

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 STEVEN A. BRIGANCE, AS)
3 PERSONAL REPRESENTATIVE OF)
4 THE ESTATE OF DOROTHY)
5 BRIGANCE, DECEASED; AND ON)
6 BEHALF OF THE WRONGFUL)
7 DEATH BENEFICIARIES OF)
8 DOROTHY BRIGANCE)

) CASE NO. CV-2010-1365

) Plaintiff

7 VS.)

8 THE BROOKFIELD AT FIANNA)
9 OAKS, LLC, D/B/A THE)
10 BROOKFIELD AT FIANNA OAKS;)
11 ROBERT "BOB" BROOKS; AND)
12 MITZI BAILEY)

11 Defendant)

13 VIDEO/ORAL DEPOSITION OF

14 MARCELENA BRIGANCE

15 SAN ANTONIO, TEXAS

16 MARCH 31, 2011

17 *****

21 ATKINSON-BAKER, INC.
22 COURT REPORTERS
23 (800)288-3376
24 www.depo.com

25 REPORTED BY: MONIQUE M. HINCHCLIFF, CSR NO. 6199

FILE NO.: A502C62

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 ROBERT "BOB" BROOKS; AND)
10 MITZI BAILEY)
)
11 Defendant)

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Deposition of MARCELENA BRIGANCE, taken on behalf
of Defendant, at HOLIDAY INN SAN ANTONION
INTERNATIONAL AIRPORT, 77 Northeast Loop 410, Room
343, San Antonio, TX 78216, commencing at 12:40 p.m.,
Thursday, March 31st, 2011, before Monique M.
Hinchcliff, CSR No. 6199.

A P P E A R A N C E S

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FOR THE PLAINTIFF:

BY: Mr. Rex Chronister
CHRONISTER FIELDS & FLAKE
309 N. 7th Street
Fort Smith, AR 72902

FOR THE DEFENDANT:

BY: Ms. Suzanne G. Clark
KUTAK ROCK LLP
The Brewer Building, Suite 400
234 E. Millsap Road
Fayetteville, AR 72703-4099

The Videographer: Mike Moore

* * * * *

I N D E X

FIRST
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MARCELENA BRIGANCE

Examination By Ms. Clark:5
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EXHIBITS

1 Handwritten notes13
 2 Letter dated December 31, 200956
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-o-O-o-

1 THE VIDEOGRAPHER: We're on the record. 12:31

2 This is the oral videotaped deposition of Marcelena

3 Brigance taken in the case, Brigance et al versus The

4 Brookfield at Fianna Oaks, Incorporated -- LLC, Case

5 No. 2010-1365. Today's date is 3/31/11. The current 12:39

6 time, 12:40 p.m.

7 This deposition is taking place at the

8 Holiday Inn located at 77 Northeast Loop 410 in

9 San Antonio, Texas.

10 My name is Mike Moore, the videographer. 12:39

11 The court reporter is Monique Hinchcliff. We

12 represent Atkinson-Baker who are headquartered in

13 Los Angeles, California.

14 This deposition is being taken on behalf

15 of the defendant. 12:39

16 Will counsel introduce themselves on the

17 record.

18 MS. CLARK: Suzanne Clark for The

19 Brookfield and Mitzi Bailey.

20 MR. CHRONISTER: Rex Chronister on 12:39

21 behalf of the Brigance family.

22 THE VIDEOGRAPHER: Will the court

23 reporter please swear in our witness?

24

25 12:39

1 MARCELENA BRIGANCE,

12:39

2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. CLARK:

5 Q. Ms. Brigance, would you please state your
6 name and address for the record, please?

12:39

7 A. Marcelena Brigance, 11500 Huebner,
8 H-u-e-b-n-e-r, Road, Apartment 202, San Antonio,
9 Texas, 78230.

10 Q. Thank you. My name is Suzanne Clark. We had
11 an opportunity to meet just a -- a few minutes ago
12 before the deposition started.

12:40

13 A. Correct.

14 Q. And I'm representing The Brookfield and Mitzi
15 Bailey in -- in this case. And I wanted to ask you
16 first if it would be okay because since we've got
17 Ms. Marcelena Brigance, Ms. Peggy Brigance,
18 Ms. Dorothy Brigance, your brother, Steve Brigance and
19 your father, Jack Brigance in this case, I don't want
20 to imply any familiarity I don't have, but if it would
21 be okay if I can refer to your brother as Steve, and
22 if I could refer to your mom as Ms. Dot so that I
23 don't -- I don't confuse which Ms. Brigance or -- or
24 Mr. Brigance we may be talking about. Would that be
25 okay?

12:40

12:40

12:41

1 Q. And did you marry again after that? 12:42

2 A. Yes.

3 Q. And what was your ex-husband's name?

4 A. Jeff. See if I can remember. I'm drawing a

5 blank. 12:42

6 Q. That says something, doesn't it?

7 A. Yes. Yes, it does. 1982.

8 Q. 1982. You don't the last name?

9 A. Shuester.

10 Q. Shuester. 12:42

11 A. Right.

12 Q. And you divorced in 1982 or married in 1982?

13 A. I married.

14 Q. And did that marriage end in divorce as well?

15 A. It did. 12:42

16 Q. And did you marry again after that?

17 A. No.

18 Q. No. And do you have any children,

19 Ms. Brigance?

20 A. Two girls. 12:42

21 Q. And could you give me their names and ages?

22 A. Monica Burch, she is 47 now; Alana Burch,

23 B-u-r-c-h, she is two years younger.

24 Q. And where -- where do your daughters live?

25 A. One lives here in San Antonio. Monica lives 12:43

1 here. Alana lives in Alabama. 12:43

2 Q. Okay. Thank you.

3 Now, you mentioned your educational
4 background as a registered nurse.

5 A. Correct. 12:43

6 Q. So did you attend -- did you attend college
7 in Seattle?

8 A. Yes, I did. At University of Washington.

9 Q. And was that -- was that a four-year program?

10 A. Yes, it was. 12:43

11 Q. And so you became registered in the state of
12 Washington?

13 A. Right.

14 Q. And you mentioned that you worked as a
15 registered nurse in California? 12:43

16 A. Right. Right.

17 Q. And what years would that have been?

18 A. I cannot recall. 1980s.

19 Q. And then in -- in Mobile, Alabama?

20 A. In Mobile? Let's see. 1987. 12:44

21 Q. Do you maintain a -- a nursing license?

22 A. It expired in 2006. I let it expire.

23 Q. And you just chose -- just chosen not to
24 renew it; is that --

25 A. I chose to retire after 28 years and went for 12:44

1 a master's in counseling. 12:44

2 Q. And when did you do the master's in
3 counseling?

4 A. 2000 -- I think I graduated 2004 or 2003. It
5 was in December. I remember that. 12:44

6 Q. And have you -- have you used that degree
7 professionally at all?

8 A. I chose to give back. So I did use it in an
9 inpatient drug and alcohol rehab in Mobile. And I
10 volunteered and had clients, yeah. 12:45

11 Q. Okay. And that was in Mobile?

12 A. Right.

13 Q. During your years as a -- as a registered
14 nurse, did you work in a -- in a hospital setting
15 or -- or what -- what role were you playing as a 12:45
16 registered nurse?

17 A. I worked ICU for a couple of years in
18 Seattle. When I moved to California, I worked -- I
19 started working emergency room and stayed ER except
20 for one year, and I just experimented in home health 12:45
21 care and was a direct -- relief director of a nursing
22 home.

23 Q. What is a relief director if you don't --

24 A. When the -- you know, like working part time.

25 Q. Okay. 12:46

1 A. Uh-huh. 12:47

2 Q. Yes. And I'm going to back up. I neglected
3 to do something I should have done very first thing,
4 and that is to talk to you a little bit about the
5 ground rules for a deposition. 12:47

6 A. Uh-huh.

7 Q. Have you ever given a deposition before?

8 A. No.

9 Q. One of the important things that we all need
10 to do and I am sometimes the worst when it comes to 12:47
11 this is to be sure that we -- we state yes or no in
12 terms of responses to questions because our court
13 reporter can't -- has a more difficult time getting
14 "ums" or head nods and that sort of thing so that we
15 have a documented transcript. 12:47

16 A. Thank you for reminding me.

17 Q. Well, and as I said, I will forget again.

18 A. I understand.

19 Q. And -- but I -- but I may ask you, from time
20 to time, is that a yes or is that a no and I'm not 12:47
21 trying to be impolite, it's just that --

22 A. I understand.

23 Q. Okay. How long have you been living in
24 Texas?

25 A. Three years. 12:48

1 Q. And where were you living just prior to your 12:48
2 move to Texas?

3 A. Mobile, Alabama.

4 Q. What prompted your move here?

5 A. I wanted to move to Texas. I liked 12:48
6 San Antonio.

7 Q. Was your daughter already living in
8 San Antonio at the time?

9 A. Yes.

10 Q. So would you describe it -- was it primarily 12:48
11 a family decision, or when you -- or did you just
12 enjoy San Antonio? I mean, I'm just looking for the
13 motivation of I want to leave Mobile, Alabama to move
14 to San Antonio.

15 A. Both. 12:48

16 Q. Both.

17 A. Uh-huh. Yes.

18 Q. Thank you.

19 Have you prepared for this deposition in
20 any way today, Ms. Brigance? 12:48

21 A. I have reviewed some things.

22 Q. What things have you reviewed?

23 A. I have reviewed things that I observed at
24 Brookfield that happened with my mother when I visited
25 my mom there. 12:49

1 Q. So what -- when you say, I've reviewed some 12:49
2 things, are those notes or are they --

3 A. I wrote some notes.

4 Q. You wrote some notes. Did you bring those
5 with you today? 12:49

6 A. I did.

7 Q. I'd like to make those an exhibit if we
8 could, Rex.

9 MR. CHRONISTER: That's fine.

10 (Exhibit No. 1 marked.) 12:49

11 Q. (BY MS. CLARK) Could you -- could you -- we
12 don't have to go over them right now but we're going
13 to want to -- we're going to want to make a copy of
14 your notes so that we can add this to the deposition
15 if we could. 12:49

16 Did you happen to review anything other
17 than your notes?

18 A. No.

19 Q. So you haven't reviewed any of the reports
20 from the state of Arkansas? 12:49

21 A. No.

22 Q. No? You didn't review anything related to
23 your mother's file from The Brookfield?

24 A. No.

25 Q. And have you read any of the depositions in 12:50

1 the case, your brother's deposition, for example? 12:50

2 A. No.

3 Q. Okay. Thank you.

4 And you're probably aware, Ms. Brigance,

5 that this case is scheduled to go to trial at the end 12:50

6 of August this year. Will you be coming to Arkansas

7 to testify during the trial?

8 A. No.

9 Q. You will not be coming to testify?

10 A. No. 12:50

11 Q. Okay. Thank you.

12 Could I take a look at your notes if we

13 could just --

14 A. May he look at them first?

15 Q. Of course he can. 12:50

16 MS. CLARK: Let's go off the record for

17 a minute.

18 THE VIDEOGRAPHER: Off the record,

19 12:52.

20 (Recess from 12:52 to 12:54.) 12:52

21 THE VIDEOGRAPHER: Back on the record at

22 12:54.

23 Q. (BY MS. CLARK) What we'll do, Ms. Brigance,

24 is make the notes that you brought here today

25 Exhibit 1 to your deposition and I will give those 12:53

1 back to you and we will talk about them in a little 12:53
2 bit more detail a little bit later in the deposition,
3 okay?

4 A. Yes.

5 Q. Thank you. 12:53

6 What I'd like to do first is get a
7 little bit of background about how your mom came to be
8 a resident at The Brookfield. And what I'd like you
9 to first to do is just give me a little bit of
10 background about your family in -- in Alabama with 12:53
11 your mom and dad.

12 A. Could you clarify that question?

13 Q. Absolutely.

14 Did you grow up in Mobile with your
15 parents there? 12:53

16 A. Yes, I did.

17 Q. And that was with your -- your brother,
18 Steve, correct?

19 A. Yes.

20 Q. And did you have any other siblings? 12:53

21 A. One other brother.

22 Q. And what -- what's the age range? Are --
23 are -- are you older, younger? What -- what are the
24 ages between the siblings?

25 A. My -- Steve is 11 years younger, my other 12:53

1 brother, three years younger. 12:54

2 Q. Uh-huh. And -- excuse me. Did you leave
3 Alabama to go to college? Tell me when you left --
4 when you left Alabama for the first time.

5 A. When my husband wanted to move to work in the 12:54
6 space industry in California.

7 Q. So you had a fairly large age gap, so to
8 speak, between you and your brother, Steve, at the
9 time?

10 A. Yes. 12:54

11 Q. So did you have a close relationship as
12 children or as young folks?

13 A. Yes.

14 Q. When your parents -- let me see. I want to
15 take the timeline -- 12:54
16 You left and moved to Seattle. When did
17 you move back to Alabama to live with your mom and
18 dad?

19 A. 1987.

20 Q. 1987. And at that point in time, were -- 12:55
21 what brought you back to Alabama?

22 A. I wanted to be closer to them.

23 Q. Why?

24 A. To enjoy their company while they were
25 living. 12:55

1 Q. How -- how was their health at that point in 12:55
2 time?

3 A. Excellent.

4 Q. Excellent?

5 A. Uh-huh. Yes. 12:55

6 Q. And was there a point in time where your --
7 your parents began to have some health problems?

8 A. They had routine medical problems like high
9 blood pressure, my mom and dad, at varying times. My
10 mother had some medical problems when she had surgery. 12:55

11 Q. What sort of surgery was that you're talking
12 about?

13 A. Oh, gallbladder and a routine colonoscopy.

14 Q. Did your mom have a stroke at some point in
15 time? 12:56

16 A. She did.

17 Q. When was that?

18 A. I can't recall.

19 Q. Okay. Do you recall your mother -- after the
20 stroke, do you recall, were you living in -- in your 12:56
21 parents' home when your mother had that stroke?

22 A. At that time I did and we -- we called 911
23 from there.

24 Q. So you were home with her when she had the
25 stroke; is that correct? 12:56

1 A. Right. And dad was too, uh-huh. 12:56

2 Q. And what was her condition after the stroke?

3 A. Immediately after, paralysis on the left side
4 and unconscious. But that started to change in the ER
5 within the hours following. 12:56

6 Q. Was -- was she able to speak?

7 A. Yes.

8 Q. Yes?

9 A. When we were admitted to her room, she could
10 speak. 12:57

11 Q. How about after you left the hospital? Did
12 she move back into the home?

13 A. She did.

14 Q. And what was her physical condition like at
15 that point? 12:57

16 A. She still had weakness and required care
17 because she couldn't get up to the bathroom by herself
18 for a while.

19 Q. How long did that take where she was not able
20 to get up by herself? 12:57

21 A. I can't recall the exact time.

22 Q. If you had to ballpark it, if it were six
23 months or three months or a year, what -- what would
24 you think it might be?

25 A. I don't like to guess. I know that she did 12:57

1 regain full use of that left side. 12:57

2 Q. Did she regain full use of that left side

3 before she moved to Arkansas?

4 A. Yes.

5 Q. And let me -- I think there were a couple of 12:58

6 times where your mom may have been in Arkansas, so I

7 want to back up and clarify -- clarify that. But

8 after -- after the stroke, you mentioned that she had

9 some difficulty getting up, some physical limitations.

10 Did she have any mental limitations? 12:58

11 A. I don't remember her having mental

12 limitations. She was mad as a wet hen. But I

13 understand --

14 Q. I think I know the answer, but why was she --

15 why was she mad? 12:58

16 A. She couldn't drive a car, uh-huh, yes.

17 And -- so we didn't. I was teaching her to drive

18 again till the doctor said no.

19 Q. And could -- could she speak and explain to

20 you that she was mad as a wet hen? 12:58

21 A. She told me she was angry. She refused to go

22 to the grocery store with me one time. She said, I'm

23 sitting here till you let me drive that car. I said,

24 Well, I guess we won't get groceries, will we?

25 Q. Now, was -- was there a time after she had 12:59

1 the stroke that she moved to Arkansas, to Fort Smith, 12:59
2 without your dad?

3 A. No. They moved together.

4 Q. Yeah. I'm going to suggest, and I'm going to
5 remind you if this -- if this is something that sounds 12:59
6 like it occurred, but did she maybe move and stay with
7 Steve for a little while just -- no?

8 A. No.

9 MS. CLARK: We want to go off the
10 record? 12:59

11 THE VIDEOGRAPHER: Off the record, 1:01.
12 (Recess from 1:01 to 1:02.)

13 THE VIDEOGRAPHER: Back on the record at
14 102.

15 Q. (BY MS. CLARK) Okay. Ms. Brigance, I just 01:00
16 want to repeat the question that we were talking about
17 just earlier.

18 Could you confirm, was there any point
19 in time that your mom moved to Fort Smith without your
20 father prior to moving into The Brookfield? 01:00

21 A. No.

22 Q. So there was no point in time where she lived
23 with your brother, Steve, without your dad?

24 A. Correct.

25 Q. Okay. Thank you very much. 01:01

1 Okay. Now, when did the discussion 01:01
2 start about an assisted living facility for your
3 mother or your father?

4 A. They -- I don't recall the date or time.

5 Q. Oh, and I'm sorry, I don't need a date or a 01:01
6 time, what I'm really asking is, was there something
7 about your mother's physical condition or mental
8 condition that indicated to you that she might need an
9 assisted living facility?

10 A. It was a two-story home. Climbing the stairs 01:01
11 was difficult. She still had some weakness but was
12 able to get around. But climbing steep stairs was a
13 danger.

14 Q. Uh-huh. Whose idea was it for her to be
15 admitted to an assisted living facility? 01:02

16 A. I don't know.

17 Q. Do you recall when discussion started about
18 or -- or do you recall having any conversations with
19 your mother about moving into an assisted living
20 facility? 01:02

21 A. No. I didn't.

22 Q. Do you recall having any conversations with
23 your brother, Steve, about your mom moving into an
24 assisted living facility?

25 A. Not that I recall. 01:02

1 Q. Do you believe that it was your mother's idea 01:02
2 to move into an assisted living facility?

3 A. I believe it was.

4 Q. That it was your mother's idea? But you
5 don't know that? 01:02

6 A. I don't know.

7 Q. Okay. Thank you.

8 Your -- there's some information in your
9 mother's medical records that indicate that she had
10 been diagnosed at some point with Alzheimer's or 01:02
11 dementia. Do you -- do you recall that?

12 A. No.

13 Q. No? So were you aware that she had any
14 symptoms of Alzheimer's or dementia?

15 A. No. 01:03

16 Q. No? Did you not think that your mom had
17 memory problems or confusion at all?

18 A. No.

19 Q. No? Okay. Thank you.

20 When -- when your mother moved into the 01:03
21 assisted living facility in Alabama, did she do so
22 with your father?

23 A. She moved in ahead of him. He wanted to stay
24 in his home as long as possible.

25 Q. How did he feel about your mother moving into 01:03

1 the assisted living facility in Alabama? 01:03

2 A. He at first didn't want her to.

3 Q. How did -- how did he want to deal with her
4 limitations?

5 A. He wanted to keep hiring caregivers. 01:04

6 Q. So she could remain at home?

7 A. Yes.

8 Q. And do you believe it was her preference to
9 go from having caregivers come to her home living with
10 her husband, that it was her preference to move from 01:04
11 that situation to move into an assisted living
12 facility?

13 A. I don't know.

14 Q. Now, I'm going to bring up a bit of a
15 sensitive topic, ma'am, and I -- I don't mean to be 01:04
16 insensitive, but I just need to ask a couple of
17 questions about some of the family issues at the time.
18 But was there a point in time where your mother
19 decided that she needed to file for divorce from your
20 father? 01:05

21 A. I never heard that.

22 Q. So you were not aware that there was a
23 divorce action filed on your mother's behalf?

24 A. Correct.

25 Q. You didn't know about it. 01:05

1 Q. When did -- do you recall about how long your 01:06
2 mom may have been living in the assisted living
3 facility before your dad decided to move in? And I'm
4 talking about Alabama now.

5 A. Well, all I can say is not long. I cannot 01:06
6 give you a specific time.

7 Q. And do you know why he made that decision?

8 A. Because he missed her.

9 Q. So he wanted to be with your mom --

10 A. Yes. 01:06

11 Q. -- more than a physical issue; is that a fair
12 statement?

13 A. If he want -- I'm sorry?

14 Q. That he -- that he wanted to physically with
15 her rather than his own physical limitations. Is that 01:06
16 a fair statement?

17 A. Could you clarify that?

18 Q. Yes.

19 Did your father move into the assisted
20 living facility because he needed caretaking? 01:07

21 A. No.

22 Q. Okay. Thank you.

23 Did your father move into the assisted
24 living facility because he wanted to be with your mom?

25 A. Exactly. 01:07

1 Q. Thank you. 01:07

2 A. Uh-huh. You're welcome.

3 Q. So your mom and dad were married, I believe,
4 over 60 some years; is that --

5 A. I can't -- let's see. 67, 68 years. 01:07

6 Q. Yeah. And when the decision was made that
7 they were going to move from Alabama to Arkansas, what
8 prompted that?

9 A. Well, I had moved to San Antonio and Steve
10 wanted them near him. 01:07

11 Q. Okay. So you had been -- you'd been in
12 Alabama, now your parents had both moved into an
13 assisted living facility, and then you moved to
14 San Antonio to be closer to your daughter.

15 A. Exactly. 01:08

16 Q. Okay. And so the decision was then made.
17 Did your parents make that request? Did they decide
18 they wanted to be in Arkansas at that point?

19 A. They very much wanted to, but Steve wanted
20 them to also. 01:08

21 Q. Sure.

22 And do you recall having any
23 conversations with your brother about selecting the
24 assisted living facility in Arkansas?

25 A. No. I trusted him. 01:08

1 Q. You trusted him. He would -- he made those 01:08
2 decisions?

3 A. Correct.

4 Q. So your brother selected The Brookfield as
5 the place for your parents to move into in Fort Smith, 01:08
6 Arkansas, correct?

7 A. Yes. And Brookfield used them as the
8 advertisement for the facility, as a healthy couple.

9 Q. Exactly. And -- and I believe it's my
10 understanding that your parents were the very first 01:09
11 residents of The Brookfield; is that correct?

12 A. My understanding.

13 Q. Yes, ma'am.

14 And we -- we got to know more about
15 your -- your mom and dad through the first lawsuit 01:09
16 that we -- we dealt with, but it's -- it's been --
17 there's been a good deal of testimony about -- about
18 your parents and -- and how much the staff enjoyed
19 both of them as the initial residents of the facility.

20 They -- they kind of were the -- the founders and 01:09
21 owners in that sense because they were the first --
22 first residents, or treated as such, rather.

23 A. Yeah.

24 Q. Now, when they moved to The Brookfield, and
25 we've -- we've now gone from Alabama, and we're in 01:09

1 Arkansas, and is part of the reason that The 01:09
2 Brookfield was selected proximity to Steve, how close
3 they could be to Steve?

4 A. I'm not sure.

5 Q. Okay. Do you know about how far Steve's 01:10
6 house is from The Brookfield?

7 A. No.

8 Q. How did -- how did you stay in touch with
9 your parents after they moved into The Brookfield?

10 A. I called them and they called me. 01:10

11 Q. About -- about how often would you say you
12 talked to them on the phone?

13 A. Dad only liked to talk every weekend. Mother
14 wanted to every day, but at that point, I only had
15 300 minutes per month. And after Dad died, I called 01:10
16 every day.

17 Q. Yeah. And we're going to come back to --
18 we're going to come back to that in terms of after
19 your -- after your father passed away and what your
20 routines were in terms of dealing with your mom. Let 01:10
21 me be sure I've gotten a few other questions taken
22 care of before we move into that.

23 When was the first time that you visited
24 The Brookfield?

25 A. August 2009. 01:11

1 Q. So you had not ever been to The Brookfield 01:11
2 when both of your parents were living there; is that
3 correct?

4 A. Correct.

5 Q. Okay. And did you visit at any other time 01:11
6 other than August of 2009?

7 A. No, but I wish I had.

8 Q. Okay. And was anybody -- anybody with you
9 for that particular visit?

10 A. Yes. My daughter, oldest daughter, who lives 01:11
11 here. We drove up together.

12 Q. And was that the only time that your daughter
13 would have been at The Brookfield?

14 A. Correct.

15 Q. Okay. Did you meet the administrator, Mitzi 01:11
16 Bailey, while you were there?

17 A. I did.

18 Q. And what was your impression of Mitzi?

19 A. Clarify, please.

20 Q. When you arrived at The Brookfield, you -- 01:12
21 did you meet Mitzi Bailey?

22 A. I met her. And you said what was my
23 impression.

24 Q. Yes, ma'am. I --

25 A. Could you expand on that? 01:12

1 Q. Yeah. That's what I'm trying to break 01:12
2 down -- break it down a little bit so that I can be
3 clearer. I apologize.

4 Did you understand that she was the
5 administrator of The Brookfield, meaning she was in 01:12
6 charge of the day-to-day activities of The Brookfield?

7 A. Yes. Yes.

8 Q. Were you comfortable with the fact that Mitzi
9 Bailey was in charge of the day-to-day activities of
10 The Brookfield? 01:12

11 A. No.

12 Q. Why not?

13 A. One time I asked her in to check the call
14 button when it over and over was not being answered in
15 mother's room. Greater than 10 minutes, we were 01:12
16 waiting. And my daughter observed it also. She came
17 in, checked it and said it was fine. I also then
18 notified her of lack of response to mother's call
19 bell.

20 Q. And I'm going to slow you down because we're 01:13
21 going to go through each of these in a little bit
22 more -- little bit more detail.

23 But prior to the -- the time that you
24 talked to her about the call -- call light, was that
25 the first time you talked to her? Had you met her 01:13

1 before talking to her about the call light? 01:13

2 A. That was the first time.

3 Q. That was the first time.

4 A. Right.

5 Q. Okay. So you hadn't -- you hadn't met her 01:13

6 prior to that?

7 A. No.

8 Q. Okay. Now, let's -- let's back up a little

9 bit. Before your visit in August of 2000 -- 2009,

10 your dad passed away. Is that February of 2009; is 01:13

11 that correct?

12 MR. CHRONISTER: Last day of January.

13 THE WITNESS: No. January 30th. Yeah,

14 January 31st.

15 Q. (BY MS. CLARK) Thank you. 01:14

16 So you talked to your mom how frequently

17 after that?

18 A. Almost every day.

19 Q. Almost every day?

20 A. She'd call me or I called her. 01:14

21 Q. Did you have a particular routine, a

22 particular time of day or anything?

23 A. In the morning.

24 Q. In the morning? And was there a particular

25 time, whether it was before breakfast or mid-morning, 01:14

1 or was there a particular time she liked to connect 01:14
2 with you?

3 A. I tried to get her before breakfast.

4 Q. And about how long would y'all talk when you
5 would talk every morning or close to every morning? 01:14

6 A. It varied. Up to an hour. At that point, I
7 had changed my phone plan, so I could.

8 Q. Sure.

9 And -- and tell me -- tell me a little
10 bit about those conversations. What -- would you go 01:15
11 through each other's days, what they were like? Tell
12 me a little bit about what you'd talk about or --

13 A. Correct. We'd talk about the -- you know,
14 what she did that day, when she got her hair fixed, so
15 forth. 01:15

16 Q. And after -- after January 31st of 2009,
17 obviously, your parents, having been married for 67 or
18 68 years ago, that had to be a very significant event.
19 How did -- how did your mom -- what was your mother's
20 temperament like dealing with that after your father's 01:15
21 death?

22 A. At first, she was a little bit down, but
23 amazingly, for being married that long, she adjusted.
24 You know, I'm sure it affected her, uh-huh.

25 Q. And -- and over time, when you say she was -- 01:15

1 at first she was down, did that last for several 01:15
2 months or several weeks?

3 A. I can't give you a timeframe.

4 Q. What was her mood when you came to visit in
5 August? 01:16

6 A. Very good.

7 Q. Very good?

8 A. Yes.

9 Q. And I'm going to talk in generalities here,
10 so I apologize, but your mom had a bit of very 01:16
11 understandable grief to go through in early 2009.
12 When you came to visit her in August of 2009, you said
13 her mood was very good. Did her mood stay very good?

14 A. While I was there, yes.

15 Q. How about after you were there? Did you 01:16
16 continue to talk every day?

17 A. Yes.

18 Q. And what was her mood like then?

19 A. Good.

20 Q. Good? 01:16

21 A. Yes.

22 Q. Was there any point in time where you felt
23 like you were -- you were concerned in particular
24 about her temperament or frame of mind?

25 A. No. I was concerned about the care she was 01:17

1 getting. 01:17

2 Q. And -- and we're going to talk about that in
3 detail, ma'am, absolutely. I -- I just wanted to
4 understand from your phone calls, after you left on
5 your visit, was there anything about those phone calls 01:17
6 where you felt like you needed to pick up the phone
7 and call Steve and say, you know, Mom's not in good
8 shape?

9 A. No. I never felt that way.

10 Q. Okay. Thank you. 01:17

11 During -- during your phone calls, would
12 she talk to you about some of the people at The
13 Brookfield who helped take care of her?

14 A. She told me her favorites.

15 Q. Who were her favorites? 01:17

16 A. I don't remember names.

17 Q. But she had -- she had several favorites?

18 A. Oh, yeah.

19 Q. Did she have some who were not her favorite?
20 And that was a bad question. Let me ask that again. 01:17
21 That was a bad question.

22 Did she complain about some of the
23 people at The Brookfield who took care of her?

24 A. Mitzi was the one she complained about.

25 Q. And what would she complain about Mitzi? 01:18

1 A. She went back that Mitzi did not respond or 01:18
2 come in and talk to her after Dad died. And that was
3 the only time, and rare did she mention it.

4 Q. So that -- her complaint was related to -- to 01:18
5 your father's death and feeling that what Mitzi should
6 have said to her after that.

7 A. Should have come --

8 Q. Should have come and talked to her.

9 A. -- and said something. She did not.

10 Q. Did you believe that The Brookfield caused 01:18
11 your father's death?

12 A. I wasn't there. My understanding, the door
13 fell on him that was put on backwards, and there had
14 been numerous complaints about it. And it was not
15 fixed. To me, a facility that has doors on backwards 01:19
16 should keep on until they get them fixed.

17 Q. Now, we didn't have an opportunity to talk to
18 you during the lawsuit involving your father's death.

19 A. Correct.

20 Q. Did you prefer not to be a part of that case? 01:19

21 A. I couldn't come to Arkansas, but y'all
22 cancelled the deposition. I was prepared to come.

23 Q. And is there -- is there a reason that you --
24 you choose not to travel to Arkansas?

25 A. It's a long drive. My daughter is working 01:19

1 full time. I prefer to have someone with me. 01:19

2 Q. Sure. Is there any other reason besides

3 the -- the drive that you would choose not to come to

4 Arkansas --

5 A. No. 01:20

6 Q. -- for either of these cases?

7 A. Today, gasoline prices.

8 Q. That's a good one.

9 From your telephone conversations with

10 your mom, and as you said, you spoke pretty much every 01:20

11 day, did you think she was happy at The Brookfield?

12 A. After Dad died? Yes. Yes.

13 Q. Did you believe she was comfortable there?

14 A. I don't know.

15 Q. But from your conversations, it appeared she 01:20

16 was happy?

17 A. Yes.

18 Q. Was -- was your mom pretty outspoken about

19 things that she would be dissatisfied with?

20 A. Part of the time. 01:20

21 Q. Part of the time? What part of the time

22 would she be outspoken?

23 A. Well, let me -- oh, would she be outspoken?

24 If no one answered her call button.

25 Q. And who would she be outspoken to about no 01:21

1 did. A third time. I said, Well, go ahead and punch 01:22
2 it again. And after 10 minutes or longer, I hung up
3 and called the front desk. So while you're on phone
4 conversations, I'll bring that up.

5 Q. Okay. And do you recall who you would have 01:22
6 talked to at the front desk at all?

7 A. I do not know.

8 Q. What other things would your mom complain
9 about besides the call lights?

10 A. I don't recall anything else. 01:23

11 Q. Anything other than the call lights? That
12 was really -- that's -- is the -- is the call light,
13 is the delay in answering call lights the one thing
14 that sticks out in your mind about your mom --

15 A. Yes. 01:23

16 Q. -- being dissatisfied?

17 A. Exactly.

18 Q. Okay. She didn't complain about the food or
19 anything like that?

20 A. No. 01:23

21 Q. No? Did she complain about any of the other
22 caregivers? You mentioned she didn't like Mitzi, and
23 we understand that. Mitzi wasn't -- she was the
24 administrator, so she wasn't one of the CNAs doing
25 day-to-day activity. Were there any of the CNAs who 01:23

1 would come to help take care of her that she 01:23
2 complained to you about?

3 A. Not unless I asked.

4 Q. And --

5 A. I don't know their names. 01:23

6 Q. And I'm -- I'm not even looking for specific
7 individuals at this point, Ms. Brigance --

8 A. Right.

9 Q. -- but when you say she wouldn't complain
10 unless asked, is that what you just said? 01:24

11 A. She wouldn't complain unless -- yeah.

12 Q. So would you ask her if the caretakers at The
13 Brookfield were taking good care of her?

14 A. Yes.

15 Q. And what would she say? 01:24

16 A. She told me who did and who didn't.

17 Q. And I'm going to -- I'm going to talk about
18 this now. Let's take the timeframe after your visit
19 in 2009, because we know you had some concerns about
20 that visit and what happened. But after that visit, 01:24
21 when you were talking to her on the telephone, would
22 you say, Mom, have things gotten any better about that
23 call light situation?

24 A. No.

25 Q. No, you didn't ask her about that? 01:24

1 A. I asked her if she was getting to the 01:24
2 bathroom on time and if she was getting help.

3 Q. And how did --

4 A. Excuse me. It seems like the questions are
5 doubling back and I'd like to go forward. 01:24

6 Q. Yes, ma'am. This is -- this is a pretty
7 important issue because one of the allegations in the
8 lawsuit here is the fact that -- that you mentioned a
9 delay in answering call lights and your brother has
10 talked about a delay in answering call lights is one 01:25
11 of the reasons that's being claimed that The
12 Brookfield caused the death of your mother. So it's a
13 really important issue, and I apologize if I've got to
14 ask several questions about that. But we are going to
15 need to go through it in some detail. 01:25

16 A. But you're talking by phone conversations.

17 Q. That's right.

18 A. We haven't gotten to the other yet, which is
19 critical what I observed.

20 Q. Okay. Well, then -- then let's do that. 01:25
21 Let's do that now. Let's talk about your visit in --
22 in August of 2009.

23 A. Uh-huh. I will agree.

24 Q. Now, that was the first part of August; is
25 that correct? 01:25

1 A. Yes. 01:25

2 Q. And do you recall the dates?

3 A. August 1st through the 9th.

4 Q. August 1st through the 9th, 2009.

5 A. We left on the 9th to return home. 01:26

6 Q. Okay. And when you -- when you arrived, did

7 you stay at your brother's house?

8 A. I stayed at a hotel or motel close by.

9 Q. Close by.

10 A. Yeah. 01:26

11 Q. So you and your daughter stayed at a motel,

12 and would you come over to The Brookfield to visit

13 with your mother?

14 A. Every morning.

15 Q. And tell me about your day. Did you stay for 01:26

16 part of the day, or -- or how long were you generally

17 there?

18 A. Till after supper. Till bedtime.

19 Q. So is it correct, you would arrive in the

20 morning and then leave after dinner? 01:26

21 A. Yes.

22 Q. And --

23 A. We did go out a few times to eat and she

24 liked to go out to the museum and -- but otherwise, I

25 stayed until her bedtime. 01:27

1 Q. Did you take your mom out several days while 01:27
2 you were there that week?

3 A. Yes.

4 Q. Yes? And you and your daughter took her out?

5 A. Yes. 01:27

6 Q. Was there -- did you take your mom over to
7 Steve's house and visit with all of you there at all?

8 A. Steve would stop by and visit.

9 Q. So Steve came to The Brookfield to visit.

10 A. Yes. Yes. 01:27

11 Q. Did he come and visit while you were there?

12 A. Many times.

13 Q. And let me get to my section here on -- okay.

14 Now, you arrived for your visit at The
15 Brookfield with your mom on August 1st of 2009. What 01:27
16 was your initial impression of The Brookfield? You
17 hadn't seen it before. What did you think?

18 A. It's a beautiful place. Her room was
19 beautiful.

20 Q. So did you feel comfortable that your mom was 01:27
21 at this facility, just in observing the physical
22 aspects of the facility itself?

23 A. First time I walked through.

24 Q. And you felt good about that?

25 A. I -- could you clarify that? 01:28

1 Q. Yes. 01:28

2 A. The facility looked nice is all I can say.

3 Q. Yes. The facility looked nice. So when
4 you -- when you observed the facility, is it fair to
5 say that there was nothing about the condition of the 01:28
6 facility itself that caused you concern about the fact
7 that this was where your mom was living?

8 A. No.

9 Q. Okay. When was the first time that there was
10 an incident that caused you some concern on your visit 01:28
11 in August of 2009?

12 A. August 2nd.

13 Q. August 2nd.

14 A. Next day.

15 Q. So the second day you were there. 01:28

16 A. Tell me about that. I observed mother put
17 her call bell on. I observed that there was a long
18 delay, and I asked her -- and my daughter was with me.
19 I asked her to put it on again and -- a third time,
20 and no one came. 01:29

21 Q. And what was she ringing the call light for?

22 A. She wanted some assistance with going to the
23 bathroom.

24 Q. Okay.

25 A. Finally my daughter, at least one of the 01:29

1 times, went out and found all the nurses talking at 01:29
2 the nursing station.

3 Q. And this was on the 2nd of August?

4 A. Right.

5 Q. Did your daughter speak to anybody about the 01:29
6 delay in answering the call lights?

7 A. Yes.

8 Q. Do you recall at all who she may have talked
9 to?

10 A. No. I do not remember names there. 01:29

11 Q. Okay. Did you speak to anybody on the 2nd,
12 do you recall, about the delay in answering the call
13 lights?

14 A. I don't remember at what point I talked to
15 Mitzi. 01:30

16 Q. Okay.

17 A. Which day. One of those days.

18 Q. Did -- do you recall speaking to anybody
19 other than Mitzi about a delay in answering the call
20 lights? 01:30

21 A. To the person who was supposed to come in.
22 When she finally came in. One of the -- one of the
23 nursing assistants came in and then I said something.

24 Q. And to the best of your recollection, are we
25 still talking about August 2nd, or is that on a 01:30

1 different date? 01:30

2 A. Every time it happened, I spoke to the nurse,
3 the CNA, who was supposed to be in the room.

4 Q. Now, when you say the CNA who was supposed to
5 be in the room -- 01:30

6 A. Or answer the call light who had those
7 patients.

8 Q. Okay. When the CNA would come in after being
9 reminded that there was a call light on, how did you
10 feel about the way that the CNA would treat your mom? 01:31

11 A. I felt okay.

12 Q. You weren't uncomfortable that they were
13 being disrespectful to her in any way?

14 A. No.

15 Q. After August 2nd, was that an occurrence one
16 time on August 2nd? 01:31

17 A. As far as I can recall.

18 Q. And when is the next time you recall having
19 an issue you felt you needed to bring to the attention
20 of -- 01:31

21 A. I don't remember. But it was within that
22 week, multiple times. So to recall every incident,
23 I'm unable.

24 Q. Okay. You don't need to recall every
25 incident, ma'am. Could you give me an idea of how 01:31

1 many times you felt your mother rang the call light 01:31
2 and there was an unacceptable delay?

3 A. I would like to give you how -- about how
4 many times, but I'd be guessing. All I felt was it
5 was too many. 01:32

6 Q. Too many. Okay. And can -- can you tell me
7 about how long the delay would be?

8 A. I can't tell you. I know that for sure it
9 was greater than 10 minutes. How long after that, I
10 don't know. 01:32

11 Q. Okay.

12 A. Because we would ask her -- we knew that we
13 would be leaving, to keep putting the light on. But
14 we would eventually go out and get someone. One time
15 they were out back, smoking. 01:32

16 Q. And you do understand that employees who work
17 at different places will occasionally take smoke
18 breaks?

19 A. Yes, but not all of them. They always leave
20 someone on the floor. 01:32

21 Q. That's absolutely correct.

22 A. Could not -- I could not find anyone -- that
23 time, I caught them smoking.

24 Q. Do you think, Ms. Brigance, that you are more
25 likely to complain about something than your brother 01:33

1 is? 01:33

2 A. I have no idea.

3 Q. You have no idea?

4 Do you think your expectations of

5 performance in terms of what the CNAs should be doing 01:33

6 is higher than your brother's?

7 A. I have no idea on that. I've not compared

8 notes.

9 Q. Would it surprise you if your brother had

10 testified that you would expect perfection? 01:33

11 A. I'm not perfect, so I doubt that I would

12 expect perfection, but I do know as an RN that my

13 expectations were reasonable.

14 Q. Do you think that you were more emphatic

15 about the call light situation than Steve? 01:33

16 A. I don't know.

17 Q. You don't know? Did you talk to him about

18 it?

19 A. I did tell him and he said, yes, it had been

20 going on. 01:33

21 Q. He said yes, it had been going on?

22 A. Yes.

23 Q. So he had observed this as well?

24 A. Yes. As well as my daughter, Monica.

25 Q. Yes. And your daughter, Monica, observed it 01:34

1 during the August 2009 visit. 01:34

2 A. Yes.

3 Q. So she -- she didn't observe that at all

4 before that.

5 A. Well, neither one of us had visited mom. 01:34

6 Q. Yes. Yes, ma'am.

7 A. But she observed it on multiple -- at

8 multiple times.

9 Q. And in your conversation with your brother

10 where you told him you had concerns about the delays 01:34

11 in answering the call light, you just said he

12 indicated to you that, yes, he -- he had observed that

13 as well.

14 A. Right.

15 Q. And tell me about that conversation. Did he 01:34

16 say, I've observed it twice? I've observed it ten

17 times? Because -- let me -- let me back up. Let me

18 ask a different question first.

19 Was it your understanding that your

20 brother was visiting your mom very frequently? 01:34

21 A. Excuse me. Yes.

22 Q. Yes. And in the conversation that you had

23 with him where you discussed your concerns about the

24 call light being answered, did he indicate that that

25 was a frequent problem? 01:35

1 A. I don't know that I can answer that, yeah. 01:35

2 Q. Okay. But he acknowledged to you in that
3 conversation while you were visiting in August of 2009
4 that he was aware there was a problem with call lights
5 being answered. 01:35

6 A. He said he had observed that.

7 Q. He had observed it himself.

8 A. Correct.

9 Q. Did he share with you that he had complained
10 to Mitzi or anyone else about it? 01:35

11 A. Yes.

12 Q. He said he had complained to Mitzi about it.

13 A. Mitzi, yes.

14 Q. During your visit in August of 2009, were
15 there any other issues that were raised that you felt
16 should be reported to Mitzi about your mom's care? 01:35

17 A. I remembered one, as I saw in my notes,
18 and --

19 Q. And you can -- you can look at those if you'd
20 like, ma'am. 01:35

21 A. Oh, I -- I remember, and I didn't -- didn't
22 call it to Mitzi's attention. She wasn't there a lot
23 of the time I was. I did tell the CNA who gave the
24 medicines that I had found several pills on the floor.

25 Q. And did those pills look like pills that were 01:36

1 your mom's medication? 01:36

2 A. One of them did, yeah. Yes.

3 Q. One of them did?

4 A. Yes.

5 Q. What about the other one? 01:36

6 A. I'm not sure. She took several meds.

7 Q. Now, at the -- in August of 2009 when you

8 came to visit your mother, the regular routine when

9 you were not there was that there were private sitters

10 that had been hired to stay with her. Were you aware 01:36

11 of that?

12 A. Yes.

13 Q. Had you met any of the sitters who stayed

14 with your mom?

15 A. I met them while I was there. 01:36

16 Q. What -- so okay. Let me -- let me back up.

17 Shirley Hamilton is one of the sitters

18 that was hired by your brother to sit with your mom.

19 A. Yes.

20 Q. Did you meet Shirley? 01:37

21 A. I can't remember.

22 Q. And does the name Debbie Upton, she was

23 another sitter that sat with your mom?

24 A. Yes. I met her.

25 Q. You did meet Debbie Upton? 01:37

1 So had you been informed that they were 01:38
2 keeping a notebook?

3 A. No, I had not.

4 Q. So you had never seen this notebook?

5 A. No. 01:38

6 Q. Okay.

7 THE VIDEOGRAPHER: You have five minutes
8 of tape left.

9 MS. CLARK: Okay. In fact, why don't --
10 why don't we take a break now and we can't switch the 01:38
11 tape.

12 THE VIDEOGRAPHER: Off the record, 1:40.
13 (Recess from 1:40 to 1:50.)

14 THE VIDEOGRAPHER: Back on the record.
15 It's 1:50. 01:48

16 Q. (BY MS. CLARK) Ms. Brigance, you explained
17 to us the incidents where you complained to Brookfield
18 personnel, whether that was Mitzi or CNAs, regarding
19 several incidents about the call lights not being
20 answered in a timely fashion. That's correct, isn't 01:49
21 it?

22 A. Yes.

23 Q. And you also mentioned there was an occasion
24 where you found a couple of pills on the floor and
25 reported that as well; is that correct? 01:49

1 A. Yes. 01:49

2 Q. Do you recall any other things that -- oops,
3 sorry.

4 Recall any other incidents that occurred
5 at The Brookfield that caused you concern? 01:49

6 A. No.

7 Q. No.

8 So it's the call lights and the fact
9 that you discovered a couple of pills on the floor; is
10 that correct? 01:49

11 A. Correct. Let me back up.

12 Q. Sure.

13 A. The -- the closet door --

14 Q. Yes, ma'am.

15 A. -- near the -- near the door opening to the 01:49
16 hallway, I had trouble with it.

17 Q. You had trouble with it?

18 A. Right. When I'd go to hang things up. And I
19 finally left it alone.

20 Q. So you had trouble opening and closing it? 01:49

21 A. Correct.

22 Q. Okay.

23 A. It was -- like it was jammed. You'd get it
24 part way open.

25 Q. Okay. 01:50

1 Q. Just the staff at Brookfield? 01:50
2 Did you call the state at that point in
3 time in -- in August of 2009?
4 A. Didn't talk to them till later.
5 Q. Okay. We'll talk -- we'll talk about that. 01:51
6 But in August of 2009, you left, I
7 believe, on August 9th of 2009. You didn't call any
8 of the state officials in Arkansas in August of
9 2009 --
10 A. No. 01:51
11 Q. -- about concerns about your mother.
12 A. No, huh-uh.
13 Q. Okay. So when you left The Brookfield and
14 you're heading back to Texas, how did you feel about
15 leaving your mom at The Brookfield? 01:51
16 A. Uncomfortable.
17 Q. You were uncomfortable?
18 A. Yes.
19 Q. And tell me about your concerns. I mean --
20 and just in general. I know we've got delays in the 01:51
21 call light, but you're uncomfortable about your mother
22 living there; is that fair?
23 A. I was uncomfortable about what I observed.
24 Q. Okay. Did you think maybe she should be
25 living somewhere else? 01:51

1 A. I asked her; she said no. 01:51

2 Q. She said no.

3 A. Correct.

4 Q. Were you in fear for her safety at all?

5 A. At that point, I'm not sure what I was 01:52

6 thinking. My concern was to get safely through

7 Dallas, back here.

8 (Exhibit No. 2 marked.)

9 Q. (BY MS. CLARK) Okay. Okay. Now, I know

10 it's in -- it's in your notes there, and we're going 01:52

11 to talk a little bit about a letter, and we're going

12 to mark this as Exhibit 2 to your deposition. It is a

13 letter dated December 31st, 2009 to Mrs. Sheryl Seine

14 and it is signed by Marcelena Brigance, and I'm going

15 to give you a copy of that, if you would. 01:52

16 A. Good. Because I didn't keep a copy, yeah.

17 Q. Okay. Can you tell me, did you write that

18 letter?

19 A. I would like to read it again.

20 Q. Yes, ma'am. Go right ahead. 01:52

21 A. Yes, I did.

22 Q. You did?

23 A. And my daughter typed it.

24 Q. Okay. I want to go through it and just --

25 we'll just be confirming some of what you've already 01:53

1 told me, if that's okay. 01:53

2 A. Correct.

3 Q. But would you read the first paragraph for
4 me?

5 A. "I visited my mom, Dorothy Brigance, with my 01:53
6 daughter for nine days in August. My background is in
7 nursing for 30 years with a stint in long-term care."

8 Q. Okay. One question I had for you. Your
9 background is in -- is in nursing. When your mother
10 would pull the call light, would she pull the call 01:53
11 light for anything other than having to go to the
12 restroom?

13 A. I can't recall.

14 Q. Do you believe that she pulled the call light
15 primarily when she needed to go to the restroom? 01:54

16 A. Yes.

17 Q. And with -- being her daughter and a
18 registered nurse, did -- did she prefer to pull the
19 call light rather than having you help her?

20 A. Yes. 01:54

21 Q. Yes?

22 A. Uh-huh. Yeah.

23 Q. Do you know why that was?

24 A. No, I don't know why. One time I asked her
25 and she seemed embarrassed. 01:54

1 Q. Okay. And would she pull the call light 01:54
2 before she went to go to the restroom, or would she
3 pull the call light when she was ready to get up from
4 the restroom?

5 A. That I don't know. 01:54

6 Q. Okay. You don't recall that?

7 A. No. Huh-uh.

8 Q. Okay. That's fine.

9 Would you read the second paragraph of
10 your letter, please? 01:54

11 A. "I sat with my mom and visited, but I was not
12 her caregiver."

13 Q. And explain that sentence to me. Why did you
14 feel it was important to state it that way?

15 A. Because I had cared for her at varying times 01:54
16 and I was there strictly to visit and there were --
17 she was at an assisted living, which primarily
18 responsibility of the CNAs is to help her. I did help
19 her a couple times in an emergency when no one came.

20 Q. Yes, ma'am. 01:55

21 But you felt it was important to
22 distinguish that you were not there as a caregiver.

23 A. Correct.

24 Q. Okay. And go ahead and read the next
25 sentence there. 01:55

1 A. "On a number of occasions, her lights went 01:55
2 unanswered; I do not expect perfection, but this goes
3 beyond minimal acceptance."
4 Q. And when we discussed this before, you said
5 that you don't know exactly how long the delay was, 01:55
6 but you believe it was longer than 10 minutes; is that
7 correct?
8 A. Correct.
9 Q. Okay. Would you read the next sentence,
10 please? 01:55
11 A. "Also, these call lights went unanswered for
12 extended periods of time until I went up to the
13 nursing station to get help from my mom."
14 Q. Okay. And would you -- would you just read
15 that last paragraph of the letter, please? 01:56
16 A. "I registered and reregistered many
17 complaints with the nursing director, Mitzi, and
18 staff; however, the situation did not improve during
19 my time at The Brookfield home."
20 Q. Okay. So based on this letter, this 01:56
21 indicates that when you left in August of 2009, you
22 were fairly upset with Mitzi and the staff at the
23 Brookfield; is that correct?
24 A. I was uncomfortable.
25 Q. You were uncomfortable. Okay. This -- this 01:56

1 letter is addressed to a Ms. Sheryl Seine. 01:56

2 A. Right.

3 Q. Do you know who that person is?

4 A. My understanding, I -- you know, that was a
5 name given to me. 01:56

6 Q. Who gave you that name?

7 A. Someone at the state level put the phone call
8 through to her and she called me back and talked to
9 me.

10 Q. Okay. Let's -- let's -- before we talk 01:57
11 further about the letter, you said that you called and
12 someone gave you this -- this name. When did you
13 first call the state?

14 A. I'm not sure.

15 Q. But was it within the timeframe of when you 01:57
16 wrote this letter?

17 A. Yes. Yes.

18 Q. So would it have --

19 A. The person asked me to write the letter, to
20 follow up the phone conversation. 01:57

21 Q. I see.

22 A. She didn't want -- want to just hear over the
23 phone.

24 Q. So this letter is dated December 31st, 2009.
25 Would that phone call have occurred then within the 01:57

1 week before you wrote this letter? 01:57

2 A. No. It took me a while to put it together
3 and get my daughter to type it.

4 Q. And so would it be within the month before
5 you wrote this letter? 01:57

6 A. I would say it was in -- sometime -- you
7 know, to be -- to be exact, I don't know. Yeah. But
8 it was a while before. It took a while to get it
9 together and get it out in the mail.

10 Q. So tell me about the -- tell me about the 01:58
11 telephone call. What -- do you recall what office of
12 the state you called? Was it a particular department
13 that you called?

14 A. No. I don't know.

15 Q. You don't recall? 01:58

16 A. No.

17 Q. How did you get the telephone number?

18 A. I don't recall.

19 Q. So you don't recall? It's not online?
20 Anybody may have suggested to you that -- 01:58

21 A. No, I didn't get it online, but I don't
22 recall.

23 Q. Okay. You don't recall how you got the
24 number.

25 Do you recall anything about the 01:58

1 conversation that you had when you did call? 01:58

2 A. Just that she listened and she said that I
3 needed to write a letter.

4 Q. Okay.

5 A. I was hoping she would take notes and they 01:58
6 would investigate when I called.

7 Q. Okay. So you were hoping they would do an
8 investigation. You considered this a formal
9 complaint.

10 A. Right. Yes. 01:58

11 Q. Okay. Let me ask you this, Ms. Brigance.
12 this is -- this is a complaint based on your
13 observations in August of 2009.

14 A. Uh-huh.

15 Q. What prompted you to decide to make a 01:59
16 complaint in December of 2009 about events that
17 occurred in August?

18 A. Well, I called earlier, you know, than that,
19 but what do you mean? Clarify that.

20 Q. Well, what I'm wondering is, if -- if you 01:59
21 were visiting your mother in August of 2009 and you're
22 leaving there on August 9th of 2009 and you were
23 concerned and upset about the fact that the staff was
24 being late answering call lights, why you didn't call
25 the state then. 01:59

1 A. Like I told you, I had to get home and drive 01:59
2 through Texas, an area I had never been, and my
3 thoughts were on that and wasn't till after I got home
4 that I started thinking about a letter.

5 Q. Okay. So you got home. Did it take you a 01:59
6 few days to get home from Arkansas?

7 A. No, we drove the same day, but it's like, you
8 know, there wasn't any hours left.

9 Q. Okay.

10 A. Yeah. 02:00

11 Q. So you probably got home then on August 10th
12 or 11th; is that fair?

13 A. I don't recall.

14 Q. Okay. But there were still a couple weeks
15 left in August. 02:00

16 A. Correct.

17 Q. But you didn't call the state during that
18 month at all?

19 A. I don't know when I called them.

20 Q. You don't know -- okay. 02:00

21 But when you called the state, they
22 asked you to draft a letter and you drafted this
23 letter on December 31st, 2009.

24 A. Yes.

25 Q. Yes, ma'am. 02:00

1 what you thought about that? 02:01

2 A. No.

3 Q. Okay.

4 A. But I agreed.

5 Q. Okay. When -- when your brother filed the 02:01

6 lawsuit related to your father's care, there was a --

7 an issue of mental anguish that so far we've been told

8 is not going to be an issue in this case, but it's --

9 it's still open, so to speak. In your father's case,

10 there was a claim for both you and for your brother as 02:01

11 to mental anguish. Were you aware of that?

12 A. No.

13 Q. No. Okay. But there was a claim made on

14 your behalf for mental anguish related to your

15 father's death. I'll just -- I'll offer that, and the 02:02

16 Court records would prove that -- prove that out.

17 Your brother provided testimony during

18 your father's case that his mental anguish was such

19 that he became suicidal and homicidal. Were you aware

20 of that? 02:02

21 A. He mentioned it sometime later.

22 Q. Later?

23 A. Yes.

24 Q. By later, was that after the lawsuit was

25 filed? 02:02

1 A. I don't recall whether it was before or 02:02
2 after.

3 Q. Okay.

4 A. Because I don't even know the day he filed
5 the lawsuit. 02:02

6 Q. The -- the lawsuit was filed, I believe, in
7 April of 2009. So a few months after your father's
8 death was when that lawsuit was filed. Did you have
9 some concern about your -- your brother's mental
10 health? 02:03

11 A. I wasn't talking to him frequently because he
12 was so busy. I did not.

13 Q. Was he busy with work?

14 A. Work, yeah.

15 Q. Did he travel a lot for work? 02:03

16 A. I don't know. His wife can answer that.

17 Q. Were you ever concerned that your brother's
18 grief or anguish prevented him from making decisions
19 about your mother's care?

20 A. No. 02:03

21 Q. So you always felt confident that your
22 brother could appropriately make decisions for your
23 mother?

24 A. Very much so.

25 Q. And you were confident that he would always 02:03

1 act in your mother's best interest? 02:03

2 A. Yes. Very much so.

3 Q. And just one more question on this particular
4 letter. This, again, is reflecting your
5 dissatisfaction when you were leaving in August of 02:03
6 2009. Are you saying that this was not related to any
7 complaint that your brother made in November of 2009?

8 A. Correct.

9 Q. This is a completely independent --

10 A. Totally. 02:04

11 Q. -- correspondence. And a completely separate
12 complaint.

13 A. And even on rereading it, I don't even think
14 I mentioned my daughter who was very concerned.

15 Q. Yes, ma'am. I believe you did say that your 02:04
16 daughter was with you when --

17 A. With me, but I didn't mention her complaints.

18 Q. Okay. So did your daughter speak to anyone
19 at the state?

20 A. No. 02:04

21 Q. After you wrote your letter, did you have any
22 more discussions with anyone at the state?

23 A. No.

24 Q. Do you recall ever having a conversation with
25 Ms. Sherril Proffer-Feyen? And Sherril is 02:04

1 S-h-e-r-r-i-l, and last name is 02:04
2 P-r-o-f-f-e-r-F-e-y-e-n, Ms. Sherril Proffer -- and I
3 think that's Feyen, or I'm not pronouncing it
4 correctly --

5 A. Sherril. 02:04

6 Q. Do you recall that name at all, ma'am?

7 A. No.

8 Q. You don't recall ever having a conversation
9 with Ms. Proffer-Feyen?

10 A. No, huh-uh. 02:05

11 Q. I'm going to read, if you don't mind, Ms.
12 Proffer-Feyen gave a deposition in this case on
13 March 8th of 2011, just a couple of weeks ago, and she
14 said this about this particular letter and her
15 conversations with you. 02:05

16 A. Yes.

17 Q. Mr. Chronister here asked her a question, and
18 this is from Page 30 of her deposition starting on
19 Line 21. "My question is, Here is -- this was in the
20 state file that we obtained, a letter dated 02:05
21 December 31st from Marcelena Brigance regarding call
22 lights and care of her father." And Ms. Proffer-Feyen
23 said this, "I did talk to the sister. Yes, I called
24 the sister. She's got my name wrong." Question:
25 "Okay." Answer: "Yes, I did talk to the sister." 02:06

1 Question from Mr. Chronister: "What was the report 02:06
2 from the sister?" Answer: "The sister said that
3 she's having problems with her mother. When I asked
4 further information, she said she had no information
5 to give me, that her brother takes care of all her 02:06
6 mother's care and that they don't particularly -- no,
7 she didn't say that, she -- what she told me, as best
8 as I can remember, she told me that she does not
9 receive all her mother's medical information from her
10 brother, that he's the guardian, power of attorney, 02:06
11 she is not. Therefore, I have to ask the brother as
12 to any medical questions or conditions regarding her
13 mother." And that ends on Page 31, Line 16 of the
14 deposition.

15 Does that sound familiar? 02:06

16 A. No.

17 Q. No? You don't recall having a conversation
18 where you would have told anyone that if they had
19 questions about your mother, they needed to talk to
20 your brother? 02:07

21 A. No.

22 Q. No? Okay. Thank you.

23 I'm going to go back once again. When
24 you were leaving in August of 2009, you had concerns
25 about your mother, but she did not want to leave The 02:07

1 Brookfield. Is that what you testified to, ma'am? 02:07

2 A. I asked her and she said no.

3 Q. Why do you think your mother would say no to
4 leaving someplace that was mistreating her?

5 A. I don't know her mind on that, so I don't 02:07
6 want to answer for her.

7 Q. Okay. But you talked to her every day,
8 correct?

9 A. Correct.

10 Q. And you were concerned about her staying at 02:08
11 The Brookfield; is that correct?

12 A. Yes.

13 Q. And in your conversations with her every day,
14 did you feel she was being abused in any way?

15 A. Abused how? 02:08

16 Q. Abused -- let's start. Did you believe that
17 your mother was being abused in any way by
18 The Brookfield?

19 A. While I was there, correct?

20 Q. While you were there or after the fact. 02:08
21 During your telephone conversations.

22 A. I do not believe she was being mentally
23 abused with the caregivers I observed there.

24 Q. Okay. Did you believe she was being
25 physically abused in any way? 02:08

1 A. Not until I heard about her injuries after 02:08
2 death.

3 Q. So after she fell, after her accident when
4 she fell, then you did believe that she was being
5 abused? 02:08

6 A. I believed -- I believed being an ER nurse
7 that her -- and I understand pictures were not done in
8 ER but at the rehab center that she briefly went to,
9 that her face was unrecognizable. And from the
10 injuries described to me by my sister-in-law who's a 02:09
11 nurse practitioner, as you know, the injuries are
12 inconsistent with a simple fall, even if you hit a
13 door with your face.

14 Q. So, ma'am, are you suggesting that someone
15 pushed her down or something like that? 02:09

16 A. I don't know that pushing down would do it.
17 I -- I'm just saying, the only statement I can make
18 with my experience as an ER nurse, board certified and
19 working 26 years in ER nursing, the injuries described
20 to me were inconsistent with a simple fall. 02:09

21 Q. So you don't believe your mother fell?

22 A. I don't know. I just know from what I hear
23 that the face was unrecognizable.

24 Q. Do you think that The Brookfield was
25 retaliating against your mother because your brother 02:10

1 had filed a lawsuit against them? 02:10

2 A. I can't answer that. I cannot answer that.

3 Q. When -- when your mom, the -- the night of
4 the accident and -- and the allegations, in this
5 lawsuit, ma'am, there have not been allegations that 02:10
6 this was anything other than a fall, but -- and I'll
7 submit to you that this -- this was an accidental fall
8 and there've not been allegations otherwise, but when
9 your mother was transferred to the hospital, did you
10 speak to her while she was in the hospital? 02:10

11 A. I spoke to her several times.

12 Q. Did she indicate to you the circumstances of
13 her fall?

14 A. She said she fall -- fell, yes.

15 Q. So your mother told you she fell down. 02:11

16 A. Uh-huh.

17 Q. What was she trying to do when she fell down?

18 A. Go to the bathroom.

19 Q. Okay. Did you come to Arkansas at all while
20 she was in the hospital? 02:11

21 A. No. I wanted to. The weather was not good.
22 And I didn't have money left.

23 Q. After -- after your mom passed away --

24 A. Right.

25 Q. -- and I believe that was December 14th; is 02:11

1 that correct? 02:11

2 A. Correct, yeah.

3 Q. How much contact did you have with Steve
4 after that?

5 A. Several conversations, and at the funeral. 02:11
6 My daughter and I drove to Mobile, Alabama for the
7 funeral there.

8 Q. Did you discuss filing a lawsuit at that
9 point in time?

10 A. We -- he talked about it. 02:12

11 Q. He talked about it at the -- when you were
12 visiting for the funeral service?

13 A. Yes.

14 Q. Did your brother talk to you at all about any
15 of the complaints that he had made with the state 02:12
16 about your dad?

17 A. No.

18 Q. No? And -- and did he discuss the complaint
19 he made about your mom's care, the complaint he made
20 to the state about your mom's care? 02:12

21 A. No.

22 Q. No. But he did talk to you about filing a
23 lawsuit when you came to your mom's memorial.

24 A. Yes.

25 Q. Okay. Let's go off the record. I may be 02:12

1 done, ma'am, if we could go off the record just for a 02:12
2 minute and I'll look at my notes.

3 A. Okay.

4 THE VIDEOGRAPHER: Off the record, 2:14.
5 (Recess from 2:14 to 2:16.) 02:12
6 THE VIDEOGRAPHER: Back on the record.
7 It's 2:16.

8 Q. (BY MS. CLARK) Okay. Ms. Brigance, I think
9 we're almost done. I just have a few more questions
10 and we can wrap this up and Rex can ask whatever 02:15
11 questions he may have.

12 A. Yes, ma'am.

13 Q. You told us that you were concerned and upset
14 about the care your mom may have been given when you
15 left in August of 2009. 02:15
16 A. Yes.

17 Q. Do you recall sharing with the staff at all
18 that you were thankful for the care that they were
19 giving her?

20 A. I don't remember. 02:15
21 (Exhibit No. 3 marked.)

22 Q. (BY MS. CLARK) Don't remember? Does -- does
23 this note, and this is a -- we'll mark this as
24 Exhibit 3, and it is a handwritten -- a copy of a
25 handwritten note. 02:15

1 A. I do. Blood pressure medicines. 02:16

2 Q. Blood pressure meds?

3 A. Thyroid meds.

4 Q. Now, we had -- we had some extensive
5 testimony in the first lawsuit about -- 02:16

6 A. Exactly.

7 Q. -- your brother's mental health issues
8 related to your father's death. Did you have any
9 specific mental health issues related to your
10 parents' -- parents' death? 02:17

11 A. I was down for a while.

12 Q. Uh-huh.

13 A. Yes. Yes.

14 Q. Any -- any mental health issues that would
15 have been treated by a physician? 02:17

16 A. No.

17 Q. No.

18 A. I did not go see one for -- after their
19 death.

20 Q. Okay. 02:17

21 A. I took it to my church.

22 Q. Now, in terms of -- of your brother's
23 concern, he was visiting your mom almost daily; is
24 that correct?

25 A. Frequently. Can I say daily, but while I was 02:17

1 there, yes. 02:17

2 Q. And -- and not while you were there, but
3 after you had come back to Texas and you were speaking
4 to your mom on the telephone every day, your brother
5 was the one who would go in and visit with her 02:17
6 frequently.

7 A. Exactly. And Peggy would stop by also after
8 work.

9 Q. Yes, ma'am.

10 Did your brother ever call you and say, 02:17
11 Lena, I am worried that Mom is being abused by that
12 place?

13 A. No.

14 Q. No? He never called you and said, You need
15 to help me convince Mom we've got to get her out of 02:18
16 here?

17 A. No.

18 Q. No? Okay.

19 BY MS. CLARK:

20 MS. CLARK: Thank you, ma'am, that's all 02:18
21 I've got.

22 (Passed the Witness at 2:18.)

23 EXAMINATION

24 BY MR. CHRONISTER:

25 Q. Just -- just I think a couple of questions I 02:18

1 need to just clarify one or two things, Ms. Brigance, 02:18
2 I want to be sure I understood correctly.

3 You had when you were here visiting your
4 mother in August --

5 A. Uh-huh. Yes. 02:18

6 Q. -- you personally observed what you felt to
7 be delays in the call light answering?

8 A. Yes.

9 Q. And then both you and your daughter on
10 different occasions attempt to go find staff? 02:18

11 A. Yes.

12 Q. And where did you find the staff?

13 A. I found them smoking. Monica found them --
14 or at the desk. Both -- both -- you know, different
15 times. And Monica would find them at the desk. 02:19

16 Q. All right. Now, other occasions, and I just
17 want to be sure, that those you personally observed
18 when you were here. But were there other occasions
19 when you were talking to your mother on the phone
20 where you would ask her to call the call lights and 02:19
21 stay on the phone with her waiting for a response?

22 A. Yes.

23 Q. And then on those occasions, did you actually
24 hang up from your mother and call the facility to
25 ensure that someone would go take care of her? 02:19

1 A. Yes. 02:19

2 Q. And do you know how many different times that
3 occurred?

4 A. At least two or three and more. I cannot
5 recall the exact amount, but too many times, I know. 02:19

6 Q. So there were incidents when you were here
7 and that you verified by actually calling the facility
8 on more than one occasion from your phone to have them
9 check on your mother.

10 A. Yes. Yes. 02:20

11 Q. Just wanted to be sure it was on different
12 occasions.

13 MR. CHRONISTER: Nothing further.

14 (Passed the Witness at 2:20.)

15 FURTHER EXAMINATION 02:20

16 BY MS. CLARK:

17 Q. Just one more question, I think, ma'am.

18 Your brother, I know -- I know Steve did
19 not specifically talk to you about a complaint that he
20 was going to file with the state, that was your 02:20

21 testimony earlier related to your mother's care, but
22 did he call you sometime around November, a little bit
23 before this letter was written that we marked as
24 Exhibit 2, did he call you and say, Lena, you need to
25 talk to the state, they need to know this stuff? 02:20

1 A. No. 02:20

2 Q. No? So -- so in -- in the late 2009 before
3 you wrote that letter on December 31st of 2009 to
4 describe your observations in August of 2009, that --
5 that was on your own initiative. No one prompted you 02:21
6 to do that; is that correct?

7 A. No. Well, it was in response to the lady
8 asking me to put it in written form.

9 Q. Yes, ma'am. But I guess I mean your contact
10 with the state, deciding to pick up the phone and call 02:21
11 the office of longtime term care in Arkansas and say,
12 I have concerns about my mother in December of 2009 --

13 A. Right.

14 Q. -- did anyone suggest that you do that?

15 A. No. 02:21

16 Q. Okay. Thank you, ma'am.

17 A. You're welcome.

18 (Passed the Witness at 2:21.)

19 MR. CHRONISTER: Nothing.

20 THE VIDEOGRAPHER: Off the record, 2:23. 02:21

21 (Deposition concluded at 2:23.)

22 * * * * *

23
24
25

1 I, MARCELENA BRIGANCE, have read the foregoing
2 deposition and hereby affix my signature that same is
3 true and correct, except as noted above.

4
5

6

MARCELENA BRIGANCE, Witness

7

8

9 THE STATE OF _____)

10 COUNTY OF _____)

11

12 Before me, _____, on this day
13 personally appeared MARCELENA BRIGANCE, known to me
14 (or proved to me under oath or through
15 _____ (description of identity card or
16 other document) to be the person whose name is
17 subscribed to the foregoing instrument and
18 acknowledged to me that they executed the same for the
19 purposes and consideration therein expressed.

20 Given under my hand and seal of office this
21 _____ day of _____, _____.

22

23

24

NOTARY PUBLIC IN AND FOR THE
STATE OF _____

25

COMMISSION EXPIRES: _____

1 IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
2 STEVEN A. BRIGANCE, AS)
 PERSONAL REPRESENTATIVE OF)
3 THE ESTATE OF DOROTHY)
 BRIGANCE, DECEASED; AND ON)
4 BEHALF OF THE WRONGFUL)
 DEATH BENEFICIARIES OF)
5 DOROTHY BRIGANCE)
) CASE NO. CV-2010-1365
6 Plaintiff)
)
7 VS.)
)
8 THE BROOKFIELD AT FIANNA)
 OAKS, LLC, D/B/A THE)
9 BROOKFIELD AT FIANNA OAKS;)
 ROBERT "BOB" BROOKS; AND)
10 MITZI BAILEY)
)
11 Defendant)

REPORTER'S CERTIFICATION

VIDEO/ORAL DEPOSITION OF MARCELENA BRIGANCE

MARCH 31, 2011

15
16 I, MONIQUE M. HINCHCLIFF, CSR No. 6199, Certified
17 Shorthand Reporter, certify;
18 That the foregoing proceedings were taken before
19 me at the time and place therein set forth, at which
20 time the witness was put under oath by me;
21 That the testimony of the Witness, and all
22 objections and statements made at the time of the
23 examination were recorded stenographically by me and
24 were thereafter transcribed;

25

1 That the foregoing is a true and correct
2 transcript of my shorthand notes so taken.

3 I further certify that I am not a relative or
4 employee of any attorney of the parties, nor
5 financially interested in the action.

6 I declare under penalty of perjury under the laws
7 of the state of Texas that the foregoing is true and
8 correct.

9 Dated this 15th day of April, 2011.

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