

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

3
4 STEVEN A. BRIGANCE, as personal PLAINTIFF
representative of the estate of Maurice Brigance,
5 Jr., deceased; and on behalf of the wrongful death
beneficiaries of Maurice Brigance, Jr.

6
7 VS. CASE NO. CV 2009-651 (V)
8 THE BROOKFIELD AT FIANNA OAKS, LLC, DEFENDANTS
d/b/a THE BROOKFIELD AT FIANNA OAKS;
9 (parent corporation) WILSON, DARNELL AND
MANN, PA; CRAWFORD CONSTRUCTION
10 COMPANY; and CRAWFORD
CONSTRUCTION COMPANY, INC.

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The video deposition of:

12 MITZI BAILEY,
was taken at the offices of Chronister, Fields and Flake
13 314 North Seventh Street, Fort Smith, Arkansas,
December 10, 2009

14
15 APPEARANCES: ON BEHALF OF:
16 MR. REX CHRONISTER PLAINTIFF
Chronister, Fields and Flake
17 314 North Seventh
Fort Smith, Arkansas 72902

18
19 MR. MARK W. DOSSETT DEFENDANT
Kutak Rock, LLP
20 234 East Millsap Road
Fayetteville, Arkansas 72703

21
22 MR. PAUL D. MORRIS DEFENDANT
Wright, Lindsey & Jennings
23 200 West Capitol Avenue
Little Rock, Arkansas 72201

24
25 KRISTIE KNIGHT CONGDON, CCR KNIGHT COURT REPORTING, INC. P.
26 O. Box 8493 Fort Smith, Arkansas 72902

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APPEARANCES CONTINUED:

MR. JAMES W. TILLEY DEFENDANT
Watts, Donovan and Tilley
200 South Commerce Street, Suite 200
Little Rock, Arkansas 72201

1 MITZI BAILEY,

2 being first duly sworn, testified under oath as follows:

3 DIRECT EXAMINATION

4 BY MR. CHRONISTER:

5 Q Would you state your full name for us, please?

6 A Mitzi Dee Bailey.

7 Q And, Ms. Bailey, my name is Rex Chronister. I think we
8 have met before when you were here for the other depositions?

9 A Yes.

10 Q And I'm going to be asking you some questions relative to
11 the issues in this case. Have you ever given a deposition
12 before?

13 A Yes.

14 Q And on about how many occasions have you given a
15 deposition?

16 A Once or twice.

17 Q And what type of cases were those in?

18 A One was a divorce and the other was an employment case.

19 Q Have you ever given a deposition in your capacity as an
20 administrator or an employee of a nursing home or other
21 assisted living facility?

22 A No.

23 Q Tell me a little bit -- well, excuse me. I was taking
24 something for granted. As far as ground rules for a
25 deposition, I know we went over those when you were here

1 before, but let's go over them with you one time. I'm going
2 to be asking you some questions. If you could, give a verbal
3 answer. Head nods, uh-huhs, and huh-uhs are very difficult
4 for the court reporter. Okay?

5 A Yes.

6 Q And if you don't understand a question -- my standard
7 line is, I have a God-given ability to ask a stupid one every
8 now and then. When I do that, please call me down on it.
9 Okay?

10 A Okay.

11 Q Because if you answer the question, I'm going to rely on
12 the fact that that is the answer I would have at court should
13 this matter go to trial. Okay?

14 A Okay.

15 Q Other than that, if you'll let me ask the question and
16 then you answer it -- we can go back and forth that way
17 instead of talking over each other, because again that's very
18 difficult for the court reporter. Okay?

19 A Okay.

20 Q Give me a little bit of background information. Where do
21 you currently live?

22 A Roland, Oklahoma.

23 Q And are you married?

24 A Yes.

25 Q How long have you been married?

1 A Three years in March.

2 Q Have any children by this or any other marriage?

3 A I do.

4 Q And how many children do you have?

5 A Three.

6 Q How old are they?

7 A 18, 17, 13.

8 Q And what was your date of birth?

9 A 01/07/71.

10 Q And your Social Security number, please?

11 A 512-66-0303.

12 Q 512? Social Security number starting off?

13 A Yes, sir.

14 Q So that doesn't mean you were born -- have a Social
15 Security number around here, does it?

16 A No.

17 Q Where are you originally from?

18 A Kansas.

19 Q And where were you born in Kansas?

20 A Kingman.

21 Q Excuse, me. I'm sorry.

22 A Kingman.

23 Q Kingman?

24 A Yes, sir.

25 Q Where is that?

- 1 A It's about 35, 40 miles west of Wichita.
- 2 Q Where did you go to school?
- 3 A Kingman.
- 4 Q And take me through to, to a little bit of your
5 educational background. So you graduated high school in
6 Kingman?
- 7 A Correct.
- 8 Q And then did you go to college?
- 9 A I did.
- 10 Q And where did you go to college?
- 11 A Garden City.
- 12 Q And is that a four-year institution or a two-year
13 institution?
- 14 A Two year.
- 15 Q And did you -- what type of a degree did you get from
16 there?
- 17 A My first degree from there was criminal justice, my second
18 degree from there was nursing.
- 19 Q Associate's degree?
- 20 A Correct.
- 21 Q Did you do any college classes or have any other degrees
22 after you got out of -- was it Garden City?
- 23 A Yes.
- 24 Q Do you have any other college classes or courses?
- 25 A I did.

- 1 Q And where were those at?
- 2 A University of Arkansas.
- 3 Q The one in Fayetteville? Fort Smith?
- 4 A It was an outreach. We did classes on webcams.
- 5 Q And where did you actually take that course at -- from?
- 6 A Fort Smith.
- 7 Q And was it through the -- was it in nursing? What was
- 8 that, those courses in?
- 9 A Education with emphasis in human resource development.
- 10 Q And when did you take those classes?
- 11 A I couldn't tell you exactly what years they were.
- 12 Q When did you get your degrees from Garden City?
- 13 A I completed my degrees in '91 for criminal justice, '95
- 14 for nursing.
- 15 Q What did you do between '91 and '95?
- 16 A I was married and basically stayed at home.
- 17 Q Did you work during that period of time?
- 18 A I honestly don't remember.
- 19 Q As far as your Associate's degree in nursing, does that
- 20 qualify you as either an RN, LPN? Well, how does that work?
- 21 A By getting your Associate's degree, you can apply to take
- 22 the inclucs (sic) for RN.
- 23 Q Have you ever taken the RN exam?
- 24 A I have.
- 25 Q And did you pass that exam?

1 A No.

2 Q How many times have you taken the exam?

3 A I couldn't tell you.

4 Q Would you take it more than once?

5 A Yes.

6 Q More than twice?

7 A Yes.

8 Q More than five times?

9 A No.

10 Q So you've taken -- you've taken it at least more than two
11 but less than five times to be an RN?

12 A Yes, sir.

13 Q And do they give you your grades on that test when you
14 take it?

15 A I don't remember.

16 Q Do you know whether or not you were close?

17 A I don't know.

18 Q Do you have any other -- well, then so you're not an RN
19 as I understand it, right?

20 A I hold an LPN license.

21 Q All right. And have you ever represented yourself to
22 anyone to be an RN?

23 A No.

24 Q Have you ever told any of the staff at the facility that
25 you were an RN?

1 A No.

2 Q Have you ever told any of the family members of the
3 residents there you were an RN?

4 A No.

5 Q Have you ever told any of the residents themselves you
6 were an RN?

7 A No.

8 Q So if anyone at the facility said that they understood
9 you to be an RN because you had told them that, they would be
10 lying. Is that right?

11 A That would be false.

12 Q I didn't understand that answer. If I had former staff
13 of the facility or former or current residents of the facility
14 or their family tell me you represented yourself regularly to
15 be an RN, would they be lying? That's a yes or no answer.

16 MR. DOSSETT: I object to the form. She doesn't have
17 to answer any of your questions yes or no. She can answer them
18 however she feels fit as long as she's answering directly to
19 the question.

20 Q So if I had been told that you represented yourself as an
21 RN, would the person who told me that be telling me the truth,
22 or would they be lying to me?

23 A I would never tell anybody that I was an RN.

24 Q And you have never told anyone that you were an RN?

25 A I have never.

1 Q All right. But you do have an LPN license?

2 A That is correct.

3 Q And when did you obtain that LPN license?

4 A I couldn't tell you what year.

5 Q Approximately? Have you had it five years? Ten years?

6 A Before '96.

7 Q And is that only in the State of Arkansas?

8 A I hold an Oklahoma license as well.

9 Q Do you have any other licenses, certificates, diplomas,
10 in any other area other than as an LPN?

11 A As an administrator I hold a license.

12 Q All right. And when did you obtain that license?

13 A I believe in May of '08, I believe.

14 Q May of '08. When did you start working at The
15 Brookfield?

16 A I believe it was May of '08.

17 Q So in May of '08, you got your license as an
18 administrator and then began working at The Brookfield at the
19 same time?

20 A Correct.

21 Q Prior to -- let's go through your work history. Kind of
22 stop a minute and back up and go through work history. You
23 got out of -- you got your Associate's degree approximately in
24 what year?

25 A '95.

1 Q And so from ninety -- take me through from '95 to '08 the
2 different jobs you've held.

3 A Moved out here from Kansas in '95 or '96. I began working
4 as a temporary staffing nurse through PRN Medical Staffing,
5 and then I went in the office as a scheduler and I worked my
6 way up in the PRN Medical Staffing office to be the manager. I
7 worked there, I believe, until 2006 -- 2005, 2006. Moved back
8 to Kansas -- Kingman, Kansas. Worked at Kanza Bank until June.
9 And moved back to Roland, Oklahoma, June or July of that year.
10 Then I went to work at Arkhola Sand and Gravel in September or
11 October, worked there until January. Went to work over at
12 Willowbrook, which was an Ameritas Corporation. I can't
13 remember the month I began working there. I would say February
14 or March. Then went to -- worked there through May when I went
15 to work for The Brookfield. And from September of '07, I
16 believe, until present I work part-time at The Buckle.

17 Q Okay. Let me kind of take it -- kind of go back through
18 those and fill in some blanks. You worked for, I guess the
19 longest period of time, there with the nurse staffing place
20 here in Fort Smith?

21 A PRN Medical Staffing, correct.

22 Q And kind of take me through in more detail how you worked
23 yourself up from there to your -- where did you start and what
24 was your final position with them?

25 A I started as a staff nurse just working through them,

1 taking temporary shifts at area facilities. And then I worked
2 as a scheduler in their office. I did some night-call and
3 weekend on-call from home for them, and then worked part-time
4 in their office and worked my way up into the manager position.

5 Q Well, was that manager position a full-time job?

6 A Correct.

7 Q And then you left that job and went back to Kansas?

8 A I did.

9 Q Why did you leave that job?

10 A I wanted to move back to Kansas.

11 Q Was that a voluntary leaving of that job or were you
12 terminated from that job?

13 A Voluntary.

14 Q And then you moved back to Kansas?

15 A Correct.

16 Q And went to work for a bank?

17 A Yes.

18 Q And what were your job duties with the bank?

19 A I worked in the operations department, cash management.

20 Q That's higher than a teller. That is some form of
21 administration or?

22 A Yeah.

23 Q And then you moved back from there to Roland?

24 A Correct.

25 Q Why did you leave Kansas and come back to this area?

1 A Because this is my children's home and this is what they
2 know as home.

3 Q When you left here, was that following a divorce?

4 A No.

5 Q Any particular reason you went back to Kansas and gave up
6 a job as a manager here?

7 A That was home. I missed home.

8 Q And then you -- when you moved back to Roland, you went
9 to work for Arkhola?

10 A Correct.

11 Q And what did you do for Arkhola?

12 A Customer service manager in their ready-mix department.

13 Q I'm sorry. I couldn't hear the answer.

14 A Customer service manager in their ready-mix department.

15 Q And then when you left the bank in Kansas, was that a
16 voluntary leaving or were you terminated?

17 A Voluntary.

18 Q And then you came back to Roland, and was your first job
19 then with Arkhola?

20 A Yes. Actually, I worked through TEC. TEC placed me. I
21 took a temporary position as the secretary to Jerry Goodson,
22 the president. And when I filled in a week as his secretary,
23 they asked me to come on and be their manager of their new
24 start-up division.

25 Q How long were you with Arkhola?

1 A Until January.

2 Q And why did you leave Arkhola?

3 A They decided to downsize. It was a termination.

4 Q Not for any conduct on your part, but just in a general
5 downsizing?

6 A Yes.

7 Q And then you went to work at the Willowbrook?

8 A Yes.

9 Q And when you were hired at Willowbrook, what was your
10 position at Willowbrook?

11 A Residential Care Director.

12 Q And at that point in time, did you have an
13 administrator's license?

14 A No.

15 Q So did you work under an administrator --

16 A I did.

17 Q -- at Willowbrook? Who was the person you worked under?

18 A Gloria Synder.

19 Q What were your job duties at Willowbrook?

20 A To oversee the medical staff, staffing, resident care.

21 Q How is that different than administrator?

22 A I basically focused on the medical. I didn't have to
23 do -- as a Residential Care Director, I just focused on the
24 medical part of the residents and I didn't have to do a lot of
25 the paperwork that the administrators do for corporations.

1 Q In your capacity at Willowbrook, did you -- were you
2 responsible for any hiring --

3 A Yes.

4 Q -- firing or disciplinary?

5 A Yes.

6 Q And you were there from February?

7 A I don't know the exact month.

8 Q And during that period of time is when you obtained your
9 administrator's license in May of '08. Is that right?

10 A Can you ask that question again, please?

11 Q Okay. You went to work at Willowbrook in February or
12 March of what year?

13 A I believe it was '08. But without having all that in
14 front of me, I really can't tell you the years or the months.

15 Q Well, I mean, an easy way to figure that out is -- we
16 know you went to The Brookfield -- you were hired by them May
17 of '08.

18 A I believe so.

19 Q And the facility opened sometime around June of '08?

20 A June 1st.

21 Q All right. So were you at Willowbrook more than four to
22 five months?

23 A Whatever the time amount is.

24 Q Well, what I'm trying to figure out is were you at
25 Willowbrook for more than a year? Was it a year-and-a-half,

1 or was it --

2 A It was not more than a year.

3 Q So you would have gone to Willowbrook in February or
4 March of '08 and left there in May of '08?

5 A Correct.

6 Q Other than your administrator's license and your LPN, do
7 you have any other license, certificate, anything like that?
8 Authored, given by the State of Arkansas or any other state?

9 A No.

10 Q Have any of your licenses or certificates ever been
11 suspended or revoked?

12 A No.

13 Q Have you ever had a citation on any of your licenses or
14 certificates?

15 A No.

16 Q Have you ever been charged with any criminal offense?

17 A No.

18 Q So you've never been placed on any form of probation,
19 suspended sentence, deferred sentence, anything where the
20 record was expunged or cleaned up after some period of time?

21 A No.

22 Q You were originally hired as the administrator of
23 Brookfield?

24 A Yes.

25 Q That was your first job as an administrator?

1 A Yes.

2 Q How long did it take to get your administrator's license?

3 A I don't remember.

4 Q Well, do you recall about when you started working on it?

5 A Immediately after I was hired.

6 Q Immediately after you were hired by who?

7 A Brookfield.

8 Q So when you were hired by Brookfield to be the
9 administrator, you did not have an administrator's license?

10 A I did not.

11 Q Okay. You were hired in, you believe May of '08?

12 A Yes, sir.

13 Q So it took you -- and you opened on June 1st?

14 A Correct.

15 Q So it took you less than 30 days --

16 A Correct.

17 Q -- to get your, your --

18 A Yes.

19 Q What do you have to do to get an administrator's license
20 in the State of Arkansas?

21 A There's different ways to obtain it.

22 Q I'm sorry?

23 A There are different ways to obtain it.

24 Q Tell me some of those.

25 A You can take a class -- a two to three-day class, or you

1 can do it online.

2 Q And how did you go about getting your administrator's
3 license?

4 A I have taken both.

5 Q When did you take the class?

6 A I can't tell you the exact date.

7 Q Would it have been sometime between May and June?

8 A No.

9 Q Did you take the class before May and June?

10 A No. I took it online.

11 Q Well, when you said you had done both and that's what I'm
12 trying to figure out.

13 A Yes. I can't tell you when I took the class. I initially
14 obtained my license by taking it online.

15 Q All right. And you had not taken the class before taking
16 it online? Is that what you're telling me?

17 A I took it online before I took the class to obtain it.

18 Q All right. And then did you get your administrator's
19 license as a result of taking it online?

20 A I did.

21 Q And then you went one step further and went ahead and
22 took the classes?

23 A I did.

24 Q And when did you do that?

25 A I can't tell you those dates. I don't know. I don't

1 remember.

2 Q Was it shortly afterwards or was it six months later?

3 A I don't remember.

4 Q Have you ever been suspended, disciplined, reprimanded or
5 terminated from any job?

6 A I was terminated from Arkhola.

7 Q All right. And that's because you told me of a general
8 downsizing?

9 A Correct.

10 Q Nothing for anything you did?

11 A No.

12 Q At any of your other jobs, did you ever have -- did they
13 maintain a personnel file on you at any of your other jobs?

14 A I can't answer that for them.

15 Q Do you know whether or not there was ever a personnel
16 file on you at any job?

17 A I didn't do the personnel there.

18 Q But as an employee, you would have been told of a
19 personnel file, wouldn't you?

20 A I -- I have no recollection of what they do with their
21 personnel.

22 Q Well, then have you ever been suspended, disciplined or
23 reprimanded by any employer?

24 A Ask that question again, please.

25 Q All right. Let's take them one at a time. Have you ever

1 been suspended from any job you were on?

2 A No.

3 Q Have you ever been reprimanded, called in and reprimanded
4 by any employer?

5 A No.

6 Q Have you ever been disciplined by any employer?

7 A No.

8 Q Given a day off or anything like that?

9 A No.

10 Q So when you started working at Brookfield, that was your
11 first job as an administrator?

12 A Yes.

13 Q And it's been your only job as an administrator?

14 A In an assisted living facility, yes.

15 Q Have you been an administrator of anything other than
16 Brookfield?

17 A PRN Medical Staffing could have been considered as the
18 administrator; yes.

19 Q But you didn't have to have any licenses or certificates
20 to do that job?

21 A No.

22 Q How did the job duties from being the administrator at
23 Brookfield differ from the job you had had -- I think you said
24 it was at Willowbrook? How was that different? What other
25 responsibilities did you take on as being the administrator at

1 Brookfield?

2 A By being the administrator at Brookfield is the -- I don't
3 know how to explain it. I don't know how to outline the
4 different duties.

5 Q Well, take me through --

6 A Can you -- can you be more specific?

7 Q Well, take me through your job duties at Willowbrook and
8 then tell me for each one of those whether they are the same
9 or different than you have at Brookfield. Let's do it that
10 way. What did you do at Willowbrook and do you do the same
11 thing at Brookfield? And then when we get to the end of what
12 you did at Willowbrook, if you do more at Brookfield that
13 would be the difference.

14 A I do, I do everything -- everything I did at Willowbrook I
15 do at Brookfield plus additional stuff -- additional duties.

16 Q When you were at Willowbrook, what was your title?

17 A Residential Care Director.

18 Q And so you were under the administrator?

19 A Yes.

20 Q Were there other directors at Willowbrook that worked
21 under the administrator?

22 A Yes.

23 Q What -- how many other directors were there at
24 Willowbrook?

25 A I can't tell you the number. I don't know exactly.

1 Q Do you have directors under you at The Brookfield?

2 A I have department heads under me.

3 Q And by your definition of department heads at Brookfield,
4 would that be the same thing as the administrators at
5 Willowbrook? Just using a different term for the same thing?

6 A I would say yes.

7 Q So how many directors do you have under you at
8 Brookfield, and who are they?

9 MR. DOSSETT: Object to the form. You mean
10 department heads?

11 Q Department head, I'm sorry.

12 A We would have a Marketing Director. We would have a
13 (pause) basically a Activities Director. And then the person
14 over our kitchen, the Dietary Manager.

15 Q Is that it?

16 A I believe so.

17 Q Do you have anyone under you that would have been
18 consistent with the job you did under the administrator at
19 Willowbrook?

20 A There is somebody under me at Brookfield that has some of
21 the same duties as what I did at Willowbrook, but not all of
22 the duties.

23 Q And who is that?

24 A At this time, it would be Michelle Seamon.

25 Q Prior to Michelle, who was it?

1 A Michelle Ensey.

2 Q And prior to her?

3 A There is no other one.

4 Q All right. So there was Michelle Ensey?

5 A Correct.

6 Q And she was there -- was she there when the facility
7 opened?

8 A Yes.

9 Q And then at some point in time she left, and who's got it
10 now?

11 A Michelle Seamon. Michelle Ensey has not left, she has
12 moved over as our Activity Director.

13 Q All right. Take me through your job duties at
14 Brookfield.

15 A To oversee all the departments, to do -- I do payroll. I
16 do billing. I hire. I fire. I work on marketing.

17 Q What do you do relevant to patient care or assessment?

18 A In what form?

19 Q That's my question. I'm trying to figure out what you
20 do. Do you -- you do interact with the residents, I guess is
21 the right word there?

22 A I do.

23 Q Do you sign off on their care plans?

24 A I do.

25 Q Okay. So tell me what a care -- so one of your jobs is

1 to evaluate care plans and sign off on them?

2 A I do. The initial care plan, the initial assessment is
3 done by our Marketing Director, which is a nurse.

4 Q Take me through how that works. I'm just trying to
5 understand it. How all this fits together.

6 A From what point?

7 Q From the point of I'm looking at having one of my family
8 members come to the facility. So I contact your marketing
9 director.

10 A Correct.

11 Q Talk with them. And tell me how I go about seeing if one
12 of my family members can be in the facility.

13 A Okay. She would go out and do an assessment.

14 Q Define an assessment.

15 A She would -- we basically have a form that she would use
16 and go through it and check what she assessed. She would use
17 that form.

18 Q And see if I can narrow this. The Brookfield is a level
19 one assisted facility?

20 A Yes.

21 Q Living facility. Is that right?

22 A Correct.

23 Q Okay. And tell me what a level one assisted living
24 facility is.

25 A I can't tell you that right off the top of my head. You

1 would have to look at, you know, what the State defines that
2 as.

3 Q Well, you've got to determine if these people fit in the
4 criteria of being in your facility. Right?

5 A Correct.

6 Q And the only way you can determine if people fit into the
7 criteria is to know the criteria. Right?

8 A Correct.

9 Q So tell me what the criteria is for someone being in your
10 facility.

11 A They would need to be able to ambulate.

12 Q All right.

13 A They would need to be able to need assistance with
14 activities of daily living or be able to do them independently.
15 They would need to be able to feed themselves. They would need
16 to be able to transfer. They would need to be able to evacuate
17 if there was a fire.

18 Q Anything else?

19 A They would need to be continent of bowel and bladder.

20 Q So they would, they would need to be able to ambulate,
21 walk?

22 A Uh-huh.

23 Q But that would -- they would still qualify if they were
24 on a walker or a cane or?

25 A Or in a wheelchair and can push themselves.

1 Q All right. That have to be able to independently toilet
2 themselves?

3 A Correct.

4 Q But you can provide assistance for getting on and off of
5 the toilet or with baths and showers, right?

6 A Correct.

7 Q Feed themselves?

8 A Correct.

9 Q The Brookfield is not a lockdown facility. People can
10 walk in and out of there, right?

11 A Correct.

12 Q What level of dementia can patients still be in -- or
13 residents still be in a level one assisted living facility?

14 A Define dementia.

15 Q Confusion, Alzheimer's patients.

16 A As long as they're not a harm to themselves or others.

17 Q And if you do not fit into the criteria to be in a level
18 one facility, you can't be in there. Is that right?

19 A Correct.

20 Q Do -- what happens to a resident who deteriorates while
21 in the facility? Are they asked to leave?

22 A They could be.

23 Q Have you ever asked a resident to leave?

24 A I have given a notice.

25 Q And is that -- was that because of physical or mental

1 deterioration?

2 A Both.

3 Q And what residents were those?

4 A Can I --

5 MR. DOSSETT: I'm going to object to the form,
6 because of privacy reasons.

7 A Yeah.

8 MR. DOSSETT: We can't talk about the health
9 condition of particular residents.

10 Q All right. Does the State ever come in and investigate
11 or check on the residents on a regular basis?

12 A Yes. They do regular surveys.

13 Q Have you ever asked a staff member to hide a resident or
14 keep a resident away from State examiners?

15 A No.

16 Q So when -- let's go back to my -- I've got a family
17 member I'm looking at being in. You would evaluate them based
18 on the criteria you've just given me? The ability to
19 ambulate, toilet themselves, feed themselves, level of
20 dementia, if any. Those things you would assess to determine
21 whether or not my family member could be in the facility?

22 MR. DOSSETT: Object to the form.

23 A Correct.

24 Q And then do you prepare a care plan based on that?

25 A We do.

1 Q And tell -- define what a care plan is for me.

2 A A care plan is a plan of care -- a plan that the family
3 and the facility sit down together and decide what is supposed
4 to be done on a daily basis for that family member.

5 Q So is that kind of like a contract of care between the
6 facility and the resident? The things you're supposed to do
7 for them in return for them staying there and paying you a fee
8 to be there?

9 A I wouldn't say it's a contract.

10 Q But it's a, it's a -- and I'm not trying to pin you down
11 on a legal term here, okay. It sets out the level of care
12 that you're supposed to give this resident.

13 A It defines what the staff is supposed to do.

14 Q And as the administrator, your job is to ensure that the
15 staff carries out those requirements. Right?

16 A Correct.

17 Q As far as Jack Brigance is concerned, was he one of the
18 first residents in the facility?

19 A He was.

20 Q He and his wife were actually the very first ones to be
21 there?

22 A Yes.

23 Q So did you review and sign off on his care plan?

24 A I did.

25 Q Do you recall what his care plan provided for?

1 A I don't.

2 Q Well, I think I've got it here. This may be too mixed
3 up, but I couldn't it figure out. Here is a application for
4 residency, which looks like it's signed by you, and a
5 resident's direct care service plan with a Brookfield Assisted
6 Living Service Agreement care plan. That's a lot of
7 paperwork. Let me ask you to look at that just a second.

8 A (reviewing paperwork)

9 Q And some of those page numbers are blurred off at the
10 bottom. I'm not sure they're in the right order.

11 A (long pause, reviewing documents)

12 Q Is that the care plans for Mr. Brigance, along with his
13 application for residency at Brookfield?

14 A It is.

15 Q And now that you've had a chance to look at that, did --
16 Mr. Brigance did fit all the requirements for an assisted
17 living center, correct?

18 A He did.

19 Q He was able to ambulate?

20 A Correct.

21 Q Were there any restrictions on his walking?

22 A Not that I remember.

23 Q All right. And he didn't need walker or a cane, did he?

24 A He didn't use one.

25 Q All right. Did he have any problems getting around the

1 facility during the times -- well, let me rephrase that
2 question. That started to be one of those dumb questions.
3 Did you have a chance to see Mr. Brigance regularly while he
4 was at the facility?

5 A While he was at the facility, yes.

6 Q And he was there from what? June, when it first opened,
7 through January?

8 A 2nd. Yes.

9 Q That's a six-month time frame or so?

10 A Yes.

11 Q And how often would you see Jack Brigance?

12 A Daily.

13 Q And was he able to get around everywhere he wanted to go?

14 A He did.

15 Q In fact, was he very active?

16 A Define active.

17 Q Considering the limitations of people in the facility,
18 was he one of the more active -- up, going around, socializing
19 and visiting with people?

20 A Well, for a month or so they were the only residents.

21 Q All right. And so you saw him in and up and down the
22 halls talking and -- to the staff?

23 A He was social.

24 Q Did he have any -- did he need any assistance in feeding
25 himself?

1 A No.

2 Q Did he need -- do you know what medications he was
3 taking?

4 A At this time I couldn't tell you right off the top of my
5 head.

6 Q Steve's impression was he took a multi-vitamin a day. Do
7 you know --

8 A I would have to see the records.

9 Q All right. As far as a 93 year old -- well, let's put it
10 this way. You have several residents in the facility now that
11 are substantially younger than Mr. Brigance was, right?

12 A Can we talk about --

13 Q Just general age. I'm not asking for any particular
14 healthcare issues.

15 MR. DOSSETT: You're just wanting to know the age
16 range of people?

17 MR. CHRONISTER: Yeah, the age range.

18 MR. DOSSETT: That's fine. There's no privacy
19 concerns there. That's okay.

20 A Okay. Ask the question again, please?

21 Q There are several people at the facility who are much
22 younger than Mr. Brigance?

23 MR. DOSSETT: I object to the form. You say much
24 younger, that's irrelevant.

25 Q Give me, give me a age range.

- 1 A They range anywhere seventies, eighties, nineties.
- 2 Q All right. Was Jack Brigance one of the older people in
3 the --
- 4 A For a few months he was only one of two residents, so.
- 5 Q Just him and his wife?
- 6 A Yes.
- 7 Q As other residents came in -- I guess my question is:
8 With -- was Mr. Brigance's physical abilities equally or
9 exceeding many of the residents in the facility?
- 10 MR. DOSSETT: I object to the form. I think it's
11 vague and ambiguous.
- 12 A Uh-huh.
- 13 Q Well, she sees -- you see him every day. Did Mr.
14 Brigance have any problems getting around, doing the things he
15 wanted to do at the facility, taking care of himself? Was he
16 able to do all of those things?
- 17 A He was.
- 18 Q All right. Was he liked by the staff?
- 19 A I can't answer that question for others.
- 20 Q As far as the staff is concerned, is there any ratio in
21 an assist -- level one assisted living facility of staff to
22 residents?
- 23 A Not so much a ratio, but there is a staff minimum that the
24 State sets per number of residents that you have.
- 25 Q And what is that?

1 A I couldn't tell you that without looking at the
2 regulations.

3 Q So when you were hired, was there any staff?

4 A There was.

5 Q Who was already hired at the time you were hired?

6 A A Marketing Director at the time, Russ Anzalone.

7 Q Who else?

8 A As far as I remember, that was the only one.

9 Q How did you come about applying for -- let me rephrase
10 that. How did you go about getting this job?

11 A Can you be more specific?

12 Q Well, did you hear that there was a new facility opening
13 and go apply for it? Did someone seek you out about the
14 possibility of taking this job? How did you find out about
15 The Brookfield and go to be hired?

16 A There was an ad in the paper and I replied to the ad.

17 Q Once you were hired, did you go about hiring the staff?

18 A I did.

19 Q When you -- so one of your job duties, then, is to hire
20 and fire?

21 A Correct.

22 Q Do you have any responsibility as far as approving the
23 hiring or firing of any staff with anybody else within the
24 company hierarchy?

25 A Can you be more specific?

1 Q Well, if you want to hire a person, do you have to clear
2 that with Mr. Brooks or anyone else up the chain of command?

3 A That's a difficult question to answer. I don't know that
4 I have to have permission. I would usually bounce things off
5 of him, communicate with him.

6 Q And when you fire someone, do you communicate with him?

7 A It depends on the circumstances.

8 Q Is there any requirement within the company that you
9 communicate with him?

10 A Not that I know of.

11 Q How is this company set up? Is The Brookfield a -- to
12 your knowledge is it a partnership, corporation, LLC? Do you
13 have any knowledge of that?

14 A I can't answer that. I mean, I don't know the exact
15 answer to that.

16 Q Do you report to anyone other than Mr. Brooks?

17 A No.

18 Q Is there anyone above you in the chain of command that
19 you are aware of other than Mr. Brooks?

20 A Not that I'm aware of.

21 Q Are you aware of any other facilities that Mr. Brooks or
22 The Brookfield have an interest in?

23 MR. DOSSETT: I object to the form. I think it's
24 vague as to what you mean by The Brookfield. Do you mean The
25 Brookfield at Fianna Oaks?

1 Q Let me just rephrase it this way. Are you -- do you work
2 for, directly or indirectly either as a administrator,
3 advisor, consultant, for any other facility owned by Mr.
4 Brooks or in which Mr. Brooks may have an interest in?

5 A I don't know how to answer that.

6 MR. DOSSETT: If you don't know how to -- if you
7 don't know the answer to his question --

8 Q Well, if you --

9 A I don't understand the --

10 MR. DOSSETT: Just a minute, please, Rex. If you
11 don't understand his question, just let him know that. If you
12 don't know the answer to the question, just let him know that.
13 Thank you.

14 A Maybe you can rephrase that so I can understand.

15 Q I'll be glad to. You are the administrator at The
16 Brookfield. Right?

17 A Yes, at Fianna Oaks.

18 Q At Fianna Oaks. Do you -- and you draw a paycheck for
19 being the administrator at --

20 A Fianna Oaks.

21 Q -- Brookfield at Fianna Oaks?

22 A Yes.

23 Q Do you work as a consultant, an advisor, a trainer -- do
24 you have any other capacity that you go to any other facility
25 owned by Mr. Brooks?

1 A I have in the past gone to another facility.

2 Q All right. And what facility is that?

3 A Highland Crossing.

4 Q And where is it located?

5 A Bella Vista.

6 Q And why would you go there?

7 A I worked as the administrator on a temporary basis up
8 there.

9 Q You do or did?

10 A Did.

11 Q And when did you work as the administrator there?

12 A From June to August.

13 Q From June of 0?

14 A This last year.

15 Q June of '09 to August of '09?

16 A Yes.

17 Q What happened to the administrator that was there?

18 A I don't know. I just went in and filled in. I don't know
19 the specifics.

20 Q Do you still have any duties in that facility?

21 A Not specific duties.

22 Q Any unspecific duties? Anything you do for them at all?

23 A Can you be more specific?

24 Q I don't know, but I'll try. Do you still go to the
25 facility at Bella Vista? Have you been there since August of

1 this year?

2 A I was there once this week.

3 Q All right. Prior to once in December, any time between
4 August and December?

5 A I can't answer that specifically. Maybe once or twice. I
6 don't really remember.

7 Q Why did you go there this last week?

8 A To help with some billing.

9 Q Do you have any responsibilities relevant to patient
10 care, hiring, firing, or the administration of that facility
11 at this point in time?

12 MR. DOSSETT: Object to the form.

13 A Can you ask that again, please?

14 Q All right. We've talked about your job duties at the
15 facility here in Fort Smith. What am I asking you is, do you
16 have, as of today, do you have any overlapping duties, any
17 work you perform either as a consultant, troubleshooter or
18 whatever term you want to use, that have you going to Bella
19 Vista and helping with that facility and drawing any money for
20 it?

21 A I don't draw a paycheck from Highland Crossing.

22 Q All right. But then do you still go up there and help
23 out?

24 A I've been up there once this week.

25 Q All right. And that was to work on a pay-related issue?

1 A Correct.

2 Q Or a billing issue?

3 A Correct.

4 Q Are you aware of any other facilities that Mr. Brooks may
5 have an interest in other than in Fort Smith and Bella Vista?

6 A Yes.

7 Q And where would those facilities be?

8 A Kansas. Kansas.

9 Q And how many are you aware of there being in Kansas?

10 A Two.

11 Q And where are they located?

12 A Merriam and Council Grove.

13 Q Merriam? Is that --

14 A I believe so.

15 Q And Council Grove?

16 A Yes.

17 Q All right. Have you ever been to any of those
18 facilities?

19 A No.

20 Q Are you aware of any other facilities besides the two in
21 Kansas you've talked about, the one in Bella Vista, and the
22 one in Fort Smith?

23 A Not that are licensed right now.

24 Q All right. Are there any in the process of construction
25 or applications for licenses have been made?

- 1 A Yes.
- 2 Q And where is those?
- 3 A Hot Springs.
- 4 Q Do you know the current status of construction of the Hot
5 Springs facility?
- 6 A I do not.
- 7 Q And you've never been to the two in Kansas?
- 8 A I have not.
- 9 Q The one in Bella Vista? You've been to that facility?
- 10 A I have.
- 11 Q You've actually been inside that facility?
- 12 A I have.
- 13 Q The doors, the interior doors, in that facility -- have
14 you been in any of the patients' rooms in that facility? In
15 Bella Vista?
- 16 A In Bella Vista?
- 17 Q Yes.
- 18 A I have.
- 19 Q Are the doors inside the patients' room of the same type
20 that are at the facility in Fort Smith?
- 21 MR. DOSSETT: I object to the form as far as what it
22 means by type. Go ahead and answer if you can.
- 23 A I, I don't recall what the doors are like up there.
- 24 Q You don't know whether they're hollow core or solid core
25 doors?

1 A I have no idea.

2 Q Or how the hardware is on any of those doors?

3 A I don't.

4 Q And have you been to the facility under construction in
5 Hot Springs?

6 A I have not.

7 Q How many residents --

8 A Excuse me, can I back that up?

9 Q Sure.

10 A You said, you asked if I had been to the construction. I
11 have been to the site before the construction started --

12 Q All right.

13 A -- in Hot Springs, but I have not been there since they
14 broke ground.

15 Q All right. How many residents are currently at the
16 facility in Fort Smith?

17 A 37.

18 Q And has that been a stable number or has it bounced up
19 and down?

20 A It's fluctuated.

21 Q What has been the -- other than -- obviously when you
22 first opened you started with zero. But has the number kind
23 of steadily increased or gone up and dropped down and?

24 A I can't answer that accurately without looking at our
25 forms.

1 Q So there's 37 residents there now?

2 A Yes.

3 Q What is the maximum capacity of the facility?

4 A We're licensed for 50.

5 Q How many staff do you have now?

6 A I can't give you an accurate number without looking at our
7 staffing.

8 Q Okay. When someone is hired, what type of educational
9 background or licenses, certificates, training -- what are the
10 qualifications to work at the facility?

11 A For what position?

12 Q Caregiver. The staff, the people who interact on a daily
13 basis with the residents.

14 A Okay.

15 MR. DOSSETT: I object to the form with regards to
16 the specificity of the position you're asking about.

17 Q You can answer it.

18 A Can you answer the question again, please?

19 Q All right. When you hire someone to work at the
20 facility --

21 A Uh-huh?

22 Q -- you're the one who does the hiring. Right?

23 A Myself or another employee.

24 Q And who is the other employee that can hire?

25 A I wouldn't say they hire them, but they might do an

1 interview.

2 Q And then the ultimate decision of hiring is left to you?

3 A Yes.

4 Q What criteria or requirements do you have for someone to
5 work there? Tell me what -- do they have to be a high school
6 graduate? Do they have to have a CNA? Do they have to be an
7 LPN?

8 MR. DOSSETT: Same objection.

9 Q For basic level of care for someone you have in the
10 facility? Cheryl Williams. Cheryl gave us her deposition the
11 last time. For someone who's going to be in Cheryl's
12 position, what are the requirements for that person to work in
13 the facility?

14 A The State doesn't require, have any requirements. I mean,
15 they don't have to be certified. They don't have to -- in
16 order by the State's guidelines for us to hire them, they have
17 to have two verifiable references and they have to have a
18 current TB skin test.

19 Q So other than two references and a TB test, that's it?

20 A Correct.

21 Q Okay.

22 A And they can't have a criminal background.

23 Q So they can't --

24 A And they have to pass a -- we have to run two checks on
25 them, a maltreatment check and a background check. And those

1 have to be cleared in order for them to work through us in that
2 capacity.

3 Q We're going to take a break. We've got less than three
4 minutes on this tape.

5 VIDEOGRAPHER: The time is now 10:26 a.m. and we're
6 back on the record.

7 OFF THE RECORD

8 DIRECT EXAMINATION CONTINUES

9 BY MR. CHRONISTER:

10 Q Ms. Bailey, let me follow up on a couple of questions
11 that I had asked earlier before the break. As far as your
12 administrator's license is concerned, you said you took a
13 class online?

14 A Uh-huh.

15 Q Is that yes?

16 A I did.

17 Q And how long is that class?

18 A It's -- you do it on your own, you -- because there's
19 certain sections that you do and you do it at your own pace.

20 Q All right. And after you complete that online class, do
21 you actually have to sit and take a formal test to get your
22 license?

23 A I don't remember if I took a test or if I had to write
24 something out. I don't remember that.

25 Q All right. When you first did whatever you had to do,

1 did you pass it?

2 A Yes.

3 Q So you did the correspondence or the -- not the
4 correspondence, I'm sorry. The internet study?

5 A Study, uh-huh.

6 Q And then you took whatever test or class --

7 A Or to write a, write something. I can't remember what it
8 all consisted of.

9 Q And you got your license on the first try?

10 A Yes.

11 Q And then at some point in time later, you went back and
12 did a class anyway?

13 A Uh-huh, I did.

14 Q And we may have heard things different over here. Other
15 than the Ready-Mix job which you were terminated because of
16 being downsized, you have never been fired, terminated or left
17 employment other than by your own choosing. Is that right?

18 A That is correct.

19 Q All right. And as a level one facility, The Brookfield
20 is not a lockdown facility. Is that right?

21 MR. DOSSETT: Object to the form as to the meaning of
22 lockdown facility.

23 Q All right. When people come to The Brookfield, when
24 family come to visit residents, there are several doors you
25 can go in and out of. Are all those doors open?

1 A No, not at all times.

2 Q Excuse me?

3 A Not at all times.

4 Q Are they open during -- well, at what time are all of
5 them open?

6 A They're not always all open. It's secured.

7 Q And do you have to sign in when you come in or out?

8 A Yes.

9 Q Have you ever had a resident elope on you? Walk off?

10 A Yes.

11 Q When was that?

12 A I don't know the date.

13 Q Ballpark?

14 A (pause) It's been in the last year.

15 Q Did the State investigate that?

16 A No.

17 Q Is that something -- do you ever have to make a report to
18 the State of any incidents that occur at the facility?

19 A We -- what incidents?

20 Q Well, anything other than normal caregiving -- if you
21 have an accident, someone falls. If someone walks off and --

22 A If you suspect abuse, neglect, or misappropriation of
23 properties, you do have to report that to the State.

24 Q Other than that, like a resident walking off, that's just
25 something you note in your own files?

1 A We would write an incident report on that, yes, and
2 notify the family.

3 Q All right. But there's no requirement to notify the
4 State?

5 A No.

6 Q When you talk about how -- we talked about how the
7 residents have to reach certain requirements to be there, that
8 if they drop below a certain level, then they don't fit into a
9 level one. Remember that part of our discussion?

10 A I do.

11 Q Do you have any patients there now who would not qualify
12 to meet the level one assisted living facility criteria?

13 MR. DOSSETT: Hold on just a second. I'm going to
14 object to this line of questioning on the question -- on the
15 grounds of how it can possibly be relevant to Jack Brigance.
16 Maybe you can enlighten me on that?

17 MR. CHRONISTER: It, basically, in my opinion, it
18 goes to the credibility of the facility when we get into some
19 of the issues relevant to his care and the accident and the
20 reporting of his accident. And this is my last question on
21 that.

22 Q I'm just trying to find out do they marshal their
23 patients? Do they watch over their care?

24 MR. DOSSETT: I'm going to object to the form. If
25 you want to repeat it, I'll make my objection.

1 Q Do you currently have any residents that in your opinion
2 as an administrator do not meet the necessary criteria for a
3 level one assisted living facility?

4 MR. DOSSETT: Okay. I do object to that as being
5 completely irrelevant with regards to the care of Jack Brigance
6 and not reasonably calculated to lead to the discovery of
7 admissible evidence. If want to ask about the time frame
8 relevant to Mr. Brigance, I might rephrase my objection.

9 MR. CHRONISTER: I think I have a right to ask it.

10 Q During the time that Jack Brigance was at the facility,
11 let's go from June of '08 to January of '09, were there any
12 residents in the facility who in your opinion did not meet the
13 criteria for a level one assisted living facility?

14 MR. DOSSETT: Same objection. Answer if you can.

15 A If we were not able to -- during that time, if we're not
16 able to provide the level of care that they need, then we would
17 ask them -- we would discuss it with the family.

18 Q But the level of care they need -- if the level of care
19 they need is inconsistent with the State requirements for a
20 level one assisted living facility, would that person still be
21 there? Did you have any residents there, during the time Jack
22 Brigance was there, that whether you provided them appropriate
23 care or not did not meet the requirements of a level one
24 assisted living facility?

25 MR. DOSSETT: Object to the form as compound. Answer

1 if you can.

2 A Yes, I would say.

3 Q All right. Do you know how many such patients you would
4 have had in the facility that did not meet the requirements --
5 or residents in the facility that did not meet the
6 requirements of a level one assisted living facility?

7 A Right now, I can think of one.

8 Q All right. And I'm not going to ask you that name
9 because of obvious HIPAA issues.

10 A Yeah. Uh-huh.

11 Q During the course of time that residents are at the
12 facility, how often are their care plans evaluated to be
13 certain that they're getting not only the care they need, but
14 that they fit within the requirements of an assisted -- level
15 one assisted living facility?

16 A We -- we would update their care plans yearly unless they
17 were admitted to the hospital, and then we would look at their
18 care plan after they would come into the hospital.

19 Q During the time that Mr. Brigance was in the facility,
20 was his care plan ever re-evaluated?

21 A No.

22 Q And was that because there was no need to reevaluate his
23 care plan?

24 A Correct.

25 Q How about Ms. Brigance? Did anything in her care plan

1 change?

2 MR. DOSSETT: I object to the form of the question.

3 What does Mrs. Brigance have to do with the case?

4 MR. CHRONISTER: It's relevant in my opinion because
5 of her -- the effects of his death on her. If her level went
6 down, if she became more depressed, then it would go toward her
7 issue of damages.

8 MR. DOSSETT: So is your question whether or not her
9 care plan was updated as a result of Mr. Brigance's death?

10 MR. CHRONISTER: Well, I guess my first question is,
11 was it ever updated? And then was it updated -- if so, why?
12 Was it because of Mr. Brigance's death?

13 MR. DOSSETT: I'll object to the form. Answer if you
14 can.

15 Q Well, was Ms. Brigance's care plan ever re-evaluated or
16 modified after, after Mr. Brigance's death?

17 A Yes.

18 Q And in what way?

19 A You know, just right off the top without looking at it, I
20 know that we've done a compliance agreement, we've done some
21 service agreement changes.

22 Q All right. Define compliance agreement.

23 A Compliance agreement is something that the resident or the
24 family would insist on doing that in our opinion is not safe or
25 we feel that they need -- something that we would suggest that

1 something needs to be done differently, that the family
2 disagrees. And so we agree on paper how we're going to handle
3 that situation.

4 Q And what was the change relevant to the compliance
5 agreement on Ms. Brigance?

6 A She did not want to use a walker.

7 Q Well, and was, was there a written compliance agreement
8 done on that?

9 A I believe there was.

10 Q Were there any issues relevant to her status?

11 A There was. There was a change in service agreement care
12 plan.

13 Q And what was that change?

14 A That the sitters -- that the companions were in there and
15 they wanted them, if they were there, to give them -- give her
16 her showers.

17 Q All right. And normally it's the facility that provides
18 for the showers, the facility staff?

19 A Yes.

20 Q All right. You said there, there was some other change,
21 and I forget your exact terminology now. Were there any other
22 changes in Ms. Brigance's care plan following Mr. Brigance's
23 accident and death?

24 A There may have been, but I can't -- without looking at her
25 record, I can't really.

1 Q Okay. Let's go back now to where we were before we took
2 the break. On the hiring and firing of staff, we were into
3 the criteria of people you hire. When someone is hired, take
4 me through the -- do you provide them any on-the-job training?
5 Do they have to take any tests? Do they have to do anything,
6 from your point of view, to evaluate them before they start
7 working?

8 A Before we can even offer them any type of employment,
9 first we do an interview. Before we can offer them employment,
10 we would have to do those two forms of background checks.
11 Arkansas State Police would have to do the -- I think before I
12 said maltreatment, but that is incorrect. It's an employment
13 clearance record that we do, and a criminal records check, and
14 then we would do a maltreatment check. And we can do that
15 after they're hired. And check their references. We would, we
16 provide one-on-one training.

17 Q Okay. When you talk about one-on-one training, you'll
18 probably have to give me a little more detail.

19 A We would put them with our lead aide and have them shadow
20 and train with either the lead aide or if they were going to
21 work on -- we've done it different ways. We would -- we would
22 put them either with somebody on the shift that they're going
23 to work and let them train with them and, or else we would put
24 them on first shift and let them train on first shift and then
25 go to the shift that they were going to work on.

1 Q As you were training them on the shift they were on, like
2 second shift, third shift --

3 A Uh-huh.

4 Q -- you would put them with?

5 A The person that's been there the longest, usually.

6 Q And that would be the person you would tend to trust the
7 most to train?

8 A Yes.

9 Q All right. You obviously wouldn't put them with an idiot
10 or somebody you were having trouble with, right?

11 MR. DOSSETT: Object to the form of the question.

12 Q Well, I'll rephrase that. You wouldn't have them being
13 trained with someone who you did not feel was competent to do
14 the job in the first place. Right?

15 A That's correct.

16 Q All right. And you wouldn't put them with someone you
17 were having a lot of trouble with, right?

18 MR. DOSSETT: Object to the form of the question.

19 Q If you're going to have them trained, you're going to put
20 them with someone who knows what they're doing and is
21 competent to do it. Is that a fair statement?

22 A It, I would put them with somebody who knows the job
23 duties.

24 Q All right. During the time you have been with The
25 Brookfield, do you recall how many people you have fired?

1 A I would say at least four or five, maybe more.

2 Q All right. And how many people have you hired?

3 A Over 20.

4 Q That's because the number of residents that has, has
5 increased the requirements of regular staffing. Is that
6 right?

7 A We got staff.

8 Q How many of the original staff was still, is still there
9 at this time?

10 A Three? Four? Four.

11 Q All right. And who are they?

12 A Myself, Chuck Gasky, Michelle --

13 Q The cook? Is Chuck the cook?

14 A Correct.

15 Q All right.

16 A Michelle Ensey and Angela Ruckman.

17 Q And what is Angela's job duties at this time?

18 A She's a caregiver on third shift.

19 Q And Michelle?

20 A Michelle Ensey has worked in our care -- in a care
21 position and has, excuse me, gone over into our activities.

22 Q Is she the one who you said was a director, and I know
23 that's -- maybe I'm using the wrong term, but...

24 A Lead aide.

25 Q Lead aide? Does The Brookfield maintain an Employee

1 Handbook?

2 A We do.

3 Q And do the employees that are hired, do they have to go
4 through that Employee Handbook and sign a receipt
5 acknowledging that Employee Handbook?

6 A Yes.

7 Q And tell me how the Employee Handbook is set up on
8 discipline of employees?

9 A I'm sorry. Can you ask that again?

10 Q How is the Employee Handbook set up as far as verbal
11 warnings, written warnings, et cetera? How does that break
12 down?

13 A In what area?

14 Q Well, in any area. If you're going to discipline an
15 employee, there are -- are there certain violations that,
16 according to the Employee Handbook, result in immediate
17 termination?

18 MR. DOSSETT: I'm going to object to the form. I
19 believe the handbook will speak for itself. Answer if you can.

20 MR. CHRONISTER: Do you have a copy? We've not been
21 given a copy of the handbook.

22 MR. DOSSETT: Okay.

23 Q We were given -- at least in Amanda's personnel file, we
24 were given a receipt showing that she had reviewed the
25 Employee Handbook, but there's no Employee Handbook in her

1 personnel file. So --

2 A No, because that's given to them.

3 Q All right. Tell me what the Employee Handbook says about
4 how you agree to treat employees relevant to their discipline
5 that's set out in your Employee Handbook.

6 MR. DOSSETT: Same objection. Answer if you can.

7 A I would need to see it to tell you specifically.

8 Q Have you read the Employee Handbook?

9 A Absolutely.

10 Q So from your reading -- and you do your hiring -- you do
11 your firing and discipline based on your Employee Handbook,
12 right? I'll rephrase that. Do you follow the Employee
13 Handbook when you discipline your employees?

14 A You know, I'll have to say no.

15 Q All right. So you don't follow it. And you don't follow
16 it because you are too liberal or too conservative or? Tell
17 me what you mean by you don't follow it.

18 A I have allowed people to get by with much more than what
19 the handbook says.

20 Q All right. So have you ever dealt with an employee who
21 physically threatened you?

22 A Yes.

23 Q And who was that?

24 A Can you define physically threaten?

25 Q Well, you answered yes based on my statement physically

1 threatened, so you must have felt --

2 A And initially, whenever you say that, I think of a staff
3 member that has, you know, swung at me.

4 Q Okay. Has anyone swung at you?

5 A Yes.

6 Q Who was that?

7 A I can see her and I can't remember her name, and it's just
8 been within the last four months.

9 Q All right. Anybody else push you, shove you, had any
10 physical-type contact with you while you've been the
11 administrator at Brookfield?

12 MR. DOSSETT: Object to the question -- form of the
13 question as compound. Answer if you can.

14 Q I'll break it down. Has anybody pushed you?

15 A I've been swung at, like in a backhand way.

16 Q Is that the one person --

17 A Yes.

18 Q -- you just told me about?

19 A Yes.

20 Q Would that be a Michelle Simmons? Seamon?

21 A I believe so.

22 Q Is that, is that the person who you just said tried to
23 take a backhand at you?

24 A Yes.

25 Q Were they terminated on the spot?

- 1 A Actually, she quit.
- 2 Q So you did -- you did not terminate over that?
- 3 A No, because she stated that she quit.
- 4 Q Okay. But she quit right then and there when that
5 happened?
- 6 A Uh-huh.
- 7 MR. DOSSETT: You need to answer yes or no.
- 8 A She did; yes.
- 9 Q Any other -- well, this particular person who took the
10 swing at you and then immediately quit, did you advise them
11 if they came back to the facility the police would be called?
- 12 A I believe I did.
- 13 Q Did you advise the staff that if they came back to the
14 facility, the police would be called?
- 15 A Absolutely.
- 16 Q And did you note that in their personnel file?
- 17 A I don't know if I did or not.
- 18 Q Have you had other employees who were verbally aggressive
19 or abusive to you?
- 20 A Yes.
- 21 Q And give me some examples of what you define to be
22 verbally aggressive or abusive.
- 23 A Whenever they become loud and disruptive.
- 24 Q All right. Does that result in immediate termination?
- 25 A It hasn't.

1 Q It hasn't?

2 A No.

3 Q Have you ever terminated anyone for being verbally
4 abusive or aggressive?

5 MR. DOSSETT: I object to the form. That's different
6 than your previous question. Are you saying immediate or just
7 to terminate them at any point, because the first time you
8 asked it, you asked about immediate termination.

9 Q All right. Were they, were any of those people who were
10 verbally aggressive or abusive to you subsequently terminated?

11 A I'm sorry. I'm going to have to ask you to ask that
12 again.

13 Q All right. You told me that you've had employees who
14 have been verbally abusive or aggressive to you, and you
15 defined that as being someone who got loud or disruptive. Did
16 I say that right?

17 A Yes.

18 Q All right. And do you recall how many people may have
19 had some type of verbal outburst like that? About how many?

20 A I'd say one.

21 Q One. And who was that?

22 A Mandy, and then of course Michelle, so two.

23 Q And as far as Mandy is concerned, give me the details of
24 her verbal outburst.

25 A What I recall is it was around lunch time, her and her

1 mother came in and we had some employment issues, and they
2 became loud and I had to pull them -- they were standing right
3 out front where -- where our cafeteria is, the -- right where
4 the residents eat. My office is kind of in there and they were
5 standing out by the front and I had to pull them into my office
6 because they were so loud and disruptive and, you know,
7 everybody was looking.

8 Q And what were the problems that led to that outburst?

9 A I believe it was for attendance.

10 Q And did you put a notation in her personnel file as to
11 those attendance problems?

12 A I mean, I can't remember what is in her file. I don't
13 remember exactly what I put in there.

14 Q Do you recall when that event occurred?

15 A I don't know the exact date; no.

16 Q Was it before or after Mr. Brigance's injury?

17 A Before.

18 Q All right. So it would have been before January of '09?

19 A Yes.

20 Q And she and her mother were there together and she got
21 loud over her attendance?

22 A Yes.

23 Q Did she ever physically threaten you?

24 A Physically threaten?

25 Q Uh-huh.

1 A Like?

2 Q Just tell you she was going to hit you, whoop you, kick
3 you, stomp you, beat you, whatever.

4 A I don't remember her saying that.

5 Q So she was just upset over some issues with her
6 attendance?

7 A Uh-huh.

8 Q And got her voice loud?

9 A Yes.

10 Q And then she came right back to work and kept working?

11 A She did.

12 Q All right. Now you terminated her in February?

13 A I don't remember the exact dates.

14 Q Well, I've gone through her personnel file. Let's kind
15 of -- you do keep a personnel file on employees, right?

16 A I do.

17 Q And do you understand the importance of keeping a
18 personnel file? Do you?

19 A I do.

20 Q What is the importance of keeping a personnel file?

21 A For tracking for employment.

22 Q All right. And if someone's a problem, then you document
23 it in the personnel file. Right?

24 MR. DOSSETT: I object to the form.

25 Q All right. Do you document it in the personnel file?

1 MR. DOSSETT: Object to the form.

2 Q You can answer it. He lives to tell me he objects to the
3 form.

4 MR. DOSSETT: Especially when I think the question is
5 vague and ambiguous.

6 Q Do you document employee conduct in the personnel file?

7 A Not in the personnel file.

8 Q Where do you document employee conduct if not in a
9 personnel file?

10 A In the attendance file.

11 Q All right. So if you had an employee who is threatening
12 you, do you put that in the attendance file?

13 A It would depend. I mean it...

14 Q When Amanda was terminated, was that after Mr. Brigance's
15 injury?

16 A Yes.

17 Q And was it after or during the time of a State
18 investigation?

19 A Was she terminated during a State investigation?

20 Q Yes.

21 A Not to my knowledge.

22 Q I'm going to give you what is represented to be Amanda's
23 personnel file. Well, let me ask this. When Amanda was
24 terminated, was she told that if she came back to the facility
25 the police would be called?

- 1 A Yes, she was.
- 2 Q How many terminated employees have you told if they came
3 back to the facility the police would be called?
- 4 A To my knowledge, two.
- 5 Q Two? And one of them was the girl who took a swing at
6 you?
- 7 A Correct.
- 8 Q And the other was Amanda?
- 9 A Correct.
- 10 Q Now, among the documents that people sign when they come
11 to the facility -- I think isn't there a patient's rights
12 form, or a resident's rights form?
- 13 A Resident's rights. Uh-huh.
- 14 Q And does one of those rights include the right for the
15 resident to have any guest of their choosing to see them?
- 16 MR. DOSSETT: I object to the form of the question.
17 It's incomplete and misstates the resident's bill Of Rights.
- 18 MR. CHRONISTER: Let me see that. Maybe it --
- 19 MR. MORRIS: I don't think that's an exhibit yet
20 either. I don't know if you meant for it to be.
- 21 MR. CHRONISTER: Okay. Yeah, let's go ahead and make
22 this an exhibit, if we can. Give me just a minute.
- 23 Court Reporter: Yes, sir. That would be 1.
- 24 MR. CHRONISTER: Yes.
- 25 Q Isn't there a specific form that is signed off on listing

1 the various rights that a resident has?

2 A Yes.

3 Q And is one of those rights the right to have guests in
4 the facility?

5 MR. DOSSETT: Object to the form, same objection.

6 MR. CHRONISTER: You can answer that.

7 A I'd have to see it.

8 Q Well, we may have to take a break for me to find it,
9 because I thought I had it organized here. Let's go off the
10 record a minute and I'll find it.

11 VIDEOGRAPHER: The time is now 10:55 a.m. and we're
12 off the record.

13 VIDEOGRAPHER: The time is now 10:56 a.m. and we're
14 back on the record.

15 Q I want you to look at item J on page eight. This is a
16 list, I believe, of the resident's rights. Is that correct?

17 A Uh-huh.

18 COURT REPORTER: Is that a yes?

19 A That is a yes.

20 COURT REPORTER: Thank you.

21 A Okay, your question again?

22 Q Is -- well, just read item J.

23 A Item J states, "May communicate, associate, and meet
24 privately with persons of his/her choice unless to do so would
25 infringe upon the rights of other residents. May send and

1 receive his/her personal mail unopened and has the right to
2 access a telephone for outgoing and incoming calls."

3 Q Okay. Would you -- I think you didn't answer my question
4 on this. Would you say this sets forth the rights that a
5 resident of The Brookfield would have? Mr. and Ms. Brigance
6 would have the right to have and associate or meet privately
7 with persons of their choosing, so long as it did not infringe
8 on the rights of other residents?

9 A That's correct.

10 Q All right. And give me your definition of what would
11 constitute infringing on the rights of other residents.

12 MR. DOSSETT: Object to the form. Answer if you can.

13 A Rights of other residents, you know, would be to provide a
14 safe place to live, to -- that they are treated with
15 consideration, respect and full recognition.

16 Q So a safe place to live and treated with respect?

17 MR. DOSSETT: Are you asking her if that's a complete
18 list of --

19 Q No. I'm just repeating --

20 MR. DOSSETT: -- the Patient's Bill of Rights?

21 Q -- what she said to me. And it's not the Patient's Bill
22 of Rights. I'm just asking her to define as the administrator
23 what infringing on the rights of other residents, to her,
24 means?

25 MR. DOSSETT: And same objection. And --

1 A Because you're asking my opinion?

2 Q I'm asking your opinion as the administrator, what
3 conduct of someone coming to see a resident at the facility
4 would infringe upon the rights of other residents?

5 A In my opinion, if it's going to provide -- if it's going
6 to make them uncomfortable or not provide them a safe
7 environment to live in.

8 Q All right. So if it made them uncomfortable or didn't
9 provide them a safe place to live in, that would infringe on
10 the other residents' rights?

11 A And I'm not saying that's what it's limited to.

12 Q Okay. But that's the main ones, these, all the others, I
13 don't want to cut you off. So tell me any more that would be
14 very important to you to define infringing upon the rights of
15 other residents.

16 A I think I'm just going to leave it with that.

17 Q Okay. So if you made other residents uncomfortable, you
18 didn't treat other residents with respect or if you may put
19 other residents in a unsafe position?

20 A Unsafe or uncomfortable position; correct.

21 Q All right. And when you terminated Amanda, you told her
22 if she came back the police would be called. Right?

23 A Correct.

24 Q Because -- why would you say if she came back the police
25 would be called? Is that your standard of any terminated

1 employee, if they come back the police would be called, or
2 not?

3 A If they're going to make a threat and if they're going to
4 act in unruly or disruptive manner.

5 Q A threat or unruly or disruptive manner? Right?

6 A Yes.

7 Q Okay. Now where Amanda is concerned, the one incident
8 where you say she got loud --

9 A Uh-huh.

10 Q -- occurred discussing her attendance, before Jack
11 Brigance got hurt. Right?

12 A Correct.

13 Q And he got hurt in January?

14 A Yes.

15 Q So it was sometime before January?

16 A Yes.

17 Q Could it have been in October?

18 A The exact date would be on an agreement that I, that I
19 wrote with her that she had signed when she came in.

20 Q All right.

21 A That way you'd know the exact date.

22 Q That would appear to be, looking at her personnel -- I
23 want to say October the 25th, but let's look at it and see.
24 October the 24th.

25 A Can I see that, please?

1 Q Sure. In fact, I want you to look at -- I took the
2 liberty of breaking this personnel file. I want to hand
3 you -- we can go off the record and take a little time for you
4 to do this. But I took the liberty of breaking this personnel
5 file that you-all had given us down into the three parts, just
6 to make it easier to view. But you can review it any way you
7 want to.

8 A Okay.

9 Q I'll explain to you what I did. The first piece right
10 here, the thicker piece, appears to be just facility's
11 standard paperwork. The tests that she took, the -- dealing
12 with exploitation of patients, policy summaries, HIV testing,
13 fingerprint card, and pay records. Okay?

14 A Okay.

15 Q The second one is just a few pages -- are just some
16 things that she signed relevant to job description, filling
17 out incident reports, staff performance appraisals, personal
18 appearance, conduct and Acknowledgement of the Employee
19 Handbook. And the last one is every piece of paper that
20 doesn't fit into those two categories. It includes notes she
21 put in here, doctor's notes, and reports that you prepared.
22 Why don't you take a minute? We can go off the record and
23 just review -- and I'm going to represent to you this is
24 everything that was given to me in this folder representing
25 her entire personnel file. Okay?

1 A Okay.

2 MR. DOSSETT: It is in, for the record, is it in
3 different order than you received it?

4 MR. CHRONISTER: I put it in chronological order.

5 MR. DOSSETT: Okay.

6 MR. CHRONISTER: That's the only thing I did. It was
7 not in chronological order. Mark, it looks like a lot of this
8 was just laying loose in there. I put it in chronological.

9 MR. DOSSETT: And you kept -- put it in different
10 categories that might have been listed in, in the file.

11 MR. CHRONISTER: Yes. Yes.

12 MR. DOSSETT: Thank you.

13 MR. CHRONISTER: Because it was -- you had a
14 September 1, followed by January 1, followed by an October 1.
15 I just put it in a chronological order.

16 MR. DOSSETT: Okay. We can go off the record.

17 VIDEOGRAPHER: The time is now 11:04 a.m. and we are
18 off the record.

19 VIDEOGRAPHER: The time is now 11:18 a.m. and we are
20 back on the record.

21 DIRECT EXAMINATION CONTINUES

22 BY MR. CHRONISTER:

23 Q Ms. Bailey, have you had a chance to review the documents
24 in the personnel file to your satisfaction?

25 A I'm so sorry?

1 Q Have you had a chance to review the documents in the
2 personnel file to your satisfaction??

3 A Yes.

4 Q First of all, I want to make sure I did not miss anything
5 when I -- I told you before we took a break that I broke that
6 down into three categories. One of them being kind of just
7 some standard paperwork. The next group being just some
8 different things that Amanda was required to sign as far as
9 acknowledging different items within the standard work
10 parameters. And then the last one being every other piece of
11 paper in there, ones you may have generated, ones she
12 generated, and whatever. The first thing I want to ask you is
13 did you find anything in any of the other paperwork that I had
14 missed that you would like to rearrange that in any way so we
15 can talk about it?

16 A No. I'm going to leave it like this and I'll get through
17 it.

18 Q Okay. So the main thing I want to talk to you about is
19 the part of the file that I interpret to be just the, for lack
20 of a better term, the guts of her personnel file. The
21 interactions that you on behalf of the facility had. And
22 that's the ones I think you're flipping through. Do you need
23 a little more time to look at that?

24 A I'm good.

25 Q All right. If I could have those, I think, we could go

1 over them a page at a time if you'd like. Okay?

2 A I'd like to see them as you go over them.

3 Q That's what I'm going to do.

4 A All right.

5 Q Okay. So can I have that other small packet back?

6 A Uh-huh.

7 Q If you need to refer to anything in this package, you let
8 me know.

9 A All right.

10 Q It looks to me like Amanda was hired on June the 20th of
11 '08. And I'm looking there at the job description for
12 Personnel Care Attendant. And it's signed by you and her.

13 A That's correct.

14 Q I'm going to show this to you.

15 A Yes.

16 MR. MORRIS: Rex, are those Bates-labeled at the
17 bottom or anything?

18 MR. CHRONISTER: I don't believe.

19 MR. MORRIS: Okay.

20 MR. CHRONISTER: Wait a minute. I don't think so.
21 There's some numbering. Mark, there's some numbers at the
22 bottom there, but I don't think they have anything to do with
23 Bates-labeling. There is a ABPF.

24 MR. DOSSETT: They look like Bates-labels to me, but
25 I don't know.

1 MR. CHRONISTER: Well, they weren't in any particular
2 order when I got them is the only reason I'm asking.

3 MR. DOSSETT: You know, I can't speak for them. I'm
4 just saying what they look like to me, so.

5 MR. CHRONISTER: All right.

6 MR. DOSSETT: It might help to identify a page at a
7 time though.

8 Q Let's -- would that reflect -- may I see that one back a
9 minute?

10 A Yes.

11 Q We'll make all these exhibits to your deposition. This
12 one at the bottom right-hand corner is ABPF110, and it just
13 basically shows job description for Personal Care Attendant.
14 It purports to be signed by you and Mitzi Bailey on June 20th
15 of '08. I mean, you and Amanda Broughton June 20th of '08.
16 Is that right?

17 A That's correct.

18 Q And that would be the day she was hired?

19 A Yes.

20 Q Now, after that -- I'm going to go now just to the
21 documents dealing with her. On -- the first one, and it's
22 dated -- again, all these are ABPF. This one is 057, and it
23 appears to be dated 09/25/08. And it's a handwritten note
24 from Mandy. And Mandy would be Amanda. Is that correct?

25 A That is correct.

1 Q Would you read that one to us?

2 A "Mitzi, in the future can you change the schedule somehow
3 so I can work the three to elevens first and the eleven to
4 sevens last because I ain't getting much sleep. I'm taking
5 care of my little brother and sister again. If you can't, then
6 that's okay. I was just checking. Mandy."

7 Q And the next thing in the personnel file -- the date on
8 that one is what date?

9 A 09/25/08.

10 Q All right. This next one is, the stamp on the bottom of
11 it is ABPF054, and it appears to be some type of a form for a
12 warning from the facility signed by you and Amanda. What is
13 that document?

14 A This is a document stating her -- the date, which is
15 September 27th, her name, and she had signed it because I gave
16 her a last written and verbal warning for no shows. She had a
17 no show on 07/11/08 and on 09/25/08. And tardies. She was
18 tardy 08/07/08, 08/22/08. They were both over 30 minutes tardy
19 and she had had many tardies less than 15 minutes.

20 Q All right. That, that is dated when?

21 A That is dated September 27th.

22 Q And the first notation of a missed day in there is back
23 in July, about, almost two-and-a-half months previous?

24 A Correct.

25 Q And that says it is last warning?

- 1 A Correct.
- 2 Q Where was a first warning?
- 3 A Verbal.
- 4 Q And there was nothing put in her file to denote any
5 verbal warnings?
- 6 A I don't believe so.
- 7 Q Okay. And would you agree with me in reviewing the
8 paperwork that this is the first document in her file
9 reflecting any adverse conduct?
- 10 A It is the first written document.
- 11 Q All right. And that was the day after she requested her
12 schedule to be changed because she was taking care of her
13 brother and sister?
- 14 A Well, she had a no-call, no-show on the 25th.
- 15 Q Well, she actually -- she apparently did come in on the
16 25th because the first document that you looked at is dated
17 the 25th where she asked to have a schedule change, right?
- 18 A I'm sorry. Say that again.
- 19 Q Well, you say there was a no-show on the 25th, but at
20 least at some point in time a document dated the 25th where
21 she requested her scheduled to be changed was in the file.
22 Right?
- 23 MR. DOSSETT: I object to the form of the question.
- 24 Q Well, just tell me the date of the handwritten document
25 that was in her file?

1 A The date on the handwritten document is 09/25.

2 Q And the date on the typed document with your response in
3 writing her up was 09/20?

4 A Seven.

5 MR. DOSSETT: I object to the form. I mean, you're
6 suggesting one is a response to the other. I think that's
7 unfair and I object to it.

8 Q But by datewise they go in that chronological order,
9 right?

10 A It is dated the 25th.

11 Q All right.

12 A When I received it -- I don't know when I received it.

13 Q Okay. Now, the next one datewise is AB, excuse me, yeah,
14 ABPF055. It's another incident report dated 10/23 and it
15 appears to be signed by you, Amanda, and a Catherine Thomas.
16 Who is Catherine Thomas?

17 A She was a cook.

18 Q Look at that one, tell me what that is.

19 A This is an incident report that Mandy signed acknowledging
20 that she called in for work on the 21st, 22nd, 23rd, on the
21 three to eleven shifts. She recognizes again that she received
22 her last written and verbal warning on 09/27, which is the
23 previous notation that we had regarding her no-shows and many
24 tardies. I verbally gave her until 10/27 at 3:00 to call me if
25 she wanted to continue her employment with us. If she decided

1 to continue her employment, she understood that any call-in, a
2 no-show, or a tardy may result in immediate termination. And
3 if she decided to terminate her employment, she would agree to
4 pay back her educational loan.

5 Q All right. And did, did -- apparently she came back in
6 sometime -- at least this has several days on it, but it
7 appears to be addressing the time frame she missed with a
8 disability slip from Sparks Regional Medical Center. Let me
9 show you that. And does that actually give her a medical
10 excuse for missing those days of work because she was in the
11 ER and sick?

12 MR. DOSSETT: Object to the form.

13 Q Well, tell me what the form says, that you're holding.

14 A That I'm holding right here?

15 Q Yeah.

16 A There's two forms. It appears that one is dated the 23rd.
17 I'm sorry. It's dated the 19th from a doctor something, looks
18 like Green maybe? And stating that she's unable to work from
19 maybe the 19th to the 23rd.

20 Q And does that overlap the dates that you'd written her up
21 on?

22 A This is dated the 23rd.

23 Q But the dates that you said she missed work --

24 A The dates that she missed work were the 21st, 22nd and
25 23rd.

1 Q And that takes her off work from the 19th to the 23rd?
2 The slip from the doctor?

3 A It does. And I did not receive this until the 23rd.

4 Q And is that the occasion where she came in with her
5 mother and you were discussing her attendance and she was
6 upset because she had a doctor's note for those dates?

7 A That is correct. That's the day that I was going to
8 terminate her, and she came in with her mother.

9 Q All right. And that's the date you said, I think, that
10 she got loud?

11 A She became very loud.

12 Q And was that because she was indignant over the fact that
13 she had had a doctor's slip for those days and you were
14 talking about terminating her?

15 A I had not received this slip.

16 Q But you apparently got it that day?

17 A She brought it in with her.

18 Q All right. And based on that slip, then did you
19 reconsider and let her keep her employment?

20 A Based on a number of things, I allowed her to keep her
21 employment.

22 Q Tell me those number of things.

23 A The number of things would be, you know, she -- she
24 committed that she wanted to be there, that she wanted her job,
25 that she wasn't going to, you know, no-call no-show, she wasn't

1 going to be tardy, that she would show up, and that she wanted
2 to continue her employment there.

3 Q And at that point in time, you made a decision to
4 continue her employment. Right?

5 A I did.

6 Q All right. And so at the time that you decided to
7 continue her employment based on that doctor's slip --

8 MR. DOSSETT: I'm going to go ahead and object to the
9 form of the question before you finish it, because you are
10 suggesting to the witness why she made a decision.

11 Q Why did you decide to keep her?

12 MR. DOSSETT: Asked -- I object to the form of the
13 question. It's been asked and answered. You just asked this
14 question and she answered it.

15 Q So you made a decision to keep her then, right?

16 A I allowed her to stay.

17 Q And at that point in time when you allowed her to stay,
18 did you consider her to be a danger to any of the residents?

19 A No.

20 Q Did you consider her to be a threat to any of the
21 residents?

22 A Not at that time.

23 Q Did you consider her to be a hindrance to the safety of
24 any of the residents?

25 A Not at that time.

1 Q Did you believe that she was treating the residents
2 without respect?

3 A Not without respect, no.

4 Q So at least at that point in time, was there any reason
5 to feel that her being in the facility constituted a problem
6 for anybody?

7 A Not at that time.

8 Q Did you ever have any residents complain to you about her
9 acting up and getting loud with you that day?

10 A Did any residents complain to me?

11 Q To you about her acting up that day when she was there
12 discussing this with you?

13 A I don't know that they complained about it. I know that
14 they were all looking at her.

15 Q They were all looking at her. Yet she kept her job?

16 A She did.

17 Q Now, the next -- that one is dated what?

18 A What form date?

19 Q The date of the --

20 A The date from the disability form?

21 Q Yes.

22 A The date on the disability form is dated 10/19.

23 Q The next one chronologically appears to be November the
24 5th.

25 MR. MORRIS: Can we get the page number?

1 MR. CHRONISTER: Yeah. The page number on this one
2 is ABPF059.

3 MR. MORRIS: What about the disability form?

4 MR. CHRONISTER: I thought I read that.

5 MR. MORRIS: Oh, I'm sorry. You may have.

6 MR. CHRONISTER: It is ABPF056.

7 MR. MORRIS: Okay.

8 Q And this one -- in fact, all of these are ABPF so I'm
9 just going to give the number after this. This one is 059.
10 It's a leave request. What's that?

11 A It's a leave request where Mandy asked if she could take
12 off December 18th and 19th.

13 Q And there's another piece of paper attached below that.
14 It looks like just on a different form. It says thanks?

15 A Thank you. It was a sticky note.

16 Q So did you grant that request?

17 A I would have to look at her records. I don't know if she
18 took it off. I, I'm usually pretty lenient anytime somebody
19 asks in advance to take a day off. We usually try to
20 accommodate them.

21 Q On -- the next one is 053. It's a handwritten note.
22 What is that?

23 A It's a note from Mandy stating that she would like to
24 review her personnel files.

25 Q And that's on January the 19th?

1 A That's correct.

2 Q And Mr. Brigance's injury was January the 7th?

3 A Yes.

4 Q Do you know why she would be asking to review her
5 personnel file on January the 19th?

6 A She did not give me any indication as to why. I know that
7 she didn't show up to review it.

8 Q The next one is 108. I think there's two items on that
9 page. One of them is a copy of the previous one.

10 A It is. It's the exact same one from the 19th.

11 Q And there's another written item on it. What is that?

12 A It's dated the 20th where Mandy says, Mitzi Bailey, we
13 need a third person on second shift. It's getting to be too
14 hectic.

15 Q And is that something you would expect your employees to
16 do based on staffing and issues reporting to you?

17 A What do you mean?

18 Q Well, do you ask for or seek feedback from your employees
19 if there's a problem or things are hectic or they feel like
20 they're short of staff?

21 A Absolutely. I encourage them to communicate with me with
22 any issues.

23 Q So there's nothing adverse in her suggesting that you
24 need to look at the staffing on that shift, is there?

25 A What do you mean adverse?

1 Q Is there any problem with her doing that?

2 A I wouldn't think so.

3 Q Okay. You answered my question. The next one is January
4 21 and it's 082. What is that?

5 A She's requesting unpaid time off from April 3rd to the
6 5th.

7 Q So she's asking -- what's the date of that?

8 A January 21st.

9 Q So she's asking for time off in April?

10 A In advance, yes.

11 Q All right. Next one is 058 and that's dated 02/01/09.
12 What is that?

13 A Dates requested off for February 2nd. She states she
14 would like to attend a funeral.

15 Q And whose funeral would that be?

16 A Mr. Brigance.

17 Q The next one is 02/14 and it is 069.

18 A Hang on just a minute. Let's go back to this one.

19 Q Okay.

20 A It's dated 02/01 and the request was for 02/02, but she
21 writes, so please let me off today. So.

22 Q Okay. Any problem with that one?

23 A No.

24 Q The next one is 069. It looks like it's dated 02/14/09.
25 What is that?

1 A I don't know if these are copied backwards or --

2 Q I believe they are.

3 A Okay.

4 Q In summary, does that indicate that she was, had gotten
5 sick and needed to go home early, that she had basically got
6 all her work done that day and was leaving because she was
7 sick and didn't need to be around the residents while she was
8 sick?

9 A It looks like that she was, that she's stating that she
10 was sick and that she didn't complete some of her work, that
11 she was going to go home.

12 Q All right. And in fact, the only thing that she
13 didn't -- I think she says in there that she still needs to
14 wake Emma up.

15 A That is correct.

16 Q All right. And it looks like along with that that she
17 did a little sticky note that says to show you I did my work
18 even though I left a little early -- and this is 084 and it's
19 for her 02/13 schedule which would have gone over to the
20 14th -- and it's checked off all her job duties. And the one
21 that's not checked at the bottom is waking Emma up?

22 A Well, it looks like some other things were not checked
23 also.

24 Q So did you meet with her and talk to her about that at
25 all?

1 A I don't remember. I don't recall.

2 Q All right. How much time do we got left on this tape?
3 Two minutes? Why don't we just take a brief -- since we had a
4 break for her to look over this, you want to just take a quick
5 switch of the tape and grab something to drink and let's move
6 on?

7 THE VIDEOGRAPHER: The time is now 11:37 a.m. and
8 we're off the record at this time.

9 VIDEOGRAPHER: The time is now 11:41 a.m. and we're
10 back on the record.

11 OFF THE RECORD

12 DIRECT EXAMINATION CONTINUES

13 BY MR. CHRONISTER:

14 Q Up to now we covered the time frame with Amanda from the
15 time she was hired until -- what is the date -- that last,
16 February the?

17 A 13th.

18 Q And that's in -- that ties into the handwritten note
19 dated February 14th, right?

20 A It appears so.

21 Q And the incident where she had gotten verbal with you was
22 in October?

23 A Yes. That's correct.

24 Q We are now coming up on, depending how the days fall,
25 somewhere between three and four months later, right?

1 A Yes.

2 Q Anything in those three or four months up to now which
3 would have caused Amanda to be considered a threat to any of
4 the residents?

5 A No.

6 Q Anything up to now that would cause Amanda to render the
7 facility unsafe because she was in it?

8 A No.

9 Q This appears to be a three-page sticky note and the
10 labels on them are actually 107, 106 and 105, if you put them
11 in the correct, or what appears to be the correct order and
12 these are dated February the 16th. And to kind of speed this
13 up a little bit, is that really a request to modify her
14 schedule because she is not getting a lot of sleep?

15 A It appears that it was a schedule change request.

16 Q All right. So anything in that request that would make
17 her unsafe to the residents or make her a danger to any of the
18 residents?

19 A No.

20 Q The next one is 096 and it's dated 02/15. Have I missed
21 anything or anything you want to add after reviewing that?

22 A Not that I can think of right now.

23 Q What is that?

24 A Well, actually this is dated the 15th so it should have
25 gone before this other one.

1 Q Okay. I may have got it out of order?

2 A Yes.

3 Q So what is that one on the 15th?

4 A The 15th looks like it's a request to have another
5 employee do some of her work.

6 Q And basically what the request is that since someone
7 comes in at six and doesn't do anything until 6:30, could
8 they, could they pass out some medicine because she's supposed
9 to be giving someone else a shower during that same period of
10 time, is that right?

11 A It appears so.

12 Q So do you believe that to be an unreasonable request?

13 A I mean, I can't think of why it would be. I mean, not
14 remembering the situation at the time.

15 Q All right. The next three -- I'm actually covering every
16 one of these documents so I'm sure I'm not missing one. The
17 next. and these are both dated February the 15th and they are
18 097 and 098. I think they are just notes to the file about it
19 appears to be Jack Brigance is still getting newspapers so can
20 we let the family know so they can cancel it and John W is
21 still spitting on the floor?

22 A Yes, it looks like there was three notes written, three
23 separate notes written on the 15th.

24 Q And those have nothing to do with her job performance,
25 they are just some issues that she thought needed to be taken

1 care of, right?

2 A Yes.

3 Q On 02/20, this one is 081, and what is that one?

4 A It's a request from Mandy for me to write her a note that
5 we don't require her to have her CNA certificate to work at The
6 Brookfield.

7 Q All right. Now, as of that date -- what's the date of
8 that one?

9 A The 20th.

10 Q So we're now coming up on four-and-a-half to five months
11 since the incident in October, right?

12 A Yes.

13 Q And at that point in time, at least according to her
14 personnel file, is there any reason to believe that the place
15 is unsafe because she's there or she constitutes a danger to
16 any of the residents or would in any way make a resident feel
17 uncomfortable?

18 A No.

19 Q This next one is 067. And it's dated. I'm sorry. I'm
20 trying to look at it. And it appears to be like three sticky
21 pads. One of them looks like a request to follow up on she
22 needs evidence that her CNA -- she doesn't need to be a CNA to
23 work there, right?

24 A Yes.

25 Q What's the other one? In fact, read the other one to me.

1 A Dated February 21st.

2 Q Okay.

3 A "Mitzi, you had me training by myself on February 23rd,
4 Monday. I need someone who knows what they are doing as well
5 or there is no way. There is too many residents now."

6 Q All right. So on February the 21st, you have her
7 training someone?

8 A On the 23rd.

9 Q You have her training someone on the 23rd. So at least
10 as of February the 23rd you felt like she was a competent
11 employee who could train people?

12 A She had been there since June.

13 Q And there was nothing about the incident in October or
14 nothing about her -- her abilities that caused you any problem
15 with having her train people?

16 A She knew her job duties.

17 Q And that's on February the 21st?

18 A That is written on February 21st.

19 Q And you had her training somebody on the 23rd?

20 A It appears so.

21 Q Next one is 068. And is that one -- just some issues
22 that, that need to be done relevant to the laundry and some
23 other things?

24 A Yeah, she is instructing other staff members what they
25 needed to do.

1 Q All right. Is that a problem?

2 A It's not her position to instruct other staff members.

3 Q But it's okay to let her train them.

4 A She was instructing -- it appears that she was trying to
5 instruct a Department Head what needed to be done.

6 Q Then on February the 23rd, number 104, what's that?

7 A It's a request by Mandy on the 23rd stating that she
8 wanted to go part-time instead of full-time.

9 Q And 099 dated 02/25/08 at 1:35 p.m. Read that one to me.

10 A On the 25th -- it just states on the 25th at 1:35 p.m.,
11 called Mandy, let her know that I had replaced her on her
12 shift, so it would end her employment effective today. I asked
13 that her nor any of her family members come on the premises or
14 the police shall be called. I told her I would mail out her
15 check on Thursday. She could get it on Friday. Mandy asked
16 what she did. I told her it was not up for discussion. I
17 wished her the best of luck. Mandy called back wanting to set
18 up a time to get her stuff out of her locker and demanded a
19 copy of her file and letter for CNA certificate. I told her we
20 already gave her a copy of her CNA class agreement and we do
21 not give copies of their personnel files. If she wanted to go
22 through it, we do however do that, and set up a time for her to
23 come at 3:00 p.m. to clean out her locker.

24 Q All right.

25 A And --

1 Q So you terminated her on what day?

2 A On the 25th.

3 Q And that's two days after she asked to go to part-time
4 status?

5 A Correct.

6 Q And so what occurred between the time you had her
7 training people -- she was actually supposed to be training
8 them on the 23rd, what occurred to make her a danger to the
9 safety of the residents to where the police would be called if
10 she came back in the building?

11 A She was making statements about me and other staff.

12 Q To who?

13 A To staff members.

14 Q What were those statements?

15 A You know, I would have to think about all of that.

16 Q Well, I want you to think about it and tell me.

17 A Okay.

18 Q Now. Can you tell me?

19 A I am trying to remember it.

20 Q Did you document any such things in her personnel file?

21 MR. DOSSETT: I'm going to object to the form of the
22 question. If you want her to take time, some time and think
23 about the issues that were going on, then we can go off the
24 record and do that. If you are going to go to another question
25 and not ask her to answer the question that was previously on

1 the table --

2 MR. CHRONISTER: Well, then --

3 MR. DOSSETT: I'm sorry.

4 MR. CHRONISTER: We can take whatever time she needs
5 to answer that question.

6 MR. DOSSETT: All right. Let's go off the record
7 then.

8 THE VIDEOGRAPHER: The time is now 11:51 a.m. and we
9 are off the record.

10 THE VIDEOGRAPHER: The time is now 12:03 p.m. and
11 we're back on the record.

12 DIRECT EXAMINATION CONTINUES

13 BY MR. CHRONISTER:

14 Q Ms. Bailey, we took a break so you could think through
15 the statements you said that Mandy had been making about this
16 time. Can you now, after you have had a chance to think about
17 those, can you tell me?

18 A I can't remember specific things. I know, what I
19 remember, is that she was making comments to the staff and the
20 residents and --

21 Q Let me stop you on each piece of this. Okay? Can you
22 tell me which staff members she was making comments to?

23 A One specifically that I remember is is Michelle Ensey.
24 The other ones I don't remember specifics. I know she was
25 causing a lot of turmoil in our facility.

1 Q And what was the basis of that turmoil?

2 A She was just making statements, false statements, about
3 work that was being done, stuff that we should be doing, stuff
4 that we shouldn't be doing, and I mean, there's proof in it
5 right here where she is leaving me these notes, you know,
6 demanding stuff that needs to be done. Where it really wasn't
7 her position to say that this is how it was going to be done.

8 Q Well, go back to that note and just read that note to me.

9 A It looks -- it appears that she wrote a note that this is
10 second shift laundry, this is what we are going to be doing.
11 Monday, Wednesday, and Friday, she lists three residents.
12 Tuesday, Thursday, Saturday, three residents and then she wrote
13 P.S. leave the laundry for second shift so it isn't being done
14 twice. We give showers. And it appears that Michelle wrote
15 back, who told her that these are the laundry days? So I mean,
16 Mandy was taking it upon herself to create things, do things,
17 that was out of the scope of her job duties.

18 Q Well, if you look at the list of her job duties, don't
19 those include all of the things that are on there that she is
20 talking about organizing and doing?

21 A It had already been written out for other shifts to be
22 doing this, not her shift, and so she was recreating and trying
23 to do stuff outside the scope of what she is hired for.

24 Q And do you have anything in the personnel file where you
25 brought her in and talked to her about that?

1 A I don't, but I know what I do remember is sometime within
2 this time frame, I brought her in, we sat down and talked about
3 it. I asked her if, you know, why is she doing this? Did she
4 state these things. She denied stating them. I asked her if
5 she was unhappy. At that time -- during that meeting she said,
6 no, she was just upset over Jack passing away and that she just
7 wasn't handling it very well. And, you know, I consoled her
8 about, you know, grief and grieving and I asked her if she felt
9 like she still needed to work there because, you know, I'm
10 getting two different sides of stories. And she at that point
11 still denied making any of these comments, and I believe that's
12 when she told me she wanted to go part-time instead of
13 full-time, and then what I remember is, you know, going back to
14 the staff and saying, hey, you know, Mandy says that she didn't
15 say these things and, you know, I had staff members come up and
16 say that is not true. She told both of this.

17 Q What staff members told you that?

18 A I remember Michelle Ensey telling me.

19 Q Anyone else?

20 A I know there was others, but I can't remember who.

21 Q So at the time that you terminated her, what would make
22 her a danger to be back in the facility to see Mrs. Brigance
23 or any other resident who was -- she had befriended?

24 A Because she had made comments to the staff stating that,
25 you know, how -- how she blamed all of us for everything and

1 that, you know, she was going make our lives miserable, and
2 that she would, you know, take care of all of this and...

3 Q Did you personally ever hear any of this?

4 A I did whenever her and her mother came in to clean out her
5 locker. Uh-huh.

6 Q What did she tell you when she and her mother came in to
7 clean out her locker?

8 A At that time they became very agitated and real verbal,
9 stating that we are not done with you yet. We are going to
10 take care of you and, you know, it may have been her mother
11 that said that, and Mandy, said, yeah you're right and, you
12 know, they, because whenever they cleaned out her locker, I
13 remember asking to look through the stuff and they said, oh,
14 this is just -- I believe she might have had stuff from her CNA
15 class and I asked to look through it to make sure that it
16 wasn't any of our forms or anything leaving the building, and
17 her mom or her -- Mandy or her mom said, well, you know, we
18 don't need that anyway. We've got all the evidence we need to
19 take care of them.

20 Q But as far as causing any harm or detriment to any of the
21 other residents, there was none that, ever -- was there?

22 MR. DOSSETT: Object to the form of the question. I
23 think it misrepresents prior testimony and other evidence in
24 the case. It's argumentative.

25 Q Any issues for her patient care or resident care?

1 A Did she not complete her job duties?

2 Q Well, anything that would make her being around a
3 resident unsafe for the resident?

4 A From the statements that she said that she was going to
5 make sure that we paid for everything and that we, that they
6 were going to get back at us.

7 Q At us meaning you or the facility?

8 A Yeah, I mean, it was undefined. So I mean, taking that, I
9 mean, you can define that as the facility, the people that live
10 there, or the people that work there.

11 Q So your comments -- now she came in after the fact of
12 this last notation which was September the 20 -- excuse me,
13 February the what? When she was terminated?

14 A The 25th.

15 MR. DOSSETT: The handwritten note or the typewritten
16 note?

17 Q The last typewritten note?

18 A It was the 25th.

19 Q And, in fact, that's the last entry in there, isn't it,
20 as far as in that -- take that back. There is one more. And
21 it's ABPF103, and what is the date of that one?

22 A This is dated February 25th.

23 Q Okay. And that one, Brookfield releases her from having
24 to pay back 400 some-odd dollars, right?

25 A Correct.

1 Q And this, the issues relevant to her coming in and
2 cleaning out her locker and making these threats to you
3 occurred sometime after that day, right?

4 MR. DOSSETT: I object to the form of the question.

5 Q Didn't they occur after that date?

6 MR. DOSSETT: I object to the form of the question.
7 Are you asking about the ones made specifically to Mitzi or the
8 ones made previous to that?

9 Q I'm talking the ones made to her, personal knowledge of
10 it? You said --

11 A I have knowledge of it through my staff members during the
12 time that she was employed.

13 Q You have --

14 A She was making threats.

15 Q Excuse me. You have what other people told you and then
16 you talked to her about it and she said that was untrue,
17 right?

18 A And then I had backup from the other staff coming back and
19 saying, no, she is incorrect because we have all heard her say
20 this.

21 Q And I need the names of every one of those staff members
22 that told you that.

23 MR. DOSSETT: Objection; asked and answered.

24 MR. CHRONISTER: No, she told me the name of one
25 person.

1 MR. DOSSETT: Objection. Asked and answered.

2 A And that's the only name I can remember right now.

3 Q That's the only name you can remember. Of all of the
4 staff?

5 A At this time; yes.

6 Q And you took what, 10 or 15 minutes to think about it?

7 MR. DOSSETT: No, I object to the form of the
8 question. We did a lot of things during that break,
9 Mr. Chronister. There are nine gentlemen here, you have one
10 restroom. Many of us used the restroom, phone calls were
11 returned, e-mails were returned, you're mis -- your
12 representation is incorrect and I won't allow it to stand for
13 the record.

14 Q All right. We had to take a break for you to think about
15 issues relevant to an employee that you fired and said you
16 would call the police if she came back into the building. You
17 could not recall off the top of your head issues that were
18 serious enough to result in the police being called without us
19 taking a break, whether it is was for one minute, three
20 minutes or ten minutes, is that correct?

21 MR. DOSSETT: No, I object to the form of the
22 question. If you would like to have the question read back,
23 you asked her the specific names and she wanted to try think of
24 the names of those people who made specific statements.

25 MR. CHRONISTER: No, the question was what were --

1 MR. DOSSETT: Have the court reporter read it back.

2 MR. CHRONISTER: I can have her read it back.

3 MR. DOSSETT: Do it.

4 MR. CHRONISTER: The question was, what were
5 incidents that led to that and she couldn't think of it.

6 MR. DOSSETT: That's not how I recall it and the
7 problem was, sir, was that you asked her to think about it and
8 you immediately went into another question and I objected to
9 the fact that you did that, you asked her to think about it and
10 then immediately started another question. She can't think
11 about it. So if you wanted her to think about it, we were
12 going to stop and think about it.

13 Q So I want you to again tell me, so we are clear, what the
14 incidents were that led to you writing on the 25th, not for
15 anything that occurred after that when she came in to clear
16 out her locker, but on the 25th of February where you wrote if
17 she came back the police were to be called?

18 MR. DOSSETT: Objection; asked and answered.

19 MR. CHRONISTER: Well -- again.

20 MR. DOSSETT: Again?

21 Q Again.

22 A Ask me that question one more time.

23 Q What were the events that occurred -- let's put -- let's
24 put this back in context. You have her scheduled on the 23rd
25 of February to train someone, correct?

1 A As of the 21st, I had her scheduled.

2 Q All right. And then on the 23rd she asked to go to
3 part-time. Right?

4 A That's correct.

5 Q And then she was terminated by phone.

6 A That's correct.

7 Q You called her. And she asked you why you wouldn't
8 discuss it with her, right?

9 A Correct.

10 Q So my question to you is, what occurred between the 21st
11 when you had her scheduled to train someone and the 23rd when
12 you terminated her? What specifically occurred during those
13 two days that resulted in a statement that if she came back in
14 the building the police would be called?

15 MR. DOSSETT: Object to the form of the question.

16 A She -- she got the staff very discontent. They became
17 very upset with the things that she was saying, the threats she
18 was making, the -- the statements that she was making about
19 what we were doing, how we were doing, when we were doing it,
20 and the demands that she was making and the statements. She
21 was causing a lot of upheaval and discontent among my staff
22 members.

23 Q And then I asked you to tell me the names of the staff
24 members who would support that and you have given me one?

25 A And that's all I can remember, even right now.

1 Q And how many people were on the staff at that time?

2 A More than five.

3 Q And can you get me the names and phone numbers of each
4 and every member of the staff who was working during that
5 period of time?

6 A You should have those, don't you?

7 Q I don't know that I have the full staff during that
8 period of time.

9 MR. DOSSETT: You do, you do. It's been produced in
10 discovery.

11 Q All right. And there's contact numbers for each and
12 every one of them?

13 A There should be.

14 Q Okay. At the same -- well, did you ever talk to
15 Mr. Brooks about any of your issues relevant to hiring, firing
16 or running the facility?

17 A At times I have.

18 Q And how does that -- how are those communications done?

19 A Usually by phone or in person.

20 Q Any by e-mail?

21 A I don't know so much as concerns or issues. I mean, we
22 talked daily.

23 Q Is that by e-mail?

24 A We send e-mails, but if it's a concern or something, we
25 would talk about it verbally.

1 Q Are there any scheduled meetings to do that? Do you have
2 a scheduled regular time each month that you and Mr. Brooks
3 meet?

4 A No.

5 Q Is anyone else in those meetings other than you and
6 Mr. Brooks?

7 A What meetings?

8 Q Well, when you talk about either the issues with the
9 facility, if you have a problem with an employee, do you
10 discuss it with Mr. Brooks?

11 A Sometimes.

12 Q Did you discuss with Mr. Brooks how to handle the girl
13 who took a swing at you and then quit?

14 A I mean, not immediately. I know after I had called the
15 police and had them sitting outside of our facility, I called
16 him and let him know what I did.

17 Q All right. Did you discuss with him any of these
18 problems with Amanda?

19 A I believe I did.

20 Q And then were those -- do you know if those were set
21 forth in discussions you had in person, by phone or by e-mail?

22 A Probably by phone.

23 Q Do you know if you had any e-mail communications with him
24 regarding Amanda?

25 A I don't know the answer to that.

1 Q Did you have any discussions with him regarding issues of
2 maintenance at the facility?

3 A I'm sure I did.

4 Q And tell me about that.

5 MR. DOSSETT: Object to the form of the question.

6 You're asking her to recall every conversation she had with

7 Mr. Brooks about maintenance at the facility?

8 Q Did you discuss with him issues as to who you should call
9 if you have problems with -- at the facility?

10 A I mean, it was a new building. If I had issues with the
11 building, I would usually call someone from Crawford.

12 Q All right. Did you ever discuss with Mr. Brooks any
13 problem with the doors at the facility?

14 A At what time?

15 Q Either before or after Mr. Brigance's fall, at any point
16 this time?

17 A Yes.

18 Q And now let's narrow the time frame down. Was it before
19 or after the fall?

20 A Ask me the question again.

21 Q Did you have any discussions with Mr. Brooks -- did you
22 have any discussions with Mr. Brooks before Mr. Brigance's
23 accident?

24 MR. DOSSETT: You mean regarding the doors?

25 Q Regarding the doors?

- 1 A Not that I can remember.
- 2 Q Did you have discussions with him after Mr. Brigance's
3 accident regarding the doors?
- 4 A I'm sure I did.
- 5 Q And can you recall what any of those discussions or
6 conversations were?
- 7 A I don't recall specifically.
- 8 Q Did you have any e-mails back and forth regarding the
9 doors?
- 10 A I don't believe so.
- 11 Q We have not been produced any e-mails in discovery. Can
12 those be reviewed and provided?
- 13 MR. DOSSETT: Sure. We will look again. We've
14 already looked, but we will look again.
- 15 Q Did you contact Mr. Brooks after Mr. Brigance's accident?
- 16 A I did.
- 17 Q And tell me when and what you recall of the substance of
18 that conversation.
- 19 A I don't remember if it was the 7th or the 8th. I believe
20 I just told him about the incident, what I had known.
- 21 Q And what did you --
- 22 A What had been told to me.
- 23 Q What did you know at that point in time?
- 24 A I only knew what -- what Mandy had reported to me.
- 25 Q You weren't there?

1 A No.

2 Q Did Mr. Brooks give any instructions on how to handle the
3 matter, on what to do?

4 A I don't remember that he gave me any instructions.

5 Q Do you remember what he told you about it?

6 A I don't.

7 Q On the maintenance issue, when the building was opened, I
8 think you just told me this, the -- it was new, right?

9 A Correct.

10 Q Did you have a list of contact personnel for any issues
11 that came up with the building?

12 A Vendors; yes.

13 Q And do you recall who the contact person for Crawford was
14 on that list?

15 A When we first opened, I believe Sonnie Fullen was my
16 contact.

17 Q Sonnie?

18 A Fullen.

19 Q Fullen? Do you remember the name of a Will Bryant?

20 A I do.

21 Q And was he at some point in time substituted on that list
22 to contact?

23 A Yes, after Mr. Fullen.

24 Q Once you got in the facility, what -- kind of go through
25 what -- any type of maintenance issues you were having. Did

1 you have issues with the heating or electrical system?

2 A Yeah. I remember one issue we had a -- the air
3 conditioner froze up and I called them about that.

4 Q Would you call Crawford or would you call -- I think Joe
5 said that the sub who actually handled the heating and air was
6 Blaylock?

7 A Blaylock, yeah, we would call Blaylock directly.

8 Q When you had to make phone calls, did -- how did you
9 determine whether or not to call Crawford or one of the
10 particular subs such as Blaylock?

11 A In the beginning I would just call Crawford. Actually
12 they were -- when we opened they were still in and out, you
13 know, making sure everything was taken care of.

14 Q Well, you did have an in-house maintenance man, is that
15 right?

16 A We did.

17 Q And I believe Joe testified that originally there was
18 somebody coming down from Bella Vista?

19 A Yes.

20 Q Do you recall that person's name?

21 A Don.

22 Q What's Don's last name?

23 A You know, I can't say it correctly. It starts with a K,
24 like, Klindusky (sic) or something like that.

25 Q And did Don do any maintenance work in the building when

1 he was coming down there?

2 A I don't believe so because, you know, Crawford would,
3 would do the maintenance. Don came down to do our -- what
4 State requires us to do on a monthly basis like our fire drills
5 and tornado drills and those things.

6 Q Did -- did Don keep records of maintenance or at least
7 all the maintenance work that he would have done at the
8 facility?

9 A Yes, if there was -- when it was reported to him and he
10 did it, he would have signed off.

11 Q And I think Joe said that there was a specific form, in
12 fact, we attached a couple as exhibits to his deposition of
13 work that was requested to be done. Do you recall those?

14 A I do.

15 Q Did you actually design that form?

16 A I don't think I designed that. I believe it was -- it may
17 have been one that Don brought down. That he was utilizing up
18 in Bella Vista.

19 Q Did you ever call Crawford Construction to report any
20 problems with the doors?

21 A At what time? At what point?

22 Q Prior to Mr. Brigance's accident?

23 A I don't remember.

24 Q Were you aware of some of the problems with the doors
25 prior to Mr. Brigance's accident?

1 A I was not.

2 Q The forms that are exhibits to Joe's -- there's a couple
3 of maintenance logs here and these are exhibits to Joe's
4 deposition. I guess we can copy them for this one. There's
5 one dated 11/12 for a closet door in Mr. Brigance's room, and
6 there's another one for a door off the hinges in
7 Mr. Brigance's room. And there's one -- I want you to look at
8 this one. It's not in Mr. Brigance's room, but on
9 11/19/08 there is a maintenance log form, it wasn't
10 Mr. Brigance's room but there was a problem with a door.
11 That's on 11/19. Now who reported that problem with the door?

12 A I did.

13 Q So prior to Mr. Brigance's accident, you had knowledge of
14 at least one problem with the door, right?

15 A I don't remember what this was, though.

16 Q Read to me what the report says.

17 A It says, "Door to closet not on hinges."

18 Q Door to closet not on hinges and it's signed by you?

19 A Correct.

20 Q And when you made that report, you made that report on
21 the form that your in-house maintenance does, right?

22 A I did.

23 Q Why would you have in-house maintenance do that as
24 opposed to Crawford Construction?

25 A I mean, I can't remember what this even was. I don't

1 remember it.

2 Q But you're the one who filled out and signed that, it
3 appears to be the same handwriting in the body of the
4 document, right?

5 A In the body of the document, what do you mean? There --

6 Q Up at the top it says the door, where it denotes the
7 problem, and then there is the signature of the person
8 reporting it?

9 A Yes.

10 Q That's your handwriting, isn't it?

11 A Yes.

12 Q So as of November, you at least prepared a report as to a
13 problem with the door?

14 A It appears so.

15 Q And gave it to your in-house maintenance people?

16 A Yes.

17 Q But you never called Crawford about it, is that what
18 you're telling me?

19 A Because -- correct, because we -- it appears that we did
20 have a maintenance person at that time.

21 Q All right. Do you as the administrator follow up on any
22 maintenance issues? If you had a -- if you turned something
23 over to your maintenance man, such as Joe, do you follow up on
24 it getting done?

25 A Follow up how?

1 Q Follow up as to check and make sure the work is being
2 done, that the maintenance man is doing what he's supposed to
3 do. Let's take it -- talk about this form a minute. It's a
4 two -- it's basically divided into two sections, isn't it?

5 A It is.

6 Q The first one being a report of a problem.

7 A Uh-huh.

8 Q Uh-huh, meaning yes?

9 A I mean, can we -- I'm getting a real bad headache. Can we
10 break, please?

11 MR. DOSSETT: When is lunch? Hold on. Stay on the
12 record, for a minute. What time is it?

13 THE VIDEOGRAPHER: 12:30.

14 MR. CHRONISTER: 12:30.

15 MR. DOSSETT: Okay, hold on. About an hour ago, I
16 indicated the need to take a break because she wasn't feeling
17 well so we could be sure and eat lunch. It was indicated to me
18 that lunch was being brought in. We are here now an hour later
19 still not feeling good.

20 THE VIDEOGRAPHER: It's in the kitchen.

21 MR. DOSSETT: Can we go ahead and break for lunch?

22 MR. CHRONISTER: Sure.

23 THE VIDEOGRAPHER: The time is now 12:30 p.m. and we
24 are off the record.

25 THE VIDEOGRAPHER: The time is now 1:15 p.m. we are

1 back on the record.

2 OFF THE RECORD

3 DIRECT EXAMINATION CONTINUES

4 BY MR. CHRONISTER:

5 Q You feel all right, Ms. Bailey?

6 A I have a headache. I'm okay.

7 Q All right. I think the court reporter was nice enough to
8 write it down for me. The last set of questions dealt with
9 taking a look at this form that you apparently filled out and
10 signed and it's in Joe's deposition regarding the doors, and I
11 asked you if that was divided into two parts. And the first
12 part of the form being a report of the problem, is that right?

13 A That's correct.

14 Q And that particular problem is the one that you filled
15 out and signed?

16 A It appears I did.

17 Q And then there's some writing underneath that which I
18 take, and if I'm wrong, stop me, but I take it to be what that
19 maintenance man did relevant to the problem and who signs it.

20 A Correct.

21 Q And who signs it, is that correct?

22 A Correct.

23 Q Once those are done, do you ever, as the administrator,
24 have an occasion to review any of these things and be sure
25 that these repairs are being done by the maintenance man?

1 A I have on occasions, yes.

2 Q Did you do that on a regular basis or just every now and
3 then? How do you do it?

4 A Not on a regular basis just, you know, on anything that I
5 might know, be aware of, that I know verbally because a lot of
6 times these are put in a book and then he would do it and then
7 put them back in the office.

8 Q And in the office is -- did you keep them in a certain
9 area in your office?

10 A In the maintenance office, yes.

11 Q The maintenance office. So did you ever have occasion to
12 look back through any of these forms and note had any other
13 problems on any of the doors before Mr. Brigance's accident?

14 A No. As in the first section, second section or?

15 Q As in any -- as, did you happen to look back at any
16 reports before Mr. Brigance's fall as you were checking what
17 the maintenance man may have done and note that, well, here is
18 another problem with the door, or here's another problem with
19 the door.

20 A No, I didn't.

21 Q But with this particular problem, did you ever call
22 Crawford construction or report any problems with the door?

23 A It doesn't appear so.

24 Q And at least from Joe's deposition, he didn't call
25 Crawford and report anything with the door, is that your

1 understanding?

2 A Yes.

3 Q Now, as far as hiring a maintenance man, did you do the
4 interview on Joe?

5 A I did.

6 Q And what qualifications did you look for in an in-house
7 maintenance man?

8 A Someone that had previous experience of working on
9 maintaining a building and somebody that is willing to fill out
10 forms and comply to the State regulations that we're required
11 to do on a regular maintaining basis as far as, like, fire
12 drills and the forms that we have to fill out.

13 Q Well, tell -- tell me about those form that you have to
14 fill out for the State as far as maintenance in the building.

15 A Well, I mean, we are required to, you know, like I said,
16 do the fire drills and some other things that I, you know,
17 can't recall at this time. I mean, that they come in and look
18 at.

19 Q Now, I think Joe said that he would change out light
20 bulbs or just do loose odds and ends of things that needed to
21 be done?

22 A Uh-huh. Yeah. And like if somebody were to move out,
23 repaint.

24 Q And at first there was a gentleman coming down from
25 Bentonville?

1 A He was doing the -- correct, to do our paperwork as far as
2 the maintaining the things that the State requires us to do.

3 Q Do you recall when Joe was hired?

4 A I don't remember the exact date.

5 Q Is Joe still working there now?

6 A No.

7 Q When did Joe leave?

8 A I believe sometime in September.

9 Q Did -- was he terminated or did he voluntarily leave?

10 A No, he gave a two-week notice.

11 Q Do you know where he is at this point?

12 A I don't know right now. I know that when I spoke to him
13 after he left, he was in the Tulsa area, Broken Arrow maybe.
14 There.

15 Q Did he give you any reason why he was giving you his
16 notice to --

17 A Yeah, something, he was in a -- something to do with
18 his -- it was a personal business that he was going to do with
19 his church or something to do with religion that I know they
20 were like web design, they were doing maybe some kind of a CD.
21 I can't remember exactly what it was, but it was
22 church-related. And they had an opportunity because they had
23 found a building that they could rent for cheap and he fell
24 into this house that he could redo and it was just a career
25 move.

1 Q Before January of '08, do you recall either Jack Brigance
2 or his wife or Steve reporting any problems to you with the
3 closet door in their room? Excuse me. January of '09, I
4 think I may have said '08.

5 A Oh --

6 Q But prior to, prior to Mr. Brigance's accident in January
7 of '09, do you recall either Jack, Steve, or Ms. Brigance, Dot?

8 A I don't remember.

9 Q You -- can you tell me that they did not report anything
10 to you or you just don't remember?

11 A I don't remember.

12 Q Apparently, you know, from Joe's deposition that there
13 were some, at least some forms filled out regarding that,
14 right?

15 A I haven't read his deposition.

16 Q Well, let's just look at those, those forms, those
17 maintenance forms. Can you tell me the names of the people
18 who reported that?

19 A On?

20 Q On --

21 A On the Brigances?

22 Q On the Brigances.

23 A On the 11th it looks like Angela Ruckman filled one out.
24 And then on the 12th Karen Brown filled one out.

25 Q All right. That first one is the one I don't think any

1 of us could figure out who the name was in Joe's deposition,
2 but you believe that to be Angela?

3 A That is Angela Ruckman. She has been with us since day
4 one. She works third shift.

5 Q So if she -- she was an employee at the facility and has
6 been there since the start?

7 A Correct.

8 Q And the second one is Karen?

9 A Karen Brown.

10 Q And is Karen still there?

11 A Yes.

12 Q So both of those who reported the problems to maintenance
13 were employees of the facility?

14 A Yes, and are currently.

15 Q Now let's kind of flip this around. Are you, well, are
16 you aware of any problems, and now I want to go through since
17 Mr. Brigance's accident, are you aware of any problems with
18 doors?

19 A Yes.

20 Q Would you take me through each of the problems you are
21 aware of with the doors since Mr. Brigance's accident?

22 A I mean, just from memory, I don't -- I mean, what I
23 remember, I remember a door in an empty room that just a clasp
24 came off. I remember the door in one of our Eaton's (sic) that
25 it, the clasp came off and then another one in the 100 hall.

1 Q Let me kind of take those through, see if I can tie them
2 back to Jo Ann and Cheryl's deposition.

3 A Okay.

4 Q I think Joe told us about the doors in Mr. Brigance's
5 room and an empty room and a door on a Connie.

6 A Correct.

7 Q What's her last name?

8 A That is an Eaton room.

9 Q Eaton?

10 A Eaton, uh-huh, room. That's not her last name. That's --

11 Q That's not the last -- not a last name?

12 A Huh-uh.

13 Q Her last name is what, B --

14 A Benchi. (sic)

15 Q Benchi. (sic) What do you know about the doors in Ms.
16 Benchi's (sic) room?

17 A I don't remember specifically. I think just the front
18 thing came undone.

19 Q Well, I think that -- at least I'm trying to remember
20 from Joe's deposition, that appears to be one -- do you recall
21 one that was taken completely out of the room?

22 A That one I believe was.

23 Q And was that -- and was that the time that Crawford was
24 actually called to help take that door out of the room?

25 A I believe they were.

1 Q Do you recall when in relation to Mr. Brigance's accident
2 that occurred?

3 A I don't. I don't.

4 Q And do you know why or what necessitated that door being
5 taken completely out of the room?

6 A You know, I don't remember.

7 Q And Cheryl talked about an incident in an empty room
8 where the door came off and tilted toward her, were you aware
9 of that?

10 A I am aware of it.

11 Q When did you become aware of that?

12 A I think the night it happened.

13 Q And how did you become aware of that?

14 A I believe they called me.

15 Q And what did you instruct them to do on that?

16 A It was an empty room, I just told them to leave it.

17 Q Okay. Do you know if Crawford came and worked on that or
18 in-house maintenance worked on that?

19 A I believe Crawford came out there.

20 Q Would there have been any incident reports, I think that
21 may be the wrong word. The maintenance report that you use
22 for your in-house maintenance.

23 A Uh-huh.

24 Q Do you have similar reports you use if any of the subs or
25 Crawford come out and work on anything?

1 A We do.

2 Q Do you keep any type of log of any maintenance done by
3 them on the facility?

4 A No.

5 Q I think also there was a room 201, Bill Byars' room.

6 A Correct, yes.

7 Q Do you recall what the incident was on the door in Bill
8 Byars' room?

9 A Not specifically, I think it was just it came unlatched.

10 Q Do you know if Crawford was called on that or it was done
11 in-house?

12 A I don't remember.

13 Q Have there been, since we took depositions the last time
14 in here -- kind of move this time frame forward, what,
15 September I think is when -- was it August? Have there been
16 any problems with doors?

17 A Yes.

18 Q What problems have you had with the doors in the last
19 four months?

20 A Just came unlatched.

21 Q And whose room or rooms did that occur?

22 A What I can remember off the top of my head. Can I say
23 resident names? Or I can't remember room numbers.

24 MR. DOSSETT: What don't you use the first name and
25 that will be fine?

1 A Okay. One of them was -- I can't remember the first name.
2 Yeah, and Miss Trembley's.

3 Q What about what happened with Miss Swink's?

4 A I didn't see it. I believe it just came unlatched at the
5 top.

6 Q And how did you find out about this?

7 A The staff called and told me.

8 Q Did you have any in-house maintenance take care of that
9 or did you call Crawford?

10 A I can't remember if our cook may have taken it down,
11 Chuck, or if Crawford may have been called. I don't remember.

12 Q When did Joe leave in relation -- he left in September
13 sometime?

14 A I believe so.

15 Q Have you had to replace him with any in-house
16 maintenance?

17 A Don has been coming down to do our regular stuff and then
18 I've had my husband come in like if somebody moves out,
19 painting and anything. My son and my husband have done that.

20 Q And so the gentleman who was coming down from Bentonville
21 and was replaced by Joe is coming back, is that what you're
22 telling me?

23 A Yes.

24 Q Are you aware of whether or not he has kept any records
25 of the things he's done since he's been back here? Do you --

1 A If he does -- if he's working at these, yes, he will sign
2 these.

3 Q And have you generated any more of those reports relative
4 to doors since we were here the last time, to your knowledge?

5 A I don't recall.

6 Q Now, you said Mildred's room and Ms. Swink's room.

7 A Yes.

8 Q And another one?

9 A Yes.

10 Q Who was that?

11 A Miss Trembley.

12 Q Miss Trembley?

13 A Yes.

14 Q And what happened to the door there?

15 A It just -- it came unhooked at the same place.

16 Q Have any of the doors -- was that door left in the room
17 or taken down?

18 A That door has been taken down. I went ahead and took it
19 down.

20 Q Who took it -- who physically took it down?

21 A I believe a gentleman from Crawford.

22 Q Have you -- and I think you said your husband had come in
23 to do some maintenance on things. Have you or your husband
24 physically taken down any doors?

25 A No.

1 Q I - and I think I asked, I said that before, but to make
2 sure I didn't make -- put an and in that, has your husband
3 ever physically taken down any doors?

4 A No.

5 Q Has your husband ever worked on any doors?

6 A No.

7 MR. MORRIS: Rex, are Mildred and Miss Swink the same
8 person?

9 MR. CHRONISTER: Mildred and Miss Swink are the same
10 person. She is a client for 15 years.

11 A And then there was also another one, Mrs. Cyrus.

12 Q Mrs. Seiters?

13 A Cyrus.

14 Q Cyrus.

15 A Uh-huh.

16 Q So that's been three issues with doors since we were here
17 the last time?

18 A Yes.

19 Q And what happened with Mrs. Cyrus's room?

20 A It just, I can't explain it. It just looked like it was
21 rubbing against the wall a little bit.

22 Q And is that door taken down?

23 A No.

24 Q Who -- was it adjusted?

25 A I'm not sure what they did to fix that.

1 Q By they, who is they?

2 A A gentleman at Crawford.

3 Q And do you recall who the gentleman is at Crawford that
4 came out?

5 A Will.

6 Q And that's Will Bryant, I believe?

7 A Right. Uh-huh.

8 Q Have you had any doors that actually came off the track,
9 and swung out into the room, no -- since we were here the last
10 time?

11 A Swinging out in the room how?

12 Q Coming away from the track and coming where it's free.

13 A I haven't seen one do that since then.

14 Q So as we sit here today, there were the Brigances' room,
15 the empty room, Connie's room, Bill's room, is that eight or
16 nine instances of rooms, eight or nine different rooms that
17 you've had a problem with doors?

18 A That's close to accurate; yes.

19 Q And how many rooms total are in the facility?

20 A 47.

21 Q There's been some issue at least 9, in 9 of 47 rooms with
22 these doors? As best you can tell?

23 A Close to that, yeah.

24 Q Some of this you may have already answered, but I just
25 want to be sure.

1 MR. DOSSETT: Should I go ahead and object now, then?

2 MR. CHRONISTER: Go ahead. We will do like in
3 Federal Court, we will give you a continuing objection. How
4 about that?

5 Q Were you there at the time of Mr. Brigance's accident?

6 A I was not at the facility at that time.

7 Q How did you become aware of his accident?

8 A Mandy called me.

9 Q What did she tell you when she called you?

10 A There were quite a few phone calls that night. The first
11 phone call she called and told me that Jack had fallen, what do
12 I do. I said, if he hit his head or if he is -- if he's
13 hurting in any way, you need to call an ambulance, you need to
14 call the family and call the ambulance.

15 Q And that, I'm assuming that call was before anything had
16 been done other than he had been discovered?

17 A I'm sorry?

18 Q That was the first call that --

19 A Yes.

20 Q So from the conversation you had with her, is it safe to
21 say that Jack had not been moved and was still there in the
22 room at the time that call was made?

23 A Correct.

24 Q Then what subsequent calls did you have from her?

25 A She had called me back and said that she had called the

1 ambulance and that they had gone ahead and taken him to the
2 hospital.

3 Q Do you know how much later that call was?

4 A I don't.

5 Q Did you go -- well, you weren't there obviously at the
6 time. Where were you?

7 A I was working at The Buckle.

8 Q Here at the Central Mall?

9 A Correct.

10 Q Did you go to the facility that evening?

11 A I went the next morning.

12 Q The normal time you would have gone to work?

13 A Yes.

14 Q When you got there, did you learn that as -- that Mr.
15 Brigance was still in the hospital?

16 A Actually I knew that he was in the hospital that night
17 because Mandy said that they were going to go ahead and keep
18 him.

19 Q Okay. When you got there, did you go to the room or
20 inspect the area where the accident occurred?

21 A I did.

22 Q What did you find? The door was outside in a hall. It
23 was all -- I mean, it was taken down and it was put outside
24 the door. Did you go in the room and look at any of the
25 tracking or?

- 1 A I did.
- 2 Q Had you ever looked at the tracking in Jack's room
3 compared to anyone else's room prior to this?
- 4 A No. Not, I mean, I hadn't compared them; no.
- 5 Q Are you now aware that there was a totally different
6 tracking system in Jack's room?
- 7 A I am.
- 8 Q When did you become aware of that?
- 9 A After the accident.
- 10 Q Once you have an accident like this, do you do an
11 in-house investigation as to what went on?
- 12 A Yes.
- 13 Q And is that mandated by the State or is this something
14 you do?
- 15 A As far as an accident like this?
- 16 Q Yes.
- 17 A I mean, it would be something that I would do.
- 18 Q And, in fact, at the time Amanda was hired -- let me show
19 you this. There are things filled out, it talks about
20 incident report forms.
- 21 A Uh-huh. Yes.
- 22 MR. DOSSETT: Can we get the number off the bottom of
23 that, please?
- 24 A 015.
- 25 Q There's one minute left on the tape and so let's take a

1 break and just --

2 THE VIDEOGRAPHER: The time is now 1:36 p.m. and
3 we're off the record.

4 THE VIDEOGRAPHER: The time is 1:44 p.m. and we're
5 back on the record.

6 OFF THE RECORD

7 DIRECT EXAMINATION CONTINUES

8 BY MR. CHRONISTER:

9 Q This particular form, have you had a chance to review it?

10 A I have.

11 Q And is that just a generalized statement as to the
12 contents of what an employee was supposed to put in an
13 incident report if there is an event that occurs on the
14 property?

15 A An outline, yeah.

16 Q When you got back there, did you question Amanda as to
17 what happened?

18 A I did.

19 Q What did she tell you?

20 A She just basically went through step by step everything
21 that happened that evening prior.

22 Q As best you can recall, tell me what she told you.

23 A What I remember, she had told me that they -- her and
24 Cheryl Williams were working that evening and that she had gone
25 around there and had gone around to the back end of the

1 building and walked by the Brigances' room and saw
2 Mrs. Brigance standing there like something was wrong and when
3 she walked in she stated that, you know, Jack was on the floor
4 with the door on him and she couldn't get the door up and she
5 had to go get Chuck. And that she, that when she -- she said
6 that she had -- she just went through again, you know, who she
7 called and what had happened. And EMS came and had taken him
8 to the hospital.

9 Q Did she tell you that Jack was in the process of opening
10 the door to put up his wife's shoes when the door came off and
11 fell on him?

12 A I don't remember her exact words, but I remember her
13 saying that he said that he was putting his shoes -- the shoes
14 in the closet.

15 Q Did you ever talk to Cheryl about what happened?

16 A I did.

17 Q Did you take a statement -- independent of an incident
18 report, did you ever take a written statement from either
19 Amanda or Cheryl about this incident?

20 A I don't believe I did.

21 Q Did you talk to Chuck, the cook, about it?

22 A I did.

23 Q And in relation for the incident itself, do you recall
24 when you talked to Amanda? Was it the next day? Was it --

25 A Well, I talked to her quite a few times that evening, and

1 then after I had gotten to the facility, I believe it was her
2 day off, I think, and I asked her to come in and, you know,
3 show me everything that had gone on, where he was laying and
4 everything.

5 Q Did you talk to Cheryl at the same time or later?

6 A I believe she worked that day and I talked to her that
7 day.

8 Q But you didn't get an independent written report from
9 either one of them?

10 A Not that I remember.

11 Q And what about Chuck, the cook? Did you talk to him?

12 A I did speak with him.

13 Q Do you recall what order you actually talked to each of
14 them in?

15 A I don't. I think -- I think I talked to Chuck that
16 morning since he was already at work, and then I believe Mandy
17 came in, and then when, then Cheryl came in after that to work
18 and I talked to her while she was on shift.

19 Q What did -- do you recall what Chuck told you?

20 A Just basically that one of the two girls came and got him
21 and he helped get the door, you know, out of the room and into
22 the hallway.

23 Q Do you recall Chuck telling you anything about how the
24 incident itself happened?

25 A I don't remember him saying anything about the incident

1 because I don't believe that he knew anything. He was just
2 asked to help with the door since he was still there.

3 Q And then so Amanda would have been next?

4 A Correct.

5 Q And then Cheryl?

6 A I believe so.

7 Q Did -- were Amanda and Cheryl's versions of what happened
8 in the incident consistent with each other?

9 A I believe so.

10 Q Do you recall anything that was different about either
11 one of their statements?

12 A No.

13 Q Let me show you this incident report. And see if you
14 recognize that.

15 A Do you need the number?

16 Q Please.

17 A 00326.

18 Q Was that the incident report that Amanda prepared?

19 A Amanda prepared this, she signed it; yes.

20 Q And is it signed off datewise as to when she prepared
21 that report?

22 A It looks like she wrote 01/07 of '09.

23 Q So she would have written that report the evening the
24 accident happened?

25 A If it's dated that.

- 1 Q Do you have any reason to believe that date is wrong?
- 2 A I did believe that that date is incorrect with the time
3 that she wrote this.
- 4 Q Why do you believe that date is wrong?
- 5 A Because she came in the next day and rewrote one.
- 6 Q All right. The -- this one here that is dated 01/07, is
7 it signed by you?
- 8 A It is.
- 9 Q And when is it dated?
- 10 A The 8th.
- 11 Q So you signed off on this particular report on the 8th?
- 12 A That's correct.
- 13 Q All right. Did you ask Amanda to prepare a different
14 report?
- 15 A I didn't ask her to, no.
- 16 Q Did you discuss with her what a report should or should
17 not say?
- 18 A I asked her -- when she came in, I went over the report
19 and asked her about it.
- 20 Q So which report -- is this the report you went over with
21 her?
- 22 A I don't believe so.
- 23 Q Well, it's the one that's in the file?
- 24 A Uh-huh.
- 25 Q It's the one that's been given to us in discovery as

1 being the report of this incident?

2 A Okay.

3 Q So my question to you is, where is the other report?

4 A It's not there.

5 Q Well, where is it?

6 A It was thrown away.

7 Q Why was it thrown away?

8 A Because she rewrote this.

9 Q So is this a second report that you say is the one that's
10 dated January the 7th?

11 A It is.

12 Q What did the first report say that was different than the
13 second one?

14 A What I remember the other report said -- what I believe it
15 said, was the resident was putting up his wife's shoes in the
16 closet and the closet door came down causing him to fall down.

17 Q What does this one say?

18 A The resident stated.

19 Q Repeat the difference to me.

20 A The one prior I believe it just said he was putting up
21 his, his shoes and this one says the resident stated.

22 Q So it was changed to indicate he stated something as
23 opposed to just writing down her conclusion, is that what
24 you're telling me?

25 A Correct.

1 Q Did you ever discuss with Amanda whether or not Jack fell
2 and pulled the door down on himself as opposed to the door
3 falling on Jack?

4 A No. I remember asking her if she was there when it
5 happened, and she stated that she was not there when it
6 happened.

7 Q All right. So was there ever any discussions or
8 consideration that Jack fell and grabbed the door causing it
9 to fall on him as opposed to the door coming off and causing
10 his fall? Do you understand the difference of what I'm
11 asking?

12 A No, define that.

13 Q All right. In the one instance the door is coming off,
14 falling on him knocking him to the ground. The other scenario
15 would be he loses his balance, falls into the door which
16 causes the door to come off the hinges or come off of its
17 track and go, go to the floor. Understand the difference in
18 the two scenarios now?

19 A Correct.

20 Q Did you ever advise Amanda that what she needed to write
21 down was that Jack fell into the door causing the door to come
22 off?

23 A Did I advise her to write that?

24 Q Did you ever advise her that is how this accident
25 occurred?

- 1 A Did I advise her that?
- 2 Q Did you tell her that?
- 3 A I didn't tell her that that had happened because I -- who
4 would know that happened if nobody saw it?
- 5 Q Did you ask her if it had happened that way?
- 6 A I asked her if she was in there when it happened.
- 7 Q Uh-huh. Did you put any pressure on her to write down a
8 report that said Jack lost his balance or Jack fell for
9 whatever reason and his falling caused the door to come off?
- 10 A No.
- 11 Q You never suggested that to Amanda -- this is what you're
12 telling me?
- 13 A Did I suggest to her to write it down?
- 14 Q That it happened because Jack lost his balance and fell
15 into the door?
- 16 A Did I ask her to write that down?
- 17 Q Yes.
- 18 A No.
- 19 Q Did you ask her if the accident could have happened that
20 way?
- 21 A No, she said she didn't see it.
- 22 Q But she did tell you specifically that Jack told her that
23 the door came off and fell on him while he was putting his
24 wife's slippers up?
- 25 A Whatever she wrote there is what she knew.

- 1 Q Why didn't you keep the old report?
- 2 A You know, in hindsight I don't know.
- 3 Q You're telling me you threw away what was the original
4 report.
- 5 A I believe so.
- 6 Q And the only reason you threw it away was to change and
7 add the term resident said?
- 8 A Stated.
- 9 Q Resident stated. Other than that the reports were
10 identical?
- 11 A From what I remember, yeah.
- 12 Q And you didn't recover and initial a change on the
13 original?
- 14 A I don't believe so.
- 15 Q Did you ever go to the hospital?
- 16 A I did.
- 17 Q Did you talk with Mr. Brigance?
- 18 A I did.
- 19 Q Did you ask Mr. Brigance what happened?
- 20 A I didn't ask him, he told me.
- 21 Q What did he tell you?
- 22 A That he was putting his wife's shoes in the closet, that
23 he had bent over and put his wife's shoes in the closet and
24 came back.
- 25 Q And the door came back on top of him?

- 1 A Uh-huh.
- 2 Q Uh-huh, meaning?
- 3 A Yes.
- 4 Q Okay. Did you ever tell Steve that Jack told you he had
5 pulled the door down on himself?
- 6 A No.
- 7 Q Did you ever talk with Steve or Peggy Brigance about this
8 incident?
- 9 A I don't know if we specifically spoke about this incident
10 as to exactly that happened. I do recall a couple of
11 conversations with Mr. Brigance, Steve Brigance, the day after
12 or two days after when he came into the facility.
- 13 Q And what was that conversation?
- 14 A What I remember from that conversation was he was standing
15 behind the desk like a lot of times he would come in and do,
16 and, he was very upset and stated that, you know, somebody is
17 going to pay dearly for this, and I'm going to make sure that
18 somebody pays for this and I started crying and he became
19 sympathetic and he said, well, why are you crying, you know,
20 I'm not mad at you, it's okay. You know, I'm -- everything is
21 going to be okay -- I'm not mad at you, and I mean, he was just
22 very...
- 23 Q I'm sorry. I interrupted you.
- 24 A That's okay. Go ahead.
- 25 Q Was it anger addressed towards the situation of the door

1 falling on his father?

2 A He was -- he was upset about that.

3 Q And was he upset about the weight of the doors in the
4 facility?

5 A I don't remember exactly the things that he had talked
6 about.

7 Q Prior to Mr. Brigance's accident, had anyone brought up
8 the issue of the weight of these doors to you?

9 A Not that I remember.

10 Q In the State report I think that Joe made -- and I could
11 be wrong in this, and the State report will bear it out. But
12 I think Joe made some comment about the doors were too heavy.
13 Do you recall that?

14 A I don't remember the report, whatever is in the report.

15 Q Do you recall Joe ever discussing with you the issue
16 about the weight of the doors?

17 A I remember after -- excuse me. I don't think -- I know
18 that I didn't realize the weight of the door until the morning
19 of the 8th, whenever, you know, it was out in the hallway and
20 we were trying to move it into a secured place. And it was at
21 that time that we realized, I realized the weight of the doors.

22 Q Who actually moved the door into a secure place?

23 A I think it -- I think it may have been Rich and Will and
24 maybe Joe or Chuck. I can't remember.

25 Q When you -- apparently you were there because you said we

1 realized. So how did you come to realize that these doors
2 were as heavy as they were?

3 A Well, whenever the next day when, you know, and I believe
4 it was me and Rich and Will maybe or, went in there.

5 Q Is there any reason for, that you can think of, the, for
6 the need of those heavy of doors in your facility?

7 MR. DOSSETT: Object to the form.

8 MR. MORRIS: Object to the form.

9 A I'm not in construction.

10 Q Your opinion -- your opinion is all I care about.

11 A I don't feel like my opinion is valid. I mean, I don't
12 have that kind of knowledge or background to be able to make an
13 accurate statement on that.

14 Q But I think you told me at the beginning of this
15 deposition that from a physical, physically active point of
16 view, Mr. Brigance was equal or kind of ahead of a lot, is
17 that right?

18 MR. DOSSETT: I object to the form. I believe it
19 mischaracterizes previous testimony.

20 A I --

21 Q Was Mr. Brigance physically active for someone in that
22 facility?

23 A He was.

24 Q And are there other residents who are less physically fit
25 than Mr. Brigance?

1 A I can't compare fitness to, I mean, I don't think you can
2 really compare fitness. I mean, can they ambulate further than
3 one, can they, you know, endure more than one, I don't know
4 what you're looking for.

5 Q Would the weight of these doors in your opinion create a
6 risk to your residents based on their physical capabilities?

7 MR. DOSSETT: Object to form.

8 MR. MORRIS: Object to the form.

9 MR. DOSSETT: You can try and answer.

10 A Answer, answer -- ask the question again.

11 Q With the weight of these doors as you now know them to
12 be.

13 A Uh-huh.

14 Q Would that particular weight of door coming off onto one
15 of your residents, considering their health issues, I want you
16 take that into account, their age and physical issues, create
17 a risk to them?

18 MR. DOSSETT: Object to the form.

19 MR. MORRIS: Object to the form.

20 A I can't answer that accurately because I can't assume or
21 expect what it would do to one person. I can't accurately
22 answer that.

23 Q Have you at any point in time asked Crawford or has
24 Mr. Brooks, to your knowledge, asked Crawford to remove these
25 doors from the facility?

1 A I don't know what conversations Mr. Brooks has had with
2 Crawford.

3 Q Have you ever asked that they be removed?

4 A I don't know that I've asked them to remove them. I
5 mean...

6 Q But since we were here the last time, have you had
7 problems with the doors?

8 A Uh-huh.

9 Q Have those doors, based on your instructions, been taken
10 down out of the rooms?

11 A Have they been taken down? No. I mean, other than the
12 time, two at the time that we had spoke about previously.

13 Q All right. Now, after this incident, are you aware that
14 Mr. Brigance made a complaint to the State indicating that
15 pressure was put on an employee to modify a report?

16 A I am.

17 Q And did the State come in and investigate that?

18 A They did.

19 Q And when did you first become aware of that?

20 A The day that State walked in with it.

21 Q Do you recall what date that was?

22 A I don't.

23 Q Was it the first -- was it after Valentine's day?

24 A I honestly don't know. I can't tell you the date.

25 Q Was it before or after Amanda was terminated?

1 A It was after.

2 Q Who from the State conducted that investigation?

3 A I believe it was Betty Wheeler and then it was the other
4 lady down in the Hot Springs area. I believe her name is Nancy
5 Jeff -- Jefferies.

6 Q Have you ever worked with any of those people before?

7 A I have met Betty once. She came in, I believe and did our
8 initial survey. She -- she helped with the initial survey.

9 Q Okay. What, what did this State investigation involve?

10 A At what -- when?

11 Q Tell me how it went, what you had to do in response to
12 that investigation.

13 A The investigation on which?

14 Q On Mr. Brigance. Have there been more than one
15 investigation?

16 A Yes. I mean, okay, when you say investigations, what are
17 you --

18 Q The State investigation.

19 A Are, are -- do you mean a State -- that they're there on a
20 complaint?

21 Q Yes.

22 A Okay.

23 Q Well, let me ask you this way: When you have an incident
24 such as Mr. Brigance's, where someone receives an injury at
25 the facility and is hospitalized, is there any requirement to

- 1 report that to the State?
- 2 A If there is abuse suspected.
- 3 Q And absent abuse, there is no requirement to report it to
4 the State?
- 5 A No.
- 6 Q The incident involving Mr. Brigance, did you report it to
7 the State.
- 8 A No.
- 9 Q Well, when we talk about investigations, I want to be
10 sure we are on the same wavelength. How many investigations
11 were involved in this incident?
- 12 A Okay. I want to make sure that I'm understanding your
13 question right. Investigation meaning?
- 14 Q Meaning the State sending a representative in to
15 interview you, Amanda, Cheryl, Joe, anyone involved?
- 16 A Usually State gets involved if there is a complaint made.
- 17 Q And in this instant, is that the only reason the State
18 became involved?
- 19 A To my knowledge; yes.
- 20 Q Is there any other investigation into this incident other
21 than the one that was based on Mr. Brigance's request?
- 22 A By the State?
- 23 Q By the State.
- 24 A Not that I'm aware of.
- 25 Q Is there any other investigation by anybody in-house, the

1 State, anybody, as a result of this incident?

2 A Not to my knowledge.

3 Q All right. I mean, you were kind of talking about --
4 about the State and I'm just trying to be sure I'm not missing
5 anything. Okay.

6 A I just want to make sure that I'm understanding your
7 question correctly.

8 MR. MORRIS: Rex, can I interject one thing? I think
9 the, I don't know that it matters, but just to be sure, the
10 incident itself involving Mr. Brigance, Jack, I think had a
11 separate file number or something than the investigation or
12 whatever that was done of the issue with Mandy. So, I mean,
13 there is like two --

14 A Two complaints.

15 MR. MORRIS: -- file numbers but it's kind of all out
16 of the same thing and I just --

17 Q Okay. Take me through each one of those as you
18 understand them.

19 A Each one of what?

20 Q Those investigations, the two.

21 A The two complaints?

22 Q Yes.

23 A Okay. One complaint being the issue with Mandy, the
24 second complaint meaning the issue with Mr. Jack Brigance.

25 Q Yes. What do you understand -- let's do those in reverse

1 order. What do you understand the issue relative to the
2 complaint on Jack Brigance to be?

3 A You know, I don't remember what the complaint was. Do you
4 not have the State reports on that?

5 Q We got one State report.

6 A Okay.

7 Q So take me through what the investigation, what was the
8 complaint on the investigation involving Jack Brigance?

9 A You know, when State comes in, they -- they can't give
10 specifics, they can't give anything. They are just there to
11 investigate. So usually they don't tell you specifically what
12 they are there about. They just, you know, it's an open door,
13 you provide them with what they request.

14 Q And what all did they request in their investigation of
15 Jack Brigance?

16 A Usually when they come in, and when they came in this
17 time, I remember them providing them a list of current
18 residents. I remember them going into other residents' rooms
19 and interviewing residents. I remember them, I remember them
20 talking to me. They talked to Joe, to Cheryl. I believe they
21 called Mandy. I think they looked at a personnel file and that
22 may have been to do with Mandy's complaint, and then, of
23 course, they looked at Mr. Brigance's file.

24 Q And on a report with -- relevant to Mandy, what did they
25 do?

1 A Actually they just asked me some questions about
2 termination and everything.

3 Q Did you tell them that you had thrown away one report?

4 A I don't know that that came up.

5 Q And the report we now have is, did you tell Mandy how to
6 write the first part of that?

7 A No.

8 Q Did you suggest to her how she should write the first
9 part of it?

10 A No.

11 Q Then how did she go from writing it one way to writing it
12 another?

13 A When I had, I had the other one -- I had one and I said,
14 now, Mandy, okay, you say here that, you know, that he was
15 putting up his wife's shoes, and she goes, no, he stated that,
16 that he told me that. I said, oh, okay. And she goes, I
17 should have wrote that, shouldn't I? And at that point, you
18 know, she took it and redid -- I didn't ask her to do it. She
19 did it on her own.

20 Q Was the -- was this issue with the report, you were
21 talking about the questions relevant to Mandy at the time you
22 terminated her. Were any these issues dealing with your
23 request for her to write another report?

24 A No.

25 MR. DOSSETT: And besides that I object to the form.

1 It misstates prior testimony.

2 Q You don't believe the issues pertaining to Mr. Brigance
3 or the rewriting of the report had anything to do with Mandy's
4 termination?

5 A No.

6 Q Give us just a minute.

7 THE VIDEOGRAPHER: The time is now 2:11 p.m. and we
8 are off the record.

9 OFF THE RECORD

10 DIRECT EXAMINATION CONTINUES

11 BY MR. CHRONISTER:

12 Q Believe it or not, I think we are on the close to over
13 stage here.

14 A Promise?

15 Q Trying. Just some kind of follow up and fill in some
16 questions. Was Amanda particularly close to Mr. and
17 Mrs. Brigance?

18 A Yes.

19 Q In fact, I think you said earlier that you actually gave
20 her some counseling or discussed with her the grief issues
21 relative to Mr. Brigance's death, right?

22 A Correct.

23 Q Since she was fired, are you aware that Mr. Brigance has,
24 has requested that she be allowed to come back to the facility
25 to visit with his mother?

1 A I'm aware.

2 Q And did you object to her being in the facility?

3 A I didn't think it was in the best interests.

4 Q Best interests of who?

5 A The staff or the people living there.

6 Q All right. And that takes us back to what had Amanda
7 done to indicate that this place would not -- that she would
8 create a safety issue for any of the residents?

9 MR. DOSSETT: Object to form. It's been asked and
10 answered.

11 Q Is there anything -- can you give me any specific detail
12 as to why you believe Amanda would constitute a risk or a
13 danger to anyone in the facility?

14 MR. DOSSETT: You mean beyond what's already -- the
15 testimony that's already been given?

16 MR. CHRONISTER: Beyond the testimony that's already
17 been given.

18 Q And I don't want to put words in your mouth, but I
19 understand the testimony as already given basically is
20 basically it was a cat fight, from your interpretation,
21 between her and the other employees?

22 MR. DOSSETT: And I object to the form.

23 MR. CHRONISTER: That's my interpretation of it.

24 A Well, I believe your interpretation is incorrect.

25 Q All right. So explain to me why it's incorrect.

1 A I've already stated in my previous testimony the issues
2 that she brought up.

3 Q Are you aware that she has, in fact, been back to the
4 facility on either two or three separate occasions?

5 A Tell me when.

6 Q I don't actually know the dates, but are you aware that
7 she's been back there?

8 A I didn't know for a fact that she had been in our
9 facility.

10 Q Was there some photographs on Dot Brigance's door with
11 Amanda there with her?

12 A There were.

13 Q And are those relatively new photographs?

14 A I don't know when they were taken. Do you know when they
15 were taken?

16 Q Within the last 30 days.

17 A Okay.

18 Q Was there any -- are you aware of any problem that
19 existed in the facility from her being there?

20 A Can you ask me that again?

21 Q Well, if you didn't know she was there, obviously did
22 anybody come to you and tell you we had a problem because
23 Amanda was here or Amanda has visited Mrs. Brigance?

24 A I don't know that anybody knew that she had been there.

25 Q So her being there was not a danger, safety problem, was

1 it?

2 A I don't know that anybody knew that she was there.

3 Q Did you have any meetings or discussions with the
4 employees regarding the possibility of what to do if she did
5 come there?

6 A Only what -- the prior statements that were made.

7 Q Are you aware she was there within the last two days?

8 A I am aware of that.

9 Q And what did you -- was there a problem with her being
10 there then?

11 A I did not approve of her being there.

12 Q What did she do to constitute any safety issue or make
13 any resident uncomfortable?

14 MR. DOSSETT: Do you mean when she came the other
15 day?

16 Q When she came the other day?

17 A It upset the staff.

18 Q Define to me how it upset the staff?

19 A The whole situation upset my staff.

20 Q How did you find out about this incident?

21 A I got a phone call from a staff member.

22 Q And what did they tell you?

23 A They said that Steve Brigance had walked in and had
24 stated, Mandy is coming in here, call the police right now if
25 you need to call them, do whatever you need to do, she's

1 walking in here.

2 Q All right. Any residents have any issues that were
3 reported to you?

4 A I wasn't there.

5 Q Have you received --

6 A I wasn't at the facility.

7 Q Have you received any complaints or objections from your
8 residents that were there?

9 A Not to this date.

10 Q Did you see any complaints or objections of any residents
11 who were there when Amanda was there previously?

12 A I don't know that any residents knew that she has been
13 there previously.

14 Q What did you tell your staff to do if she came back in
15 the building now?

16 A When?

17 Q As of yesterday, did you instruct your staff to do
18 anything?

19 A As of yesterday?

20 Q Yes, or the day before yesterday, when she was there?

21 A The day before yesterday I told my staff that to tell Mr.
22 Brigance that we stood firm on our decision not to have her in
23 there, and if he chose to bring her in, that he was responsible
24 for any actions or any problems that would come about from it.

25 Q Why were you not willing to let her back into the

1 building to visit Mrs. Brigance under those same conditions
2 and restrictions, that Mr. Brigance be responsible?

3 A I'm sorry. Can you repeat that?

4 Q Do you understand that Mr. Brigance had been requesting
5 Amanda see his mother since shortly after his father's death,
6 right?

7 A Correct.

8 MR. DOSSETT: I object to the form because it
9 suggests that Amanda couldn't see his mother somewhere else and
10 we are somehow preventing the two from meeting somewhere
11 outside the facility.

12 MR. CHRONISTER: In the facility. I'll modify that
13 to be in the facility.

14 MR. DOSSETT: Thank you.

15 Q And you're also aware of her rights as a resident of that
16 facility to have someone in there? Correct?

17 A Correct.

18 Q Why could Mr. Brigance not bring Amanda there if he's
19 responsible for her, escorts her in and escorts her out?

20 A You understand that it's my job to provide a safe
21 environment for my other residents and my other employees.

22 Q And I want you to tell me any specific safety issues that
23 Amanda presented to any other resident of that facility?

24 MR. DOSSETT: I'm going to object. This is at least,
25 at least the fifth time this question has been asked and

1 answered.

2 MR. CHRONISTER: Probably the sixth.

3 MR. DOSSETT: Okay, can we move on?

4 MR. CHRONISTER: I'd like to get an answer as to the
5 safety issues to a resident.

6 MR. DOSSETT: You've already --

7 MR. CHRONISTER: To a resident.

8 MR. DOSSETT: You've already covered this.

9 MR. CHRONISTER: I think we talked about staff having
10 issues, not residents.

11 MR. DOSSETT: We talked about staff -- you want me
12 to tell you what she's already said or do you want to go back
13 and read the transcript later to see.

14 MR. CHRONISTER: I would like for her to tell me.

15 Q Let's try one last time as to any particular safety issue
16 to a resident, not a staff member, a resident?

17 MR. DOSSETT: I'm going to object that it's been
18 asked and answered.

19 MR. CHRONISTER: I'd like her to answer it again.

20 A I stand firm on the way I answered it before.

21 Q Can you tell me one safety issue you've given me relevant
22 to a resident?

23 MR. DOSSETT: Listen I'm -- I'm going to, I'm going
24 to object. Now it's been asked and answered at least seven
25 times and this just isn't fair to keep asking the witness the

1 same thing over and over. If you don't like her -- if she gave
2 a bad answer, she's going to stand on it. If you don't like
3 her answer, you're going to have deal with it.

4 MR. CHRONISTER: And if we read there and she's never
5 given me one answer as to a safety issue for a resident as
6 opposed to a staff member, we can come back here and do it
7 again, okay?

8 MR. DOSSETT: She has already explained what the,
9 what, how these things implicate both residents and staff.

10 MR. CHRONISTER: All right.

11 Q Were the police called the other day -- day before
12 yesterday?

13 A Not to my knowledge.

14 Q And did you instruct the staff either to call the police
15 or not call the police?

16 A I told them that -- I had already told you what I told
17 them.

18 Q And that was that Steve was responsible?

19 A Uh-huh. And if it became a problem to go ahead and call
20 the police.

21 COURT REPORTER: Uh-huh; yes?

22 A Yes.

23 COURT REPORTER: Thank you.

24 Q Did you give your staff any instructions if Amanda came
25 back to the building again after day before yesterday that

1 they were to immediately call the police or not?

2 A Okay. Can you break that down? Tell me what date, when,
3 what.

4 Q Apparently she was in the building day before yesterday
5 and that's -- I think you just testified that you told your
6 staff to say that Steve would have to be responsible for her
7 and if there's a problem to call the police?

8 MR. DOSSETT: I object to the form. That is
9 incomplete and misstates the prior testimony.

10 MR. CHRONISTER: I mean, I'm just -- I'm not trying
11 to do anything other than summarize.

12 MR. DOSSETT: I understand. I just want the record
13 to be clear so that if the question is repeated back later that
14 my objection is on there, that it's incomplete and misstates
15 the prior testimony.

16 Q When she was there the other day, you did not call the
17 police, correct?

18 A I was not at the facility. I did not call the police. To
19 my knowledge I don't know that a staff called the police.

20 Q And what did you tell your staff to tell Steve about her
21 being there?

22 A Exactly what I told you before.

23 Q And I tried to paraphrase that, but there was an
24 objection, so tell it to me again.

25 A Do you not already have that?

1 Q I didn't write it down?

2 MR. DOSSETT: I object that it's been asked and
3 answered. If you can tell him again, try to help him out.

4 A Okay. I told them to -- after Steve came in and said that
5 Mandy's coming in here, do what you have to do, call the
6 police. I told my staff to tell him that we stood firm on our,
7 you know, decision of not wanting her to come back in there and
8 that he would be held responsible for any actions that took
9 place, and if it became an issue, I told them to go ahead and
10 call the police if they needed to.

11 Q And the police were not called, so?

12 A Not to my knowledge.

13 Q Did you instruct your staff that if it happened again
14 what they were to do?

15 A After that -- after?

16 Q After the events of day before yesterday?

17 A After they were out of the building?

18 Q After they were out of the building, did you have any
19 meetings or conversations with your staff or instruct them to
20 do -- what to do if this event occurred again?

21 A No.

22 Q Amanda was terminated, right? Did she sign up for
23 unemployment?

24 A I don't remember.

25 Q Do you recall whether or not you contested her

1 unemployment?

2 A I don't remember.

3 Q Do you know if Michelle Seamons, Samons, the one that
4 took a swing at you, filed for unemployment?

5 A I don't remember.

6 Q Do you remember whether or not you contested her
7 unemployment?

8 A I don't remember.

9 MR. CHRONISTER: Mark, can you check the records and
10 find out your position?

11 MR. DOSSETT: Filed employment or --

12 MR. CHRONISTER: If either one of them filed
13 unemployment and what the company's position was on accepting
14 or denying their unemployment?

15 MR. DOSSETT: Sure.

16 Q Before Mr. Brigance's accident, what was Steve Brigance's
17 relationship with you and the staff?

18 A In what way?

19 Q Well, did you get along?

20 A We had a family, I mean, our relationship was such as, you
21 know, any other. I mean, it was a facility/family
22 relationship.

23 Q In fact, did Steve bring Christmas presents for you to
24 give to the staff the Christmas actually before his father's
25 injury in January?

1 A I remember that his dad wanted to give us gifts and I know
2 that he did bring some things, and I don't -- I don't know who
3 they were from. If they were actually from Steve or from Jack.

4 Q Have you had any arguments directly with Steve or
5 whatever term you want to put it, run-in's, arguments,
6 disagreements with Steve since his father's accident until
7 now? I know you told us about the one where he was upset
8 right after it happened and he said he wasn't mad at you. Any
9 others?

10 A As far as disagreements or words between the two of us?

11 Q Yes.

12 A No, I mean, it's been business.

13 Q At the time the facility opened, there were -- were there
14 several doors to enter the facility?

15 A We have several doors.

16 Q Did the family have a code to enter by any of these
17 different doors?

18 A Yes.

19 Q Do the families still have codes to enter by these
20 different doors?

21 A They don't have codes to all the doors.

22 Q And why, why not?

23 A For safety and security purpose to secure our facility.

24 Q And does that have anything to do with either Amanda
25 coming back to the building, to keep that from happening?

1 A No.

2 Q Have anything to do -- I think you said there was an
3 elopement, I think that's the word -- where somebody walked
4 off. Have anything to do with that?

5 A There's a number of reasons that we chose to secure our
6 facility.

7 Q What were they?

8 A Many of them.

9 Q Then tell me.

10 A Well, just recently there was another facility that got,
11 someone went in and demanded all of their narcotics. They went
12 in through an open door.

13 Q Okay. What else?

14 A It was -- it was -- it was a management decision that we
15 chose for safety and security of our residents and our
16 employees. And to be real honest with you, it probably should
17 have been done sooner.

18 Q Did you prepare for this deposition today?

19 A In what way?

20 Q Did you meet with anybody to review any records, review
21 any documents, anything like that?

22 A I did.

23 Q And what did -- tell me kind of the documents you
24 reviewed and who you talked with in preparation for your
25 deposition today.

1 A I spoke with Mark. And, you know, really we just -- we
2 really didn't talk about a whole lot. I did pull my reports
3 from the State where, where they came in and, and did the -- on
4 the complaints. I looked those over.

5 Q Anything else that you can recall?

6 A Not that I can remember right now.

7 Q The State reports you reviewed, did -- where did you get
8 those from?

9 A I have them.

10 Q On both incidents? On both reports?

11 A Yes; uh-huh.

12 Q Do you know when the State released those reports to you
13 and you got them?

14 A I don't know.

15 Q All right. Mark, I think I've only got one from the
16 State that I've requested.

17 MR. DOSSETT: Which one is it?

18 MR. CHRONISTER: I believe it's the one only on Jack.

19 MR. MORRIS: The one that I have I got in discovery
20 from Mark. So they kind of all lump together.

21 MR. DOSSETT: Yeah. We produced in discovery the one
22 on Mr. Brigance's fall, and I have provided you the ones with
23 regards to the concept that Mandy was somehow pressured. I
24 know I've provided it to you previously. They have been
25 provided separately from the discovery, but I know I've given

1 them to you.

2 Q The reports that you received, how did you get them, do
3 you recall?

4 A Yeah, I requested them.

5 Q And who -- would you receive them in mail or physically
6 delivered to you?

7 A I believe they mailed them.

8 Q Do you recall who released those reports to you?

9 A I don't.

10 Q How many reports were there from the State?

11 A There were reports on two, two of the complaints. The one
12 on Mandy and then the one on Mr. Brigance.

13 Q And that's the only reports that would have been
14 generated by the State that you are aware of?

15 A Those are two, the two that I have right now.

16 Q All right. I've nothing further. Let's take a break.

17 MR. MORRIS: I've got a few.

18 MR. CHRONISTER: Oh, you do?

19 MR. MORRIS: Won't take very long.

20 CROSS EXAMINATION

21 BY MR. MORRIS:

22 Q Prior to -- well, are you aware of any -- did you ever
23 inform anyone at WDM Architects about any of these incidents
24 or problems with doors prior to Mr. Brigance's incident?

25 A Not I'm aware of.

1 Q Are you aware of anyone from The Brookfield informing
2 anyone from WDM Architects about any of the incidents or
3 problems with doors that occurred prior to -- informing them
4 prior to Mr. Brigance's incident?

5 A I know that I haven't. I don't know if any other employee
6 or...have.

7 Q So as I understand it might have happened and you don't
8 know about it, but you're not aware of anyone else doing it?

9 A No.

10 Q The -- you went through with Mr. Chronister the various
11 rooms that had had an issue with the door. Do you remember
12 that?

13 A I do.

14 Q And one of them involved a door that Cheryl -- is it
15 Williams?

16 A Uh-huh.

17 Q That Cheryl Williams had an issue with, do you recall
18 that?

19 A I do.

20 Q Did you actually observe that door that she had her issue
21 with while it was -- after, after her incident?

22 A Yes.

23 Q Was it -- what was it -- how was it attached, if at all,
24 to the door frame at that time? Was it still attached at the
25 top at all?

1 A It was still attached here.

2 Q So had it come unclipped at one end of the top?

3 A Yes.

4 Q Like the others?

5 A Yes.

6 Q Was it still attached at the top at one end, though?

7 A Oh, yeah.

8 Q Okay.

9 A It was still like that.

10 Q Other than with Mr. Brigance's door, all the other issues
11 with doors that -- was it a situation where the plastic clip
12 had come unlatched or was never latched at the top of the
13 sliding end?

14 A Yes. Or else the latch or the clip would just come off of
15 it.

16 Q And in all of those incidents, was the door still
17 attached at the top at one end of the door?

18 A It, correct. I mean, they have all been attached, not,
19 you know, I mean, not like that.

20 Q Okay.

21 A But -- this one, it was attached on both ends.

22 Q So instead of it becoming a -- so instead of sliding, it
23 also became kind of like a swinging door?

24 A Correct; yes.

25 Q So in any of those incidents other than with

1 Mr. Brigance's door, once someone from Crawford or Joe latched
2 the hook back, have they ever come undone again, the same
3 door?

4 A The latch? Yes.

5 Q Has it ever?

6 A As far as the latch; yes.

7 Q Let me try this again. Once Joe or someone from Crawford
8 or someone else with the facility fixed the hook or the latch?

9 A Plastic latch, yes.

10 Q Have any of those latches on the exact same door come
11 undone again?

12 A Yes.

13 Q Okay. Which door was that?

14 A Bill Byars.

15 Q Any others?

16 A I honestly couldn't tell you accurately right now. I
17 don't think so, though.

18 Q Mrs. Cyrus's room, I think you mentioned the door was
19 rubbing at one end?

20 A Yeah.

21 Q Was it still attached?

22 A Oh, yes.

23 Q All four points or all of it?

24 A Uh-huh. Yes. All, all.

25 Q Three points?

1 A All, all points that would normally be.

2 Q So other than Mr. Brigance's door, as we sit here today
3 are you aware of doors, any closet doors coming off the
4 resident, in a resident's room where they came completely off
5 the track at the top?

6 A Not unless they were taken off.

7 Q And that would have been done by either somebody from
8 Crawford or somebody from the facility if they were taken off?

9 A Yes.

10 MR. MORRIS: I don't have anything else. Thank you.

11 MR. TILLEY: No questions.

12 MR. CHRONISTER: I just have one because I was
13 confused on one thing.

14 REDIRECT EXAMINATION

15 BY MR. CHRONISTER:

16 Q The door that Cheryl talked about in the vacant room, you
17 never went to that room?

18 A I did.

19 Q Did you see the door that Cheryl had talked about?

20 A Uh-huh.

21 MR. DOSSETT: Is that a yes?

22 A Yes. I'm sorry.

23 Q Well, I think the question a minute ago was that only one
24 latch at the top had come undone where the door was swinging?

25 A I believe so.

1 Q And I think Cheryl in her deposition said that both
2 points at the top had come out and the door was actually
3 tilting out of the room toward her, but did not fall to the
4 floor because it was held at the bottom clamp only.

5 A Not to my knowledge; no.

6 Q Well, and I think that the pertinent parts are -- they
7 are what they are in Cheryl's deposition, but on page 65 and
8 66, that's not the right one. I've got it right here. That's
9 Joe's. I'll let you have this in just a second to look at.
10 But it, that one says that the question is: I want to make
11 sure I'm on the record, but it was hanging down essentially at
12 an angle is what you're telling me? Answer: yes. So what was
13 holding it? The bottom clip or whatever it had at the bottom
14 was catching it because when folded it stayed right there.
15 And so it's your testimony that both points at the top came
16 out of the closet off the track? That's what I'm assuming I
17 mean, I don't do construction, I'm no architect, so I don't
18 really know. But at least when Cheryl was there, her
19 definition was that door came completely out at the top and
20 was tilted at an angle, but you don't have any -- you wouldn't
21 dispute that if that's what she testified to, right?

22 MR. DOSSETT: Object to the form.

23 MR. MORRIS: Object to the form. Are you asking if
24 she would object that you read it correctly or disagree with
25 testimony?

1 Q Do you disagree with Cheryl?

2 A If what I'm understanding that she is trying to say, if
3 she is trying to say the door, with this being a door, this
4 being the trifold, if she was saying it was only held right
5 here, I disagree.

6 Q That's what she said is that the door came out at an
7 angle and was held only at the bottom?

8 A I disagree.

9 Q Okay.

10 (Off the record briefly.)

11 BY MR. CHRONISTER:

12 Q You are unaware of any door that has come unhinged at the
13 top to where it would lean out, is that what you're telling
14 me?

15 MR. DOSSETT: You mean other than when somebody
16 intentionally took it down?

17 Q Other than when somebody intentionally took it down?

18 A That I recall right now; yes.

19 Q And you disagree with what Cheryl said in her deposition
20 as to the status of that door?

21 A If, if what I am understanding her testimony because I was
22 not here, I am understanding that she is stating that it was
23 only held with this being a door held by this bottom. Mr.
24 Chronister, is that correct? It was only held right here?

25 Q I -- that is correct. That is what her deposition says

1 at page 66?

2 A That is what she is saying. She is saying that it was
3 like that.

4 Q That it was folded and tilted at an angle like this held
5 at the bottom only.

6 A I am disagreeing with her testimony. To my knowledge it
7 was held by the top and the bottom.

8 Q And you're not aware of any door that has come unhinged
9 in that manner where it would completely come up unhinged at
10 this top?

11 A Where it would just be held by the bottom.

12 Q That's correct?

13 A I -- I do not have knowledge of that.

14 Q And are you aware of any other door that has come off,
15 where it's completely fallen away?

16 A No.

17 Q Other than Mr. Brigance's?

18 A No.

19 Q And Connie Benchi -- was the door, when we were here
20 before her door was taken completely out of her room, is that?

21 A I believe so.

22 Q Was that door taken back and rehung in her room
23 subsequently?

24 A Yes.

25 Q And has it come off the track again at any point in time

1 since it was rehung in the room?

2 A You know, I, I don't believe so.

3 Q Within the past two months, has it come off the track in
4 her room again?

5 A At this time I don't think so.

6 Q Is it a possibility it has?

7 A Not that I can remember.

8 Q Is the door still in her room or has it been taken out
9 yet again?

10 A To my knowledge it's in her room.

11 Q Nothing further.

12 MR. MORRIS: I don't have anything.

13 MR. TILLEY: No, ma'am.

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DEPOSITION CONCLUDED

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EXHIBITS FROM DEPOSITION OF MITZI BAILEY

EXHIBIT NO. 1 Brookfield Assisted Living at Highland Crossing
Application for Residency

EXHIBIT NO. 2 Brookfield Letter Bailey/Amanda Broughton
Dated 02/25/09

EXHIBIT NO. 3 Incident and Accident Report 01/07/09
Maurice Jack Brigance

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C E R T I F I C A T E

STATE OF ARKANSAS)
)SS.
COUNTY OF SEBASTIAN)

I, Kristie Knight Congdon, a Certified Court Reporter, in and for Sebastian County, Arkansas, do hereby certify that the witness, MITZI BAILEY, was duly sworn by me prior to the taking of testimony as to the truth of the matters attested to and contained therein; that the testimony of said witness was taken by me by Stenomask and was thereafter reduced to typewritten form by me or under my direction and supervision; that the foregoing transcript is a true and accurate record of the testimony given to the best of my understanding and ability.

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

Kristie Knight Congdon
Certified Court Reporter
Certificat No. 649