

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 FORT SMITH DISTRICT
3 CIVIL DIVISION

4 STEVEN A. BRIGANCE, as personal PLAINTIFF
5 representative of the Estate of
6 Maurice Brigance, Jr., Deceased;
7 and on Behalf of the Wrongful Death
8 Beneficiaries of Maurice Brigance, Jr.

9 VS CASE NO. CV-2009-651 (V)

10 THE BROOKFIELD AT FIANNA OAKS, LLC, DEFENDANTS
11 d/b/a THE BROOKFIELD AT FIANNA OAKS;
12 (Parent Corporation) WILSON, DARNELL
13 AND COMPANY; CRAWFORD CONSTRUCTION
14 COMPANY; and CRAWFORD CONSTRUCTION
15 COMPANY, INC.

16 VIDEO DEPOSITION OF SHIRLEY HAMILTON
17 TAKEN IN FORT SMITH, ARKANSAS
18 AUGUST 30, 2010, @ 9:40 A.M.

19 REBECCA L. YOUNG
20 CERTIFIED COURT REPORTER
21 410 WHITE TAIL LANE
22 GREENWOOD, AR 72936
23 (479) 597-0976
24
25

APPEARANCES

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On Behalf of the Plaintiff:

Mr. Rex Chronister
CHRONISTER, FIELDS & FLAKE, PLLC
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On Behalf of Defendant Brookfield:

Ms. Suzanne G. Clark
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On Behalf of Defendant Wilson, Darnell and Co.:

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On Behalf of Defendant Crawford Const.:

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WATTS, DONOVAN and TILLEY
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Little Rock, AR 72201

ALSO PRESENT:

Ben Freeney, Videographer

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1 God?

2 WITNESS: I do.

3 Thereupon, Shirley Hamilton, having been called for
4 examination by counsel for Plaintiff, and having been first
5 duly sworn, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CHRONISTER:

8 Q. Shirley, would you state your name for us, please?

9 A. Shirley Hamilton.

10 Q. Shirley, my name is Rex Chronister. We've met - -

11 A. Right.

12 Q. - - before, I think, out at the facility one time when
13 you were with Steve's mother.

14 A. Right.

15 Q. We're here today to take your deposition and basically go
16 over some of the issues relevant to this case.

17 A. Uh-huh.

18 Q. So have you ever given a deposition before?

19 A. No, I haven't.

20 Q. I know we talked about it a few minutes ago, but I'm
21 going to ask you some questions. If I ask you a stupid
22 question, and I told you in my office, I've got a, just a
23 natural ability to ask one every now and again, stop me; tell
24 me you don't understand it.

25 A. Okay.

1 Q. Because I want to just cover the issues relevant to this
2 case and I want to be sure it's clear and your answers are
3 clear.

4 A. Okay.

5 Q. Okay. Also, for the court reporter's benefit, try to not
6 answer with uh-huh's or uh-uh's.

7 A. Okay.

8 Q. I know with the video it's easier, but head nods are also
9 difficult for the court reporter.

10 A. Right.

11 Q. And let me ask a question, and when I finish it, then you
12 answer it so we don't talk over each other. Okay?

13 A. Okay.

14 Q. All right. Where do you currently live?

15 A. Actually, I have a home out at Sugar Loaf Lake, but I've
16 decided to go to Northeast Arkansas where I was born and
17 raised and spend a year. So I've been gone seven months.

18 Q. Just get back?

19 A. Last Saturday.

20 Q. All right. Are you employed at this point in time?

21 A. Yes.

22 Q. And where do you work?

23 A. I work for Home - - Home and Stead Senior Care in
24 Jonesboro.

25 Q. What does that job involve you doing?

1 A. Taking care of elderly people that require a certain
2 amount of care.

3 Q. How long have you done that type work?

4 A. Actually, all my work. I quit school when I was
5 thirteen; my mother died. There was a three-day-old baby; and
6 uh, four kids younger than me and I helped my dad raise them
7 and I've just always took care of people.

8 Q. And how is it that you came to meet Steve Brigance?

9 A. I had worked for ElDirect Senior Care here in Leechwood
10 (phonetic). Here in Leechwood (phonetic). I'm sorry. Fort
11 Smith. And uh, when we had the ice storm, uh, last January
12 was a year ago, Ellen, the lady out at ElDirect, she called me
13 at home and asked me if I could get to Sparks Hospital. She
14 had a client there that they needed help with and she couldn't
15 get anyone in Fort Smith to drive to the hospital. They said
16 the roads were too bad. So, uh, she said I know, you know,
17 that you have driven; So I went to the hospital and Steve was
18 with his father and he asked me, you know, how long I could
19 stay. I wasn't even working for them at the time; she just
20 called me because I had worked for her. And uh, he told he
21 had been with his daddy for twenty hours and he was just
22 exhausted and he asked me how long I could stay and I told him
23 til he got back. However long it took. And uh, you know, I
24 started staying with him until he expired.

25 Q. And so you, you know the approximate date that you first

1 met Steve and Jack Brigance?

2 A. I'm thinking, for some reason, it was the middle of
3 January. 15th, 16th.

4 Q. Where was he within the - - when I say he, I mean, and I
5 refer to him as Jack, but Maurice is his actual name, but he
6 goes by Jack.

7 A. Uh-huh.

8 Q. Where was Jack in the kind of scheme of treatment? Was
9 he still in the hospital; was he rehab?

10 A. He was still in hospice.

11 Q. So he had already gone to hospice?

12 A. He was on the hospice wing, yes.

13 Q. And did you continue to sit with him from, I guess the
14 middle of January to the time of this death?

15 A. Right. Yes, I did.

16 Q. Tell me a little about - - and I'm going to break this
17 down both as to physical and mental with Jack at the time you
18 first got there in early January. And I think if we look at
19 the records, that's probably the first day he was on the
20 hospice floor. I think he may have just gotten moved to
21 hospice that day. In any event, what was his physical
22 condition?

23 A. He was in an extreme amount of pain. It hurt him even to
24 talk and when he tried to talk he would - - he would actually,
25 his voice would - - he just couldn't talk. You know, it

1 wouldn't - - he would make the moves to talk, but no sound
2 would come.

3 Q. And do you know what pain medications he was on at that
4 time?

5 A. I have no idea because he was on the hospice floor in the
6 hospital and they took care of his medications. You know, I
7 did not touch any medication at all.

8 Q. But whatever he was on, was it controlling his pain as
9 best you could tell?

10 A. It was my understanding when I first started that he was
11 not taking any medication at all.

12 Q. Okay. Do you know who you got that from or heard that
13 from?

14 A. Actually, from his son.

15 Q. From Steve?

16 A. Right. And, you know, I mean they would ask him if he
17 wanted pain medication, and he declined.

18 Q. So would the pain manifest itself all the time with him
19 or was it - -

20 A. The pain was with him all the time. But you know, some
21 people have a high tolerance for pain and some people don't
22 have.

23 Q. With his physical condition, could he move on his own;
24 did they have to move him or turn him?

25 A. They had - - they had to. They had to move him. He

1 might move his forearm, you know, to touch his face; but as
2 far as moving his body, he could not because it was extremely
3 painful and the draw sheets were used to turn him and they
4 would, you know, raise him up on one side and tuck pillows
5 under him and leave him for two hours and then they'd take the
6 pillows out and leave him on his back; and then in two hours
7 they'd turn him the other way and tuck pillows under him.

8 Q. Was that painful for him?

9 A. Oh yes. Oh yeah. Yeah. Every time you moved him he
10 moaned. It hurt him so bad it was unreal.

11 Q. What about his - - was he incontinent at that time?

12 A. I believe. I'm not - - I believe he had a catheter, but
13 he could not get out of bed. You know, there was Chux under
14 him. Whatever took place, BM's or whatever, it was taken care
15 of. He was in the bed. Period. He did not get out of the
16 bed. They even brought portable equipment into his room if
17 they had to do an x-ray or something like that. But, you
18 know, when you go into hospice, a lot of time they cease
19 aggressive treatment. When you reach hospice, you know you're
20 dying. You know, I mean that's - - they're there to keep you
21 comfortable until the end. That's what hospice is about.

22 Q. And in Jack's case, let's kind of transition that to the
23 mental aspects. Was he awake and alert?

24 A. Yes. Yes.

25 Q. And from the time you were there, let's say from the

1 middle of January until his death, I think January 31st, was -
2 - did he remain alert and conscious virtually that entire
3 time?

4 A. I would say up until they started, uh, the last couple of
5 days when the pain got so bad that they gave him morphine to,
6 you know, to help him to relax. I mean he - - he didn't - -
7 he didn't sleep. You know, they didn't give him a sleeping
8 pill and he'd go to sleep and sleep for four to five hours.
9 He didn't do that. You know, he, every time he moved or
10 breathed, it hurt him.

11 Q. But he refused the medication?

12 A. Yes. And you know, that might have been because, maybe
13 he wanted to be alert and not miss anything; because, you
14 know, when you're in hospice, you know that your time is
15 coming and you don't want - - you don't want to miss anything.
16 They just tend to want to, uh, see everything. You know, feel
17 everything. Hold it to them.

18 Q. And have you dealt with other family members or patients
19 that you've cared for through the hospice or dying process?

20 A. Oh, yes. Oh, yes. I have, uh, my oldest sister, she
21 started with Alzheimer's in '86 and she died in 2006 and I had
22 to take care of her. My father moved in with me in '89 and he
23 had liver and lung cancer and he died in '98 and he died in my
24 home.

25 Q. How old was he at that time?

1 A. He was ninety-one when he died. My sister was seventy-
2 six. And you know, the only time that she got a skin
3 breakdown was when she went to the hospital. Her skin was
4 just like a baby's skin because we turned her and we massaged
5 her and put lotion on her and, you know, we couldn't even do
6 that to Mr. Jack's back because it hurt him too bad. You
7 know, when you turn them, you put lotion on them and massage
8 them to bring the blood to that area so they don't get a
9 decubitus; you know, and Mr. Jack couldn't stand that.

10 Q. As far as his mental state, was he - - could you
11 communicate with him? Would Jack try to talk with you?

12 A. If you asked him a question, he would respond, but he
13 would run out of voice. You know, he could be talking and
14 never talked real loud to me. Of course, you know, he was
15 very sick. But he would start to talk and then his voice
16 would just get lower and lower and lower and he, you know, he
17 would be making all the efforts but there would be no sound
18 coming out; and he would get awfully frustrated, you know, and
19 he just - - he'd just give up.

20 Q. What do you mean by he would get frustrated?

21 A. When he would - - when he would try to talk and no sound
22 would come out.

23 Q. Did he communicate with family? By example, did family
24 members call or come by to see him?

25 A. Oh, yeah. His son, Steve and his wife, Peggy; and his

1 grandson Chris who was at Fayetteville at the University, you
2 know, they would come in and out of the hospital to see him.
3 And of course, they knew how badly it hurt him to talk and
4 they always, you know, went up to the bed and talked to him
5 and he'd, you know, he'd smile at him and say a few words, but
6 they didn't tax him to communicate. Uh, his daughter from
7 down in Texas, she would call and, uh, you know she'd want to
8 talk to him, but she couldn't see him; she couldn't see the
9 shape he was in, you know, and sometimes I would hold the
10 phone up to his ear and, uh, he'd say hi, you know, and yes
11 and no or uh-huh and huh-uh, you know, and then he would take
12 his hand and wave the phone away and I would tell her, Lena,
13 Mr. Jack's through talking. He can't talk anymore.

14 Q. But throughout that entire period of time he was alert
15 and oriented - -

16 A. Yes.

17 Q. - - and well aware of what was going on?

18 A. Yes. Yes. He was. But he was in a tremendous amount of
19 pain. Tremendous amount.

20 Q. How often would you sit with him? How many - - kind of
21 take me through the schedule.

22 A. Do you know what, it was kindly tough. Uh, mostly when I
23 came they couldn't, uh, ElDirect was taking care of him and
24 they couldn't get anyone to go to the hospital because of the
25 ice storm, and the weather was horrendous during that period;

1 and uh, mostly just Steve, his son, and I sat. Steve would
2 stay with him while I was gone; Peggy, Steve's wife, she
3 would, you know, leave work at 3:00 maybe and she'd come to
4 the hospital and I would go home; and then Steve would come
5 and stay until 7:00 or 8:00 and then I would come back and I
6 would spend the night, you know, until one of them came the
7 next day.

8 Q. So were you with him virtually every night?

9 A. Basically, yes. Yeah.

10 Q. And that was in the last, from the middle of January
11 until his death?

12 A. Uh-huh.

13 Q. Uh-huh is yes.

14 A. I'm sorry.

15 Q. That's your first one, by the way.

16 A. I'm sorry.

17 Q. As the time progressed, did he stay - - I think you said
18 a minute ago toward the very end, the last twenty-four to
19 forty-eight, but other than that, did he stay - - was he
20 mentally alert throughout the time?

21 A. He definitely knew what was going on, yes. And uh, you
22 know, when you walked up and asked him a question, he would -
23 - he would give you an answer. You would have to get really
24 close to his mouth to hear him and then sometimes you couldn't
25 understand it because he simply couldn't talk correct. It

1 just - - nothing would come out. He might start out talking,
2 but he might not get two or three words out until it would
3 just - - just like you have laryngitis. He would be making
4 all the motions, but no sound.

5 Q. Did you - - I know you were there in the evenings, did
6 you ever meet Dorothy Brigance during the time Jack was alive?

7 A. Yes.

8 Q. And did she come visit him at the hospital?

9 A. She came to the hospital to visit him. Her son and
10 daughter-in-law went and picked her up and brought her up
11 there; and when she walked up to the side of the bed, it was
12 absolutely just heartbreaking because she cried and, you know,
13 she'd reach out and rub his arm and he'd take his hand and pat
14 her, you know, and try to reassure her, you know, that uh, it
15 was all right; it was all right. And of course, all she could
16 do was just be stand there and cry. And uh, whenever they
17 left she was just looking over her shoulder, you know, not
18 wanting to leave, but having to go. It was just devastating.

19 Q. Toward the end, I guess you've seen death before?

20 A. Yes, I have.

21 Q. Take me through the end for Jack.

22 A. Well, he - - he was - - he was taken - - they were giving
23 him morphine and, uh, he, uh, the night - - the night that he
24 died, you know, he had become agitated. He would get
25 agitated. Uh, like he was physically uncomfortable. You

1 know, just, you know, fighting the cover; fighting the, you
2 know, his gown, you know, pulling at it; tugging; uh, the
3 night that - - the night that he expired, I called one of the
4 nurses in and asked, about midnight I guess, to call Steve
5 and, uh, she said she didn't think she needed to; she needed
6 to wait. And uh, I told her, I said okay. Well, she checked
7 his vitals and, you know, then I called her again and - - and
8 uh, she didn't - - didn't want to call him. You know, it was
9 2:00 in the morning and, uh, she left the room and I just
10 thought, well, you know, this is Steve's daddy and he needs to
11 know. He needs to be at the hospital. So I just called him.

12 Q. And had Steve been up there earlier that day and spent
13 the day?

14 A. Oh, he had come by there that night, you know, on the way
15 home. Steve would go to the office at the awfulest hours.
16 You know, he might go to the office at 4:00 in the morning and
17 work until 9:00 and then come to the hospital and let me go
18 home. And then if Peggy come in at 3:00, he would go back to
19 the office and work until 8:00 when I got there, or 9:00,
20 whatever time I came in. We weren't - - we weren't locked
21 into hours. We had to work the hours that we needed to work
22 in order for Steve to continue with his business and Peggy is
23 a nurse practitioner, she's got - - you know, she had clients
24 she had to see. So between the three of us, we just kindly
25 rotated, you know. Each day it was a brand new ballgame. You

1 never knew what hours you would need to be there and we just -
2 - just did it.

3 Q. Well, at the end, what were you seeing in Jack that even
4 though the nurse said I don't think we need to do this?

5 A. Well, you know, when you breathe, you breathe deeply.
6 Down in - - you know, down into your tummy. And I have seen -
7 - I watched my husband die; my sister die; I've watched two
8 sisters die; and my dad. I've seen people die. And when they
9 breathe, you know, they breathe down here, and then as their
10 body relaxes, they - - it gets shallower and then more shallow
11 and more shallow. They simply don't have the strength to pull
12 that air down into their tummy like - - like you and I do.
13 And then when they die, it's just, and that's it. And I could
14 see that Jack - - Jack had difficulty breathing, but he wasn't
15 breathing; he was. And so I called Steve; and he was - - I
16 don't know if you've ever heard of the death rattle, but I
17 think that's the gurgling of maybe the fluid buildup in the
18 lungs. I don't know what it is, but whenever they start
19 breathing like that, they're dying. It's just that simple.
20 They're dying. And I called Steve and like in fifteen minutes
21 he and Peggy were at the hospital; and uh, you know, when he
22 come in, he immediately saw what I was talking about, you
23 know. And uh, I went out and got me a cup of coffee and sat
24 down outside in the corridor and, uh, I don't know, maybe an
25 hour, hour and fifteen, twenty minutes later, I went in and

1 Steve told me, he said, Shirley, you might as well just, you
2 know, go on home because I'm not leaving daddy. I said okay.
3 So I left the hospital; and he died a little after five or
4 around 5:00 that morning.

5 Q. After Jack's death, was that the end of your relationship
6 with the Brigance family or did you do more - - do more?

7 A. Actually, when, uh, Steve took his father to Mobile for
8 interment, and uh, he called me and asked me if I could stay
9 with his momma while he was gone. That he thought that, uh,
10 if I would come and stay with her from 7:00 in the morning and
11 help her, you know, to breakfast and help her get to the
12 dining room for lunch and for dinner, and I - - I ate three
13 meals a day with her because she did not like to eat alone,
14 and she still sat at the table that she and Mr. Jack had first
15 sat at when they came to that facility. She, uh, she just
16 wouldn't move. You know, if she left it, she'd leave him. It
17 was just, she didn't want to. But uh, after she had her night
18 medication and the aide came in to put her to bed; help her
19 change her clothes; sometimes I would help her into her night
20 clothes and she'd remove her makeup; and uh, when she was
21 ready to go to bed or the aide was there to put her to bed,
22 then I would leave. And then be back the next morning. And
23 that's how I started to stay with her. And uh, she didn't
24 want me to go home. She wasn't used to being alone, Rex. I
25 mean, Mr. Jack had walked her back and forth to the dining

1 room, you know; and they had exercised together and, you know,
2 they watched television. She got to where she wouldn't watch
3 TV. Uh, Steve would tell me, now Shirley, be sure to - - to
4 tune in Lawrence Welk so mother can watch; and I'd say, Ms.
5 Dot, do you want to watch Lawrence Welk, and she'd say no, I
6 can't watch that. I can't watch that because used to Jack
7 would - - Jack would get me out of my chair and we would
8 dance. He'd dance her around in the apartment and she finally
9 got to where she wouldn't watch TV at all. She would watch
10 CNN, watch the news in the morning, and watch the weather in
11 the afternoon, just in case we had a tornado and we had to go
12 to the safe room. But that's all the TV she'd watch.

13 Q. Do you know how long she and Jack were married?

14 A. They had been married sixty-eight years in October before
15 he died.

16 Q. Did she tell you that?

17 A. Oh, yeah. Oh, yeah.

18 Q. Did she tell you how they met?

19 A. Oh, yeah. Oh, yeah. Yeah. Her older brother brought
20 him home from college with him when she was sixteen; and she
21 set an alarm clock and put it in the waste basket in the guest
22 room and he found it. Four years later they were married.
23 Her father said her and, uh, Jack was like a cloud coming over
24 the mountain. He seen it coming.

25 Q. When, uh, during the time you were with her, what changes

1 did you see in her as you sat with her? How long did you stay
2 with her?

3 A. I stayed with her from around the 1st of February til the
4 1st of August.

5 Q. About six months?

6 A. Uh-huh. Uh, she didn't want to leave the apartment
7 unless she had to. We looked at a smaller apartment, but she
8 refused to leave the apartment. Uh, I don't know. That was
9 her and Jack's home when Steve brought them up here to take
10 care of them. I believe they were the first residents in that
11 facility. I'm not sure, but they were one of the first. I
12 will say that. And uh, they had, uh, Steve had moved them up
13 here in June and then they had their sixty-eighth anniversary
14 in October; and then he was injured and died the last of
15 January.

16 Q. Did she tell you anything about the accident or what she
17 recalled of the accident or her feelings about the accident?

18 A. She was - - she was angry. She was mad.

19 Q. Explain that to me.

20 A. She was mad that, uh, that a door could fall. She was
21 mad that the door was, what did it way ninety-something
22 pounds, was even in a facility for retired people. You know,
23 the bathroom door, it was on a sliding deal, and I could
24 barely move it. You know, I don't - - I didn't understand why
25 not a hollow-core inside door for God's sake. What do they

1 weigh? Fifteen pounds. I mean, you know, she was just angry;
2 and she never got over it.

3 Q. Did she direct her anger towards any one person or
4 circumstance?

5 A. She was extremely agitated at, uh, at Mitzi and she was
6 agitated at Brooks, the gentleman that owned the facility. I
7 think at the indifference. I really believe the indifference.
8 If she said to me once, she must have told me a hundred times,
9 Mitzi never one time came to me and said Ms. Dot, I'm so sorry
10 about Mr. Jack. Said she never one time said I'm sorry about
11 what happened.

12 Q. During those six months you were with her, kind of go
13 through her - - did her condition stay the same; did it begin
14 to deteriorate? What did you see in her?

15 A. She was so depressed that when she got up in the morning
16 she went to the dining room to eat breakfast and then back to
17 her room; and uh, sometimes, normally around 9:30, we would go
18 to the activities room for thirty minutes of exercise. She
19 did her exercise five days a week. Never missed it. Back to
20 her room. To the dining room for lunch; back to her room. On
21 Wednesday she went to the beauty shop in the facility to have
22 her hair done. And uh, after I started staying with her, a
23 lot of times I would shampoo and set her hair again on Friday
24 or Saturday. Or sometimes on Monday if she had a doctor's
25 appointment or something, I would do her hair because, you

1 know, I mean they lay on their heads on their recliners and
2 the back of her hair would be not very good looking, you know,
3 so I would just shampoo and reset her hair. And uh, that was
4 it. She never left the apartment unless there was a doctor's
5 appointment, a hair appointment, or lunch or dinner involved.

6 Q. And from talking to Steve or other people, was that
7 abnormal the way it was before Jack?

8 A. I think it was. Of course, you know, I was not around in
9 the facility, but I know everybody that worked there talked
10 about him dancing her around. You know, they would have
11 people come in and play music or, uh, have movies. But Mr.
12 Jack always danced with her. You know, she told me that he
13 would - - he would dance her around in the apartment in the
14 living area. He was quite a dancer and they always danced.

15 Q. How is it that - - in August what happened that you
16 ceased caring for her?

17 A. I have some health issues myself and I had worked nonstop
18 for six months, but my best friend of fifty years lives in
19 Alaska and she had breast cancer; and she had, uh, surgery in
20 October, uh, of '90 - - of '08. And uh, I wanted to go see
21 her because if she was going to die from breast cancer, I
22 wanted - - I wanted to go visit with her while she was alive.
23 And uh, I had my daughter book me a flight and I flew to
24 Alaska for two weeks; and we went deep sea fishing; caught
25 some halibut; got a picture of a 179-pounder that was bigger

1 than I am. It was an awesome trip. And uh, then when I came
2 back, I'm notorious. I work; and when I don't work, I travel.
3 So I spent about three or four months on the road.

4 Q. And what arrangements were made, to the best of your
5 knowledge, for someone to continue to sit with, uh, - -

6 A. My daughter had been, uh, you know, she had come by Ms.
7 Dot's to see me. Ms. Brigance. Several times. And uh, she
8 just loves old people, you know. I mean she just loved them
9 to death. And of course, I was always talking about Ms. Dot,
10 the southern belle. I mean she did her makeup when she got up
11 and we went to breakfast and we came back and she went in her
12 dressing room and she touched up her makeup. Before we went
13 to lunch, she did her makeup; when she came back, she did her
14 makeup. I said one time, I said Ms. Dot, you are a southern
15 belle. She said you are so right. It was Dorothy Belle
16 Brigance. But she was a - - she was a Birmingham debutante
17 and she never gave it up. I mean she strictly paid a
18 tremendous amount of attention to her appearance. It just,
19 you know, it was just kindly amazing. And I had told my
20 daughter about it and, uh, you know, she come by to meet Ms.
21 Dot. And then ever chance she got, she stopped by to see Ms.
22 Dot. And uh, I had asked Steve, you know, if Debbie could
23 start staying with his mother and he said yeah.

24 Q. What care did Dorothy need when you were there? What
25 care did the facility provide for her?

1 A. Well, supposedly they were supposed to check on her them
2 every two hours. Uh, they were supposed to, you know, help
3 them if they needed to go to the bathroom. Uh, assist them
4 walking down to the dining area; do their laundry; you know,
5 just stuff. Basically, this person had to be able to feed
6 themself; take care of their own toiletry business; but you
7 know, when I started staying with her, you know, they just - -
8 they quit coming into her room to even check on her. In fact,
9 uh, I did all of her personal wearing clothes myself. I
10 washed them. They didn't - - they didn't do them anymore.
11 Uh, I didn't particularly care for them coming out of the
12 dryer like they were baked and put in a basket and wrinkles
13 set in and my client wear it when I'm walking down the hall
14 with her. I wouldn't have it. I took care of her laundry. I
15 ironed her clothes and she looked like that southern belle.

16 Q. As far as coming in and caring for her, did they stop
17 that?

18 A. Basically.

19 Q. Do you know why?

20 A. I assume because I was there that, uh, they didn't feel
21 like they needed to.

22 Q. Was that in your job description or still in theirs?

23 A. Well, uh, you know, I didn't know what arrangements had
24 been made when they moved into the facility, but I was
25 strictly there for Ms. Dot. I was not there to clean her

1 apartment. They were supposed to clean her apartment. I was
2 not there to change her bed. I was there to keep her company
3 because that's what Mr. Jack had done for sixty-eight years.

4 Q. One last, just a question. You told me about seeing
5 death, family members being affected. How did Steve react to
6 his father's death?

7 A. He was devastated. But you know what was worse, Rex?
8 Was that he knew for three weeks his daddy was dying. That's
9 the bad part. You know, if the door had fallen on Mr.
10 Brigance and killed him and he died en route to the hospital,
11 that, you know, it was just an accident and his death would
12 have resulted. But you know, this was an accident and that
13 man suffered for more than three weeks. You know, even when
14 he was on the hospice wing, you know, when you'd talk to him
15 and - - and look at him and, you know, he just - - he never
16 knew when he was gonna die, but he knew. He knew what hospice
17 was. He knew it was inevitable he was going to die and he
18 just, uh, had a lost, can't help it look in his eye. You
19 know, I mean, he knew he was gonna die; he just didn't know
20 when. And Steve watched that. Then he'd go home and watch
21 his mother grieve for her husband of sixty-eight years that
22 was no longer there to help her do the things that he did for
23 her. And he did a lot for her. You know, up to and including
24 telling her, you know, Dorothy it's time for us to get up and
25 go to lunch and she had, uh, she needed someone to hold her

1 arm, you know. That's what he - - she might not have needed
2 it physically, but she needed it mentally because he had done
3 it for sixty-eight years. You know, she just - - she was lost
4 without him. Just lost without him. And he was lost without
5 her. You know, he was - - he was sick; he was ill and he was
6 in hospital. He was on hospice, and she was not physically
7 able to come to that hospital and stay with him. So in his -
8 - in his dying days, he couldn't even have the comfort of
9 having his wife of sixty-eight years hold his hand. Now
10 that's bad. Nothing you can do about it. If you could have,
11 we would have. You know, it just - - he was just dying and
12 there was nothing could be done about it.

13 Q. I don't think I have anything further.

14 MR. MORRIS: Let's take a break.

15 MR. CHRONISTER: Let's take just a second.

16 VIDEOGRAPHER: The time is now 10:18 a.m.

17 We are off the record.

18 OFF THE RECORD AT 10:18 A.M.

19 RECORD CONTINUED AT 10:25 A.M.

20 VIDEOGRAPHER: The time is now 10:25 a.m.

21 and we're back on the record.

22 DIRECT EXAMINATION

23 BY MR. CHRONISTER:

24 Q. I just have one question. There was a ring.

25 A. Yeah.

1 Q. And I had it in my notes to ask you about it and I
2 forgot, so.

3 A. I had forgotten about it momentarily.

4 Q. Tell me about the ring and what you know of this ring.

5 A. Uh, this ring Ms. - - Ms. Dot had made for Jack. Uh,
6 they did a pilgrimage to the Holy Land back in '82. 1982.
7 And she had this ring made for Jack. It was gold and had
8 diamonds in it; and he wore that ring always; and after he
9 died, she put it on a gold chain and carried it on her neck
10 and she'd - - she'd sit and hold that ring, you know, slip it
11 on her fingers. She was just always - - that was her - - that
12 was her contact to Jack.

13 Q. And not only coping with, uh, Jack's death, what was her
14 - - did she have concern for Steve?

15 A. Steve was having some issues. She didn't know what
16 because Steve did not tell her, uh, that he was going a, uh,
17 doctor. But he - - he, uh, he lost quite a bit of weight, you
18 know, during this period; and she was really worried about
19 him. Uh, she didn't need, you know, to know what the issues
20 were because she didn't need nothing else to worry about, but
21 uh, he had lost quite a bit of weight.

22 Q. And she could tell that?

23 A. Yes. Yes. Oh, anybody could tell it that knew him. You
24 know, I mean I could tell he'd lost weight. But, uh, she
25 worried about him too.

1 Q. I don't have anything further.

2 CROSS EXAMINATION

3 BY MR. MORRIS:

4 Q. Ms. Hamilton, my name is Paul Morris. I represent W.D.
5 M. Architects in this case. We met prior to your deposition.
6 Is that right? Just here in the, uh, - -

7 A. Uh-huh. Right.

8 Q. Here in the conference room?

9 A. Right.

10 Q. That was a very poor question to start out with. Did you
11 reel in this 179-pound halibut in yourself?

12 A. No, but it was caught on the boat the night before, but I
13 got my picture made with it.

14 Q. I understood you earlier had to drop out of school to
15 take care of your family at a young age?

16 A. Uh-huh.

17 Q. Did you ever go back and finish any of your schooling?

18 A. Actually, when I went to northeast Arkansas I went to
19 Northeast College and enrolled to get my GED.

20 Q. Congratulations. This is just recently, you mean?

21 A. Uh-huh. Yes.

22 Q. Prior to doing that, any other training that you
23 received?

24 A. No. Uh-uh.

25 Q. I think I understood that your first contact with the

1 Brigance family was after the accident happened. Is that
2 right?

3 A. Yes.

4 Q. So you never were in the Brigance room at the facility
5 prior to the accident?

6 A. No.

7 Q. The - - you mentioned a 90-pound closet door earlier.

8 A. Uh-huh.

9 Q. Did you weigh the door?

10 A. No, I didn't; but I'll tell you what, I closed the
11 bathroom door and it took everything I had to move it. It was
12 - - I couldn't believe it. I couldn't believe that a door
13 that heavy could be put in a facility for someone - - an
14 assisted living facility. It was so heavy. Now, my first
15 husband helped remodel and build homes; and I am aware of a
16 solid wood door and a hollow core door. Now, you know, maybe
17 someone that don't know the difference, but I know the
18 difference. And I knew when I got hold of that one door, I
19 thought - - it was just - - I couldn't believe how heavy it
20 was.

21 Q. How did you find out it weighed ninety pounds?

22 A. That was just a guesstimate.

23 Q. No one's ever told you how much it weighed?

24 A. No.

25 Q. It seemed like you had something else to say. I don't

1 want to cut you off.

2 A. I was gonna say, I have picked up grandchildren; I have
3 picked my children up; I was raised on a farm; and I have
4 thrown 100-pound bags of seed on my shoulder and carried them
5 halfway through a field to fill up a planting; I think that I
6 am within reasonable limits on the weight guess on the door.
7 I didn't take it off of the track, but I've moved enough doors
8 on tracks to know the difference. Okay?

9 Q. The hollow core that you had mentioned, also that you
10 thought it should have been a hollow core door. Maybe you
11 already told me just previously, but did you ever look at the
12 door or examine it after it was off to determine whether it
13 was solid wood or hollow core?

14 A. No sir. The door was not in the apartment.

15 Q. So you've never seen the door that came off?

16 A. No. No. I've only seen the doors that remained. There
17 was one sliding door in the apartment and then the doors to
18 the bedroom, you know, and they were heavy doors, but they
19 were, uh, on three hinges and they worked beautifully.

20 Q. Other than having trouble - - I won't put words in your
21 mouth, but other than having trouble moving it because of the
22 weight that you told me about, was there any other problems
23 with the sliding doors that you had?

24 A. Well, I'll tell you how we dealt with the - - the
25 bathroom door was the sliding door left in the apartment. We

1 finally put notes on all the doors in the apartment to leave
2 them open. You know, because Ms. Dot could not, could not
3 open that bathroom door. She just simply could not do it. So
4 we just - - I perceived it to be a pocket door, only it was
5 mounted on the outside of the frame, you know, instead of in
6 the center where it would slide back into the wall; but the
7 area by the bathroom door was about probably a four or five
8 foot span, and that door was a, you know, at least a thirty-
9 six, if not a forty-two. So we just slid it back, you know on
10 that wall and just left it open.

11 Q. Other than the weight issues, though, were there any
12 problems with the doors? Any problem with them coming off the
13 hinges; any problems with whatever nature other than the fact
14 that you perceived them to be too heavy?

15 A. In that - - in that apartment?

16 Q. Yes ma'am.

17 A. No. I had been told that other doors in the facility had
18 come off. I do not know that; did not see it. But I was told
19 that they had.

20 Q. Okay. We'll come back to that, but I want to finish with
21 Ms. Brigance's apartment first.

22 A. Okay. Okay.

23 Q. Other than the weight issues, any other problems with the
24 doors that you're aware of?

25 A. The one thing that I am aware of, and I don't know what

1 it's got to do with it, but we had gone to lunch and Steve
2 came by and he said Shirley, when did they take the track off.
3 And I said they haven't come to take the track off. He said
4 look at it. And I said, oh my god, when did they do that.
5 The original track that I saw on the closet where the door
6 fell, I thought it was a white curtain rod up there for a
7 track. The one that was there when Steve called my attention
8 to it, and it had been maybe a week or so, the one that was
9 there then was a real heavy metal track like that was on the
10 other one. But it was not the track that was there when I
11 first came.

12 Q. Okay. Anything else?

13 A. Uh, - -

14 Q. About the Brigance apartment?

15 A. I looked at the track and I'm just really curious about a
16 lot of things, and there was only two screws holding those
17 tracks up. And there were slots for four and I wondered why
18 they didn't have screws in all of them. I'm not a builder and
19 I'm not an inspector, but it just seemed to me, knowing how
20 heavy the bathroom door was, I wondered why they didn't have
21 screws in all of them.

22 Q. Did you ever see the tracks separate from the wall, from
23 the ceiling where it was mounted?

24 A. No. It was - - the white one was there when I first
25 started going. The door - - I did see the door. It was down

1 at the end of the hall when we went to the dining room. The
2 maintenance department was there; and when the maintenance man
3 was in on Wednesday, the door was left open and the door was
4 standing out in the corner. I was told that was the door. I
5 don't know that it was.

6 Q. Any other issues that you perceived with the doors in the
7 Brigance room?

8 A. No. Just, uh, the closet doors in her bedroom were the
9 bifold and Steve wanted them left open. Period. I mean we
10 just always left them open so that she wouldn't have to get
11 hold of them.

12 Q. I want to know if there's anything else. Anything in
13 addition to the stuff you've already told me about.

14 A. I don't think so.

15 Q. Okay. You mentioned that you had heard that there had
16 been issues with doors in other rooms?

17 A. Right.

18 Q. Who did you hear this from?

19 A. From the girls working in the facility.

20 Q. Okay. Can you give me their names?

21 A. You know what, I could tell you their first names.

22 Q. I'll take whatever you can give me.

23 A. But I could not even tell you any of the last names.

24 Q. First names, if you can tell me.

25 A. Let me think about it for a minute. Now I can't - - I

1 cannot tell you specifically which one. There was a few
2 caregivers in the building other than myself. Uh, there was a
3 girl by the name of, uh, let me see. What did - - there it
4 is. I never trust memory. There was a lady that was staying
5 with, uh, a gentleman down at the end of the hall to the left
6 of Ms. Brigance; and uh, her name was Mary Cypert. C-Y-P-E-R-
7 T.

8 Q. Okay.

9 A. She sat with a gentleman by the name of Swink. And let
10 me look right here. This is my telephone book and it's a
11 disaster, but I love it. Michelle is her name. Uh, and I
12 don't have a clue what her last name is. Michelle was one;
13 and uh, - -

14 Q. Was she a caregiver or was she a - -

15 A. She was a facility worker. Uh, Wendy.

16 Q. Was she a facility worker or a caregiver?

17 A. This girl was a facility worker. She's the one that - -
18 she was with Mr. Brigance until the ambulance came. She
19 actually - -

20 Q. Mindy maybe?

21 A. Mindy.

22 MR. CHRONISTER: Mandy?

23 Q. Mandy?

24 A. Mandy. Yeah, see, I knew it wasn't Mindy because I have
25 a niece named Mindy. So, okay. Mandy.

1 Q. Okay.

2 A. Mandy. And uh, several of the clients in the facility
3 had talked in the dining room about different doors falling
4 and one of them had said that one of the doors came off the
5 track and hit an employee.

6 Q. And by client, you mean residents?

7 A. Yes.

8 Q. Of the facility?

9 A. Yes.

10 Q. Do you know what employee this door supposedly fell on?

11 A. No.

12 Q. Do you know what resident or client?

13 A. No.

14 Q. We can do these one at a time if we need to, but I'm
15 going to try to do them as a group. Mary, Michelle and Mandy
16 are the three people you mentioned that you had heard about
17 other door issues from?

18 A. Right. These were the people that I normally talked to.
19 Mary and I had - - have had lunch together several times. Uh,
20 you know, we just became friends. Mandy came back to see Ms.
21 Dot and then, uh, Mitzi wouldn't let her come in. There was
22 an issue about her coming to see Ms. Dot; and I think the
23 other girl is still working there. She still was the last
24 time I, you know, talked to anybody. But now I've been gone
25 since February.

1 MR. MORRIS: Let's take a break.

2 VIDEOGRAPHER: The time is now 10:40 a.m. and
3 we are off the record.

4 OFF THE RECORD AT 10:40 A.M.

5 RECORD CONTINUED AT 10:46 A.M.

6 VIDEOGRAPHER: The time is now 10:46 a.m. and
7 we are back on the record.

8 CROSS EXAMINATION CONTINUED

9 BY MR. MORRIS:

10 Q. Okay, Ms. Hamilton, right before we took a break to
11 change the tape we were talking about, uh, conversations with
12 Mary Cypert, Michelle and Mandy, I believe.

13 A. Uh-huh.

14 Q. About other issues with doors or issues with doors in
15 other rooms.

16 A. Uh-huh.

17 Q. Rooms other than the Brigance's.

18 A. Uh-huh.

19 Q. Is that right?

20 A. Right.

21 Q. Do you have specific recollections about the difference
22 conversations you had with each one of those people or is that
23 just the people you discussed these other doors?

24 A. Yes. Right. That.

25 Q. I won't ask you about each particular conversation, but

1 just tell me generally what these three individuals told you
2 about other doors.

3 A. Well, you know, uh, one of the ladies said, and I don't
4 even remember which one, that one of the doors had fell on one
5 of the Brookfield workers. And uh, then there was - - and I
6 cannot even remember this lady's name, but you know, there was
7 thirty-five, forty people out there. That's hard to get to
8 know them when you're only in the dining room and exercise
9 with them. But uh, the hall to the left of, uh, the, uh,
10 activities room, they said a door fell down there on that
11 wing. And uh, I don't - - I don't know which apartment; don't
12 know whose apartment; but you know, they just - - in the
13 laundry room when I would be doing Ms. Dot's clothes and Mary
14 worked for Mr. Swink, and when she would - - you know, she'd
15 be taking clothes out of the laundry and she would mention
16 something or we'd see somebody and it would come up.

17 Q. Anything - - anymore to tell that you can give me about
18 those conversations?

19 A. No. No.

20 Q. The - - I've noticed you've got some notes in front of
21 you.

22 A. Uh-huh.

23 Q. I don't want to pry, but is that something you reviewed
24 prior to giving your deposition here today?

25 A. This - - this is something that I do when I stay with a

1 client. Uh, went to breakfast; exercise class; rested til
2 lunch; had a BM; did hair; repair work on the face; did the
3 ironing; ate lunch. That way, if someone said when did she
4 have a BM, it's a matter of me backtracking and, you know,
5 I've always done it. I call it helping my family, you know.
6 It's just something that I've just always made a habit of. In
7 here I took her to the doctor. She had a cancer on her neck
8 and I noted each morning when it was cleaned. You know, I
9 cleaned the wound. I put it in here. And uh, you know, it's
10 just something that I've always done.

11 Q. May we have a copy of those to make an exhibit to your
12 deposition?

13 A. Uh, well, I tell you what, there was a, uh, there was a
14 copy sent to the State of Arkansas and I believe there's a
15 copy in Rex's office. Is there?

16 UNKNOWN: Yes.

17 MR. CHRONISTER: It was typed up.

18 WITNESS: Not of the entire book, but
19 of pertinent things.

20 MR. BRIGANCE: Excuse me a second. I was
21 out, did somebody hit Rex or did something happen to
22 my lawyer?

23 MR. CHRONISTER: Paul - - Paul punched and
24 he - -

25 WITNESS: Everybody needs to take - -

1 MR. MORRIS: If - - had been here I
2 would have expected that, but with him not here - -

3 WITNESS: This is something that I
4 kept and I've always done it with each of my
5 clients. And uh, it'll be up to Rex.

6 MR. CHRONISTER: I have no problem with
7 letting you copy that. We've got a copy. I just
8 saw this for the first time also Friday. Uh, we'll
9 copy it; run a copy here and we'll give it to the
10 court reporter.

11 WITNESS: You know, when I stay with
12 different clients, some of them may call and want to
13 know when they went to the dentist or when they went
14 to the doctor and I keep a running manual on - - on
15 all of them.

16 MR. MORRIS CONTINUING:

17 Q. Yes ma'am. And I don't need to see anyone other than Mr.
18 - - would there be any notes now on Mr. Brigance?

19 A. No. No.

20 Q. So it would just be Mrs. Brigance?

21 A. The only notes on Mr. Brigance are the ones that I wrote
22 on my worksheet for ElDirect and I do have some copies of
23 that. In fact, I have every copy that I sent in. I'll just
24 have to dig them out and uh, I'll bring them to Rex.

25 Q. That would be great. What's the name of the company you

1 said?

2 A. ElDirect. E-L-D. Just spelled direct.

3 Q. Is it one word?

4 A. Uh-huh.

5 Q. Okay.

6 A. It's a capital E and L and then the D starts the direct.

7 Q. Just like El, is that for like elderly?

8 A. Elder. Elderly. But it's just called ElDirect. And I

9 think that - - it's in the telephone book. It's out - - are

10 you familiar with the area?

11 Q. Somewhat.

12 A. Do you know where Free Ferry drops off from Rogers Avenue

13 at the library? It's in that big gray building over there on

14 the other side of the realtor office.

15 Q. Well, I won't ask you to go home and do it immediately,

16 but if you could in the next couple of days check for those

17 notes and send those to Mr. Chronister as well.

18 A. Okay.

19 Q. And I guess I'll, if everybody's in agreement, as that

20 the notes of the notebook be Exhibit 1 and then we'll make

21 those Exhibit 2. Is that all right, Ms. Court Reporter?

22 MR. CHRONISTER: That we'll have copied.

23 I'll just give it to the court reporter and she can

24 make the additional copies for this one and then

25 we'll have Shirley get the others.

1 WITNESS: There was notes taken out
2 of this.

3 MR. CHRONISTER: If you promise not to hit
4 me anymore.

5 WITNESS: And my daughter took notes,
6 you know, went through this and made notes and sent
7 it to the State of Arkansas. Is that correct?

8 MR. MORRIS CONTINUING:

9 Q. Well, I think - - is the set of notes that you gave Mr.
10 Chronister everything that's in there?

11 A. Not everything, but any pertinent.

12 Q. Well, we know - -

13 A. I mean you're free to look at it. I don't care.

14 MR. CHRONISTER: We have a copy of that
15 entire book.

16 WITNESS: Oh, do you? Okay.

17 MR. CHRONISTER: Yes, we copied that entire
18 book Friday. So we have that entire book.

19 WITNESS: Steve called and told me
20 that I needed to do a deposition and I said oh, my
21 good, where's my blooming book.

22 MR. MORRIS: Well, I don't have to read
23 through it right now and ask you questions about it,
24 but if Mr. Chronister's got a full set, that'll be
25 sufficient.

1 WITNESS: All right. But you know, I
2 couldn't tell you that I did something on April 4th
3 if I didn't get in this book and look at April the
4 4th. Can't do that.

5 MR. MORRIS CONTINUING:

6 Q. Ms. Hamilton, I think after hearing your testimony today,
7 it's fair to say that you grew fond of the Brigance family
8 during your course. Is that right?

9 A. Momma was a real special lady.

10 Q. You think a lot of her. Is that correct?

11 A. Yes. I thought a lot of her. I sure did.

12 Q. I don't have any further questions. Thank you for your
13 time.

14 A. Thank you.

15 MR. CHRONISTER: You're not through yet.

16 WITNESS: Oh.

17 MR. MORRIS: Oh, I'm sorry. No, there's
18 a couple more people.

19 WITNESS: I was leaving. Don't tell
20 me you're done unless you're done.

21 CROSS EXAMINATION

22 BY MS. PIKE:

23 Q. Ms. Hamilton, my name is Bethany Pike and my firm
24 represents Crawford Construction Company.

25 A. Uh-huh.

1 Q. And I just wanted to verify, do you have any personal
2 knowledge of the accident that is at issue, Mr. Brigance's
3 accident?

4 A. I came into it after he was on the hospice wing at the
5 hospital.

6 Q. Okay. So no, you don't have any personal knowledge?

7 A. No.

8 Q. And also, did you ever have any conversation with anyone
9 affiliated with Crawford Construction Company?

10 A. Not unless I said hello to the people coming in to work
11 on the doors. Now there was a crew that came through a couple
12 of times, but I don't even know where they were from.

13 Q. Do you remember anything that was said, any particulars?

14 A. (Witness shakes head.)

15 Q. That's all the questions I have.

16 A. The answer was no. I shook my head, but the answer is
17 no.

18 Q. Thank you.

19 CROSS EXAMINATION

20 BY MS. CLARK:

21 Q. Ms. Hamilton, my name is Suzanne Clark and I represent
22 Brookfield and Mitzi Bailey and Bob Brookes in this lawsuit.

23 A. Uh-huh.

24 Q. And I just have a few more questions for you if you don't
25 mind. Mr. Morris took you back through your education and

1 you're getting your GED now. Is that correct?

2 A. I hope to.

3 Q. Congratulations.

4 A. If algebra don't take me down.

5 Q. Can you give me a bit of an idea, you said you've been

6 taking care of people your whole life.

7 A. Absolutely.

8 Q. Since you started working, can you just give me a little

9 bit of what your resume would look like, who you worked for

10 and, you know, what companies you worked for?

11 A. When I went back to work, probably about five years ago,

12 now I went to work for ElDirect, and I worked for them up

13 until last year. Uh, I worked for, uh, most of my clients

14 have been long term.

15 Q. Is that you're talking about in the last five years?

16 A. Yes. I was taking off work in '99. I had cardiomyopathy

17 and I wasn't able to work. And when I became able to return

18 to work, I could only do limited things so I did what I do

19 best, I take care of people.

20 Q. When you said you could only do limited things, what are

21 the limitations?

22 A. I don't pick up anything heavy; you know, I simply cannot

23 pull and tug on anyone. I have a pacemaker, so whoever I stay

24 with has to be ambulatory. I would say probably a companion

25 would be, you know.

1 Q. Prior to the past five years working for ElDirect, what
2 sort of work history did you have prior to that?

3 A. I retired from Shipley Baking Company here in Fort Smith.

4 Q. What did you do for Shipley Baking?

5 A. Various things. I started out part time as a break
6 person; then I became a line worker; then I became - -

7 Q. I'm sorry. You were a what person?

8 A. A break person.

9 Q. And tell me what that is, if you'll help me out here.

10 A. Okay. I worked all over the bakery. I would go give
11 them ten or fifteen minute breaks.

12 Q. So when somebody was on a break, you'd fill in for that
13 person?

14 A. Right. Right.

15 Q. Okay. Great. Thank you.

16 A. And uh, I became a line worker; and then I became an off
17 bearer. I caught the product when it came out of the machine;
18 and then I became a machine operator.

19 Q. And how long were you with Shipley Baking?

20 A. Nineteen years.

21 Q. Nineteen years.

22 A. Uh-huh.

23 Q. And anybody before that?

24 A. Uh, yeah. I had worked - - there's that word. Yes. I
25 worked for Crane Industries out on South Zero for five years

1 prior to Shipley. We made foam rubber. And prior to that, I
2 just was a mommy.

3 Q. Way to go. I think you said you had five. Does that
4 sound - -

5 A. No.

6 Q. No?

7 A. No.

8 Q. I might have been mixing you up.

9 A. No. You're mixing me up with somebody else.

10 Q. How many kids do you have?

11 A. I have one daughter. I had two children. My son was
12 killed the day before his eighth birthday.

13 Q. I'm sorry.

14 A. And uh, my mother died when I was thirteen and she gave
15 me a three-day-old baby before she died, and I - - I raised
16 him.

17 Q. You helped raise your siblings?

18 A. My siblings. Right.

19 Q. Now you mentioned that when you first became acquainted
20 with Mr. Brigance was when Jack Brigance was already in
21 hospice. Is that correct?

22 A. Yes.

23 Q. And you mentioned, I missed it during Rex's questioning,
24 that who was it that called you and asked you to come to
25 Sparks?

1 A. ElDirect.

2 Q. ElDirect. Okay.

3 A. They had - -

4 Q. So he was in touch with ElDirect and asked for some
5 assistance.

6 A. He had people from ElDirect working, staying with his dad
7 at the hospital, but they couldn't get to the hospital here in
8 Fort Smith.

9 Q. Oh, I see. Okay. And do you know who any of those other
10 people were - -

11 A. I do not.

12 Q. - - that had worked there prior to that?

13 A. Do not have a clue.

14 Q. Now when Mr. Brigance, and I'm talking about Jack
15 Brigance now.

16 A. Uh-huh.

17 Q. Was in the, uh, was in hospice.

18 A. Uh-huh.

19 Q. You mentioned several times that he was in just a
20 tremendous amount of pain but that he did not want to take
21 pain medication, and you speculated that you thought that
22 might be because he wanted to be aware; he didn't want to miss
23 anything. I think you also told us that you could ask him
24 questions and have conversations with him but that he had some
25 difficulty speaking - -

1 A. Right.

2 Q. -- after a period of time, but he understood pretty much
3 what you were asking?

4 A. Uh-huh.

5 Q. Did you or anybody else ask him why he didn't want to
6 take pain medication?

7 A. He just didn't want it. He would -- he would refuse it.
8 He just didn't want it.

9 Q. Well, I guess I'm a little bit confused because you
10 emphasized several different times about how much pain he was
11 in any time he had to be moved. Did you encourage him to take
12 the pain medication?

13 A. No ma'am. I did not.

14 Q. No. Did Mr. Brigance or Mrs. Brigance encourage him?

15 A. I have no idea.

16 Q. No. But he just refused to take it?

17 A. He refused to take it because it was offered to him by
18 the nurses and he did not take it.

19 Q. And you didn't ask him --

20 A. No.

21 Q. -- Mr. Brigance why, this would be so much better for
22 you?

23 A. No.

24 Q. No?

25 A. Uh-huh.

1 Q. And you did say that hospice, the purpose of hospice, was
2 to keep people comfortable?

3 A. Absolutely. And he did, toward the end, the last day or
4 two, he did take morphine, but it got really, really bad
5 before he started taking it.

6 Q. But he was un - - he was uncomfortable, is that what
7 you're saying?

8 A. Oh, yes.

9 Q. Prior to?

10 A. Well, I assume he was uncomfortable because when they,
11 and when I say they, the nurses, they would take the draw
12 sheet and pull it up and hold it up and the one on the other
13 side of the bed would get hold of it and pull it up and they
14 would tuck pillows under him; and every time they moved him he
15 cried out. So I'm assuming it hurt him.

16 Q. And he was still refusing the pain medication - -

17 A. Yes ma'am.

18 Q. - - at that time. And you never asked him why? Okay.

19 A. It wasn't my job to ask him why. You know, because he
20 was - - he knew. You know, they asked him and he refused it.

21 Q. Okay. Now you said that you had some experience with
22 hospice care because your older sister passed away.

23 A. Uh-huh.

24 Q. Was she in a hospice or was she at your home or her home?

25 A. She was in hospice the first time when she was in the

1 nursing home.

2 Q. And where was that?

3 A. I can't even tell you the name of it. It's over in, uh,
4 what's that town in Oklahoma just across the state line on
5 Phoenix Avenue. Somebody help me out here.

6 Q. That's okay. She wasn't in this area, though? This was
7 - -

8 A. Well, it was in Fort Smith. I mean it's just across the
9 state line over on Phoenix. What's that town over there?

10 MR. CHRONISTER: Arkoma?

11 WITNESS: Yeah. She was in a nursing
12 home at Arkoma. And then we took her out of it in
13 2000 and brought her home and took care of her at
14 home and she died in '06.

15 MS. CLARK CONTINUING:

16 Q. She died in '06 and did she die at home or in - -

17 A. Yes, she did.

18 Q. She did. So she died at home. And your father died at
19 home as well?

20 A. Yes, he did. And he was on hospice also.

21 Q. When you say he was on hospice, were there hospice
22 workers coming into your home - -

23 A. Yes ma'am.

24 Q. - - to help care for him?

25 A. Six hours a day.

1 Q. And was that true for your sister as well?

2 A. I don't know how many hours a day she had, but yes, she
3 did have hospice also.

4 Q. Did your sister take any medication when she was dying?

5 A. My sister had, uh, Alzheimer's, and she took what was
6 prescribed for her and it was ground up and put in applesauce
7 or pudding and given to her.

8 Q. Did your dad take any medication when he was - -

9 A. My father was on a patch, a morphine patch. He had liver
10 and lung cancer.

11 Q. I'm going to - - I know you're going to be providing us
12 with the medical stat that you took during your stay - -

13 A. Uh-huh.

14 Q. - - while you were - - you were helping with Mrs.
15 Brigance at Brookfield. We haven't had an opportunity to
16 review any of those notes prior to this deposition, so I - - I
17 just wanted to ask you if, later on, I've got a few more
18 questions for you.

19 A. Uh-huh.

20 Q. But if, later on after reviewing those notes, we have
21 some additional questions, would you be willing to speak with
22 me again?

23 A. Oh, yeah. Yeah.

24 Q. We could maybe do a supplemental deposition of there are
25 additional questions that come up as a result of that?

1 WITNESS: Would you want to be
2 sitting in on it?

3 MR. CHRONISTER: Oh, sure.

4 MS. CLARK: Yes, yes.

5 MR. CHRONISTER: It would be a deposition I
6 would be at.

7 WITNESS: Honey, I don't mind talking
8 to anybody because I'm going to tell you what Rex
9 told me. He said I want you to do three things:
10 Tell the truth, tell the truth, tell the truth.

11 MS. CLARK: There you go. There you
12 go.

13 WITNESS: So that's all I can do.

14 MS. CLARK: Very good.

15 MS. CLARK CONTINUING:

16 Q. Now, uh, when you were caring for, uh, Mrs. Brigance
17 after Mr. Brigance's death at Brookfield, you made some
18 mention of what the - - what the people at, uh, at the
19 Brookfield were supposed to be doing and I think that the
20 impression that there were several things that they were not
21 doing that they were supposed to be doing. Is that - - is
22 that what you were trying to say?

23 A. Well, I don't know where it's at, but I know one time in
24 particular I came in and, uh, the bedding from the week before
25 was still there and I had to wash it because the bed needed to

1 be changed and there were no clean sheets for it.

2 Q. Is that something you looked over in your notes before
3 today's deposition?

4 A. No. No. I mean it's in here. I know it's in here.

5 Q. Uh-huh.

6 A. Because at the time, I did the laundry. I always did her
7 outer clothes.

8 Q. And are you saying you did it because the people at the
9 Brookfield would not do it? Is that what you're saying?

10 A. They would wash them and they would dry them, but you
11 know, if they're not hung up, if they're put in a basket, they
12 get wrinkled and they look really bad. They did all of the
13 towels; all of the sheets; and I washed her outer clothes and
14 her - - her bras and her pantyhose. Of course, she used, uh,
15 briefs, Depends, so we washed her pantyhose and her bras by
16 hand; and I washed her outer clothes and Steve pressed them.

17 Q. So did you tell anyone at the Brookfield I'll take care
18 of her outer clothes?

19 A. Oh, yeah. And they were - - they were not put - - she
20 had a laundry basket on wheels and, you know, towels and
21 things were put in that and they could just take the basket.
22 Her wearing clothes, we kept folded up in the bedroom separate
23 and did them. And then when I got enough for a load I would
24 take them down to the laundry area and wash them.

25 Q. Uh-huh.

- 1 A. Get their iron and ironing board and bring it to the
2 apartment and iron them.
- 3 Q. Now you had mentioned also that, uh, and Mr. Morris asked
4 you about the doors that you were very surprised about the
5 weight of the doors.
- 6 A. Uh-huh.
- 7 Q. Now the doors that you were surprised about weight, this
8 is not the door that had fallen in Mr. Brigance's room?
- 9 A. No. It's the other - -
- 10 Q. Was that still hanging?
- 11 A. It was the only other sliding door in the apartment.
12 There's two sliding doors. The one on the small closet as you
13 come into the apartment. Coat closet. And then the one over
14 the bathroom door.
- 15 Q. And you were - - you felt that you were determining the
16 weight of that door while it was hanging there while you were
17 - -
- 18 A. Just having to move the bathroom door, girl, it was
19 heavy. I mean it was heavy. So when I said ninety-pound
20 door, that was a guesstimate, but I'd be willing to bet \$10 it
21 weighed ninety pounds.
- 22 Q. Did you have complaints about the way that Mrs. Brigance
23 was treated by the employees at the Brookfield?
- 24 A. No.
- 25 Q. No?

1 A. Because when I was with her, I took care of her. Period.

2 Q. Let me back up. Because when you were with her, you took
3 care of her.

4 A. Uh-huh.

5 Q. So does that mean that you felt that other people were
6 not taking care of her?

7 A. No ma'am. No ma'am. I was hired to sit with Mrs.
8 Brigance because she was used to having the companionship of
9 her husband. He assisted her to walk to meals and any other
10 place that she wanted to go, Mr. Jack had always done. And
11 she was just lost, you know. So I held her arm; walked her to
12 breakfast; and walked her back; and she speed walked. Honest
13 to God. You could be walking down the hallway and I could
14 feel her gathering her muscles up because she was gonna
15 sprint. And when she'd take off, I would go with her, and she
16 would say how did you know I was gonna do that. Well, I could
17 feel her getting gathered up because she would do it for about
18 ten or twelve steps. But, you know, she always - - I always
19 held on to her just.

20 Q. You also said that Mrs. Brigance never missed her
21 exercise.

22 A. No.

23 Q. Tell me what kind of exercise.

24 A. They called it chair dancing and you simply sat in the
25 chair and you used weights and, you know, you do the back and

1 your feet and legs, you extend them. Do scissors; move them
2 sideways, you know. But they all did it sitting in a chair,
3 an armchair. Did thirty minutes of it five days a week. And
4 she did not miss it.

5 Q. What were you paid in terms of whether - - when you were
6 at the hospice, let's start there. What were you paid by the
7 Brigance's for your work at the hospice?

8 A. I wasn't paid by the Brigances.

9 Q. I'm sorry. By ElDirect. What was your compensation
10 through ElDirect?

11 A. I would have to get a check stub and look to tell you. I
12 really could not even tell you what I made.

13 Q. You don't recall what your hourly wage was?

14 A. I do not.

15 Q. Would it have been the same level of compensation for
16 when you were taking care of Mrs. Brigance?

17 A. Oh, yeah. Yeah.

18 Q. And that was all through ElDirect as well?

19 A. Yes.

20 Q. You never received any separate compensation - -

21 A. No.

22 Q. - - from the Brigances?

23 A. No.

24 Q. Did Mr. Brigance, Mr. Steve Brigance, or Peggy Brigance
25 ever express any concerns to you about Brookfield?

1 A. Everybody was concerned about the door situation out
2 there.

3 Q. Were you surprised, because you were caring for Mrs.
4 Brigance after Mr. Brigance's accident, were you surprised
5 that she remained there?

6 A. I really was, but she didn't want to leave that
7 apartment.

8 Q. Why do you think that was?

9 A. I just kind of felt like that if she abandoned the
10 apartment that she felt like she might be abandoning him, you
11 know. She refused to move in the dining room; she refused to
12 move from the dining table where he and she had always sat.
13 She just would not move, you know. They tried to get her to
14 move, but she wouldn't do it. That was their table. That was
15 how she felt about it. That was their table.

16 Q. Tell me a little bit about, and I think you explained
17 this a little bit when Mr. Chronister was asking questions,
18 but tell me a little bit about what your, sort of, daily
19 routine would be with Mrs. Brigance when you were taking care
20 of her.

21 A. When I'd get there, they normally gave her her, uh,
22 primary medication at 6:30 because you're supposed to have it
23 on an empty stomach. They would help her get dressed; and
24 when I came in at 7:00, we would go to the dining room to eat;
25 go back to the apartment. She would fix her face and sit down

1 until time to go to exercise; and we'd do the exercise and
2 she'd repair her makeup and then we'd go to lunch. Come back;
3 she'd get in the chair, unless she went to the bathroom. She
4 never left unless she had to go to a doctor's appointment.
5 She had to go, uh, get her hair done. There had to be a
6 reason for her to leave the room. She never - - she never did
7 join in any of the festivities ever again. She just wouldn't
8 do it.

9 Q. She just wouldn't do it?

10 A. No ma'am.

11 Q. Her son and her daughter-in-law came to visit her fairly
12 frequently, didn't they?

13 A. Oh, Steve was there two or three times a day.

14 Q. Yeah.

15 A. If he was in town, he was there every day faithfully.
16 Normally at breakfast and most of the time at supper time.

17 Q. Did you talk with Mrs. Brigance when - - when, uh, Steve
18 Brigance decided to file this lawsuit on behalf of his father?
19 Did you talk to her about that?

20 A. You know what, Honey? She was just, uh, how do I want to
21 say it. You couldn't talk to her about - - about that,
22 because she was just angry. She was just angry. And it upset
23 her so.

24 Q. Did any of the other employees talk to you about that?

25 A. No.

1 Q. No. Did any of the other employees ask you about talking
2 to Steve Brigance?

3 A. No.

4 Q. No. None of them asked how they might be able to reach
5 him or anything like that?

6 A. No. He was there every day. And the people that worked
7 on the second shift, I didn't tell Rex, but I normally left at
8 3:00; and I think that's about the time they were doing the
9 shift change and I would just, you know, when I left her
10 apartment and when I walked up front, I normally went out one
11 of the side doors and I'd just step in the hallway and tell
12 the girls at the desk I'm leaving; she's by herself.

13 Q. Yeah.

14 A. You know.

15 Q. So they knew when you weren't there?

16 A. Right. Right. So I don't know if - - if the shift
17 changed at 3:00 or 3:30, but it was sometimes they would all
18 be there doing whatever they do when they change shifts. I
19 don't know what their routine is.

20 Q. But you were there pretty much on a daily basis for - -

21 A. Pretty much.

22 Q. From February to August?

23 A. Yes.

24 Q. With a few exceptions. Is that fair?

25 A. Yes.

1 Q. Okay.

2 A. I would clock out and leave and go to the doctor or, you
3 know, if I had to leave, I would always let them know that I
4 was leaving. If I had shopping to do for her, normally when
5 she went to the beauty shop or if she went to exercise and I
6 had to run down to Walgreens to pick up medications or
7 whatever, you know, I'd just tell them I'm going to leave and
8 I'll be back in X amount of minutes, you know.

9 Q. Okay. Other than the time that you came in and you felt
10 that Ms. Dot's bedding had not been changed when it should
11 have been and the fact that you didn't think that some of the
12 clothing when they did the laundry that it wasn't pressed or
13 folded correctly, whatever, do you have any specific
14 complaints about the way that Ms. Dot was treated by employees
15 at Brigance or was cared for employees at Brookfield? I'm
16 sorry.

17 A. Do you know, I really don't know what all was expected,
18 you know, with - - what the staff was supposed to do for them,
19 but I know that whenever I came to stay with her, when I first
20 started staying with her, it seemed like that they checked in
21 on her more often, and the longer I was there, the less they
22 checked with her. But I was always there unless I had to
23 leave for a doctor's appointment or something.

24 Q. Okay. I think that's all I have. Thank you very much.

25 A. You're welcome.

1 MR. CHRONISTER: You have anything else?

2 RECROSS EXAMINATION

3 BY MR. MORRIS:

4 Q. I should have asked these to begin with. I apologize.
5 But I think your answers were implied, but I'll check just to
6 be sure. Had you before today, had you ever heard of W.D.M.
7 Architecture?

8 A. No, I hadn't.

9 Q. So is it safe to say as far as you know, you've never
10 spoken with anybody from that firm?

11 A. Not to my knowledge.

12 Q. All right. Have you ever met a gentleman named John
13 Brewer? Excuse me. Brewer.

14 A. Not to my knowledge. There was a John that was a client
15 out there and I don't even know what his last name was.

16 Q. This John was the architect.

17 A. No.

18 Q. So I don't' think that's the same person. And I think we
19 had a long discussion of the doors, and I'm not going to
20 rehash all that, but I think I understood that you never
21 personally saw any door off of its track or down or anything
22 other than the door that fell that was involved in Mr.
23 Brigance's accident and it was sitting down the hall for a
24 period of time. Is that correct?

25 A. And someone said it was - - it was the door that fell in

1 that apartment and it was in the maintenance area.

2 Q. Yes. And that's the only door that you ever saw that
3 wasn't on its tracks?

4 A. Right.

5 Q. That's all the questions I have.

6 A. Okay.

7 RE CROSS EXAMINATION

8 BY MS. CLARK:

9 Q. I apologize. I just have one more question. Earlier you
10 mentioned when we were talking about the notes that you have.

11 A. Uh-huh.

12 Q. You mentioned your daughter going through your book and
13 making some notes about a report to the state?

14 A. Uh-huh.

15 Q. Can you tell me if she was looking at your notes for what
16 her - -

17 A. Actually, I kept notes in this book until I left Ms. Dot
18 in August; and my daughter started staying with her, and
19 another girl, and they continued my habit of keeping notes.

20 Q. Sure. You said that she looked over your notes. Are you
21 saying she made separate notes after you left or she would
22 make additional notes or notations to what you had written?

23 A. No. She went through this entire book and she made
24 notations on certain things that I had written down, certain
25 things she had written down, and certain things that Cheryl

1 had written down.

2 Q. And did she - - did she write those in that notebook or
3 did she write that someplace else?

4 A. She wrote them and sent them to the State of Arkansas and
5 Rex has got a copy of that in your office.

6 MR. CHRONISTER: That's what we're going to
7 make as Exhibit 2, based on what he had requested.

8 MS. CLARK: Now that I'm understanding
9 that, we're fine. Thank you.

10 WITNESS: But, you know, basically it
11 was just filtering out doctor visits, bathroom
12 visits, hair salon visits, you know.

13 MS. CLARK: Thank you.

14 WITNESS: You're welcome. Thank you.

15 VIDEOGRAPHER: The time - - the time is
16 now 11:21 a.m. This concludes the deposition of
17 Shirley Hamilton.

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EXHIBIT LIST

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Deposition Exhibit #1 Notebook
Deposition Exhibit #2 Second Set of Notes

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C E R T I F I C A T E

STATE OF ARKANSAS)
)
COUNTY OF SEBASTIAN)

I, Rebecca L. Young, a Notary Public and Certified Court Reporter do hereby certify that the witness, Shirley Hamilton, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested, or otherwise, in the outcome of this action; and that I have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect impartiality, that requires me to relinquish control of an original deposition transcript or copies of the transcript before it is certified and delivered to the custodial attorney, or that requires me to provide any service not made available to all parties to the action.

Rebecca L. Young
Certified Court Reporter
And Notary Public
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My Commission Expires:
11-3-2013
November 3, 2013