

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS
CIVIL DIVISION

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

Plaintiff,

vs.

Case Number CV 2010-1365

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

Defendants.

VIDEOTAPED DEPOSITION OF STEVEN

A. BRIGANCE, taken at the law offices
of Chronister, Fields & Flake, 309 North
Seventh Street, Fort Smith, Arkansas, on
Monday, February 21, 2011, at 9:27 a.m.

A P P E A R A N C E S

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For the Plaintiff:

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Also present:

CHRISTINA HELT, VIDEOGRAPHER
ROBB HELT, VIDEOGRAPHER

1 I N D E X

2 TESTIMONY BY STEVEN A. BRIGANCE

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10 E X H I B I T S

11 NUMBER MARKED

12 1 Complaint report 118

13 2 November 17, 2009 e-mail 144

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1 MONDAY, FEBRUARY 21, 2011; FORT SMITH, ARKANSAS; 9:27 A.M.

2
3 THE VIDEOGRAPHER: This is the videotaped
4 deposition of Steven Brigance, taken on behalf of
5 the defendant in the matter of Steven A.
6 Brigance, as personal representative of the
7 estate of Dorothy Brigance, deceased, and on
8 behalf of the wrongful death beneficiaries of
9 Dorothy Brigance versus The Brookfield at Fianna
10 Oaks, LLC, et al. Today's date is February 21st,
11 2011. The time is 9:27 a.m., and we are on the
12 record.

13 Are there any stipulations that you would
14 like to get on the record?

15 MR. DOSSETT: Just that we'll take the
16 deposition according to the Arkansas Rules of
17 Civil Procedure.

18 MR. CHRONISTER: Correct.

19 THE VIDEOGRAPHER: Thank you.

20 Would the court reporter please swear in the
21 witness.

22 STEVEN A. BRIGANCE,
23 having been called upon to testify in the form of a
24 deposition, and having been duly sworn or affirmed,
25 testified as follows, to wit:

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BY MR. DOSSETT:

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

A. Steven A. Brigance.

Q. Mr. Brigance, you know me. I'm Mark Dossett. We have worked together in the past, and so we know one another, and if I call you by your first name, I don't mean to do that. I try to be more formal than that, but I may slip up.

We have gone through a deposition before, so I have all your background information. We're not going to reread that, but let me just cover a few things with you. I know that whenever we took your deposition previously that you were dealing with some issues, and were on some medication at that time. Are you currently taking any medications?

A. Yes.

Q. And what is that?

A. The same, Lexapro, 20 milligrams.

Q. And have you had medication today?

A. Yes.

Q. And would that be the same dose you took today?

A. Yes.

Q. And who was the doctor who is prescribing that?

1 A. Dr. Baker, Dr. Balis are the psychiatrist and the
2 general practitioner.

3 Q. We're here today, of course, to talk about your
4 mother's case, a case involving your mother. Let me see
5 if I can kind of pick up where we left off on the previous
6 deposition. I recall, from your previous deposition and
7 from your request for admission responses, that when we
8 took your deposition in August of 2010, I believe it
9 was --

10 A. No, 2009.

11 Q. 2009. Time is getting away from me. In August of
12 2009, that's right, at that time, I asked you what the
13 care was like that your mother was receiving at The
14 Brookfield, and you expressed to me then that it was, for
15 the most part, good care.

16 A. I think that was August 11th, and I think I said in
17 the context of what you come to expect in elder care
18 facilities, it was good care by the caregivers.

19 Q. By the caregivers. And those would be -- when you
20 say "the caregivers," you're talking about the employees
21 of The Brookfield?

22 A. Talking about people like Mitzi -- not Mitzi, the
23 administrator. I'm talking about Michelle Ensey, Michelle
24 Seaman, others whose names I can't remember at this point,
25 but not, for example, the marketing person, and certainly

1 not Mitzi, but, yes, the caregivers that would shower my
2 mother, toilet her, up until sometime in August, yes, it
3 was, by relative standards, good care.

4 Q. Okay. Help me understand, if you can, in your eyes,
5 did that somehow change after August 11th?

6 A. Radically.

7 Q. And explain to me how it changed and what you
8 observed.

9 A. First of all, in any environment, whether it's
10 hospital, assisted living, senior housing, nothing is ever
11 done perfectly. My sister, who visited for 10 days in
12 August, sort of expects perfection, and, you know, I just
13 am used to a different set of standards. People aren't
14 perfect in any environment.

15 Prior to August, and I just say August 11th, that was
16 the date of the deposition, there would be missed call
17 lights. There would be times where my mother was not
18 gotten for dinner, but, by and large, the caregivers,
19 there was continuity in the staff. They all knew my
20 mother.

21 My mother expected certain things, for example, she
22 liked decaffeinated coffee at night, and regular coffee in
23 the morning, for obvious reasons. She liked water without
24 ice. She liked to be called Ms. Dot. And starting
25 mid-August, and I would have to look at the time records

1 and go back to refresh my memory, which I have not done on
2 any of this, there were all of a sudden a flood of new
3 employees such that you would have an employee -- I
4 remember one young fellow in particular trying to serve
5 dinner that night, and dinner took an hour and a half. He
6 could not get my mother's meal, which had been
7 pre-ordered. My mother got aggravated. I introduced -- I
8 would always introduce myself to new people. I liked to
9 call them by their first name, and introduce them to my
10 mother. And he was gone the next day. And so you had a
11 lot of turnover. And in any environment involving the
12 elderly, continuity is key because the elderly do expect
13 certain things in certain ways. And so what I started
14 noticing in August was that there were new caregivers that
15 did not know my mother, didn't know her desires with
16 respect to medications, with respect to exercise routines.
17 The call lights became more frequently unanswered.

18 And my sister, really, I would say to you, because
19 the circumstances were difficult with my mother being in
20 that facility and with the matter going on with my dad,
21 over his death, it was very difficult, period, and I tried
22 to get along with everybody because that's what I needed
23 to do for my mother, and so I would overlook some things.
24 I mean, the sitters would bring certain things to my
25 attention, and I would say, "I'll live with that," or I

1 would ask the sitter, "Why don't you talk to someone." I
2 tried to limit my contact with, whether it was Mitzi or
3 the caregivers themselves in any negative light, I tried
4 to limit it to what I thought were big issues, and big
5 issues were becoming more frequent.

6 I was in on more than one occasion where I would ring
7 all, I think, four call lights while my mother was on the
8 toilet, she had already rung the one in the bathroom, and
9 they would not be answered, I mean, I'm talking
10 30 minutes, 40 minutes such that my mother would get off
11 the toilet.

12 My mother's care plan was quite explicit, and
13 everyone knew this, by that time, she had a walker, my
14 mother needed help with transferring, with getting in and
15 out of bed, certainly with toileting. And that was about
16 the only thing I did not do for my mother. I never aided
17 in toileting. She didn't want it and, honestly, I didn't
18 either. And so I would sit in there. Sometimes I would
19 need to be at work, and I would sit in there, waiting for
20 the call lights to be answered. And my mother would get
21 quite aggravated. But it was mainly -- for me, it was
22 mainly call lights and the bed situation in terms of
23 soiled sheets, soiled clothes not being changed, not being
24 washed.

25 Q. The instance or instances you recall where you would

1 pull all the call lights, and no one would come for 30,
2 40 minutes --

3 A. Yes.

4 Q. -- how often would that happen?

5 A. Oh, 30 or 40 minutes, probably -- and it would be
6 during the day. It was not at an odd shift hour, in other
7 words, it was the, I guess they call it, 7:00 to 3:00
8 shift, most hospitals do, in any event. It would be on
9 that shift. I would not do this at night because,
10 generally, the sitters were taking care of my mother at
11 night.

12 Delayed call lights, several times a week.
13 45 minutes, that one sticks out in my mind. 20 minutes,
14 fairly common. I think Debbie and, certainly, my sister
15 would be -- my sister was there 10 days in August, I think
16 the first half of August, and spent probably 15 hours a
17 day with her, and when my sister left, we sort of did a
18 data dump, her to me, and Lena was more -- my sister's
19 name is Marcelena. She goes by Lena -- was much more
20 emphatic about the call-light situation.

21 Q. You mentioned a time that there was a 45-minute
22 delay. Is that a single episode you're remembering or a
23 particular episode, I should say?

24 A. Yes, I mean, the 45 minutes because I remember I was
25 very late to a meeting that day, and I couldn't find

1 anybody. I would go out in the hallways, and my guess is
2 they were in other rooms, and I finally did get someone.

3 Q. Do you remember when that was?

4 A. Mark, I'm guessing mid-September. It was not very
5 soon after -- I believe my sister left sometime --
6 actually, I think she may have left the day I was deposed,
7 on the 11th of August, and we did not talk until probably,
8 by the time she got back to San Antonio, about the middle
9 of August, about her concerns about the facility.

10 Q. Whenever this incident happened where there was the
11 45-minute delay, you mentioned that you went in and looked
12 for people. That was going to be my follow-up question
13 here. Whenever the delay was occurring on this event when
14 there was a 45-minute delay, what did you do in response
15 to the delay?

16 A. Karen, I think Karen Brown, the marketing person,
17 officed -- I hate to use a noun as a verb, but had an
18 office right across from my mother's room. I would always
19 start there. Now, Karen was not a caregiver, but she was
20 in the chain of command. I think she may have even been
21 assistant administrator under Mitzi at some point. I
22 would start with her. Very frequently she was not in, I
23 mean, her job was marketing, and you don't market by
24 sitting in your office. And if she was not in, I would
25 walk the halls.

1 Once -- well, not just once in a while.
2 Occasionally, I would find somebody coming in and out of a
3 room, and I would say, "Mom needs to be" -- I'll use a
4 noun again as a verb -- "toileted." And other times I
5 would go up to the front desk. Sometimes there were
6 people at the front desk. Often, particularly, on that
7 7:00 to 3:00 shift, they were not at the front desk just
8 because they were doing other things. I mean, by that
9 time, the facility had gone from -- well, my parents were
10 the only residents for the first several months going back
11 to June of 2008.

12 I guess by the time this was happening you had not
13 only the combination of turnover, but you had an increased
14 census. I'm just guessing 30, 35, maybe not 35, 30 rooms,
15 probably, with people in them, and the staff was
16 stretched. And so that's why I would tolerate longer call
17 lights.

18 I would tolerate -- in the old days, boy, except when
19 there were problems with the system, which happened
20 periodically, when the phone system wasn't working or,
21 like, one night John, one of the residents, was, they
22 said, was sitting on the call light, so nobody's call
23 light was getting -- you know, those sort of things can
24 happen, I guess, but it was getting increasingly hard not
25 only to get call lights answered, but to find people. And

1 often they would go in and they would go, "It didn't do on
2 my" -- I think it was work -- I don't know how these
3 things work, but through a phone system, and they would
4 say, "I don't even show it." And somebody else would come
5 in and often what would happen is two would come in. You
6 would have nobody for some period of time, and two would
7 come in, and one would say, "I didn't get the page," and
8 the other one say, "Well, I got it," then they would start
9 talking about the paging situation.

10 Oftentimes, by that time, my mother and I were in the
11 bathroom doorway. I was trying to keep my mother from
12 coming out or, if she had her pants up, I would just help
13 her to the chair, and then when they would get back in,
14 they would take her back in and finish.

15 Q. This episode, this one particular episode where you
16 recall it being 45 minutes, how did it eventually get
17 resolved? Did your mother help herself? Did you find
18 someone?

19 A. Yes, she got off the toilet.

20 Q. Okay. Was she able to pull her pants up herself?

21 A. About halfway.

22 Q. Did you assist her the rest of the way?

23 A. Not exactly.

24 Q. What happened?

25 A. I got her to the chair.

1 Q. Okay. After you got her to the chair, were you there
2 when anyone --

3 A. Yes.

4 Q. -- from the facility came to the room?

5 A. Yes.

6 Q. And who came?

7 A. I believe Michelle Ensey.

8 Q. And did you go retrieve her or did she come on her
9 own?

10 A. She came.

11 Q. Tell me what happened when she came to the room.

12 A. She seemed to know -- well, first of all, Mom was
13 sitting there with her pants partially down, and I can't
14 tell you for sure it was Michelle Ensey, but the reaction
15 I remember, she was very sorry, "Oh, Ms. Dot, I'm so
16 sorry. I had the page, I got tied up, and I'll help you,"
17 and they went back in and spent quite a bit of time
18 because I think she had soiled her pants, and I left
19 before they were finished in the bathroom. And you
20 understand, Mark, when I say "45 minutes," I wasn't saying
21 it's 44 minutes and 30 seconds. It was longer than
22 40 minutes.

23 Q. And I assumed that when you say "45 minutes," that's
24 some kind of an estimate?

25 A. Yes.

1 Q. And you had a feel for it?

2 A. Well, I did because I had a meeting. I usually, in
3 the mornings, would see my mother -- at this time, I used
4 to eat breakfast with her, then it got to a point where I
5 would have the sitters eat breakfast with her, and I would
6 come after breakfast. And I had, like, a 9:30
7 appointment. I would usually go by about 8:30, after she
8 got back from breakfast, and it was at least 9:20 by the
9 time I left, so maybe I got there at 8:35, but I know I
10 was pressed up against a meeting.

11 Q. Okay. Are there any other particular instances of
12 when you were there, waiting for the call light to be
13 answered, that you recall, the ones that stand out in your
14 mind like this one did?

15 A. Just a number that my mother, particularly during
16 this time, was complaining more and more. And, honestly,
17 I think part of that was as a result of Lena being there.
18 Fastidious isn't the right word. We both care about our
19 mother. I have more experience in the industry, although
20 Lena did work, I think, in the skilled nursing facility
21 arena for a while.

22 I have the day-to-day care, and it was a long number
23 of months since my dad's death, and it was not easy, and
24 so I accepted some things, and Lena accepted few, if any,
25 I mean, for example -- and I know you will talk to Lena.

1 I know Michelle Ensey was one of the most caring people --
2 I guess she's still at the facility -- that my mother had.
3 She and Amanda and several others were very caring to my
4 mother. I will give you one example of how things were
5 changing, and I may be going far afield --

6 Q. No, please do.

7 A. -- and I told Rex I wouldn't do that.

8 Q. No, please do.

9 A. My mother was a powder nut, and everybody knew that.

10 She loved powder, and we were having to get her two or
11 three containers of -- big containers of powder biweekly,
12 and she -- somebody, for Christmas, gave her, or may have
13 been a birthday, her birthday was July 25th, I think it
14 was for her birthday, gave her what is called satin
15 powder. It's just very nice powder. And I think it may
16 have been Lena that gave it to her.

17 And somewhere last night Peggy was reviewing a few of
18 the progress notes, and showed it to me, and we both got a
19 chuckle because my mother had asked the caregiver, and I
20 don't think it was anybody we knew, it was one of the new
21 ones, to do what they always did, and that was, "Would you
22 rub me with powder?" And the caregiver looked at it and
23 said, "I can't dispense medications." And my mother got
24 upset about that because she was used to getting her legs
25 rubbed and powder put on her. Makeup, my mother wore

1 makeup at night, so she was used to that. And this person
2 just mistook the powder as being a medication, and said to
3 my mother, "We can't dispense medications, by law."

4 Now, at night, I would have thought, particularly in
5 my mother's condition, having had some strokes, my mother
6 would have just been a little flummoxed, but my mother
7 said back to her, quoted in the progress note, she said,
8 "I don't believe that's the law that requires that. I
9 believe it's the administrator."

10 And so my mother had gotten to the point where she
11 sensed that people did not want to care for her, above the
12 caregivers, in other words, that the caregivers still
13 loved her and still cared for her. There were still a
14 few, Cheryl had left by this time, but we were able to
15 hire her as a sitter, and that's where we went from them
16 bathing her, showering her, to Cheryl doing it.

17 But the instances I remember, primarily, are tied to
18 my mother, and I think this finally answers your question,
19 are, in general, the number of times my mother would get
20 upset. My mother clearly was upset after my dad's death,
21 and remained angry for quite some time, but as we got into
22 the summer, we were able to play ball with her more, to
23 get her to smile more, and I thought she was doing
24 somewhat better, and then the turnover started, then Lena
25 came, and then things just started escalating.

1 You know, it's like cancer. Do we have more cancer
2 or are people screening it better? I think I became more
3 alert to things that were going on and more sensitive to
4 them, primarily, because my mother was reacting with anger
5 again.

6 Q. When your mother would become more expressive about
7 her concerns, who was she expressing those to?

8 A. Well, concerns. I would say she was just expressing
9 her anger.

10 Q. Okay. And to whom would she express her anger?

11 A. Anybody who would listen.

12 Q. Who did you see her express it to?

13 A. Me. First of all, me. I was the one there most of
14 the time. I don't think -- Lena would have to speak for
15 herself. My guess is that Mother said very little during
16 Lena's time because Lena is a lot more vocal, and would
17 be, than I.

18 I think I -- maybe I got lost a minute ago. Michelle
19 Ensey was, is, and always will be one of my favorites.
20 She's a great lady, a great caring lady, exactly what you
21 need in any sort of elder-care environment. And then I
22 think maybe Michelle got promoted and became less of a
23 caregiver. She would still do it to fill in, I think, but
24 my mother saw less and less of her.

25 My sister, on the other hand, in her 10 days, had, I

1 think, several dustups with Michelle. And I either wrote
2 Michelle or I may have just pulled her aside at some point
3 when I found out about it. I did not find out about it
4 from Michelle at all. My sister told me. And I couldn't
5 have that. You know, it's like they say, don't criticize
6 a waiter, you know, don't take an attitude with a waiter
7 because they've got your food back there. And these
8 people had my mother. And so I would never -- I never got
9 angry with a caregiver during my entire time there.

10 Mitzi and I had a different relationship for a whole
11 number of reasons, particularly during this period, but
12 Mitzi wasn't the one delivering care. And I knew even if
13 Mitzi -- and I'm just, hypothetically, I'm not suggesting
14 that she did this at all -- told people to stop caring for
15 my mother, they would continue to care for my mother
16 because they cared for her.

17 So, again, that's part of an example where Lena would
18 take a different attitude and a different demeanor toward
19 caregivers. I respect -- to me, caregivers are angels.
20 Now, did they have a few that came during that period when
21 there was that turnover, yes, and, you know, to the
22 facility's credit, those people, with one or two
23 exceptions, they were gone pretty quickly, days, weeks,
24 they were gone, but then someone new would come in, and I
25 would go back to introducing them and so on and so forth.

1 But she would express it to me, clearly, she would
2 express it to Debbie and to Cheryl, the sitters. She
3 would not talk to Mitzi. My mother would not talk to
4 Mitzi. I don't think Bob ever tried to talk to her, but
5 she would not have talked to Bob if Bob had tried, but she
6 would talk to any caregiver, any caregiver, and she would
7 say that -- you know, in my presence, she would take more
8 of an attitude than I would. My mother, particularly when
9 it came to toileting, would get very aggravated because my
10 mother was a very clean person, very proud, she always
11 wore her stockings and her makeup during the day, and when
12 she soiled herself, that meant she had to go through all
13 that again, which was not an easy process for her.

14 I never -- when the caregivers would leave, I would
15 tend to say, "Mother, you're treating them kind of like
16 Dad would on occasion, and we can't do that. These are
17 our friends." And so it was mainly to me.

18 Q. Okay. Other than this episode where it took
19 45 minutes, this one standing out in your mind, are there
20 any other specific episodes with regard to the call lights
21 that stand out in your mind as being particularly lengthy
22 or troublesome?

23 A. For my mother, there were a number.

24 Q. Right.

25 A. And for my mother, she would tend to -- because my

1 mother moved sort of slowly, I would help her into the
2 bathroom, but I would not help her get her -- but she
3 would have to go. We would ring -- let me back up.

4 Q. Okay.

5 A. I won't say "strike that" because then I sound like a
6 lawyer. My mother would generally ring a call light, and
7 I think most of them knew this, before she went into the
8 toilet because she needed help sitting down, transferring,
9 getting her clothes down, so it was kind of like a running
10 start. And if I were there, I would -- if my mother would
11 then say, "I'm finished." And I would always shut the
12 door. I was the only one that would move the door because
13 I didn't let her operate the door. Shut the door because
14 she wanted privacy. And she would say, "I'm finished."
15 And by that time, you know, the one at her chair had
16 already been rung, and nobody is there, and let's say it's
17 10 minutes.

18 Usually, to get my mother to do everything would be
19 10 minutes or so. Nobody has come. I would ring a couple
20 other call lights. So I would say, you know, the call
21 lights, for me, I don't know what the regs are, I don't
22 know -- I just know that it was longer than my mother
23 could tolerate, and there were a number of times. I won't
24 use the word "many" or a "few." There were a number of
25 times where my mother would end up getting off the toilet,

1 and me either stopping her and trying to get her back on
2 the toilet, or helping her into the chair a number of
3 times.

4 Q. Can you give me a range as to what that number would
5 be, ones that you witnessed?

6 A. Are we talking about August, September, October and
7 November?

8 Q. Sure.

9 A. Because I think she fell on the 19th, August 11th,
10 let's mark that out, so between August 11th and
11 November 19th, I would go every morning, every morning,
12 and, generally, in the evening, but I cannot remember a
13 single evening where this occurred because usually by the
14 time I got in to see her, the sitters had showered her or
15 had her in her pajamas, and then I would visit for a
16 while, and they would usually toilet her one more time
17 before they left. So none of this was at night and none
18 of it was on the night shift that I observed.

19 Now, I heard about, from the sitters and from my
20 mother in the morning like, "I rang the call light, and
21 they didn't come." But what I observed would be -- and my
22 mother always -- did not always need to go to the
23 bathroom, so if you rule out -- let's say there's three
24 months, and I would go six days a week, maybe a dozen
25 times.

1 Q. Okay. During any of these instances that you
2 witnessed where you felt like there was an excessive delay
3 in responding to the call light, did you ever see any harm
4 come to your mother?

5 A. Physical harm?

6 Q. Yes, sir.

7 A. I mean, my mother did fall, but I don't -- I haven't
8 looked back at any of this stuff, so I don't know. I
9 don't remember that fall, but she did fall in the summer.
10 I don't think it had anything to do with that. I think it
11 was just her trying to ambulate by herself. No physical
12 harm.

13 Q. How about other types of harm, emotional?

14 A. Well, mental, emotional, yes. I mean, first of all,
15 we worked, I worked -- we all worked real hard on my
16 mother's anger for months because anger -- I mean, anger
17 basically killed my brother, and it was -- I believe it
18 was taking a terrible toll on my mother, and now she was,
19 once again, focusing on what the facility was not doing,
20 but, again, she would not move. So I felt trapped, but I
21 felt trapped watching her, first of all, be angry, and,
22 number two, be -- I don't know if "insulted" is the right
23 word.

24 My mother would be embarrassed. My mother strived
25 real hard -- the Velveteen Rabbit. You've got young kids,

1 I don't know if you ever read that to your kids, but my
2 mother was like the little boy in the Velveteen Rabbit.
3 My mother had a picture of her debutante -- a painting of
4 her debutante picture, she was 19, before she got engaged
5 to my dad, right next to her vanity, and I swear to you
6 that is who my mother saw in that mirror. And that's why
7 she got on her stockings every day, even after my dad's
8 death. It wasn't just for him. It was for her. And so,
9 yes, emotional, I think, would be the right way to put it.

10 Q. Describe for me, if you could, the changes you saw in
11 your mother as she tried to deal with these issues, the
12 anger and frustration.

13 A. I think first, I think she would have been -- because
14 my mother liked to meet caregivers, and others will
15 testify that my mother didn't like so much the other
16 residents. She was nice to them as she would walk
17 through, but mainly for the reason I was just saying. My
18 mother, she knew she was in an assisted living facility,
19 but those people had problems. She did not. That's why
20 she refused to wear a hearing aid until that summer.

21 Once we got her to actually finally admit that she
22 could not hear -- I had a sign that I hung behind her, and
23 she didn't like it, but she tolerated it because we had
24 that kind of relationship, but it said, "I'm not hard of
25 hearing. I'm just trying hard not to hear you."

1 Well, my mother was getting increasingly hard of
2 hearing. Finally, we got her a hearing aid, and it was
3 like a miracle. And it was difficult to put in. I gotta
4 tell you, I could not put it in. And this was one of the
5 things that started at this time. She couldn't sleep in
6 it, obviously, so the first shift before the sitter,
7 because my mother tended to be an early riser, would put
8 the hearing aid in. It was during the time where the
9 staff was changing over, and so you would have sort of a
10 different person each time putting the hearing aid in.
11 Well, they had the problems I did, and we would come, and
12 the hearing aid would be put in wrong. She couldn't hear.

13 So all of a sudden, first thing in the morning, and
14 my mother was a morning person, she liked the morning, she
15 loved to eat. She loved her breakfast. And she wouldn't
16 be able to hear, and she would be aggravated. So
17 aggravation and it was -- and that aggravation flowed to
18 not just the hearing aid, but these people don't know what
19 they're doing. So now this genuine regard that my mother
20 had, even for new caregivers that came in, because even
21 before August there was some turnover. I mean, you know,
22 Kathy DeSantis had left, Amanda had left, but once I see
23 the time, I can remember the names of the people, Angela,
24 I mean, there were very good people coming in that loved
25 my mother. And she always gave them the benefit of the

1 doubt because that was who my mother was.

2 I think the biggest thing going on, Mark, was that
3 she no longer trusted the caregivers, except one or two.
4 She wanted Michelle. She would ask me to get Michelle
5 Ensey. And I would say Michelle is doing -- you know,
6 she's going to be at activities. "No, I want her." "I
7 can't do that. I'll find somebody else." And I remember
8 bringing in somebody one time, and she said, "I don't want
9 that." So a distrust of the caregivers.

10 I mean, for better or worse, I think it's pretty well
11 known that my mother really never liked Mitzi from day
12 one, and that's not my position. I would -- she would
13 make jokes. I would come home or come to eat with her,
14 and she would say, "Are you going to take Mitzi home
15 tonight?" My mother just never -- for whatever reason, my
16 mother had a certain antenna about people. She never
17 liked Mitzi, but she liked the caregivers. And so I think
18 what was beginning to happen was that nobody knew that she
19 liked coffee. They would bring her caffeinated coffee at
20 dinner, supposedly. I don't know the difference. I don't
21 drink coffee. But she would say, "I have trouble
22 sleeping, and I know that they didn't bring the right
23 coffee." I don't know if they did or they didn't.

24 So it was the caregivers, particularly new ones that
25 were coming in, lost all benefit of the doubt, as I saw

1 it, and so I saw my mother retrenching back to not wanting
2 to go out of the apartment, being more -- being shorter
3 with caregivers when I was there, even some caregivers
4 that she liked. And so I was dealing more with her at
5 that time. I mean, quite honestly, Mark, I used to say,
6 "Let's move." And, "No, I don't move, but you need to" --
7 and, honestly, it was, "you need to fix this."

8 There was a lot of -- there was a lot -- there was a
9 lot of stress that I was dealing with. I thought it was
10 attributable to my dad, but at this point, the conflict --
11 because my mother and I never had conflict, and we were
12 starting to. We were starting to. She would say to me,
13 "You need to fix it," and I would say, "We've got to deal
14 with this in a certain way," and then she would say,
15 "You're not listening to me." And my mother would even
16 get short with me, which never -- that never happened.

17 So her demeanor was changing, and I was trapped, I
18 mean, that's why I tried to get the sitters in for longer
19 periods of time. I tried, through the e-mails, because I
20 could not -- I had been told not to see Mitzi,
21 individually, so I started writing e-mails. I would not
22 get replies. I would talk to the caregivers. It was an
23 accelerating pace of almost inevitability.

24 And I'll tell you that I guess Dr. Phil Barling would
25 be the one to best testify as to the terrible conflict I

1 felt during this period. It was a train wreck. I could
2 see it coming, not that I could see her falling and what
3 happened, but I knew something was going to happen. This
4 was reaching critical mass and, honestly, I couldn't deal
5 with it much anymore.

6 Q. You mentioned that you were told not to see Mitzi,
7 individually.

8 A. Right.

9 Q. Who gave you that instruction?

10 A. Rex.

11 Q. Okay. So it came from your attorney?

12 A. Yes.

13 Q. When --

14 A. And I think you guys -- somebody asked me to stop
15 calling or e-mailing Bob, and so, basically, my contact,
16 other than through e-mails, had to be with the caregivers.

17 Q. And to kind of put that in context, during this
18 period of time there was the ongoing lawsuit with your
19 father?

20 A. Yes, yes, yes. It wasn't for a bad reason.

21 Q. Right.

22 A. I mean, it was just -- it was part of the
23 impossibility of the situation because in any facility,
24 you've got to be able to go to a quality -- you've got to
25 go to someone outside the caregivers because the

1 caregivers are that. They're not the administrators,
2 they're not the owners, they're not the ones who can hire
3 or fire or get new people or different people, and that
4 was part of the impossibility of it.

5 Q. Whenever you would be there, and the call lights
6 would not be answered in an appropriate amount of time,
7 was there ever a time when you would go look for someone,
8 and not be able to find help?

9 A. Yes, yes.

10 Q. And how often did that happen?

11 A. Probably as often as I did find help. And, again,
12 I'm not -- they weren't back eating donuts. It wasn't
13 because they weren't giving care to someone. I'm assuming
14 they were doing something, I mean, the building had filled
15 up, and by my way of thinking, obviously, not the state's,
16 I thought they needed more staff for these kinds of
17 reasons, but they were busy, I mean, I never saw -- they
18 would get smoke breaks, and they would be -- you know, one
19 or two would be out back, but I never saw anyone not
20 working there, you know, that was supposed to be working.
21 Nobody was around reading magazines. And I've seen that
22 with a lot of my clients, people who don't work. These
23 people were hard workers.

24 Q. Talk to me about what you experienced with regard to
25 her bedding or clothes being soiled. Because that was the

1 other thing you mentioned that since changed or bothered
2 you after August 11th.

3 A. Well, it bothered my mother. Honestly, I never -- I
4 would get the report. Again, the sitters would -- you
5 would have caregivers come, or were supposed to come,
6 before the sitters arrived, and that wasn't happening
7 periodically. How often, Debbie and Cheryl would be --
8 generally, Debbie, because Debbie was the morning
9 person -- would be the one to know that. So you would
10 have two waves before I got there, once I stopped eating
11 breakfast with my mother. I just found it untenable for
12 me to continue going into the dining room.

13 Now, I love Chuck, the cook, and that was one thing
14 that never changed. My mother loved the food, loved
15 Chuck, never wavered on that. Still the best place in
16 Fort Smith to eat a Monday night meal, I imagine, to this
17 day because most of the restaurants are closed. And Chuck
18 was wonderful to her. For some reason, she fell out of
19 love with his peanut butter pie, but other than that, she
20 liked -- she loved Chuck, and she loved the kitchen staff.
21 So that was one thing that never changed.

22 So you would have a caregiver, supposedly, come in,
23 and sometimes would and sometimes wouldn't, and then you
24 would have Debbie, that I started getting in by 7:00. She
25 used to come in, like, 8:00 or 8:30, but that was when I

1 was coming to take my mother to breakfast. But she needed
2 ambulatory assistance, and there were some times when they
3 did not get my mother for breakfast. And, again, my
4 mother always liked to eat, until the last 14 days or so
5 in the hospital. But she loved to eat, and there were
6 times when she would go marching on down the hall by
7 herself. And it might have been one of those times that
8 she fell. I don't remember.

9 The progress notes -- again, I haven't reviewed this,
10 but she fell sometime this summer. She got a PT person
11 come in and, ultimately, as much as she disliked him, he
12 talked her into getting a walker, which was a big benefit,
13 but we still didn't want Mother going down with a walker
14 because she would tend to try to -- she would go speed
15 walking. Again, she felt she was younger than everybody
16 else, and so we always wanted her to have ambulatory help.
17 She wasn't getting it for a while, so when I stopped
18 coming to breakfast, I moved Debbie up to 7:00. You come
19 in, make sure you help her to breakfast. So Debbie would
20 be the one with the sheets, perhaps Cheryl, I don't know,
21 at night, I don't know. But I do remember Debbie being
22 the one.

23 They kept a log, as has been, you know, much
24 discussed in other places. They kept a log. I didn't
25 review the log. I didn't want to look at the log, I

1 didn't ask to look at the log. Honestly, I didn't want to
2 because of the same reasons that I didn't listen to
3 everything that Lena had to say. I was pretty angry
4 during those days, too, and I had to shut out the stuff
5 that I knew I just couldn't do anything about, you know,
6 if -- I mean, for example, the bar with Lena might be five
7 minutes, or any waiting time, for a call light to be
8 answered. Mine is going to be elongated. And Debbie the
9 same way.

10 I read somewhere in one of the depositions a long
11 time ago that people talked about that, you know,
12 Ms. Dot could be demanding, and there's no question she
13 was. And so people tended to react to that, and I think
14 all of us were aware of different things. I tried to
15 focus on the things that really stuck out. And the
16 soil -- I know your next question is how many times was I
17 told this. I don't remember. More than one, less than
18 10. But where I was told that when Debbie arrived that
19 the bed -- on at least one occasion that the bed had been
20 made up with soiled sheets, she would say that Ms. Dot was
21 wet when I came in, and I've had to redress her.

22 Now, Debbie is the one to talk about that. Look, I
23 know in elder care environments, like a baby, like, you
24 can change a baby and, you know, a baby is a baby. My
25 mother wasn't a baby, but she did have continence issues,

1 and she wore a diaper, but her diaper would be completely
2 soiled. And, you know, these caregivers can look at a
3 diaper, I mean, you look at a baby's diaper and you know
4 that just happened or it's been there awhile. And Debbie
5 was getting increasingly frustrated. And I asked her, I
6 said whenever this comes up, talk to the caregivers first
7 and, if need be, talk to Mitzi. And there were times
8 where part of my e-mails, I believe, I raised them.

9 I know my mother's toilet was not working for at
10 least one 10-day period. Now, I'm not saying it was
11 stopped up during that whole time, right, because that was
12 the only place my mother could go to the toilet in her
13 room, you know, just one bathroom, but it was like a daily
14 occurrence. It would back up. And I think I even wrote
15 Mitzi about that one time, but I think if you read that
16 e-mail, I didn't write it like my sister would have done
17 it, you know, because, again, I don't -- I tried to treat
18 people with the same respect that I wanted them to show my
19 mother. And so these were the issues that were happening
20 in terms of the toilet not working, the sheets, the
21 clothing -- I think Debbie -- and I'm speaking for Debbie.
22 You'll talk to Debbie again -- would be in the corner,
23 soiled, and not washed.

24 Quite honestly, I know, and I saw somebody say this,
25 and it's true, particularly when Shirley, the first

1 sitter, that gave way during the summer sometime, she
2 liked to wash my mother's clothes, but I would always make
3 the point to the caregivers, if they do it, that's fine,
4 but keep coming in, you know, it's not taking away the
5 responsibilities you have because they go to stores,
6 they're sick on occasion, they got their own things to do.
7 I'm relying upon them mainly to be with my mother, and if
8 they can do things for my mother that's seamless that
9 meshes with you guys, great.

10 Q. Do I understand you correctly, then, with regards to
11 the soiled bedding, that that was something that was
12 primarily reported to you as opposed to you witnessing it?

13 A. Yes.

14 Q. And the person who would report it to you would be
15 Debbie, mostly?

16 A. Yes.

17 Q. And who else?

18 A. And Cheryl might have.

19 Q. And Cheryl maybe?

20 A. I don't remember if she did or she didn't.

21 Q. Okay. Let me ask you about the logbook. You
22 mentioned it. You indicated that you did not look at the
23 log?

24 A. No.

25 Q. Is that -- have you ever looked at it?

1 A. Have I looked at it? I've seen it.

2 Q. Have you read it is what I meant?

3 A. No.

4 Q. So during your -- while your mother was a resident of
5 The Brookfield, were you aware that a log was being kept?

6 A. Yes.

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

9 A. I didn't want to. I was there -- I debriefed them
10 every morning, fancy term, we talked, "How is Mother?
11 What's going on?" I would take them outside, or Mother
12 didn't have her hearing aids in those early days and so we
13 could talk. Mother liked to watch the TV, so she would be
14 watching the TV while we would talk, and I would get a
15 five- or ten-minute, you know, kind of like a shift
16 report, "How did things go? Did she sleep good? How did
17 she eat? Any issues?" And so it would be in that way.

18 Why didn't I want to read it? My mother, when she
19 first had her stroke in 2004, something like that, her
20 first major stroke, we had around-the-clock sitters then,
21 except they were LVNs. All of them were LVNs. Cheryl is
22 an LVN, I think, but Debbie is not. She's just a sitter.
23 And they kept a logbook. I don't know why they do it, but
24 every sitter I've ever had keeps some sort of log or
25 notes. I don't know if it's to protect themselves. Maybe

1 the agencies want it. I asked Shirley why she was keeping
2 it, and she said, "I do it just for my own benefit."

3 You know, we weren't looking -- when it started, the
4 aim wasn't to improve my mother to get her to go live
5 independently. My mother was in an assisted living
6 facility and, without a doubt, the next step was going to
7 be a skilled nursing facility, so she just kept it to
8 remind herself. She might write herself notes. I don't
9 know, I mean, they're the best ones to ask. But it
10 wasn't -- I didn't want a blow-by-blow because, again,
11 Debbie was pretty vigilant.

12 Again, there were things that it would bother Debbie
13 that I would not react to. Soiled sheets and linens and
14 clothes weren't one of them, but there were things that I
15 just -- there were only so many things I could deal with.
16 And so much of the time, and before August 11th, when you
17 deposed me, there were times when they would tell me
18 things, and I might say, "I'm not even going to talk about
19 that, just watch Mom or something." Or I might say, "Talk
20 to a caregiver," or "I'll talk to Mitzi or write her," but
21 they were very infrequent because the bar was pretty high
22 for me to interdict.

23 Q. So you did not ask the caregivers to keep a log?

24 A. Oh, no.

25 Q. And, to your knowledge, they indicated to you that

1 they just did this routinely?

2 A. I mean, I think Shirley has been in this -- well, I
3 don't know if she did it for her husband, who was a
4 quadriplegic, but she said, "I've been doing this sitting
5 for many, many years, and I do it for every patient,
6 resident." And I don't know about Debbie. Debbie, I'm
7 assuming, did it because her mother did.

8 Q. Do you know of anyone that the sitter showed the log
9 to?

10 A. I think they tried to show it to the state. I don't
11 think the state looked at it. On occasion, when I was
12 sitting there and they would say, "Well, here, it's
13 written down here," did they try to show it to me? I
14 would say, "Just tell me. I don't want to read it. I
15 don't want to read anything. Just tell me. If it's
16 important enough, tell me."

17 Because, again, they would start reading it at some
18 time and it would be stuff that I didn't need to know,
19 like, you don't want to know how many bowel movements your
20 mother -- I don't want to know that. I don't want to know
21 that. I don't want to know whether there was blood in the
22 urine. I just need to know if there's a medical issue,
23 take that up with Peggy. I don't want to read five pages
24 of what, really, is 30 seconds for me as a primary contact
25 with my mother, at that time, that I can kind of assign to

1 somebody else, let's address this or not.

2 What was the exact question, did I know why they did?

3 I'm sorry.

4 Q. I was wondering if you're aware of anyone that --

5 A. Oh, that they showed it to.

6 Q. -- they showed it to. And you indicated that they

7 tried to show it to the state, but you're not sure the

8 state looked at it?

9 A. Right.

10 Q. They tried to show it to you, on occasion. You

11 described that. Anyone else?

12 A. Not to my knowledge. You have to ask Peggy. I don't

13 know if Peggy ever saw it. I don't know.

14 Q. Let's talk about your mother's medical condition.

15 A. Uh-huh.

16 Q. If it's possible to cover this amount of time in one

17 step, let's do it, but, basically, from the time that your

18 mother -- that she became a resident at The Brookfield, up

19 until your father's passing, how was her mental and

20 physical condition during that time?

21 A. I'd say -- I'm going to give you a one-word answer,

22 stable and happy. Two words.

23 Q. Stable and happy?

24 A. Yes.

25 Q. What were the things that you noticed about her

1 limitations, whether they be physical or mental?

2 A. My mother had a number of limitations, but, honestly,
3 you know, when you're married 68 years, I find it with my
4 wife now, Peggy will deny it, but she doesn't hear, I
5 mean, none of us do as well as we think we're doing, and I
6 make up, I mean, without even hearing, I sometimes
7 interpret for Peggy. And my dad -- my mother needed help
8 with ADLs, with ambulation, but my dad was, every night,
9 everywhere they went, he walked her. He did not need help
10 with ambulation, and so he was able to do that, and so she
11 felt pretty independent because it was nothing different
12 for them. They had always walked arm in arm, and so I
13 would say she didn't recognize that particular limitation.

14 Her hearing was pretty stable during that period,
15 never great, but I didn't get the sign until well after my
16 dad's passing that I mentioned. They sang, they laughed,
17 they danced, they ate. They were kings and queens of the
18 roost.

19 Q. Did she have any Alzheimer's symptoms during that
20 period of time?

21 A. Alzheimer's, no. Did she have symptoms that she had
22 had a stroke? Some, yes.

23 Q. What were her symptoms from the stoke?

24 A. She would repeat things. She would tell me the same
25 joke every day. She would -- if I stayed long enough,

1 couple, three hours, I would hear the same story. She
2 tended to focus more on the past. We're still before my
3 dad's passing?

4 Q. Yes, sir.

5 A. Okay. Then strike that focus on the past. That's
6 post my dad's death, but the others, she tended to repeat
7 herself. She had what we call selective hearing. She
8 would -- she could zone out at a meal. But there were a
9 lot of people that we did eat with and I conversed with in
10 the assisted living facility that had, I would call,
11 moderate, heavy Alzheimer's, I mean, you had John, I can
12 name off a number of them. None of that.

13 My mother tended to be absent-minded, but she could
14 tell you what she saw on the TV that day. She knew about
15 the news. She followed the election and knew more about
16 the election in 2008 than I could ever could have. She
17 called me that night with the results. And so this
18 idea of -- you know, they say that Alzheimer's people or
19 people, you know, with strokes, tend to have pretty good
20 past recall, and not so much short-term memory, I think
21 that's right. Her short-term memory was very, very sharp,
22 but could she zone out, could she get in her own little
23 world? Yes.

24 And she had, again, ambulation issues, moved very
25 slowly. Her left -- now I'm beginning to remember how she

1 fell. I think she got up, unassisted, and her left leg
2 dragged, and she toppled over, so I'm pretty sure she was
3 in the room, and it was just where she was trying to
4 ambulate by herself. And I think maybe even one of the
5 sitters was there at that time.

6 I mean, my mother, for example, I think had she not
7 had any effects of her stroke, she would have said -- even
8 though she was pretty independent, she would have said --
9 she would have known enough to know, "Shirley, would you
10 help me." And, instead, she would just get up. I mean, I
11 would be sitting in there playing ball with her, and she
12 would have to go to the bathroom, and she would just start
13 to move, and I would go, "Wait." So I think that is
14 attributable to not being 100 percent mentally. I also
15 think -- no, that's after my dad's death. So that's
16 pretty much.

17 Q. How did her condition or limitations change after
18 your father's death?

19 A. Well, first of all, she was just very depressed. I
20 mean, I think all of a sudden -- I'm just surmising. I
21 mean, we talked about it, but not a lot. She didn't want
22 to. Every time we tried to talk about how she was
23 feeling, she would cry, so that's why I took her to the
24 doctor, Dr. Henry, to see if she would converse with him
25 and, basically, she would not.

1 She was depressed. She was lonely. Now, all of a
2 sudden, she had to have help going to -- so she knew her
3 limitations, I mean, they always say that spouses, and I
4 think it's why spouses, people who are married, live so
5 long, even by the most recent studies, you fill in the
6 gaps for one another, whether you have mental issues or
7 not. I mean, we have strengths and weaknesses, and I
8 think that's what makes a good marriage.

9 She, all of a sudden, didn't have all those aids, and
10 I think it was a real fight for her to not recognize that
11 she didn't hear as well as she used to, she didn't think
12 as well as she used to, she wasn't as independent as she
13 used to be. And I think that's why she hung onto her
14 appearance so much because that, in her mind, never
15 changed. So she was in denial. Wouldn't get a walker.
16 Man, oh, man, and I remember signing a waiver on the
17 walker, and I would say, "Look, my mother -- I can't make
18 my mother get a walker. I just can't." So I signed a
19 waiver, if she goes trotting off, you know, all things
20 being equal, and it's the walk that caused it, then I take
21 responsibility, we take responsibility for that.

22 When she had the fall, I think she started to
23 recognize that she had physical limitations that I think
24 she had been pretty much in denial on since her stroke,
25 and that hurt her. That hurt. Then she had the fall, and

1 she had the therapist that she was very -- she was very --
2 it was a love/hate relationship. They were politically
3 very different, both very outspoken, but it was very good
4 for her because she was sharp, I mean, I would sit and
5 listen to some of their debates, and it was amazing. And
6 as much as she kept saying, "I'm not going to see that man
7 again," she would be ready for him. And he would come in,
8 and he would even make her laugh, but as soon as he left,
9 she would say, "I'm not going to let him back in here
10 again." So it was good for her.

11 And he finally -- the last day, because I told him, I
12 said, "Knock yourself out. If you can talk her into
13 getting a walker, good luck. I've gotten nowhere.
14 Peggy's gotten nowhere. Mitzi, when she was still talking
15 to her, got nowhere." And, by golly, I walked in that
16 afternoon and she said, "I've decided to get a walker."
17 You could have blown me over with a feather. So that was
18 an admission, but the walker gave her some independence.

19 Then when we got the hearing aid, she loved it. She
20 heard like she had never heard. And so that's when I say
21 she was starting to come back a bit. So I would say
22 depression, recognizing limitations that she had before,
23 but had been made up for by my dad. My dad would always
24 interpret for my mother, sometimes too much so, so she got
25 used to him whispering in her ear, and sometimes louder

1 than a whisper, but she came to grips with that. So
2 that's why when I was being deposed that 11th of August, I
3 remember I was not in such great shape, and that was
4 before Lena had gotten here, that I felt we had come a
5 long way.

6 MR. DOSSETT: I think we need to change the
7 tape, so we're going to take a short break.

8 THE VIDEOGRAPHER: The time is 10:23 a.m.,
9 and we are off the record.

10 (A brief recess was taken.)

11 THE VIDEOGRAPHER: Time is 10:32 a.m. We're
12 back on the record.

13 BY MR. DOSSETT:

14 Q. Right before the break we were talking about the
15 changes that you had noticed in your mother after your
16 father passed.

17 A. Yes.

18 Q. And these were the notes that I made, that she became
19 depressed, and that she began to recognize her limitations
20 that your father had kind of made up for and helped her
21 with.

22 A. Yes.

23 Q. And those were the two things I wrote down. Are
24 there any other changes in her condition that you
25 recognized?

1 A. Well, the irritability and her shortness,
2 particularly with me and Peggy, as we were trying, for
3 example, taking powder or trying to reduce the amount of
4 powder she used or talking about the walker. Dealing with
5 her was more difficult during that period.

6 Q. Was there any change in her mental capacity during
7 that time?

8 A. She -- my first answer would be no. My more
9 definitive answer would be she tended to focus on more
10 immediate things, particularly my dad's case. She focused
11 on events that were more past. I think I -- we're after
12 my dad's death, right?

13 Q. Yes. I'm talking about the time period after your
14 father's death.

15 A. I think earlier I said her memory, short- and
16 long-term, was pretty good, I mean, she was happy, she
17 focused -- I think she really liked the present, and
18 having been exactly where I think she was during part of
19 this time the last couple years, I understand that you
20 tend to want to focus on somewhere other than where you
21 are. She had always loved being where she was. She was
22 now focusing back and forward, as opposed to being here.
23 Was it because she couldn't remember the present? No, I
24 don't think so. I think it was because she didn't like
25 the present.

1 Q. In your estimation, it was more kind of a defense
2 mechanism rather than an inability --

3 A. Yes.

4 Q. -- to recognize what was going on around her?

5 A. Exactly.

6 Q. I wanted to ask you about the sitters, and your
7 decision to get the sitters for your mother. Can you
8 explain to me your thought process, what you were trying
9 to accomplish, what, in your mind, their purpose was going
10 to be?

11 A. Well, let's start with there was just one, to begin
12 with. My dad died, I think, January 31st. We buried him
13 in Mobile on the 3rd or 4th of February. My mother could
14 not travel for the funeral, for both physical and mental
15 reasons, really. We had a service for Dad here, and I
16 knew she couldn't be alone. She was just not -- she was
17 very unbelieving when I told her, that Saturday morning,
18 that my dad had died. As bad as she knew he was, she just
19 knew he wasn't going to die, and so when she got the news,
20 she took it real, real hard, and I think immediately I
21 asked -- and this is subject to check, but I'm pretty sure
22 that I asked Shirley, because I couldn't be with her
23 24 hours. I was arranging the funeral and all the other
24 things that we were doing. And a long-distance funeral
25 can -- you're dealing with two different funeral homes,

1 and it was taking an awful lot of time. So I believe I
2 had Shirley come in immediately, just to be with her.

3 Shirley was with my dad until about three or four
4 hours before he died Saturday morning, the 31st. She had
5 been with me over the last two weeks of his life,
6 including hospice. She was very good. My dad liked her.
7 My mother liked her when she came up to see my dad in the
8 hospital. They were the same political party. My mother
9 would always ask what's your religion and what's your
10 politics, and if you had the wrong answer, it was -- and
11 so I told Shirley, before she ever met my mother the first
12 time when my dad was in the hospital, I said, "I have no
13 idea about your religion or your politics. Whatever it
14 is, tell her you're this and that, and everything will be
15 fine," and it was.

16 Turned out Shirley told her the truth, and my mother
17 was okay with that, but my mother liked Shirley. Shirley
18 talked a lot. My mother was not talking a lot. She was
19 crying a lot. Shirley had been through this. She cared
20 for her quadriplegic husband for 30 years, had buried a
21 number of relatives, close relatives, so Shirley knew the
22 grieving process and was terrific. And I'm pretty sure
23 the day my dad died, and, again, we can clarify it in the
24 records, the pay records, if it's that important, but I
25 think immediately I asked her would she be willing to sit

1 with my mother, and she said yes. And so then we got the
2 schedule out and said okay, we're going to be going down
3 to Mobile, and we don't get back till here, and I would
4 like you to sit with her for a while.

5 And the reason I think is specifically in your
6 question, why? To try to provide her some comfort, some
7 company. The caregivers are not there. I know that.
8 They can't be in my mother's room constantly. There are
9 other people that need to be attended. So it was for my
10 mother's emotional well-being.

11 Q. Now, I know at some point it went from one
12 caregiver --

13 A. Yes.

14 Q. -- to two or three at different times --

15 A. Yes.

16 Q. -- until Shirley kind of dropped off. Why did you
17 increase the number?

18 A. Well, it was first, Shirley was through an agency,
19 and, you know, the agency has to make money, and I forget,
20 I'm just going to do an order of magnitude, I pay the
21 agency \$20, and they pay Shirley 10. I don't think that's
22 exactly right, but it's close enough.

23 Q. I understand.

24 A. So everybody has to make money. And that was pretty
25 expensive because Shirley was working -- Shirley is a

1 worker. She would work not just 10 hours or 8 hours. She
2 would work 12, 14. We, basically, played it by how Mother
3 was doing. Shirley gave up, I think, all of her other
4 sitting jobs. Often, she would have two or three, and I
5 just, basically, hired her through the agency to focus on
6 my mother.

7 It was quite expensive. You know, my dad's long-term
8 care insurance, I had always been supplementing their
9 living expenses anyway, and when we lost his long-term
10 care insurance and then lost my mother's Social Security,
11 and was able to just get my dad's, you know, that was
12 about \$1500 a month additional, plus the sitter, and so I
13 asked to see Shirley's contract because, you know, a lot
14 of these contracts will say you can't compete, so I wanted
15 to see if there was any out there or if I had any wiggle
16 room to pay, for example, ten hours a day on the agency,
17 and then hire her independently at a less rate. I'll pay
18 you \$10. I'll pay you the net you're getting from the
19 agency. And she gave me the contract, and I could not
20 ethically do that, legally or ethically.

21 And so she came up with the idea, she said, "Look,
22 the agency likes me. They can send me other places. My
23 daughter could use a job. She has also sat for people.
24 She would sit with my husband during his years. And so my
25 mother actually knew Debbie because I think Shirley had --

1 I don't think Shirley ever gets sick, but maybe had gone
2 on a vacation for a weekend, and Debbie came in. My
3 mother liked Debbie, same -- well, she lied about the
4 religion part of it, but same politics, so she was okay.
5 She knew the password to get it, so to speak, and my
6 mother liked her.

7 And so I went to my mother with the idea I can
8 increase, somewhat, the hours for even a little less
9 money, and my mother said, "That's fine. I like Debbie."
10 Because I was afraid she was so attached to Shirley, that
11 it would be another loss. And we just have to look at the
12 records, Mark. I don't remember when this is. It seems
13 like it was midsummer.

14 Q. Okay.

15 A. But it may have been -- because I do believe Shirley
16 was there when my sister arrived, and did not come in
17 during that 10-day period, so we can find whenever there
18 was a gap, I think was the first -- I think Shirley was
19 still working. I think we implemented this idea later in
20 August.

21 I needed more hours, I felt, because there were some
22 of the issues arising, you know, we talked about them. I
23 don't know if we talked about them in particular, but
24 there were several times when my mother did not get to
25 exercise, and she liked exercising, and they didn't get

1 her to exercise. And I would go in, and instead of being
2 in exercise where I could go to the class and watch her,
3 she would still be in the room. So I wanted to cover more
4 time.

5 By this time I decided I just could not eat meals
6 anymore. Up until that time I was eating breakfast,
7 trying to eat dinner with her. I didn't eat, but I sat
8 with her while she ate, and I couldn't do that anymore, so
9 I wanted to get coverage at both ends. I could not
10 afford, in any realistic sense, the additional expense for
11 Shirley, so I got Debbie, and increased hours. I'm just
12 sort of ballparking this. Instead of 10 or 12, Debbie
13 would work 14 or 15 for the same or less money.

14 And then things started, late August, and, again, the
15 records will reflect, early September, mid-September, at
16 some point Cheryl left the facility, and my mother loved
17 Cheryl. That was another loss. She had lost a number of
18 caregivers at that time. I still could not get Amanda
19 back. My mother, one of the things she was agitated about
20 was I could not -- my mother was used to being pretty
21 successful with things. I could not get Amanda in the
22 building. And she wanted Amanda to be a caregiver, and I
23 just couldn't make that happen. And so when Cheryl left,
24 I heard she had gone to work at another facility and,
25 again, I don't know how much people were making at that

1 facility or anything else, but Peggy and I talked about
2 it, and I made the decision we would bring Cheryl in for
3 the evenings because my mother was complaining that the
4 people that were giving her showers, she didn't know. She
5 wasn't as comfortable with them. They could not shower
6 her as well. And so I called Cheryl.

7 I don't know how I got Cheryl's number, to tell you
8 the truth. May have been Shirley had it. And I called
9 Cheryl, and Cheryl said she was going to go back to school
10 and I simply said, "Well, would you be interested in maybe
11 four or five hours a day" -- I think Cheryl has little
12 children. She didn't want to do it during the day -- "and
13 into the evening until Mom goes to bed? Because she's
14 missing some meals or they're not picking her up on time.
15 She's complaining about medications and other things. The
16 toileting is an issue." And Cheryl said yes. And so I
17 agreed to pay her the same thing I was paying Debbie at
18 that time which, I think, was \$10 an hour. And she
19 started whenever -- two ways to check, I mean, I think
20 we've given you, in my dad's case, all of the pay records
21 or the notebook whenever -- I believe Cheryl also used the
22 book, so whenever Cheryl starts, those were the dates that
23 that occurred.

24 So changing Shirley to Debbie, to try to be succinct
25 about it, primarily, a money issue to cover more time

1 because I felt my mother needed somebody watching out for
2 her when I could not be there because I was observing
3 things, and my mother was telling me more about things
4 that were not pleasing her, and she was getting
5 increasingly agitated. And then I kept increasing
6 Cheryl's time.

7 Q. What was -- we've talked a little bit about Shirley.
8 You expressed at the beginning you hired her, essentially,
9 as I took it, putting words in your mouth, but,
10 essentially, I took it to keep her company.

11 A. Yes.

12 Q. And to help your mom not be as lonely?

13 A. Yes.

14 Q. And alone, right?

15 A. And to walk her to meals when I wasn't there or to
16 exercise so that if the caregivers didn't show up at a
17 particular time, then Shirley was there to do it.

18 Q. That would allow -- am I correct that that would
19 allow your mom to kind of keep her schedule --

20 A. Yes.

21 Q. -- a little more precisely like she liked it?

22 A. Yes.

23 Q. I know that, from something you said earlier, that
24 Shirley did other things for your mother other than just
25 keep her company. You mentioned she would do her laundry?

1 A. Yes.

2 Q. What other things do you remember Shirley doing when
3 she was a sitter?

4 A. Oh, she would empty the waste basket. I think -- I
5 forget, but I think it was two times a week they would get
6 cleaning in the room, maybe only once, but my mother used
7 a lot of diapers, and sometimes they -- and, usually, the
8 caregivers, certainly, early on, would clean the diaper
9 pail, it wasn't a diaper pail, per se, but the diapers
10 went in a certain place, and I think if Shirley saw they
11 were piling up, she would get them out of there, change
12 the toilet tissue if she was in there, Mom was in there,
13 change the toilet tissue.

14 She would start shopping for her. I would shop for
15 her, as a rule, then Mitzi did some shopping for a while,
16 probably the first month or two after my dad's death, and
17 then I pretty much took that over, then Shirley said, "Why
18 don't you just let me do it?" And we came up with a plan
19 at that time that would be good to get my mother out, if
20 we could, and Shirley is very patient, and her car was
21 easier to get into than was mine, and so often when they
22 would go shopping together they would stop, pick up a
23 hamburger. So it was a way to get my mother some
24 alternative activities outside the facility.

25 Q. Are you aware of Shirley ever taking on an increased

1 role as far as just basic caregiving for your mother?

2 A. Define "caregiving" for me, like toileting?

3 Q. Assisting her with her ADLs.

4 A. Certainly, when convenient, if Shirley was there, she

5 would do some things, and Shirley is the best person to

6 answer this question. In terms of toileting, I think she

7 would tend -- I think she would tend to call the help. I

8 just wasn't there.

9 Q. Okay.

10 A. I think Shirley is the best person to answer because

11 when Shirley was there, I generally didn't stay that long.

12 I would take the time when Shirley wasn't there.

13 Q. So those are questions better asked of Shirley as to

14 what her activities were?

15 A. Yes.

16 Q. Okay. Did your expectations of what the sitters were

17 going to do, did that ever change over time as we added

18 Debbie and added Cheryl?

19 A. Honestly, and not trying to incite anything or to be

20 volatile, certainly, by late September, all of October

21 that I can remember, right up until the day of my mother's

22 accident, their main role was to protect my mother.

23 Q. What do you mean by that?

24 A. I felt that my mother was at significant risk. My

25 mother was increasingly getting agitated about the things

1 that she felt were not being done, and we've talked about
2 most, if not all of them. She began not to trust the
3 caregivers.

4 There was one caregiver in particular, and I wouldn't
5 remember her name, but I bet Debbie or Shirley would. She
6 was an odd lady. We're all odd, but she was an odd lady,
7 a sort of older lady, but my mother called her creepy, and
8 she would always enter through the back bedroom. Well,
9 everybody would come through, and they were supposed to,
10 even though they were misnumbered on the outside, it
11 looked like the other one, and I know Shirley and Cheryl
12 would have been the two that got real upset, they kept
13 telling her, "Don't come through the back."

14 My mother never liked the dark, so we would keep -- I
15 had night lights everywhere, and usually left a light on
16 in the living room so she would have ambient light. But
17 this woman kept coming through the back bedroom, and it
18 bothered my mother. And I know I said something about
19 that, at that time, to pretty sure it was Michelle Ensey,
20 that this -- either this person -- I think I might have
21 even asked that she not attend to my mother if there's any
22 other alternative because she just wasn't getting it.

23 And there was another lady, and I would recognize her
24 name, and forgive me, but she was very slow, I mean, I
25 mentioned most of the workers there were pretty darn

1 sharp, good workers. The caregivers I'm talking about.
2 And this woman didn't -- and a lot of her colleagues would
3 complain about her. She just was not swift. Again, I'm
4 just -- I'm not trying to hurt anybody's feelings. And my
5 mother did not particularly like her. She was
6 particularly slow to answer, and I would -- at times,
7 before I left that evening, I would find out who was on
8 duty. But to protect my mother from lapses.

9 Debbie smoked, still does, as far as I know, I don't
10 think Cheryl does, and Debbie would take smoking breaks,
11 so, you know -- and I would try to make it clear to Mitzi,
12 during October, through at least one or more e-mail
13 exchanges, not e-mail exchanges because she never
14 responded, but the sitters were asked by Mitzi, "Let me
15 know your schedule so I can staff around them." And when
16 I heard that, I really got upset because this was, as I
17 remember, mid-October, sometime in October, and by that
18 time, again, things were escalating in the terms of the
19 things that were not going right, and I felt the sitters
20 are not always there.

21 By this time my mother would not go out to the store.
22 She would not, basically, leave the apartment. She
23 wouldn't come to my house any longer. She was in the
24 apartment, and they were not always there. So I made it
25 clear to Mitzi they're there -- they're still sitters.

1 Now, Cheryl was an LVN, LPN, whichever designation she
2 has, but Debbie is a sitter. She's not a caregiver. So I
3 tried to make it clear to Mitzi that these don't
4 displace -- when my mother rings a call button, don't
5 assume, don't have anybody assume, that the caregiver is
6 there. If the call button is rung, it might have been
7 rung by Shirley. Might be a two-man assist, I mean, my
8 mother had -- food was so good, had gained a bit of
9 weight, and sometimes my mother did have big accidents,
10 and so, you know, answer the call lights.

11 And what I was hearing from Cheryl and Debbie is
12 that's not happening. On any shift the answering of call
13 lights continues to be bad. We're not getting -- what
14 they would say to me is, "Ms. Dot is not getting what she
15 needs from this facility." And it was just adding --
16 look, Mark, it was just adding the increasing burden on
17 me. I knew it. I tried to make people aware of it. I
18 wanted my mother out.

19 My mother, on one side of her brain, wanted to be
20 out. She was beginning, at that time, to hate everything,
21 once again, almost like, except for different reasons,
22 after my dad's death. I could see that she was depressed.
23 We played ball less. She almost never smiled, but she was
24 not going to leave. And so the only thing I could do, and
25 I gotta tell you, I mean, this may not be admissible, but

1 we're talking here, you want to know what's on my mind.

2 Q. I do.

3 A. I'll tell you. I wanted so desperately for that case
4 to settle. I figured if -- and you know it. We made
5 tries at it, and I think you introduced the mediation in
6 this case with that, we missed some opportunities. And I
7 do believe if the case had settled and my mother could say
8 that's been handled, I believe I could have gotten her out
9 of there, I really do.

10 So I was constantly sitting on Rex, I mean, by that
11 time, I think certainly by November, I think we had a
12 trial date or I was begging Rex to get a trial date, let's
13 get some pressure on this. I only had plans and money,
14 honestly, free money, to get the sitters through December.
15 Our plan was to try to get to December 31st, try to see if
16 we can settle the case or get some movement, and continue
17 to work on Mom, and in the meantime, let's just hunker
18 down. I think I even used that term with everybody, the
19 sitters, Cheryl and Debbie, and my wife, Peggy, let's just
20 hunker down. This is not tenable for me, and everybody
21 knew that.

22 And I think that's why Dr. Phil will be probably the
23 first person to testify about the rage that I felt over
24 this. I had no win of a position, not with the way I was
25 handling myself, the way I was handling my dad's case, the

1 way I was handling, certainly, my mother. I felt like I
2 was failing her. I had no ability to go to Bob or to
3 Mitzi, where I would normally go, where anybody would
4 normally go, you go to the top of the heap, right, to get
5 things fixed. And so it was -- it was -- and I -- it was
6 to protect her from anything that could happen.

7 Now, are you saying protect her from active abuse?
8 Abuse is abuse. You can neglect people, and I call that
9 abuse. I do believe at that point what I have come to
10 know and appreciate as abuse, both in Arkansas and
11 elsewhere, I felt my mother was being abused. And that
12 killed me. And I tried to get the state involved. I had
13 been trying to get Ms. Medley in for some period of time.
14 She got to the point where she would not even return my
15 call. I found out later, from the state, that they told
16 her not to return my call.

17 So I was trying to enlist the state's support. I
18 knew what the ombudsman role was. My mother had an
19 absolute right, with one exception, to have anybody she
20 wanted in her room, and that was -- the exception is a
21 clear and present threat to other residents. I know
22 Mitzi's point of view, and what I wanted was somebody to
23 come in and mediate that. And I was told by the state,
24 after many, many efforts, we're not going to allow
25 Ms. Medley in there. That's not her job. And I said,

1 "Well, as I read the regs, that is precisely her job."

2 And you know what, I've dealt with her many times
3 with Beverly, and I can tell you in this state, and many
4 others, I've got some really vigilant ombudsmen that have
5 enforced smoking rights, for example, in non-smoking
6 facilities, and done other bizarre things. I simply
7 wanted, with my mother declining, to get somebody in there
8 that might lift her spirits. And, finally, as you know, I
9 secreted Mandy in there, and it did lift her spirits
10 temporarily. But cocoon, hunker down, whatever you want
11 to call it. I was trying for a temporary fix, and hoping
12 we could get to December 31st.

13 Q. When you were listing the things that you were doing
14 to try to get to December 31st, one of the things you said
15 was to, hopefully, during that time period, you could work
16 on your mother?

17 A. Yes.

18 Q. Did you mean work on convincing her to move?

19 A. Yes, yes.

20 Q. I thought so, but I wanted to make sure I understood.

21 You mentioned that you felt, during this time period,
22 that your mother was at risk, and the role of the sitters
23 was to protect her. What, specifically, did you think she
24 was at risk from or at risk of?

25 A. Well, and I mentioned it way too much in my dad's

1 case, having been in a hospital a lot myself, having had
2 much experience in a skilled nursing facility environment
3 and, in the last three or four years, an assisted living
4 facility, the first thing almost anybody will tell you,
5 and we did it during indoctrination and orientation,
6 because I help designed that out at Sunwest Management,
7 call lights are critical. They're most critical,
8 interestingly enough, in an assisted living facility
9 environment.

10 In acute care, for example, after each of my
11 surgeries, most four recent back surgeries, I couldn't go
12 anywhere. I could ring that call light, and if they don't
13 answer, there's not much I can do. I can start trying to
14 reach and throw things, but that's -- I'm not going
15 anywhere.

16 Similarly, in a skilled nursing environment, you have
17 many bedridden residents. There was only really one, that
18 I knew of, in the assisted living facility environment at
19 Fianna Hills, down at the corner from my mother's.
20 Everybody else, better or worse, more or less, could
21 ambulate, with a couple of exceptions of people who were
22 in wheelchairs, and so if you don't answer a call light --
23 and residents, I think you alluded to it a few minutes ago
24 in terms of getting used to schedules, you do. I mean,
25 boy, oh, mighty, my dad was really into his schedule, but

1 he could enforce his. I mean, they wouldn't always kowtow
2 to him. He would show up for dinner, and he would be an
3 hour early, and Chuck wasn't going to serve him, he had to
4 get used to that.

5 But they get engrained in certain patterns, for
6 example, going to dinner, going to exercise. So what was
7 happening is she wasn't getting to exercise. Maybe Debbie
8 went out, told somebody to get her to exercise. I
9 remember one time in particular Debbie was so angry when I
10 came back that day, my mother was teetering down without
11 her walker with toilet tissue hanging out of her pants
12 with all -- with two of the call lights in the apartment
13 on, and mess all in the bathroom. And Debbie got her and
14 took her back. And I know Debbie was very angry that day,
15 and confronted one or more caregivers. And she'll be able
16 to tell you about that.

17 What I was most afraid of, I'm sad to say, is my
18 mother ambulating without help, and that's why I talked to
19 my mother all the time about it. I would talk to her in
20 the room, when she would get up with me sitting there, and
21 I'd ring a call light. Because that's what we all trained
22 her to do. If we're sitting, including Shirley -- if
23 we're sitting here, ring the call light. We may or may
24 not be able to do it, but if somebody comes, and we don't
25 need them, that's fine. But if they don't come, that's

1 part of the system. And she worked well with it for a
2 while, but then, again, when the turnover started, and she
3 didn't like a number of these caregivers, and that one in
4 particular that I mentioned that would come to the other
5 door and haunt -- not haunt. What's the word I'm
6 looking -- spooked, spooked my mother at night. And my
7 mother, on a couple occasions, said she awakened during
8 the night, and somebody was standing at the end of the
9 bed.

10 Now, this goes back to your mental question. My
11 mother never hallucinated. I have no proof of that. I
12 don't know it. It could have well been a caregiver
13 looking in at her at some point. I don't remember the
14 days of whenever that was, but it spooked my mother, and
15 so I was afraid, and it's why, if I had to do it over
16 again, I would have gone down and slept with my mother, I
17 mean, I just would.

18 I felt that she was most at risk at a moment when
19 Debbie went out to smoke. That's why Debbie got into a
20 pattern, I believe -- she's the best person to ask -- of
21 telling people when she was going to go shopping or
22 something, "Make sure you get in there if Ms. Dot needs
23 anything." And I started having Cheryl stay a little
24 longer, in other words, make sure my mother is in her REM
25 sleep. And every day I would talk to her about ringing --

1 making sure you do the call light.

2 Because if you haven't been in that room, that room
3 was -- maybe you have been. Certainly, by their
4 standards, the Mobile is a great room. There weren't
5 wires everywhere. It was a very well laid-out, save for
6 the doors, a very well laid-out apartment with big, wide
7 doors and all, but surfaces were all hard. And I'm not
8 saying there was anything wrong with it, they were just
9 hard. And particularly from my mother's fall from the
10 chair, getting from -- she had side rails on the bed --
11 getting out of the bed and walking through the door where
12 she ultimately fell into it, and getting into the
13 bathroom, and trying to seat herself on the toilet was
14 just not possible for her.

15 Q. When you say -- when you thought about her being at
16 risk you, essentially, were afraid of her trying to
17 ambulate by herself --

18 A. Yes.

19 Q. -- and falling?

20 A. Yes.

21 Q. And the reason you thought she was at risk was
22 because, in your estimation, the call lights weren't
23 answered appropriately, and you were afraid your mom would
24 ambulate on her own because of that fact?

25 A. I know that to be the case, I mean, this is hearsay

1 because my mother would tell me that constantly.

2 Q. Would tell you what?

3 A. "Why do I ring them? They don't answer them."

4 Q. Other than that risk, was there any other particular
5 risk you had in mind when you made the statement you
6 thought she was at risk?

7 A. I felt mentally, you know, my mother had one, I call
8 it a major stroke. I think I actually read her hospital
9 records at the time. They called it a mild stroke, but
10 back in 1994 -- strike that -- 2004, my mother was
11 aphasic. She could not ambulate at all. Her brain was
12 affected. She could not -- I mean, let's face it, she
13 could not speak, I mean, it was a daunting recovery. And
14 she, I know, during the course of the next few years, had
15 many strokes because she would go through periods where --
16 and I'm thinking here I don't remember an occasion, until
17 she got in the hospital here, but certainly in Mobile, she
18 would have episodes of -- Peggy is the medical person, but
19 temporary loss of memory or she would be slurring. I'm
20 not sure that I remember anytime here, so I know my mother
21 had other strokes.

22 She had a strong heart. We Brigances have strong
23 hearts. A lot of other problems, but strong hearts. I
24 was not worried about her having a heart attack, certainly
25 not worried about her not eating because no matter how

1 depressed she got, my mother ate almost robotically, I
2 mean, she knew what she was eating, when she was eating,
3 what she wanted. So my mother always enjoyed her food, so
4 not that.

5 Getting angrier, I mean, she was literally getting
6 angrier by the day. And where I was at the time, it was
7 very tough to have to -- to have to deal with that every
8 day, I mean, everything was angry in my life, you know, my
9 dad's lawsuit, right, everybody has their own family
10 issues. You have children. Wait till they get to be
11 teenagers and in college. But my mother was a delight to
12 deal with until, particularly, those last three or four
13 months.

14 Q. All right.

15 A. So anger and a stroke. I felt the anger would lead,
16 potentially, to another stroke.

17 Q. I know that on approximately November 17th, you sent
18 an e-mail to Mitzi, saying that you thought that there
19 needed to be a family meeting, a meeting between family
20 and the facility to talk about your mother.

21 A. The only -- and, again, I have not reviewed this for
22 this deposition. I haven't reviewed, really, anything
23 other than the note Peggy showed me last night. But what
24 I remember is I wanted a meeting involving the state; that
25 I was not going to meet with Mitzi alone. I wanted the

1 state involved because -- you mentioned November 17th. I
2 don't remember that particular e-mail. It does stick in
3 my mind that it was around the middle of November that I
4 finally wrote the state.

5 Q. Do you remember, about the middle of November, coming
6 to the decision that you needed to do something?

7 A. Do something?

8 Q. To intervene for your mother.

9 A. I needed to get the state involved.

10 Q. Was there any particular event that made you reach
11 that conclusion, or was it just kind of a culmination of
12 things that kept occurring?

13 A. As I remember, I had written a series of e-mails
14 about different things to Mitzi, and I got not one
15 response. And then the sitters were telling me that we're
16 still not getting the assistance we're asking for, and so
17 by that time I'm looking, and it may have been the 14th,
18 15th, somewhere in the middle of November, I finally --
19 and, obviously, that didn't just come out of my mouth. I
20 probably worked on that a day or two, that I decided I
21 could not get Ms. Medley to return my call, and I felt
22 that was the first opportunity I would have somebody local
23 because I knew this is Little Rock, I mean, I've dealt
24 with the state before for Beverly matters, and it
25 sometimes takes quite awhile to get anybody, they're busy,

1 to get over from Little Rock. I felt like

2 Ms. Medley might be able to help out.

3 Q. Ms. Medley was the ombudsman?

4 A. As far as I know, she still is, but was at that time,
5 yes.

6 But to answer your question, you said was there some
7 specific event, and I think it was simply I was at my
8 wit's end. I was not -- again, I could not see Mitzi
9 alone, or I was told not to, and if I did that, maybe that
10 interferes with settling the case. My mother is
11 increasingly angry, the sitters are increasingly telling
12 me things aren't like they should be, "You need to do
13 something." The state was all I had left. And by that
14 time, I had pretty much concluded I felt I wasn't going to
15 be able to get to December 31st. That was six weeks away.
16 I had the holidays, I knew that while we might be able to
17 get Shirley back, but Cheryl had kids, and she would want
18 to take time off. I think Thanksgiving was the next week
19 or two weeks away, and we were already saying, "What are
20 we going to do to staff the sitters?"

21 We had enlisted my son, my youngest son, who, by this
22 time, his name is Chris, and he's at the University of
23 Arkansas, and he and my mother were very, very close.
24 He's the favorite grandchild, and he loved visiting her.
25 Every time he came home, he would spend hours with her.

1 He had gotten so he couldn't go into the facility anymore.
2 He was just angry about it, and so he had agreed to spend
3 some time over the holidays, and we were starting to
4 already plot that, but I just -- I've always been able,
5 you know, we in this profession, we think we're good at
6 what we do, you know people, you use honey, you use anger,
7 you use the tools you've got to use. And here for my
8 mother -- I had already failed my dad, and here for my
9 mother, I was caught, and I had nowhere to go.

10 Q. So it would have been more just kind of a culmination
11 of events?

12 A. Yes.

13 Q. As opposed to a single event?

14 A. I do not remember any specific thing because, again,
15 my guess is I started writing that e-mail. Sometimes I'm
16 a little slow on drafting, I want to get the words right,
17 and I was back to the poor, but the waiter analogy, I
18 mean, I'm complaining about a place that has the care of
19 my mother. And, look, I've been in the industry. I've
20 seen retaliation many times, not here, I'm talking about
21 I've seen it, and so I had to walk very -- that took a lot
22 for me to finally make that step. I didn't mind doing the
23 oral stuff, like I was doing with Ms. Medley and calling
24 over in Little Rock, but you put something in writing, it
25 gains a life of its own. And at that time, I had nowhere

1 else to go.

2 Q. How did you find out that your mother had an
3 accident?

4 A. And, again, I'm going on memory here. Well, first of
5 all, I know Peggy called. And my mother's closest
6 sister-in-law Belna Bell -- my mother was a Bell. It was
7 her sister-in-law, married to her brother -- had died of
8 cancer the weekend before.

9 I wasn't -- I didn't need another funeral. We had
10 lost my mother's sister, who was virtually a twin sister
11 to her, in May. We had lost, I think, four, including my
12 uncle in October, I had gone to Mobile to bury him, so I
13 had been to four funerals. I couldn't do a funeral, even
14 though my mother wanted me to go. So they were going to
15 have a memorial service over in -- outside of Auburn,
16 Alabama. I had never been to Auburn, but I had been to
17 Birmingham, so I figured it would take me eight hours, ten
18 hours to get there, whatever.

19 And I really, honestly, I was not in a good place. I
20 think I saw Dr. Phil before I left, but I was in a -- I
21 had reached my wit's end. I could not handle anything
22 anymore, and, so honestly, I dumped it on Peggy. I said,
23 "You've got to handle this with Mitzi. You've got to get
24 a meeting."

25 We talked about Peggy's schedule. Peggy is a nurse

1 practitioner, as you know. She has a pretty moderately
2 heavy practice. These are old people as well, most of
3 them disabled in one way or another. They book
4 appointments way in advance, and so for Peggy to make her
5 schedule work, you know, she would have to cancel patients
6 which is -- then takes them weeks to get back, and some of
7 her -- many of her patients are terminal. And so she
8 said, "I will work with it and I will do my best."

9 I got over to the memorial service and, again, this
10 was November 20th, maybe, 19th, 20th, the week before, as
11 I remember, Thanksgiving. I think my mother fell on a
12 Thursday because I remember the 19th. I got a call at,
13 like, 5:00 a.m. Friday morning on -- I had gone -- our
14 lake house is about, from Auburn, three hours, maybe. I
15 had driven all night to go do some winterizing there
16 because it's not particularly liveable, and so I got the
17 pipes done, and I was already up anyway, and I think the
18 call was at 5:00, and I believe Peggy was at Washington
19 Regional by that time, and told me what had happened.

20 Q. What did Peggy tell you when she called?

21 A. She said that Mother had fallen; that Peggy had
22 gotten a call from the facility, I'm thinking somewhere in
23 the 10:00 range. You know, I asked immediately why Peggy
24 hadn't called me. Well, I think they went over to Sparks,
25 Sparks didn't have, as I remember, a neuro doctor. She

1 said we had to care-flight Mother up. I think Peggy
2 drove. I don't think she went in the helicopter. So
3 Peggy had a few things on her hands, and there was nothing
4 to tell me other than she appeared, potentially, to be
5 seriously injured. But I think they didn't, because I
6 remember they did not do surgery or they were not going to
7 do it at that time. But I said -- I didn't really have
8 any clothes to pack. I said, "I'll close up the house and
9 come on home." So I drove on home.

10 It's about a 14-hour drive. As I remember, the
11 weather wasn't very good. It took me two days to get
12 back. By that time they were making plans to bring her
13 back here. Sunday sticks in my mind. It could have been
14 Monday. So I arrived about the time, and I think they
15 bussed Mom back, and so I didn't go up to Washington
16 Regional. I went home, took a shower, and saw Mom at
17 HealthSouth at the hospital.

18 Q. So the first time you saw her after the accident, she
19 was back in Fort Smith?

20 A. Yes.

21 Q. Did you get to talk to her?

22 A. I talked to her.

23 Q. Did you have a conversation with her?

24 A. She would try to speak, and she could not, or not
25 audibly that I could understand her.

1 Q. Okay.

2 A. She would make sounds, and I know you've heard when
3 we talked about my dad, toward the end with him, he would
4 try to talk, but could not talk. I think she not only had
5 trouble making it audible, like my dad, he was very
6 cognitive, but he just couldn't form the words.

7 I think my mother both had some mental issues with
8 trying to say clearly, certainly, that first time I saw
9 her. And I've said this before and, again, I'm not trying
10 to incite anybody, the picture that they took at
11 HealthSouth of her, if I had walked into that room, I
12 would not have known my mother. If you show me three
13 other women, she was not recognizable from the day, three
14 days before I had seen her. And I add that, in part, to
15 simply say I was pretty shocked, and there wasn't a lot I
16 could say. There wasn't a lot I could say.

17 Q. Was there any point in time after your mom's accident
18 where you were able to talk to her, and carry on a
19 conversation between the two of you?

20 A. The answer is yes, but if I can explain, short. My
21 mother could be a talker, in the old days, always telling
22 you jokes or, if she was mad, telling you what she was
23 angry about. Basically, I was able to converse with her,
24 ask her questions. She would answer it in very succinct
25 language, sort of like it hurt her to talk, or maybe it

1 hurt her because she didn't think -- maybe it was an
2 emotional issue. I don't know which.

3 Q. Was it difficult for her to talk?

4 A. Yes, yes.

5 Q. Okay. What did the two of you talk about?

6 A. The first -- and, again, I don't know -- I remember
7 my dad's days, every one of them. My mother's days are a
8 little more blurry. I would say she was in HealthSouth
9 three, four days. That was different than when we went
10 over to acute care. In HealthSouth, I would eat with her
11 every meal because she really -- and I had to feed her
12 often. It did not seem that she couldn't move her hand,
13 it was she was weak. Because I would watch her in rehab.
14 And, honestly, I know when Peggy brought her back, the
15 conversation we were having when Peggy was coming back, I
16 don't think in the van with her, but in a car, trailing
17 them, we had a conversation, she -- Peggy was sort of
18 buoyed the first time and had said, "I think Mom might be
19 able to only have a few days. She said even yesterday I
20 was thinking maybe we could get her back to the facility."
21 And I thought, "Oh, that's a miracle. That's great." But
22 she said the doctor -- I think she said the doctors wanted
23 her to come at least for a couple of days to rehab. So I
24 came in expecting my mother to be something different than
25 I saw, so I was shocked. Short conversation.

1 During the three or four days she was in HealthSouth,
2 first couple of days they were getting her up, getting her
3 dressed, which she liked. She was eating, but pretty much
4 had to be fed, not eating as much, but eating, and she
5 would do a lot of eye motions, like, you know, trying to
6 talk to you with her eyes, and then she would try to
7 speak. And I would kind of say, "Do you want more food?
8 How is the rehab going?" She would have a morning session
9 and an afternoon session. I would watch for a while in
10 the rehab to see what I thought of what was going on.
11 Peggy would come over and watch her.

12 We weren't talking during that time, but then I would
13 sit at lunch with her and talk to her. First day or two
14 seemed -- I would say she was at least holding her own,
15 and maybe some slight improvement, slight, but at that
16 point her bruising was only getting worse, I mean, you
17 know how long bruising takes to fully show itself, so she
18 wasn't looking better, but she was getting up on, you
19 know, whatever they call the posts, and taking some steps.
20 And the therapist people, as they've always been with me,
21 very good, very encouraging. They didn't try to work her
22 too hard, so unlike my dad, when we knew time was of the
23 essence, I think everybody felt we can make incremental
24 gains, and be okay.

25 Third day I came in, and there was something

1 different. She would not even look at me. I didn't know
2 whether she was angry. I didn't know if she had had some
3 sort of event. I didn't know. But my mother, when she
4 went into -- and she did this throughout until, like, two
5 days before she died, she did it through most of the time
6 in hospice, but probably the last 36 hours when she
7 started having some seizures in hospice. After my dad's
8 death she had -- he never had a wedding ring, but he had
9 this ring, blue ring, and he had a ring that she had
10 bought him from Egypt when they went to the Holy Land many
11 years ago, and she asked me to put it on a chain, and I
12 did that shortly after my dad's death, and she would kiss
13 it every night, even though she wasn't a Catholic, but she
14 got into these almost like a trance-like state. She would
15 kiss it. A lot of times she would tear up.

16 Throughout her time in the hospital she constantly
17 rubbed that ring, or those two rings, so even when she was
18 sleeping, so it was almost like an auto-reflex kind of
19 thing. She would -- at times, she would kiss it. She
20 would put my hand -- when I would come, she would hold my
21 hand. She would hold my hand over the rings, but our
22 conversations were very short.

23 That third day, I don't remember her talking to me at
24 all. I know I went to the folks there, the staff, and
25 asked, because this would have been -- I don't remember if

1 there was a breakfast table there or not, I don't
2 remember, but I figured she might have already eaten. I
3 asked her if she ate, it seemed like it may have been
4 there, half eaten. I just remember she didn't eat much.
5 And I said, "She seems different to me." And one of the
6 PT people, not a nurse I don't think, but one of the
7 therapists, said, "She seems different to us," and they
8 asked do you want her to have PT this morning. So I went
9 back to try to converse with Mom, "Do you want to do PT?"

10 And, again, I don't know whether she was angry or
11 what was going on. She just rubbed her ring, and she
12 never really responded that day. I remember that they
13 didn't do PT, certainly not while I was there. I came
14 back at lunch. She seemed more robot-like. Clearly, no
15 emotion. Kept rubbing her ring. Again, I tried to feed
16 her. She ate very little. I remember she spilled her
17 milk that day. She wanted to try to get it, and I
18 thought, "Okay. We're not doing PT so far, so maybe get
19 some strength," and she wanted to do it. And she spilled
20 it, and that upset her, so she showed some emotion.
21 Seemed like she said one or two words, I don't remember.
22 But I think what you're going back to, was there some full
23 discussion of things that happened or anything else. I do
24 not remember that.

25 Q. Okay.

1 A. I don't think my mother was able to -- at any point
2 able to fully converse like my dad did.

3 Q. Was she ever able to tell you what happened that
4 night when she got hurt?

5 A. No.

6 Q. While we're talking about it -- go ahead.

7 A. I hate when I can give one-word answers, but just
8 so -- I asked her a question early on, not the first time
9 I saw her, but shortly, what happened, and all I got were
10 her eyes. She never talked to me, that I remember, about
11 what happened that night.

12 THE VIDEOGRAPHER: We have five minutes left
13 on the tape.

14 MR. DOSSETT: Let's just go ahead and switch
15 it now, then.

16 THE VIDEOGRAPHER: Time is 11:23 a.m. We
17 are off the record.

18 (A brief recess was taken.)

19 THE VIDEOGRAPHER: Time is 11:35 a.m. We're
20 back on the record.

21 Counsel.

22 BY MR. DOSSETT:

23 Q. Right before we took the break, we were -- you were
24 telling me about how your mother did in those three days
25 at HealthSouth.

1 A. Right.

2 Q. I was hoping you could kind of talk to me about how
3 she did after she left HealthSouth. I know she eventually
4 ended up in hospice.

5 A. Right.

6 Q. Take me through that, if you would.

7 A. Again, I'm not -- I think I know the reasons, but I'm
8 not nearly as clear in my mind about that as I was with my
9 dad, for some good reasons, probably for some not so good
10 reasons, but the acute care where she was, and I forget
11 the floor, and certainly don't know the room number, she
12 seemed aloof. She was conscious most of the time. Didn't
13 watch TV. Peggy or I or Debbie, because we moved Debbie
14 over to sit with her, and I think also Cheryl -- there was
15 someone with her all the time.

16 I think in my mind, by the time we had been in acute
17 care for two or three days, I didn't see her getting any
18 better, I didn't see her getting a lot worse, and it was
19 so reminiscent to me of my dad's situation where, once
20 again, you don't know what to do. So we talked to the
21 doctors. I think, you know, they would do typical
22 response tests and talk to her. I think she may have
23 talked to Peggy more than me. I felt then, and I feel
24 now, that my mother probably was a little aggravated at
25 me.

1 Q. Why?

2 A. You know, I don't want to get into the shrink stuff
3 because I'm really beyond a lot of that, but, you know, I
4 was the one that picked the facility. Maybe just look at
5 it as a series of events. They were in Mobile. That was
6 untenable. I don't regret moving them here, don't even
7 regret, really, at least at that time, the facility, but
8 that room. And we were just all caught, you know, my
9 dad's death, I mean, you know, I never thought about how
10 long he would live, but I'll tell you, they were enjoying
11 life, and it was nice to see them because their life
12 wasn't always that easy.

13 They had had a good run, and my dad and my mother
14 were so close after her 2004 stroke, and things were very
15 rough during that period, financially, emotionally, lot of
16 complications, but we had come a long way. But, you know,
17 Dad's event, my mother's reaction, watching her go through
18 all of that, and not being able to resolve my dad's case,
19 I took that, I still do, always will, take that as a great
20 failing. Now, am I -- it's not even that am I dealing
21 with it. I have dealt with it, and I'm okay, so it's not
22 a guilt that haunts me, but it's a guilt that I picked the
23 room, and so on and so forth. And everything from that
24 that happened to mother cascaded down.

25 And I will tell you, certainly, after my dad's death,

1 my goal in life was to protect my mother, I mean,
2 everybody knows statistics, knows odds, people that have
3 been married that long, it's difficult. I took it as a
4 personal challenge to not just keep my mother alive, but
5 to keep her happy. And for a while it was tough, then we
6 had a pretty good early summer, and then things started
7 happening, and then they kept crescendoing.

8 And, you know, I will tell you, and you've pressed me
9 about this, and legitimately so at other points, up until
10 the point of my mother's death, or accident, could I have
11 legally moved her, forced her? Yes. I have no doubt it
12 would have killed her. I couldn't take that guilt on as
13 well, I mean, that's a direct guilt. She should have
14 disowned me, not in a legal sense, but -- and my mother's
15 personality was so fragile, so I tried to deal with that
16 the same way I did with the walker and the hearing aid,
17 her vegetables, whatever I dealt with her on to try to
18 keep her healthy. And I believe I failed that, and I
19 believe that my mother felt that.

20 There were, clearly, times where my mother would
21 react and respond to Peggy more than me. And that's very
22 unusual, I mean, she loves Peggy, loved Peggy, but with
23 me, particularly, and I remember -- I do remember, Mark,
24 your original question, and so I'm sorry I'm going back to
25 it to describe, the days I remember in acute care were

1 very little discourse, very little discussion. Mostly me
2 talking to her. I brought in a stereo system. She loved
3 music. She loved Jerry Vale and Lawrence Welk. And I
4 went out -- I don't have any Jerry Vale or Lawrence Welk.
5 I do now, every Lawrence Welk CD I could find. And she
6 loved the music, and we played music till the very end, so
7 that seemed to calm her down.

8 During acute care I wouldn't say she was never
9 restless. She was constantly with the ring, though. And
10 I would come in, for example, if she were lying still or
11 we were holding hands, and I would say, "Where are your
12 rings?" And she would immediately go (indicating), so she
13 was cognitive. I would ask her, you know, "Are you
14 dreaming?" And she would mostly not verbal, she would nod
15 or she would shake her head. I asked her a number of
16 times if she was in pain. I do not remember that she was
17 in much pain in acute care. I know she got very restless
18 in hospice.

19 And also in hospice -- because I know I'm bleeding
20 into hospice, no pun intended there. What changed in
21 hospice, because when we put her there, it was obviously
22 on the advice of doctors. I think Dr. Henry was of the
23 clear opinion she's not going to reverse; that we're not
24 doing her any good here. Quite honestly, my wife works
25 over at Sparks. They want you in and out of beds there.

1 I mean, if you're in rehab, I mean, they, essentially,
2 kicked my dad out. If you're not making progress, you
3 move on. And I think in the acute care bed, and I think
4 they were pretty full, as they were this past weekend over
5 there, it wasn't fair if she's not getting better, and the
6 doctors are -- you know, so we moved her to hospice.

7 This is where I forget. I can remember the hours my
8 dad was in hospice, but my mother seems like a week. But
9 what changed two or three days before she died, I know
10 there was an event Sunday night, and we had been with her
11 all afternoon, seemed comfortable, resting, nothing
12 particularly changed, the vitals, as I remember, were
13 still, again, strong heart, obviously, no food, although
14 they were giving her -- she did not have swallowing
15 problems like my dad did, and my mother, like I say, until
16 two or three days before her death, she would still eat,
17 automatically. And I remember we had a discussion with
18 the staff and the docs about is that helping her or
19 hurting her? Because the last thing my mother wanted,
20 just like my dad, was to be in any sort of state of
21 nothing was going to be better, and I knew she didn't like
22 the condition she was in, and I think we reached a
23 compromise that they don't automatically bring trays in,
24 but if she asked for it.

25 Q. Okay.

1 A. Once in a while she did, but, certainly, not the last
2 day. When we left that Sunday, we went down -- we had
3 been doing nothing but -- I hadn't worked since it all
4 happened, and Peggy was having to take days off. There
5 was a Christmas party down at -- because this was
6 December 14th, as I remember -- the dialysis unit at
7 Sparks where Peggy was working, and Peggy is part of the
8 dialysis unit as well, was having a Christmas party. I
9 hate that party. I didn't want to go to it, but Peggy
10 talked me out of it because both of my mom's docs were
11 going to be there, and I hadn't seen them in a couple of
12 days, and I figured, "Okay. It will be good for Peggy to
13 get away."

14 So I stayed with Mom. Peggy, as I remember, went
15 home, dressed up. I don't think I did. We went down. We
16 had just sat down and we got a call from Shirley. Shirley
17 was with her. And she said -- Shirley always called me,
18 and still does, as far as I know, Bud, "Bud, you need to
19 get back here." So for me it was a blessing in one sense.
20 I didn't have to sit at a Christmas party. And we got
21 back, and Shirley used the word "seizure," "Your mother is
22 having a seizure." So Peggy and I, you know, it was
23 usually at the auditorium, now it was at the bar, so it's
24 less than five minutes away, certainly at the speed I
25 drove.

1 We rushed up there and we got there, and I fully
2 expected Mother, I hoped not, but I wanted to be there
3 when Mother died, just like I was with Dad, but she was
4 resting comfortably, her eyes were open, she was working
5 her rings. And I went over to her, and I remember what I
6 said. I don't remember if she said something or not, but
7 I feel that she said to me -- I said, "Have you been
8 dreaming?" And she said -- I remember her -- I don't
9 remember her, I feel, I intuit that she said, "Yes." And
10 I said, "What about?" And she put the rings and she said,
11 "Dad." And I remember saying to her, "I think you'll be
12 dancing with Dad soon."

13 That was Sunday night. I don't remember what day of
14 the week, I think it was at least two days later, we had
15 been there -- I know Debbie was on duty, and everybody had
16 the same thing with my dad, any change, and with my dad, I
17 was there, and I was able to watch his respiration and his
18 breathing go down so you knew it was inevitable within a
19 certain level.

20 When we left her that night she looked -- I think she
21 had just gone to sleep. I don't think. I know she had
22 just gone to sleep. Debbie was there. She was resting
23 comfortably. She had not, as I remember, rubbed the rings
24 all day that day. I don't remember her conversing or
25 trying to converse. And we went home. As I remember, we

1 had barely gotten to sleep, it was maybe 10:00, I could be
2 wrong, but as I remember we had barely gotten to sleep,
3 and Debbie said, "Ms. Dot has passed." And she
4 immediately said, "I'm so very sorry," because she knew I
5 wanted to be there, and I think she figured I would be
6 angry. And I said, you know, "I understand. We'll come
7 right down." And we did, and we talked to the nurses.
8 And my mother died suddenly.

9 There was no -- my dad sort of had that, what people
10 call, death rattle or that last gasp or, you know, the
11 reduction in the breathing and clear sings. Now, the
12 nursing staff may have seen something, but they certainly
13 didn't call us, and I think they would. I don't think. I
14 know they would have. I think my mother passed suddenly,
15 and she had been dead, like, 20 minutes, maybe 15, when we
16 got there.

17 Q. Did she pass in her sleep?

18 A. I believe. I do not believe -- I remember asking
19 Debbie, but I believe she was not awake.

20 Q. Let's go back, if we can, to the decision to move her
21 to hospice.

22 A. Yeah.

23 Q. I know that was on the recommendation of her doctors.
24 Who participated in that decision for the family?

25 A. Well, it would have been -- for the family, if we're

1 talking blood, it would have been me. I would have
2 informed Lena, and I'm sure I did. I don't remember the
3 call, but Lena was calling like she did with my dad,
4 multiple times a day. And, in fact, Lena's children were
5 calling that Sunday night when we were there with Mother,
6 thinking she was passing that Sunday night that I said we
7 came back from the Christmas party to be with her, and I
8 would not take those calls because I just wanted to be
9 with Mother. And I know her daughters got angry at me
10 about that, but I stayed in pretty close touch with Lena.

11 I would put the phone up to Mother's ear, but Mother
12 could not make any audible sound like Dad could. But
13 Mother would hear, you know, Lena would call, and I would
14 have informed Lena, and Lena would have, just like with
15 Dad, was very upset. And I remember she said, just like
16 with Dad, don't give up. And I'm back to that -- you
17 know, I'm not giving up. I'm doing the only thing I can
18 do that's left to me.

19 And I don't remember, I don't think -- I know I felt
20 resistance from Lena, just like, I mean, I've had the
21 terrible task of doing this for my brother at age 57, and
22 my dad at 93, and my mother. And my sister hasn't had to
23 make any of those decisions. I have. Would she have been
24 a better person because she's a medical person? She would
25 have certainly brought -- I had to rely upon what others

1 were telling me, including Peggy, and she -- Peggy would
2 have been involved, but mainly from a supportive role, you
3 know, adding that, yes, we're not seeing any improvement,
4 medically, and we're not going to. So my sister would
5 have been more -- someone who was informed. I listened to
6 what she had to say, but it didn't change what we did or
7 the timing of it.

8 Q. Was your mother in a state where she was able to
9 contribute?

10 A. No, no, no.

11 Q. So she was not brought into this decision?

12 A. No. I know Peggy and I talked. The doctors didn't
13 talk to us about that like we did with my -- about my dad.
14 I remember my dad's reaction. I don't know what it would
15 have done to my mother. There was nothing -- I mean, my
16 mother could not have -- she could only have been upset,
17 and I learned long ago in the corporate environment or
18 with family, why tell people things they can't do a thing
19 about but be upset. And I did think back to my dad, and I
20 thought it didn't help my dad, and he was more cognitive
21 and better able to understand it. I had also -- this will
22 also sound bizarre, and it's more than you want to know,
23 but, I mean, we've done this in a conversational style.
24 I'm not trying to advocate for anything. You want to know
25 what I know.

1 Q. I do.

2 A. And that's what I've been trying to tell you.

3 Q. I do.

4 A. And I'm sorry for the rambling, but I will add I had
5 been then, or my problem, I think watching a DVD series I
6 had had for some time, but I didn't sleep in those days, I
7 was up all night, each night, called "Shoah," Shoah, the
8 Hebrew word for, really, the holocaust. I think directly
9 translated it means calamity, but it's the Jewish word for
10 holocaust, and I have been a student of the holocaust for
11 years.

12 And I remember one SS officer in particular
13 describing the difference between concentration camps and
14 death camps, and talking about the way it went in
15 Treblinka versus the way it went in Auschwitz is very
16 different. And he talked about how they funneled -- at
17 Auschwitz 2, they funneled -- which was a death camp,
18 wasn't any holding or concentrating, it was a death
19 camp -- you were brought in by trains, taken off of a
20 ramp, all moved toward the, quote, delousing area that was
21 just, basically, taking off your clothes, and then those
22 fortunate enough, i.e., in quotes, that went in
23 immediately were gassed. It usually took 10 or
24 15 minutes. But the women and children always had to go
25 last, and the SS officer, even in his indignant state,

1 talked about how insufferable it was for them, knowing
2 death was coming.

3 And I watched Volume III probably the night or two
4 nights before we did it with my mother, so I wasn't going
5 to tell my mother where we were moving her. I don't know
6 if I would have done differently with my dad, knowing what
7 I knew, because my dad was much more cognitive. He would
8 have figured out he was somewhere else. Plus, as we know,
9 they do tell them, and I'm not sure there's much the
10 family can do to say, "Don't tell them." In my mother's
11 situation I believe we conversed and I said, "Look, she's
12 not in a position to really understand or make any
13 decision here. I would like you not." Whether they did
14 or didn't, I don't know.

15 Q. Did she ever have an understanding, the best that you
16 could tell, that she was in hospice?

17 A. No. I think I understood the question. Did she ever
18 evidence to me that she knew she was in hospice?

19 Q. That's what I was trying to --

20 A. No, no.

21 Q. You have mentioned a couple times about the decision
22 about whether or not to move your mom from The
23 Brookfield --

24 A. Yes.

25 Q. -- as you saw things deteriorating there in the fall

1 of 2009. This has been an issue between us --

2 A. Sure.

3 Q. -- in the case.

4 A. Sure.

5 Q. And it's going to be an issue. And I just want to
6 hear what is the explanation that you have as to why you
7 did not move your mother from The Brookfield if you
8 thought she was at risk there shortly before her accident?

9 A. Well, first of all, there is no perfect place, I
10 mean, the elder-care arena in this country has its flaws.
11 I felt I knew the flaws in this system. They were quite
12 evident, and I had patched as many of the holes that I
13 could. So it got back to my mother's decision. My
14 mother, and I think it's been expressed by people in
15 different words, but it comes down to two things. That
16 was her home.

17 And, look, I know exactly where you're going. I've
18 used this in defending cases for years, and I've seen --
19 I've tried to be honest here. I won't sit here and tell
20 you, like I've heard in cases I've defended, "Oh, it was
21 terrible from the beginning," and all this stuff. I've
22 tried to be as honest as I can be, the good and the bad.
23 And I think that record rings true in terms of all of
24 this.

25 I've asked you before what else would be my answer?

1 I was paying more money, by far, to get care. I could
2 have taken her to Willow Brook, any number of places Peggy
3 and I had searched out. We were ready to -- we had a
4 group ready to go. "We can get this done. We can move
5 you in a weekend." So why would I want to pay more money,
6 pay more money to sitters? The one facility we could move
7 to is 30 seconds away from this one, so it wasn't a
8 convenience matter.

9 My mother did not want to go. As long as my mother
10 was cognitive, which, to a great extent when I made the
11 hospice decision, that was the first time I've ever felt I
12 might have forced my mother to do something she did not
13 want to do because I couldn't have explained it to her,
14 "Mother, you're in a death spiral. Do you want to stay in
15 this room where they don't really want you?" My mother
16 was not able to understand and make a choice. Had she
17 been able to, I think she might have, but she might have
18 been like my dad. She might have said no. So I really
19 moved her at that point.

20 Knowing what I know now, I would have moved her
21 forcibly. I believe she would have died anyway. She
22 would have died angry at me. I was already feeling a lot
23 of guilt. I died pretty much estranged from my brother.
24 That's still not something that I prefer. I was making
25 life-and-death decisions for her, and as long as she was

1 cognitive, it was her home, she said it to everybody, "I'm
2 not" -- she would say, "They're not making me leave from
3 my home." The other thing is she would talk about my
4 dad's presence in the room, and -- but, Mark -- and I
5 could have said, "Mother, I'm moving you." And I would
6 have had to get an ambulance and, no joke, restrain her.

7 My mother and I had probably as an idyllic, Freudian
8 sense, I don't know, but idyllic relationship as anybody
9 could want with their mother. And I respected her dearly,
10 and I could not bring myself to do that while I felt I
11 still had some choice.

12 Q. If I'm hearing what you're telling me, if it was up
13 to you, you would have moved her?

14 A. I would have moved -- she would have never gone back.
15 I mean, Peggy and I talked about this. Peggy and I talked
16 about this. I took my mother down -- I went over the day
17 my dad died, that Saturday morning. My mother, I waited
18 till she got up. He died at 3:00, 3:00 a.m., whatever. I
19 waited till 8:00, for her to be ready to go to breakfast,
20 and I went over and I told her. And, of course, she
21 wanted to go to the hospital. I said, "He's not at the
22 hospital." And I said, "As soon as they get him so that
23 you can see him, we'll go down to the funeral home." And
24 we did.

25 And Peggy and I talked, and I said to her, and I said

1 to her, "We can take your things today, and you can stay
2 with Peggy and me, and we'll move you into someplace else
3 next week." "I'm not going anywhere else. This is Jack's
4 and my room." And I said, "I will keep talking about it."
5 And we talked about it. We talked about it if not daily,
6 every time I felt I had an opening. For example, and I
7 think you mentioned this one time, may have been at my
8 dad's trial, did she, one instance with Shirley on one
9 day, look at a smaller room in that facility? Yes, she
10 did. And when I came in that evening she told me she had,
11 I think, maybe, I don't know who she went with, either
12 Karen or Mitzi, and they had written down what the room
13 rate would be, so I felt that was my real opening.

14 Dad's not in that room, so I figure one of the two is
15 down now, right? I'm left to the case. I'm left with the
16 case. Because I don't remember the specific occasion,
17 but, again, I feel that I knew from her, whether she said
18 it explicitly or not, that if I got the case settled, if I
19 resolved it in whatever way, she wanted doors down, she
20 wanted other things, just like I did, if we were able to
21 leave some impact here so that we've made an effect, that
22 it's safer, and Jack's matter, the wrong, has been dealt
23 with, I felt I had a decent chance to get her out,
24 particularly when she said, "I would be willing to look at
25 another room."

1 So maybe I did that wrong. I said it, "There's no
2 reason to move to another room, you know, it's not that
3 much less, it's a lot of trouble, so if we're going to
4 move, it's just a matter of getting a van, hiring a couple
5 of guys, we can get you moved in the same amount of time
6 from this facility." And at that point, within hours, if
7 not a day, the interest in moving to a room, "All right.
8 Then I'm not going anywhere." So I was back to where I
9 started.

10 If I had it to do over again would I move her, hoping
11 I -- because I still had hope that I could get the case
12 settled, then I would have both the problems settled, and
13 I felt, without a doubt, I could get her out of there. In
14 retrospect, would I do things different today? Probably
15 would because I would take the risk that my mother would
16 die of a broken heart, or whatever else she would die
17 with, somewhere else, rather than looking like she looked.

18 Q. When she expressed to you she didn't want to move,
19 the reasons that you've listed so far, as I have them, is
20 that she felt it was her home, she felt your dad's
21 presence there, and she didn't want to feel like somebody
22 had forced her out.

23 A. Yes.

24 Q. Are there any other reasons she expressed to you?

25 A. Not that I can remember, Mark. Well, before -- you

1 know, we're talking about a long time frame here. I would
2 say while Cheryl was still there, working at the facility
3 and showering her, while Michelle Ensey -- and I mention
4 those two in particular because there was that continuity,
5 and they loved her, and, as I said before, they did things
6 for Mother in the middle summer, really, from my dad's
7 death until August, thereabouts. My mother wanted them.
8 She said -- she would say, "My family is here." And I
9 would say, "Who is your family?" I said, "I'm your
10 family. I'll be with you, Peggy, Chris, everybody will be
11 with you." "Cheryl and Michelle."

12 I don't remember this explicitly, but it seemed like
13 she may have asked Michelle, at one point, you know, "If I
14 go somewhere else, would you go?" And, of course, in
15 those days nobody was going to say anything because my
16 mother talked to everybody. Nobody was going to say yes
17 to my mother, and then my mother say something to Mitzi.
18 That wasn't going to happen. So as I remember, Mother
19 said -- I was not there, but Mother made an inference
20 like, "I've asked them, and they won't come." So I would
21 add that as a third reason. There were still at least
22 two, and I think -- there's, like, an Angela. It's not
23 Angela Ruckman, but -- and I will know her name. I don't
24 think she's there anymore, but my mother really liked her,
25 too, and so there were three caregivers that she really

1 liked.

2 Q. Was there ever a time when you had a discussion with
3 your mother about the fact that you felt she wasn't safe?

4 A. Oh, yes.

5 Q. And what was her response to that?

6 A. Well, it would be in concrete terms, like before she
7 got the walker, "You really need the walker," but, yet, I
8 was getting nowhere with that. That was not with what was
9 happening post the time period we've been talking about,
10 but I felt she was not safe without a walker. And so when
11 we finally got that handled, now, I could move into the
12 time that we've talked about and the events that we've
13 been talking about today.

14 I would put in concrete terms, "Mother, you know what
15 Dad's death" -- and this is the only way I could really do
16 it with her because she was a mother. She always called
17 me obstinate. That was her word. I would always use the
18 word "stubborn." Everybody was stubborn except her. And
19 she would say, you know, "I can walk fine, particularly
20 now that I have my walker." And I would say, "Mother, you
21 must ring the call lights." Mother would say, and this is
22 not middle of August because it took awhile for her to
23 inure the fact that they weren't answering the call lights
24 so routinely. She would say, "I'm not going to sit there
25 forever."

1 Several times she left the dining area, and they
2 would catch her. Seems like I saw that in the progress
3 notes that they would stop her, say, "Wait a minute,
4 Ms. Dot. We've got to accompany you back." And she said,
5 "I've been waiting here an hour. I'm not going to" -- and
6 it was usually not an hour, but it was whatever time. And
7 so she would say -- she would also -- she would often
8 humor me and say, "I'll give them" -- you know -- "but I'm
9 not going to sit there forever." That's what she would
10 say. And then she would say to me, "And you wouldn't
11 either." She would always point at me and say, "And you
12 wouldn't either." And I would say, "No, I wouldn't sit
13 there forever." But this is what I said to try to guilt
14 her into this, I said, "You know what we've been through
15 about Dad's death, and you know what we've done, and you
16 know that you don't have" -- because I was particularly
17 worried, again, like I said, the smoke breaks for Debbie,
18 or when somebody had gone to the store and she was not
19 there, and I said, "You cannot move, not even out of this
20 chair." And she would humor me and say, "I'll ring it,"
21 but I also know there were times she would not ring it.

22 And she would tell me, "I'm not" -- my mother could
23 get, particularly when she was angry, which, again, I
24 never saw my mother angry until after my dad's death. I
25 never -- in all the time I've known my mother, anger was

1 not -- I have been an angry person. I admit that. My dad
2 wasn't an angry person. I guess I just got it from
3 somewhere, but I'm dealing with that now, and I'm getting
4 more like she was. But she would say, "I'm not going to
5 waste my time." And so we were schooling her, "Look, if
6 I'm there, I'm going to ring the call light. Don't you
7 get up. I'm going to ring the call light." And we would
8 sit there, and she'd say, "That's enough time. I've got
9 to go to the bathroom." And she would say, "What do you
10 want me to do? Do you want me to do it here in the seat?
11 I'm not going to do it here in the seat." But that -- to
12 me, that was the main risk factor. That was what -- that
13 and the doors. I was then, I still am, concerned about
14 the doors. And so I constantly made sure that she would
15 not touch the doors.

16 The bathroom door -- she always wanted privacy
17 because you would be in the living room, and there's
18 nowhere really else to go, and you could move to another
19 room, couldn't really see her, but, you know, you could
20 hear. She didn't like that. So when I was there, anybody
21 else, they would move the door. And I got her, at least
22 she claimed she would not touch the door if she was alone
23 because people had to knock to come in, and if she didn't
24 answer, they usually wouldn't come in, at least on the
25 first knock, so -- unless she had rung the call light. So

1 she would say okay. And I'm hoping she did that.

2 I know Debbie and Cheryl and Shirley, everybody,
3 Chris, everybody was programmed those doors don't move, in
4 part, because I was still fearful of the ones that we did
5 not take down.

6 Q. Did you ever have a conversation with her about
7 trying to get her to go to a different facility where you
8 expressed to her you thought she wasn't safe there?

9 A. I think I can answer that yes, with an explanation.

10 Q. Okay.

11 A. Or it could be no with an explanation. And I know
12 you don't like that, but here's the explanation: It would
13 have been done in the context of, "I have sitters now
14 here, and we've gone to a lot of hours that they're
15 costing a lot of money, and the main reason I have,
16 certainly, Cheryl at night, other than to give you a bath,
17 those extra two or three hours at night is because I don't
18 think you're safe here because of the call-light
19 situation. And I'm working on it." And I would always
20 say, "I'm working on it." And she would -- as I remember,
21 she would say, "You'll get it fixed."

22 But, again, there was nothing -- I tried guilt, I
23 tried rewards, you know, just to get her to go look at
24 other facilities. Maybe they've got -- "You don't like
25 Chuck's peanut butter pie anymore," so I started buying

1 her peanut butter pie that she liked. And I said, "You
2 can get that over at the new place." And she would not go
3 look.

4 Q. Did she ever go look at a different facility?

5 A. No.

6 Q. Did you ever look at a different facility?

7 A. Yes.

8 Q. Which ones?

9 A. Looked at Willow Brook, looked at this -- I think
10 it's a rehab place on Wheeler. Did what I think it was
11 Bob was describing, kind of just walked in. Most of them
12 were not locked, just walk in, mealtime, sit around, ask
13 for a brochure, get a rate chart. I knew all of them were
14 less expensive, by a pretty good bit, from my initial
15 look. I mean, this came out in my dad's case. I zeroed
16 in on this facility pretty quickly because it was the
17 newest. And Peggy has patients from this one over on
18 Wheeler, and it's considered a very good facility. It's
19 more full, fuller. It has more people in it, census is
20 high. Building is not nearly the building.

21 And, honestly, when I moved my parents here, I think
22 one of the reasons my mother really liked it, the facility
23 in Alabama was an old facility, and had been a SNF, a
24 skilled nursing facility, and the bricks and mortar were
25 not good. I know -- and my mother never told me this

1 after my dad's death, but I know when they moved in, they
2 thought they were in the Taj Mahal compared to their room
3 in Alabama, not just a matter of space, but a matter of
4 cleanliness, everything.

5 I mean, there was, as people who know who go into
6 facilities, even ours, heck, I've even been in independent
7 living facilities, but there can be an odor, particularly
8 in older buildings. It's like you can't get it out. It
9 doesn't mean things are happening at that moment, but if
10 you've got a sensitive nose, it's there. There was never
11 any of that. I've read that in the state reports during
12 my dad's case. I agree there were not odors there. It
13 was a clean -- and I think my mother felt, because she
14 would ask me, "Are these new facilities?" And I would
15 say, "No, but they've got really good people."

16 And we would go back to, you know, the circle game
17 of, "Well, Cheryl doesn't work there. Michelle doesn't
18 work there. I've got to get to know all new people." It
19 just -- I say again, knowing what I know today, if I had
20 it to do all over again, I would do it different.

21 Q. As you sit here today, do you think that your mom
22 was -- that the level of care she needed was too extensive
23 to be in an assisted living facility, Level 1?

24 A. I'm going to walk me through it, not you --

25 Q. Okay.

1 A. -- but rather than just giving you a one-word answer.
2 My dad, certainly -- I believe my dad could have been in
3 an independent living were it not for my mother because my
4 dad was pretty -- now, he couldn't live in the home that
5 he asked me to move him out of. He couldn't take care of
6 a home, but God forbid if my mother had died first, as
7 much as my dad would have missed her, he had such good
8 health that I think he would have been all right.

9 And he was much more social than my mother. She
10 needed help with her ADLs, I mean, under the insurance
11 policy, I think she needed help with three of five. She
12 needed none with eating. She needed help, clearly, with
13 ambulation, but as long as my dad was there, I forget what
14 her care plan said, but I said as long as my dad is here
15 and they're comfortable, I don't need another aide walking
16 on the other side of the my mother. They might fall, and
17 I always said to Mitzi, or whomever was asking when we did
18 the care plan, and if they fall walking together, you
19 know, as long as the ceiling doesn't fall in on them or
20 there's something wrong, that's a risk we're willing to
21 take. And so they lived somewhat independently because of
22 the ability to mesh Dad's independence in with Mother's
23 dependence.

24 Was she dependant on the three of the five ADLs?

25 Yes. I come back to -- and that alone would not suggest

1 she was not qualified for ALF there. She was incontinent
2 much of the time, and we went to the diapers, which Mother
3 didn't want to do either, but she went to the diapers.
4 That was another of her gifts before Dad died because I
5 had to enlist Dad's support because she just kept
6 saying -- she was in denial over the incontinence issue.
7 But judging by other people in the facility, I mean, I can
8 tick them off, Herbert, John, there were a number of
9 people that shouldn't have been in that facility that were
10 far worse than my mother.

11 ALF 1, ALF 2, I'm not used to that system here in
12 Arkansas. Alabama had one level ALF, and their level ALF
13 had an RN. I don't think my mother needed an RN, and that
14 was the main difference. She knew her prescriptions
15 better than I know mine, every one of them.

16 And so now that I've walked you through my thinking,
17 I would probably say I think my mother was qualified to be
18 in that facility.

19 Q. I made a note I need to ask you about. You mentioned
20 that you and your mother would play ball?

21 A. Uh-huh.

22 Q. What did you do?

23 A. Bouncy ball, like what I used to call a dodgeball or
24 a kickball. She was a teacher, and I bought her -- I
25 think -- no, I did buy her that ball. The therapist gave

1 her a couple of other balls, but she always liked that
2 ball.

3 My mother was always competitive, and everybody will
4 tell you this that dealt with her. She attacked that --
5 she always considered herself top of the class in
6 exercise. She would talk about, "Those people can't do
7 anything. I lead the class. I'm the first in the class."
8 And she took great pride in that. And we would -- every
9 day I would go, and first thing she would do, she would
10 say, "You want to play ball? Let's play ball."

11 And I would sit across -- you know, the living room
12 was maybe 12 feet, so I would sit in a chair, so we were
13 eight feet apart, and she would start bouncing that ball.
14 If there were a third person over here like Shirley or
15 Debbie or Peggy, she would bounce that ball, and then
16 without saying anything, she would throw it at them and
17 hit them. And she just would laugh. She loved doing
18 that. She would bounce it hard. I would do spins, and
19 she would catch it. She was incredibly good with her
20 dexterity, I mean, better than any of the women that would
21 play with her. She couldn't beat me, but she was very
22 good, and she just loved that.

23 And then the other thing we would do, like a mantra,
24 she would rub your back. She had this back-rubber that
25 Lena gave her for Christmas one year, then it stopped

1 working, and I got her a new one, this automated
2 back-rubber. And she would rub everybody's back. Any
3 caregiver that came in, if they came in when she was on
4 the toilet, when they got her off, she would have to rub
5 their back. It was just you come into Ms. Dot's room, you
6 got your back rubbed, but then she always wanted hers
7 rubbed.

8 Q. The game of ball that you all had, was this something
9 that was -- what you all just came up with on your own, or
10 was it designed by the therapist?

11 A. He designed something else after her fall in
12 midsummer. I came up with it because after Dad's death, I
13 couldn't get her to laugh. I couldn't get her to smile.
14 And so I got a ball, because we had played ball before at
15 places, because she always liked to play ball. When she
16 went to the facility in Alabama, that's what they do.
17 They play with this very light ball. So I got this
18 heavier one, and it had a big bounce to it, and I don't
19 even remember that she had first rejected it. She said,
20 "Yeah, let's play ball." And it just became a ritual.
21 And she would never tire, I mean, she could go for any
22 amount of time. I was always the one to stop it, unless
23 she had to the bathroom. Once in a while she would have
24 to go to the bathroom, and it would stop the game, but she
25 didn't tire.

1 Q. How many complaints did you make to the state about
2 your mother's care following your father's death?

3 A. To the Little Rock, I remember the one I wrote up.
4 Now, about my mother's care. Yes, I think the complaint I
5 made regarding the doors indirectly affected my mother
6 because she was in a facility that had the doors, and two
7 of the sets of doors we didn't take down. I guess,
8 indirectly, that goes to her care. I do not believe at
9 any time prior to August -- let's take it from the
10 deposition date --

11 Q. Okay.

12 A. -- which I remember is August 11th. I do not
13 remember making a complaint to the state, meaning, as I
14 remember, Mr. Hicks, Ms. Proffer, I did not know
15 Ms. Gately, I think her name is, I didn't know her at the
16 time, and I don't think I ever talked to them. As you
17 know, I didn't get a copy of the report, but I did talk to
18 Ms. Medley, so that's when you say "state," she's part of
19 the state, but she's the local ombudsman.

20 I talked to her, and I don't remember the first time,
21 but it was about Mandy. And maybe she has records. I
22 don't keep a journal or anything of when I talked to her.
23 Maybe in the e-mails there's something that would indicate
24 the first time I talked to her, but I remember calling the
25 ombudsman. I think it was after, Mark, sometime after --

1 I mean, I know we made a request of you to talk to Brooks
2 or Mitzi, somebody, with a supervised visit, let Amanda
3 get into the facility, and the answer finally came back
4 no. And I think that's probably the first time I called
5 Ms. Medley. And after that, there were just calls.

6 You know, now, I'm thinking it may have even been
7 earlier, like, March or April because she was the one
8 that -- and I will -- it wasn't her word. She secreted to
9 me a copy of the report. She said, "Have you seen the
10 report that they issued on your dad's, you know, your
11 complaints about your dad?" And I said, "No." And she
12 said, "Well, I can send you a copy if you don't say where
13 you got it." "That's fine. That's cool."

14 So I was talking, whenever that was -- my dad was
15 buried the 4th. I think Amanda was fired maybe late
16 February, early March. I might have talked to her as
17 early as April when Mandy couldn't get in there, and she
18 seemed understanding of this. And this is back to your
19 question when did you complain to the state. So I'm
20 treating Ms. Medley as the state, but at that time, I
21 believe my only complaint was that my mother had a
22 resident right that was not being recognized, and that it
23 was very important for my mother and her social, her
24 mental makeup, to see people that she really had regard
25 for. And I also, by that time, had already begun to think

1 maybe Mandy is not working, Shirley is \$20 an hour, maybe
2 I could get Amanda to lower the burden of the cost. So I
3 would say March/April.

4 Q. Okay.

5 A. And, again, the only complaint that I know I made
6 concerned the unwillingness of the facility to allow Mandy
7 into my mother's room.

8 Q. And that would have been made to Ms. Medley?

9 A. Yes. I don't remember ever talking to the Little
10 Rock state about that. I could be wrong, but I don't
11 remember it.

12 Q. Okay. I know that in November, you made a written --

13 A. Yes.

14 Q. -- report to the state --

15 A. Yes.

16 Q. -- prior to your mother's accident.

17 A. Yes.

18 Q. Did you also make a written complaint after your
19 mother's accident regarding it?

20 A. I don't think it's a second complaint, Mark, I mean,
21 I could be wrong if you've got documents, but I did talk
22 to them, and so if you're referring to a complaint as
23 follows: My sister called me, Debbie called me, I
24 believe, and said they had talked to a state investigator.
25 This was after -- and, again, I'm remembering middle of

1 November, 13th, 14th, 15th. That's just my memory.

2 Sometime, I think it was, after my mother's accident
3 I got those phone calls that the state was investigating,
4 and that was my November, whatever it was, complaint. And
5 what I heard was just what I took to be the misdirection
6 that I believed, and still do, with the state that they
7 took on my dad's case. And at some point I'm pretty
8 sure -- I know I talked to Ms. Proffer during the time my
9 mother was in the hospital. I don't remember whether it
10 was in HCA, the rehab wing, or the acute care. It was
11 not -- could have been hospice. I don't think so. Seems
12 like it was -- well, it could have been when she was in
13 hospice, Mark.

14 There had been no report written, but I called them
15 or maybe wrote them and I said, "Look, I don't think this
16 investigation is focusing on the right stuff, based on
17 questions that I'm being told they're asking of others
18 that I've referred them to."

19 Q. What were they focusing on, and what did you think
20 they should be focusing on?

21 A. Well, as I remember from my sister, the questions --
22 the questions had very little to do with my sister's
23 complaints, which included the call-light situation and so
24 on and so forth. And I asked, "What did they ask you?"
25 And I gotta tell you, Mark, sitting here today, I don't

1 remember what Lena said. I bet you Lena will remember,
2 but I don't remember what Lena said.

3 And I know Debbie, it was a similar vein, for
4 example, I do know this: Debbie said to me something
5 along the lines of, "I don't think they were listening to
6 me." And I said, "What makes you think that?" And they
7 said, "Well, they don't want to see any of our notes."
8 And I said, "You mean your notebook?" "Yeah." "They
9 don't want to see it?" "No." I said, "Well, then, go
10 back to your notebook, refresh whatever you've got, and
11 send it to them." She said, "That's what they asked me to
12 do, so I did that." Debbie said, "I did that" or "I am
13 going to do that."

14 And it seems like -- I know Peggy got a call when
15 Mother was, I think, in HCA. Again, the accident was the
16 19th. She would have been in HCA late November, like,
17 right at Thanksgiving. I doubt they came over at
18 Thanksgiving, but she got a call, Peggy would have to tell
19 you, it may have been from Ms. Proffer, may have been just
20 from the RN doing the investigation, and I know Peggy said
21 something, it wasn't a long conversation, but I think,
22 best I remember, Peggy gave me the sense was that this
23 does not seem like they're focusing on the real issues
24 here.

25 So I then -- I don't know if I wrote Mr. Hicks first

1 because I corresponded with Mr. Hicks before I ever moved
2 my parents here because I didn't understand the ALF 1, ALF
3 2 categorization here. He was helpful, and pointed me to
4 some documents and regs. So it was basically to go back
5 to him and say, "Look, I don't think this is going right."
6 Because I remember he then talked to Ms. Proffer.
7 Ms. Proffer may have talked to me. I think this is all
8 somewhere in all this because, honestly, I have never read
9 the full state report, but it seems like they had, you
10 know, the sequence of events. I don't remember there
11 being anything violently wrong with that.

12 And then Ms. Proffer wanted me to talk to Ms. Gately,
13 because my complaint still was about Mandy, it was about
14 Mandy, too. And that's when I talked to Ms. Gately who,
15 apparently, Ms. Medley works for, and I think I even wrote
16 something about that to Ms. Medley or somebody I remember
17 because that -- she used to work -- Ms. Gately used to
18 work at Beverly Enterprises before I was at Beverly
19 Enterprises, and she reminded me of an old Beverly
20 Enterprises employee.

21 I worked for the railroad for a long time. Railroad
22 workers had the same tendency to tell you, you know,
23 "Here's our tariff. Here's our time schedule. It's that
24 way or it's no way." And she told me on no uncertain
25 terms she was the one who had told Ms. Medley not to call

1 me back, not to go to any meeting; that that wasn't their
2 job. And she was proud of that fact.

3 Q. Ms. Proffer was the one who said this?

4 A. No, no, no. Ms. Gately.

5 Q. Gately. Thank you.

6 A. No, Ms. Proffer was always nice. I remember I had a
7 conference call with both Mr. Hicks and Ms. Proffer.
8 Ms. Proffer asked me the same question that you've asked
9 me many, many times, which is a common and
10 needs-to-be-asked question. And to some who haven't been
11 through it, I think you just can't understand. There will
12 be some, I'm sure, "I don't understand. I would have just
13 moved my mother."

14 I hope you're never -- not you, personally, but I
15 hope anybody who would say that never gets in my position.
16 Maybe they would do better, maybe they wouldn't, but I had
17 a long conference call, the first time I'd really gotten
18 anybody at the state level, I felt finally -- and, again,
19 this was after my mother's injury. She was in the
20 hospital, I think had been moved to acute care, but was
21 not in hospice.

22 By this time they had still had no follow-up with my
23 sister, no follow-up with either Cheryl or Debbie, no
24 follow-up with me. Just like in my dad's case, I was
25 never interviewed, never talked to. I had a complaint. I

1 was there most of the time, more than anybody else,
2 including most of the caregivers they interviewed, but
3 they never talked to me. Never gave me a copy of my dad's
4 report. And I saw that process was part of what was not
5 making me happy either; that I do need to be talked to.
6 So I think, to their credit, both Mr. Hicks and
7 Ms. Proffer said, "We will make time." And they made
8 time. And I remember going outside the hospital and
9 having the conference call. And they were very patient,
10 and listened. And they had a few questions. They got the
11 names and the numbers and the people, and I mentioned that
12 my caregivers kept notes. As I remember, they asked me
13 what was in it. I said, "I have no clue, but I know that
14 they documented what they're now telling me and what
15 they've been telling me all along happened, but they're
16 the ones that saw more of this than I did."

17 So they said, "Okay. We will" -- they said -- she
18 said, Ms. Proffer, said, "I believe" -- and I don't know
19 whether she did or didn't. She said, "I will get directly
20 involved." Because at that point, I think she was dealing
21 through, you know, normal surveyors. And whether she did
22 or didn't, I think she did because she called me one day
23 when she was over here. My mother was still in acute
24 care, and she said -- she said, "Can you come over? We're
25 still at the facility. Can you come over?" And I don't

1 think she wanted to meet me at the facility. She was
2 going to meet me somewhere else. And I said, "Sure, we
3 can meet." She said, "But I gotta leave such and such
4 time." I said, "Well, Mother's meal is coming, and I
5 don't have any relief. I can't do that." And she said,
6 "Okay. Well, I'll be back." She said, "Would you mind if
7 I come see your mother?" I said, "Of course not." She
8 said, "Do you think she'll be able to talk to me about
9 that night?" I said, "I don't think so, but you're
10 welcome to come see her."

11 I'll also tell you that Ms. Proffer, she was
12 convinced, based on what she said to me, that my mother
13 was recovering and was not as badly off -- I think
14 everybody thought I was exaggerating. I got that distinct
15 impression. Things were said like, "Well, when she gets
16 back to the facility."

17 By the second or third day in acute care, I knew my
18 mother was not -- absent miracles, and I gotta tell you, I
19 don't believe in them, I didn't think she was going back
20 to the facility. And I think there was one exchange where
21 after I had put Mother in hospice, I talked to her, I
22 forget, I don't remember any substance other than I said,
23 "I just put Mother in hospice," and it was total
24 disbelief. She said, "I had heard she was getting
25 better." And that really miffed me, and I said, "I don't

1 know who you heard that from, but my mother has not gotten
2 any better." And I gave her the room number we were in,
3 and I said, "You're welcome to come over." They never
4 did.

5 MR. DOSSETT: We need to make a tape change.
6 Let's do that now.

7 THE VIDEOGRAPHER: Time is 12:30 p.m. We're
8 off the record.

9 (A brief recess was taken.)

10 THE VIDEOGRAPHER: Time is 12:39 p.m. We're
11 back on the record.

12 Counsel.

13 BY MR. DOSSETT:

14 Q. I'm going to show you what I believe is the final
15 written report from the state regarding your complaints in
16 November of 2009, regarding your mother.

17 For the record, what I'm showing you is going to
18 be -- they're Bates stamped as 3002 --

19 MR. CHRONISTER: Mark, off the record a
20 minute.

21 (Discussion held off the record.)

22 MR. DOSSETT: Back on the record.

23 What I'm going to show you is Bates stamped
24 3002 through 3010, consecutively. We'll mark it
25 as Exhibit 1 to your deposition.

1 (Exhibit 1 was marked for identification.)

2 BY MR. DOSSETT:

3 Q. It indicates on there, on 3002, that an initial
4 investigation -- I'm sorry -- an original complaint intake
5 of 11/17 had numerous allegations that were investigated
6 on November 23 and 24. Additional concerns were brought
7 to the attention of the state by the complainant, and that
8 caused the office to consider that another visit may be in
9 order.

10 Do you remember whether this is what you were
11 describing to me awhile ago, that you made an initial
12 complaint, then you had the conference call to express to
13 Mr. Hicks and Ms. Proffer that you thought it wasn't going
14 in the right direction, and they did a subsequent
15 follow-up investigation?

16 A. Can I just ask you first, Mark?

17 Q. Sure.

18 A. This says it's page 2 of 10. I'm assuming 1 is just
19 a title page or something.

20 Q. Yeah. Let me go ahead and show you the first two
21 pages.

22 A. Okay.

23 Q. And they're 3000 and 3001. Let's add those to
24 Exhibit 1.

25 A. Well, in answer to your question, clearly, the

1 first -- if there were two, the first investigation has
2 the names of the people here, Jane and Betty, the two
3 surveyors. It says date of visit, the 23rd and 24th of
4 November, 2009. I don't really understand the paragraph,
5 what it says, honestly. It says, you know, what you read,
6 additional concerns dealing with dangerous doors, poor
7 communications from the facility to the complainant, poor
8 care, were again voiced by the complainant.

9 This may well have been in that oral conversation.
10 And then it says this information caused this office to
11 consider that another visit may be in order. The results
12 of that visit are as follows. Then the next paragraph
13 says an unannounced on-site investigation was conducted at
14 the above facility on the dates indicated. What dates?

15 Q. I had that same question. I guess we'll have to ask
16 the investigators who wrote it.

17 A. Okay. Because right now the only dates that have
18 been mentioned are the two dates that Betty and Jane were
19 up there. But, again, Ms. Proffer did tell me, and I have
20 every reason to believe her, that she, personally, was
21 going to get involved.

22 Can I add just one thing?

23 Q. Absolutely.

24 A. I hope I haven't chased too many rabbit trails. I
25 know I've been more talkative than you would like.

1 Q. No.

2 A. Ms. Proffer, one of the things that impressed me, and
3 maybe I did complete this thought, when she asked me, "If
4 things are so bad," and this was during the oral
5 conversation, "why don't you just move your mother?" And
6 I told her, and I went through, basically, the same thing
7 that I've said, I mean, if you're telling the truth, you
8 don't have to remember what you said. So -- and she
9 said -- and Mr. Hicks seemed to want to push a little bit,
10 but she jumped in and she said, "I have a grandfather" --
11 father-in-law, whatever she said, I thought it was a
12 grandfather -- "that's exactly like that." She says, "I
13 understand that completely," and never asked me another
14 question about that.

15 So, I mean -- and that's why I say at least if you're
16 been in the situation, you've seen it, you know how some
17 people can react. But I don't see in here any other date,
18 other than the 23rd and the 24th, and I can't -- in my
19 mind's eye, that seems early after my mother's accident to
20 have had that conversation, but it could have been so that
21 I already had the conversation. And I know when she
22 called and said she was here, I know that was after -- I'm
23 believing it was after the 24th, so it may make sense. It
24 just doesn't make sense in these two short paragraphs.

25 Q. All right. What I'm understanding from you, and I

1 want to make sure I got this right, are you telling me
2 that the original complaint was made, and when it was
3 investigated, you weren't satisfied with how it was done,
4 you called and had this oral conversation, some type of
5 conference call --

6 A. Yes.

7 Q. -- with Mr. Hicks and Ms. Proffer?

8 And then did you understand that they were going to
9 come back to the facility or somehow look into it further?

10 A. Certainly, look into it further. They -- and it was
11 Ms. Proffer that was the one saying this, as I remember.
12 I don't think in that conversation she said she was
13 definitely going to come back over. She said she would
14 look into it, I mean, she seemed to go, "Okay, yeah, gotta
15 do a good job here. We want to do a good job. We'll look
16 into it, and we'll get back to you."

17 And, again, I remember probably two calls, one when
18 she said she was here and wanted to meet with me and,
19 perhaps, stop by the hospital and see my mother, and I
20 know when I said that I gotta stay with Mom for dinner
21 because she's really not eating, we don't have anybody
22 else, seemed like she said, "I'll be back." And then
23 there was a time later I talked to her, and I think she
24 said she was not coming back, and I offered to go over
25 there, and that meeting just never happened. I don't

1 remember.

2 But going back to your question, it was -- I had no
3 idea that the investigation had terminated, if it had, the
4 23rd and 24th. I just knew questions had been asked of
5 certain people. And, again -- so I didn't talk to Jane
6 and Betty. Nobody called me. I don't think they called
7 me at all. They did leave a couple of messages. They
8 talked briefly to Cheryl, I think, and Debbie and my
9 sister and Peggy. And based on what those people told me,
10 it was eerily reminiscent of what I found to be major,
11 major problems with the investigation of my dad,
12 irrespective of the outcome.

13 Q. Were you ever notified of the final result of the
14 investigation?

15 A. No.

16 Q. Final conclusion?

17 A. No, not by the state.

18 Q. Have you seen -- prior to today, have you seen the
19 state's report?

20 A. I saw it when Rex got it. I don't know how we did
21 it, whatever kind of request, but I saw it sitting there,
22 I leafed through it quickly, and that was it. Let's just
23 say on advice of counsel, I was told -- not of counsel --
24 of doctors, I was told, "Don't do that," so I have not.

25 Q. Do you have an understanding as to what the overall

1 conclusion was from the investigation, whether it was
2 substantiated or unsubstantiated?

3 A. I think what they did was they talked to certain
4 residents, they talked to certain employees, and
5 concluded, irrespective of the testimony of five other
6 people, that there were no call-light issues in other
7 rooms and, therefore, there must not have been one in my
8 mother's. I do understand that, yes.

9 I also understand that, for example, I don't think
10 there was anything said in the notice or the report --
11 and, you know, if you got it all, seems like it's that
12 big, kind of all the attachments. I did ask those who
13 have read it, "Did the state note any findings with
14 respect to the missing progress notes for my mother during
15 the very period that we're talking about?"

16 If you look in my mother's progress notes, which I
17 did look at, they, for some reason, stop on October 22nd,
18 and they pick back up on November 14th, I think. 22 days
19 during this period where I'm writing these e-mails and
20 saying there's a problem, and the caregivers are saying
21 there's a problem, and Peggy is saying there's a problem,
22 and there's not a single progress note. It's like my
23 mother was not in that facility.

24 If the state can find no problem there, if they can
25 kind no problems with the records of my mother's last

1 night, the strike-throughs without proper dating, the
2 ominous new handwriting with the same initials, I think it
3 would be very clear in this that somebody else wrote on a
4 clean sheet of paper another version of what happened that
5 night, written very legalistically, but supposedly the
6 night of the 19th. I don't think that -- look, I've been
7 looking at records a long time, and you know this.

8 If I saw that record in Beverly, the first word that
9 would come to my mind would be "fraudulent." There's
10 different handwritings, there's different times. There's
11 one copy of the progress note that Peggy found last night
12 that looked one way, and another copy in the same report
13 from the state that looks -- that has additional
14 emendations, and if the state found nothing about that,
15 they didn't talk -- other than asking to talk to my
16 mother, and I said she was not conversant, they listened
17 to me. They did not -- my sister wrote a note, Mark, and
18 I think you guys have got it in production. I asked those
19 that read this, "Is my sister's complaint noted in there?"
20 I don't think anybody saw them. I asked Debbie and
21 Cheryl. They were never called back. They were called by
22 one of those two nurses. I don't think Ms. Proffer ever
23 contacted them, and they did -- the state did not want to
24 read their notebook, for whatever reason.

25 I don't know why you would -- nobody asked me, as you

1 have, was it Steve's -- he's a lawyer, so did he cook all
2 of this up? This report, having been in the industry 10
3 years, is -- in particular that it involves my mother,
4 but just being a report and used to seeing reports and
5 having deficiencies noted, just look at my time at
6 Beverly, we would had been killed here. I've had
7 facilities shut down with less than this. But I've got
8 three weeks of e-mails of complaints by a whole host of
9 people, and, you know what, in the progress notes that
10 we've been given, by you guys, at least, there are three
11 weeks of missing records, not one note.

12 We used to say at Beverly, "Not charted, not done."
13 It's like my mother was not in that facility. At the same
14 time that I'm writing Mitzi and saying, "Mitzi, you're
15 asking to staff around my sitters. My sitters are my
16 sitters. They're not caregivers. Don't you staff around
17 them." No reply from Mitzi.

18 If we had had the meeting with Mitzi, one of the
19 first things I would have asked for would have been the
20 progress notes, and if I had seen three missing weeks in
21 that situation, I probably would have yanked my mother out
22 of that facility, over her strenuous objections.

23 That is -- I told you I wouldn't flare, and I really
24 don't have the anger. I'm not crazy like I used to be.
25 To me, that is unbelievable, unbelievable. And I'm

1 talking to you from someone from the industry, not
2 somebody who doesn't know what I'm doing.

3 Q. And with regards to it being unbelievable, you're
4 talking about the missing --

5 A. Three weeks.

6 Q. -- progress notes and the strike-throughs?

7 A. And the strike-through and the same initials on
8 something that's, clearly, a different person's
9 handwriting. That's unlawful to do that. So -- and there
10 are other gaps. Peggy pointed them out to me last night.
11 I didn't look at the sheets, per se, but I'm sure Peggy
12 can talk to them, whether there was a missing week here
13 during this period, a missing week there, a missing week
14 in September, a missing week in November, just gaps. And
15 you can see -- if you go to the night of my mother's
16 accident, and there's all this writing, all this writing,
17 some of it, clearly, after the fact, Mark, clearly, after
18 the fact. Now, all of a sudden, they're doing what they
19 haven't been doing for weeks.

20 When I asked Mitzi, when I told Mitzi when I lodged
21 my complaints, if I were Mitzi, what I would have been
22 doing as an administrator, first thing I would have done
23 is gone to the progress reports, and I would have gone to
24 my staff and say, "What in the world are we doing? We've
25 got a hyper-vigilant" -- that's the term we always used

1 for these families like us that expect pretty darn good
2 care for \$4,000 a month. I would have said, "What in the
3 world are we doing?" Maybe she did. Maybe that's why
4 they got a little more -- but where was she for three
5 weeks when I'm writing these e-mails? She's not
6 responding to me.

7 I can't get an audience with anybody, the state won't
8 get involved, and then, when they finally do come in,
9 again, unless you tell me I'm wrong, based on what other
10 people have told me, the state doesn't notate that. So,
11 yes, did the state find no deficiency? Unbelievably so in
12 the light of five people saying the same thing about my
13 mother, and two of them not family members.

14 Q. I would like to ask you, if you could, just kind of
15 help me make a list of the things in the state's
16 investigation and/or their report that you take issue
17 with, either what you think the state did wrong in its
18 investigation or what it failed to do that it should have
19 done.

20 A. Okay. I'm just saying this, as I said, I have not
21 reviewed it.

22 Q. Okay. Let's do this then, let's leave the report out
23 of it for the moment.

24 A. Okay.

25 Q. As I understand it, from listening to you just now,

1 you have some dissatisfaction with how the investigation
2 went.

3 A. Oh, absolutely.

4 Q. And I just want you to list those things --

5 A. Sure.

6 Q. -- that are adding to that dissatisfaction.

7 A. Sure.

8 Q. Okay.

9 A. And, again, it's not like my sister's approach, who
10 may have never dealt with a surveyor, or somebody who has
11 never dealt with a surveyor. I've dealt with an awful lot
12 of surveyors. So mine is, yes, is it my mother? Yes,
13 it's my mother, but I don't know whether anybody else's
14 call lights were not being -- they went into other
15 people's rooms, and I know that I was told they found no
16 odor. I didn't complain about odors. They looked into
17 bookkeeping and all of this other stuff to see what was
18 going on and, clearly, they found one progress note that
19 they had them update the two days they were in there.
20 There are notes that were added, so my guess is they
21 looked at these progress notes, they copied them, and they
22 had the employees add two new entries while they were
23 there, after the fact.

24 Those calls didn't happen those days, the days that
25 they're noted, so they're looking -- and back to the

1 problem. They're looking at these notes, and they're not
2 saying, "Look, there seems to be some issue here." I
3 know -- Mark, I know this is not a skilled nursing
4 facility. I know it's not an acute care. But I tell you
5 what, you go through all those progress notes for three
6 weeks and a day when the family was alleging these
7 problems, there's not one note on my mother. I can't find
8 an excuse for that, and I can't find an excuse why a state
9 wouldn't say something about that.

10 No, as far as I know, they exonerated everybody.
11 That's what I have a problem with. My mother's call
12 lights were not being answered for some period of time,
13 and they make no finding of confirming that. I don't know
14 what else they needed. They have contemporaneous notes,
15 apparently, from caregivers. They have oral testimony
16 from caregivers. They have my testimony. They have my
17 sister's notes. They have Peggy's testimony.

18 We're not crazy people. This, as I said, was a train
19 wreck waiting to happened. I think it had been -- it's
20 documented as well as I could, handled as well as I could,
21 with all other things happening, including the lawsuit,
22 and my ability/inability to go to them directly, trying to
23 get Ms. Medley, trying to get the state, and for them to
24 conclude, based on the fact that they talked to another
25 resident who hasn't had with a call light, I don't know,

1 maybe other people weren't, Mark, but I can tell you our
2 family was. So the conclusion is ridiculous to me.

3 Unfounded by the evidence that was presented. For
4 example, the soiled sheets was one particular complaint.
5 I know they talked to a person named Angela Ruckman. To
6 not substantiate the complete -- the soiled sheets stuff
7 at all, in other words, Shirley, people, just made this
8 stuff up. Maybe they concluded it didn't happen 10 times,
9 but they didn't find that it happened once. Why? They
10 went and they talked to Angela Ruckman, the employee who
11 would have been guilty of not changing the sheet.

12 Now, the prisons, as they say, are full of innocent
13 people that never did a thing wrong. You're in Mitzi
14 Bailey's regime, state's in there, you go in there and
15 confess, "Yeah, I was making up the bed with the soiled
16 sheets," you're fired. No. There were five people that
17 had been saying this well before my mother's accident,
18 well before my mother's accident, about the call lights.
19 And I don't know who they interviewed. If people in this
20 report say there were not problems with call lights in
21 this facility, I will tell you point blank they're liars.
22 There were constant problems with call lights, even before
23 August.

24 The system couldn't work. Phones didn't work.
25 John -- you had a system where one person could tie up the

1 entire call-light system, which John did one night. John
2 was the Alzheimer's guy that should not have there, easily
3 to recognize. I won't use his last name, but he was a
4 former Notre Dame professor. They finally moved him out
5 of that facility when he got abusive to some people. But
6 the system was always a mess. So if in there they've
7 asked people, many of whom have turned over, maybe the
8 system is better now, I don't know, but, look, the
9 call-light system was a chronic problem in that facility.
10 And that's a fact.

11 So if they concluded all this was -- to me, it was a
12 coverup of the nth regard, most pointedly pointed out by
13 the fact that they make no reference to where was
14 Mrs. Brigance for these three weeks in October? Where was
15 she during this week in November? Was she even present?
16 Was she getting medication? Again, I know you don't have
17 to chart everything. For 22 days they charted nothing
18 during the time.

19 Now, how do you piece back together, based on their
20 notes? Because that's the way we used to prove it at
21 Beverly. We would go back with contemporary notes and go,
22 "No. We were doing this. We were doing that. No, we ran
23 some call lights. No this, no complaint." No note of the
24 complaint of the family here in any of these progress
25 notes. Go to some of them, look, this is why.

1 So let's go back, process. They talked to Debbie
2 once, as I understand it, maybe twice. Debbie will be the
3 best person to tell you. Debbie called me after the first
4 time, said, "They're going to call back. They don't want
5 to see the notebook or any of my notes. They asked me to
6 write it up separately. I'm going to do that." Debbie
7 called me a second time and said, as I remember, they
8 didn't want what she wrote up, but she wrote it and sent
9 it anyway. I don't know if in it's here or not. I
10 haven't read it. I don't know. I don't know how you
11 would say that's irrelevant.

12 I don't know how you would conclude that an employee
13 who had her job on the line, and would have been the one
14 to make up the bed with soiled sheets, in the light of two
15 people testifying that it was done that way, and you have
16 all this other stuff going on, and no progress note to
17 indicate anything, and you conclude that the family is
18 crazy, not the facility.

19 My sister. My sister went to the trouble of putting
20 a note together and, again, as we've talked about before,
21 my sister has her own certain health issues, but she went
22 to great lengths, and she told me, "I don't think the
23 woman was listening to me because she would repeat things
24 back and have it wrong," and so she said, "Would you put
25 it in writing." My sister put it in writing. As far as I

1 know, there's nothing from my sister in that report. Why?

2 I don't know if they've got me in there or not, but
3 they never asked for anything other than my complaint.
4 They never followed up with me like Ms. Proffer had said.
5 They never sent me a copy of the report. Why is that? I
6 had to get a copy of my dad's report secreted to me from
7 Ms. Medley weeks after the fact, maybe months. I don't
8 know when I first saw that. It was after Rex asked for
9 it. I couldn't get it from anybody.

10 So process, they talked to Peggy. They were going to
11 call Peggy back. As far as I know, Peggy is not in there.
12 Peggy has reviewed that, I think, or some of it. I don't
13 think Peggy is in there. So another witness to this is
14 not in there.

15 I mean, the complaints weren't that drastic. They
16 weren't -- I understand when the state report looked at
17 Amanda. I don't understand Ms. Medley and Ms. Gately, but
18 I understand that they can't get into personnel issues,
19 and I understand that. I wish they could have helped me,
20 but I don't understand that. I don't understand the
21 ombudsman doing what they did, but I understand the
22 report.

23 I understand the report on my dad's doors. They're
24 not expert on doors, you know, and I had a lawsuit, I
25 understand. I disagreed with it. I understood all that.

1 They did confirm the death of my dad, obviously, and that
2 the door did fall, but they didn't find any of the things
3 that it took us a year, as you well know, to find out that
4 transpired to get to that place. As you well know, the
5 state was told, in that investigation, the same thing I
6 was told: There had never been problems with doors and
7 never been a problem with Mr. Brigance's door, and we
8 didn't do anything wrong. That's what I was told for the
9 first six months of the litigation. Well, it turned out
10 to be quite different.

11 And I think the state, through whatever, when I said
12 "coverup" earlier, it's budget, it's whatever it is. This
13 is one facility of a whole bunch. And, again, bricks and
14 mortar, it's pretty good. They confirmed, for example, my
15 statement about the discontinuity of staff. And everybody
16 in the nursing home business or the elder-care business
17 knows that's a critical factor. There's not anything the
18 state can do to cite them about that, but they didn't --
19 as far as I know, they didn't even make a finding about,
20 yes, there has been increased turnover. We've got people
21 here that drew one day's pay, and they were gone, or a
22 week's pay, and they were gone.

23 What they said, as I was told, was there was enough
24 staff here. I didn't complain that there wasn't enough
25 staff. I don't even know what the regs provide in staff.

1 I doubt that we have things like they have in California
2 and Florida, for example, that have specific ratios that
3 you have to have on any given shifts, like in a skilled
4 nursing facility, but I didn't complain that there was a
5 general shortage of staff. I didn't complain about an
6 odor. I didn't complain the bookkeeping wasn't good
7 because I hadn't seen the progress notes, but they claimed
8 to have looked at the progress notes that are obvious on
9 their face to be problematic and, as far as I know, made
10 no finding about it. That's about it.

11 Q. Let me see if I understand them, make sure I got them
12 all down here. One is that it seemed to you that the
13 state investigation was off topic, they were looking at
14 things like odors and bookkeeping and the number of staff,
15 when you were giving -- you were trying to express
16 different complaints to them.

17 A. Specific complaints to my mother.

18 Q. And --

19 A. Regarding my mother.

20 Q. Right. And that was another one I had was that it
21 seemed to you that the state was ignoring testimony or
22 evidence specific to your mother by focusing on other
23 residents in the facility that you weren't trying to issue
24 a complaint about.

25 A. Yes.

1 Q. You mentioned to me that the state didn't catch or
2 didn't seem to find a problem with missing progress notes
3 and notes that had strike-throughs or that appeared to be
4 improperly modified.

5 A. Yes. And to further explain that as briefly as I
6 can, for example, there may be an explanation there. I
7 don't think they went to the trouble to find an
8 explanation, to find a problem, I mean, when Peggy showed
9 me that one sheet last night, the first thing I said was
10 it's different handwriting. In fact, it's printing. It's
11 a different person, same initials, and it's clearly after
12 the fact, not dated, not initialed. And then there's one
13 sheet that ends there as if somebody went back and wrote
14 it just like you would want it to be.

15 And there's strike-throughs that are just -- that
16 Peggy showed me that were just off the chart and just
17 "error" written, just "error" written across it. That's
18 not the way you do any kind of records in a hospital
19 setting, acute care, skilled nursing, assisted living.
20 When you have care of people, you document what you're
21 doing. Yes, to make no finding or explanation about that,
22 it truly, having been in this industry for over 10 years
23 now, boggles my mind.

24 Q. Another thing I have listed here with regard to call
25 lights, in particular, was that you felt the state was

1 ignoring the testimony being given by the caregivers and
2 the family --

3 A. Yes.

4 Q. -- by going and asking the other residents.

5 A. "Do you have a problem?"

6 Q. You weren't making complaints about the other
7 residents?

8 A. Right. I was having enough trouble with my mother at
9 that point. As much as I had interest in other residents,
10 I was -- my mother was the one who was injured and was
11 facing what I knew to be some inevitable problem at the
12 time that I made very specific complaints.

13 Q. And then the final thing that I wrote down here on my
14 list was that you felt as if the state was not thorough in
15 its process, they were not talking to -- they were not
16 talking to the witnesses they needed to talk to, looking
17 at the documents they needed to look at, those types of
18 things.

19 A. Or asking the right questions or doing the follow-up
20 that was promised.

21 Q. Simply not being thorough in their investigation?

22 A. In my opinion, yes. And I think one of the common
23 denominators throughout this process, including
24 Ms. Proffer, and I've never met her, and, again, she was
25 always pleasant on the phone, no follow-up with me,

1 including, "This is our report, Mr. Brigance. This is" --
2 nothing.

3 Q. What do you attribute these things to, is it -- do
4 you think it was part of an intentional cover-up, is it
5 incompetence? What do you think it is?

6 A. Having dealt with a lot of regulators, and I think I
7 said this in my dad's case, budget cuts, there's very
8 limited staff to do an awful lot of work, and they have a
9 certain way of doing things. I don't know this Judy or
10 Betty or Jane, whatever their names were, the two initial
11 surveyors. I don't know if they are the same ones on my
12 dad's. But I think my complaint was very different than
13 this sort of general complaint that I have gotten from
14 families for clients. And I think they come in with a
15 certain mindset of what they do. Sometimes they can't see
16 the forest for the trees, and sometimes it's simply an
17 error in methodology because it's always been done that
18 way. A lack of resources, lack of time.

19 I have no explanation as to why somebody,
20 particularly the relationship in the sense that we
21 communicated, they knew I was upset, they knew my mother
22 had died by this time, that nobody calls and says -- I
23 mean, you tell me. I'm not a conspiratorial kind of
24 person, but to go twice with investigations of deaths of
25 two people in the same facility, in the same room, with

1 the same administrator, and do it like this is just -- I
2 don't know anybody in the business that would do it that
3 way.

4 Q. I'm just trying to figure out if you believe it's
5 incompetence. Do you think that they were intentionally
6 doing a bad job?

7 A. I think -- let's talk about Ms. Gately first.

8 Q. Okay.

9 A. Why would she tell Ms. Medley not to get involved
10 with a resident-right issue? I don't know. I can tell
11 you, having spoken to her once, she's stubborn, and it's
12 her way, and she's going to tell you what it is.

13 Do I find that incompetence? There's plenty of
14 incompetence in the industry. At Beverly there was, I
15 mean, our executive group switched out Beverly. Somebody
16 you'll probably see in this case as a witness comes from
17 that environment. And, yes, there is incompetence at the
18 state. I'm not saying Mr. Hicks, Ms. Proffer is. I don't
19 know. I just know I look at the evidence, and I would
20 have at least expected somewhere in that report, again,
21 there, I haven't seen it, I haven't read it, and nobody
22 has told me it's there, Lena Brigance says this, this and
23 this, the two caregivers go this, this, and this. Steve
24 Brigance, the complainant, says this, this and this.
25 Mrs. Brigance said this, this and this.

1 We talked to Angela Ruckman, who changes sheets, and
2 she said no, she never did that. Weigh the evidence, and
3 you just say no, wasn't ever done. Wasn't ever done.
4 And, again, all of this came up, Mark, I think what's
5 critical here -- look, I know, I'm a lawyer. You're a
6 lawyer. Lawyers always do these things, right? This
7 happened all before my mother's accident. It wasn't me
8 saying late in the day, look at my testimony, prior to
9 August. I'm not sitting here ramming anybody. I don't
10 like the way the doors were done. I think other issues.
11 That case is on appeal or not. It's over for you and me,
12 so I'm not getting on that.

13 I've testified truthfully about my mother's care and
14 the caregivers and what was good there, and my complaints
15 started at a specific time. I made every written record I
16 could. I tried to get along. I dealt directly with
17 caregivers because I couldn't deal with the other folks.
18 I did everything I could. I tried to enlist the state.
19 That record is all clear. And what's equally clear is
20 I've never got a copy of the report. The state never
21 talked to me. Maybe they just don't like me. Maybe I'm
22 too aggressive. Maybe they just don't like talking to
23 people who've lost two parents in the same room, the same
24 facility with in the same administrator, but a totally
25 different staff. I don't know.

1 I know Ms. Gately has one set of issues in the way
2 she approaches the job. I got a sense Mr. Hicks and
3 Mrs. Proffer are different, but I can't tell you whether
4 they're competent or incompetent. I can tell you that
5 product, had it come across my desk, and I've done an
6 awful lot of internal investigations, I would have flunked
7 this one in a second. And you can talk to people who will
8 probably testify in this case that will tell you that I've
9 done that. This is an amazing group of findings here.

10 Q. Are you talking about the state investigation?

11 A. Yes. In light of why would you not look at a book?
12 Somebody says to you, "I have contemporaneous records."
13 Why would you, as an investigator, say, "I don't even want
14 to look at that"? You might discount it. What does a
15 judge say? You got two sides. Doesn't a judge usually
16 want to hear argument? Look at it him or herself. Make a
17 judgment call. "I don't want to see it." And then they
18 ignore the very people who are saying that. Don't even
19 meet with them.

20 This was all, as far as I know, me, Peggy, Debbie,
21 Cheryl, my sister. Now, my sister was in San Antonio.
22 All of us were available in any of those days they were
23 supposedly here to talk to them individually. You know
24 what they did, Mark, as you've made this point over and
25 over again? They had the right to talk to anybody that

1 would talk to them in that facility. Residents don't --
2 as you know, they don't have to talk to surveyors, and
3 there are some people there that I can tell you probably
4 wouldn't just because they're not very social people. And
5 they had the right to talk to every employee.

6 I have no idea how many employees they talked to. I
7 know that a lot of the exes they couldn't talk to because
8 they weren't there anymore, but the one ex they could have
9 talked to, they could have talked to face-to-face, was
10 Cheryl, Cheryl Williams. She had been there. She had
11 experience. She had contemporaneous notes of what had
12 happened. Her observations seem incredibly relevant to
13 me, and what I'm told is, by those who've reviewed the
14 report, she's not in there. She didn't make the book.

15 Now, you're looking for answers for things that make
16 no sense to me. I'm not good at that. I'm a
17 professional, you're a professional. I think we've both
18 been pretty successful in our careers. I can't explain
19 that.

20 Q. Let me ask you about the notebooks kept by the --

21 A. By the way, as I remember it, I've only seen one.

22 Q. Okay.

23 A. I think they call it the green book.

24 Q. Okay.

25 A. And I have seen it because it sat on the windowsill

1 by where the sitters sat next to by my mother, and it's
2 spiral bound.

3 Q. Do you know where the original is?

4 A. I think Rex has it, I hope. I don't have it.

5 Q. I have a copy of it.

6 A. I think Megen has it.

7 Q. Okay.

8 A. I'm pretty sure I offloaded that, but I might have
9 it. But, God forbid, if I do, I know I can find it. I do
10 know it went missing at one point when I did have it, but
11 that's when I thought I gave it to somebody who is more
12 organized than me.

13 Q. Okay. In the days between November the 17th and
14 18th, in that time frame, 16th, 17th, 18th, when there
15 were some e-mails back and forth between you and Mitzi
16 about trying to schedule a meeting, do you recall Mitzi
17 asking you to make a list of whatever complaints you might
18 have, and bring it to this meeting, do you recall that?

19 A. Not off the top of my head.

20 Q. All right. Let me see if I can find what I'm talking
21 about.

22 A. You might well have. I just --

23 Q. That's okay.

24 A. My memory doesn't go back.

25 MR. DOSSETT: That's okay. Let me see if I

1 can find it, and we can just go off it instead of
2 trying to stretch our memories.

3 I'm going to show you -- I'm going to pull
4 one out of here and see if this will do it. It's
5 Bates stamped 3201. We'll mark it as Exhibit 2
6 to your deposition.

7 (Exhibit 2 was marked for identification.)

8 THE WITNESS: Okay. I've looked at it,
9 Mark.

10 BY MR. DOSSETT:

11 Q. Does that help to refresh your memory at all as to
12 you being asked to look at the diary or the notebook to
13 see what the specific complaints might be regarding your
14 mother?

15 A. Well, I guess if there was a second page to this,
16 that might have been what Mitzi asked because it seems to
17 be what -- and, of course, I'm crossed out there, but it
18 sounds like me, so it appears that somebody suggested I
19 look at the book, I mean, because it says I'm not going to
20 look at the book, and that was on doctor's orders.

21 Q. Okay.

22 A. So I was not in a position to be the advocate of what
23 they knew and had seen.

24 Q. All right. If you look at the e-mail at the top of
25 that page.

1 A. Yes.

2 Q. Basically, you indicate that you're not going to look
3 at the list, and that Peggy is not going to look at it
4 either, the list -- or the diary. Pardon me.

5 A. That's what it says. I don't remember writing that.

6 Q. Why would it be -- I understand that you felt like
7 you couldn't read the diary because it would affect your
8 depression.

9 A. Right.

10 Q. But why would it -- help me understand why it would
11 be inappropriate for Peggy to look at it to make sure
12 that -- since she was going to be the representative at
13 the meeting, for her to make sure we had a complete list
14 of what was going on?

15 A. Well, again, I think in this period of time, which
16 was quite short, as I remember, the diary was quite long,
17 Peggy did not want to become the expert spokesman for two
18 other people that were live human beings sitting there,
19 and saying what they had to say, I mean, what we were
20 trying to do is to get a middle person to read something
21 else they had not ever read, and to come in and advocate
22 for that as if they were the people who wrote it.

23 Again, we're all in the same -- I was about to go on
24 the road here for the memorial service, as I remember, the
25 17th. I'd have to -- yes, 17th, Tuesday. But Peggy is

1 not an advocate. I couldn't look at it because, again, I
2 had gotten the data dumps from the sitters. I knew
3 enough, I was bothered enough by things.

4 Peggy had enough on her, honestly, Mark, just dealing
5 with me and the mother and everything else going on. But
6 as I remember, Peggy's reaction was they're both there.
7 Cheryl agreed to come in. Debbie was there in the daytime
8 anyway. In fact, I think that the meeting was let's start
9 with -- since Peggy couldn't get her schedule, I think
10 somewhere it was suggested just meet with the two sitters,
11 you know, put together the e-mails that Steve has written.
12 That's sort of -- I don't know why Mitzi is asking me to
13 put together -- this is what is particularly poignant
14 about this, why she's asking me to put together a list, or
15 go back and review a book, when she hasn't responded to a
16 single e-mail. And if she went back to the progress notes
17 for the very period that we're talking about, she would
18 find no notes. That's the problem right there. I guess
19 maybe that's why she's asking me because she's got nothing
20 in the books about my mother.

21 Q. You found it strange -- you had sent her an e-mail
22 voicing certain complaints you had about your mother's
23 care?

24 A. Several e-mails, yes.

25 Q. Let's talk -- I'm referring to the one that started

1 this chain where you said Mitzi, we've got to have a
2 meeting. We've got to bring in the state. Let's get this
3 done. You've listed in there -- you've kind of hit the
4 high points of your concerns. I realize it's not
5 exhaustive. And she has replied to you that she's willing
6 to have a meeting, and would like for you to bring a
7 complete list of your complaints. What seems odd about
8 that to you?

9 A. Well, that she didn't respond to -- and I don't have
10 the count -- four or five e-mails in the previous weeks.
11 She had progress notes that she didn't have anything in
12 them. She must have looked at that. It seems odd that an
13 administrator is having to ask me about problems when we
14 have been quite vocal to her entire staff about issues. I
15 don't know if she talked to her staff.

16 By this time, and I think I say, and as kindly as I
17 could, there was no trust with Mitzi, just none. Mitzi
18 had done nothing during this entire time, I mean, e-mail
19 after e-mail that I wrote, totally ignoring, totally
20 ignoring. Now, all of a sudden I'm going to meet with a
21 person that I've been told I can't meet with by my own
22 lawyer to hear her say what to me? She's the
23 administrator. I have made formal complaints, and this is
24 still going on before my mother's injury, and she's saying
25 I won't do anything to facilitate the state being in here.

1 Well, she knows how the state operates. You're not going
2 to get anybody over from Little Rock in 24 hours. So what
3 it was saying is you can show up, and I'll listen to you.
4 We had passed that point. We had passed that point.

5 Q. You mention in the e-mail there that's Exhibit 2 when
6 you talk about the fact that Peggy is not going to review
7 the diary either before the meeting, you say, "That is our
8 choice." What do you mean by that?

9 A. Well, I made my choice, with doctor's help, and Peggy
10 was adamant that she was not going to read the diary.

11 Again, as I remember, Mark, primarily just a time
12 thing. Peggy was -- I was leaving town. Peggy had to
13 take over the care of my mother, deal with the sitters,
14 all the other things. Peggy is not a lawyer. She is not
15 an advocate. She doesn't want to advocate for those sorts
16 of things, and it's like Mitzi, who is, in my opinion,
17 almost single-handedly creating this environment, is now
18 telling us when to meet, who is going to be there, how
19 it's going to go, et cetera, et cetera. And I'm not used
20 to dealing with administrators like that.

21 Q. In your initial e-mail that starts this chain where
22 you set out to Mitzi, it says, I write very reluctantly,
23 here what's causing me concern, we need to do something
24 about it. You use the phrase that a hostile environment
25 has been created. What did you mean by "hostile

1 environment"?

2 A. I don't remember. I was trying to stay away from
3 buzzwords. I mean, clearly, I felt my mother -- and,
4 again, I've come from the industry. I've lost my share of
5 Florida cases where they define abuse as almost anything,
6 but this was abuse, but I didn't want to use buzzwords.

7 The hostile environment was an administrator who
8 would not deal with the family, just would not deal with
9 the family, would not deal with my sitters. And I think
10 they are much more appropriate to ask that question
11 because I think they can describe the situation quite
12 readily that Mitzi, basically, said, "You don't exist. I
13 don't talk to you," even though I told Mitzi, on a number
14 of occasions, "They are my surrogates. When I'm not here,
15 they're my surrogates. Not a proxy for a health care
16 decision, et cetera, but they're my surrogates. You treat
17 them like you treat the family that does have
18 responsibility for them." And Mitzi was abusive to them.

19 The staff, again, with all the turnover, most of
20 these new people, there was -- it was an odd, to me,
21 odious environment. It was sterile. Nobody was going to
22 do anything. All the care that had been the first year my
23 parents were in that facility was gone. It was devoid of
24 that. Everybody that was in there, I mean, Michelle
25 Ensey, I think she was full-time activities director, or

1 whatever they call her now, so she was not giving care
2 anymore. The staff was just in constant -- they always
3 seemed agitated, always seemed protective, always seemed
4 defensive.

5 My mother clearly felt it. It was hostile in a
6 number of ways, but mainly -- I don't know what anybody
7 would tell an administrator, but when you get complaints
8 like I actually put in writing, one thing you don't do is
9 not respond, you know, and this went on for some period of
10 time, no response. Right. No response. That's a hostile
11 environment, to me. She could have told the assistant
12 administrator, "Karen, go talk to Mr. Brigance about this.
13 Find out" -- she could have done anything.

14 Q. Were these e-mails that you were sending?

15 A. Yes.

16 Q. You mentioned the cost associated with the room.

17 Obviously, at the time that your parents moved in, you
18 knew what the cost was?

19 A. Yes.

20 Q. You agreed to that?

21 A. For both of them, yes.

22 Q. For both of them. Whenever it was just your mother,
23 the decision was made by the family for her to stay in
24 that room?

25 A. The decision was made by my mother.

1 Q. By your mother. Okay. And at the time that decision
2 was made you, of course, knew what the rent was for the
3 room?

4 A. Yes.

5 Q. And there were other less expensive options, I
6 assume?

7 A. Yes, both there, as we talked about the smaller room,
8 as well as elsewhere, yes.

9 Q. That's right. And I know you had a lot of factors
10 going into your decision, but at the end of the day, the
11 decision was made, even though we know the cost, even
12 though we know the other options, we're going to keep
13 mother in this particular room at this particular rate?

14 A. Because that's what she demanded.

15 Q. And I imagine it was a very difficult decision for
16 you, but at the end of the day, that was your decision to
17 make, would you agree?

18 A. I don't want to quibble with you. Was it my decision
19 not to overrule my mother and force her out of the
20 facility? Yes.

21 Q. Okay. You had mentioned previously about the walker
22 and the fact that your mom resisted that for a period of
23 time?

24 A. Yes.

25 Q. You recognized the need for the walker, didn't you?

1 A. Yes. Now, once my dad had died.

2 Q. Yes, that's what I mean.

3 A. Yes.

4 Q. What about her shoes and the type of footwear that
5 she had, did you ever have any discussion with anyone at
6 the facility about what was appropriate or inappropriate
7 footwear for her?

8 A. That kind of rings a bell, slippers or something. It
9 may have been more Peggy than me, or I put that off on
10 Peggy. That's one of the things I didn't get into, like
11 her undergarments and her slippers, but I think
12 somebody -- I mean, and powder was mentioned, mainly, by
13 us, but I think they concurred in that. Evidently, too
14 much powder creates a slip risk, and Peggy was big into
15 that, but I don't remember specifically, but that kind of
16 rings a bell.

17 Q. Okay. Maybe Peggy would have been the person to deal
18 with the slipper issue?

19 A. I would hope so.

20 THE VIDEOGRAPHER: You have five minutes.

21 BY MR. DOSSETT:

22 Q. What was your routine about going and seeing your
23 mother from the middle of the summer of 2009 on until her
24 accident, if you had one?

25 A. I did. And it only varied during the week or the 10

1 days my sister was there. I would only go when Lena was
2 not there because Lena kept Mother very busy during those
3 10 days, and Mother was very tired so then I would
4 generally go only in the evening as she was preparing for
5 bed. Other than that, every day was the same, I mean, as
6 you know, much of my work was gone, so I was not traveling
7 for work. I would go into the office and do whatever I
8 needed to do, but I would see her going, usually, into the
9 office, usually, after breakfast. Often, they gave her
10 her meds at breakfast, but there seemed to be a pattern,
11 again, I think, starting in the late summer where because
12 of the staff issues they couldn't get to all the
13 medications at once, and Mother didn't want to wait in the
14 dining room for an hour or whatever to give them, so they
15 would give them to her in her room, so they would often be
16 coming in and giving her medications.

17 While I was there we would, obviously, play ball, we
18 would generally watch some news. Like I say, she was a
19 news junkie. She liked to watch tennis, so we got -- I
20 got her ESPN so she could find tennis almost always. We
21 would talk about the day, what she had planned. Usually,
22 the sitter would stay just awhile, and then take a break,
23 particularly if it was Debbie. She would go smoke. If it
24 was Cheryl, Shirley, she would stay for a while, but
25 Shirley was a talker, and it was very hard to talk to my

1 mother with Shirley talking, so, you know, I would say,
2 "Shirley, you can take a break," or whatever. I would
3 stay for whatever time, usually, until exercise or shortly
4 before because Mother always would go to the bathroom
5 before.

6 Sometimes I would come home, come back to the
7 facility right after lunch, before her nap -- she usually
8 napped in the chair -- and usually in the evening, to talk
9 to Cheryl or to visit with Cheryl. Usually, by that time,
10 Mother was in her night clothes.

11 Q. Was this a seven-day-a-week or I think once you said
12 a six-day-a-week routine for you?

13 A. It seemed like every day, Mark.

14 Q. Okay.

15 A. I kind of remember a cold during that period, and I
16 don't get many colds, but I wouldn't have gone to see her
17 if I had a cold, but, yeah, it was -- I know you could ask
18 Peggy, I mean, Peggy would literally beg me not to go some
19 days because it was a -- it was very hard, I mean, going
20 into that facility and seeing anybody.

21 That's why, you know, one of the things talking in
22 terms of a hostile environment, after I brought Mandy in
23 that time, and Mitzi found out about it, that's what
24 everybody referred to as the lockdown that occurred after
25 that. Nobody could come in through the back entrance. As

1 long as I could go in the back entrance, which had been
2 allowed since the facility opened, it was probably 18 feet
3 to my mother's door, and so I didn't usually have to see
4 anybody except when they came in to answer a call light or
5 something, and I could leave through that back door, but
6 then when that all changed, I remained convinced,
7 obviously, to make sure that I couldn't secrete Mandy in
8 again, I had to enter through the front door. Then it
9 went to signing in, so you almost couldn't avoid people.
10 And that's when I stopped eating, you know, in the
11 cafeteria, but the regimen didn't really change.

12 MR. DOSSETT: Okay. Let's go ahead and
13 change tapes.

14 THE VIDEOGRAPHER: Time is 1:36 p.m. We are
15 off the record.

16 (A brief recess was taken.)

17 THE VIDEOGRAPHER: Time is 1:40 p.m. We're
18 back on the record.

19 BY MR. DOSSETT:

20 Q. I have just a few things here, looking at my notes, I
21 skipped over and I need to cover, and then we'll be done.

22 Where was your mother's funeral held?

23 A. Mobile, Alabama.

24 Q. Was there any family that was unable to make that
25 trip that otherwise would have attended?

1 A. My youngest son was in school, and he had never been
2 to a funeral or even a memorial service before my dad's,
3 and he was very close to my dad. Even if Chris had not
4 been in school, I doubt he would have gone. He pretty
5 much walked out of my dad's, and was very shocked by that.

6 All of my children came, grandchildren. You know,
7 there were cousins that didn't come, but Lena was there,
8 both of Lena's children.

9 Q. So Lena was able to make it?

10 A. Yes, yes.

11 Q. Was there a separate memorial service held --

12 A. No.

13 Q. -- like there was for your father?

14 A. No.

15 Q. Just the funeral?

16 A. Yes.

17 Q. We don't need to rehash all of them, but as far as
18 your personal complaints about The Brookfield, and the
19 care that was provided or how they took care of your
20 mother, have you voiced all of those to me today?

21 A. As much as I can remember, probably two or three
22 times.

23 Q. You used the phrase, at one point, that you felt that
24 what your mother endured there in the last several months
25 amounted to abuse?

1 A. Yes.

2 Q. And I know that you have listed the things that you
3 believe contribute to that. I was wondering if you could
4 just explain to me why do you think it rises to the level
5 of abuse?

6 A. I guess part of it, Mark, is my experience in the
7 industry. And, again, I oversold that in the last case,
8 and I apologize for that, but I'm used to dealing in a
9 number of states that define abuse and neglect by a
10 specific language. In Florida, for example, dried food
11 under fingernails of a resident in a skilled nursing
12 facility is abuse; raising your voice is abuse.

13 I never believed it. I believe in many states the
14 definition that either statute or courts have created to
15 define abuse are way overused, but in this instance, I
16 guess I really do believe that what was going on here was
17 retaliation. I don't have a doubt in my mind, because I
18 know how rough it was for me, that Mitzi didn't want me in
19 that building. I don't think she had anything against my
20 mother, but I know she had something against me. And if I
21 were her, I probably would have, too, I mean, I made
22 certain allegations against her in my dad's case. I still
23 believe them. I believe that she was a bad administrator,
24 based on my experience. I believe she refused to follow
25 what a good administrator does in terms of keeping up with

1 what the caregivers are doing for the staff, as we talked
2 about just in missing records, after-the-fact things.

3 Not letting Amanda in will always be abuse to me.
4 When you deny a resident a resident right, I believe
5 you're abusing them. And particularly with my -- my
6 mother's situation, the difficulty after my dad's death,
7 my own difficulties, which were well known, my offer to
8 have Amanda accompanied into the building where she would
9 not even come in contact with another caregiver or a
10 resident, and to have that repeatedly denied, and then to
11 have her do what she did with her staff when I did get
12 Mandy into the building, which was too late, by the way,
13 all of that, to me, was abuse. You can call it emotional
14 abuse, mental abuse, but I think it was designed to make
15 sure that my mother got in such a state that I got her out
16 of the building.

17 They can't really, by law, even though they have
18 certain rights, they really can't come to you and say,
19 "You've got to get out of the building." So it was
20 uncomfortable. It was uncomfortable for Bob, I'm sure,
21 certainly uncomfortable for Mitzi. So if that case went
22 on, that was another imperative for me as to why I wanted
23 my mother out of there. But I believe that, genuinely,
24 through me, she was retaliated against.

25 Mitzi -- and I won't say what I'm thinking. Well, I

1 will. And I think you know this from your interviews.
2 Mitzi has a certain reputation, and it came out in my
3 dad's case in terms of the way -- her management style.
4 And I think that she ran that in a manner that created a
5 hostile environment, going back to the term I first used,
6 that led to everything I would define as mental and
7 emotional abuse against my mother that resulted in a set
8 of circumstances that almost guaranteed she would suffer
9 the physical abuse that ultimately happened to her.

10 Q. The physical abuse being her injury?

11 A. Yes. Again, as I said earlier, in the assisted
12 living environment, people, particularly cognitive
13 residents, get inured to things. You answer their call
14 lights pretty regularly when you've only got 5 or 10
15 people in the building. You get 27 people in the
16 building, and it goes from an average time of 5 to 10
17 minutes to 15 to 20 to 25 because you've got more
18 residents, even though you have adequate staff, by state
19 law. To me, that's understaffing with the clients that I
20 use.

21 You need to be able to have a continuity of service
22 because the residents get used to it. And if they think,
23 like my mother did, that she's ambulatory or that she's
24 independent enough, and she gets her back up enough, it's
25 pretty predictable that she's going to do things that

1 don't get done for her.

2 It's clear to me, in this case, having lived it, that
3 Mitzi and the staff relied on the sitters to do things
4 they were supposed to do. That's borne out in Mitzi's
5 question and my response to her to make sure that the
6 sitters gave her their schedules so she could staff around
7 them, to which I immediately responded -- and I felt a lot
8 differently when I wrote it, but I said, "Don't do that.
9 They're not caregivers. They're sitters." Which means,
10 to me, that if you go in and -- and she rings a call
11 light, and you go in, and Shirley is helping her, which
12 she did on many occasions, I'm sure, you ask, "Do you need
13 help?" And Shirley might say no. All right. Today, you
14 didn't need the help, but you're there. That's what you
15 pay your \$4,000 for.

16 What my mother ultimately got was a room, with me
17 paying for the sitters that the facility let become
18 surrogate caregivers to my mother's disadvantage because I
19 had that one seven-hour increment of time I didn't have
20 covered. And I saw it every day -- not every day,
21 regularly. The sitters saw it regularly. Lena saw it
22 that when call lights didn't get answered, my mother would
23 take matters into her own hands, and I knew that was a
24 risk, and it was a risk I tried to make painfully clear to
25 anybody who would listen, and it didn't improve until it

1 was too late.

2 And so to me, the circumstances of the environment
3 were set up for the accident that occurred, and it was --
4 yeah, I believe my mother was first mentally and
5 emotionally abused, and then as a result of the physical
6 abuse, the accident, suffered for 25 days like my dad
7 suffered for 24 days. And I will tell you I do not use
8 those words with my dad. My dad was not abused, and I
9 don't think -- we didn't have that whole e-mail I wrote.
10 I don't think I used the word there. I tried to stay away
11 from it. I wanted to, and I might say in an earlier draft
12 I did because I thought it might help get somebody's
13 attention.

14 So back to your question, why did I use "hostile
15 environment"? To try to use something that has something
16 of a buzzword to it, but not one that goes directly to an
17 administrator's role and to say -- because, again, Mitzi
18 was still the administrator there. So that's a long way
19 to answer your question.

20 Q. With regards to your mother, did you make any reports
21 to any other authorities, such as the police, or anyone
22 like that?

23 A. No, no.

24 MR. CHRONISTER: Off the record.

25 THE VIDEOGRAPHER: The time is 1:50 p.m.

1 We're off the record.

2 (Discussion held off the record.)

3 THE VIDEOGRAPHER: Time is 1:51 p.m. We're
4 back on the record.

5 BY MR. DOSSETT:

6 Q. Let me clarify my last question. Did you ever make a
7 report to the police, or any other authority, besides the
8 state investigators, that your mother was being abused?

9 A. Besides the ombudsman, no.

10 Q. Okay. Thank you.

11 You've mentioned a couple of times about having Mandy
12 come visit your mother?

13 A. Yes.

14 Q. I realize, obviously, that was at the point in time
15 when Mandy wasn't supposed to be back, according to the
16 facility.

17 A. Yes.

18 Q. Is that right?

19 A. Yes.

20 Q. How many times did you bring her back to the facility
21 after she, being Mandy, was instructed not to come back?

22 A. While my mother was alive, I think once. After my
23 mother's death where I asked Mandy to come help me pick
24 out a funeral outfit was the second time.

25 Q. Let's go to the first time. Was that the time when

1 she was brought in without the knowledge of the facility
2 personnel?

3 A. I don't know if the facility knew or not, I mean, we
4 walked through the door.

5 Q. Did you go through the front door or the back door?

6 A. Went through the back door, which was the door I
7 always used at that point.

8 Q. It was accessed with a keypad number system?

9 A. I think so.

10 Q. And what was the purpose of that visit?

11 A. My mother had been begging me for months to see
12 Mandy, and it was done to get Mandy to see my mother. My
13 mother was -- I don't remember the date. I've tried -- I
14 did try to look back on that. I don't have any record
15 of -- we took a photograph, but I don't think I used a
16 camera that has a date stamp on it, but I know it was a
17 time when my mother was particularly low, and I got -- it
18 was Mandy, Mandy's mother and Mandy's sister, all three,
19 and I think Cheryl was there, probably, as a sitter,
20 because I think they're all in the picture.

21 Q. Let's talk about the second occasion after -- that
22 would be after the time your mother had passed away?

23 A. Right.

24 Q. Tell me what happened that day when you went to the
25 facility.

1 A. I walked through the front door. The back doors were
2 locked. You couldn't get in them with a keypad, so I
3 walked through the front door. Michelle Ensey was at the
4 front desk. You had to sign in, and I signed in, and
5 Mandy was by my side. She signed in. And Michelle came
6 up and she said, "Hi, Steve," and she looked very nervous
7 and very red, obviously, what's the word, uncomfortable.
8 And I think I whispered in her ear, or very low voice, I
9 said, "You do whatever you need to do." Because I had
10 been told by a number of people, "We've been told to call
11 the police."

12 And two of the caregivers, and I think Michelle
13 probably might have been one of them, told me after the
14 time I brought Mandy in that Mitzi did know about it; that
15 there were threats made against the staff if this happened
16 again, they better call the police, blah, blah, blah. So
17 I didn't want to get Michelle in trouble, but I also knew
18 that Michelle was close to the family. She was close to
19 my mother. And it could have been she was just upset at
20 my mother's death. That was the first time I had seen
21 her, seen Michelle, since my mother's death. And I think
22 she probably wanted to say something about that, and I
23 just -- I simply said, "Do whatever you need to do."

24 Q. Why did you bring Mandy with you that day?

25 A. Because I wanted somebody to help me pick out my

1 mother's outfit.

2 Q. But why Mandy as opposed to someone else who was more
3 familiar, perhaps, with what your mother had in her room?

4 A. Mandy knew my mother's clothes probably better than
5 anybody. But if you're hinting was there an idea that I
6 wanted to send a message to this facility that you need to
7 honor patient's rights, resident rights, and if, indeed,
8 they were going to arrest Mandy, I wanted to do something
9 because my mother was through with that facility now, and
10 I knew I wouldn't be let back in. And so if I could do
11 something, you know, at the time my dad died, I don't know
12 about now, but I tried for two long years to get the doors
13 down because I felt, and I know he felt, that was
14 something that could be his legacy there. Nobody else
15 would be killed by 90-some-pound doors.

16 I felt in my mother's situation -- again, I knew a
17 lot of the residents, I considered a number of them
18 friends. If they were going to do that, if Mitzi would do
19 that to my mother, she could do that to anybody else, I
20 mean, it really had become Mitzi's law. It's what my
21 mother referred to, even though we never talked about it.
22 I never knew about it until I was told what my mother said
23 about -- you know, I read it, Peggy showed it to me in the
24 report, about that it's Mitzi's law that she can't have
25 powder on her chest.

1 And so was that a side of it? Yeah, it was. Because
2 I had been planning for some time, I wanted to get -- I
3 don't know, late summer, August, late August, sticks in my
4 mind as the time around Labor Day, which is my birthday,
5 might have been the time, but I had tried for a couple
6 months to get Mandy in, and at that time I was going to go
7 through the front door, given the feedback that others had
8 given me about Mitzi's reaction because I did want to --
9 look, I couldn't get Ms. Medley to come in. I couldn't
10 get the state to deal with it. I was going to deal with
11 it.

12 Q. When was the last time you had been to the facility,
13 The Brookfield?

14 A. When I moved my mother's belongings out. Mother died
15 on the 14th, had her funeral on the 17th. I know Shirley
16 started packing stuff while we were down at the funeral.
17 Within a day or two of when we got back.

18 I will add I don't think -- maybe -- I don't
19 remember. Either Peggy or I were asked to go to a
20 walk-through, and I'm not sure if it was with Mitzi or
21 Karen Brown. Ask Peggy the question if you want to know
22 the answer. But we were asked to sign a form that one of
23 the problems with the room was blood still on the carpet
24 from when my mother fell, and that they would be charging
25 us for that. Somebody came to their senses and didn't

1 charge us for that, but I'm pretty sure it was Peggy,
2 might have been Shirley, one of the two were at -- had to
3 be at that walk-through, and it was specifically noted.

4 Q. Someone who was doing the walk-through on behalf of
5 the facility indicated that was a damage or something?

6 A. Yes.

7 Q. And there was some mention of a charge for that?

8 A. Yes.

9 Q. But that didn't come to pass, did it?

10 A. Didn't come to pass.

11 MR. DOSSETT: That's all the questions I
12 have. Thank you.

13 THE WITNESS: Thanks, Mark.

14 THE VIDEOGRAPHER: Time is 2:00 p.m. This
15 will conclude the deposition.

16 (Deposition concluded at 2:00 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2

3 STATE OF ARKANSAS)

) ss

4 COUNTY OF BENTON)

5

6 I, BETH A. KALTENBERGER, Certified Court Reporter

7 in and for the State of Arkansas, do hereby certify that

8 the witness, STEVEN A. BRIGANCE, was duly sworn by me

9 prior to the taking of testimony as to the truth of the

10 matters attested to and contained therein; that the

11 testimony of said witness was taken by me stenographically

12 and was thereafter reduced to typewritten form by me or

13 under my direction and supervision; that the foregoing

14 transcript is a true and accurate record of the testimony

15 given to the best of my understanding and ability.

16

17 In accordance with Rule 30(e) of the Rules of

18 Civil Procedure, review of the transcript was not

19 requested by the deponent or any party thereto.

20

21 I FURTHER CERTIFY that I am neither counsel for,

22 related to, nor employed by any of the parties to the

23 action in which this proceeding was taken; and further,

24 that I am not a relative or employee of any attorney or

25 counsel employed by the parties hereto, nor financially

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

10
11 IN WITNESS WHEREOF, I have set my hand and
12 affixed my seal on this 7th day of March, 2011.

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

1 COURT REPORTER'S CERTIFICATION OF CERTIFIED COPY

2
3 I, BETH A. KALTENBERGER, LS No. 679, Certified Court
4 Reporter in the State of Arkansas, Certify that the
5 foregoing pages 1-169 constitute a true and correct copy
6 of the original deposition of STEVEN A. BRIGANCE taken on
7 February 21, 2011.

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

12
13 Dated this 7th day of March, 2011.

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

18 Arkansas LS No. 679

California CSR No. 9231

19 Nevada CCR No. 505
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