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I N D E X

TESTIMONY BY PEGGY BRIGANCE, APN

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E X H I B I T S

NUMBER

MARKED

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1 MONDAY, FEBRUARY 21, 2011; FORT SMITH, ARKANSAS; 2:13 P.M.

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THE VIDEOGRAPHER: This is the videotaped
4 deposition of Peggy Brigance, taken on behalf of
5 the defendant. Today's date, February 21st,
6 2011. Time is 2:13 p.m. All counsel present for
7 previous depositions in this matter again present
8 for this deposition.

9

And would the court reporter please swear in
10 the witness.

11

12

PEGGY BRIGANCE, APN,

13

having been called upon to testify in the form of a
14 deposition, and having been duly sworn or affirmed,

15

testified as follows, to wit:

16

17

E X A M I N A T I O N

18

BY MR. DOSSETT:

19

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

20

A. Peggy Brigance.

21

Q. Ms. Brigance, you and I know each other from the
22 previous trial and from another deposition.

23

A. Yes.

24

Q. You know, from that deposition, kind of how this
25 process goes, I think.

1 A. Yes.

2 Q. We are not going to cover the ground covered in your
3 previous deposition, as much as possible. I just have a
4 few things I wanted to ask you about Dorothy Brigance, in
5 particular.

6 A. Okay.

7 Q. We're not going to go back over all of your
8 background information and things like that, but has your
9 licensure or credentials, or anything along those lines,
10 in a professional sense, changed since you gave your
11 deposition?

12 A. No, they haven't.

13 Q. I understand that you have had an opportunity to look
14 over the progress notes that The Brookfield kept on
15 Dorothy Brigance during the time period where she was
16 residing alone at The Brookfield; am I correct?

17 A. Yes, I looked over a few of them that -- several
18 pages that I think were dated maybe sometime in September
19 through November.

20 Q. Okay. I'm going to hand you a number of pages here.
21 I think they are numbered consecutively 3255 through 3262,
22 and what I'm going to ask you to do is just look through
23 there and see if you can tell which ones you looked at and
24 which ones you didn't, and the ones that you did look at,
25 I wanted to ask you a few questions about.

1 A. Okay.

2 MR. DOSSETT: Mark this as Exhibit 1.

3 (Exhibit 1 was marked for identification.)

4 THE WITNESS: I think these three, and maybe
5 four pages, I've seen. I don't think I went back
6 as far as this August. I don't recall that.

7 BY MR. DOSSETT:

8 Q. Okay. Well, then, hand me back the ones that you
9 don't remember seeing. Which are the ones you did look
10 at?

11 A. The more current ones, like, these three or four that
12 were dated --

13 MR. CHRONISTER: There are some page numbers
14 here.

15 THE WITNESS: Where are the page numbers?

16 Okay. I may have seen this one, 3258, and then I
17 believe I saw -56, -57 and -55.

18 BY MR. DOSSETT:

19 Q. When did you have an opportunity to first review
20 these?

21 A. Yesterday afternoon.

22 Q. And did you review those in preparation for your
23 deposition today?

24 A. Yes. I visited with Mr. Chronister for a little bit
25 yesterday afternoon.

1 Q. I don't want to know about the conversation that you
2 and Mr. Chronister had. I'm not trying to ask about that,
3 so if my question seems to be leading you there, let me
4 know because that's not what I'm trying to get at.

5 A. Okay.

6 Q. As you reviewed these pages that you have in front of
7 you that you just identified, did you find anything odd or
8 out of the ordinary?

9 A. I did. Well, I noticed this on the 11/19th was
10 crossed off in an error, and then the note rewritten on
11 the page 3255. I noticed a gap in the dates from on 3257,
12 at the top of the page, the date was 10/15, and it looked
13 like there was a notation almost every day there until
14 10/22, and then there was a gap in time until the 11/12
15 date, and I think those were the most significant things
16 that I noticed there.

17 Q. Let's take the first one. You mentioned there was a
18 note that was crossed out?

19 A. Yes.

20 Q. And then there was a note rewritten on the following
21 page?

22 A. Yes.

23 Q. Tell me what you found strange, odd or out of the
24 ordinary about those entries.

25 A. Well, it's difficult to read on this 3256 on 11/19

1 where it's been crossed out, but if you do try to look at
2 what actually was written and crossed out and why it
3 stated "error," it is stating that the -- well, let me
4 look at this for a minute and see if I can read it again.

5 Okay. It's stating that, "Resident was sleeping at
6 10:00 p.m." Something else is written there that I'm not
7 sure of, and then she said, "'No, thank you.' Checked on
8 her at 4:00," so I can't read the rest of that there. But
9 then -- so that's crossed out and it says "error." And I
10 know that in medical records, when you cross out
11 something, you usually date it and initial it and then go
12 and correct it, and so then the corrected version just
13 struck me as odd in that it's a different handwriting, and
14 it's a completely different statement than what was
15 written over here, so I just found that odd.

16 Q. Okay. Anything else about those entries that you
17 found out of the ordinary?

18 A. Let me read this one again. What was the question
19 again?

20 Q. Was there anything else about those entries that
21 struck you as out of the ordinary?

22 A. Not necessarily out of the ordinary on this new
23 version of the 19th. I'm not sure exactly how accurate it
24 was, but as far as out of the ordinary for charting, no.

25 Q. Which part of it strikes you as maybe being

1 inaccurate?

2 A. Well, the note was, "Peggy was in there and asked me
3 not to wake her up at 8:00," and "just check on her."

4 We did -- I did have a conversation that evening with
5 the sitter, and that's probably not exactly the way
6 that -- or it's not exactly the way I stated it to her,
7 but that's the way it was charted there. And it was a
8 suggestion that I had for Mother's care, it wasn't
9 specifically an order as in a medical order, so I can't
10 speculate as to why she used that word in there.

11 Q. You said that that wasn't exactly what you had
12 suggested. What did you suggest?

13 A. Well, Mom had, apparently, been speaking with the
14 sitter about not being able to sleep well at night because
15 she was being awakened every two hours to go to the
16 bathroom. And I said, "Well, that does sound like a lot.
17 That is interrupting her sleep. Why don't we do this:
18 Why don't you check on her every two hours, and if she's
19 not wet, and she seems to be resting well, and everything
20 is okay, just leave her alone, and go back in two hours,
21 and so every four hours we can awaken her to get up to the
22 bathroom if everything else is okay." So I didn't really
23 say at 8:00 do this, but that was the gist of what we
24 talked about.

25 Q. Do you recall ever having a discussion with anyone

1 from the facility about Dorothy Brigance's shoes, and the
2 kind of slippers she had, whether they were good or bad
3 for her, given her gait issues?

4 A. I don't recall, in particular, any conversation with
5 anyone there at the facility, or the sitters, I mean, I do
6 have some vague remembrance of suggesting to Mom that, you
7 know, on her birthday or whatever, I would get her a
8 different style of slippers if she would prefer that, but
9 she felt like -- she loved those slippers. She had had
10 them forever, and she didn't want anything else.

11 Q. In your memory that you do have about it, do you
12 recall there being concern about the style of shoe that it
13 was, and whether or not that would increase her risk of
14 falling?

15 A. Well, it was a narrow slipper with a little bit of an
16 elevation, but I don't recall that we talked about that in
17 particular with her falling. It just didn't look
18 comfortable to me, and I kept saying, "Mom, I'll get you
19 something else," but, again, "No." That's what she
20 wanted. She had had those slippers for years and years
21 and years, and that's what she wanted.

22 Q. As you sit here today, you don't recall having a
23 discussion with anyone from the facility about the fact
24 that the style of slipper she was using might make it more
25 likely for her to fall?

1 A. I don't recall that.

2 Q. Did you notice any change in your mother-in-law's
3 physical condition or cognitive condition, say, in the
4 summer of 2009, up until the point of her fall?

5 A. We began to notice that she was having more
6 difficulty hearing, and that was definitely an issue, and
7 we were -- she did not want to accept that she was having
8 any trouble hearing, and we were finally able to convince
9 her to go to an audiologist, a hearing specialist, and she
10 eventually got a hearing aid, so that was definitely a
11 problem and decline. And, of course, without Dad walking
12 her down the hallway, we had suggested that she might use
13 a walker. She did not want that for quite a while, and
14 eventually we were able to have her evaluated, and let her
15 see that that could be a benefit to her, so she was going
16 to use the walker after a while, so I did see a little bit
17 of a decline in her in that way.

18 Q. Did you notice any decline in her cognitive ability
19 between -- you know, within the last six months of her
20 life? And I'm talking about prior to her accident. I
21 know at the end she had some.

22 A. Right. Well, and she was more melancholy without her
23 husband there, maybe a little bit more quiet at times, but
24 as far as her thought processes, I don't really think that
25 those changed because she would still have appropriate

1 conversations with me on many occasions when I was there.

2 Q. What was your routine in going to see her at the
3 facility before her accident?

4 A. Whenever Steve was available, and he was seeing her
5 several times a day, then I may skip several days, and
6 only see her once every two or three days. If he was not
7 available and couldn't get to see her one day, then I
8 would go once or twice on those days.

9 Q. On average, how many times a week, let's say, did you
10 see her?

11 A. Oh, this would be a guess, but I'd say probably at
12 least six or seven.

13 Q. Okay. Is it fair to say that either you or Steve saw
14 her every day?

15 A. Yes.

16 Q. Her accident happened on November 19th of 2009. In
17 that time period, did she have -- what was her cognitive
18 ability like, did she have any deficits or limitations?

19 A. No, no more than what she had always had as far as,
20 you know, she didn't do her checkbook or those kinds of
21 things, you know, but...

22 Q. Was she able to understand simple instructions, and
23 follow them?

24 A. Yes.

25 Q. One that I have in mind in particular would be the

1 fact that she might -- that she should ask for help before
2 trying, for example, to get out of bed?

3 A. Yes.

4 Q. Was she aware of that?

5 A. Yes.

6 Q. Was her cognitive ability such that she was able to
7 understand that, and know that she needed help?

8 A. I believe so.

9 Q. Tell me, if you would, how you found out that she had
10 had an accident.

11 A. I got a phone call at home that evening.

12 Q. Who called?

13 A. One of the caregivers there at Brookfield. And I
14 don't remember who it was.

15 Q. Tell me what they told you.

16 A. They said that they went in the room, and found Dot
17 on the floor, and they had called the EMS folks, and they
18 were going to take her to the Sparks ER; that she had a
19 bloody face.

20 Q. Where was Steve at this time?

21 A. He was out of town at our South Carolina home.

22 Q. When you got the call, what did you do?

23 A. I went right down there.

24 Q. To the hospital?

25 A. No, to Brookfield.

1 Q. Okay. Did you make it to Brookfield before or after
2 the ambulance?

3 A. After the ambulance. She was on the stretcher, going
4 down the hallway. I did see her there in The Brookfield
5 on the stretcher on her way out.

6 Q. What did you notice about her when you saw her?

7 A. Her face was a mess. She had the bloody nose and
8 already at that point a large lip, and just looked like a
9 mess.

10 Q. Was there one side that looked like it was injured
11 more than the other, or one location on her face?

12 A. I don't recall that.

13 Q. Did you ride in the ambulance --

14 A. No.

15 Q. -- to the hospital or follow it?

16 A. No. I didn't do either one. I took my car and went
17 right over.

18 Q. Okay. And I understand that at some point, she was
19 transferred to Washington Regional?

20 A. Yes.

21 Q. Do you recall when that was?

22 A. Oh, yes. That was quite a long evening there at
23 Sparks ER, but, yeah, I got there when she was in the ER,
24 and the doctors were examining her. And they had taken
25 her for a CT scan and, based on the result of that scan,

1 said she needed attention right away from a neurological
2 surgeon or a neurologist, and there was not one available
3 on call that night, and so they said there would be one
4 available in the morning at 7:00, but it may not be wise
5 to wait that long, so it was up to me to decide what to
6 do.

7 Q. So you decided that you might try a different
8 hospital?

9 A. Well, I actually -- and this was about probably
10 midnight, 1:00 a.m. I actually made several calls to some
11 physician friends of mine and a neurologist friend who I
12 thought would be willing to come over if I could contact
13 him personally, but after a couple hours, or I don't
14 remember exactly, one to two hours, I never could get
15 ahold of him, so I said we better just go on, so we went
16 to Northwest Arkansas.

17 Q. How did you get to Northwest Arkansas?

18 A. I drove.

19 Q. And how did Ms. Dot get there?

20 A. She was transported by EVAC helicopter, whatever that
21 service is.

22 Q. Was she already at Washington Regional when you
23 arrived?

24 A. No. I got there first.

25 Q. It probably takes some time to get the helicopter

1 arranged and actually get her transported. Is that why
2 you were able to beat her there?

3 A. I'm not really sure why. I should not have gotten
4 there first, probably, but I did, and I don't know. Maybe
5 it did take them longer to get the helicopter there, but I
6 never did get a good explanation on that.

7 Q. How long were you there in Fayetteville with her?

8 A. Well, that was late Thursday night, early Friday
9 morning, and I think that she stayed in that hospital
10 until Sunday, or it could have been Monday morning.

11 Q. Okay.

12 A. I don't really remember if it was Sunday or Monday.

13 Q. Did you stay up there the whole time, stay in
14 Fayetteville?

15 A. I stayed with her the whole time. I did leave for a
16 few hours. I came -- I think I came back to Fort Smith to
17 The Brookfield to pick up a few of her things that she
18 wanted, and had my son stay with her while I was gone, so
19 she had a family member there with her.

20 Q. Was that the son that was attending school in
21 Fayetteville?

22 A. Yes.

23 Q. Chris, is that right?

24 A. Chris.

25 Q. When she was in Fayetteville, was there some

1 determination made that they were or were not going to do
2 surgery?

3 A. Yes, actually, that night, by the time she got up
4 there, the neurologist up there did see her, and that was
5 my anticipation why we were going up there, that they
6 might need to do something, and I don't recall if he
7 actually did a -- I think they did do a repeat CAT scan
8 when she got up there, and said that things showed
9 improvement over the CT scan, Fort Smith, and that
10 watchful waiting would be okay for now. We didn't have to
11 do anything emergent at that time.

12 Q. Whenever the decision was made that she should come
13 back to Fort Smith, how was she doing then, in your
14 estimation?

15 A. She had improved over those first couple of days, and
16 she actually had gotten up and walked down the hall with
17 the walker there in the hospital, and looked like she
18 would probably be able to progress with some rehab.

19 Q. Was she able to talk during those days at Washington
20 Regional?

21 A. She was, and she did try to talk quite a bit, but it
22 was very difficult to understand her, and I'm not real
23 sure those first couple of days part of that may have been
24 from the actual accident, the swelling, the bleeding that
25 had occurred, plus, just some -- possibly, some confusion

1 also, but she -- her speech was very garbled, and also
2 just from the, probably, the swelling that she had in her
3 face. You know, she looked bad, so it was very difficult
4 to understand what she was trying to say.

5 Q. Was it difficult for her to talk?

6 A. I don't think so. She didn't act like she was having
7 trouble because she did talk quite a bit, but her voice
8 was very soft also, so I don't know what that was really
9 about. But she would try to talk, but it was just very
10 difficult to understand what she was saying, so
11 communication was an issue those first couple of days.

12 Q. Was there ever an opportunity where she had -- let me
13 rephrase it.

14 Was there ever a time where you had an opportunity to
15 ask her what had happened the night of her accident?

16 A. I don't recall that I asked her that.

17 Q. And this is kind of another way of asking the same
18 thing, but did she ever tell you what had happened that
19 night of the accident?

20 A. The only thing I remember her saying is that, "I
21 tried to go to the bathroom, and I fell and hit the door."

22 Q. You recall her saying anything else about it?

23 A. No.

24 Q. Did you ever talk to anyone at The Brookfield, any of
25 the employees there, about the accident, what had

1 happened?

2 A. I don't think so.

3 Q. Do you know anything about the circumstances about
4 how she was found?

5 A. Not really. I just noted that the puddle -- the
6 bloodstain on the carpet, but I don't know a lot of
7 particulars about how she was on the floor or whatever.

8 Q. How did her condition overall go after she got back
9 to Fort Smith? How did it go in rehab? Let me ask it
10 that way.

11 A. I think -- well, for the first day or two, she was
12 participating in what they wanted her to do. She was
13 getting up and walking some with the walker, and she was
14 eating, and she was talking and cognitive of what was
15 going on, and then about the end of the second day or the
16 third day while she was there, we noted that there was
17 some decline.

18 I think she was having trouble moving her legs. She
19 kept saying that she just couldn't move her legs anymore,
20 and they were having trouble trying to get her up, and
21 they were having to assist more with getting her to the
22 side of the bed, and then she was really struggling just
23 even to stand, so I don't remember exactly the decline
24 every day, but it did decline to where she just was not
25 able to participate in the rehab there anymore.

1 Q. When she came to that point, did she go back to the
2 floor?

3 A. She went -- she was in HealthSouth Rehab Hospital.

4 Q. Okay.

5 A. So when they determined she could not participate in
6 the rehab program, it was decided that she should be
7 transferred back to -- or transferred to Sparks.

8 Q. And the records will bear this out, so I'm not trying
9 to box you in on anything, but just tell me what you
10 remember about how she did at Sparks and, you know, did
11 she get better, was it a steady decline, those type of
12 things.

13 A. From what I recall, it was a fairly steady decline
14 because she was not getting up. There was still an order
15 for physical therapy. They would come in and talk to her
16 about getting up, but she just couldn't participate, and
17 she became more fatigued, I believe, and just didn't -- so
18 I think, finally, we just had them stop physical therapy
19 because that was not going to work. Her appetite
20 declined, and she always loved to eat, so she just was not
21 eating much anymore. And then I think -- I know she had a
22 seizure at one point, and then after that seizure began to
23 just become more to where we could not communicate with
24 her much anymore.

25 Q. At some point, I know that she went to hospice.

1 A. Yes.

2 Q. Do you remember discussing hospice with any of the
3 doctors?

4 A. I don't recall if I did. I know that would have been
5 Steve's role. He probably did. I don't recall what my
6 conversation was with them.

7 Q. Were you supportive of the decision to move her to
8 hospice, did you think that was the right thing to do at
9 that point?

10 A. I did.

11 Q. Do you recall how many days she spent in hospice?

12 A. No. I somehow think it was less than a week. I
13 really don't recall how many days.

14 Q. What's your memory about how she did while she was
15 there?

16 A. Well, you know, of course, in hospice, that's what
17 they're doing is just making you comfortable, and she
18 stayed in bed the whole time. She never got up anymore,
19 as far as I remember, when she was in the hospice, and so
20 she was being turned, and once in a while she was alert
21 enough, I remember the first few days we did have some
22 conversations with her, and she -- she had her wedding
23 ring on, so she would constantly be fiddling and touching
24 with that, and I think maybe the last day or so she
25 stopped doing that, so we knew something was going on.

1 That was a change.

2 And she would still try to talk, and I don't even
3 know if that was to us, or she was just speaking, or
4 whatever, but she would say something every now and then.
5 Again, it was still difficult to hear her in those last
6 couple of days, but she would fiddle with that ring, and
7 she would say something. She had a little stuffed toy
8 that she loved, and she wanted that right there with her,
9 and she would talk about that.

10 Q. When was the last time you were able to see her
11 before she passed?

12 A. The evening before. We were in there the evening
13 before.

14 Q. You and Steve?

15 A. Yes.

16 Q. Okay. And would that be -- as you know, I took
17 Steve's deposition right before yours, so would -- when
18 you say "the evening before," does that mean you saw her
19 that evening, you went home, and sometime in the early
20 morning hours, you got a call or --

21 A. Yes.

22 Q. Okay.

23 A. And I don't even recall what time it was, but, right.
24 We were there that evening, and then we left. The sitter
25 was there with her, and we had thought, as with Steve's

1 dad, that we would get a call, and go back over and spend
2 some time, but that wasn't the case.

3 Q. Have you talked to anyone who purports to know how
4 the accident happened, other than what Ms. Dot told you
5 herself?

6 A. No, I don't recall that I have.

7 Q. Did anyone from the State of Arkansas Office of Long
8 Term Care, or any of their investigators, contact you as
9 they were investigating her accident?

10 A. I did speak with one person on one occasion, and I
11 don't even recall who it was, what her name was, or what
12 office that she was from, but I think it had to do with
13 some of the state investigation, and it was after the
14 accident because about the only thing I really recall of
15 the conversation was that I was on my way over to see Mom
16 when she was in the HealthSouth Rehab Hospital, and I got
17 a phone call on my cell phone at that time, and remember
18 just talking to someone briefly about -- I think about the
19 accident, a little bit about her stay at Brookfield.

20 Q. Do you recall any of the details of that conversation
21 as far as how long the conversation was, or any details
22 you may have talked about?

23 A. I really do not. I don't think it was a real long
24 conversation, but, again, I'm just speculating.

25 Q. Okay.

1 A. I really don't remember.

2 Q. That's all right. If you don't remember, it's okay
3 to tell me that.

4 Did you have any other interview or contact,
5 conversation, with any other investigator after that point
6 in time?

7 A. No, I don't think so.

8 Q. As you would visit your mother-in-law in the, let's
9 say, last 90 days before her accident, if her accident
10 happened on November the 19th, that would take us back to
11 the August/September time frame, did you have any
12 particular concerns about the care she was receiving at
13 The Brookfield?

14 A. Well, my concern was that I was not as directly
15 involved in what was going on as my husband Steve was, and
16 so I was letting him handle most of that, but I was aware
17 that there had been an issue and discussion on her not
18 getting call lights answered in a timely manner. You
19 know, she was still going down to the dining room, eating,
20 that kind of thing.

21 I know there were a couple of instances when Steve
22 reported to me that, you know, he had noted -- that he had
23 found out that his mom was walking by herself, and a
24 couple times that she had been soiled. And sitters had
25 mentioned to me that sometimes they had come in in the

1 morning and found that the sheets from the night before
2 were wet, and had not been changed, and so I knew that
3 there were some things going on, and Steve was handling
4 those.

5 Q. Were these things that were reported to you, either
6 by Steve or by the sitters?

7 A. Usually, that was the manner that I would find out.

8 Q. Did you -- did you observe any of these type of
9 things yourself?

10 A. I -- really, about maybe once or twice, I was there
11 in the evening when, you know, she would be toileting
12 and -- or I don't know where the -- I know I was there one
13 time when she was in the bathroom, and no one else was
14 there with her and, you know, I asked if I could help her.
15 She didn't want me in there helping her in the bathroom.
16 Again, you know, we've talked about how proud she is. She
17 didn't want me helping her in the bathroom so, "No, it's
18 okay. They're going to help me. I'll just wait here."
19 And she would pull the cord and wait and, you know, I
20 think one time I waited about 15 minutes before help came.
21 I kept saying, "Mom, I'll be glad to help you." "No, it's
22 okay. They'll come." She knew if she waited long enough
23 that she thought someone would show up.

24 Q. Do you remember any other instances?

25 A. No.

1 Q. These issues you listed for me just a moment ago that
2 were reported to you, either by the sitters or by Steve,
3 did you do anything to follow up on those issues with the
4 staff, or was that being handled by other people?

5 A. Well, early on -- and my recollection is that things
6 seemed to decline more, as far as the care, about in
7 August, and Steve was working on those issues, but as time
8 progressed, and probably more into November, even, I
9 decided that I needed to be more involved because Steve
10 just had to have a break from this. It was too stressful
11 for him with his depression and constantly over there with
12 his mom. And I said, "These things that are -- also that
13 are medical issues with Mom, let me try to handle some of
14 those for you."

15 And so I think it was at that time that I left Mitzi
16 a note or maybe sent her an e-mail or something saying any
17 of these medical concerns, please let me know about them.
18 Let me help with some of these issues with Mom. You can
19 talk to me about some of these things. And I did try to
20 make an effort at that time, and I think that was shortly
21 before the accident, so not a lot happened after that.

22 Q. Was there ever an occasion, in those last 90 days
23 prior to her accident, where you went to someone at the
24 facility to report that you had a specific complaint or
25 concern?

1 A. I don't recall that I did.

2 Q. There is an e-mail exchange in middle of November
3 where it starts out as an e-mail exchange between Mitzi
4 and Steve about having a meeting, and then it's indicated
5 that you were going to attend the meeting on behalf of the
6 family. Do you remember that?

7 A. Yes.

8 Q. Okay. And I think this meeting, actually, there was
9 some difficulty scheduling it, and this was just the day
10 before -- just in the days before her fall.

11 Whenever there was some difficulty scheduling that
12 with your schedule, what was the issue there?

13 A. And I do believe that -- those e-mails occurred on
14 the week that the accident happened, and the accident was
15 on a Thursday, and I think I e-mailed Mitzi early in the
16 week and said that, you know, we need to meet, and let's
17 meet with the, and named a couple of different people from
18 the state, and as for myself, 8:00 or 4:00 would be best,
19 and please give me some notice, 24 hours' notice, and I
20 will try to work with you on that. And I think there was
21 an e-mail on that Wednesday afternoon, about 4:15, when
22 Mitzi suggested we meet the next day at 4:00, and that I
23 should -- if I wanted the two people from the state, I
24 should invite them to come.

25 Well, at 4:30 in the afternoon, first of all, I

1 didn't feel it was my responsibility to invite the people
2 from the state. I was asking her to arrange it, and I'll
3 be there, and so that was not going to work for people
4 from Little Rock, obviously, to come the next day at 4:00,
5 so we were going to have another date, apparently, and
6 then that never happened.

7 Q. Was the reason that you indicated you couldn't do the
8 4:00 meeting the following day, was that so that,
9 hopefully, the folks from Little Rock would be there, is
10 that why you couldn't do it?

11 A. Well, I would consider it twofold. Number 1 is that
12 I didn't feel like I had had enough notice. That really
13 wasn't a 24-hour, maybe a 23-hour notice, but I really
14 felt like that wasn't fair to my patient load to
15 reschedule all of them in the afternoon. And, plus, if I
16 had said yes, let's do it anyway, you know, I didn't think
17 those people could have made it from Little Rock, and it
18 hadn't been arranged, and I, certainly, at 4:30 in the
19 afternoon, could not call them myself.

20 Q. Did you attend a walk-through at the facility after
21 your mother-in-law's death when you all were closing out
22 the account?

23 A. No.

24 Q. That wasn't you?

25 A. No.

1 Q. Okay. What I have in mind is one of these
2 walk-throughs, kind of like when you're moving out of an
3 apartment, you walk through with the landlord, and make
4 sure there weren't any holes in the wall. You don't
5 recall attending anything like that?

6 A. Our sitter, Shirley, did that for us.

7 Q. Okay. With regards to the sitters, were you aware,
8 at the time, and by "at the time," I mean when your mother
9 was living at the facility, were you aware that they, the
10 sitters, were keeping a diary of what went on each day?

11 A. Yes.

12 Q. Did you ever look at that?

13 A. No.

14 Q. Do you know why they kept it?

15 A. My thought on why they kept that was because,
16 originally, we first -- Shirley was the first sitter that
17 we hired, and that was back when we had her for Steve's
18 dad. And she was from an agency, and that was part of
19 their role is to keep a log and to turn in what they had
20 done with folks during the day. So she continued that,
21 and then her daughter was one of our sitters, and she,
22 apparently, has her own agency, and so she was used to
23 doing that, so I never said anything to them about that.
24 I thought that was for their reference. I don't know what
25 they did with that information, that they probably did

1 that for everyone they cared for.

2 Q. Did you ask them to keep such a diary?

3 A. No.

4 Q. To your knowledge, did Steve ask them to keep such a
5 diary?

6 A. No.

7 Q. Okay. Was there any reason in particular that you
8 didn't look at it?

9 A. I had no reason to look at it, I mean, whenever I was
10 there, we had open communication. They would tell me what
11 was going on. I would talk to them, and I really had no
12 reason to.

13 Q. Have you had any conversations with any of the
14 employees from the facility about Ms. Dot's accident?

15 A. I don't think so.

16 Q. Have you had any conversations with any employees
17 from the facility about any problems with her care since
18 her passing? Let's do that.

19 A. No.

20 Q. After her accident, but before her passing, have you
21 had any conversations with any of the people from the
22 facility about her care?

23 A. I don't recall that I did.

24 Q. Other than normal routine communications with the
25 staff, did you have any communications with them about her

1 care, prior to her accident?

2 A. The only thing that I recall, you know, I mentioned
3 that incident about the toilet, but then I really didn't
4 talk to anybody about that. I think I -- the sitters did
5 express to me, on occasion, some concerns, and sometimes I
6 would just mention it to Steve, let him handle it.

7 I do remember one time, and it may have been close to
8 the time of the accident, when I was trying to handle more
9 of this for Steve, when they brought up the issue again
10 about Mom being in wet sheets. And I believe I did e-mail
11 Mitzi about that to try to get a response on that, and was
12 there something going on different with Mom. Why was this
13 happening? Or was it something that we could do something
14 about as far as the care. But other than that, I don't
15 remember anything in particular.

16 Q. And how did you contact Mitzi about that?

17 A. I recall an e-mail.

18 Q. Do you recall any other issues that -- I would call
19 them complaints, but I'm not trying to limit that, any
20 other issues that you would have brought to the attention
21 of The Brookfield regarding Dorothy Brigance's care, say,
22 from the time that Jack passed away until her accident?

23 A. I don't remember a specification conversation, but I
24 do know that we -- and myself, on occasion, also, talked
25 about her in the dining room. We wanted more

1 socialization for her. I wanted her to be at a table with
2 some other ladies, and so early on, that was something
3 that we had tried to do, but, you know, other than what
4 we've already discussed, I don't recall anything else.

5 THE VIDEOGRAPHER: You have about 10
6 minutes.

7 BY MR. DOSSETT:

8 Q. You told me that the sitters had, at some point,
9 expressed to you something about the bedding being wet?

10 A. Yes.

11 Q. You just told me about that. Do you remember, as you
12 sit here today, any other specific concerns that the
13 sitters raised, and brought to your attention?

14 A. And, again, I don't really recall a lot of specific
15 conversations, but I do recall, in general, sometimes them
16 saying to me that they felt like they were having to
17 toilet Mom more than they were to be responsible for.
18 Because, really, they were there for the companionship,
19 not for any care, and we made that clear to Brookfield
20 that we wanted them -- The Brookfield assistants to care
21 for Mom, not our sitters, but they were doing more of her
22 care, and we felt like some of that was because she was
23 not getting attention.

24 I recall a conversation with, I believe it was,
25 Debbie, the sitter, as far as doing laundry, feeling that

1 Brookfield was supposed to do laundry one day a week, but
2 when Mom is having more problems with being wet, and they
3 would find wet sheets, laundry wasn't getting done but
4 once a week, and it would sit in the room and smell, so
5 the sitters would do that. Those kinds of things.

6 Q. You mentioned to me that you brought the issue of the
7 wet bedding to Mitzi's attention. Did you ever bring any
8 other issue to her attention that the sitters had
9 expressed to you?

10 A. I don't recall specifically.

11 Q. When was the last time that you were at the facility?

12 A. The evening of the accident.

13 Q. You've had no occasion to go back since then?

14 A. Oh, the last time I was there at the facility, that's
15 the last time I was there with Mom and, again, I believe I
16 stated I went back over the weekend when she was in the
17 hospital in Northwest Arkansas to get some things that she
18 wanted out of her room.

19 Q. That would be the last time?

20 A. I believe it was.

21 MR. DOSSETT: We're almost to the end of our
22 tape. We're going to take a break for just a
23 minute and switch tapes?

24 THE WITNESS: Okay.

25 THE VIDEOGRAPHER: Time is 3:02 p.m. We're

1 off the record.

2 (A brief recess was taken.)

3 THE VIDEOGRAPHER: Time is 3:10 p.m. We're
4 back on the record.

5 BY MR. DOSSETT:

6 Q. Ma'am, I have just a few follow-up questions.

7 A. Okay.

8 Q. Have you had any -- taken the opportunity to look at
9 the diary that the sitters kept prior to today, at any
10 point?

11 A. No, I haven't.

12 Q. Who was the primary contact that the facility was to
13 contact if they had any questions, problems, issues?

14 A. Well, Steve was the primary contact for most things,
15 and then the last couple months of Mom's being there, I
16 had requested that I would be the contact for any medical
17 problems.

18 Q. Do you know, just give me an estimate, as to when
19 that changeover occurred?

20 A. I don't recall specifically. May have been September
21 or so.

22 Q. Okay. And I understand that's an estimate. It's not
23 supposed to be exact.

24 Did you, personally, ever make any complaints or
25 reports regarding Dorothy Brigance's care to the Arkansas

1 Office of Long Term Care?

2 A. No, I didn't.

3 Q. How about to the police?

4 A. No, I didn't.

5 Q. How about to any authority?

6 A. No.

7 MR. DOSSETT: Ma'am, that's all the
8 questions I have for you. I appreciate it.

9 THE WITNESS: Okay.

10 MR. CHRONISTER: You're done.

11 THE VIDEOGRAPHER: The time is 3:12 p.m.

12 This will conclude the deposition.

13 (Deposition concluded at 3:12 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2

3 STATE OF ARKANSAS)

) ss

4 COUNTY OF BENTON)

5

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

16

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

20

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

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

10

11 IN WITNESS WHEREOF, I have set my hand and
 12 affixed my seal on this 7th day of March, 2011.

13

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BETH A. KALTENBERGER, CCR, RPR, CRR

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Arkansas LS No. 679

California CSR No. 9231

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Nevada CCR No. 505

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COURT REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, BETH A. KALTENBERGER, LS No. 679, Certified Court Reporter in the State of Arkansas, Certify that the foregoing pages 1-37 constitute a true and correct copy of the original deposition of PEGGY BRIGANCE, APN, taken on February 21, 2011.

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

Dated this 7th day of March, 2011.

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