

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION

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

Plaintiff,

vs.

Case Number CV 2010-1365

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

Defendants.



VIDEOTAPED DEPOSITION OF DEBORAH
UPTON JONES, taken at the law offices
of Chronister, Fields & Flake, 309 North
Seventh Street, Fort Smith, Arkansas, on
Monday, February 21, 2011, at 9:27 a.m.

A P P E A R A N C E S

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For the Plaintiff:

REX W. CHRONISTER, ESQ.
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For the Defendants:

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KUTAK ROCK, LLP
234 East Millsap Road
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Also present:

MS. NIKKI KIRBY, VIDEOGRAPHER

I N D E X

TESTIMONY BY DEBORAH UPTON JONES

PAGE

Examination by Mr. Dossett

4

Deposition Concluded

77

Court Reporter's Certificate

78

E X H I B I T S

NUMBER

MARKED

1 Typed list

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1 THURSDAY, MAY 5, 2011; FORT SMITH, ARKANSAS; 8:59 A.M.

2
3 THE VIDEOGRAPHER: This is the videotaped
4 deposition of Deborah Upton Jones, taken on
5 behalf of the defendant in the matter of Dorothy
6 Brigance versus The Brookfield. Today's date is
7 May 5th, 2011, and the time is 8:59 a.m., and we
8 are on the record. All counsel present for
9 previous depositions in this matter are again
10 present for this deposition, and stipulations
11 will carry forward.

12 Would the court reporter please swear in the
13 witness.

14
15 DEBORAH UPTON JONES,
16 having been called upon to testify in the form of a
17 deposition, and having been duly sworn or affirmed,
18 testified as follows, to wit:

19
20 E X A M I N A T I O N

21 BY MR. DOSSETT:

22 Q. Can you state your name for the record, please?

23 A. Deborah Upton Jones.

24 Q. Ms. Jones, my name is Mark Dossett. I'm an attorney
25 from Fayetteville, and I represent The Brookfield and

1 Mitzi Bailey in a lawsuit that we're here about today.

2 Have you ever given a deposition before?

3 A. Yes, previously.

4 Q. I know that you gave a deposition in the case
5 involving Mr. Jack Brigance. Other than that, have you
6 given a deposition before?

7 A. No.

8 Q. So this will be your second time, I take it?

9 A. Right.

10 Q. I know that we need to get you out of here this
11 morning because you have somewhere to be this afternoon,
12 and I promise that we will do that. There are a few
13 ground rules that if you and I will try to follow will
14 make this go a little more smoothly. First of all, it's
15 important that whenever you want to answer a question,
16 that you give a verbal answer. If you shake your head or
17 nod your head or shrug your shoulders --

18 A. I understand.

19 Q. -- I'll understand you, but it won't come out well on
20 the paper.

21 A. Right.

22 Q. Okay. If I ask a bad question, please let me know
23 that. If you don't understand it or it's confusing, if
24 you'll indicate that to me, I will be happy to rephrase
25 it, repeat it, or just start over. Okay?

- 1 A. Okay.
- 2 Q. We will take a break periodically so that we can
3 change out tapes on the video camera, but if you need a
4 break at any time, for any reason, if you'll just indicate
5 that to me, we will stop and take as many breaks as we
6 need to. Okay?
- 7 A. That's fine. Thank you.
- 8 Q. And then, finally, it's very important for the
9 transcript, as you see, the court reporter is taking down
10 what we say, and so it's important for the transcript that
11 we not talk over one another. So if you will do your best
12 to wait until I finish my question to begin your answer,
13 that will help. Okay?
- 14 A. Okay.
- 15 Q. And it's important for me to try to wait and let you
16 finish your answer before I start my next question. I'm
17 not always good at that. Sometimes I think you're done
18 when you're not. So if I interrupt you, if you will
19 somehow indicate that to me, I will stop and be quiet, and
20 let you finish. Okay?
- 21 A. Okay.
- 22 Q. What is your current address?
- 23 A. 9310 South Shore Drive, Hackett, Arkansas.
- 24 Q. And how long have you lived there?
- 25 A. Since 1986.

1 Q. Now, I understand that you've been recently married.

2 A. Yes.

3 Q. What's your husband's name?

4 A. Carl.

5 Q. What does he do for a living?

6 A. He works for an insulation company.

7 Q. I know that in some of the paperwork in this case
8 you're identified as Deborah Upton. Is that you?

9 A. Yes.

10 Q. Okay. And just for the record, as we go along later,
11 if we see someone identified in some of these previous
12 records as Deborah Upton, that's you, you're the same
13 person as Deborah Upton Jones?

14 A. Correct.

15 Q. When did you get married?

16 A. It's been a while.

17 Q. That's all right.

18 A. September 12th of '09.

19 Q. Okay. Have you been married any other times?

20 A. Once before.

21 Q. And when was that?

22 A. Let's see. I got married in 1988, and divorced in
23 '99.

24 Q. What county was that in?

25 A. Sebastian.

1 Q. And what was your maiden name?

2 A. Brown.

3 Q. And your first husband's last name was Upton?

4 A. Correct.

5 Q. Where did you graduate high school?

6 A. Lavaca.

7 Q. And what year?

8 A. 1980.

9 Q. What's your date of birth?

10 A. 11/7/62.

11 Q. I had looked at your educational background from your
12 first deposition. Has that changed in any way? Have you
13 had any additional education or professional training
14 since your prior deposition?

15 A. No.

16 Q. How long have you worked as a, what I would call, a
17 private sitter for the elderly?

18 A. Private, probably since 2007, 2006.

19 Q. Okay. Do you have any other work history of working
20 with the elderly?

21 A. I work for the Area Agency on Aging.

22 Q. You used to or you do now?

23 A. I did.

24 Q. Okay. And what did you do for them?

25 A. The first time I was a homemaker and a caregiver, and

1 that was probably in '91/'92, and then I did it again,
2 June -- see, I have to think back how long it's been.
3 Approximately June 22nd or so of '05 until January of '06.

4 Q. Then what did you do in January of '06?

5 A. Then I started working for the -- it is an
6 alternative care provider program out of Arkansas
7 Medicaid, and my client was a paraplegic.

8 Q. Okay. Are you currently working?

9 A. Yes.

10 Q. What are you currently doing?

11 A. I sit with an Alzheimer patient.

12 Q. I don't want to know the person's name if they're not
13 involved in this case. Are they involved in this family
14 at all, the Brigance family?

15 A. No.

16 Q. How long have you been doing that?

17 A. Since March of -- no. March of 2009, I believe.

18 Q. I think you would have last sat with Dorothy Brigance
19 in November of 2009?

20 A. Right.

21 Q. So did those two overlap, your current client and
22 Dorothy Brigance, did they overlap at all?

23 A. Yes.

24 Q. I want to go back to the time when you were a
25 homemaker and caregiver for the Area Agent -- Arkansas

1 Area Agency on Aging. Am I getting that right or am I
2 adding something to it?

3 A. Area Agency on Aging, yeah.

4 Q. And your job title was that you were a homemaker and
5 caregiver. What did you do in that role?

6 A. I cleaned house, I cooked meals, ran errands, gave
7 baths.

8 Q. How many clients would you have at one time?

9 A. I think at one time I had nine in a week.

10 Q. So would you go visit each of them every day, or did
11 you have a schedule?

12 A. One of them was every day, and then two of them
13 were -- four of them were three times a week.

14 Q. Okay.

15 A. And the rest were just twice a week.

16 Q. Did they live in the same place or were they
17 scattered out?

18 A. No, they were scattered out.

19 Q. And how much time would you get to spend with them
20 when you would go visit?

21 A. Anywhere from an hour to three hours.

22 Q. I know you did that in '92, and then you came and did
23 that again in '05 and '06. Was the job the same?

24 A. Yes.

25 Q. Now, you indicated in January of '06, you worked for

1 Arkansas Medicaid?

2 A. Right.

3 Q. And you helped take care of a client who was a
4 paraplegic. What did you do for that client?

5 A. I ran errands, cleaned house, bathed him, cooked
6 meals.

7 Q. Was that the only client you had?

8 A. At that time, yes.

9 Q. Was that a full-time job or did you have other
10 clients?

11 A. Four hours a day.

12 Q. Okay. Now, whenever you were sitting for the
13 Alzheimer patient at the same time that you were sitting
14 with Mrs. Brigance, how often would you see the Alzheimer
15 patient?

16 A. It would depend. I may be out there twice a week,
17 once during the week and then on the weekends.

18 Q. It varied?

19 A. Varied.

20 Q. How is the schedule now with that client?

21 A. It is from 12:00, 12:30, 1:00 until after supper at
22 6:00.

23 Q. Every day?

24 A. Every -- two days on, two days off now. Because
25 she's getting -- it's advancing.

1 Q. Okay. Is that person in their own home or are they
2 in an institution somewhere?

3 A. In a facility.

4 Q. What type of facility?

5 A. Nursing.

6 Q. It's a nursing home?

7 A. Right.

8 Q. As opposed to an assisted living facility?

9 A. Right.

10 Q. Your services that you provide, how are they paid
11 for?

12 A. By the family.

13 Q. Now, I know that your mother is Shirley Hamilton; am
14 I right?

15 A. Correct.

16 Q. And she, at one time or another, maybe still does, I
17 don't know, worked for a company called Elder Care, or
18 something like that, Elder Direct or Eldirect. I'm
19 butchering it, I realize.

20 A. Eldirect.

21 Q. Eldirect. And have you ever worked for that company?

22 A. No.

23 Q. Have you ever worked for a similar company?

24 A. Just the Area Agency.

25 Q. Okay. And that's the -- the Area Agency on Aging, is

1 that a government entity?

2 A. I'm not for sure. It may be. The nurses are, like,
3 Western Arkansas visiting nurses.

4 Q. Okay.

5 A. So it may be part of the state.

6 Q. We are here today to talk primarily about your time
7 as a private sitter with Dorothy Brigance. And, as I
8 understand it, you did work as a private sitting for her
9 for a period of time; am I right?

10 A. Correct.

11 Q. And I have gone through your deposition and the
12 sitter's log, and it looks to me like the first entry I
13 can find for you was on April the 14th of 2009. Does that
14 sound right?

15 A. Probably pretty close.

16 Q. When did you actually start working for the Brigances
17 where you would sit for Dorothy Brigance?

18 A. Probably around that time.

19 Q. Around that time. Okay.

20 And it was my understanding, from looking at your
21 prior deposition, that you were employed directly by the
22 Brigance family; am I correct?

23 A. Correct.

24 Q. Steve Brigance was the one who hired you?

25 A. Correct.

1 Q. And that your wage for that job was \$10 an hour; am I
2 right?

3 A. Correct.

4 Q. How often did you get paid?

5 A. Weekly.

6 Q. How did -- how was it determined the amount of money
7 you were owed?

8 A. By the hours.

9 Q. Did you get paid a certain number of hours every
10 week, or did you have to keep track of your time, and turn
11 that in?

12 A. Kept track of it.

13 Q. And what did you use to keep track of it?

14 A. Just the log.

15 Q. Okay. I mean, was there anyplace where it was
16 written down, for example, where you would write I got
17 here at 7:30 this morning, and I left at 3:00, so you
18 could keep track of your hours every day?

19 A. Just in the book.

20 Q. So at the end of the week, who tallied your hours up
21 and turned them in to Steve?

22 A. I would, or whoever was on Friday or Saturday.

23 Q. And was there something in writing that was prepared,
24 or did you just tell him what he owed?

25 A. I think we might have wrote it down on a slip of

- 1 paper.
- 2 Q. Was there any record like that that was kept by the
3 sitters?
- 4 A. I don't think so.
- 5 Q. How were you paid, was it cash, check?
- 6 A. Check.
- 7 Q. From reading your prior deposition, I was confused
8 about one thing, and that was your particular schedule
9 with Mrs. Brigance. Did it change over time? Did it
10 start as one thing, and change to something else, or were
11 you always on a particular shift?
- 12 A. I can't recall the actual time. I haven't had time
13 to look because I can't remember what time I actually
14 would start. Sometimes I went in at 8:00, 8:00 to 2:00,
15 8:00 to 3:00, 8:00 to 1:00, 7:00 to 2:00, 7:00 to 3:00,
16 just depended.
- 17 Q. Am I correct that, generally, when you would work,
18 you would come in in the morning at the beginning of the
19 day, and work till sometime in the early to midafternoon
20 hours?
- 21 A. Probably, but I think I did afternoons, too, a few
22 times.
- 23 Q. And what would "afternoons" mean?
- 24 A. 1:00, 2:00 until after supper.
- 25 Q. Okay. You're -- and I'm going to summarize this to

1 make sure I understand. If I got it wrong, tell me.

2 Usually, you would work in the mornings, you would come in
3 at the beginning of day, and work till early afternoon or
4 midafternoon, but there were a few times where you worked
5 the afternoon shift when she -- after her supper?

6 A. I think when I first started, it was afternoons to
7 evening.

8 Q. Okay.

9 A. And then maybe a couple mornings on the weekends.

10 Q. Okay. And when did it shift that you were doing
11 mostly mornings?

12 A. I don't recall when it shifted.

13 Q. Now, did you bring with you today the original
14 sitters' log that you kept?

15 A. I don't have the original.

16 Q. Who has the original?

17 A. Don't know.

18 Q. When was the last time you saw the original?

19 A. In your office, I thought.

20 Q. In Mr. Chronister's office?

21 MR. CHRONISTER: I think that's when we --

22 THE WITNESS: That's when you made the copy
23 of this.

24 MR. CHRONISTER: We copied that.

25 BY MR. DOSSETT:

- 1 Q. Okay. But you don't have possession of the original?
- 2 A. No.
- 3 Q. And you don't know who does, I take it?
- 4 A. I don't know.
- 5 Q. Okay. That's fine.
- 6 A. I just know I don't have it.
- 7 Q. Okay. That's fine. That's kind of how I am. I know
- 8 I don't have it either.
- 9 When was the last time you talked to Cheryl Williams?
- 10 A. Oh, goodness, it's been a long time.
- 11 Q. Have you talked to her since Mrs. Brigance passed
- 12 away?
- 13 A. Maybe in January or February, after she passed in
- 14 December.
- 15 Q. And what was the reason that you -- or occasion that
- 16 you had to talk to Cheryl?
- 17 A. I just called to see how she was doing.
- 18 Q. Okay. Were you able to go to Mrs. Brigance's
- 19 funeral?
- 20 A. No.
- 21 Q. Tell me about your sitters' log, and what you saw as
- 22 the purpose for keeping it.
- 23 A. I just did it for my benefit.
- 24 Q. Okay.
- 25 A. Writing down what time we got there, if I did

1 errands.

2 Q. Okay.

3 A. If, you know, she went to exercise, if she was having
4 a good day, just stuff like that.

5 Q. What was your expectation as to what purpose it would
6 serve, the book, what purpose it would serve?

7 A. Just to keep track of how things were going.

8 Q. Okay. Did you show it to Steve or Peggy from time to
9 time?

10 A. I believe Peggy, I did.

11 Q. How about Steve?

12 A. I don't recall showing it to him.

13 Q. Okay. Did you ever discuss with Steve the entries
14 that you made into the book?

15 A. If something happened, I would call him and tell him
16 that something happened. I believe I made notes that I
17 did call him and tell him.

18 Q. Is it fair to say that when something eventful
19 happened with his mother, that you would let him know?

20 A. Yes.

21 Q. And if something eventful happened with his mother,
22 would you also generally, as a general rule, record it in
23 your log?

24 A. Yes.

25 Q. What did you see as your job duties with regards to

1 Mrs. Brigance?

2 A. Just companion.

3 Q. Was it your job duty to provide her any kind of
4 medical care?

5 A. No.

6 Q. Do you have any training as a CNA?

7 A. No.

8 Q. Have you ever been a CNA at all?

9 A. No.

10 Q. Do you have any nursing training?

11 A. No.

12 Q. Have you ever worked in a nursing home as an employee
13 of a nursing home?

14 A. No.

15 Q. How about an assisted living facility?

16 A. No.

17 Q. I meant to ask you this earlier. I'm not sure if I
18 did or not. Your current client that you sit with,
19 whenever you are helping this person, are there any other
20 clients present, or is it just you and the client?

21 A. There's other people at the facility.

22 Q. Are there any other persons that you're caring for?

23 A. No.

24 Q. So whenever you are there to be with and help the
25 paraplegic clients you currently have, it's essentially

1 one-on-one care?

2 A. The one I have isn't a paraplegic now.

3 Q. Okay. It's an Alzheimer's patient?

4 A. Right.

5 Q. Thank you for correcting me.

6 When you're there with the Alzheimer patient, it's

7 essentially one-on-one care with the patient?

8 A. Yes.

9 Q. When you were with the paraplegic client, was it

10 one-on-one care?

11 A. With the paraplegic?

12 Q. Yes, ma'am.

13 A. Yes.

14 Q. When you were working for the Area Agency on Aging,

15 and you would go to people's homes and help them with

16 various things, was that one-on-one care when you were

17 there with them?

18 A. Yes.

19 Q. Let me ask you about Amanda Broughton. Were you ever

20 present there at the facility in Dorothy Brigance's room

21 when Amanda Broughton came to visit?

22 A. No.

23 Q. There was one occasion whenever Ms. Broughton -- are

24 you aware of the fact that the facility had told her she

25 wasn't allowed to come back?

- 1 A. Yes.
- 2 Q. There is one instance, at least, where she did come
3 back, and various people were there, and a photograph was
4 taken. But you were not there for that occasion?
- 5 A. No.
- 6 Q. I understand, from the previous deposition you gave,
7 that you do not feel as if the Brookfield staff was
8 properly caring for Mrs. Brigance; am I correct?
- 9 A. Yes.
- 10 Q. Tell me what you believe the shortcomings were in the
11 care that they were providing?
- 12 A. Just in general?
- 13 Q. Yes, ma'am.
- 14 A. I think the turnover is really bad out there.
- 15 Q. Okay. What else?
- 16 A. Just in general, I mean, neglect, is all I could call
17 it.
- 18 Q. And in what ways did you see what you call neglect?
- 19 A. I seen her soiled. I seen her bed soiled and made
20 up. I seen her coming back from breakfast by herself.
21 Just general stuff.
- 22 Q. Okay. Any other specific things that you can recall,
23 other than her being soiled, her bed being made soiled,
24 and her coming back from breakfast by herself?
- 25 A. I think there was medication that she had run out of

1 at one time.

2 Q. Okay. Anything else you can recall?

3 A. (Witness shakes head.)

4 Q. Let me ask you, I want to take these one at a time,
5 if I can, when you mentioned her being soiled, tell me
6 what you recall about that.

7 A. I had left before exercise on one of the days. I
8 can't remember what day it was. I believe it was in
9 October. I'm not for sure. And when I came back, she was
10 headed down the hall, and she had on a pair of
11 cream-colored slacks, and they had feces all down the back
12 of them. I could smell her from 50 feet away.

13 Q. Okay.

14 A. And I ended up cleaning her up. I told one of the
15 girls about it, and she said, "Well, you'll have to ring
16 the buzzer." So by the time the stench hit me and the mad
17 hit me, I just did it myself.

18 Q. Okay. And so let me make sure I understand. On this
19 particular episode when you noticed it, you told somebody
20 that worked there?

21 A. Yes.

22 Q. Who was it that you told, do you know?

23 A. Let me think of her name.

24 Q. Okay.

25 A. Was it Jennifer? No. What was her name. I've got

1 it in the notes.

2 Q. Okay.

3 A. I haven't had a chance to look at them.

4 Q. Okay. And do you remember what this person's job was

5 there?

6 A. I think at that time, she was activity director and

7 assistant -- somehow assistant to Mitzi.

8 Q. Okay. And whenever you told this person, she told

9 you to pull the call light?

10 A. To push the call light, and the girls come help.

11 Q. Was your understanding that if -- from the

12 instruction that this person gave you, that they wanted

13 you to pull the call light, and that someone would come

14 down there and help?

15 A. Right.

16 Q. And rather than do that, you helped Mrs. Brigance

17 yourself?

18 A. Yes.

19 Q. Do you know anything about how she got soiled?

20 A. I think what I wrote in the notes that she told me

21 she had pushed the button, and no one came, and she got up

22 and went to the bathroom by herself.

23 Q. Do you know that of your own personal knowledge or

24 that's just what you remember her telling you?

25 A. I think that's what she told me.

- 1 Q. You didn't witness it in any way, did you?
- 2 A. No.
- 3 Q. Do you know of any other person who witnessed it,
4 other than Mrs. Brigance?
- 5 A. No.
- 6 Q. When you saw Mrs. Brigance in the hall, did she have
7 her walker?
- 8 A. Yes.
- 9 Q. And she was by herself?
- 10 A. Yes.
- 11 Q. As far as you know, was there anyone at Bookfield
12 aware of the fact that Mrs. Brigance's pants were soiled?
- 13 A. No.
- 14 Q. When I went through your log, I saw numerous entries
15 of times when Mrs. Brigance might have an accident, and
16 you would have to help clean her up. That happened quite
17 often, didn't it?
- 18 A. Quite a bit.
- 19 Q. And she was able to use the toilet, but also
20 sometimes she had accidents?
- 21 A. Yes.
- 22 Q. And whenever you were there, and an accident
23 occurred, you would help her get cleaned up, wouldn't you?
- 24 A. Yes.
- 25 Q. Over these months that you sat with Mrs. Brigance,

1 did you all develop a friendship?

2 A. Well, sure.

3 Q. That would just be natural, wouldn't it?

4 A. Correct.

5 Q. And would you agree that she spent much more time
6 with you than she did the Brookfield staff, on a daily
7 basis?

8 A. Possibly.

9 Q. For example, if you would get there at 8:00, and
10 leave at 2:00, that would be six hours. You would be with
11 her that entire time, generally, wouldn't you?

12 A. Right.

13 Q. And the Brookfield staff would just kind of come and
14 go --

15 A. Right.

16 Q. -- during the day?

17 Okay. Did you feel as if Mrs. Brigance felt more
18 comfortable with you than she did the staff at Brookfield?

19 A. Yes.

20 Q. Did you feel like you were closer to her on a
21 personal basis than you were?

22 A. Yes.

23 Q. Was there ever a time when you were there, you,
24 personally, that you saw Mrs. Brigance soiled, and the
25 Brookfield staff knew that, and ignored her?

1 A. I can't recall.

2 Q. You don't recall any instances like that?

3 A. Other than just that one time.

4 Q. That we just talked about in the hall?

5 A. Right.

6 Q. And I think you told me that you -- that with regards

7 to that instance, you're not aware that any Brookfield

8 staff knew that she was in that condition prior to you

9 finding her; am I correct?

10 A. Correct.

11 Q. And what I'm wondering is, are you aware of any

12 instance where Mrs. Brigance's clothes were soiled, and

13 you felt like the Brookfield staff knew about it, but just

14 wasn't taking care of it?

15 A. The time that her bed was wet.

16 Q. Okay. And I'm going to talk to you about that. I've

17 got that next on the list, but what about her clothes,

18 kind of talking about when she soiled herself, and her

19 clothes that she was wearing were soiled?

20 A. I don't recall any other time.

21 Q. Let's go ahead and talk about the instance with the

22 soiled bed. Tell me what you remember.

23 A. I went in and went to breakfast with her, and we came

24 back, and I gathered up a load of laundry.

25 Now, Ms. Dot, that's what I call Ms. Dorothy, she

1 would put a towel on her bed because she wore makeup on
2 her legs, and not to stain the sheets, she would use the
3 towel. And I went to change the towel out on the bed, and
4 it was full of urine. And they had spread the bed up,
5 made the bed up with the comforter and everything, and the
6 bed was totally wet. Her nightgowns were hanging up in
7 the bathroom, sopping wet with urine, like she was going
8 to put them back on that night.

9 Q. The nightgowns were as well?

10 A. Yes.

11 Q. I didn't mean to interrupt you. Was there more to
12 the story, or was that it?

13 A. Well, I called, pushed the button --

14 Q. The call light?

15 A. -- to get someone in there to see, you know, what the
16 deal was, why didn't they strip her bed, you know, when
17 they knew it was -- they had to have known it was wet.

18 Q. Okay.

19 A. And I can't remember, I think it was Martha came
20 down, and I had already stripped the bed, and the
21 comforter was out in the hall, and she went and told
22 somebody about it.

23 Q. Did Mitzi come down there on this occasion?

24 A. I don't think so.

25 Q. What was done about it by the Brookfield staff?

- 1 A. I guess they talked to a CNA about it. I don't know.
- 2 Q. Do you know who the Brookfield staff member was that
3 was working at that time?
- 4 A. Mandy, but I don't know her last name.
- 5 Q. Did you talk to her about it?
- 6 A. Just, you know, in passing.
- 7 Q. Tell me what was said.
- 8 A. And she said that it had been addressed, the problem
9 had been addressed.
- 10 Q. Are you aware of the fact that Mandy denies making
11 the bed up like that?
- 12 A. I don't think it was Mandy who made the bed up. I
13 believe it was somebody else.
- 14 Q. Who do you believe it was made that made the bed up?
- 15 A. Whoever got Ms. Dot out of bed.
- 16 Q. Okay. Did you make the bed that morning?
- 17 A. No. The bed was already made.
- 18 Q. Did Mrs. Brigance ever make her own bed?
- 19 A. No.
- 20 Q. Was she capable of doing that?
- 21 A. I don't know.
- 22 Q. I mean, did she have any physical limitations that
23 would prevent her from making the bed?
- 24 A. No.
- 25 Q. So as I understand your testimony, then, you didn't

1 make the bed?

2 A. No.

3 Q. And you didn't see anyone make the bed?

4 A. No.

5 Q. And so I guess you could not tell us who made the

6 bed, could you?

7 A. Whoever got her up and got her dressed.

8 Q. That would be an assumption on your part?

9 A. Exactly.

10 Q. But you don't know, of your own personal knowledge,

11 who made the bed that day, do you?

12 A. No.

13 Q. What you know is that when you found it, it was made

14 up wet?

15 A. Yes.

16 Q. And you stripped the bed, and let the staff know?

17 A. Yes.

18 Q. Okay.

19 A. Actually, I didn't strip the bed. I let them come in

20 and see it before I stripped the bed.

21 Q. Okay. And who saw it?

22 A. It was Mindy, Mandy, whatever her name was, one of

23 those.

24 Q. Okay. Was it one of the CNAs?

25 A. It's in here.

1 Q. Well, look it up if you want to. You have a copy of
2 your sitters' log with you, and as much as you would like
3 to, feel free to look at it, to refer to it. Okay? I'm
4 leaving that completely up to you.

5 I noticed from your prior deposition that there was
6 an instance on September 3rd of 2009, where it seemed like
7 no one was responding to the call light, and you called
8 the Brookfield -- you took out your cell phone, and called
9 the Brookfield number. Do you remember this?

10 A. I do.

11 Q. Okay. Tell me about that.

12 A. You better let me look that one up.

13 Q. Okay. I made in my notes that it was September 3rd
14 of 2009, if that helps you at all.

15 A. Yes. That was the night one of the other residents
16 had stayed on the button.

17 Q. Tell me what you remember about it, just about the
18 incident.

19 A. Well, she was wanting her medicine so she could go to
20 bed.

21 Q. Mrs. Dot?

22 A. Ms. Dot. And someone had told me to push the button
23 when she was ready to go to bed, and they would come in
24 and give her her medicine so she could go to bed. And
25 nobody answered and nobody answered, so the other girl

1 came in and said that -- that was Christine, the little
2 short, dark-haired one, said that if someone else was
3 pushing the button at the same time Ms. Dot was pushing
4 her button, that whoever did it first would show up. They
5 didn't know their button was on.

6 Q. Okay. How did you get some help that night, did you
7 record that?

8 A. Oh, I did. I called Mitzi on my cell phone.

9 Q. Okay.

10 A. And she said it showed that her light was not on.

11 Q. So let me make sure I understand the whole scenario.
12 Whenever it was time for you to get Ms. Dot ready for her
13 bed, she kind of had a routine that she went through?

14 A. Right.

15 Q. And it included putting her makeup on; is that right?

16 A. No. That was in the morning.

17 Q. Did she like -- I thought she liked to put --

18 A. She did facial and lotion and stuff like that.

19 Q. Okay. As she got ready for bed?

20 A. Brushed her teeth, everything.

21 Q. Okay. And on this occasion you were going to help
22 Ms. Dot with her bedtime routine?

23 A. Yes.

24 Q. And you knew that she needed medicine before she went
25 to bed; am I right?

1 A. Right.

2 Q. And so you -- you said that they told you. Was that
3 a Brookfield staff member that said pull the -- call us on
4 the call light whenever she's done?

5 A. I wrote at 6:20, "Called for Christine. She told me
6 leaving dining area. When Dot was ready for bed, to pull
7 the cord."

8 Q. So let me find my -- let me find that entry so I can
9 follow you along. Okay. I found you there at the 6:20
10 entry, it says, "Called for Christine"?

11 A. Uh-huh.

12 Q. How did you call for Christine?

13 A. Just pushed the button.

14 Q. Okay.

15 A. Or pulled the cord.

16 Q. All right. And she, I guess that means Christine,
17 told me, "Leaving dining area. When Dot was ready for
18 bed, to pull the cord"?

19 A. Yes.

20 Q. Okay. And then whenever, as I understand it here
21 from looking at this, you had pulled it a couple times,
22 and nobody responded; am I right?

23 A. Yeah. I think it started at 6:10.

24 Q. And so as I understand it, you had had some kind of
25 communication with this Brookfield employee named

1 Christine that you were going to go get Ms. Dot ready for
2 bed, and she said, "Well, when you're done, and she's
3 ready for her meds, holler at me"?

4 A. Right.

5 Q. Then when she was ready, you pulled the cord at 6:10
6 and 6:15, and nobody was coming?

7 A. Right. Well, I pulled one and Ms. Dot pulled the
8 other one, so I didn't have any control over the second
9 one.

10 Q. That's fine. And then at some point, you decided
11 that this was -- something was wrong or they weren't
12 coming?

13 A. Right.

14 Q. What made you call -- decide to call on the
15 Brookfield number?

16 A. Because they had been having trouble with the lights.

17 Q. Okay.

18 A. Or with the pull cords. And there's actually -- I've
19 got another entry in here, and you'll have to let me find
20 it, where Mandy had come in, not Amanda, Mandy Ping, I
21 believe her name is, and changed out all the batteries.

22 Q. Uh-huh.

23 A. Because she said her call lights were going off, and
24 this was -- we hadn't even pulled them.

25 Q. Okay. All right. I remember reading that in your

1 log, by the way.

2 A. I mean, there's, you know, where you push them and it
3 doesn't show up. They have little phones that that light,
4 the number for that light would go directly to the phone
5 and say, you know, call light or light or cord or
6 whatever --

7 Q. Okay.

8 A. -- on their phones that they carried around with
9 them.

10 Q. Oh, okay. So if they were walking around, and the
11 call light got pushed, it was supposed to show up on their
12 phone that somebody in Room 411 has pulled the call light?

13 A. I believe the phone would vibrate. If it was in
14 their pocket or laying down, it would vibrate and it --

15 Q. Okay. That way, they don't have to be sitting at the
16 desk, watching a board or something?

17 A. Exactly.

18 Q. Okay. Whenever the call light cord was pulled a
19 couple of times, and no one came, was that out of the
20 ordinary?

21 A. No.

22 Q. That didn't seem unusual to you, that the cord was
23 pulled, and nobody came?

24 A. Well, yeah. I mean, I mentioned it before.

25 Q. And as I take it, you were aware that they were

1 having some technical issues with their call system?

2 A. Yes.

3 Q. Now, whenever you called on the phone, I believe you

4 had stated before your deposition you called The

5 Brookfield's main number?

6 A. Yes.

7 Q. And Mitzi answered?

8 A. Yes.

9 Q. And you told her what was going on?

10 A. Right.

11 Q. And looks like, if I'm looking at your log, that you

12 got Mitzi on the phone at about 6:20. I know these times

13 are estimates, but around 6:20.

14 A. Right.

15 Q. And then about 6:25, two aides show up?

16 A. Right.

17 Q. So am I correct that when you brought the problem --

18 on this day, when you brought the problem to Mitzi's

19 attention, somebody did respond within five minutes?

20 A. Right.

21 Q. Okay.

22 A. And, actually, according to Christine, at 6:45, she

23 was still -- she was waiting, and then they went off on

24 her phone.

25 Q. Okay.

- 1 A. She said, "Oh, well, there they are."
- 2 Q. All right. So back at this time in early September,
3 they were having some technical issues, it looks like,
4 with their call system?
- 5 A. I think they had before also.
- 6 Q. All right. Now, when you were there with Ms. Dot,
7 and the call system seemed not to be working, what would
8 you typically do if you were there with her?
- 9 A. If I didn't call, I would just find somebody, go find
10 somebody, and ask them to check.
- 11 Q. So you would either use your cell phone to call or go
12 track somebody down?
- 13 A. Right.
- 14 Q. Whenever you called or went and tracked them down,
15 would they come help?
- 16 A. Yes.
- 17 Q. Let me ask you about -- let's go back to the episode
18 where you found the bed had been soiled, made up soiled,
19 made up wet, I guess.
- 20 A. Okay.
- 21 Q. Did you ever talk to Mitzi about that?
- 22 A. I don't think I talked to Mitzi about that.
- 23 Q. Were you of an understanding that Mitzi was made
24 aware of it somehow?
- 25 A. Yes.

1 Q. And were you of an understanding that that was
2 addressed with the staff?

3 A. Yes.

4 Q. And did it ever happen again?

5 A. No.

6 Q. The next thing I wrote down about the specific things
7 you could recall that seemed neglectful to you was an
8 episode where you found her coming back from breakfast by
9 herself.

10 A. Right.

11 Q. Tell me about that.

12 A. I believe at that time she had had a few issues
13 walking, and they had always assisted her back and forth
14 before, and I think it's -- I just found her, like, one
15 time, but I think before in here there are several entries
16 on her being by herself, either going or coming back from
17 breakfast, lunch.

18 Q. Okay. Was this -- was she already coming back from
19 breakfast when you got there?

20 A. I believe she had started to breakfast when I got
21 there.

22 Q. Okay. What was the general routine, would you
23 usually take her to breakfast?

24 A. Yeah, I would get there, and if she needed to do
25 anything, go to the bathroom or whatever, you know, I

1 would take her to the bathroom, and then we would start to
2 breakfast.

3 Q. Was that the normal routine?

4 A. Yes.

5 Q. And on this particular day, she was already started
6 down the hall by herself?

7 A. Yes.

8 Q. Did she have her walker?

9 A. Yes.

10 Q. Had she fallen or anything like that?

11 A. No.

12 Q. Other than her going down the hall by herself with
13 her walker, was she in any kind of danger or peril, or
14 anything happening to her?

15 A. No.

16 Q. Did she have any wardrobe issues that day?

17 A. No.

18 Q. What did you do when you found her in the hall?

19 A. I just put my stuff in her room, and just went on
20 with her.

21 Q. Did you let the staff know?

22 A. Yes.

23 Q. Who did you let know?

24 A. One of the girls. I don't know if it was Christine
25 or Mindy, Mandy.

1 Q. Okay. What was her response?

2 A. She said, "Well, we hadn't got back down there yet."

3 Q. Meaning they hadn't gotten around to her room yet?

4 A. No. They'll go around and say, "It's almost time for
5 breakfast. Are you ready?" you know, and stuff like that.
6 And I don't think they had made it that morning.

7 Q. They hadn't made it to her room yet?

8 A. No.

9 Q. Let's talk about the medication error or when she ran
10 out of meds, I guess, is really what you told me.

11 A. I believe she ran out of her Aricept at one time.

12 Q. All right. And what do you remember about that?

13 A. Just that when she had her medicine that morning, the
14 aide said that she was missing her Aricept.

15 Q. Okay.

16 A. Because it hadn't been refilled.

17 Q. Okay. And do you know how many days she missed?

18 A. I would have to --

19 Q. Let's go ahead and look at it. I think that was in
20 November of 2009, so it's going to be towards the back of
21 our log, and looking at my notes, I see that you had a
22 note in there on the 14th, and maybe the 15th, if I'm
23 reading my notes right.

24 A. Let's see, here's one at 11/15 at 6:57, where Cheryl
25 wrote, "Still out of Aricept."

1 Q. That's Cheryl's handwriting?

2 A. Yes.

3 Q. Okay. Let me -- if you want to keep looking, go
4 ahead, but was Aricept usually given at bedtime?

5 A. I can't remember if it was gave once a day or twice a
6 day.

7 Q. All right.

8 A. I can't find it.

9 Q. So as you sit here right now, I mean, if it's in
10 there, it's in there, but as you sit here right now, the
11 only note that you found was on 11:15 where it says she
12 was out of Aricept again, which would indicate it was not
13 the first day?

14 A. No.

15 Q. But that was the only entry that you found as you sit
16 here right now?

17 A. Right.

18 Q. And that was Cheryl's handwriting?

19 A. Yes.

20 Q. So we would have -- we would need to ask Cheryl about
21 what she meant by the word "again"?

22 A. Exactly. And I believe -- I think if I go back, I'll
23 find it.

24 Q. You're welcome to take as much time as you like.

25 A. I can make a note of it. I can't find it where it

- 1 says that she was out of it to start with.
- 2 Q. Do you know why there was a day -- one or more days
3 when she was out of her Aricept?
- 4 A. Because it hadn't been refilled, from what I
5 understand.
- 6 Q. Do you know if it was because it wasn't ordered, or
7 the pharmacy hadn't got it done, or something else?
- 8 A. I have no idea.
- 9 Q. Okay. This time that you recall her running out of
10 her Aricept, are you aware of any other problems with her
11 medications?
- 12 A. Just the one that she has -- I believe she took one
13 once a month, and she had to walk after she took it, and
14 had to take it before she ate, and it was gave -- Cheryl
15 was there that day. It was gave during breakfast, and
16 there was a couple of times when it was gave at a
17 different time.
- 18 Q. Okay. So there was some question about the time of
19 day it was given, and whether it was meeting all the
20 particular circumstances it was supposed to be given
21 under?
- 22 A. Yes.
- 23 Q. And Cheryl was the one that was present?
- 24 A. I believe so.
- 25 Q. Okay.

1 A. I think I was there one time, but I have no idea when
2 it was.

3 MR. DOSSETT: Okay. We're going to need to
4 change the tape here shortly, so we're going to
5 go ahead and take a break and do that.

6 THE WITNESS: Okay.

7 THE VIDEOGRAPHER: Time is 9:52 a.m., and we
8 are off the record.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: The time is 10:11 a.m.,
11 and we are back on the record.

12 BY MR. DOSSETT:

13 Q. Okay. Ma'am, we're back on the record, and the court
14 reporter is taking down what we say again. Okay?

15 A. Yes.

16 Q. Let me -- I'm going to jump around here on you. I'm
17 not going to go and cover with you everything that you've
18 already testified to in your previous deposition, but I
19 want to jump around and kind of ask you just on some
20 topics where I had some additional questions or some
21 particular interest. Okay?

22 A. Okay.

23 Q. I want to talk to you about Ms. Dot's slippers. And
24 I saw some entries in the logbook about where the sitters
25 had kind of tried to -- that she had two sets of slippers,

1 one was a terrycloth set and the other was a gold set that
2 she liked more. Do you remember this?

3 A. Yes.

4 Q. And I saw some entries in the sitters' log where you
5 all -- I shouldn't say you all. The sitters were
6 recording that they would kind of try to hide the gold
7 ones and keep them out of sight so maybe Ms. Dot wouldn't
8 try to use them. Do you remember that?

9 A. Yes.

10 Q. Tell me about that and what was going on.

11 A. Well, I just didn't like them.

12 Q. Why?

13 A. I don't know why, I just didn't like them, but I
14 didn't feel like she needed to wear them. I felt like she
15 needed to wear the others.

16 Q. Was it because the gold ones had a raised heel on
17 them?

18 A. Slight wedge, but not -- not high.

19 Q. Okay. But is that what was causing you to think
20 maybe she would be better off with the terrycloth ones?

21 A. Yes.

22 Q. So what was it that you were doing to try to get her
23 to forget about them?

24 A. Oh, we would put them in the middle underneath the
25 bed or, you know, in the closet, underneath something.

- 1 Q. Did you ever talk to her about the need to switch?
- 2 A. I think maybe once, twice.
- 3 Q. What did you try to explain to her about those gold
4 slippers?
- 5 A. That she needed to wear the other ones.
- 6 Q. Did you explain to her why the gold ones might not be
7 the best for her?
- 8 A. Evidently, not good enough.
- 9 Q. And I realize that she could be kind of set in her
10 ways, and wanted to do things the way she wanted to do
11 them, and I'm not criticizing her for that, but was this
12 one of those situations where you tried to explain to her
13 why it would be better for her not to wear them, but she
14 insisted on wearing them?
- 15 A. Yeah. She had worn them for years, she said.
- 16 Q. I wanted to ask you about if you recall The
17 Brookfield running a background check on you and the other
18 sitters whenever you all started sitting for Ms. Dot. Do
19 you remember that?
- 20 A. I think so.
- 21 Q. Did that make you upset?
- 22 A. No.
- 23 Q. Did you ever tell anybody that you were upset about
24 it?
- 25 A. I believe I had to run some papers back and forth

1 several times, and I thought it was took care of. That
2 was the only thing that I made a comment about.

3 Q. It wasn't the fact that they were doing a background
4 check, you just felt like they were asking you to do
5 things over and over again?

6 A. Right.

7 Q. Oh, okay.

8 A. I mean, I've had an FBI check, worked for the census,
9 you know, stuff like that.

10 Q. And you're probably not surprised that your
11 background check came back clean, and nothing on it?

12 A. Right.

13 Q. I had just seen an entry or a notation somewhere that
14 you might have been upset about the background check, and
15 I was wondering why that was, and you gave me your
16 explanation.

17 A. Well, I filled this out, and then I had to go have it
18 notarized, and then, you know, it was just --

19 Q. Kind of became a pain?

20 A. Why didn't they have a notary there? Why didn't they
21 tell me that to begin with, you know?

22 Q. Did you understand why they were doing those
23 things --

24 A. Yes.

25 Q. -- doing a background check?

1 A. Yes.

2 Q. Would that be an appropriate thing, in your mind, for
3 somebody to do?

4 A. An appropriate thing?

5 Q. Yes.

6 A. Yes.

7 Q. You didn't have any problem with them doing a check?

8 A. No.

9 Q. You just felt it was being handled in a way that was
10 becoming a nuisance to you?

11 A. Yes.

12 Q. You thought it could have been handled better?

13 A. Yes.

14 Q. Okay. Are you aware that there were some
15 investigations done by the state investigators with regard
16 to Mrs. Brigance?

17 A. Yes.

18 Q. How many times did investigators call you or talk to
19 you in person?

20 A. Once or twice.

21 Q. Did they ever meet with you in person or was it
22 always by phone?

23 A. I think just by phone.

24 Q. If the records from the investigators, if their notes
25 indicate that there were two investigators that talked to

1 you on different days, would you dispute that, or does
2 that match up with your memory?

3 A. I can't recall just -- I can only recall just one.

4 Q. Okay.

5 A. I think someone did call me and ask me about setting
6 up a time to talk with someone that was prior, three or
7 four days before that time.

8 Q. The person that did the interview, was it a man or a
9 woman?

10 A. A man, I believe.

11 Q. Do you recall -- do you recall whether or not you had
12 an interview that was performed by an investigator that
13 was a female --

14 A. No.

15 Q. -- by the name of Jane Pessa?

16 A. I can't -- I can't recall.

17 Q. Okay. If Ms. Pessa has notes that indicates she
18 talked to you, and this is what you told her, are you
19 going to dispute that you had a conversation with her or
20 you just don't remember?

21 A. I don't remember. I wouldn't dispute it, but, you
22 know, I would have to go back and look.

23 Q. Okay.

24 A. Because I would have made a note.

25 Q. Okay. Tell me what you recall about your interview

1 with the gentleman investigator that called you.

2 A. He wanted to know some instances what I would
3 consider stuff that needed to be looked into.

4 Q. Okay. And did you answer his questions?

5 A. Yes.

6 Q. Did you tell him what you could remember, to the best
7 of your ability?

8 A. Yes.

9 Q. Were you honest with him?

10 A. Yes.

11 Q. Did you hide anything?

12 A. Not that I know of.

13 Q. If you knew something that was bad about The
14 Brookfield, did you hold it back or did you tell him
15 everything you knew?

16 A. I just told him what I had wrote in my notes.

17 Q. And I'm just wondering if there was anything bad
18 about The Brookfield that you had in your mind that you
19 intentionally held back from him.

20 A. Not that I know of.

21 Q. Do you recall being asked by the investigator to send
22 your log in, or some portion of it in, to them to be
23 reviewed?

24 A. I can't remember if he asked me or if I volunteered
25 to send it to him. Because he wanted ten instances, and I

1 told him I have more.

2 Q. Okay. And there is a typewritten list of instances.

3 I'm going to show it to you and ask you if that's what

4 you're talking about.

5 A. This right here.

6 Q. Oh, you have it? Okay. Great. You see that it has

7 that "2," that sticker?

8 A. Uh-huh.

9 Q. That's because it was Exhibit 2 to Shirley Hamilton's

10 deposition. Do you remember that?

11 A. Yes.

12 Q. Tell me about this list. Who typed it up?

13 A. I did.

14 Q. And how did you determine what information to put on

15 here?

16 A. It came out of this.

17 Q. Out of your sitters' log?

18 A. Yes.

19 Q. And what was the purpose of preparing this list?

20 A. Just to -- I guess to note how many instances there

21 was and what the -- you know, the issues were.

22 Q. Did you make it specifically to send on to the state

23 investigator?

24 A. Yes.

25 Q. So if I understand you correctly, during your

1 interview with the state investigator, he asked you for
2 the ten most important things that he thought -- you
3 thought he should know out of the log, and when you sat
4 down, you came up with more than ten?

5 A. Yes.

6 Q. And so instead of limiting it to ten items, you just
7 went through and made a list of what you thought was in
8 the log that the investigator should be aware of?

9 A. Yes.

10 Q. And you typed it up?

11 A. Yes.

12 Q. And then you did what with it?

13 A. I e-mailed it to the State of Arkansas.

14 Q. Okay. Do you remember what your e-mail address was
15 then?

16 A. Debup62@yahoo.com.

17 Q. D-E-B-U-P62@yahoo.com; is that right?

18 A. Yes.

19 Q. And do you recall when you did that?

20 A. No, I don't.

21 Q. Go ahead. I'm sorry.

22 A. It might be close to -- it would have to be close to
23 this end date.

24 Q. Well, I have a copy of an e-mail in the state's file
25 from you at that address, D E B U P 62@yahoo.com to a

1 gentleman named Kenneth Hamft, H-A-M-F-T, dated
2 December 4, 2009. Does that sound about right?

3 A. Yeah, that sounds about right.

4 Q. Okay. And you agree with me that you did e-mail him
5 the list?

6 And we'll go ahead and mark this typewritten list,
7 consists of four pages, starts with the date 3/9/09, ends
8 with the date 11/19/09. We'll go ahead and mark that as
9 Exhibit 1 to your deposition.

10 (Exhibit 1 was marked for identification.)

11 BY MR. DOSSETT:

12 Q. Do you agree that you did send this to the state
13 investigators by e-mail?

14 A. Yes.

15 Q. And did you feel as if that had all the information
16 from the sitters' log that, at least in your eyes, the
17 investigators needed to be made aware of?

18 A. Yes.

19 Q. And I looked at it. There's obviously more than ten
20 entries, as you told me, because you knew there were more
21 than ten things they needed to know about. Did you feel
22 constrained to leave it like I gotta make this short or
23 I've gotta leave something out, did you do anything like
24 that, or did you just put it all down?

25 A. I may have, you know, condensed it, but I didn't --

1 just whatever I thought was in here that needed to be on
2 the other list.

3 Q. Okay. So if you found it in the sitters' log, and
4 you felt like the investigators needed to be made aware,
5 you put it on this typewritten list?

6 A. Yes.

7 Q. Did Steve Brigance ever ask you to keep a log?

8 A. No.

9 Q. Did he ever give you any instructions about what to
10 put in your log?

11 A. No.

12 Q. Did he ever ask you to keep an eye on what The
13 Brookfield or its staff was doing to report to him if
14 there were any problems?

15 A. No.

16 Q. Did you consider it your duty to let Steve and Peggy
17 know if there was a problem?

18 A. Yes.

19 Q. And you did that?

20 A. Yes.

21 Q. Was there ever a time when you were encountering a
22 particular problem at The Brookfield with Mrs. Brigance,
23 and you went and told the staff about it, and they just
24 ignored you?

25 A. That's hard to answer.

1 Q. Okay. Why is that?

2 A. For instance, her hearing aids, it took them three
3 weeks to learn how to put them in. I had to write on them
4 with a Sharpie just so they could put them in the right
5 ear.

6 Q. Okay.

7 A. You know, you would think if it was addressed once,
8 it would have been handled differently.

9 Q. Whenever you noticed that her hearing aids were in
10 wrong, did you bring it to the Brookfield staff?

11 A. Yes.

12 Q. And did somebody come down and take a look?

13 A. Yes.

14 Q. And would they -- at that moment, would they get them
15 in the right ears?

16 A. Yes.

17 Q. And that happened again?

18 A. Several times.

19 Q. And did you report it to them?

20 A. I would call them.

21 Q. And would they come down and fix it?

22 A. Or they would say they didn't do it.

23 Q. Okay.

24 A. Or they'll have a sit-down or whatever, you know,
25 with the aide.

1 Q. They would have some kind of training with the aide?

2 A. Right.

3 Q. And did they eventually get that corrected where it
4 stopped happening?

5 A. Yes.

6 Q. And was the problem -- when I read your log it seemed
7 to me like the problem was that they were getting the left
8 ear in the right ear, and the right ear in the left ear.

9 A. Well, actually, the piece that went in the ear well
10 was actually poked down in her ear.

11 Q. Okay.

12 A. You know, I would walk in and I'd say something to
13 her and she would go, "What?" you know, and I would say,
14 "Let me check them hearing aids," and they wouldn't even
15 be in right.

16 Q. Was it that they were just in the wrong ear, or they
17 just weren't put in her ear correctly?

18 A. They were put in backwards, upside down, you know,
19 every which way.

20 Q. Okay. And whenever you would find that situation
21 occurring, that the hearing aids were not in correctly,
22 you would bring it to The Brookfield's attention; am I
23 right?

24 A. Yes.

25 Q. And somebody would come down there and address it?

- 1 A. Yes.
- 2 Q. And it took them a few tries until they got everybody
3 trained up on the right way to do it, it sounds like.
- 4 A. About three weeks.
- 5 Q. Am I correct in that?
- 6 A. Yes.
- 7 Q. And then with your help, once they got that
8 corrected, no more problems with it?
- 9 A. Yes.
- 10 Q. I know that you weren't there with Ms. Dot 24 hours a
11 day, seven days a week. You had your shifts and you had
12 another client and you had your own personal life, right?
- 13 A. Right.
- 14 Q. But whenever you were there with her, you never
15 allowed her to be in danger or in distress in any way, did
16 you?
- 17 A. No.
- 18 Q. I mean, if you saw her needing something or needing
19 help with something, you would help her or get her the
20 help, wouldn't you?
- 21 A. Yes.
- 22 Q. So -- and I know you can only speak for yourself, but
23 as long as you were there, Ms. Dot was well taken care of;
24 would you agree?
- 25 A. Yes.

1 Q. How did you find out that Ms. Dot had had an
2 accident?

3 A. I believe I had spoke with Cheryl.

4 Q. Okay.

5 A. She called me.

6 Q. What did he tell you?

7 A. That she had fell.

8 Q. Did you ever go see Ms. Dot in the hospital?

9 A. I stayed up there with her. I was with her when she
10 passed away.

11 Q. Okay. So you were the sitter that was sitting with
12 her in hospice when she passed away?

13 A. Yes.

14 Q. Did you ever talk to her about what happened to her
15 that night?

16 A. Yes.

17 Q. What did she tell you?

18 A. She said that she had pulled the cord, and no one
19 come, and she had to go to the bathroom.

20 Q. And you recall that she specifically told you she
21 pulled the cord, and no one came?

22 A. Yes.

23 Q. Did she tell you how long -- how much time had passed
24 between the time she pulled the cord, and when she decided
25 to get up?

- 1 A. I think she pulled -- she told me she pulled it two
2 or three times.
- 3 Q. But do you know?
- 4 A. No, I don't.
- 5 Q. So you don't know if she was telling you that she
6 pulled it two or three times within an hour or five
7 minutes or anywhere in between?
- 8 A. No.
- 9 Q. Okay. Did she tell you how she fell?
- 10 A. She just lost her balance, she said.
- 11 Q. Did she tell you whether she was wearing those
12 slippers or not?
- 13 A. No, she didn't say.
- 14 Q. Did she say whether she was using her walker or not?
- 15 A. No.
- 16 Q. Did she generally use her walker inside her room?
- 17 A. No, not inside her bedroom because the wall is just
18 so far from the bed.
- 19 Q. Okay. When was it that Ms. Brigance gave you her
20 version of events?
- 21 A. Probably about a week or week and a half after she
22 was in the hospital.
- 23 Q. Which hospital was she located in at the time?
- 24 A. Sparks. She was in the rehab part at that time.
- 25 Q. I note that there was a time where -- a point in time

1 in rehab where she kind of took a turn for the worse, and
2 then ended up going to hospice. Do you remember that?

3 A. Yes.

4 Q. Was your conversation with her about what happened,
5 was it before she took that turn for the worst or after?

6 A. Before.

7 Q. When Ms. Brigance needed to use the restroom, did she
8 like to have privacy while she was using the restroom?

9 A. No. We left the door open.

10 Q. Okay. Did you stay in there with her or did you just
11 leave the room, and leave the door open?

12 A. I would stay in there with her.

13 Q. And what help would you give her when she was going
14 to the restroom?

15 A. I would pull her pants down, and help her clean
16 herself up and stuff like that.

17 Q. Would you help her get onto the toilet and off of the
18 toilet?

19 A. She could get up and down by herself. She just
20 needed help pulling her clothes up.

21 Q. Okay. Did she need help pulling her clothes down to
22 sit on the toilet, or could she do that?

23 A. She could to a point, I mean, she did. I know she
24 did because she would go to the bathroom, and would have
25 went to the bathroom before I got there, and everything

1 was fine.

2 Q. Okay. And by that I assume you mean that when you
3 would arrive, she would already be in the restroom, on the
4 toilet?

5 A. Right.

6 Q. Okay.

7 A. And I think one time she wanted me to shut the door,
8 and I told her we couldn't shut the door.

9 Q. Okay. I saw some discussion about whether or not her
10 door -- she had two doors to her room; is that right?

11 A. Right.

12 Q. And whether both doors were supposed to be locked at
13 a particular period of time, or one. What do you remember
14 about that?

15 A. I remember coming in and Ms. Dot telling me that
16 someone was in her second room, which is where she would
17 put her makeup on and stuff like that. And there had been
18 several mornings that I would come in and I would check
19 that door first on the outside, and it would be unlocked.

20 Q. Okay.

21 A. And we always tried to keep it locked. And then
22 there would be mornings where I would come in, and her
23 main door would be locked. Of course, I'm not going to
24 knock on it so she'll get up and come unlock the door. I
25 would have to go find someone to unlock the door.

1 Q. Do you know what the instructions were from Steve
2 Brigance as to which doors were supposed to be locked and
3 when?

4 A. Well, just during the middle of the night is when
5 they were supposed to be locked, but the main door was
6 supposed to remain -- not the main door. The second
7 bedroom door was supposed to remain locked at all times.

8 Q. The main door, that's what, I guess, would be the
9 front door to her apartment?

10 A. Right.

11 Q. Was it supposed to be locked or unlocated when there
12 were no sitters there with her?

13 A. Unlocked.

14 Q. During the day, I mean.

15 A. Yes.

16 Q. Whenever you all were there with her, did you leave
17 the front door unlocked?

18 A. Yes.

19 Q. Now, what I would call the back door --

20 A. Right.

21 Q. -- it was supposed to be locked all the time?

22 A. Yes.

23 Q. And then the front door was supposed to be locked
24 when she was in bed?

25 A. Yes.

1 Q. Did Steve Brigance sometimes leave notes in the
2 sitters' log for you guys?

3 A. I think he might have left a couple on top, you know,
4 just on a piece of paper or something like that, Post-it
5 note or something.

6 Q. All right. This list that we have marked as
7 Exhibit 1 to your deposition, I noticed in your prior
8 deposition that you made some extra copies of that, you
9 tried to give one to Steve, and he wouldn't take it.

10 A. Right.

11 Q. Do you know why he didn't take it?

12 A. He didn't want to look at it.

13 Q. Did he tell you why?

14 A. No, he didn't tell me why. I just figured it would
15 upset him.

16 Q. But he didn't say, "No, I can't read that. I'm too
17 upset," he just said, "No, I don't want it"?

18 A. Yes.

19 Q. Okay. Did you ever have a conversation with Ms. Dot
20 about the importance of using her walker?

21 A. I think I probably did.

22 Q. Do you recall that period of time when she didn't
23 want to use it?

24 A. Yes. And we had to call it her Buick, yes.

25 Q. You had to do what?

- 1 A. Call it her Buick.
- 2 Q. Okay. Is that part of the way you got her to think
3 of how it could help her?
- 4 A. Yes.
- 5 Q. After she -- I know there was a period of time when
6 she didn't want to use it, and then she began using it.
7 Once she got used to it, did you have any problems getting
8 her to rely on that walker to help get around?
- 9 A. No.
- 10 Q. I know there was one instance, and I believe it was
11 you, where you had to go run an errand right before she
12 was supposed to go to physical therapy.
- 13 A. To exercise, yes.
- 14 Q. Do you remember this incident?
- 15 A. Yes.
- 16 Q. Tell me about that.
- 17 A. That was the day that I came back -- I had went to
18 get her a peanut butter pie, and when I came back, I put
19 the pie in her room, and I could smell feces. And that
20 was the day I started around the corner, and one of the
21 other sitters for another person out there said, "She's
22 right there, and she's dirty." And I went, "Oh, no." And
23 when I looked around the corner, she had cream-colored
24 slacks on, and you could tell she had messed herself.
- 25 Q. Was this the incident you told me about before, or a

1 different one?

2 A. Yes, same one.

3 Q. Okay. When you were there, I know that Steve

4 Brigance came to visit often, didn't he?

5 A. Uh-huh.

6 Q. I'm sorry. You'll have to say "yes" or "no."

7 A. Yes.

8 Q. Okay.

9 A. Sorry.

10 Q. No, that's all right. Sometimes when we get to it

11 later, we're trying to decide if that was a "yes" or a

12 "no."

13 A. I understand.

14 Q. Were you ever present when Steve would come -- did

15 you ever see him come pick her up and take her out of the

16 facility to go somewhere?

17 A. I believe I did. I took her to get her hearing aids,

18 to the doctor, you know, and they might meet us over

19 there.

20 Q. Did she enjoy that?

21 A. Oh, yes.

22 Q. Was she physically able, with your help, to do things

23 like get in and out of the car, and go to the doctor and

24 those things?

25 A. Yes.

1 Q. I think I saw maybe in your mother's deposition that
2 she would sometimes take her for rides.

3 A. Yes.

4 Q. And go get her pie and things like that.

5 A. She loved Braum's.

6 Q. Loved Braum's?

7 A. Braum's ice cream.

8 Q. Did you sometimes take her and go to Braum's?

9 A. After she got her hearing aids, we went. We went
10 several times, went to Subway, hamburger, you know.

11 Q. She enjoyed that?

12 A. Oh, yes.

13 Q. And she was physically able to do those things?

14 A. Yes.

15 Q. And were you ever there when Steve came and got her
16 and took her out?

17 A. I don't think I was. I think Mom might have been,
18 and I know that he did come and get her for certain family
19 things.

20 Q. That he did?

21 A. Yes.

22 Q. How do you know that?

23 A. Because I believe she spent, like, a Memorial Day,
24 they had a picnic or barbecue or something like that.

25 Q. But I'm wondering how you know that.

1 A. Oh, she told me.

2 Q. Oh, she told you. Okay.

3 Do you know who Debbie Medley is?

4 A. Medley?

5 Q. Yes, ma'am. She's an ombudsman for -- she's the

6 local ombudsman. Do you know what I mean by "ombudsman"?

7 A. I don't think I do.

8 Q. Okay. She's the -- the ombudsman is the state

9 employee that works as an advocate for people in long-term

10 care.

11 A. Oh, okay.

12 Q. Okay. And she's the local one.

13 Do you remember her coming to visit with Ms. Dot just

14 shortly before her accident?

15 A. I would have -- I don't recall it. I'm not saying

16 that it's not wrote down somewhere.

17 Q. What do you remember about the day before her

18 accident, do you remember anything about that day?

19 A. No. I would have to -- you know, I would have to

20 look back on it.

21 Q. Let's go ahead -- why don't you go ahead and look at

22 your log.

23 A. Because Cheryl was there, I believe, the evening that

24 that happened.

25 Q. There's an entry there that starts on 11/18, and I'm

1 trying to figure out whose handwriting that is, 11/18 at
2 7:25.

3 A. 11/18, 7:25, that's me.

4 Q. Okay. And then her accident was on 11/19.

5 A. Yeah. That's when the hearing aid issue was still
6 going on, too. She had a sister-in-law pass away.

7 Q. It looks like -- I'm looking at this date, and it
8 appears this was her beauty shop day.

9 A. Right.

10 Q. Looks like she talked to Lena that day.

11 A. She spoke with Lena every morning.

12 Q. Okay. Good.

13 A. Or her daughter. I think that's what her name is,
14 Lena.

15 Q. Okay. I think I just finally understood this for the
16 first time, but you see on this page where there's the
17 9/25 entry?

18 A. Yes.

19 Q. And then in some parentheses there it says, "But she
20 had a doctor's appointment."

21 A. That's the beautician.

22 Q. Okay. See, I was thinking that meant Mrs. Brigance,
23 but it just occurred to me you're saying here the
24 beautician has a doctor's appointment, so you're not sure
25 what time she'll be there?

1 A. Right.

2 Q. Okay. Do you remember a time when Steve Brigance
3 called and asked to try to get some contact information
4 for Amanda Broughton?

5 A. Called who?

6 Q. I think called you, but I'm going to try to find the
7 entry for you.

8 A. I think that was Cheryl.

9 Q. That was Cheryl?

10 A. I think it was.

11 Q. Okay.

12 A. Because I didn't know Amanda.

13 Q. Okay. That makes sense.

14 I noticed in the log it's recorded routinely what she
15 has for dinner.

16 A. Yes, sir.

17 Q. And looks like shrimp was one of her favorite foods?

18 A. Yes.

19 Q. Did she have any problems or reactions to shrimp?

20 A. Not to shrimp.

21 Q. What would she have a problem with?

22 A. I believe the one time was aspartame in yogurt.

23 Q. All right. But when she would eat her shrimp, you
24 didn't ever notice her having any kind of allergic
25 reaction or anything?

1 A. No. I believe she did have something going on one
2 time with her mouth, but they never did ascertain what it
3 was that caused it.

4 Q. Okay. The copy of the one you have, does it have
5 numbers in the bottom right-hand corner?

6 A. What date are you on?

7 Q. Let me see if I can figure out what date it is. I
8 can give you the page number, too, if yours have page
9 numbers.

10 A. I don't think it's got page numbers on it anywhere.

11 Q. Let me just show you my copy. It will be a lot
12 easier. This is the entry I'm wondering about right here
13 at the bottom of the page. I'm wondering if that's you or
14 Cheryl.

15 A. It is me.

16 Q. Okay. Read that if, you would, and I wanted to ask
17 you a question about it.

18 A. Where it's got the asterisk by it?

19 Q. Yes, ma'am.

20 A. "Cheryl, Christina or Ginger brought you a book. It
21 is under tissue on table between recliners. Also, Steve
22 asked if you would get ahold of Mandy for him. He has
23 been trying to call her and can't make contact. You may
24 give her his number, cell. He is ready for Ms. Dot to
25 visit with her no matter the outcome," question mark.

1 Is that what you wanted?

2 Q. Yes, ma'am.

3 You didn't know Mandy?

4 A. No.

5 Q. So what you were just doing was passing along the --

6 passing along the message to Cheryl?

7 A. Yes.

8 Q. What did you mean about he was ready for -- he was

9 ready for Ms. Dot to visit with Amanda, no matter the

10 outcome?

11 A. I think that he had -- every time he spoke with his

12 mother about her, she would get upset because she was

13 there when Jack had his difficulty.

14 Q. Okay.

15 A. And every time he would, you know, start talking

16 about Amanda, she would get weepy.

17 Q. Okay.

18 A. You know, how much she missed her. And I believe she

19 talked to her on the phone a couple times.

20 Q. And when Steve says no matter what, he wants his mom

21 to meet with Amanda, no matter what the outcome, do you

22 know -- did he say anything more than that?

23 A. No.

24 Q. Did you know what he meant by that?

25 A. I just thought, you know, whether it upset her or

1 not, you know, because she had been asking about her.

2 Q. Whether it upset his mother or not?

3 A. Yeah.

4 Q. Okay. Did Ms. Dot ever indicate to you whether she
5 had gotten to see Amanda when she was, you know, out of
6 the facility, doing something, did she ever indicate that
7 to you?

8 A. I don't recall that. I know she missed her. She
9 told me she missed her.

10 Q. See if you can find your entry for October the 1st.

11 A. Okay. The first part of it or the second part of it?

12 Q. Well, this is the part I'm looking for. It says,
13 "Continued 1/10/09" on top, and then the last entry on the
14 page is 11:15. It's numbered on mine as page 7099, but I
15 know your pages aren't numbered.

16 A. It's not numbered on these. At 10/1/09 Thursday,
17 starting at 3:30 p.m.?

18 Q. The first entry on the page I'm looking at is
19 5:30 p.m., so it may be the next page.

20 A. That's Cheryl.

21 Q. That's Cheryl. And if you go down to the -- okay.
22 And then it says 10/2/09.

23 A. Mine looks like cursive. Hers looks like printing.

24 Q. Okay. I'm starting to figure this out. And then on
25 10/2/09, Friday, it's on that same page. Do you see it?

1 A. That's mine at the bottom.

2 Q. And that is an 11:15 entry?

3 A. That's stopping with 11:15, yes.

4 Q. Okay. There's a sentence or two there that starts
5 with an asterisk, starts with the phrase, "Steve said
6 Mitzi." Do you see that?

7 A. I don't see an asterisk, but I see where it says
8 that.

9 Q. Okay. Could you read that for me? I want to ask you
10 a question.

11 A. Just the last part of it, you don't want it, like,
12 before?

13 Q. You can read all of it you like. That's fine. Yeah,
14 why don't you just read the whole entry for me.

15 A. For 11:15?

16 Q. Yes.

17 A. "Steve came by" or "Steve by. Him and Ms. Dot went
18 walking. She had a little rest before lunch." Oh, there
19 it is. I see it now. "Steve said Mitzi called him
20 complaining that she didn't know I was gone at 3:00, and
21 cord wasn't on back of chair. Steve said yesterday was a
22 bad day for Mitzi to call him about such stuff, especially
23 since someone had been coming for such long period of
24 time. Now I have to let them know when I leave and
25 whenever I get here, and I will be noting down everything

1 from now on on a daily basis, example, when aides come in
2 and when they don't, when something should be done and it
3 is not. Cheryl, make sure that they know you are here and
4 when you leave."

5 Q. Okay. What was your understanding as the reason for
6 The Brookfield wanting to know when you were here and when
7 you were leaving?

8 A. From what I understand, I believe Mitzi had come in,
9 and we weren't there. I left at 3:00, and I think she
10 came in at, like, five or ten after 3:00, and no one was
11 there with her, and then she had said something to Cheryl
12 about it.

13 Q. Do you know why -- and if you don't know, that's
14 fine. Do you know why Mitzi wanted to know that?

15 A. I don't know.

16 Q. You make the statement in there that you're going to
17 start writing down everything?

18 A. Right.

19 Q. Why was that?

20 A. Well, she knew that I had been leaving at a certain
21 time and that Cheryl had been coming in. They knew what
22 time we got there, what time we left.

23 Q. And you felt like she should already know?

24 A. She should, I mean, because this was October, and it
25 started back third or fourth month.

1 Q. Okay. I believe you indicated that you were with
2 Mrs. Brigance when she passed?

3 A. Yes.

4 Q. Were you the only one there?

5 A. At that time.

6 Q. Tell me what you recall about that.

7 A. I just recall that it -- she had been several days
8 not eating, not drinking, no verbal, no physical movement
9 or anything, and she just -- she just stopped breathing.

10 Q. What did you do when you noticed?

11 A. I called -- well, first, I cried, then I called Steve
12 and Peggy.

13 Q. Did she pass peacefully?

14 A. Yes.

15 Q. Whenever you called Steve and Peggy, did they come
16 down at that point?

17 A. Yes.

18 Q. Did you stay with them or did you leave?

19 A. I stayed probably about 35 or 40 minutes.

20 Q. Okay. Were they still there when you left?

21 A. Yes.

22 Q. I noticed an entry in your log where you mentioned
23 that you were leaving for the day, and that you had tied
24 the call light -- I shouldn't say tied. The entry says
25 that you put the call light cord on the back of the chair.

1 A. Right, laid it across the back of chair and down the
2 side.

3 Q. You didn't tie it?

4 A. No.

5 Q. Did you ever wrap the call light cord around the
6 handrails in the bathroom?

7 A. No.

8 Q. Or the handrails in the bedroom?

9 A. No.

10 Q. Did you ever see anybody do that?

11 A. I think it might have been looped maybe once or
12 twice.

13 Q. Do you have any idea who did it?

14 A. One or two times I seen it like that, not looped
15 twice.

16 Q. Okay.

17 A. I don't know.

18 Q. One thing I forgot to ask you about earlier is when
19 we were making the list of the complaints you had about
20 the facility, you mentioned that the turnover was bad.

21 A. Yes.

22 Q. I think I know what you mean by that, but I want to
23 make sure. Does that mean that they had a lot of new
24 employees?

25 A. Yes.

1 Q. That there was a rapid rate of people leaving, and
2 new people coming on?

3 A. I thought so.

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

5 A. Yes.

6 Q. Okay. And what was it about that situation that was
7 concerning to you?

8 A. It's hard to pinpoint, you know. There's got to be a
9 reason why they're not staying or why they don't want to
10 stay or I don't know.

11 Q. Did it just raise suspicion with you, or was there --
12 is that what you're telling me, or was there something
13 more specific than that?

14 A. I never did figure out whether it was because they
15 didn't want to do the work or if there was too much work
16 or if they wasn't trained or, you know. One girl was --
17 one would be there one day, and then they would hire
18 someone else, and she would be there three days and, you
19 know, it just -- of course, some people don't want to
20 work.

21 Q. And when you noticed that, it made you wonder about
22 what was going on?

23 A. Well, I would kind of laugh about it, "Well, where
24 did so-and-so go?" you know. "Well, she couldn't hang."
25 Well...

1 Q. And the good thing, I guess, for Ms. Dot would be
2 that you and Cheryl were constants in her life?

3 A. Pretty constant.

4 Q. And so for the most part, most of the days of the
5 week she had -- most of the time people with her were you
6 and Cheryl, day in and day out?

7 A. Right.

8 Q. And so I guess the good news is that if the staff was
9 changing over, that -- we're talking about

10 Ms. Dot -- at least she had the constant you and Cheryl,
11 as opposed to having somebody new all the time completely?

12 A. Right. There was a few that she was particular about
13 that worked there.

14 Q. You mean that she liked?

15 A. Yes.

16 Q. Do you remember who they were?

17 A. I believe the one was Michelle Ensey. She liked her.
18 And Christina, then I believe Mandy.

19 Q. Mandy Ping?

20 A. Yes.

21 MR. DOSSETT: Let's go off the record for
22 just a second.

23 THE VIDEOGRAPHER: Time is 10:59 a.m., and
24 we are off the record.

25 (A brief recess was taken.)

1 THE VIDEOGRAPHER: The time is 11:03 a.m.,
2 and we are back on the record.

3 BY MR. DOSSETT:

4 Q. Okay. Ma'am, we're back on the record, and the court
5 reporter is taking down what we say again after a break.

6 Okay?

7 A. Okay.

8 Q. I wanted to ask you, there's some phone numbers in
9 the notes, and I think they may be yours, but I just need
10 to confirm that. (479) 639-2810.

11 A. My home.

12 Q. (479) 651-5227?

13 A. My cell.

14 Q. Okay. Are those your numbers now?

15 A. Yes.

16 Q. And were those your numbers back when you were
17 watching -- sitting with Ms. Dot?

18 A. Yes.

19 MR. DOSSETT: Ma'am, I appreciate your time.

20 I think that's all the questions I have for you.

21 THE WITNESS: All right. Thank you.

22 MR. CHRONISTER: Nothing.

23 THE VIDEOGRAPHER: Time is 11:04 a.m., and
24 we are off the record.

25 (Deposition concluded at 11:04 a.m.)

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, DEBORAH UPTON JONES, 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 23rd day of May, 2011.

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 19 _____
 BETH A. KALTENBERGER, CCR, RPR, CRR
 20 Arkansas LS No. 679
 California CSR No. 9231
 21 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 1-79 constitute a true and correct copy of the original deposition of DEBORAH UPTON JONES taken on May 5, 2011.

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

Dated this 23rd day of May, 2011.

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