to

8 meet with him?

9 A. I talked to Steve, I think.

10 Q. And earlier you told me that you had not talked to

11 Steve. So tell me what it is -- when did you talk to

12 Steve and about what?

13 A. I talked to Steve after I called Dot, and told her

14 why I couldn't come and see her anymore.

15 Q. Come and see Dot?

16 A. Yes.

17 Q. And what did you tell Dot?

18 A. I told her that I was fired, and that I wasn't

19 allowed on the premises anymore.

20 Q. And then you called Steve?

21 A. No.

22 Q. Then how did you get in touch with Steve?

23 A. I called Steve afterward, after Dot was -- Dot had

24 told him I got fired, and he didn't know why, so I called

25 him and told him why.

1 Q. Okay. And what did you tell him?

2 A. I told him that I was fired and that -- I don't know
3 exactly what I told him, but I think I told him that I got
4 fired because Mitzi made me rewrite the incident report.

5 Q. You got fired because you were made to rewrite an
6 incident report?

7 A. Yeah, and that investigators were coming, and she
8 didn't want me to be there.

9 Q. So you told Steve that you thought you were fired
10 because the state investigators were coming, and she
11 didn't want you to be at the facility whenever that
12 happened?

13 A. Yes.

14 Q. Do you know how the investigators got your name and
15 telephone number?

16 A. I assume Brookfield Assisted Living.

17 Q. Did anybody tell you that you were fired because the
18 investigators were coming, and Mitzi didn't want you to be
19 at the facility?

20 A. No.

21 Q. You just made that assumption?

22 A. Yes.

23 Q. And after making that assumption, you then passed
24 that assumption on to Steve as the reason you had been
25 fired?

- 1 A. I said I think, yes.
- 2 Q. But the truth of the matter is even when you were
3 conveying that information to Steve, nobody had ever told
4 you that, you had just come to that conclusion yourself?
- 5 A. Yes.
- 6 Q. Whenever you told that to Steve, what did he say to
7 you?
- 8 A. He didn't say much of anything; that he would look
9 into it.
- 10 Q. Did you hear back from him?
- 11 A. Maybe a while after.
- 12 Q. How long after?
- 13 A. I don't know for sure because I don't know if I heard
14 back from him then.
- 15 Q. How did you find out that you needed to come down
16 here to Mr. Chronister's office?
- 17 A. When he called me, I think.
- 18 Q. Who did?
- 19 A. I think Steve.
- 20 Q. Okay.
- 21 A. But I'm not sure.
- 22 Q. You'll see here on Exhibit Number 2, your statement
23 here is written February 28th of '09. Do you see that?
- 24 A. Yes.
- 25 Q. That is two days after you talked to the state

1 investigators. Okay?

2 A. Uh-huh.

3 Q. Are you telling me that sometime prior to
4 February 28th, that Steve had called you back?

5 A. I don't know for sure. I don't know dates.

6 Q. At some point, did Steve call you and tell you to
7 come down here to Rex Chronister's office?

8 A. I think so.

9 Q. Did he call you at some point and tell you that?

10 A. Yes.

11 Q. What did he say to you?

12 A. To come down here. I don't know. I don't remember.

13 Q. Whatever conversation you had with Steve, you came
14 away from that knowing that you should come and visit with
15 Mr. Chronister?

16 A. Yes.

17 Q. And you came down here. Tell me what happened then.

18 A. I told him what happened that night and why I think
19 that I was fired.

20 Q. And was that the same reason you had just told Steve?

21 A. Yes.

22 Q. And at some point, were you asked to make this
23 written statement?

24 A. Yes.

25 Q. And did you do it?

- 1 A. Yes.
- 2 Q. Is the information that you wrote down, that written
3 statement on February 28th, is it true?
- 4 A. Yes.
- 5 Q. Did you have a chance to review that written
6 statement before you testified today?
- 7 A. No.
- 8 Q. You didn't look over it?
- 9 A. No.
- 10 Q. When was the last time you looked at it?
- 11 A. When I wrote it.
- 12 Q. When you wrote it.
- 13 With regards to the written statement, on the third
14 page we have two full pages. Do you see that?
- 15 A. Yes.
- 16 Q. And at the end of the second page, is that your
17 signature at the bottom?
- 18 A. Yes.
- 19 Q. And then on the third page there's a shorter
20 paragraph, on the third page of Exhibit 2. Is this also
21 your handwriting?
- 22 A. Yes.
- 23 Q. Is that your signature on the bottom?
- 24 A. Yes.
- 25 Q. And what's the date up here?

1 A. 2/28/09.

2 Q. Is that the date you wrote this third page as well?

3 A. I assume so, yes.

4 Q. Why did you write a third page? You see we have page
5 number 1 and page number 2?

6 A. Yes.

7 Q. And you signed at the end of page number 2. Do you
8 see that?

9 A. Yes.

10 Q. And you wrote a third page and signed it again. Why
11 did you do that?

12 A. I don't know for sure.

13 Q. Why didn't you just include the information on the
14 third page in the original written statement?

15 A. I don't know for sure.

16 Q. Do you remember writing this information here on the
17 third page of Exhibit 2?

18 A. Yes.

19 Q. I wanted to ask you a question about it. If you see
20 here it talks about -- I'm just going to read it. "Mitzi
21 Bailey asked me to rewrite my incident report on Jack
22 Brigance."
23 Is that a true statement?

24 A. Yes.

25 Q. "I refused to rewrite the report."

1 Is that a true statement?

2 A. Yes.

3 Q. Did you write a second report or not?

4 A. I did after a while, yes.

5 Q. So it then says, "There was an incident report that

6 Mitzi wrote herself also, so I am not sure which incident

7 report is in the file, but I stated that I was on duty and

8 I wrote the incident report, so it should not be in anyone

9 else's handwriting or have anyone else's signature."

10 Do you see that?

11 A. Yes.

12 Q. When I read this, it appeared to me that you were

13 saying that you did not rewrite your report?

14 A. I rewrote it after a while because I kept refusing,

15 and it wasn't good enough.

16 Q. What wasn't good enough?

17 A. Telling her that I didn't want to rewrite it.

18 Q. So your testimony now is that when Mitzi asked you to

19 rewrite the report, you said no, I'm not going to rewrite

20 it?

21 A. I did say that, yes.

22 Q. And you repeatedly refused?

23 A. Yes.

24 Q. And at some point you realized that wasn't going to

25 be good enough?

- 1 A. Yes.
- 2 Q. So you rewrote it, and put the same information on
3 it?
- 4 A. Yes.
- 5 Q. So on this Exhibit 2 when you say, "I refused to
6 rewrite the report" and there should only be one real
7 report and it has my handwriting on it, you're really
8 saying you wrote it twice?
- 9 A. I wrote the same thing twice.
- 10 Q. So when you say you refused to rewrite it, what you
11 really mean is that you agreed to rewrite it, but you
12 wrote the same information?
- 13 A. I didn't agree to that, what she wrote, what she
14 wanted me to write.
- 15 Q. So you rewrote it, but you didn't change any of the
16 information?
- 17 A. Yes.
- 18 Q. That's what it means?
- 19 A. Yes.
- 20 Q. Let's look back at Exhibit 1. I want to make sure of
21 this. We're looking here, there's a line that says
22 "Summary of Incident." Do you see that?
- 23 A. Yes.
- 24 Q. Read to me what it says.
- 25 A. "Resident stated he was putting up his wife's shoes

1 in the closet and the closet door came down, causing him
2 to fall down."

3 Q. And as I understand it, you're not sure if this was
4 the first version or the second; am I right?

5 A. I believe it was the first version, but I'm not sure.

6 Q. And if we had the second version, then, it would be
7 exactly the same, except instead of "stated" it would say
8 "voiced"?

9 A. Yes.

10 Q. And nothing else on the report that's in your
11 handwriting would be changed; am I correct?

12 A. Yes, you're correct.

13 Q. Now, whenever you talked to the investigators from
14 the state, did you tell them that Mitzi -- you did tell
15 them Mitzi asked you to rewrite it. We've covered that,
16 right?

17 A. Yes.

18 Q. Did you tell them that she wanted you to lie on that
19 report?

20 A. I don't remember.

21 Q. Why wouldn't you have told the investigators that?

22 A. I didn't know if they were friends of hers or not.

23 Q. Now, you knew that they had introduced themselves,
24 right?

25 A. Yes.

1 Q. And you thought that maybe these people that are
2 calling from the Office of Long Term Care are really her
3 friends, posing as investigators?

4 A. No. She could have friends in that field. I wasn't
5 sure, so I didn't want to talk to them.

6 Q. Would these be the same friends that she fired you
7 before you would talk to her friends?

8 A. What do you mean?

9 Q. I think you told me earlier that she fired you, you
10 thought, because she wanted you to be gone before the
11 investigators arrived?

12 A. Yes.

13 Q. And now you're telling me that you're afraid the
14 investigators were her friends, and you couldn't trust
15 them.

16 A. No, I'm not saying they're the same people.

17 Q. Okay. With regards to these ladies, you didn't tell
18 them that Mitzi had asked you to lie, did you?

19 A. I don't know for sure.

20 Q. Let me make sure I understand. You just don't
21 remember whether you gave them that piece of information
22 or not?

23 A. I'm not sure.

24 Q. Now, I'll let you look at Exhibit 2 as much as you
25 want, but when I read this report, I don't see anywhere in

1 here that you say that Mitzi told you to lie.

2 A. It doesn't say that in here.

3 Q. So whenever you talked to the investigators, you're
4 not sure whether you told them that; am I correct?

5 A. Yes.

6 Q. And when you came to Mr. Chronister's office and you
7 wrote your written report two days after talking to the
8 investigators, you didn't put that in the written document
9 for Mr. Chronister either, did you?

10 A. No.

11 Q. Why not?

12 A. I don't know.

13 Q. But your testimony under oath today, in 2010 --

14 A. Yes.

15 Q. -- is that she did tell you to lie?

16 A. I'm not saying that she wanted me to rewrite her
17 piece of paper which wasn't true because she didn't see
18 it, and I didn't see it either.

19 Q. Were there any lies contained in what she wanted you
20 to write down?

21 A. Just her making it look like he pulled the door down.
22 He didn't pull it down, so that would be a lie.

23 Q. As you read the report, was the word "pull down" --
24 did the report want you to say that Jack had pulled the
25 door down?

1 A. I don't know for sure.

2 Q. Okay. Was there anything in there that you saw that
3 you said, "I'm not going to write this because it's a
4 lie"?

5 A. Well, I wasn't going to rewrite it just because I
6 wrote one, and I didn't need to rewrite it.

7 Q. Yes, ma'am. But, eventually, you did rewrite it just
8 for the sake of rewriting it to get her off your back?

9 A. Yes.

10 Q. And when you did that, what I'm asking you is when
11 she asked you to rewrite it, did she ask you to put any
12 information into this report that you thought would be a
13 lie if you wrote it down?

14 A. I guess because she didn't see it.

15 Q. And was she asking you to write on there that she did
16 see it?

17 A. No, but she was pretty much saying to write what she
18 wrote.

19 Q. Yes, ma'am. And I think we're saying the same thing,
20 but I need to make sure. Are you telling me, under oath,
21 that what Mitzi was asking you to write down was a lie, if
22 you had written it down, that it would have been a lie on
23 your part?

24 A. Yes.

25 Q. And then -- so what I'm trying to find out is, and

1 you think that's why you got fired, right?

2 A. Because I didn't rewrite it?

3 Q. In the way that she wanted you to.

4 A. Yes.

5 Q. And she wanted you out of there before the state got

6 there to investigate?

7 A. Yes.

8 Q. And you told Steve that and you told Mr. Chronister

9 that?

10 A. Yes.

11 Q. And what I'm trying to find out, ma'am, is if that's

12 what happened, why didn't you, one, tell the state that,

13 and why didn't you tell Mr. Chronister that in this

14 written report that you did for him?

15 A. I don't know why I didn't tell him that, but I didn't

16 tell them that because I didn't really know who they were

17 and whether they were what they said.

18 Q. Okay. You told me that, and I'm sorry for asking you

19 again, but when you wrote it for Mr. Chronister, why

20 didn't you tell him that Mitzi was asking you to lie?

21 A. I don't know why I didn't add it into the paper.

22 Q. You just don't know?

23 A. No.

24 Q. Has anyone else told you that Mitzi asked them to

25 change their version of events?

1 A. No.

2 Q. Has Cheryl ever told you that Mitzi asked her to lie?

3 A. No.

4 Q. Have you made any other written statements about what
5 you remember, other than what we have here as Exhibit 2?

6 A. Not that I know of.

7 (Exhibit 4 was marked for identification.)

8 BY MR. DOSSETT:

9 Q. I'm going to show you what we'll mark as Exhibit 4 to
10 your deposition. This is an incident accident report from
11 February 6th. Take a look at it.

12 Did you complete this report?

13 A. Yes.

14 Q. Do the same portions that we discussed, does
15 everything from the summary of incident above, is that all
16 your handwriting?

17 A. Yes.

18 Q. Tell me what you remember about this incident.

19 A. That he was -- what I told you earlier, the same
20 thing, that's the incident report I was talking about;
21 that he lost his balance whenever he was plugging in the
22 lights.

23 Q. Okay. And this happened the day before?

24 A. I'm not sure.

25 Q. Do you remember going to check on him about it?

- 1 A. Yes.
- 2 Q. Tell me what you remember.
- 3 A. He wasn't hurt or anything. He just lost his balance
4 when he was plugging in the lights.
- 5 Q. How did you find out about it?
- 6 A. He told me.
- 7 Q. Was he still on the ground when you got there, or did
8 he tell you about it afterwards?
- 9 A. No, he wasn't on the ground.
- 10 Q. So at some point in time later, you were visiting
11 with him, and he told you that he fell?
- 12 A. It was right after. I don't know if they pulled the
13 call light or what.
- 14 Q. You don't remember?
- 15 A. No.
- 16 Q. All you remember is somehow he told you that, and you
17 filled out the report?
- 18 A. Yes.
- 19 Q. Does this report accurately reflect what you learned
20 from Mr. Brigance?
- 21 A. Yes.
- 22 Q. Now, you'll agree with me, won't you, that you did
23 complete this incident and accident report that's
24 Exhibit 4?
- 25 A. Yes.

1 Q. And did -- did you ever rewrite this report or change
2 it in any way?

3 A. Not that I know of.

4 Q. Is it possible, ma'am, that the two reports that you
5 remember completing about Mr. Brigance are really
6 Exhibit 1 and Exhibit 4, is it possible that those are the
7 only two reports that you ever completed for him?

8 A. No.

9 Q. You don't think that's possible?

10 A. No.

11 Q. Have you ever contacted the state -- after this
12 interview that you had with these ladies that called you
13 on the phone on February 26th, did you ever contact the
14 state again, and let them know that you had anything else
15 to say?

16 A. No.

17 Q. Did you ever contact them and say, "These two people
18 called me, and I'm not sure they were really from you, so
19 I didn't tell them everything, but here's what you really
20 need to know"?

21 A. No.

22 Q. Did you ever think about that?

23 A. I didn't know who to contact.

24 Q. You didn't know who to contact?

25 A. No.

1 Q. Did these ladies give you their names when they
2 called you?

3 A. Yes.

4 Q. Did they leave you information on how to contact
5 them?

6 A. I remember putting their number in my phone.

7 Q. So they must have provided that to you?

8 A. I don't know for sure or I just kept it in my phone
9 because they called.

10 Q. So you had at least their telephone number from your
11 caller I.D.?

12 A. Yes.

13 Q. Let's go back and talk about your time -- your first
14 employment at Brook Wood (sic). You talked about having a
15 hard time getting to work when you worked at the plastic
16 plant?

17 A. Yes.

18 Q. Did you also have a hard time getting to work when
19 you worked at -- I'm forgetting the name of it.

20 A. Willow Brook.

21 Q. Willow Brook. Did you have a hard time getting to
22 work there?

23 A. On and off. My sister drove me.

24 Q. Did Mitzi sometimes give you a ride?

25 A. To Willow Brook the first time I worked there?

- 1 Q. Yes, ma'am.
- 2 A. Yes.
- 3 Q. Did she, on at least one occasion, give you cab fare
4 so you could get to and from work?
- 5 A. No.
- 6 Q. You don't remember that?
- 7 A. There was never a time that happened.
- 8 Q. How about at Brookfield, did she ever help you
9 arrange a ride to work at Brookfield?
- 10 A. She picked me up a couple times, but never gave me
11 money for a cab fare.
- 12 Q. But you'll at least agree with me that you remember
13 Mitzi taking the time to take you to and from work so that
14 you could make it there?
- 15 A. Not to and from, but every now and then, yes.
- 16 Q. Every now and then she would come and get you, and
17 take you to work?
- 18 A. Yeah, if I had a problem with not being able to get
19 there.
- 20 Q. And did she sometimes take you home?
- 21 A. Not that I know of.
- 22 Q. But she did sometimes take you to work at Brookfield
23 and at the prior place?
- 24 A. Yes. Once at Willow Brook.
- 25 Q. Did you go to Jack Brigance's funeral?

- 1 A. Yes.
- 2 Q. Who did you attend with?
- 3 A. I didn't attend with anyone. My mom went with me.
- 4 Q. Where did you sit at the funeral?
- 5 A. Behind Dot.
- 6 Q. Did you sit with the family?
- 7 A. Yes. I've never been to a funeral before. I didn't
- 8 know where to sit.
- 9 Q. But you did sit with the family?
- 10 A. Yes.
- 11 Q. I understand that recently you had some pregnancy
- 12 complications?
- 13 A. Yes.
- 14 Q. Did you call Steve to talk -- to let him know that
- 15 you were having pregnancy complications?
- 16 A. No.
- 17 Q. You didn't call him and let him know?
- 18 A. I couldn't call anyone. I was in Little Rock.
- 19 Q. Did somebody call for you?
- 20 A. Yes.
- 21 Q. Who called?
- 22 A. My mom.
- 23 Q. Did you ask her to call?
- 24 A. No.
- 25 Q. Do you know why she called Steve?

1 A. She called him to let him know because of the
2 deposition that was coming up.

3 Q. So it was all about trying to schedule for the
4 deposition?

5 A. Yes.

6 Q. Did you have a date scheduled for your deposition at
7 that time?

8 A. Yes.

9 Q. Do you recall an incident where you and Cheryl got in
10 trouble, for lack of a better word, for leaving the door
11 unlocked at night?

12 A. I didn't get in trouble, but he talked to Cheryl, and
13 she told me about it, and Bob was "he."

14 Q. Bob talked to Cheryl?

15 A. Yes.

16 Q. What do you remember about that?

17 A. She told me that he was telling her that she
18 needed -- we needed to make sure to go and check the
19 doors, but there was never -- he wasn't mad about it. He
20 was just letting us know we need to check the doors.

21 Q. And who was it that left the door unlocked?

22 A. I don't know. The doors are all -- the doors have
23 problems themselves.

24 Q. Was it your job, when you were working at night, to
25 make sure that the doors were locked so people couldn't

1 get in?

2 A. All of our jobs, yes.

3 Q. Including yours?

4 A. Yes.

5 Q. And was there a time, prior to your termination,
6 where you failed to make sure the doors were locked, and
7 it was your fault?

8 A. No.

9 Q. You don't ever recall that happening?

10 A. No.

11 Q. And you don't ever -- are you telling me it didn't
12 happen or you don't remember it?

13 A. It never happened.

14 Q. And there was -- are you telling me there was never a
15 time when the doors were found unlocked, and it was your
16 responsibility?

17 A. It's all of our responsibilities, so I would get
18 blamed too, yes.

19 Q. But wasn't there a time when it was your -- not just
20 everybody's, but it was yours in particular, and you said,
21 "It was my fault the door was not locked"?

22 A. No.

23 Q. That did not happen?

24 A. No.

25 Q. Did you understand that that was a very serious

1 offense?

2 A. Yes.

3 Q. It would not surprise you if Mr. Brooks was upset
4 about the doors being unlocked after hours, would it?

5 A. Yes.

6 Q. It would or would not?

7 A. He would be upset, yes.

8 Q. Why is it such a serious issue?

9 A. Because someone could get in or people could get out.

10 Q. When you were working at Brookfield did you have
11 attendance problems?

12 A. Throughout CNA school, it was excused, and I had a
13 miscarriage and I had doctors' notes, so, yes.

14 Q. When was the miscarriage?

15 A. October 2008, I think.

16 Q. Do you remember getting written up for attendance
17 issues at Brookfield?

18 A. No.

19 Q. You don't remember that?

20 A. No. But it could have happened.

21 Q. You'll agree with me, won't you, that you did have
22 some attendance problems while you were working there?

23 A. Yes.

24 Q. Do you remember a time that Mitzi talked to you about
25 terminating you because of those attendance issues, and

1 your mother came down to talk to Mitzi about it with you?

2 A. No, that didn't happen.

3 Q. It never happened?

4 A. No.

5 Q. Was there ever an incident at the facility where your
6 mother came and talked -- that you and Mitzi and your
7 mother talked about your attendance issues?

8 A. When I came in with my doctors' notes for the
9 miscarriage, and she wouldn't excuse it.

10 Q. So it did happen, there was a conversation between
11 the three of you?

12 A. Yes.

13 Q. And where did that take place?

14 A. In her office.

15 Q. Did Mitzi first meet you and your mother out in the
16 public area of the facility?

17 A. No. We went into her office.

18 Q. Was there ever a time during that conversation when
19 you all were talking outside of her office?

20 A. By the copy machine, yes.

21 Q. And isn't that also where the, what I would call, the
22 nurses desk is?

23 A. Around it, yes.

24 Q. And isn't the nurses desk right there where the
25 dining area is?

1 A. Yes.

2 Q. Did that conversation get heated?

3 A. Not heated.

4 Q. Were people raising their voices?

5 A. No.

6 Q. Nobody raised their voice?

7 A. Not that I know of.

8 Q. You don't remember anybody getting loud?

9 A. No.

10 Q. Were people angry?

11 A. I was upset --

12 Q. What were you upset about?

13 A. -- but we weren't yelling or anything.

14 Because I had doctors' notes, and she knew why. We

15 communicated through it all, and then all of a sudden she

16 wanted to hold my check and fire me.

17 Q. Did you get fired?

18 A. Yes, and then she took it back right then.

19 Q. So she was prepared to fire you when you came in?

20 A. I assume, yes.

21 Q. But she did give you a second chance?

22 A. She made a call, and then told me that she would go

23 ahead and keep me.

24 Q. And did your mother participate in this discussion?

25 A. Yes, a little bit.

1 Q. If there were other people that heard someone in the
2 group of these three people getting loud, would you
3 disagree with that?

4 A. Yes.

5 Q. Let's go to the day that you were eventually
6 terminated. Tell me what happened that day.

7 A. What do you mean by "eventually terminated," when she
8 called me over the phone?

9 Q. Yes.

10 A. She called me when I was at my house, and she told me
11 that they no longer needed me anymore, and I asked her
12 why, and she said there was no reason.

13 Q. Were you supposed to be at work at that time?

14 A. No.

15 Q. Had you recently missed work?

16 A. The miscarriage.

17 Q. That was in October, right?

18 A. Yeah.

19 Q. And you got terminated when?

20 A. February.

21 Q. February. That's the last time you had missed work,
22 was October?

23 A. I'm not positively sure.

24 Q. So all that Mitzi said to you is, "We don't need you
25 anymore," you asked her why, and what did she say?

1 A. She said that there was no reason.

2 Q. She said there's no reason?

3 A. Yes. That's what she told me on the phone.

4 Q. And then she just hung up?

5 A. No. We weren't -- I just said okay, and she said

6 thank you and bye.

7 Q. That was it?

8 A. Yeah.

9 Q. Then she hung up?

10 A. Yeah.

11 Q. If the records indicate that happened on

12 February 25th, would you disagree with that?

13 A. No. Because I don't know what day it was.

14 Q. What did you do whenever you received this phone call

15 from Mitzi with regards to your termination, what did you

16 do?

17 A. Nothing. I called her back a little bit later and

18 asked her a date to set up a time when I could come and

19 get my stuff out of my locker.

20 Q. Okay. And she set that time up with you?

21 A. Yes.

22 Q. And how long after that was your conversation, I

23 mean, was your meeting?

24 A. Maybe within that week.

25 Q. And tell me what happened when you went to pick up

1 the stuff from your locker.

2 A. We went -- my mom took me up to get it. We met, I
3 think, in her office, and she walked me to my locker, and
4 I got my stuff out. She wanted to look through my
5 paperwork to make sure I wasn't taking anything, and then
6 I left.

7 Q. Was this paperwork in your locker?

8 A. Yes.

9 Q. And she went through that before you left?

10 A. Yes.

11 Q. Was there any discussion between the two of you?

12 A. That she was going to look through my paperwork,
13 pretty much that's it.

14 Q. Through your what?

15 A. Paperwork.

16 Q. That was it?

17 A. Yeah.

18 Q. Did you ask her at that time why you were being
19 fired?

20 A. No.

21 Q. During this conversation did you say anything to
22 Mitzi that she wasn't done with you or she was going to
23 regret what she was doing?

24 A. No.

25 Q. You didn't say anything like that?

1 A. No.

2 Q. Were there any words exchanged between you at all,
3 other than her asking to look through your paperwork?

4 A. No.

5 Q. You just walked in, looked at each other, walked down
6 to the locker, and that was it?

7 A. It wasn't -- we didn't have any problems, no.

8 Q. Okay. And Mitzi was there?

9 A. Yes.

10 Q. Your mother was there?

11 A. Yes.

12 Q. Anyone else?

13 A. Maybe Karen Brown, but I'm not sure.

14 Q. Were you given any instructions?

15 A. No.

16 Q. And this isn't a trick question. I'm trying to find
17 out at what point you were told that you couldn't come
18 back.

19 A. Okay.

20 Q. When was that?

21 A. I think I found out through -- I don't know for sure.
22 I don't know.

23 Q. Did Mitzi tell you that at some time?

24 A. She never told me in person and she never told me on
25 the phone.

- 1 Q. What did she do?
- 2 A. What did she do?
- 3 Q. How did she communicate that to you?
- 4 A. I think Cheryl told me that. I wasn't working there
5 anymore, but we're still friends.
- 6 Q. Sure.
- 7 A. Cheryl Williamson.
- 8 Q. Sure. But is it your testimony that you were never
9 told that you weren't allowed back?
- 10 A. No, I was told, but I don't know -- she never told me
11 on the phone, that I know of, and she never told me in
12 person for sure.
- 13 Q. You think maybe Cheryl told you then?
- 14 A. No. I believe Mitzi did.
- 15 Q. You just don't remember when or how?
- 16 A. Yes.
- 17 Q. Who is Kathryn Thomas?
- 18 A. She worked in the -- Kathryn Thomas worked in the
19 kitchen.
- 20 Q. Was she present whenever you and your mother came in
21 to talk about Mitzi when you were trying to get your
22 absences excused?
- 23 A. The day of my miscarriage?
- 24 Q. Yes, ma'am.
- 25 A. Yes.

1 Q. Let me show you some documents that are attached --
2 I'm not going to attach them because they're part of your
3 personnel, but I'll show them to you. The first one is
4 Bates stamped 054, and this is a write-up in your
5 personnel file for attendance issues. Take a look at it,
6 if you would, please. I'm going to ask you about it.

7 A. Okay.

8 Q. Is that your signature?

9 A. Yes.

10 Q. What day did you sign and date that?

11 A. I assume the date that's on there.

12 Q. Is that your handwriting on the date?

13 A. Yes.

14 Q. What date did you write down?

15 A. Write it down?

16 Q. What's the date that you wrote down?

17 A. 9/27/08.

18 Q. Do you recognize what this form is?

19 A. Yes.

20 Q. What is it?

21 A. It's a party form or whatever, yeah.

22 Q. Was this the write-up that you got at The Brookfield
23 in September for being -- for having attendance issues?

24 A. Yes.

25 Q. It says on here that you were a no-show on July 11th,

1 and 9/25, and that you were tardy on August the 7th,
2 August the 22nd, over 30 minutes, and many tardies less
3 than 15 minutes?

4 Do you see that?

5 A. Yes.

6 Q. And then it says, "Last written and verbal warning."

7 Do you see that?

8 A. Yes.

9 Q. What did you understand "last written and verbal
10 warning" to mean?

11 A. That would be termination later on.

12 Q. If you continued to have attendance problems, then
13 you would be terminated?

14 A. Yes, but we had a different -- we talked about it
15 before I signed that piece of paper.

16 Q. Talked about what?

17 A. Because during CNA school, my tardies and absences
18 or -- well, my tardies were excused, or whatever because
19 she agreed that I got out of school at three something and
20 I was supposed to be at work at 3:00, so.

21 Q. So you're telling me that when you signed this form,
22 before you signed it, you were basically told that your
23 tardies were excused?

24 A. Yes.

25 Q. But you went ahead and signed it anyway?

1 A. Yes.

2 Q. Let's look at this next form which is 0055, it's
3 ABTS0055. Take a look at it. I want to ask you about it.
4 Do you remember this?

5 A. Yes. I don't remember it, but I see my handwriting
6 on it.

7 Q. Does it contain your signature?

8 A. Yes.

9 Q. And what's the date you wrote down next to your
10 signature?

11 A. 10/24/08.

12 Q. Does that coincide with the date of your miscarriage?

13 A. Yes.

14 Q. I see here that it talks about the fact that you
15 called in for work on the 21st, 22nd and 23rd, right?

16 A. Yes.

17 Q. Do you see that? And then it references that you
18 were written up previously on 9/27. Do you see that?

19 A. Yes.

20 Q. And it talks about that you're going to have to let
21 Mitzi know by 3:00 p.m. on 10/27 if you want to keep
22 working there, right?

23 A. The dates have to do with my miscarriage. That's why
24 I was absent. She had me sign this after she fired me,
25 and then decided to keep me. So in order to get my check,

1 I had to sign this piece of paper.

2 Q. So let me see if I've got this straight. So in
3 September, you were written up for attendance issues,
4 right? That's this page right here?

5 A. Yeah.

6 Q. And you were told this was your last warning?

7 A. Yes.

8 Q. But you had an excuse because you had a reason to be
9 late?

10 A. Through her, what she told me, yes.

11 Q. And then in October, you had some call-ins because of
12 health issues?

13 A. Yeah.

14 Q. And, according to this, you had already received your
15 last warning, but since you had these call-ins that you
16 were going to be terminated, but then she decided to give
17 you a second chance?

18 A. Yes.

19 Q. And you all signed the paperwork?

20 A. Yes.

21 Q. Did you get in trouble anymore for attendance issues
22 that you can recall prior to your termination?

23 A. Not that I know of.

24 Q. If the records indicate that you did have some
25 additional attendance issues, would you dispute those?

1 A. No.

2 Q. How were you getting to work back then?

3 A. My mom.

4 Q. Did your mom have a job?

5 A. She was disabled.

6 Q. Was she able to drive?

7 A. Yes.

8 Q. Have you talked to Mitzi Bailey since the date of
9 your termination?

10 A. Yes. I had to meet up with her later on to get the
11 stuff out of my locker.

12 Q. How about other than that, since that day when you
13 got your stuff out of your locker?

14 A. Not that I know of, no.

15 Q. Have you ever talked to Bob Brooks?

16 A. When I worked there, yes.

17 Q. And how about since your termination, have you talked
18 to him?

19 A. No.

20 Q. Have you ever been back to The Brookfield since the
21 day that you collected your things from your locker?

22 A. Yes.

23 Q. How many times?

24 A. Once, I think, once.

25 Q. When was that?

- 1 A. I don't know the date.
- 2 Q. What was the purpose of going back?
- 3 A. To see Dot.
- 4 Q. So it would have been before Dot passed?
- 5 A. Yes.
- 6 Q. And why did you go that day?
- 7 A. To visit her.
- 8 Q. Was there any special occasion, is what I mean?
- 9 A. No.
- 10 Q. Who else was there?
- 11 A. Me, my mom, my little sister, Cheryl, Dot and Steve.
- 12 Q. How did you get into the facility?
- 13 A. Steve.
- 14 Q. What do you mean "Steve"?
- 15 A. Steve and me met up, and he took me in there.
- 16 Q. Right through the front door?
- 17 A. There was two times. No, one time was through the
- 18 back, one time was through the front.
- 19 Q. Let's talk about the time through the back door.
- 20 When was that?
- 21 A. I don't know the exact date, but I believe right
- 22 before her fall.
- 23 Q. And who let you in through the back door?
- 24 A. Steve.
- 25 Q. Steve Brigance?

1 A. Yes.

2 Q. How did he know you were at the back door?

3 A. Because we set it up.

4 Q. How did you set it up?

5 A. Over the phone.

6 Q. And was there some special occasion why you were
7 going to go to the facility?

8 A. No.

9 Q. You were just going to visit?

10 A. Yes.

11 Q. So how did he know that you were at the back door,
12 did you call him, did he know you were going to be there
13 at a certain time?

14 A. We called him. I was still allowed to call and talk
15 to his mom, too.

16 Q. I'm sorry. I couldn't hear you.

17 A. I was still allowed to call and talk to his mom, so I
18 talked to his mom and him through the phone.

19 Q. Did you let them know that you were at the back door?

20 A. No. We already set up a time and date to meet before
21 we came there.

22 Q. Okay. And what was the plan?

23 A. To visit Dot.

24 Q. I mean, tell me about the plan. Somehow you
25 contacted Steve, and you all developed a plan. What was

1 it?

2 A. We talked about it at Gino's Pizza.

3 Q. Who met at Gino's Pizza?

4 A. Me, my mom drove me, and Steve in his truck.

5 Q. Okay. And then what happened. You met up at Gino's

6 Pizza. Then what?

7 A. Then we went -- we followed him to the back door, he

8 tapped in the code, we went into Dot's room.

9 Q. So Steve went in the back door with you?

10 A. Yes.

11 Q. And was this the back door that was directly across

12 from her room?

13 A. Yes.

14 Q. And what did you do when you went inside, just visit?

15 A. Yes.

16 Q. How long were you there?

17 A. 45 minutes, at least. I don't know.

18 Q. Who else was there?

19 A. Dot, me, my mom, my little sister, Cheryl and Steve.

20 Q. Did somebody take a picture of this?

21 A. Yes.

22 Q. Was this the picture that was put on her door?

23 A. Yes.

24 Q. And did you understand when you went into the

25 facility, did you understand at that time that you were

1 not supposed to be back without permission?

2 A. Through Mitzi, yes.

3 Q. Mitzi told you that?

4 A. I assume that's how I found out that, yes.

5 Q. And so did you have permission -- had you gotten
6 permission to come back?

7 A. No. Steve told me that I should be able to be there;
8 that he talked to the police or whoever came, attorneys or
9 whatever, when they got there if they showed up.

10 Q. So he said -- at that time, both you and Steve knew
11 that you weren't supposed to come back unless you got
12 permission first, right?

13 A. I was never ever supposed to come back anyway without
14 or with permission.

15 Q. Well, surely, if you got permission from the
16 facility, then you're allowed to come back?

17 A. Yeah, but I couldn't get it.

18 Q. Okay. But you knew you weren't supposed to come
19 back, right?

20 A. Yes.

21 Q. Steve knew that because you all talked about it?

22 A. Yes.

23 Q. And despite the fact that you both knew you weren't
24 supposed to be back, the two of you developed a plan to
25 allow you to come back?

- 1 A. Yes.
- 2 Q. And then you did come in the facility through the
3 back door?
- 4 A. Yes.
- 5 Q. Why the back door?
- 6 A. I don't know.
- 7 Q. Do you think it was so nobody would see you?
- 8 A. I assume, but I don't know.
- 9 Q. And was there any reason --
- 10 A. It's just closer to her room.
- 11 Q. The second time you came back, you came through the
12 front door?
- 13 A. Yes.
- 14 Q. Okay. And whenever you and Steve made this plan, he
15 told you not to worry about it because if the police
16 showed up or whatever, he would talk to them?
- 17 A. Yes.
- 18 Q. Were you nervous that the police would be called if
19 they knew you were there?
- 20 A. Yes.
- 21 Q. And after you stayed and visited, how did you leave?
- 22 A. Through the back door again.
- 23 Q. Back door. Was your mom's car there at the facility?
- 24 A. Yes.
- 25 Q. Do you remember what date this was?

1 A. No.

2 Q. Before she fell, obviously?

3 A. Just within the same week or a week before.

4 Q. Did you ever visit with Dot outside the facility?

5 A. No.

6 Q. Did you ever -- did Steve ever invite you to visit

7 with her outside the facility?

8 A. No.

9 Q. Was there ever any talk about taking Dot out to

10 dinner or meeting with her at his house or anything?

11 A. No.

12 Q. Whose idea was it to have this event where you would

13 sneak in the back door?

14 A. I wasn't really sneaking.

15 Q. Okay.

16 A. But Dot wanted to see me, so, yeah.

17 Q. How did you find that out?

18 A. Through Steve and me calling her. And the second one

19 wasn't a visit. She was in the hospital then.

20 Q. She wasn't there anymore?

21 A. No.

22 Q. Did you come with Steve to help clean some things out

23 of her room?

24 A. Not clean anything out. He gave me a picture.

25 Q. All right. Tell me about this second event when you

1 came. And you came through the front door this time?

2 A. Yes.

3 Q. Did you walk in with Steve?

4 A. Yes.

5 Q. Did he go in before you?

6 A. Yes.

7 Q. And where did you stay?

8 A. Before, no. We went in at the same time.

9 Q. Immediately before you went in together, did he go

10 into the facility to talk to them?

11 A. I'm not sure.

12 Q. Tell me what happened when you went in.

13 A. I remember Chuck and -- Chuck sitting in the kitchen,

14 Karen at the desk, and they were -- she was polite and

15 everything. She never told me to leave or anything. I

16 had to sign in, Steve signed in, my mom signed in, and we

17 went to the room, and I believe a pastor was there.

18 Q. How long were you there?

19 A. At least 45 minutes, I think.

20 Q. And what did y'all do during this 45 minutes?

21 A. We talked. He gave me a picture.

22 Q. Now, if I understand you correctly, Dot was not

23 there, right?

24 A. No.

25 Q. Am I right or wrong?

1 A. You're right.

2 Q. So y'all went into the room and just visited for
3 45 minutes or so?

4 A. We were talking in between him giving me the picture,
5 yes.

6 Q. What was the picture of?

7 A. One we took the first time we visited, one of the
8 pictures, yes.

9 Q. It was a photograph of you and Dot and some other
10 folks?

11 A. Yes.

12 Q. How would you describe your relationship with Mitzi?

13 A. Other than after Jack died, it was fine.

14 Q. You all got along well up until his passing?

15 A. Yeah.

16 Q. What changed then?

17 A. I think me not wanting to rewrite the incident
18 report.

19 Q. You think that changed her attitude towards you?

20 A. Yes. She didn't want anyone talking about it, so
21 when she -- she wanted us to keep it under the table, so
22 she knew that when the investigators came, that I would
23 say something. I think that's why she fired me.

24 Q. Did she say that to you?

25 A. No. But she told us not to talk to anyone about any

1 of it, not to Steve or anybody.

2 Q. Right. You understood that you couldn't talk about
3 these types of things -- people shouldn't be talking about
4 these types of things, didn't you?

5 A. Yes.

6 Q. Did she ever tell you to keep something under the
7 table?

8 A. No. She just told us not to talk about it.

9 Q. Okay. And, to the best that you can tell, up until
10 Jack's accidents, your relationship with Mitzi was fine?

11 A. Yes. The only thing was the miscarriage thing, the
12 one incident there.

13 Q. And then after Jack's accident, do you think Mitzi's
14 attitude towards you changed?

15 A. Yes.

16 Q. Did your attitude towards Mitzi change at all?

17 A. Maybe a little bit.

18 Q. And why is that?

19 A. Because she wanted me to rewrite something that
20 wasn't right.

21 Q. And how did your attitude towards her change, in what
22 way?

23 A. Well, I wasn't worried about anything like that. I
24 just didn't think the same of her as I did before.

25 Q. Now, have you ever talked -- you told me that after

1 you were terminated by Mitzi, shortly thereafter you
2 called Steve, and told him, right?

3 A. Yes.

4 Q. Have you ever talked to Steve about your termination
5 since that day?

6 A. No, not that I know of.

7 Q. Did you ever talk to Steve about the accident since
8 that day?

9 A. Other than me writing the things that I wrote on the
10 table here, no.

11 Q. You mean the Exhibit 2?

12 A. Yes.

13 Q. Was Steve here that day when you wrote that?

14 A. I don't think so.

15 Q. Who was in the room?

16 A. Rex, my mom, Rex and my mom.

17 Q. You, Rex and your mom?

18 A. Yes. I don't think Steve was there, but he could
19 have been.

20 MR. DOSSETT: We have to change the tape, so
21 we'll take a break.

22 THE VIDEOGRAPHER: Time is 3:19 p.m. We're
23 off the record.

24 (A brief recess was taken.)

25 THE VIDEOGRAPHER: Time is 3:28 p.m. We're

1 back on the record.

2 BY MR. DOSSETT:

3 Q. Ma'am, do you know who Crawford Construction Company

4 is?

5 A. Yes.

6 Q. Who do you know them to be?

7 A. The people that built the facility, I believe.

8 Q. Have you ever met any of those people?

9 A. Maybe so, possibly, yes.

10 Q. Did you ever talk to them?

11 A. I assume so, yes.

12 Q. Do you have any specific memory of what you may have

13 talked to them about?

14 A. Nothing specific, no.

15 Q. Do you remember ever talking to any of them about

16 Mr. Brigance's room, or anything to do with it?

17 A. No, I don't.

18 Q. Do you ever recall speaking with any of them about

19 doors in the facility, whether they be in Mr. Brigance's

20 room or someone else's room?

21 A. No.

22 Q. Would you know those folks if they walked in the room

23 today?

24 A. I doubt it.

25 Q. Do you know who WDM Architects is?

- 1 A. No.
- 2 Q. Have you talked -- do you know who Mr. Brewer, the
3 architect, John Brewer, do you know who he is?
- 4 A. No, I don't think so.
- 5 Q. Have you ever met him or talked to him?
- 6 A. Possibly, but I don't know for sure.
- 7 Q. You don't have any memory of that?
- 8 A. No.
- 9 Q. Do you have any -- have you ever overheard anything
10 that the architects may have said regarding anything in
11 Mr. Brigance's room?
- 12 A. No.
- 13 Q. Or any of the other doors in the facility?
- 14 A. No.
- 15 Q. Was there a time where -- that you recall receiving
16 any instructions from Steve about medication for his
17 father?
- 18 A. No.
- 19 Q. Do you ever remember being told by Steve that his
20 father had been prescribed an antidepressant, but nobody
21 should tell him about that, they should tell him it's some
22 other type of medicine?
- 23 A. Not him. I seen it on a paper.
- 24 Q. What paper was that?
- 25 A. The med book.

- 1 Q. And what did it say?
- 2 A. Mitzi wrote a thing down that said, "Do not tell Jack
3 that it's a depressant," or something like that. I don't
4 know. I just remember seeing the piece of paper.
- 5 Q. Do you know if that came per Steve or not?
- 6 A. I believe it was Mitzi's handwriting, but I'm not
7 sure.
- 8 Q. You don't know where the instructions came from,
9 originally?
- 10 A. No. I wasn't there.
- 11 Q. Okay. Steve never told you anything like that?
- 12 A. No.
- 13 Q. Did you ever, you, personally, ever witness any
14 problems with the Brigances' door before it fell on Jack?
- 15 A. Yes.
- 16 Q. And when had you seen a problem with the door?
- 17 A. Pretty much from the beginning you could tell. It
18 kept coming off the -- plastic piece kept coming off the
19 little slide, the metal slide.
- 20 Q. What plastic piece?
- 21 A. A little round circle that goes in the side to hold
22 it up.
- 23 Q. And you saw that come loose?
- 24 A. A few times, yes.
- 25 Q. Prior to the day that it fell?

1 A. No. Before, no.

2 Q. Before, yes, ma'am, before the day that it fell?

3 A. Yes.

4 Q. And what did you do when you saw that?

5 A. Went to the maintenance log and wrote it down.

6 Q. So you prepared maintenance logs when you noticed it?

7 A. Yes.

8 Q. And did Joe -- do you know who Joe Martin is?

9 A. Yes.

10 Q. And did Joe go and fix those?

11 A. Yes.

12 Q. And you remember that happening a couple of times?

13 A. A few times, yes.

14 Q. Was Mr. Brigance, did he feel comfortable letting you
15 know if he had a problem in his room?

16 A. Yes.

17 Q. And if he told you about something that was wrong in
18 his room, maintenance-wise, what would you do?

19 A. Write it down in a log.

20 Q. And was Joe pretty good about going by and fixing
21 things that were put in the maintenance log?

22 A. Yes.

23 Q. Did you ever notice the door in the Brigances' room
24 come off of the -- come down and come off the door --

25 A. No.

1 Q. -- prior to it falling on him?

2 A. No.

3 Q. You didn't believe that that door was a danger to

4 Mr. Brigance before it fell, did you?

5 A. Yes. Because the plastic piece would come down. It

6 wouldn't be all the way down, but it would be not sturdy.

7 Q. Did you think that it was unsafe?

8 A. Yes.

9 Q. After Joe fixed it, did you think it was working

10 better?

11 A. Not really because it was the same as it was before.

12 Q. So your testimony is that you always felt that

13 Mr. Brigance's door was unsafe?

14 A. Pretty much, yes.

15 Q. And did you let Steve Brigance know that?

16 A. No.

17 Q. You didn't tell him --

18 A. No.

19 Q. -- that there was a problem with his father's door?

20 A. No. He already knew.

21 Q. He knew what was going on with the door?

22 A. Yes.

23 Q. But did you ever have a discussion with him where you

24 said, "Steve, I'm worried about this door. I think it's

25 unsafe"?

1 A. No.

2 Q. Whenever it was repaired, did you feel better about
3 it; that it was safe again once it was fixed by Joe?

4 A. Not really.

5 Q. So you always thought it was unsafe?

6 A. After, yeah, because the same exact part kept coming
7 down.

8 Q. And did you ever -- what did you do about that?

9 A. Anytime it fell down or came apart, I wrote it down.

10 Q. In the log?

11 A. Yeah.

12 Q. But, I mean, I think your testimony is even after it
13 was fixed, you still thought it was unsafe?

14 A. Pretty much, yes.

15 Q. And so what did you do about that, the fact that you
16 continued to think that it was unsafe?

17 A. Nothing.

18 Q. Did you tell anybody?

19 A. Mitzi.

20 Q. You told Mitzi that you thought it was unsafe?

21 A. Everyone knew it was like that. Everyone knew it was
22 unsafe.

23 Q. Everyone knew the door was unsafe?

24 A. Yeah.

25 Q. And that's because one end was coming off of its

1 track, the plastic piece was?

2 A. Yes.

3 Q. And who is "everyone"?

4 A. Mitzi, Joe, any of the workers, the Brigances, Steve,
5 possibly Bob. I don't know.

6 Q. You don't know what Bob knew, do you?

7 A. I assume he knew, but I don't know for sure.

8 Q. You're just assuming?

9 A. About that door.

10 Q. You're just assuming, right?

11 A. Yeah.

12 Q. Were you aware of any problems with any other doors
13 in the facility you, personally, aware where you witnessed
14 them prior to what happened to Mr. Brigance?

15 A. No, but I seen doors down from when they fell.

16 Q. Let's make sure that we're specific about this. Did
17 you ever see any other door fall?

18 A. No.

19 Q. You saw other doors that were not up?

20 A. Yes.

21 Q. And you don't know if they were taken down or whether
22 they fell down because you didn't witness it, right?

23 A. No.

24 Q. Am I correct?

25 A. I didn't witness it, yes.

1 Q. So if a door was taken down -- if you saw a door
2 down, you, personally, don't know whether it fell down or
3 whether it was taken down on purpose?

4 A. Yes.

5 Q. Am I correct?

6 A. Yes.

7 Q. And other than seeing that some doors were down, you
8 never witnessed any other problems with doors, did you?

9 A. Yes.

10 Q. You did?

11 A. Yes.

12 Q. Prior to Mr. Brigance's fall?

13 A. Not them falling down, but parts of them coming off
14 and things, yes.

15 Q. And you, personally, witnessed it?

16 A. Yes.

17 Q. And how many times?

18 A. A couple.

19 Q. And did you go fill out maintenance logs when you
20 witnessed it?

21 A. Yes.

22 Q. And what was -- do you remember which rooms it was
23 in?

24 A. Ruth Robbins.

25 Q. Robbins?

1 A. Ruth Robbins.

2 Q. Ruth Robbins. Okay.

3 A. I think that's her name. Where you would slide the
4 door and either get stuck in the bathroom with the person
5 until you opened it, or a little guard on the bottom of
6 the door that it's a white piece that would just come off.

7 Q. Was that the sliding door that goes to the bathroom?

8 A. Yes.

9 Q. Okay. How about any of these bi-fold closet doors,
10 prior to Mr. Brigance's fall, did you notice any problems
11 with bi-fold closet doors that you witnessed?

12 A. No.

13 Q. Okay. Whenever the investigators called you on the
14 telephone, did you tell them about any problems that you
15 had witnessed with other doors?

16 A. No, I don't think so.

17 Q. Did you tell them that you had always thought that
18 Mr. Brigance's door was unsafe?

19 A. No.

20 Q. Has anybody told you why the door fell down?

21 A. What door, Jack's?

22 Q. Mr. Brigance's door.

23 A. No.

24 Q. Do you know why it fell down?

25 A. I only know what Jack told me.

1 Q. But do you know what caused it to fall, is what I'm
2 wondering?

3 A. No.

4 Q. Because Mr. Brigance, he only told you that he was
5 putting the shoes away when it fell?

6 A. Yes.

7 Q. Let me make sure I understand. Did he tell you why
8 it fell?

9 A. No. He just said he opened it, and it fell.

10 Q. Have you ever been charged with a crime?

11 A. No.

12 Q. Are you planning on coming to trial in this case?

13 A. Yes.

14 Q. Do you know when it is?

15 A. I think the day after Thanksgiving.

16 Q. You've been asked to be ready to come?

17 A. Yes.

18 Q. Is there any reason you know of right now why you
19 can't come?

20 A. No.

21 Q. How is your health, are you doing okay?

22 A. Yeah.

23 Q. We mentioned the fact that these two ladies from the
24 state called you on the telephone on February 26th of
25 2008. Do you remember talking about that?

1 A. Yes.

2 Q. Have you talked to anyone else from the state, other
3 than those two investigators?

4 A. No.

5 MR. DOSSETT: I think that's all the
6 questions I have. Pass the witness.

7 E X A M I N A T I O N

8 BY MR. MORRIS:

9 Q. Ms. Broughton, my name is Paul Morris. Did I say
10 that right, is it Broughton?

11 A. Yes.

12 Q. I represent WDM architects in this case who Mark
13 asked you a few questions about earlier. I won't make you
14 answer those again, but he specifically asked you, at
15 least my notes were, if you were aware of any other
16 problems in other rooms with the bi-fold closet doors that
17 occurred before Mr. Brigance had his accident, and you
18 said that you were not; is that right?

19 A. Yes.

20 Q. I want to go ahead and make sure in the couple of
21 months or so after the accident -- well, at any time after
22 Mr. Brigance's accident, are you aware of any other
23 problems with any bi-fold closet doors in the facility?

24 A. From hearsay or from me seeing?

25 Q. That you personally witnessed.

- 1 A. No.
- 2 Q. So the only other things that you would be aware of
3 are something someone else told you about?
- 4 A. On that, yes.
- 5 Q. Okay. And who would have told you about other
6 problems in other rooms?
- 7 A. Angela Ruckman, I think one fell down on her.
- 8 Q. Angela -- what's her last name?
- 9 A. Ruckman.
- 10 Q. Anyone else tell you anything about other door
11 issues? Let's start over. I'm sorry.
- 12 As I understand it, whether it be before or after
13 Mr. Brigance's accident, you have not personally witnessed
14 any problems with any other closet doors, bi-fold closet
15 doors, in any other resident rooms, correct?
- 16 A. Not me.
- 17 Q. Okay. Other than Angela Ruckman, has anyone else
18 told you about any other problems, whether they be before
19 or after?
- 20 A. Cheryl Williamson, but I don't know if it was her or
21 Lisa Fancher. One came down in the Leon Taylor room and
22 something happened. Carolyn or --
- 23 Q. Ms. Bianci, maybe?
- 24 A. Yeah, that's who it is.
- 25 Q. I want to be sure I'm clear. We've taken the

1 deposition of a young woman named Cheryl Williams. Is
2 that who you're talking about when you said "Williamson"?

3 A. Yes.

4 Q. Okay. And you think either Cheryl Williams or Lisa
5 Fancher told you about an incident involving a door in
6 Leo's room, is that what you said?

7 A. No, in another room. And then one came down in
8 Leon's room that I heard about.

9 Q. Okay. Leon's room.

10 A. Yes.

11 Q. And that's -- is the one that came down in Leon's
12 room what Cheryl or Lisa told you about?

13 A. I don't think so.

14 Q. Okay. Who do you think told you about Leon's room?

15 A. I know the sitter did.

16 Q. The sitter for Mr. Brigance -- for Mrs. Brigance?

17 A. No, the sitter for Leon Taylor.

18 Q. Okay. Let me try this again. I'm getting a list
19 here. The sitter for Leon Taylor who, do you know this
20 person's name?

21 A. No.

22 Q. You think that she -- is it a she?

23 A. Yes.

24 Q. You think she told you about a door having a problem,
25 a closet -- a bi-fold closet door having a problem in Leon

1 Taylor's room, right?

2 A. Yes.

3 Q. And what happened with that, do you know?

4 A. I don't know for sure.

5 Q. Okay. Then you think Cheryl Williams or Lisa Fancher
6 told you about another door problem; is that right?

7 A. Yeah, one of the two told me about it.

8 Q. And do you know whose room that was in?

9 A. No.

10 Q. Do you know what happened with that door?

11 A. No.

12 Q. Can't tell us anything about how it happened, what
13 particular problem occurred?

14 A. I believe they were cleaning, but I'm not sure.

15 Q. Okay. And then Angela Ruckman, you think, told you
16 about one?

17 A. She did.

18 Q. And whose room was that in?

19 A. It was Betty Alvin's room. Before they moved in, no
20 one lived there.

21 Q. So it was vacant at the time, but then Ms. Alvin
22 moved in?

23 A. Yes.

24 Q. I think we discussed Ms. Bianci's room. Is that the
25 one you think might have been Cheryl or Lisa, or is that a

1 totally different one?

2 A. Different.

3 Q. Who do you think told you about Ms. Bionchi?

4 A. I heard about it when I worked there.

5 Q. Just hearsay that you just heard about?

6 A. Yeah.

7 Q. Any other doors that you've heard about from someone,
8 closet, bi-fold closet door problems, that you've heard
9 about?

10 A. Not that I recall.

11 MR. MORRIS: I don't have any other
12 questions right now. Thank you.

13 MR. DOSSETT: I just want to make sure I got
14 the name right. Did you say Leon Taylor?

15 THE WITNESS: Yes.

16 MR. DOSSETT: Okay. Thank you.

17 THE VIDEOGRAPHER: The time is 3:44 p.m.
18 This will conclude the deposition.

19 (Discussion held off the record.)

20 THE VIDEOGRAPHER: Did you want to place
21 something on the record, Mr. Dossett?

22 MR. DOSSETT: Yes. I'm going to take
23 possession of the original exhibits and will
24 deliver them to the court reporter who is going
25 to prepare the transcript. They will go with the

1 original, and then we will forward that to
2 Mr. Brigance so that -- Mr. Chronister so that
3 the witness can read and sign.

4 (Proceedings concluded at 3:44 p.m.)

5 -o0o-

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

COURT REPORTER'S CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Beth A. Kaltenberger, Certified Court Reporter for the State of Arkansas, certify that I transcribed the preceding from a DVD recording provided to me by Kutak Rock in re 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. vs The Brookfield at Fianna Oaks, LLC, d/b/a The Brookfield at Fianna Oaks (parent corporation); Wilson, Darnell and Mann, P.A.; Crawford Construction Company; and Crawford Construction Company, Inc.; Robert "Bob" Brooks; and Mitzi Bailey; that said video recording has been reduced to transcription by me, and the foregoing pages numbered 1 through 120 constitute a true and correct transcript of the recorded proceedings, to the best of my ability.

WITNESS my hand and seal as such Court Reporter on this 15th day of November, 2010.

BETH A. KALTENBERGER, CCR, RPR, CRR
Supreme Court Certified Reporter No. 679