

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

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

7 Plaintiff,

8
 vs.

 Case Number CV 2010-1365

9
10 THE BROOKFIELD AT FIANNA OAKS, LLC,
 d/b/a THE BROOKFIELD AT FIANNA OAKS;
 ROBERT "Bob" BROOKS; and MITZI BAILEY,

11 Defendants.

12 _____

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15
16
17 DEPOSITION OF DAVID DEVEREAUX,
18 VOLUME II, taken on behalf of the
19 Defendants, at the law offices of
20 Chronister, Fields & Flake, 309 North
21 Seventh Street, Fort Smith, Arkansas,
22 on Saturday, August 20, 2011, at
23 10:28 a.m.
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25

A P P E A R A N C E S

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I N D E X

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TESTIMONY BY DAVID DEVEREAUX

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E X H I B I T S

LETTER

MARKED

A Mitzi Bailey Personnel File Review	81
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1 SATURDAY, AUGUST 20, 2011; FORT SMITH, ARKANSAS

2 10:28 A.M.

3
4 DAVID DEVEREAUX,

5 having been called upon to testify in the form of a
6 deposition, and having been duly sworn or affirmed,
7 testified further as follows, to wit:

8
9 E X A M I N A T I O N

10 BY MR. DOSSETT:

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

12 A. David Devereaux.

13 Q. Mr. Devereaux, I had taken your deposition in this
14 case previously, as you've been identified as an expert
15 witness for the plaintiff, and during that deposition, I
16 had asked you if you developed any new opinions or the
17 basis for your opinions changed, to let us know, through
18 Mr. Chronister, and I received notice a couple of weeks,
19 maybe ten days ago, that you had some additional
20 information to talk about, and so I have requested to take
21 your deposition again.

22 Is that a correct representation, that you now have
23 some new information that bears on your opinions?

24 A. Yes.

25 Q. It's going to be my goal that we not replot the

1 ground we covered last time, but just the new topics, and
2 that will help us get through this a little more quickly.

3 First of all, tell me, just kind of generally, what
4 it is that's new information or that has changed since I
5 took your previous deposition.

6 A. I shared information with Mr. Chronister earlier in
7 August, after reviewing more documents and materials
8 related to the case.

9 Q. What additional items did you review?

10 A. I reviewed some deposition material, and I also
11 reviewed Mitzi Bailey's personnel file.

12 Q. Those depositions, were they listed in the cover
13 letter that you provided to Mr. Chronister's office, along
14 with the updated report?

15 A. I know I referenced Mitzi Bailey's deposition in my
16 letter. I don't recall mentioning any others, though I
17 have reviewed others.

18 Q. What others do you recall reviewing?

19 A. I reviewed Sherry Proffer, Jim Hicks, Jane Pessa,
20 Betty Wheeler, Debbie Gatley -- or Kathie Gatley, sorry,
21 the other ombudsperson and Debbie Upton, Cheryl Williams,
22 Deborah Swaim, and if I missed any, my apologies, but also
23 those of Steve and Peggy and Marcelena Brigance.

24 Q. Have you had an opportunity, since your deposition,
25 to review the, what I call, the sitters' log, handwritten

1 notebook of daily events kept by the sitters?

2 A. No.

3 Q. Have you reviewed that at all to this point?

4 A. No.

5 Q. There's also a typewritten condensed version of that
6 that was prepared by Ms. Upton, I believe. Have you seen
7 that one?

8 A. I have seen that.

9 Q. Is that something you had reviewed before your first
10 deposition or since your first deposition?

11 A. Since.

12 Q. You had not reviewed it at the time of your first
13 deposition, then?

14 A. No. Nor did I review it before I submitted that
15 report to Mr. Chronister.

16 Q. When did you review that typewritten summary of the
17 nurses' notes?

18 A. Earlier this week.

19 Q. And I said the nurses' notes. It's the sitters' log.
20 Earlier this week?

21 A. Yes.

22 Q. I have already taken the supplemental deposition of
23 Ms. Acosta, and she explained to me that on the report,
24 she showed me the shaded boxes that represent new
25 information. She indicated to me that she prepared the

1 supplemental report, with input from you, but she's the
2 one who actually typed it up; is that correct?

3 A. That's partially correct. Not only did she type it,
4 but, for the most part, she wrote it.

5 Q. Okay.

6 A. I read it, but she wrote it.

7 Q. Okay. So the updates to the written report represent
8 mostly her work product?

9 A. Yes.

10 Q. Does it represent all of her work product, or did you
11 make any changes to it?

12 A. We had conversation during the construction of the
13 report. She wrote the report, I read the report, I didn't
14 rewrite the report.

15 Q. Did you make any changes to it?

16 A. No.

17 Q. Do you agree with it?

18 A. Do I agree with the report that was submitted?

19 Q. Yes, sir.

20 A. Yes, I do.

21 Q. Is it fair for me to work on the assumption that that
22 represents your opinions, as well as Ms. Acosta's?

23 A. If you wish.

24 Q. Would that be accurate?

25 A. I think so.

1 Q. If it's on that written report, it is something that
2 you reviewed prior to sending it to Mr. Chronister that
3 you agreed with?

4 A. Yes.

5 Q. I just want to make sure if I were to get to trial
6 and ask you about something on there, that you wouldn't
7 say you didn't agree with it or didn't take a position on
8 it.

9 A. No.

10 Q. I also was provided recently some e-mails,
11 essentially, the e-mail correspondence between yourself
12 and Ms. Acosta and Mr. Chronister's office, and there were
13 a couple of items I wanted to ask you about in that.

14 First of all, there was some discussion about the
15 rates that would be charged in this case, and I know at
16 the time I took your deposition, you had not settled on
17 that. Have you since settled on rates?

18 A. I've billed you for rates, yes.

19 Q. Yes, sir. I want to understand the rates that you're
20 going to charge me, and compare those to the rates you're
21 going to charge Mr. Brigance.

22 A. Okay.

23 Q. So what rates are you going to charge me?

24 A. I charged you \$300 an hour.

25 Q. And how about for Ms. Acosta's time, do you recall?

1 A. I believe hers was at \$200 an hour.

2 Q. I believe that's correct. And then how about

3 Mr. Brigance?

4 A. We billed him the same rates.

5 Q. And has he provided any payment towards those?

6 A. He's provided a retainer.

7 Q. In what amount?

8 A. I believe it was \$5,000 to each of us.

9 Q. Okay. Will the rates be the same at trial?

10 A. Which rates?

11 Q. The hourly rates that you mentioned.

12 A. Yes.

13 Q. You'll charge Mr. Brigance those same rates?

14 A. Yes.

15 Q. How about when you're preparing for trial, will those

16 be at the same rates?

17 A. Yes.

18 Q. Sometimes people will charge a -- experts are all

19 over the place, but sometimes they'll have a different

20 rate for review, and a different rate for deposition, and

21 a completely different rate for trial. But you're not

22 doing that, you have one rate for everything?

23 A. That's right.

24 Q. There was also an indication in that e-mail

25 correspondence that you had reviewed the personnel file

1 for Mitzi Bailey; is that correct?

2 A. Yes.

3 Q. And that you felt like there was a story behind her
4 personnel file or her work history, and invited
5 Mr. Chronister to discuss that with you if he was
6 interested.

7 Do you remember sending that e-mail?

8 A. I wrote a cover letter with the report I submitted
9 that is over there, yes. I sent this to Mr. Chronister.

10 Q. And there was kind of a phrase in there -- and I
11 apologize. I didn't bring those e-mails with me, but
12 there's a phrase in there something along the lines there
13 appeared to be a story behind Ms. Bailey's work history.

14 Do you remember sending that e-mail?

15 A. You would have to refresh my memory. I sent a cover
16 letter via e-mail with that report to Mr. Chronister. If
17 you're talking about a separate e-mail, I would have to
18 see it.

19 Q. You wouldn't be able to recall that offhand?

20 A. No.

21 Q. And do you feel like there is a story, quote,
22 unquote, behind Mitzi Bailey's work history with The
23 Brookfield prior to The Brookfield?

24 A. My impression around her work history, yeah, yes, I
25 do.

1 Q. And what is that?

2 A. Well, I think I stated it partially in the letter
3 that I submitted to Mr. Chronister.

4 Q. Okay. Well, can you tell me about it? I don't have
5 a copy of that letter, I don't think.

6 A. Did you lose it?

7 Q. No. I don't think I ever received it.

8 A. You didn't receive it?

9 Q. There's a cover letter?

10 A. There's a cover letter that goes with that piece of
11 paper you have in your hand.

12 Q. The executive summary of her personnel file?

13 A. As I said, this is my fourth time, there is a cover
14 letter that accompanies that document.

15 Q. All right.

16 A. Yes.

17 Q. And does it somehow summarize your thoughts on it?

18 A. In many respects, yes, it does.

19 MR. DOSSETT: I have not received a copy of
20 that, I don't believe, Rex.

21 MR. CHRONISTER: We will look, Mark. You
22 should have everything.

23 MR. DOSSETT: I received a package of
24 e-mails, but not letters, so if it was the cover
25 letter, I don't have that.

1 MR. CHRONISTER: It was probably a cover
2 letter that came by way of e-mail because I
3 received those reports by e-mail.

4 THE WITNESS: And it says that on the cover
5 letter, transmitted by e-mail.

6 MR. DOSSETT: I don't have a cover letter on
7 that. We'll look for that at a different time, I
8 guess.

9 (Exhibit A was marked for identification.)

10 BY MR. DOSSETT:

11 Q. Why don't you tell me in your own words what you
12 believe the story behind Ms. Bailey's employment history
13 is. And if you need to look here, I have marked as
14 Exhibit A the summary that you prepared of Ms. Bailey's
15 personnel file.

16 A. Okay.

17 Q. And before we get started, will you identify for the
18 record what Exhibit A is?

19 A. This is a series of seven pieces of paper, and the
20 cover page for this exhibit is entitled "Mitzi Bailey
21 Personnel File Review."

22 Q. Did you prepare this document?

23 A. Yes.

24 Q. All right. Did anyone else contribute to it?

25 A. Contribute in terms of construction?

1 Q. Content and preparation of the document.

2 A. No. Ms. Acosta read it, but she didn't rewrite it or
3 edit it.

4 Q. So tell me, after you reviewed Ms. Bailey's personnel
5 file, what was the story behind her work history that you
6 gained from that?

7 A. The information that I learned, in reviewing Mitzi
8 Bailey's personnel file, was that she applied for a job to
9 operate an assisted living facility as administrator with
10 very little prior experience in an assisted living
11 facility, and zero experience in a supervisory capacity in
12 assisted living, administratively, prior to her
13 application. What I also learned was that she highlighted
14 some of her, quote, core professional strengths in her
15 résumé as staff training and development and customer
16 service.

17 I learned that The Brookfield conducted a reference
18 check process that was inconsistent with what my
19 experience was in terms of reference checking someone who
20 did not have great depth in terms of administrative
21 experience in an assisted living facility, particularly in
22 the case where this person would be considered for hire in
23 opening a brand-new assisted living facility, and then
24 once hired, that there was a one-day approach to
25 orientation, when the company that she worked for or was

1 hired by set different targets, some much longer than a
2 single day for orientation to be properly completed, and
3 that the company had specific expectations and
4 requirements around incident reporting, documentation,
5 residents' rights, building and safety and abuse and
6 neglect investigations and, in most cases, after reviewing
7 that personnel file and Ms. Bailey's video deposition, it
8 appeared that she didn't follow, or chose not to follow,
9 the structure that The Brookfield put in place for the
10 benefit of someone running that facility; that there were
11 tests that every employee should have taken as part of
12 their orientation, and she did not.

13 And the conclusion that I came to was that for
14 someone who had very limited exposure in their work
15 history in an assisted living facility, and then
16 represented themselves as being a candidate, a qualified
17 candidate, as an administrator of an assisted living
18 facility, she didn't devote a lot of time to following the
19 rules that the company or the organization that hired her
20 actually set in place for her to uphold.

21 Q. Are all your opinions that come from Mitzi Bailey's
22 personnel file represented in Exhibit A?

23 A. This is the review of Mitzi Bailey's personnel file.

24 Q. Yes, sir. And I was just wondering if it represents
25 all of the opinions that you have developed as it relates

1 to that personnel file. Does Exhibit A contain all those?

2 A. Based on the information that I had available to
3 review?

4 Q. Yes, sir.

5 A. Yes.

6 Q. So if I wanted to know what all of your opinions were
7 with regards to Mitzi Bailey's personnel file, all I have
8 to do is look at Exhibit A, and they will all be contained
9 within that document?

10 A. No. That's not what I said. That's based on
11 information available. I made remarks in this document
12 that there were some pieces of information not available,
13 and there wasn't any information that told me that that
14 was Mitzi Bailey's personnel file in its totality. So
15 this is based on the review of the information made
16 available to me.

17 Q. Uh-huh.

18 A. But if there was a personnel file that was on hand at
19 Bob Brooks's office or if there was a supplemental file at
20 The Brookfield in the business office that had to do with
21 Mitzi Bailey, I would like to be able to review that
22 before I tell you that these are my final thoughts.

23 Q. Okay. Today is August the 20th. The trial of this
24 case starts, I guess, nine days from today. Have you
25 finalized your opinions?

1 A. I've given you the conditions around a finalization,
2 Counsel, and, as I said, and this will be the third time,
3 based on the information that I had available to review,
4 these are my findings.

5 Q. Okay. And I'm trying to make sure I understand. I
6 apologize for asking again, but I don't feel like I have
7 an answer yet.

8 Does Exhibit A contain all of your opinions that you
9 hold, at least ones that you've developed to date, with
10 regards to Mitzi Bailey's personnel file?

11 A. Based on the information I've reviewed, yes.

12 Q. And do you plan on reviewing any additional
13 information?

14 A. If it's available.

15 Q. Do you have any information right now that you either
16 have in your possession or your access that you intend on
17 reviewing in the future?

18 A. No.

19 Q. Okay. So I think what you're telling me is that
20 Exhibit A represents your opinions, but if you were
21 provided additional information, you may develop new
22 opinions or change opinions that you currently hold?

23 A. Or confirm the ones that I have, yes.

24 Q. Sure. So if I want to know what opinions you hold
25 with regards to Mitzi Bailey's personnel file as of today,

1 all I have to do is look at Exhibit A, and they will all
2 be contained within that document?

3 A. You'll have my review of the file. If you want to
4 ask me additional questions about my opinion of her as an
5 administrator that's not contained in the personnel file,
6 that's probably true.

7 Q. Here's the deal: I thought I had your final opinions
8 many months ago, then we get two weeks before trial and I
9 find out lo and behold, Mr. Devereaux has developed new
10 opinions, and so here I am on a Saturday, taking your
11 deposition nine days before trial, and all I want to know
12 is have you gotten to the bottom of it, and do you have
13 your opinions finalized and, if so, will you tell me what
14 they are?

15 A. Well, I think you've misrepresented that, Counsel.

16 Q. Tell me how I got it wrong?

17 A. Let me try and center you on that.

18 Q. Thank you.

19 A. And if you read the cover letter that accompanied
20 this document --

21 Q. I would love to read it, by the way.

22 A. Then why don't I wait until you read that before you
23 ask me any more questions about it.

24 Q. Did you bring a copy of it with you today?

25 A. I wasn't requested to. No.

1 Q. Well, go ahead and tell me what it is that I
2 misunderstand about your position.

3 A. When you read that letter, it will restate the
4 initial three points that we put in our initial report to
5 Mr. Chronister.

6 Q. Okay.

7 A. So if you have the initial report in your possession,
8 you could pull that out, and those three points were in
9 the first report, and those three points were in the
10 second report.

11 Q. Okay.

12 A. So there is nothing new or different in terms of our
13 conclusion. There's additional information to review, but
14 the conclusions are no different.

15 Q. Okay. Have you developed any new opinions since I
16 took your deposition last?

17 A. About what, sir?

18 Q. About this case.

19 A. About this case?

20 Q. Yes.

21 A. No. They go back to, as I said just a second ago,
22 the three points that were in the initial cover letter to
23 Mr. Chronister and the three points that were in the
24 second cover letter to Mr. Chronister.

25 Q. How many years did you spend at Beverly, will you

- 1 remind me again?
- 2 A. Eight and a half.
- 3 Q. How many times was Beverly cited for violation of the
4 Arkansas regulations during your watch?
- 5 A. There were several facilities that had surveys all
6 the time. I think I attested to that in the initial
7 deposition. And we can go through, as you said, ground
8 covered in the earlier deposition, but there were several
9 facilities that went through routine and complaint surveys
10 all the time.
- 11 Q. I'm wondering if you know the number of citations
12 issued to Beverly by the State of Arkansas.
- 13 A. No.
- 14 Q. Do you know, how many times was Beverly investigated
15 by the attorney general for the State of Arkansas?
- 16 A. No.
- 17 Q. You don't know that?
- 18 A. No.
- 19 Q. Were those areas of your responsibility?
- 20 A. At times.
- 21 Q. And what were the job description requirements for
22 administrators of assisted living facilities at Beverly?
- 23 A. You would have to ask Beverly.
- 24 Q. You don't know that?
- 25 A. I don't have the job description with me.

1 Q. You would need the document to refresh your memory?

2 A. I would.

3 Q. What did the procedure provide for at Beverly with
4 regards to the investigation of complaints or incidents,
5 what was the procedure set out by Beverly?

6 A. You would have to ask for that, too.

7 Q. You can't testify to that as you sit here?

8 A. I can't recite it. I know one exists.

9 Q. So you know one exists. Do you know what it
10 contained, can you recall?

11 A. No.

12 Q. Did you ever personally participate in the hiring of
13 any administrators for assisted living facilities on
14 behalf of Beverly?

15 A. On behalf of Beverly?

16 Q. Yes, sir.

17 A. No. I have on previous companies.

18 Q. Okay. And for Beverly, that represented the last --
19 your last employer in the long-term health care industry,
20 didn't it?

21 A. Yes.

22 Q. Okay. When was the last time that you did
23 participate in the hiring of an administrator for an
24 assisted living facility?

25 A. 1998.

- 1 Q. And remind me what company that would be for.
- 2 A. Manor Care Health Services.
- 3 Q. And what would have been your role at that time for
4 that company?
- 5 A. I was a district vice president.
- 6 Q. Do you remember the job requirements or description
7 for that particular position with the company?
- 8 A. I know a job description existed. If you want a
9 copy, you can ask them.
- 10 Q. You can't tell me what was on it?
- 11 A. No.
- 12 Q. When you were at Beverly, did you participate as an
13 administrator, I mean, participate in hiring an
14 administrator for any skilled nursing facilities?
- 15 A. No.
- 16 Q. When you worked for Beverly, did Beverly maintain
17 separate policies for investigating incidents at assisted
18 living facilities versus skilled nursing facilities?
- 19 A. I don't believe so.
- 20 Q. Do you know?
- 21 A. I gave you my answer.
- 22 Q. So if we compared those, you believe they would be
23 the same?
- 24 A. Yes.
- 25 Q. But you can't tell us what they contained?

- 1 A. No, I can't.
- 2 Q. Did Beverly maintain a manner in which residents at
3 either an assisted living facility or skilled nursing
4 facility could voice a complaint?
- 5 A. Yes.
- 6 Q. And what was that?
- 7 A. There was a toll-free hotline based in Fort Smith,
8 staffed 24 hours a day.
- 9 Q. All right.
- 10 A. So they could call and talk to someone. They could
11 also speak to a department head, to an administrator in
12 the building, and log a complaint in the same way.
- 13 Q. And what was -- what was Beverly's policy for
14 maintaining a log of those complaints?
- 15 A. To maintain a log.
- 16 Q. In what manner?
- 17 A. In a written manner.
- 18 Q. And where is that kept?
- 19 A. Either in the Fort Smith office, if the complaint was
20 logged at the toll-free hotline, or at the facility if it
21 was logged at the facility.
- 22 Q. Was the complaint then to be reported to the home
23 office?
- 24 A. Excuse me?
- 25 Q. If it's made at the facility, was it then required to

- 1 be reported to the home office in Fort Smith?
- 2 A. No.
- 3 Q. Did your responsibilities at Beverly ever require you
4 to audit the personnel files of administrators?
- 5 A. No.
- 6 Q. As you reviewed the different policies that you quote
7 here in Exhibit A on the different topics, did you have
8 any criticisms of the policies themselves?
- 9 A. No.
- 10 Q. Did they appear to be good policies, to you?
- 11 A. There were a couple of things I would have changed,
12 and I reference that in my report.
- 13 Q. Other than the changes that you would suggest in your
14 report, do you find the policies to be sufficient?
- 15 A. Yes.
- 16 Q. Your criticism would be that it appears to you that
17 Ms. Bailey did not follow them?
- 18 A. My observation, yes.
- 19 Q. You mentioned to me earlier that you still have not
20 reviewed the sitters' log. What is the reason for that?
- 21 A. Because I've reviewed many other documents.
- 22 Q. But why not the sitters' log?
- 23 A. Because other things came first, and Ms. Acosta
24 reviewed the log.
- 25 Q. When was the last time you discussed this case with

1 Mr. Brigance?

2 A. I had a brief telephone conversation with

3 Mr. Brigance on Wednesday.

4 Q. Of this week?

5 A. Yes.

6 Q. What was said during that conversation?

7 A. Not too much.

8 Q. Who initiated it?

9 A. He did.

10 Q. And whenever -- did he express to you the reason that

11 he was calling you?

12 A. He wanted to call me.

13 Q. And talk about this case?

14 A. A little bit, to talk about the conversation we were

15 going to have here.

16 Q. And did he ask you any questions?

17 A. No.

18 Q. Did he make any statements?

19 A. Yes.

20 Q. What statements did he make?

21 A. He made some statements about you.

22 Q. Okay. And what did he say?

23 A. He said to expect exactly what's going on here today.

24 Q. What else did he say?

25 A. He asked me if I needed any additional information.

1 Q. What did you tell him?

2 A. I told him that I think I had everything that I
3 needed.

4 Q. Is there any document in this case that you have
5 requested to review that you have not received?

6 A. No.

7 Q. Is there any document in the case that you feel like
8 you need to review, that you don't have, I mean, you
9 haven't asked for, but you feel like you need it, but it
10 hasn't been provided to you?

11 A. I don't know what I don't know, Counsel. So, as I
12 said earlier around Mitzi Bailey, if there was additional
13 information in the files of Bob Brooks related to her
14 employment, or if there was additional information related
15 to her employment at The Brookfield, that would be
16 helpful.

17 Q. And I'm not asking you to read people's minds or have
18 a crystal ball. What I'm wondering is as you have
19 reviewed the files, is there a piece of information or a
20 document that you said, "I need this piece of information
21 or document," and you don't have it, you have not been
22 provided it yet?

23 A. I have -- I have not asked for it. I have referenced
24 it in this report, and, yes, there is.

25 Q. And what is that?

1 A. I would really like to see performance evaluations
2 done by Bob Brooks on Mitzi Bailey.

3 Q. Why?

4 A. Because I'm interested.

5 Q. In what he, Bob Brooks, believed to be her
6 performance?

7 A. If he wrote it, if one exists, when he wrote it and
8 what it says.

9 Q. Okay.

10 A. I would be interested in knowing that. I can't draw
11 a conclusion without it, not having seen it, but that
12 would be documentation I would be interested in seeing.

13 Q. Okay. Anything else?

14 A. Not that I can recall. Yes, I can.

15 Q. Okay.

16 A. Whatever training -- additional training and
17 development documentation or files exist to building
18 skills or competence around Mitzi Bailey, whether it was
19 self-instruction, whether it was instruction within the
20 organization otherwise known as The Brookfield, or the
21 organization that Bob Brooks was responsible for in
22 supervising Mitzi Bailey.

23 Q. Are you still planning to come to trial at the end of
24 September (sic) here in Fort Smith?

25 A. If I'm asked.

- 1 Q. As you sit here today, have you been asked?
- 2 A. Have I been asked?
- 3 Q. Yes, sir.
- 4 A. Doesn't the judge usually ask or counsel usually ask?
- 5 Q. Counsel will usually ask you.
- 6 A. That usually waits until the trial starts, though,
- 7 doesn't it, Counsel?
- 8 Q. No, sir. Has anybody asked you to be here, to be in
- 9 Fort Smith, and be available for the trial?
- 10 A. To be in town?
- 11 Q. Yes, sir.
- 12 A. Yes.
- 13 Q. Have they told you when they want you to come to the
- 14 courthouse to give your testimony?
- 15 A. No.
- 16 MR. CHRONISTER: We anticipate that
- 17 Mr. Devereaux will testify.
- 18 MR. DOSSETT: Okay. Live at trial?
- 19 MR. CHRONISTER: Yes.
- 20 MR. DOSSETT: Thank you.
- 21 BY MR. DOSSETT:
- 22 Q. Have you reviewed any personnel files besides Mitzi
- 23 Bailey's?
- 24 A. No.
- 25 Q. There is, apparently, an issue in this case that

1 revolves around the administration of Aricept to
2 Mrs. Brigance.

3 Are you aware of that issue?

4 A. Yes.

5 Q. Since your deposition in the previous case, have you
6 reviewed any medical records, medical bills, pharmacy
7 records, anything like that with regards to the
8 administration of Aricept?

9 A. No.

10 Q. If you read Ms. Bailey's deposition, I assume you are
11 aware of the questions that Mr. Brigance asked her about
12 when she would or would not make a written record of a
13 complaint made to her?

14 A. I don't remember Mr. Brigance asking any questions of
15 her.

16 Q. I'm sorry. Mr. Chronister asking her that question.

17 A. I've read the deposition and reviewed the video.

18 Q. Do you recall those series of questions about when
19 she would or would not make a written record of a
20 particular complaint?

21 A. Yes.

22 Q. In your opinion, is it sufficient -- let me rephrase
23 it.

24 In your opinion, does the administrator have to make
25 a written record of every complaint lodged at the

1 facility?

2 A. I believe that's a requirement at The Brookfield.

3 Q. And my question to you, sir, is is it your opinion
4 that the administrator is required to make a written
5 record of every complaint?

6 A. When I was an administrator, I did, and when I
7 supervised other administrators, that's something that I
8 required of them, so, yes.

9 Q. So if the complaint is, "I don't like the way the
10 blinds are done in the dining room," do you make a written
11 record of that?

12 A. Yes. Now, if they said, "Can you please shut the
13 blinds," that's not a complaint. That's a request, and I
14 think there's a differentiation between the two.

15 Q. Is there any amount of discretion that you would
16 allow an administrator in deciding what issues require a
17 written documentation and which issues are of a minor
18 nature that simply just need to be handled?

19 A. Some.

20 Q. You would allow some discretion?

21 A. Some.

22 Q. And would you agree with me that in allowing that
23 discretion, we do recognize that there will be some minor
24 things that a written record is not made of?

25 A. My personal opinion and the requirements of The

1 Brookfield are very different.

2 Q. Okay. Explain that to me, please.

3 A. I think the policy of The Brookfield -- let me see if
4 I can find it. If I look on page 4 of Exhibit A, under
5 the section "Personnel Grievance Policy," there is a
6 section entitled -- and I'm reading from the form
7 "Resident Complaint Resolution." This section includes
8 Number 2: "The administrator should investigate the
9 complaint or assign someone to investigate and make a
10 written record of the investigation. When necessary,
11 outside agencies should be notified to participate in the
12 investigation. This may include the regulatory agency,
13 the advocacy group or ombudsman, or law enforcement
14 officials. Complaints may include negative comments about
15 food, roommates, activities, or staff members. Complaints
16 may be merely irritations or serious violations such as
17 abuse or theft. Every complaint should be evaluated by
18 the administrator."

19 And then it goes on to say, Number 4: "A complete
20 report of the complaint investigation and follow-up should
21 be filed by the administrator, protecting the identity of
22 specifically named individuals except authorized persons."

23 Q. Okay. And you said your opinion varied from that
24 policy. In what way?

25 A. I think I stated that earlier.

1 Q. I didn't understand it, so please restate it.

2 A. Which part? What part didn't you understand?

3 Q. In what way does your opinion vary from this policy?

4 A. Doesn't vary very much from the policy.

5 Q. Okay.

6 A. As I said earlier, The Brookfield's policies are very
7 good. It was around the execution by Mitzi Bailey, based
8 on her testimony in the deposition, that appears to be
9 inconsistent with the policies that her organization
10 established.

11 Q. In what way?

12 A. In ways that she attested to that she did not
13 document complaints. She didn't make records of them.
14 She didn't make records of investigations. And her
15 company, when you read the materials and the information
16 in that personnel policy, you'll see that there is very
17 prescriptive information about how that's to be done.

18 Q. So you believe that The Brookfield policies and
19 procedures required her to make a record of every
20 complaint, regardless of how minor?

21 A. Yes.

22 Q. And you, obviously, understand, from reading her
23 deposition, that she said whether or not she made a
24 written record just depended upon the nature of the
25 complaint?

1 A. It appeared, based on the information that I read and
2 the video that I saw, that that did not happen very much
3 at all.

4 Q. All right. Let me try again. Did you see in her
5 deposition where she said that whether or not she made a
6 written record depended upon the nature of the issue she
7 was investigating?

8 A. I would have to read the text of that deposition to
9 answer that correctly.

10 Q. So you don't recall as you sit here?

11 A. As I said, I would have to read the text of the
12 deposition.

13 Q. And in what way do you believe Ms. Bailey's decision
14 to record complaints depending upon the nature of the
15 complaint, her practice of doing that, as described in her
16 deposition, how do you think that caused or contributed to
17 Mrs. Brigance's fall?

18 A. I think it speaks to a pattern of leadership and
19 administration in the building, I believe, in how
20 complaints were dealt with, but how incidents were dealt
21 with. There's specific policies and procedures around
22 incident resolution, documentation, education and training
23 that appear not to have been followed by Mitzi Bailey in
24 her administration of that facility, and it speaks to a
25 pattern of leadership that created an environment where

1 people could have been hurt and, in my estimation, people
2 were hurt.

3 Q. Mr. Brigance?

4 A. Mr. Brigance, Mrs. Brigance. I don't know about the
5 others, Counsel. I'm not privileged to the records in the
6 facility, but at least in those two instances, those two
7 people were hurt in that nursing home -- in that assisted
8 living facility. Excuse me.

9 Q. We're not here to talk about Mr. Brigance because,
10 actually, the lawsuit that Mr. Steve Brigance filed, we
11 went and tried to it a jury in Sebastian County, and they
12 determined that my client was not responsible. So we're
13 not here to talk about that case anymore. We're here to
14 talk about Mrs. Brigance's injury.

15 A. Nevertheless, he was hurt in that facility. Okay?

16 Q. Okay. And what I'm asking you is to explain to me
17 how you believe Mitzi Bailey's practice of documenting
18 complaints, based upon the nature of the complaint,
19 deciding whether or not to document it, based upon the
20 nature of the complaint, how did that cause or contribute
21 to Mrs. Brigance's fall?

22 A. And as I've said earlier, it speaks to a larger
23 issue.

24 Q. That's all -- I'm sorry. Go ahead. I didn't mean to
25 interrupt.

1 A. That's pretty rude.

2 Q. Well, you paused.

3 A. That's pretty rude. I paused, and you jumped. So do
4 I get the chance to answer the questions, Counsel?

5 Q. I'll tell you what. We're going to start over with
6 the question, and I will allow you to answer. I'm not
7 trying to be rude, but when I think you're done with your
8 answer, I'm going to go on to my next question. Okay?

9 Here is the question: Please tell me for the record,
10 so I can remind you of it at trial, how do you believe
11 that Mitzi Bailey's description of making written records
12 of complaints, based upon the nature of the complaint, how
13 do you think that caused or contributed to Mrs. Brigance's
14 fall?

15 A. And as I've started now for the third time, I think
16 it's an element of a larger approach to Mitzi Bailey's not
17 only preparation, but execution of the facility. And when
18 you look at that in the total spectrum, that created an
19 environment where people could have and actually were
20 hurt.

21 Q. And is that the sum total of it?

22 A. That's a summation, yes.

23 Q. I don't want a summation, sir. I want the sum total
24 because I want to hear it today before I'm sitting in
25 front of a jury. So please tell me all of it, not just

1 the summary of it, the whole kit and caboodle.

2 A. Okay. I went through this report with you earlier.

3 Q. Exhibit A?

4 A. Yes.

5 Q. Okay.

6 A. And you've got an individual here who worked 32 days
7 at an assisted living facility as a resident care
8 director, and then made application to be an
9 administrator, so after 32 working days at an assisted
10 living facility, she believed that she was qualified to be
11 an administrator in an assisted living facility. 32 days.
12 So she applied.

13 She didn't have a license to be an administrator,
14 but, nevertheless, she felt that she was qualified, and
15 somebody else did as well, so they hired her. And in the
16 process, her job description for that position at The
17 Brookfield, the first qualification in the job description
18 was, number one, experience in property management. And
19 on her résumé, she had zero years of experience in
20 property management, and no license or certificate to run
21 that facility. So my opinion is that it didn't appear
22 that she was qualified to do the job when she applied for
23 the job.

24 And then to extend that, if she's not qualified to do
25 the job when she applied for the job, and then I think it

1 took three months after she started the job to actually
2 become certified as an assisted living administrator, and
3 in the process of executing her duties did not use the
4 forms, it was a choice not to use the forms, at least by
5 the information made available to me, didn't use the forms
6 to document incidents internally, and then send that
7 information in a, quote, follow-up documentation for
8 incident form to the management agent at the company that
9 she worked for, she didn't use that, or doesn't appear to
10 do that.

11 There wasn't a great deal of evidence that she took
12 her own training seriously when she went through an
13 orientation process consisting of 52 elements, and she
14 satisfied them in a single day related to training,
15 orientation, policies and procedures, a grievance form,
16 that's usually what involves complaints, an incident form
17 that usually involves incident reporting, abuse and
18 neglect, residents' rights. So when you add things like
19 that to her judgment to document certain complaints in a
20 certain fashion, my belief is that she was neither
21 qualified, prepared nor interested in doing the job that
22 the company asked her to, the way that they had
23 established it.

24 Q. I didn't want to interrupt you. Was that the end of
25 your answer?

1 A. I'm completed, yes.

2 Q. Okay. So you believe that she wasn't qualified, she
3 didn't take her job or her training seriously?

4 A. Yes.

5 Q. And I want to know in what ways you're going to tell
6 the jury that caused or contributed to Mrs. Brigance's
7 fall.

8 A. I'm going to say that she was either incompetent or
9 disinterested in running a facility that size, complexity
10 and age and, as a result of that, the proper processes,
11 procedures and documentation was not put in place to
12 maintain the operating standards that one would expect to
13 provide the care and services to residents and maintain
14 safety. That's what I'm prepared to say.

15 Q. And that caused or contributed to Mrs. Brigance's
16 fall in what way?

17 A. In the way that there's a pattern of leadership that
18 created such a loose approach to patient care and safety,
19 that things happened.

20 Q. And I don't understand how you're going to link that
21 to Mrs. Brigance falling on November the 19th.

22 A. I don't intend to talk about how she fell, Counsel,
23 because that I don't know, but what I can talk about is my
24 belief about the environment she created based on her lack
25 of skills, ability and interest.

1 Q. I think I understand, but let me make sure. You're
2 going to say she wasn't qualified, she didn't take her
3 training or her job seriously, and you believe that would
4 have prevented her or caused her not to because you think
5 to some extent she chose not to, to operate the facility
6 in the way that you believe it should be operated?

7 A. Yes.

8 Q. And that's, essentially, what you're going to say?

9 A. And when you do that over a period of time, and you
10 don't pay proper attention to the things that are
11 important, and you don't do things the way The Brookfield
12 asked her to do it consistently, things will happen, and
13 things did happen.

14 Q. And as you sit here today, you don't know the
15 details -- you don't know the facts surrounding
16 Mrs. Brigance's fall, do you?

17 A. No. I think we talked about that in the earlier
18 deposition.

19 Q. You don't know?

20 A. There's, what I believe, inadequate documentation,
21 and I wasn't present when whatever happened to
22 Mrs. Brigance happened.

23 Q. What do you know about the facts of her fall?

24 A. I don't know that she fell. I can't answer that.

25 Q. Okay. So what I'm trying to find out, I understand

1 that you're going to testify that Mitzi Bailey wasn't
2 qualified, didn't take her job and training seriously and,
3 as a result, The Brookfield was not run the way you
4 believe it should be run. What I'm trying to find out is
5 how are you going to link that to causing or contributing
6 to Mrs. Brigance's fall? I'm not grasping it.

7 A. Then I guess you're not grasping it.

8 Q. Tell me. I don't think you've told me.

9 A. I've given you the answer to every question you've
10 asked me, Counsel. Those are my best answers. If you
11 don't like them, that's not my problem. They are the best
12 answers that I can give you as I'm sitting here today.

13 Q. Okay. That's all that you have to offer?

14 A. At what time is it?

15 Q. 11:18 on Saturday morning.

16 A. At 11:18 on a Saturday afternoon, that's the best I
17 have for you.

18 Q. Okay. Have you been retained to review any other
19 cases, any other long-term care litigation cases, since
20 your deposition?

21 A. Where?

22 Q. Anywhere in the world.

23 A. Yes.

24 Q. Could you tell me -- could you list those for me,
25 please?

1 A. I've been asked to review information in a case in
2 Florida and in a case in Mississippi.

3 Q. The Florida case, does it involve a skilled nursing
4 facility or assisted living facility?

5 A. It involves a patient and physicians, and the patient
6 was in two assisted living facilities and a nursing home
7 during their care.

8 Q. Is there a lawsuit pending in that case?

9 A. There's a lawsuit filed, yes.

10 Q. And that involves facilities --

11 A. I think I just educated you and said "patient and
12 physicians."

13 Q. Yes, sir. I wasn't done with my question. I'm not
14 going to call you rude, as you did me, but I wasn't done
15 with my question.

16 Does that case involve assisted living facilities,
17 skilled nursing facilities and doctors as defendants?

18 A. No.

19 Q. Who are the defendants in that case?

20 A. A physician and a nurse practitioner.

21 Q. Okay. Who is the attorney you're working for?

22 A. His name is John Bringardner.

23 Q. I'm sorry. Can you spell that last name, please?

24 A. B-R-I-N-G-A-R-D-N-E-R.

25 Q. And where is he out of?

1 A. Florida.

2 Q. Where in Florida?

3 A. Tampa.

4 Q. What firm is he with?

5 A. It's a long name. I would have to go back to my
6 files and look.

7 Q. Okay. How about the Mississippi case?

8 A. About what, sir?

9 Q. Who are the defendants?

10 A. The defendant is a not-for-profit organization that's
11 religious-based.

12 Q. Is it a hospital or long-term care facility?

13 A. It's a not-for-profit foundation that's church-based.

14 Q. And what does it do?

15 A. I don't know.

16 Q. What are the allegations in the Mississippi case?

17 A. It's a case involving a disputed lease between the
18 operator of a nursing home and a not-for-profit
19 church-based organization.

20 Q. And who are you reviewing the case on behalf of?

21 A. On behalf of the nursing home provider, the tenant.

22 Q. Does it involve any alleged injury, abuse or neglect
23 to a resident?

24 A. Which case are we talking about?

25 Q. The Mississippi case.

1 A. I don't know yet.

2 Q. And who is the attorney that retained you?

3 A. Bill May out of Meridian, Mississippi.

4 Q. Any other cases that you've reviewed since your
5 deposition?

6 A. No.

7 Q. The Florida case, what is the nature of the
8 allegations in that case?

9 A. I don't think I'm going to disclose that without
10 talking to counsel that I work with. I need some guidance
11 on that, sir.

12 Q. Okay. I'm just kind of looking in a general sense.

13 A. I'm aware of that.

14 Q. Does it involve injury to a person?

15 A. Yes.

16 Q. Are you currently working with Steve Brigance on any
17 other matters unrelated to the case for his mother?

18 A. No.

19 Q. And not just on a client basis, but on a professional
20 basis.

21 A. I answered the first question.

22 Q. Is the answer no, even with the clarification?

23 A. Yes.

24 Q. In looking at the supplemental report that was
25 provided that Ms. Acosta prepared, there was some mention

1 made in there about the number of times in which
2 Ms. Bailey did not know the answer to questions asked her
3 in her deposition in this case.

4 Do you recall those entries in the supplemental
5 report?

6 A. Yes.

7 Q. Are you going to tell the jury in this case that
8 Ms. Bailey was being untruthful when she said she did not
9 know the answers to those questions?

10 A. I think I'm going to answer the questions that are
11 asked me, Counsel. I can't forecast what Mr. Chronister
12 or his associates are going to ask me.

13 Q. If asked, are you going to say that you believe she
14 was being untruthful?

15 A. I haven't yet decided on that yet.

16 Q. Okay. Are you troubled by the questions that she
17 could not answer?

18 A. Yes.

19 Q. And why?

20 A. Because I was.

21 Q. On what basis?

22 A. Well, there were several questions, I believe, and I
23 will go back through that information again before trial
24 and determine how many answers were "yes" and "no"
25 questions, in my estimation, that answered with "I don't

1 know" or "I don't remember." But I'll go back and do that
2 before I participate in trial.

3 Q. Why did that trouble you?

4 A. "Yes" or "no" questions usually go with a "yes" or
5 "no" answer.

6 Q. What if you don't know the answer to it?

7 A. You don't know "yes" or you don't know "no"?

8 Q. If you don't have the information or you don't recall
9 the proper answer to the question, what should you say?

10 A. As I say, I have to go back and look at the
11 information. But as an educated nurse and someone who was
12 responsible for the daily operation of that facility some
13 of those were, to use your words, troubling.

14 Q. And I'm trying to find out why it was that you found
15 them troubling. Was it because you expected, that based
16 on her training and experience, she should know the answer
17 to those?

18 A. Or lack thereof, maybe not.

19 Q. Did you review any documents to prepare for your
20 deposition today?

21 A. Yes.

22 Q. What did you review?

23 A. This.

24 Q. Exhibit A?

25 A. Your Exhibit A.

1 Q. Any other items, any other documents that you
2 reviewed, to prepare for the deposition?

3 A. No.

4 Q. Have you discussed with Ms. Acosta her supplemental
5 deposition?

6 A. Not really.

7 Q. That implies that you did discuss it to some degree.

8 A. When did you start and when did you finish and how
9 are you, yes.

10 Q. Is that it?

11 A. That's about it.

12 Q. Nothing substantive?

13 A. No.

14 Q. One of the depositions you reviewed since your prior
15 deposition was that of Jim Hicks; is that correct?

16 A. Yes.

17 Q. Do you recall his testimony on the issue of the
18 position he took when The Brookfield refused to allow one
19 of its former employees to return?

20 A. Yes.

21 Q. What do you recall being Mr. Hicks's position on
22 that?

23 A. I believe he answered "yes" to a series of questions
24 that you asked one after the other after the other.

25 That's what I believe.

- 1 Q. That's all you remember about it?
- 2 A. In terms of what he said?
- 3 Q. Substantively, what was the position that he took
4 when he was asked to look into it by Mr. Brigance?
- 5 A. That's a different question. My takeaway from Jim
6 Hicks's testimony was he was confused about that issue;
7 about the request by Steve Brigance to investigate it, and
8 he indicated that it was not investigated, and it was
9 pushed back because it involved an employee-related
10 matter. That's what I recall Jim Hicks's testimony to be,
11 and that, for some reason, he didn't know why, exactly, it
12 wasn't investigated as a resident right issue.
- 13 Q. Do you recall Mr. Hicks's testimony to the effect
14 that he would give a large amount of discretion to the
15 administrator in making those decisions?
- 16 A. Based on the questions you asked him, yes.
- 17 Q. And do you disagree with Mr. Hicks's position that
18 the administrator should be given a large amount of
19 discretion?
- 20 A. To some degree, I do.
- 21 Q. To what degree?
- 22 A. I think, in reading the Arkansas regulations, an
23 individual -- there were two regulations. One is
24 residents' rights. And the residents' rights were
25 consistent with -- references the constitution early on in

1 residents' rights, but it says that a resident may meet
2 with any person of their choosing at any time, and the
3 Arkansas regulations say that any person may be allowed in
4 the facility so long as they are not a danger or present a
5 substantial risk to other residents.

6 I think in Mr. Hicks's testimony, there was a lot of
7 emphasis on staff, or there was some emphasis on the
8 interplay or the interrelationship with the staff. And
9 nowhere in the OLTC regulations or in residents' rights
10 does it make any allowance for staff. And also in the
11 OLTC regulations, I think there's specific reference to
12 documentation in the resident record in instances where
13 there are difficulties with staff members.

14 So when I read through the deposition, I saw a
15 constant reference, or several references, to the
16 relationship with staff. I also didn't see any
17 documentation around in the resident record related to
18 disrupting or creating a danger to residents. And for
19 someone who is a state official and paid to be familiar
20 with the OLTC regulations and residents' rights and an
21 advocate for the resident, I found that to be a surprise.

22 Q. Have you gone back and reviewed the OLTC regulations
23 with regards to Assisted Living Facility Level 1 in
24 Arkansas?

25 A. Yes.

- 1 Q. You did that since your last deposition?
- 2 A. Yes, I have.
- 3 Q. Do you believe that the way that staff interacts and
4 behaves has any effect on residents?
- 5 A. It can.
- 6 Q. If an administrator has a staff member -- this is
7 completely hypothetical. If an administrator has a staff
8 member that is causing a disturbance with other staff, can
9 that impact the residents?
- 10 A. It would need to be very well-documented, and if I
11 were involved in the conversation as a health care
12 executive, I would be making sure that that was a
13 significant threat, based on the regulations that exist at
14 OLTC and the residents' rights because oftentimes the
15 residents' rights are very sacred, and there are people
16 who make decisions based on convenience, so it would be
17 something I would have to pay very close attention to.
- 18 Q. It would be a tough call for an administrator,
19 wouldn't it?
- 20 A. I've been an administrator. It is a tough call.
- 21 Q. It's a very tough call?
- 22 A. I wouldn't say it's a very tough call, but there are
23 steps to go through before you make that call.
- 24 Q. Who is in the best position to make that call?
- 25 A. Depends on the experience of the administer.

1 Q. Who is the person who has to make that call?

2 A. Again, depends on the experience of the
3 administrator.

4 Q. When you were an administrator, who did that decision
5 fall to?

6 A. When I was a young administrator, it oftentimes fell
7 to my boss. When I became a more experienced
8 administrator and a senior official, it would depend on
9 that experience level of the administrator at the time.
10 Sometimes it would fall to me and sometimes it would fall
11 to the administrator at the time.

12 Q. The question I was trying to ask a while ago was
13 whether or not a disruption by a staff member, even if
14 it's just amongst the staff, have you seen that have an
15 impact on the residents?

16 A. Like I say, it can.

17 Q. Have you observed it happening in your experience?

18 A. Not very often.

19 Q. Is that something that an administrator -- in
20 deciding whether or not a staff member should be allowed
21 back in the building, is that something that the
22 administrator should take into consideration, the effect
23 it might have on --

24 MR. CHRONISTER: There's that cover letter.

25 MR. DOSSETT: Thanks.

1 MR. CHRONISTER: Megen said you did have it
2 the other day.

3 MR. DOSSETT: We're off the record for a
4 minute.

5 (Discussion held off the record.)

6 MR. DOSSETT: For the record, Mr. Chronister
7 has shown me a letter --

8 What's the date of the letter?

9 MR. CHRONISTER: August 2nd.

10 MR. DOSSETT: -- August 2nd, which says
11 attached is the updated report. I do have a copy
12 of that. What I do not have a copy of is a
13 letter that was supposed to have been a cover
14 letter to Exhibit A to the deposition, the
15 executive summary, that provides the executive
16 summary of the personnel file, and summarized the
17 thoughts relating thereto.

18 MR. CHRONISTER: For the record, that Bailey
19 review, Mitzi Bailey personnel file review, is
20 the document that was attached to that e-mail, so
21 it may be called something different, but that
22 document is one in the same.

23 MR. DOSSETT: It's actually -- the document
24 that was attached to that letter is the
25 supplemental report with the red shading in the

1 box, and that I have.

2 MR. CHRONISTER: Okay. That's the one that
3 you got with the Mitzi Bailey, at least I got it
4 on here. It was forwarded.

5 MR. DOSSETT: I don't have a corresponding
6 cover letter that goes with Exhibit A.

7 MR. CHRONISTER: I believe they were all
8 attached to the same e-mail. There's three
9 attachments to that e-mail which includes cover
10 letter, Bailey file and then the other that you
11 referred to were all three, apparently, in one
12 document.

13 MR. DOSSETT: Okay.

14 MR. CHRONISTER: Or that's what it would
15 appear. We will look, and if there is another
16 cover letter, you will have it.

17 MR. DOSSETT: Mr. Devereaux thought that
18 there was a cover letter, or at least as I
19 understood his answer, that he thought there was
20 one that summarized the import of the review of
21 the personnel file in particular.

22 MR. CHRONISTER: My understanding, from his
23 testimony, was that the cover letter he referred
24 to denoted their prior opinions, and then tied
25 his opinions, following review of Mitzi's

1 deposition and personnel file, into those same
2 opinions. And if you'll look at this cover
3 letter, it is the one that states those opinions.

4 MR. DOSSETT: It just doesn't mention the
5 summary of the personnel file. If there isn't
6 another one, that's fine. I have the August 2
7 letter.

8 MR. CHRONISTER: We will look.

9 MR. DOSSETT: Okay. That's fine.

10 BY MR. DOSSETT:

11 Q. Since your previous deposition, have you interviewed
12 any witnesses in this case?

13 A. I don't have a witness list. So I wouldn't know to
14 do that.

15 Q. Have you interviewed anybody about the Brigrance case
16 since your previous deposition?

17 A. No.

18 Q. Has the status of your relationship with Ms. Acosta
19 changed since your prior deposition?

20 A. No.

21 Q. You haven't gotten married?

22 A. No.

23 Q. Are you still a romantically involved couple?

24 A. We were partners, I testified to that, and we still
25 are.

1 Q. Okay. You mentioned to me that you have received
2 what you believe was a \$5,000 retainer from Mr. Brigance.
3 Have you submitted any bills to him?

4 A. Submitted any bills?

5 Q. Yes, sir.

6 A. Not that I can remember.

7 Q. Have you kept any time records in this case?

8 A. Yes.

9 Q. And how do you store those or keep up with them?

10 A. I keep a list.

11 Q. You have access to that list?

12 A. Yes.

13 Q. Will you please provide it to Mr. Chronister so I can
14 request it from him?

15 A. Yes.

16 Q. Thank you.

17 Have you formed any opinions in this case, other than
18 what is -- other than what would be recited on the
19 supplemental report prepared by Ms. Acosta or Exhibit A to
20 your supplemental deposition?

21 A. With the exception of whether or not I believe Mitzi
22 Bailey was being truthful, I think you have everything.

23 Q. What's your opinion in that regard?

24 A. I told you I'm still thinking about it.

25 Q. Oh, okay. That's true.

1 If any of your opinions change, or you develop new
2 bases for these opinions or you form new opinions prior to
3 trial, will you please let Mr. Chronister know so he can
4 notify me?

5 A. As I have in the past, yes.

6 MR. DOSSETT: Thank you. That's all I've
7 got.

8 MR. CHRONISTER: I have just a few
9 questions.

10 E X A M I N A T I O N

11 BY MR. CHRONISTER:

12 Q. Mr. Devereaux, is it your opinion that the
13 administrator's job is to control and be sure that the
14 staff is functioning properly for the care of the
15 residents?

16 A. Yes.

17 Q. And if the administrator allows or does not follow up
18 on complaints, does that create risk for the residents?

19 A. It can, yes.

20 Q. So if there were complaints that someone was allowed
21 to sit on the toilet for 20 and 30 minutes at a time, if
22 there were complaints that someone was not changing bed
23 sheets, and they were allowed to be made up over
24 urine-soaked bedding, and the administrator, for some
25 reason, did not document those complaints and did not

1 discipline the staff for allowing that to occur, would
2 that create a looseness, I think you said a minute ago, as
3 far as the safety of the residents are concerned?

4 A. It would create a relaxed approach to care that would
5 threaten safety, yes.

6 Q. And in your opinion in reviewing the complaints and
7 issues at hand there, is that what happened in this case?

8 A. I believe that some of that has happened, yes.

9 Q. And would that be how Ms. Bailey's administration of
10 the facility would affect and contribute to the injuries
11 to Mrs. Brigance?

12 A. Yes.

13 MR. CHRONISTER: Nothing further.

14 FURTHER EXAMINATION

15 BY MR. DOSSETT:

16 Q. Are you of the opinion that there was an incident in
17 which bed sheets were made up wet?

18 A. I've read information to that effect, yes.

19 Q. Are you of the opinion that that was not followed up
20 on by Ms. Bailey?

21 A. I've read testimony that it happened on more than one
22 occasion.

23 Q. And from whom did you get that testimony?

24 A. One of the caregivers. I can't be specific on which
25 one it was.

1 Q. Now, you did not -- let me make sure I understand.
2 You didn't read the handwritten log, you read the typed
3 summary of the logs?
4 A. That's correct.
5 Q. And how many instances of that happening did you see
6 in the typed summary of the log?
7 A. I have to read it again.
8 Q. Can't recall?
9 A. Like I said, I would have to read it again.
10 Q. I'm just wondering if you recall.
11 A. No. And I would have to read it again.
12 Q. So I'm just wondering if you're of the opinion that
13 there were times that happened that Ms. Bailey did not
14 follow up on, as the administrator.
15 A. I'm not sure about that.
16 Q. I think you just said to Mr. Chronister that that was
17 one of the things that you believe led to a lax atmosphere
18 in the facility and that somehow contributed to an
19 accident.
20 A. Yes.
21 Q. Are you going to come to trial and testify to a jury
22 that it's your understanding that that happened, that it
23 was reported, and that the administrator failed to follow
24 up on it, the making of the bed with wet sheets?
25 A. The first two parts, I am.

1 Q. What about the following up on it?

2 A. Like I said, I would have to look and see.

3 Q. Okay. The other example that he gave you was

4 something about people being allowed to sit on the toilet

5 for 20 or 30 minutes at a time. Are you aware of that

6 happening?

7 A. Am I aware of?

8 Q. That it's alleged to have happened.

9 A. I am aware that there's conversation to that effect.

10 I can't prove that it happened.

11 Q. From whom did you get that information?

12 A. I believe also from caregiver testimony.

13 Q. Would that be either Ms. Upton or Ms. Williams?

14 A. Yes.

15 MR. DOSSETT: Were those the two examples

16 that you used?

17 MR. CHRONISTER: I think that's what I used.

18 MR. DOSSETT: All right. That's all I have,

19 Mr. Devereaux. Thank you.

20 MR. CHRONISTER: I have one follow-up on

21 that. I guess Mark and I could go back and forth

22 all day. I guess that's why we have a lawsuit.

23 FURTHER EXAMINATION

24 BY MR. CHRONISTER:

25 Q. If the administrator followed The Brookfield's

1 instructions and documented things, we'd know how many
2 alleged incidents there were or were not that we were
3 involved in, wouldn't we?

4 A. Yes.

5 Q. But she didn't do that, based on what you've read,
6 right?

7 A. Based on what she testified, yes.

8 MR. CHRONISTER: Nothing further.

9 FURTHER EXAMINATION

10 BY MR. DOSSETT:

11 Q. You're not going to say that she testified that
12 something substantial would happen, and she wouldn't make
13 a record of it, you're not going to say --

14 A. I'm going to testify that things happened in that
15 facility that she admitted she didn't document.

16 Q. Okay.

17 A. And the nature of which I don't know.

18 Q. Okay. So, for example, you don't -- you're not going
19 to come in and testify that there were instances reported
20 where Mitzi Bailey had information the resident was
21 allowed to sit on the toilet for 20 or 30 minutes without
22 any help, and failed to do something about it, you're not
23 going to say that, are you?

24 A. I'm only going to testify to what the documentation
25 allows me to testify to.

1 MR. DOSSETT: Okay. That's good enough.

2 I don't have anything further.

3 MR. CHRONISTER: Nothing.

4 (Deposition concluded at 11:50 a.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, DAVID DEVEREAUX, was duly sworn by me prior
9 to the taking of testimony as to the truth of the matters
10 attested to and contained therein; that the testimony of
11 said witness was taken by me stenographically and was
12 thereafter reduced to typewritten form by me or under my
13 direction and supervision; that the foregoing transcript
14 is a true and accurate record of the testimony given to
15 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 26th day of August, 2011.

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20 BETH A. KALTENBERGER, CCR, RPR, CRR
Arkansas LS No. 679
California CSR No. 9231
21 Missouri CCR No. 1335
Nevada CCR No. 505
22
23
24
25

1 COURT REPORTER'S CERTIFICATION OF CERTIFIED COPY

2
3 I, BETH A. KALTENBERGER, LS No. 679, Certified Court
4 Reporter in the State of Arkansas, Certify that the
5 foregoing pages 70-130 constitute a true and correct copy
6 of the original deposition of DAVID DEVEREAUX taken on
7 August 20, 2011.

8
9 I declare under penalty of perjury under the laws of
10 the State of Arkansas that the foregoing is true and
11 correct.

12
13 Dated this 26th day of August, 2011.

14
15
16
17 _____
Beth A. Kaltenberger, CCR, RPR, CRR

18 Arkansas LS No. 679

California CSR No. 9231

19 Missouri CCR No. 1335

Nevada CCR No. 505
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