

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS  
Honorable G. Thomas Cooper, Jr.  
Circuit Court Case No.: 2007-CP-40-03365

**RECEIVED**  
FEB 09 2016  
SC Court of Appeals

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Appellant Case No. 2014-001373

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Estate of Edward James Mims,  
Laura M. Cole, Personal Representative.....Appellant,

v.

The South Carolina Department of Disabilities  
and Special Needs, Kathi Lacy and Stan Butkus, .....Respondents.

**Volume X**

**RECORD ON APPEAL**

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803-256-2017  
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1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS  
2 COUNTY OF RICHLAND

3  
4 EDWARD MIMS, BY AND THROUGH  
5 HIS LEGAL GUARDIAN,  
6 MARGARET MIMS,

7 Plaintiff,

Case No.: 07-CP-40-03365

8 vs

9 BABCOCK CENTER, JUDY JOHNSON,  
10 SCDDSN, KATHI LACY,  
11 STANLEY BUTKUS,

12 Defendants.

13 D E P O S I T I O N

14 WITNESS: STAN BUTKUS  
15 DATE: Wednesday, June 10, 2009  
16 TIME: 10:04 a.m.  
17 LOCATION: Law Office of Patricia Harrison  
18 611 Holly Street  
19 Columbia, South Carolina  
20 TAKEN BY: Attorneys for the Plaintiff  
21 REPORTED BY: GINA M. SMITH  
22 Certified Shorthand Reporter  
23 Registered Professional Reporter

24 -----

25 Gina M. Smith, CSR, RPR  
117 Harmon Creek Court  
Lexington, SC 29072  
803-359-5705

1 APPEARANCES:

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3 EDWARD MIMS, BY AND THROUGH HIS LEGAL  
GUARDIAN, MARGARET MIMS:

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13 SCDDSN, KATHI LACY AND STANLEY BUTKUS:

14 DAVIDSON & LINDEMANN, P.A.  
15 BY: KENNETH P. WOODINGTON, ESQ.  
1611 Devonshire Drive, Second Floor  
16 P.O. Box 8568  
Columbia, SC 29202-8568

17 ALSO PRESENT:

18 TANA G. VANDERBILT

19  
20 (INDEX AT REAR OF TRANSCRIPT)

21

22

23

24

25

1 STIPULATION: It is stipulated by  
 2 and among Counsel that this deposition is being  
 3 taken in accordance with the South Carolina Rules  
 4 of Civil Procedure, and that the deponent does not  
 5 waive the right to read and sign the deposition  
 6 transcript.

7 -----

8 STAN BUTKUS, being first duly  
 9 sworn, testified as follows:

10 EXAMINATION

11 BY MS. HARRISON:

12 Q. Thank you for coming today.

13 A few ground rules. If you'll please  
 14 always make sure to voice your responses, because  
 15 the court reporter can't record nods or shrugs. As  
 16 I know, you've had your deposition taken because of  
 17 taking it before.

18 A. I'm nodding my head when you're telling me  
 19 this, and I'm saying no, I should be saying yes.

20 Q. So I know you know the ground rules. If I  
 21 ask a question and you don't understand it, I'll  
 22 ask you to repeat it. If you answer the question,  
 23 I'll assume you understood the question. Is that  
 24 acceptable?

25 A. Yes.

1 Q. Tell me -- Dr. Butkus, tell me something  
2 about your educational background.

3 A. I'm a high school graduate, and a science  
4 honors, I recently remembered as I saw my  
5 graduation certificate someplace. But I have a  
6 bachelor's of political science. I have a master's  
7 degree in public administration. I have a master's  
8 degree in educational psychology and special  
9 education.

10 At one time had a special ed  
11 certification, but that's lapsed since I haven't  
12 been teaching. I have a master's of social work  
13 degree, and I have a Ph.D. in social policy.

14 Q. And where's your Ph.D. in social policy  
15 from?

16 A. Brandeis University School of Social  
17 Policy and Management, Waltham, Massachusetts.

18 Q. Is Brandeis a Catholic school?

19 A. No.

20 Q. I believe you were schooled in Catholic  
21 schools?

22 A. Uh-huh, yeah, several.

23 Q. High schools?

24 A. High school and undergraduate was a  
25 faith-based. Actually Brandeis was founded by

1 Jewish folks.

2 Q. And how did you come -- where did you work  
3 first after you got out of undergraduate school?

4 A. I worked in the state of Nebraska in the  
5 Office of Mental Retardation.

6 Q. And I'm sorry, I'm having trouble hearing  
7 you.

8 A. Okay.

9 Q. If you'll speak up.

10 A. I worked in the state of Nebraska in the  
11 Office of Mental Retardation.

12 Q. Who was your boss there?

13 A. George Thomas.

14 Q. And what is he doing now?

15 A. I have no idea.

16 Q. After that, what did you do?

17 A. After that, I worked in Canada, for the  
18 Province of Ontario, for two years as a unit  
19 director of a large unit in an institution.

20 MR. WOODINGTON: Excuse me just a second.

21 BY MS. HARRISON:

22 Q. And who was your supervisor there?

23 A. John McHugh.

24 Q. And why did you leave there?

25 A. I had an opportunity to go to

1 New Hampshire and be the DD Council Executive  
2 Director, so wanted to move back to New England  
3 where I was from. Had one child and we had another  
4 one on the way, so we wanted to be closer to family  
5 and friends.

6 Q. And where's your family?

7 A. Maine.

8 Q. Who was your supervisor at the  
9 New Hampshire job?

10 A. John Storer.

11 Q. Spell that for me, please.

12 A. S-T-O-R-E-R.

13 Q. How long were you there?

14 A. Six, almost seven years.

15 Q. And then where did you go from there?

16 A. I worked -- actually rehabbed a house for  
17 the better part of a year, that I owned, and then I  
18 worked for the University of Southern Maine doing  
19 training for a director of staff, setting up  
20 training programs, statewide -- it was a statewide  
21 training program sponsored by the University of  
22 Southern Maine, and the target group was people who  
23 worked in Mental Retardation Services.

24 Q. Why did you leave the New Hampshire job?

25 A. It was an opportunity to move back to

1 Maine, and so I decided to move back to Maine.

2 Q. So it's an opportunity to move back to  
3 Maine to rehab a house?

4 A. Uh-huh, and work on my dissertation.

5 Q. Were there any problems in the job at New  
6 Hampshire?

7 A. No.

8 Q. Were you ever terminated from a job?

9 A. No.

10 Q. Did you ever resign under pressure?

11 A. No.

12 Q. So how long were you at the University of  
13 Southern Maine?

14 A. That was a year. That was a Contract  
15 Position Title 20.

16 Q. And then where did you go from there?

17 A. I worked for the Maine Bureau of Mental  
18 Retardation for about seven years and directed a  
19 regional office in central Maine.

20 Q. And who was your boss there?

21 A. I had several. The last one was a woman  
22 named Betsy Davenport.

23 Q. And where is she now?

24 A. I think she's retired.

25 Q. And how long were you there?

1 A. About seven years.

2 Q. Where did you go from there?

3 A. I went to Virginia from there to become  
4 the Director of the Office of Mental Retardation in  
5 Richmond.

6 Q. And who was your supervisor there?

7 A. Jim Bumpas.

8 Q. Of Bumpas, Virginia?

9 A. His family is right from that area, right.  
10 He shortened his name. He eliminated the second S  
11 on the end of his name because he thought it was  
12 embarrassing to his children. The correct spelling  
13 of Bumpas in Virginia was with two Ss.

14 Q. And where is Jim Bumpas now?

15 A. He's retired.

16 Q. Where does he live?

17 A. Colonial Heights, Virginia.

18 Q. What was his last job?

19 A. His last job, I believe he was director of.  
20 Southside Virginia Training Center in Petersburg,  
21 Virginia.

22 Q. And how long were you in the position in  
23 Virginia?

24 A. I was there about four and a half years,  
25 and then I was asked to be acting director of

1 Central Virginia Training Center in Lynchburg, so I  
2 went up there. And I enjoyed that, so I ended up  
3 becoming permanent there.

4 I was there about five years, not quite  
5 five years probably, and then following I came back  
6 and did a year as Social Commissioner for Community  
7 and Facility Services back in Richmond. So I was  
8 with the agency about ten years in all.

9 Q. The Lynchburg position, who was your  
10 supervisor?

11 A. Jim Bumpas, and following that it was  
12 Olivia Garland.

13 Q. And what was her job, Olivia Garland?

14 A. She was a Social Commissioner for  
15 Community and Facility Services.

16 Q. And where is she now?

17 A. I believe she's still in Richmond and  
18 she's doing private work as a payroll consultant.  
19 I think she has a company of her own.

20 Q. So is she working in the MR/RD field?

21 A. No, more behavioral health.

22 Q. Does she have anything to do with First  
23 Health?

24 A. She did. She worked for them for a number  
25 of years.

1 Q. But she's not doing that anymore?

2 A. No.

3 Q. So after you worked for Olivia Garland,  
4 then where did you go?

5 A. I went back to Richmond. And she had  
6 moved on, and that's the job that I took back in  
7 Richmond as a Social Commissioner for Community and  
8 Facility Services.

9 Q. And who was your supervisor there?

10 A. Tim Kelly was the commissioner at that  
11 time at the department. He was my supervisor.

12 Q. And where is he now?

13 A. Someplace in the wilds of northern  
14 Virginia. He went back there after his commission.  
15 I don't know what he's doing now.

16 Q. How long were you there?

17 A. I was with the agency a total of ten  
18 years, and about a year as Social Commissioner for  
19 Community and Facility Services. I came back and  
20 was acting in that role and was made permanent  
21 after a bit, and so --

22 Q. And who -- how did you learn of the job in  
23 South Carolina?

24 A. A colleague mentioned it.

25 Q. Excuse me?

- 1 A. A colleague mentioned it to me.
- 2 Q. What colleague?
- 3 A. In Virginia.
- 4 Q. What colleague?
- 5 A. Oh, the name? Janet Hill.
- 6 Q. And who is she working for now?
- 7 A. I believe she's retired too.
- 8 Q. And so who did you interview with when you
- 9 came here?
- 10 A. The Commission.
- 11 Q. And when did you begin your position here?
- 12 A. Mid-September '96.
- 13 Q. And what kind of shape was the agency in
- 14 in '96?
- 15 A. I think it was in pretty good shape
- 16 overall. I think that it was ready to be -- the
- 17 system was ready to really take the next step
- 18 forward in terms of approaching services for people
- 19 with disabilities, which is basically what the
- 20 Commission asked me to do.
- 21 Q. And what was the next step forward?
- 22 A. Move to person-centered services, that
- 23 sort of thing.
- 24 Q. Who were the senior staff when you first
- 25 arrived?

1 A. Bill Barfield was there. Brent Koyle,  
2 since retired, was there. Tana there was, but then  
3 she left. Now she came back.

4 I'm trying to think -- oh, Lonnie Bowman  
5 was there. He was head of the -- sort of a -- over  
6 an amalgam of things from computers to procurement  
7 to capital errors. Those were the --

8 Q. And where is he now?

9 A. He's retired. I think I must be leaving  
10 somebody out, but I --

11 Q. When did Kathi Lacy come into --

12 A. Oh, Kathi, I'm sorry, Kathi, she was  
13 there. And she came -- she actually started just a  
14 few weeks before I did, I think.

15 Q. Now, she left for a while, didn't she?

16 A. Yes, and I don't know when that was, but  
17 her return was just before I got there.

18 Q. Did the Agency pay for her to get her  
19 degree?

20 A. I don't know.

21 Q. Did she get a degree while she was --  
22 while you were director?

23 A. I believe she had completed it by then.

24 Q. Now, tell me about your relationship with  
25 Phil Massey.

1 A. Phil Massey was the predecessor in the job  
2 of the state director. I think I might have met --  
3 over the years I met him once or twice at national  
4 meetings, so I didn't really know him at all.

5 When I came here, he had already left the  
6 state, and he had begun working for Mentor, a  
7 national association which he was with, I think,  
8 for about five years, up in the Boston area.

9 Q. Does he have any association now with  
10 Mentor?

11 A. I don't know.

12 Q. But your organization began contracting  
13 with Mentor, did they not?

14 A. They had some contracts prior to my  
15 arriving there, I believe, with Mentor, yes, on the  
16 Mental Health side. State of South Carolina had an  
17 arrangement with Mentor, but it was on the Mental  
18 Health side. I don't think there was any stuff  
19 related to mental retardation with Mentor at that  
20 point.

21 Q. So once you arrived, did Mentor begin also  
22 serving with --

23 A. No, my memory is that they didn't get  
24 interested in doing services on the Mental  
25 Retardation side until after we, you know, got

1 moving on person-centered, opened the system up for  
2 everybody that wanted to participate, become a  
3 provider and have consumers choose them, and they  
4 became a qualified provider.

5 They may have in there, someplace along  
6 the line, won a special solicitation to help deal  
7 with people that had mental retardation and mental  
8 illness, but I'm a little hazy on that. I think  
9 they were in that ballpark with those kind of  
10 things.

11 Q. Is that when Phil Massey depopped Crafts  
12 Farrow?

13 A. I don't know. I don't believe that Phil  
14 Massey depopped Crafts Farrow.

15 MR. WOODINGTON: I'm sorry, what was that  
16 word?

17 MS. HARRISON: Depopped.

18 MR. WOODINGTON: D-E-P-O-P-P-E-D?

19 THE WITNESS: It's depopulation. That was  
20 actually on my time at the agency, there was a  
21 decision, mutual decision with the Department of  
22 Mental Health, that would probably be good to move  
23 away from that service delivery model.

24 BY MS. HARRISON:

25 Q. Now, did -- did at some point the Agency

1 enter into a quality assurance agreement with First  
2 Health?

3 A. The Agency -- we were the second in the  
4 country to put out a bid for a quality improvement  
5 organization to do a large part of our quality  
6 assurance. One of the agencies that bid on that  
7 was First Health. They got the first one.

8 Actually Delmarva, who is now the  
9 contractor, participated but didn't come in first  
10 in the earlier solicitation. There was about --  
11 probably about five entities that competed for that  
12 first solicitation, is my memory.

13 Q. Did you, during that time, call Olivia  
14 Garland --

15 A. No.

16 Q. Let me finish my question.

17 A. Please.

18 Q. So you had no telephone communication with  
19 Olivia Garland during that time?

20 A. No. No.

21 Q. Did you call anybody at First Health and  
22 suggest that they hire Phil Massey?

23 A. No. It was after they got the contract I  
24 was called and asked who would be a good person  
25 that might know something about mental retardation,

1 and they mentioned Phil Massey, and I said yeah,  
2 he's somebody that knows.

3 Q. And who called you?

4 A. I think it was Olivia.

5 Q. So you're saying that call happened  
6 after --

7 A. That's my memory.

8 Q. -- after they had been selected?

9 A. Yes.

10 Q. Is there any chance that call could have  
11 happened before?

12 A. What I'm telling you is my recollection.  
13 That was probably eight or nine years ago.

14 Q. But it could have?

15 A. Could have, yeah.

16 Q. Now, at about that time, didn't DDSN  
17 somehow terminate the positions of 40, 50 people  
18 who had been doing quality assurance?

19 A. No.

20 Q. Tell me about that. Tell me what happened  
21 to those jobs.

22 A. Well, what happened, we decided to do  
23 quality assurance through an independent entity,  
24 you know, give us kind of an arm's length kind of  
25 look at what we were seeing and what was being done

1 in terms of quality.

2 And the way we did that was by -- and I  
3 remember specific conversations with Dr. Koyle, for  
4 example, you know, the -- how many FTEs over time,  
5 either vacancies -- full-time equivalent  
6 positions -- private vacancies or people we could  
7 reassign to come up with a target amount of money  
8 that we would fund the QIO program with. So nobody  
9 was laid off.

10 Q. Did they keep their jobs?

11 A. Some of them had reassignments, yeah, but  
12 there was nobody laid off.

13 Q. There was nobody laid off?

14 A. That's what I'm saying, yes.

15 Q. So you just found other places?

16 A. Through attrition, people moved on and  
17 there were vacancies. We didn't fill the  
18 vacancies. We held vacancies. And others that  
19 were in that role either were given different  
20 assignments or whatever, but there wasn't anybody  
21 laid off.

22 Q. So you've let this quality assurance out  
23 to First Health, and tell me what they were  
24 supposed to do.

25 A. Well, they would review files, review

1 cases, go on site, make sure that -- I think it was  
2 something like 250 or 70 indicators that they would  
3 look at. They would interview staff, they would  
4 interview individuals, they would interview  
5 families.

6 They did a 10 percent mail sampling of  
7 families. They did structured interviews with  
8 individual consumers. They --

9 Q. What was the purpose for all of this?

10 A. The purpose was to make sure that what we  
11 thought we were doing we were in fact doing,  
12 confirming that, you know, the investments we're  
13 making in services were doing what they were  
14 supposed to do.

15 Q. Was First Health supposed to assure that  
16 Medicaid rules and regulations were being followed?

17 A. Sure. Yeah. And even as part of that, we  
18 had occasionally -- after bid, we had them actually  
19 test billings for Medicaid. In other words, they'd  
20 look at -- they'd random pull some billings and see  
21 if people were billing for what they were supposed  
22 to to offer the service that happened.

23 Q. And what role did Dr. Massey play in that?

24 A. He was involved with First Health in  
25 helping them, but I can't tell you exactly what he

1 did. That was between him and First Health.

2 Q. So you don't know what he did at --

3 A. No.

4 Q. -- First Health?

5 A. No.

6 Q. You never talked to him about it?

7 A. No, just he helped them get their feet set  
8 up here in South Carolina, and that's about all I  
9 know.

10 Q. Did he continue to be on their payroll?

11 A. I believe he had some sort of  
12 relationship, but I never asked him what the  
13 particulars were, nor did he tell me.

14 Q. And you couldn't tell from your  
15 interactions with him?

16 A. It was none of my business. I didn't need  
17 to ask him.

18 Q. So he's working for the agent -- how much  
19 was the contract?

20 A. About a million.

21 Q. The total contract?

22 A. Yes.

23 Q. I seem to recall 4.2, 4.3. Why is --

24 A. I don't know where you get that  
25 information, but it was about a million.

1 Q. So it's about a million dollars for how  
2 many years?

3 A. A million a year for five years was the  
4 initial contract. You're thinking of the term of  
5 the contract.

6 Q. A million a year for five years?

7 A. Yes.

8 MR. WOODINGTON: Could I ask what five  
9 years we're talking about?

10 THE WITNESS: Well, somewhere around --  
11 let's see. Backing into it, I think Delmarva is,  
12 say, in their second year now, so they would have  
13 started, like, '07. So they had the previous  
14 period of time, so go back to '02.

15 And, actually, the procurement section of  
16 the Budget and Control Board was slow in getting a  
17 solicitation out when the five-year term ran out,  
18 so it rolled over another year. So it actually had  
19 six years. So that gets us back to '01.

20 BY MS. HARRISON:

21 Q. Now, about this time that Phil Massey goes  
22 with Delmarva -- I mean with First Health, I  
23 believe you created a position for him at DDSN, did  
24 you not?

25 A. I wouldn't call it a position. What we

1 had him doing was intermittent work on helping to  
2 orient new executive directors to the system. It  
3 was on an as-needed basis.

4 And, as you know, there's not a lot of  
5 turnover in those positions, so just occasional  
6 assistance. And we actually talked about would it  
7 be easier to have him in that role to be casual  
8 with us, a temp, or to go with, say, a university  
9 contract or something like that. And he felt that  
10 it was simpler for him just to be a temp, so I said  
11 okay.

12 Q. Now, this time he's drawing retirement  
13 benefits from your agency, is he not?

14 A. I think he's drawing it from the State  
15 Retirement System.

16 Q. And he's getting a paycheck from First  
17 Health and now he's working for your agency, then  
18 training local directors?

19 A. Yeah, orientation for local directors,  
20 that's right.

21 Q. Now, your agency -- according to Rip  
22 Lender, your agency provided funds for him to  
23 increase his CTH I program at the Babcock Center.  
24 Can you tell me something about that?

25 A. Yeah. I can tell you that it would be

1 inaccurate to say money went there increased  
2 fundwise to do that program. What I can tell you  
3 is the CTH I program, enhanced, as it's called, was  
4 used to provide options for people like at Pine  
5 Lake, folks that needed to get out of that  
6 situation, who didn't need the level of care at  
7 Pine Lake and so forth.

8 So we were pleased that Babcock was  
9 interested in doing that, because, as you may know,  
10 it's a lot more cost effective to serve people in a  
11 CTH I enhanced than an ICF/MR.

12 Q. Did your agency pay Phil Massey to do that  
13 transition?

14 A. I believe that Mr. -- Dr. Massey had a  
15 contract with Babcock, I think, probably -- it must  
16 have been when you were there, right, as Chair or  
17 board member?

18 Q. So it's your testimony that DDSN did not  
19 provide funds for Dr. Massey to do that?

20 A. My memory is -- my memory is that there  
21 was a contract between Babcock Center and Phil  
22 Massey to assist in that.

23 Q. So the money came from Babcock?

24 A. That's my memory, yes.

25 Q. Now, is it not true that the boards that

1 contracted with Phil Massey received this enhanced  
2 rate?

3 A. Is it not true? Really, outside of the  
4 Babcock Center, I would be hard pressed to tell you  
5 if Dr. Massey, in working with whichever other  
6 boards, was persuasive in convincing them that they  
7 should be doing more CTH I enhanced. I mean, I  
8 don't know that to be the case.

9 Q. So as far as you know, Babcock Center was  
10 the only board that did the enhanced CTH IIs?

11 A. Right, on the level that they were doing  
12 it. There could have been some other boards here  
13 and there.

14 I think my memory also is that we did some  
15 presentations at provider meetings, maybe Phil  
16 Massey did them, describing how the model works and  
17 the various advantages, the pluses and minuses of  
18 it.

19 He may have subsequently, unknown to me,  
20 done some conversations or had some engagements  
21 with local boards to do CTH I enhanced, but I just  
22 don't recall that that was the case.

23 MR. WOODINGTON: I'm sorry. Off the  
24 record a second.

25 (Off-the-record discussion.)

1 MS. HARRISON: If we can put that on the  
2 record, I was talking about CTH I.

3 Thank you, Ken.

4 BY MS. HARRISON:

5 Q. So there was a lot of shifting around, was  
6 there not, when Pine Lake closed? Did the Pine  
7 Lake people go directly into a CTH I?

8 A. Probably for the most part. There might  
9 have been some here and there that that wouldn't  
10 have been a good fit for, but that was -- generally  
11 that's where a lot of the folks would have gone.

12 Q. So you're saying most of the folks at Pine  
13 Lake went directly into a CTH I?

14 A. That's my memory, yes. It could have been  
15 that there were some served in other Babcock  
16 programs for who it was more appropriate to go to a  
17 CTH I enhanced, and then the position that they  
18 left somebody from Pine Lake went into.

19 Q. Do you know how many people were in that  
20 situation where there was a domino effect?

21 A. I don't, no. And you're asking me the  
22 universal question did everybody go, and I'm saying  
23 I don't know. And I'm giving you a hypothetical  
24 that some could have gone to other options within  
25 the Babcock system of services.

1 Q. Are you aware that at about that time  
2 Edward Mims was beaten by an employee?

3 A. Yes, I recall that he had been abused,  
4 that's right.

5 Q. Tell me what you're aware of.

6 A. Just that he had been abused, there was  
7 staff -- I believe it was founded. It was at, if  
8 I'm correct, at the Clusters Center at that point.

9 Q. That's right.

10 A. Pre-Kensington. That's my memory at that  
11 point.

12 Q. So when did it come to your attention?

13 A. Typically, I'd be made aware if there was  
14 an abuse that's occurred in a program someplace. --  
15 And typically what I'd do is I would contact the  
16 Commission Chair and the relevant district  
17 commission member to let them know that something  
18 happened and that the investigation was underway,  
19 that the families had been contacted. Stuff like  
20 that would be typically what we would do.

21 Q. If you can speak up a little, I think it  
22 may be hard --

23 A. It just started to slide at the end.  
24 Sorry.

25 Q. So when Edward Mims was beaten by Carl

1 Anthony, the protocol would have been -- how does  
2 the word get to you?

3 A. Typically, I'd be notified that there was  
4 an abuse that had occurred in a local program and  
5 it was being investigated, that sort of thing. And  
6 if there was any, you know -- staff needed to be  
7 suspended or stuff like that, that that was taken  
8 care of and the investigation was underway.

9 Q. How promptly would the investigation occur  
10 if it had been witnessed?

11 A. Usually fairly promptly. In the ICF/MR  
12 program, this was the pre-SLED independent  
13 investigation, but ICF/MR regulations called for a  
14 preliminary assessment-of the situation immediately  
15 and a report out within five days, I believe it is.

16 So the ICF/MR had -- by federal rule had a  
17 robust approach, timewise, to making sure that  
18 incidents and allegations were carefully and  
19 properly reviewed.

20 Q. So certainly within five days you would  
21 know about it?

22 A. Yeah.

23 Q Were you made aware that Edward Mims was  
24 beaten with a belt and had lashes on his back?

25 A. I can't remember if I was told

1 specifically how he was abused, but that there was  
2 an abuse that had occurred.

3 Q. So the second abuse by a consumer, would  
4 that be brought to your attention?

5 A. Well, that may have. I'm not remembering  
6 the belt incident. That probably would be -- if  
7 it's consumer-on-consumer, as you know OAPA has a  
8 different way that -- Omnibus Adult Protection  
9 Act -- that treats that a little bit differently in  
10 terms of whether it was staff-on-client versus  
11 client-on-client or consumer-on-consumer.

12 Q. As far as you as the executive director  
13 need to know if a person's severely beaten at a  
14 facility, in terms of that message getting to  
15 you --

16 A. Yeah.

17 Q. -- does it matter whether that individual  
18 was beaten by an employee or by a consumer?

19 A. Yeah. Typically, something of that  
20 severity, I probably would have been contacted on.  
21 And from a human perspective -- forget the law for  
22 a moment -- yes, I would very much want to know  
23 that that had happened.

24 But there are different tracks, as you  
25 know, for how they are then processed from a legal

1 perspective.

2 Q. Now, Clusters was closed, was it not, by  
3 CMS in --

4 A. No, actually it wasn't closed by CMS.

5 Q. Tell me what happened at Clusters. It's  
6 closed now, isn't it?

7 A. Yes, ma'am, it is.

8 Sometime, I believe it was in '04, the  
9 Atlanta office of CMS came by and reviewed one of  
10 the units and decertified it. A couple weeks  
11 later, DHEC went into another unit. I always mix  
12 it up. There are eight six-bed units or six  
13 eight-bed units, one or the other, and they  
14 decertified a second unit, is my memory.

15 And about that time as well, I had  
16 conversations with Ms. Johnson, who was the new  
17 executive director in that time frame, maybe been  
18 on board maybe a year or so, and she told me that  
19 she had concerns about whether the Agency could  
20 maintain the quality of service needed at the  
21 Clusters.

22 And she asked if we would take over, we  
23 DDSN, would take over management. And I said we  
24 would take it over under one condition, and that  
25 condition was that we close it. And that's what we

1 did. We took it over and we closed it.

2 Q. What do you mean you took it over?

3 A. We managed it. We put one of our people  
4 out there to manage the program.

5 Q. And there would be documentation of  
6 when -- y'all had an agreement, I assume, a written  
7 agreement?

8 A. A written agreement. Probably in the  
9 files there's a letter to that effect, yeah, likely  
10 would have formalized that, uh-huh.

11 Q. So --

12 A. So CMS -- it would be incorrect to  
13 conclude that CMS closed it. DDSN closed it.

14 Q. What does it mean when CMS decertified one  
15 of the units?

16 A. It means that some standards aren't being  
17 met, ICF/MR standards aren't being met.

18 Q. So they just go in and decertify it or do  
19 they not declare immediate jeopardy first?

20 A. There's several steps. There's a standard  
21 could be out, there could be conditions of  
22 participation, there could be immediate jeopardy,  
23 there could be decertifications that, you know,  
24 repeat offenses or anything like that.

25 But decertification, then, is a process

1 that agencies are allowed to make corrective --  
2 take corrective steps within a certain time frame  
3 to get the program back up to the quality that's  
4 needed.

5 And then the recert is contingent on the  
6 re-review by the Department of -- well, CMS in the  
7 case of some of the instances or DHEC in other  
8 instances.

9 Q. But CMS had found immediate jeopardy --

10 A. Right.

11 Q. -- had they not, at Clusters?

12 A. That doesn't mean that it's decertified.

13 Q. I understand that, but before the  
14 decertification, they found immediate jeopardy, did  
15 they not?

16 A. I'm not sure what the sequence was. My  
17 memory is that they came in and said we're  
18 decertifying this. They went right to the end and  
19 decertified it. They didn't say, okay, there's  
20 immediate jeopardy, something like this, try  
21 harder, they just decertified it.

22 Q. And it has to be pretty serious --

23 MR. STEGMAIER: Y'all don't talk over each  
24 other.

25 BY MS. HARRISON:

1 Q. Did they decertify a program for minor  
2 offenses?

3 A. No.

4 Q. I believe it has to jeopardize the health  
5 and safety and life of individuals?

6 A. No. I imagine there are instances where  
7 there's just a pattern, not in South Carolina, but  
8 a pattern of failure to meet basic standards that,  
9 you know, just to repeat, death by a thousand cuts,  
10 that this program just isn't meeting what needs to  
11 be done, they could decertify it.

12 Q. So if you had an individual who had been  
13 beaten there once by an employee and it was  
14 witnessed, and then you had an individual who was  
15 severely beaten with lashes on his belt with a  
16 back -- on his back, big red lashes, and that  
17 information came to you, what responsibility do you  
18 have as state director?

19 A. Well, if we're talking about the same  
20 case -- we're still with Edward Mims and the  
21 Clusters situation?

22 Q. Any case.

23 A. Oh, any case.

24 Q. You've got a person who's been beaten  
25 there twice.

1 A. It would have to be thoroughly  
2 investigated. I think there's a responsibility  
3 first to protect the consumers and users of  
4 service.

5 Likewise, there's a responsibility to  
6 ensure that staff are treated fairly in cases where  
7 there's, you know, a very clear suggestion that a  
8 staff, say, hit another individual, hit a consumer,  
9 it was witnessed by another employee. The person  
10 would be suspended immediately and an investigation  
11 would begin.

12 Something of that severity under the old  
13 rules probably would have gone to SLED. Now it  
14 automatically goes to SLED.

15 Q. Would you be informed of this?

16 A. Yeah, something of that severity, sure.

17 Q. Now, tell me about the involuntary  
18 admission process. Under what -- if you've got  
19 someone in one of your programs, under what  
20 circumstances would you involuntarily judicially  
21 admit them?

22 A. Well, it's allowed in our code to  
23 involuntary admit individuals. The situation in a  
24 general sense would be one where we would, by  
25 assessment of staff and so forth, people who knew

1 the individual, that the situation that they were  
2 in was threatening to their health, safety, or  
3 welfare, if there was somebody that was responsible  
4 for them that wasn't acting in their interest.

5 Q. So --

6 A. Knowingly or unknowingly wasn't acting in  
7 their interest.

8 Q. So whose assessment do you base that on  
9 when you do an involuntary admission?

10 A. It would be the staff immediately involved  
11 in the situation in all likelihood. Say it was a  
12 health issue, we might want to have a nurse  
13 familiar with the situation look at it. It would  
14 be those types things. . . . .

15 Usually it's kind of a health/safety thing  
16 more than -- it could be a behavior thing  
17 occasionally. You might want to have a  
18 psychologist look at it to see if anything can be  
19 done in the home to deal with whatever the factors  
20 were that were driving the behavior that was now  
21 adaptive, that kind of thing.

22 Q. And what kind of paperwork would come to  
23 you if this has happened?

24 A. Well, it would be an assessment of --  
25 whether there's paperwork or a briefing that

1 there's going to be paperwork -- here's the status  
2 of X situation, here's what the points of view in  
3 thinking are of various trained professionals. We  
4 think the best interest of this person is served in  
5 not doing voluntary or -- involuntary or do an  
6 involuntary. So it would be based on knowledgeable  
7 people participating around the circumstances of  
8 the situation.

9 Q. So who makes the final decision?

10 A. It would be a consensus, but I make  
11 decisions on placement in the code. The executive  
12 of the Agency's responsible for making placement  
13 decisions.

14 Q. If you're responsible for making placement  
15 decisions, is it also your responsibility to get  
16 people out of the placement if they're in danger  
17 there?

18 A. Well, that could be a separate  
19 determination. I think that anytime there's an  
20 event, you need to assess the circumstances  
21 carefully to see if it was isolated or a pattern of  
22 some type.

23 And if the mix of staff and mix of  
24 behaviors just isn't what needs to happen -- I  
25 could tell you in a previous job I held in

1 Virginia, when I was director of a facility, that  
2 we thought that some staff had abused some folks,  
3 but they weren't -- as we required under the code,  
4 they weren't coming forward.

5 One was terminated and sustained on  
6 appeal. The others I simply reassigned to other  
7 units within the agency, and they protested, but I  
8 said no, it's management prerogative to reassign  
9 people where they can best fit.

10 Q. Where are you working now?

11 A. I'm a consultant, kind of a part-time  
12 consultant situation.

13 Q. Who do you consult with?

14 MR. WOODINGTON: Before he answers that,  
15 I'd like to let the record reflect that we had  
16 objected to that and we had a little informal  
17 off-the-record agreement with Judge Barber a few  
18 weeks ago, and he advised -- Judge Barber thought  
19 Dr. Butkus had to answer that question. So I just  
20 wanted to put that on the record.

21 THE WITNESS: So repeat the question,  
22 please.

23 BY MS. HARRISON:

24 Q. Who are you consulting?

25 A. State of Missouri.

1 Q. And how did you come to have that  
2 connection?

3 A. I was contacted by the State of Missouri.

4 Q. And what kind of consult -- what's your  
5 fee arrangement there?

6 A. My fee? I don't know what you mean by the  
7 question.

8 Q. What's your fee arrangement there?

9 A. I have one with them.

10 Q. And what is that arrangement?

11 A. Are you asking me how much they're going  
12 to pay me?

13 Q. Right.

14 A. They're going to pay me \$800 per day plus  
15 expenses.

16 Q. So you'll be going out to Missouri?

17 A. That's right.

18 Q. And how many days a month do you plan to  
19 be in Missouri?

20 A. Well, there's some initial work. We've  
21 added some work along the way. I don't know if  
22 they'll add some other activities beyond that, but  
23 I think probably -- my commitment's probably only  
24 going to be no more than three weeks, I imagine.

25 Q. So what are you doing there?

1 A. I'm helping them on some issues related to  
2 how they're shifting the management of service  
3 coordination from regional state offices to local  
4 public entities.

5 Q. Is service coordination separate from  
6 service delivery in Missouri?

7 A. No.

8 Q. And who is your -- how did you learn of  
9 that job?

10 A. I was contacted by the state director  
11 there.

12 Q. And that is?

13 A. His last name -- I'm blocking all of a  
14 sudden his first name.. Bernie Simons. . . . .

15 Q. Now, so you said that work will last three  
16 weeks?

17 A. Something like that is my --

18 Q. Do you have any other job applications out  
19 there?

20 A. No, no, no.

21 Q. So have you retired from the State of  
22 South Carolina?

23 A. No, not yet.

24 Q. Do you have any intent of returning to a  
25 position in the state of South Carolina?

1 A. I haven't decided that.

2 Q. What assets do you have?

3 A. I have my home and some modest savings,  
4 two years current.

5 Q. And what is your home worth?

6 A. Not as much this year as it was a year  
7 ago, I guess. I don't know, I would say -- my wife  
8 and I always disagree. I'd say maybe 300,000. And  
9 we owe a modest amount on it.

10 Q. And how much do you owe?

11 A. A modest amount. I don't know. I'll put  
12 it this way, maybe a couple, two or three more  
13 years to pay, something like that.

14 Q. And what other assets? Do you have any  
15 other real estate?

16 A. Yes.

17 Q. And tell me about that.

18 A. I have no other real estate in South  
19 Carolina. I have a home in Maine.

20 Q. Where is that?

21 A. In Portland, Maine.

22 Q. And what's it worth?

23 A. In the same neighborhood.

24 Q. Anyone living there now?

25 A. I rent it.

1 Q. What other assets do you have? Do you  
2 understand that you've been sued in your individual  
3 capacity?

4 A. Yes.

5 Q. And that you would be individually  
6 responsible if a verdict is returned?

7 A. That I may be, yes.

8 Q. And what other assets do you have?

9 A. I already covered the cars, right?  
10 They're not worth too much. That's about it.

11 I have some 401K, stuff like that.  
12 Whatever's in my retirement system.

13 Q. Have you transferred any money out of your  
14 name since this litigation began?

15 A. No.

16 Q. So you have a house in Maine, a home here,  
17 a 401K. You have no stocks or bonds or  
18 investments?

19 A. Other than through the 401K and whatever  
20 they -- they also are going downhill too.

21 Q. So you have no savings?

22 A. We have savings, yeah, sure.

23 Q. Tell me about that.

24 A. What do you need to know? The amount?

25 Q. The amount, where, what's the investment

1 in.

2 A. In the bank. I don't know what my savings  
3 account balance is. I don't check it.

4 Q. Approximately?

5 A. Ten.

6 Q. 10,000?

7 A. Yes.

8 Q. You have no other investments?

9 A. No.

10 Q. You were making about 154 a year. Is that  
11 correct?

12 A. Yes.

13 Q. And so the only investments you have are  
14 your home in Portland, your home here, your 401K,  
15 and \$10,000 in the bank?

16 A. Something like that, yeah.

17 Q. So there's no stocks, there's no bonds?

18 A. That's what I'm saying, yes.

19 Q. And there's no money that you've  
20 transferred into your wife's name?

21 A. I believe I said earlier no, there was not  
22 any money transferred into my wife's name.

23 Q. I'm sorry.

24 A. I've already answered that question. I  
25 said -- I'll repeat my answer -- I've transferred

1 nothing in my wife's name, no assets of any type.

2 Q. Have you transferred any money or anything  
3 of value to anyone else?

4 A. No, nor have I transferred anything to  
5 anybody else.

6 Q. And what do you have in the 401K?

7 A. I don't know what the balance is. I don't  
8 check that. It's gone down. My wife kind of rides  
9 herd on that stuff and she said you don't want to  
10 know, but it's gone down kind of thing.

11 Q. Are you planning to move from South  
12 Carolina anytime in the next six months?

13 A. I haven't really decided if I'm going to  
14 do that. So it would be -- I guess you'd say no, I  
15 don't have a plan.

16 Q. Tell me about -- let's get back to the  
17 assessment and how information gets to you when  
18 someone is abused. An incident like someone being  
19 taken to the emergency room because their bed was  
20 infested with ants, what would happen to a report  
21 like that?

22 A. That would be -- that type of thing would  
23 be a critical incident, and it would come into our  
24 system. And the quality assurance people, under  
25 Kathi Lacy, would track that and be aware of that,

1 and that might be something that she would, you  
2 know, let me know if something odd like that  
3 occurred some place.

4 Q. Have you ever been told that a consumer's  
5 bed was infested with ants and they had to be taken  
6 to the emergency room?

7 A. I may have in that particular instance,  
8 because it's very -- it's never happened in  
9 anyplace I've ever worked that something like  
10 that's occurred. So that would be very unusual.

11 Q. Did that give you any concern?

12 A. Well, yes, I found that problematic.  
13 Concern in terms of what does that mean for the  
14 program, certainly they need to look into it in  
15 terms of what measures need to be taken to correct  
16 that from occurring again. But how it occurred,  
17 stuff like that, how did they get in the bed, I  
18 would have no idea.

19 Q. So tell me the process. A caregiver finds  
20 an individual covered with ant bites, looks and  
21 sees the bed's infested with ants. How does the  
22 information flow go from the caregiver to you?

23 A. Just as I said a moment ago.

24 Q. Give me step by step, please.

25 A. I thought I did. I'll try again.

1 The staff that spot it would submit a  
2 critical incident within 24 hours to our agency.  
3 Mr. Sam Davis typically would get those critical  
4 incidents, and he would let Kathi Lacy, through his  
5 supervisor or directly, know that this circumstance  
6 developed in this particular home. So that's the  
7 notification side.

8 Follow-up side would be, well, what steps  
9 have been taken to correct that.

10 Q. And then Kathi.-- is it Kathi Lacy that  
11 informs you?

12 A. Yes, if she in her judgment thinks this is  
13 something that I would need to know about, or if  
14 it's just an unexplained random event that doesn't  
15 mean anything -- I'm not saying this didn't mean  
16 anything, I'm saying it depends on the situation  
17 whatever the circumstances.

18 Q. So she tells you about it. As state  
19 director, what is your responsibility?

20 A. Well, my response was that what steps  
21 are -- you know, how did it happen, who's going to  
22 take care of it, how are we going to prevent it  
23 from occurring again, who's going to do what to  
24 deal with it.

25 Q. Would it give you concern as a state

1 director to know that there are a number of other  
2 events at that same facility?

3 A. Could you be more specific?

4 Q. Rug burns on the back of an individual,  
5 immediate jeopardy having been declared.

6 A. Rug burns would concern me as a situation.  
7 It would concern me more if it hadn't been  
8 investigated.

9 Since you're raising it as an issue, I'm  
10 assuming that somebody reported it someplace as an  
11 incident that needed to be investigated and found  
12 out or determined what happened and what corrective  
13 measures need to be taken.

14 Q. Would that bother you if there were  
15 someone with rug burns?

16 A. Sure.

17 Q. What would you as --

18 A. I think I already said that.

19 Q. -- as the director do?

20 A. I think I already said that too. I'd want  
21 to make sure it was thoroughly investigated, find  
22 out how it happened, what corrective measures  
23 needed to be taken to prevent it from occurring  
24 again.

25 Q. And what kind of follow-up do you as

1 director have -- do you just say go and fix it or  
2 do you come back and look and see if it was fixed?

3 A. The staff would go back and ensure a  
4 number of days later to make sure that the  
5 correction was put in, was fixed, and was going to  
6 deal with the situation.

7 Now, if you're talking about -- which  
8 situation are you talking about?

9 Q. Let's talk about a rug burn case.

10 A. Typically -- say -- my first question  
11 would be was that somehow an abusive or neglectful  
12 situation, and gather evidence to make a  
13 determination on that.

14 If it wasn't that, if that was ruled out,  
15 if it was something that the consumer individual  
16 was doing themselves, I would have another series  
17 of questions about, well, what does the program  
18 call for, isn't there proper supervision, what kind  
19 of activities does the person need to be engaged in  
20 so that they're not hurting themselves in that way,  
21 inadvertently or planned.

22 Q. Did you do any follow-up once these  
23 situations were initially brought to your  
24 attention?

25 A. The Agency would do the correct follow-up,

1 and I would learn by exception that there was a  
2 problem in the implementation of the corrective  
3 measures. In other words, if they aren't done.

4 Q. Now, what responsibility -- if you had an  
5 individual with ant bites all over his body and had  
6 to be taken to the ER, what responsibility did you  
7 as director have to take that information about  
8 that incident to your board?

9 A. Well, it would depend if it was isolated,  
10 and I don't recall -- I'm telling you in the years  
11 that I've been in this field that I never recall an  
12 incident in three, four, fives states I've worked  
13 in of that type.

14 To me, I assume it was an isolated  
15 situation and probably one that I wouldn't need to  
16 report to the board in terms of abuse or something  
17 like that.

18 Q. Now, you're saying you never heard -- I  
19 thought your testimony was that you were aware of  
20 that incident.

21 A. Yes, that's what I'm saying.

22 Q. But you're saying in other places you'd  
23 never seen that?

24 A. Yes, I said it's -- the incidents of  
25 people in the field of disabilities being bitten by

1 ants in their beds is extremely low. That's the  
2 first event in 40 years I've worked with  
3 disabilities I've ever heard of it.

4 So I put it in a category of this is a  
5 random event, how did it happen, let's correct it,  
6 but not one that would rise to the level of there's  
7 a major systemic problem of some type.

8 Q. If that same house had had an immediate  
9 jeopardy finding for med errors and if an  
10 individual had choked to death and a second  
11 immediate jeopardy had occurred --

12 A. Which home are we in?

13 Q. We're in Kensington.

14 Would that rise to that level of systemic  
15 concern?

16 A. Now, would you repeat the first part of  
17 the question?

18 Q. If there's been a finding of immediate  
19 jeopardy over a med error, and then there had been  
20 someone to choke to death and CMS came in and  
21 investigated and found the house was understaffed,  
22 the staff was not trained and that death was not  
23 properly investigated, and the ant incident had  
24 also occurred, does that rise to the level of --

25 A. Which facility were the ants in?

1 Q. All of that was in one facility.

2 A. Okay. They're all separate events. The  
3 choking, if you're referring to -- Mr. Cothran  
4 actually wasn't a choking. It was aspiration.  
5 There's a difference between choking and  
6 aspiration. He aspirated on previously-digested  
7 food.

8 Q. Is it true --

9 A. So --

10 Q. -- that Mr. Cothran aspirated on a chunk  
11 of toast?

12 A. I've read the autopsy. The autopsy said  
13 he aspirated.

14 Q. On a chunk of toast?

15 A. On predigested food is what the autopsy  
16 said. A choke of food wouldn't have been  
17 predigested.

18 Q. So it's your understanding that there was  
19 no health or safety violations with the death of  
20 Mr. Cothran?

21 A. No, I didn't say that. I said -- you  
22 said -- I'm taking exception with your  
23 characterizing it as choking. I'm saying it's not  
24 choking.

25 In fact, the staff at the facility were

1 found to have been guilty of neglect for giving  
2 him -- for munching up food. But on the following  
3 day, assuming the following day, and they didn't  
4 follow the procedure, that was neglect, and I made  
5 sure that the facility terminated them for that.

6 Q. Now, are you familiar with the CMS report  
7 at Kensington after that death?

8 A. In terms of the decertification?

9 Q. I'm talking about --

10 A. Immediate jeopardy?

11 Q. The report of immediate jeopardy where  
12 they found that staff was not properly trained, the  
13 house was not properly staffed, and the death was  
14 not properly investigated, are you familiar with  
15 that report by CMS?

16 A. I'm familiar with it, they came and that  
17 there was an immediate jeopardy. It, however, was  
18 not decertified, and there were corrective measures  
19 put into place to deal with the various issues that  
20 were cited.

21 Q. Soon, within a month or two after that,  
22 there was another immediate jeopardy finding, was  
23 there not?

24 A. From CMS or from --

25 Q. From DHEC.

1 A. Was it the medication error?

2 Q. On a different issue.

3 A. There may have been. If you'd be more  
4 specific, might jog my memory.

5 Q. Are you aware that Kensington was  
6 decertified during Ed Mims' tenure there?

7 A. During whose tenure?

8 Q. Ed Mims' tenure.

9 A. I don't believe it was decertified.  
10 Decertified means, among other things, that you  
11 stop getting the money, and there's no break in the  
12 funding.

13 Q. There was not another finding and were not  
14 families sent a letter saying that it had been  
15 decertified?

16 A. I don't -- this is my memory: It was not  
17 decertified, so I certainly don't know why families  
18 would be getting a letter saying it is decertified.

19 Q. Now, you made the decision, did you not,  
20 initially, not to release -- not to cooperate with  
21 the judge's order to release Edward Mims?

22 A. No. I think that he was -- my memory is  
23 that he was involuntarily committed to us, which  
24 requires a court action. And I know the mother had  
25 some wishes to take him home, and we felt that that

1 had to be routed back through the Court, that we  
2 couldn't override a Court decision that placed him  
3 in our care.

4 Q. Why did the Court get back involved in  
5 Edward Mims?

6 A. I think the mom wanted to have some more  
7 involvement in his life and have him at home, that  
8 sort of thing, have visits if he was still in a  
9 residential program, stuff like that.

10 Q. She just decided she loved him more and  
11 she wanted him home more often?

12 A. Yes. And in between that, there was an  
13 injury he sustained that I think maybe that raised  
14 some concerns in her mind.

15 Q. And tell me about that injury.

16 A. He had a small wound on his penis.

17 Q. Describe the small wound.

18 A. That's the extent -- all I'm told is that  
19 it was a small wound. I had Dr. Graeme Johnson  
20 look at it and he said there's a small wound, and  
21 that was it.

22 Q. So you were relying on Dr. Graeme's  
23 assessment?

24 A. Yes.

25 Q. Graeme Johnson, I believe?

1 A. That's right.

2 Q. Who else did you receive information from  
3 about this injury?

4 A. From within our agency, it would have been  
5 reported and so forth through critical incident,  
6 that kind of thing. So we'd get information that  
7 way.

8 And when I was aware of it, I was the one  
9 that asked Dr. Johnson to take a look at what was  
10 involved with it and what his determination of the  
11 situation was, was it, you know, abuse or something  
12 like that, or how did it occur in his medical  
13 judgment.

14 Q. Did you discuss this case at any point  
15 with Kathi Lacy?

16 A. Probably did, yeah, because it would come  
17 to her attention through the critical incident  
18 reporting process.

19 Q. So this would come to the attention -- it  
20 would go to, I believe your testimony was, Sam  
21 Davis, Kathi Lacy, and then to you. Is that the  
22 chain of command?

23 A. Yes.

24 Q. And you brought in Dr. Graeme Johnson?

25 A. That was my decision, yes.

1 Q. Who all was in the discussion when you  
2 decided to bring in Graeme Johnson?

3 A. Well, I don't recall that we had a  
4 meeting. Probably what likely occurred was Kathi  
5 apprised me of the situation. I said, well, let's  
6 have Dr. Johnson look at this and see what his  
7 determination is of what happened and if there was  
8 an explanation for it.

9 Q. Did you ever have anyone speak with Edward  
10 Mims' treating physicians about this injury?

11 A. I'm not recalling that we did. Unless  
12 somebody spoke with them in terms of an  
13 investigation that I'm not -- that somebody else  
14 did, the police did an investigation kind of thing,  
15 I'm not recalling that I personally spoke with  
16 them, no.

17 Q. Would it not be good to get the opinion of  
18 the treating physician who knows a person if you're  
19 doing an investigation of abuse or neglect?

20 A. I think you need information from a  
21 variety of sources, and I can't tell you, for  
22 example, if Dr. Johnson contacted the treating  
23 physician or not.

24 But I would rely on Dr. Johnson in matters  
25 like this. He's familiar with -- he's worked many,

1 many years in the disabilities field, formerly  
2 worked as the medical director, for example, down  
3 at Coastal Center, and he's really familiar with  
4 situations with people with disabilities, injuries  
5 that might occur and so forth, and how they might  
6 have happened, that type of thing.

7 Q. I'm sure he's familiar with how they  
8 occur.

9 Dr. Judy Johnson, did you have any  
10 discussions with Dr. Johnson about what was going  
11 on at Kensington?

12 A. On these different issues, I'm not  
13 recalling that I had a specific -- that I had a  
14 specific conversation with her. I could have.

15 Mostly the problem with the situation was  
16 that we would look at what the circumstances were,  
17 see what needed to be done, coordinate with her,  
18 and her staff was to model that sort of thing  
19 around what needed to be done and addressed in the  
20 situation and circumstances.

21 Q. So you've got a facility that immediate  
22 jeopardy has been declared at least twice in six  
23 months, and you have the ant bite incident and you  
24 have the injury to the penis, and you wouldn't  
25 discuss this with Dr. Johnson?

1 A. Well, the ants, that was one thing; the  
2 penis injury was a second thing. They were all  
3 individual circumstances that occurred over time,  
4 and the reviews and so forth came in at different  
5 points of time as well. I don't recall a  
6 conversation with her about that.

7 The responsibility that I would have is --  
8 when these events come up is to make sure the right  
9 people are talking to the right people and are  
10 getting to the bottom of what needs to be looked  
11 at.

12 Q. So you had no -- is it your testimony you  
13 have no -- had no communication with Dr. Johnson  
14 about Edward Mims?

15 A. Oh, well, you're asking me if I talked  
16 with her about ants and all that. I'm not  
17 recalling that I had a specific conversation with  
18 Dr. Johnson about Edward Mims. I'm not recalling  
19 that.

20 Q. So when you made the decision as state  
21 director to involuntary -- judicially admit him,  
22 you don't talk with the director of the agency?

23 A. We've got to come back and get some time  
24 frames here. You're talking about an incident in  
25 the '05 time frame. The involuntary was much

1 earlier than that.

2 And I don't think Ms. Johnson was director  
3 then. I think that Mr. Lender probably was  
4 director in '01, and you would have been Chair of  
5 the Board.

6 Of course some of these things I've  
7 wondered, you know, just parenthetically, how as a  
8 governing body you would have been informed and  
9 then what action you would have as the contract  
10 entity, the governing body, would take any action  
11 that would be remedial and deal with stuff that  
12 way.

13 Q. Did you inform me as the chairman of this  
14 involuntary admission?

15 A. I don't believe I did. I don't know if  
16 you were chairman then. I can't --

17 Q. Did you involve -- did you inform the  
18 chairman?

19 A. I would deal with the executive director,  
20 and whatever -- if the executive director felt  
21 there needed to be conversation with the chairman,  
22 the executive director would have conversation with  
23 the chairman.

24 Our relationship would be -- unless it got  
25 to a contractual point, where the contract was

1 being violated, then I would call the Board Chair  
2 to say we have a problem.

3 But where it's an operational situation  
4 that we think we can resolve in some way, it would  
5 be staff to staff dealing with what needed to be  
6 dealt with.

7 Q. So you would have had communications about  
8 this involuntary admission with the former director  
9 Rip Lender?

10 A. Me or through my staff to him or through  
11 his staff, yes.

12 Q. If you had the final say, are there people  
13 who are judicially admitted that you don't review  
14 the case?

15 A. You know, I was director 12 years. I  
16 cannot tell you that I can recall another judicial  
17 or involuntary admission. So they're very, very  
18 rare. Most --

19 Q. So you're saying this is the only --

20 MR. WOODINGTON: You have to let him  
21 finish his answers.

22 THE WITNESS: This is an extremely rare  
23 situation. My memory is that while it was somewhat  
24 involuntary in the sense of what the code says, is  
25 that all the parties signed off and agreed to it.

1 BY MS. HARRISON:

2 Q. So you don't remember any other judicial  
3 admissions during your time as director?

4 A. I do not recall them. There may be some  
5 counsel who has been here and back and so forth  
6 could remember some, but it's very, very rare that  
7 that would occur.

8 Q. Once someone is judicially admitted, and I  
9 think we all agree that the code says that --

10 A. Involuntarily admitted.

11 Q. -- that you have responsibility for making  
12 that decision, what responsibility do you have  
13 periodically thereafter to make sure that he's  
14 being kept safe?

15 A. Well, the same responsibility that we'd  
16 have towards anybody that we serve, that they're  
17 safe, free from harm, getting the services they're  
18 supposed to get when they're supposed to get it,  
19 that kind of thing.

20 Q. And whose responsibility is that?

21 A. That's the Agency responsibility via  
22 contractual arrangements with local agencies.

23 Q. And where does the buck stop with that?

24 A. Got to be more specific. I don't know  
25 what you mean.

1 Q. You're saying the Agency has a  
2 responsibility to assure the health --

3 A. Right.

4 Q. -- and welfare, and I believe that's a  
5 federal requirement, is it not?

6 A. It's -- yeah, under various programs it's  
7 a -- right -- stipulation.

8 Q. MR/RD waiver?

9 A. Yeah, it's in there. It's one of the  
10 assurances.

11 Q. ICF/MR?

12 A. It's in the Home and Community Based  
13 Waiver. That's an assurance we go with, and it  
14 would be in the ICF/MR.

15 MR. STEGMAIER: Could you say that again?

16 THE WITNESS: Which part?

17 MR. STEGMAIER: It's in the what?

18 THE WITNESS: It's in the -- every state  
19 that applies for a waiver has to agree to comply  
20 with safeguards, six, seven, eight of them.  
21 They're ranging from access through system  
22 outcomes -- one of them is to provide the necessary  
23 safeguards, which would be translated that you need  
24 to deal with situations where people would be in  
25 danger or possibly in danger to make sure that

1 they're safe.

2 BY MS. HARRISON:

3 Q. And so if the Agency has the duty to  
4 assure the health and welfare of the people --

5 A. Yeah.

6 Q. -- who is responsible for assuring that  
7 the Agency does that?

8 A. Well, the Agency director is responsible  
9 for the agency and everything that goes on within  
10 the agency in terms of what the code requires, what  
11 our contractual commitments are under waivers or  
12 ICF/MRs, state-funded programs.

13 I would then periodically report to our  
14 governing authority on various things that they  
15 would need to know about from their role as the  
16 governing authority.

17 Q. And when an incident -- what's your  
18 responsibility for reporting these incidents to the  
19 commissioners?

20 A. Well, the typical situation, say if we  
21 learn of an allegation of abuse someplace, what I  
22 would do is contact the Chair and let them know,  
23 and then I would contact the commission member  
24 whose congressional district that it occurred in.

25 Q. Is there a written policy that requires

1 that?

2 A. No, I think it's just good practice. We  
3 don't have a policy.

4 Q. So every time there was a serious  
5 incident, did you contact --

6 A. Yeah.

7 Q. -- the chairman?

8 A. That's what I'm telling you, that's the  
9 practice and that's what -- pretty much I can't  
10 think of a situation that I didn't, that would  
11 reach that level.

12 Q. And you also contacted the commissioner  
13 for that district?

14 A. Yes. That's what I'm saying, yes.

15 Q. Now, when the incident occurred, do you  
16 know how many stitches it took to repair the  
17 laceration to Edward Mims' penis?

18 A. No, I don't.

19 Q. How long did it take before the Babcock  
20 Center reported that injury? What are the Babcock  
21 Center's responsibilities for reporting?

22 A. Well, they would need to report something  
23 like that right off, within -- as soon as somebody  
24 sees it, it would have to be reported, and then it  
25 would be reviewed.

1 Q. And report it to whom?

2 A. Us. Within their own agency, they would  
3 let those supervisors and so forth know that there  
4 was a problem that occurred.

5 Q. Is there anyone else they had to report it  
6 to?

7 A. Well, it would depend on the severity  
8 thing. It might be reported to local law  
9 enforcement if somebody assumed -- that it kind of  
10 met that threshold.

11 But in a case like that, there's no --  
12 wasn't any -- my memory is that there was no  
13 immediate contact to think there was a criminal  
14 investigation required of some type. But those  
15 would be --

16 Q. What made you think there was no need for  
17 criminal --

18 A. I didn't say there was no need. I said my  
19 memory is I don't know if there was a  
20 determination, and, if there was, to contact the  
21 police on the laceration. I just don't know.

22 Q. Well, let's say that you are the director  
23 of the agency, the providing agency, and there's an  
24 individual who has a four-centimeter laceration on  
25 his penis which is bleeding and oozing, and it

1 takes six stitches to repair, and no one knows how  
2 it happens, and it's determined it wasn't  
3 self-inflicted. Is that the kind of thing that law  
4 enforcement needs to investigate the scene?

5 A. I don't recall if law enforcement was  
6 notified or not. It's just -- I just don't have  
7 that memory.

8 Q. I think you didn't understand my question.

9 A. I'm sorry. Please repeat it, then.

10 Q. You are the director of an agency, and an  
11 individual -- comes to your attention that an  
12 individual is found with a four-centimeter  
13 laceration on his penis that is oozing blood and  
14 requires six stitches to repair, and he was wearing  
15 sweatpants and it wasn't self-inflicted. Is that  
16 something you as the director would notify law  
17 enforcement about?

18 A. I probably would, yeah.

19 Q. Who else would you as a director feel you  
20 had the responsibility to notify and within what  
21 time frame?

22 A. Right away, within a reasonable time, the  
23 governing body, probably the Chair.

24 Q. Would it be important in your quest for  
25 truth to preserve the bloody chair and the blood on

1 the floor?

2 A. That, as director of the agency, yeah, if  
3 there was a suggestion that there was criminal  
4 behavior, I think the responsibility of the  
5 provider agency, which would rest in the CEO's hand  
6 primarily, that you'd want to preserve the  
7 evidence, that's correct.

8 Q. If the mess has been mopped up, would it  
9 be harder to get DNA evidence?

10 A. I'm not an expert in DNA. I don't know.

11 Q. As director, what was your policy about  
12 preserving evidence --

13 A. What, hypothetically, would be my policy  
14 in an agency like that, I certainly would want to  
15 have it preserved, sure.

16 Q. Do you have -- as a director of State  
17 DDSN, what is your policy on an event like that, as  
18 to the need for preserving evidence?

19 A. I think it needs to be preserved. And I  
20 think when you make contact with the police, that  
21 that would be the first question that the police  
22 would say is make sure you preserve the evidence.

23 Q. How soon in an event like this should  
24 police be called?

25 A. I'd say right off. If it warrants police

1 action, right off.

2 Q. So you were informed immediately about the  
3 injury, and when Ms. Mims showed up with a Court  
4 order, allowing her to take Edward home, your  
5 agency refused to allow him to go home?

6 A. Yeah, I think there was another Court  
7 order that we needed to reconcile whether or not,  
8 you know -- which one we had to go by. I don't  
9 think there's any interest on our part of denying,  
10 you know, a properly developed legal process, or  
11 follow the legal process, to let anybody go that  
12 needed to go. I don't see that -- I don't know why  
13 anybody would see that as an issue.

14 I mean, from my perspective, if we had a  
15 preexisting responsibility of the Court, we needed  
16 to make sure that that would be executed properly.

17 Q. You've got an individual that this injury  
18 has occurred with. His mother shows up with an  
19 order from the Court requiring his release, giving  
20 her the authority to release him, signed by the  
21 same Court that signed the judicial admission. Can  
22 you tell me what involvement you personally had in  
23 deciding not to release him?

24 A. Oh, I think I talked with our counsel at  
25 the time, Mr. Hill.

1 MR. WOODINGTON: I would ask you not to go  
2 into those conversations.

3 THE WITNESS: Who I have nothing further  
4 to say about.

5 BY MS. HARRISON:

6 Q. Who else did you talk with?

7 A. Well, I would have talked with Dr. Lacy,  
8 Kathi Lacy, about the situation.

9 Q. Did you talk with Dr. Johnson?

10 A. I don't recall that I did, no.

11 Q. So you talked with --

12 MR. STEGMAIER: I'm sorry, which  
13 Dr. Johnson?

14 BY MS. HARRISON:

15 Q. Dr. Judy Johnson.

16 A. I talked with no Dr. Johnsons on that  
17 topic.

18 Q. So you just talked with Dr. Lacy and your  
19 lawyer. You didn't talk with anyone else?

20 A. Right.

21 Q. Did you talk with Sam Davis?

22 A. I don't recall if I did or didn't.

23 Q. Tell me about the conversation with  
24 Dr. Lacy.

25 A. We had the conversation, and --

1 Q. How did it go?

2 MR. WOODINGTON: Excuse me just a minute.  
3 If Mr. Hill was present, I would regard that as an  
4 attorney-client conversation and I'd instruct him  
5 not to answer.

6 But let me just voir dire with you.

7 Do you recall if Jim Hill was present at  
8 the conversation?

9 THE WITNESS: I think he was.

10 MR. WOODINGTON: I'd instruct you not to  
11 answer that.

12 BY MS. HARRISON:

13 Q. Did you have any discussions with Dr. Lacy  
14 outside the presence of Jim Hill?

15 A. I don't think so.

16 Q. So Jim Hill was there for every  
17 conversation you had with Kathi Lacy about this?

18 A. In reference to the Court action --

19 Q. Anything having to do with Edward Mims.

20 A. Oh, no. Certainly there are other things  
21 I've certainly probably talked --

22 Q. Tell me about those conversations.

23 A. He would have talked about the event and  
24 so forth, what needed to be done, that kind of  
25 thing.

1 But a lot of it in this particular  
2 circumstance, where I think we are in the  
3 conversation, discussion here was around what  
4 happened in the -- with the attorney there, with  
5 Kathi, and what the decisions were. So I guess  
6 I've been advised not to --

7 Q. What conversations did you have with Kathi  
8 when Jim Hill was not present?

9 A. Just the general thing. She would have  
10 informed me, as I think I testified earlier, that  
11 this unusual occurrence happened.

12 Remember we talked about that, how it  
13 would come in through Sam Davis and Sam Davis would  
14 apprise her, she would apprise me.

15 Q. And what did she tell you about it?

16 A. That it occurred, it's very unusual, and  
17 we're going to be looking into it.

18 Q. How long did you give her to get back with  
19 you?

20 A. I didn't give her a time frame.

21 Dr. Lacy's a very polished professional  
22 and she knows how to prioritize, and she would dig  
23 into something right away if that was needed for a  
24 day or two. It would depend.

25 Q. Your agency continued to be involved after

1 the Court issued the order, the temporary  
2 guardianship order and the order that said that  
3 Edward would be released, did it not?

4 A. Yes.

5 Q. Were you aware that Jim Hill went to the  
6 Probate Court and appeared at those proceedings?

7 MR. WOODINGTON: You can answer whether  
8 you were aware or not.

9 THE WITNESS: I was aware that he  
10 participated in some proceedings, yes.

11 BY MS. HARRISON:

12 Q. And were you aware that he asked the judge  
13 to use Edward's money to hire a lawyer for Edward's  
14 sister?

15 A. You're asking me if I knew what Jim Hill  
16 asked the judge, I don't know.

17 Q. What do you know -- other than your  
18 individual conversations with Jim Hill, what do you  
19 know about Jim Hill's participation in these  
20 proceedings?

21 MR. STEGMAIER: Can we go off the record  
22 for a second?

23 (Off-the-record discussion.)

24 MS. HARRISON: If you'd read my last  
25 question, please.

1 ( Question read.)

2 THE WITNESS: Only that he participated in  
3 them.

4 BY MS. HARRISON:

5 Q. At whose direction?

6 A. Well, it would have been at my direction  
7 that he needed to be participating in Court  
8 activity.

9 Q. So did you direct him to oppose the  
10 appointment of Margaret Mims as Edward's guardian?

11 MR. WOODINGTON: I would ask him not -- to  
12 only answer whether or not he -- what position -- I  
13 think it's all attorney-client. I instruct him not  
14 to answer that.

15 BY MS. HARRISON:

16 Q. Did you make a decision that the  
17 appointment of Margaret Mims should be opposed by  
18 your agency?

19 A. No.

20 Q. Did someone at your agency make that  
21 decision?

22 A. Getting into --

23 MR. WOODINGTON: If it's  
24 attorney-client --

25 THE WITNESS: Yeah.

1 BY MS. HARRISON:

2 Q. So you did not make a decision to -- he  
3 was not acting under your direction?

4 A. I don't recall -- without getting into  
5 this attorney-client, what's attorney, what's not,  
6 we would have had a discussion about what would be  
7 a reasonable way to approach the situation, is the  
8 extent of what I can remember.

9 I don't really remember saying, and, by  
10 the way, it wouldn't be proper to have so-and-so or  
11 anybody else to be the guardian. I mean, I  
12 wouldn't get into that situation. I'm not sure  
13 that that was -- well --

14 Q. Your agency in front of a number of people  
15 opposed the appointment -- in fact, your agency  
16 sent a brief -- filed a brief in opposition of the  
17 appointment of Margaret Mims as guardian.

18 Now, did you as the state director make  
19 that decision to have a brief filed opposing her  
20 appointment?

21 A. Again, from my perspective, that would  
22 have been something I would have discussed with  
23 Attorney Hill.

24 Q. But who made the decision?

25 A. It would have come out of that discussion.

1 Q. But who made the decision?

2 A. I'm not --

3 MR. WOODINGTON: I think it's appropriate  
4 to ask him what -- as a result of that discussion  
5 what happened, but not necessarily what the --  
6 well, not at all what the contents of the  
7 discussion was.

8 MS. HARRISON: But his agency filed a  
9 brief and decided to be a participant, an active  
10 participant, in a probate proceeding opposing the  
11 appointment of Margaret Mims as guardian, and I  
12 think I have the right to know who at the agency  
13 made that decision to participate and to file a  
14 brief opposing her appointment. I think I have the  
15 right to know that.

16 MR. WOODINGTON: You know, I have a right  
17 to discuss that in the middle of the deposition  
18 since it involves a discussion of privilege, and  
19 what I'd like to do is take him outside for a  
20 minute and discuss that with him.

21 MS. HARRISON: That's fine.

22 MR. STEGMAIER: Do we have a brief  
23 available?

24 MS. HARRISON: And while y'all are  
25 talking, I'll get the brief.

1 (A recess transpired.)

2 BY MS. HARRISON:

3 Q. So you've had an opportunity to look over  
4 the objections your agency filed with the Court?

5 A. Uh-huh. Yes.

6 Q. Can you tell me who made the decision to  
7 file these objections?

8 A. We would have had a discussion.

9 Q. Who is we?

10 A. Mr. Hill. Let me see if I cannot include  
11 him in this. And I misinterpreted you earlier. I  
12 thought you said that we were objecting to the  
13 sister being the guardian. I must have misheard  
14 you.

15 Q. No, you were promoting the sister at the  
16 courthouse.

17 A. Going by this. What this is here,  
18 basically what this says is that the role of the  
19 Agency would be one that we were consistently  
20 acting on the basis of what -- the original action  
21 we took in terms of the involuntary admission.  
22 That would be that the petitioner's capacity to do  
23 the stuff she needed to do, we felt she wasn't  
24 capable of doing. So that was our position. So  
25 it's consistent. So it's not really --

1 Q. And your decision -- so you made that  
2 decision?

3 A. Right. Ultimately, yes.

4 Q. What did you base the decision that  
5 Ms. Mims -- excuse me, let me finish my question.

6 A. Please, please, sorry.

7 Q. What did you base your decision that the  
8 Agency should object to her appointment based on  
9 her inability to care for Edward? What was the  
10 basis of that decision?

11 A. That the circumstances were still  
12 operating that led to the original involuntary  
13 admission. We hadn't seen a change in her  
14 capacity.

15 Q. Had you sent anyone to her home?

16 A. There would have been somebody probably  
17 taking a look at that, the situation, what his  
18 needs were and that type of thing. My  
19 determination, there wasn't --

20 Q. So did anyone from your agency do a home  
21 study before these objections were filed?

22 A. I can't remember if there was a home study  
23 done, but I'm pretty sure that there was an  
24 assessment of some type regarding her capacity. It  
25 may have involved a home visit, but I don't recall.

1 Q. Are you aware that when the  
2 Court-appointed visitor went to Edward's residence  
3 with a Court appointment that she was denied access  
4 to Edward?

5 MR. WOODINGTON: Which residence? I'm  
6 sorry.

7 BY MS. HARRISON:

8 Q. To the Kensington residence.

9 A. No, I wouldn't have been aware of that.  
10 Ms. Bagnal? Ms. Miller?

11 Q. I believe when Ms. Mullis went and  
12 Ms. Bagnal went, they refused to allow them in the  
13 facility.

14 A. I'm not recalling that.

15 Q. So no one informed you that they weren't  
16 allowed to see Edward?

17 A. I'm not recalling that it occurred nor  
18 that anybody told me.

19 Q. So you didn't know that these  
20 Court-appointed examiners were not allowed to see  
21 him?

22 A. I was unaware of that.

23 Q. But you made the decision -- tell me what  
24 the factual basis -- why did you not think that  
25 Ms. Mims was capable of taking care of Edward?

1 A. Basically that the conditions still  
2 existed, her ability, her resources to be able to  
3 provide for Edward, we felt that the same situation  
4 that was present when we went for involuntary  
5 admission were still operating.

6 Q. And what were those things that would be  
7 of danger to Edward?

8 A. We felt that she couldn't provide the  
9 level of care that he needed in the home.

10 Q. And why was that?

11 A. That she was out of the home, she was  
12 working, she didn't have a lot of resources, income  
13 was limited, things of that nature.

14 Q. So is it your position as former state  
15 director that when mothers work out of the home  
16 they cannot care for their severely-disabled  
17 individual at home?

18 A. It wasn't my position when I was state  
19 director, what you just said, nor is it now. Each  
20 circumstance has to be assessed on its own.

21 Q. So if working out of the home was not a  
22 barrier, is it that mothers who do not have wealth  
23 are unable to keep their children at home? Do you  
24 have people that live on SSI and they keep their  
25 severely-disabled children at home?

1 A. Sure. I'm sure there are.

2 Q. Is that a hindrance, not having money?

3 A. Money can be a factor. And you're asking  
4 me a global question. A global question is some  
5 people living in poor circumstances can provide  
6 good care. Others might be assessed as otherwise.

7 In this circumstance, what our assessment  
8 was was that he couldn't get the care he needed.

9 Q. Because --

10 A. Another case, it might have been  
11 different.

12 Q. He couldn't get the care he needed because  
13 mother worked out of the home and she was poor. Is  
14 that correct?

15 A. The capacities, the resources, the  
16 capacities, the -- my memory is that, you know,  
17 that it was hard for her to keep everything -- she  
18 would be fatigued, keep everything moving ahead.  
19 There was a lot on her as an individual being able  
20 to meet her own needs in terms of being able -- as  
21 well as Edward's, but another situation could be  
22 different.

23 Q. Isn't that what MR/RD waiver services are  
24 designed to help with?

25 A. It can help in that. And I think,

1 subsequently, after the decision was made that,  
2 okay, he can go home and the mother can provide the  
3 care, that an application was made and he was found  
4 eligible.

5 Q. Now, why didn't -- instead of filing  
6 objections and trying to keep him in a facility  
7 that had been decertified, why didn't your agency  
8 offer those services, those MR/RD waiver services  
9 from the get-go?

10 A. Well, he wasn't -- let me repeat this. He  
11 wasn't in a decertified facility. Kensington was  
12 not decertified.

13 Q. What was the status of Kensington?

14 A. If there's one thing I would like to be  
15 clear today, it wasn't decertified.

16 Q. What was the status of Kensington at the  
17 time?

18 A. They had some various issues, and they had  
19 been working on plans of corrections to get it back  
20 up to where it needed to be, where it had, you  
21 know, not been doing what -- the way, you know,  
22 things should have been done, that kind of stuff.  
23 That's what I'd say on that.

24 The rest of the question, he was in that  
25 facility, we felt that was best for him. He hadn't

1 gone to a status where he was going to be at home  
2 because this hadn't been dealt with yet, and that  
3 would be a separate process after that that he  
4 would apply for the waiver, which in fact he did,  
5 and which in fact he was approved for.

6 Q. What did you do to help with that? Did  
7 you offer him Adult Nursing Services so that his  
8 mom could keep him safely at home?

9 A. We offered him the -- after this  
10 decision's made and, okay, he's going to go home,  
11 fine, and the neighbors are going to do some  
12 things, maybe, and so forth, and he was approved  
13 for the waiver.

14 And the waiver has a mix of services,  
15 respite, personal care, stuff like that. It does  
16 not include adult day health as a service.

17 Q. Mr. Hill talked about a cat on the table  
18 and the house being unkempt. Did y'all have any  
19 discussions about that?

20 A. I can tell you with certainty that I don't  
21 recall Mr. Hill telling me anything about a cat on  
22 a table.

23 MR. WOODINGTON: Let's not talk about what  
24 Mr. Hill talked about.

25 BY MS. HARRISON:

1 Q. Did anyone tell you that the house was  
2 disorderly?

3 A. I don't remember anyone describing it in  
4 those terms.

5 Q. So as far as you knew, the house was  
6 perfectly acceptable?

7 A. I didn't say that.

8 Q. What did you know about the house?

9 A. You said it was disorderly. I don't know  
10 if it was disorderly.

11 Q. What did you know about the house?

12 A. The main thing that I knew was that the  
13 combination of the mom and the overall environment  
14 wasn't something that we felt, based on our  
15 professional assessment, was in his interests to be  
16 in. So it would be a combination of things.

17 In other words, we can't go down the list  
18 of, is it poor, is it single mom, is it the house.  
19 It's a combination overall.

20 Q. And tell me all the negatives that did not  
21 work.

22 A. We felt that she could not provide the  
23 care that he needed because of her resources in the  
24 broadest sense of that term, not just monetary,  
25 psychological resources, certainly financial

1 resources where that's appropriate. We just didn't  
2 think that she would be able to do that.

3 Q. So she didn't have the psychological  
4 resources or the money. Give me specifics about  
5 what she didn't have.

6 A. I did. We can go down a list and say,  
7 well, was the house okay, kind of come up with  
8 that. What we did was we do an overall assessment  
9 of can this circumstance -- because it's not any  
10 one of those things that's predictable, what's  
11 going to work or what's not going to work.

12 The overall assessment was those  
13 combination of things: Single mom, not a lot of  
14 financial resources -- although that's not a  
15 determiner -- her capacity being fatigued from  
16 work. She had to work very hard to put food on the  
17 table, that kind of thing.

18 The combination of physical, psychological  
19 and other resources we felt was inadequate, which  
20 is very different from, you know, that the mom had  
21 great affection and love for Edward and wanted to  
22 act on -- these are all separate things. It was  
23 our judgment that based on these circumstances at  
24 that time for Edward, that it wasn't in his  
25 interest.

1 Q. Why did your agency determine that the  
2 sister should be appointed?

3 A. I don't recall that we made a decision. I  
4 don't think we can make a decision who's guardian.

5 Q. But did you not press the Court to  
6 consider the sister?

7 A. I'm not -- I think we're getting into the  
8 legal realm here. I don't know that we did.

9 Q. And this is the copy with all the  
10 attachments, and I'd like to mark this as  
11 Exhibit 1.

12 MR. STEGMAIER: Hold on. Let's mark it as  
13 plaintiff's next.

14 MS. HARRISON: Okay. Plaintiff's next.

15 (PLF. EXH. 20, Objections, was marked for  
16 identification.)

17 MR. WOODINGTON: Since you just handed him  
18 this, I would just point out that everything is '01  
19 except for maybe the last document. Let me see if  
20 I'm right about that. No, I'm sorry, there's  
21 something else too.

22 MS. HARRISON: This is a 2005 document.  
23 They attached '01 documents to it.

24 MR. WOODINGTON: There is some '05 stuff  
25 at the back. So Tab G through the end. He can

1 take his time and review it if he wants. Let's  
2 just see where we go.

3 BY MS. HARRISON:

4 Q. At the next-to-the-last document is a  
5 letter from Edward's sister, Diane Theriot, to  
6 Mr. Hill.

7 Are you aware of any meetings between  
8 Ms. Theriot and Mr. Hill?

9 A. No, I'm not.

10 Q. Did you ever meet Ms. Theriot?

11 A. No, I didn't, to my memory.

12 Q. Can you tell me why the Agency would be  
13 submitting to the Court the letter opposing  
14 Ms. Mims' appointment that was sent by his sister?

15 A. That might be in the legal realm.  
16 Mr. Hill must have felt it was important for the  
17 Court to be aware of that.

18 Q. And can you tell me why Mr. Hill would  
19 have been sitting at counsel table in the courtroom  
20 with the sister?

21 A. I wasn't there. I have no idea.

22 Q. Was it your intention that he have any  
23 kind of representation of the sister?

24 A. Who?

25 Q. Mr. Hill.

1 A. I'm sorry, I'm not understanding the  
2 question. He would somehow represent the sister?

3 Q. The agency lawyer was not sitting in the  
4 back. The agency lawyer was taking an active role.  
5 And the agency lawyer asked the sister to come up  
6 to counsel table in the courtroom and participate,  
7 sitting beside him. Can you tell me why the agency  
8 lawyer would take this kind of position between  
9 family members?

10 A. I wasn't there and so I don't know why he  
11 did that. It wasn't something that he discussed  
12 with me, if I can say that.

13 Q. So you didn't know the sister would be at  
14 the hearing?

---

15 A. No. Was that the one that was on a  
16 Sunday?

17 Q. So what was your decision about the role  
18 the Agency would take in this emergency proceeding  
19 to get Edward out of Kensington?

20 A. The Agency's position would be to act on  
21 what we thought -- based on the information we  
22 thought that would be in the best interest of  
23 Edward.

24 Q. And what was that?

25 A. To stay in the -- remain in the

1 involuntary status and stay where he was.

2 Q. Now, did you ever discuss this during this  
3 time with Judy Johnson?

4 A. No, not that I recall. No.

5 Q. Did you discuss it with anyone at the  
6 Babcock Center?

7 A. No, not that I recall.

8 Q. Now, a 2006 audit by HHS of your agency  
9 said that the substantiated rate of abuse and  
10 neglect was double the statewide average, I believe  
11 it was in 2003, and was quadruple the statewide  
12 average in 2004. Are you familiar with that audit?

13 A. Well, not only am I familiar with that,  
14 it's stated that we provided them because we did

---

15 the analysis. Those are documents that we gave to  
16 HHS, so we generated them.

17 Q. Now, you were the person who had the sole  
18 decision-making authority about where to place  
19 Edward Mims, were you not?

20 A. The state director is responsible for  
21 making placement decisions, uh-huh.

22 Q. And you made the placement decision in  
23 2001 when he was involuntarily admitted --

24 A. Right.

25 Q. -- to admit him to the Babcock Center, did

1 you not?

2 A. I believe that's correct.

3 Q. In 2003, when your agency determined that  
4 there was double the rate of substantiated abuse  
5 and neglect, did it occur to you that you had any  
6 duty to Edward Mims to remove him from that  
7 facility?

8 A. We have a duty to everybody we serve, and  
9 the duty that I acted on at that time, based on the  
10 '03 data, was in March of '04, I got a commitment  
11 from the Babcock agency, spoke with Ms. Johnson and  
12 the Board, to reduce the capacity of the agency in  
13 residential services by 25 percent over three  
14 years, because I felt that they had too much on  
15 their plate to manage. So that would affect,  
16 obviously, Edward and anybody else in the  
17 organization.

18 Q. So that was in '03?

19 A. No, that was in March '04, based on the  
20 '03 data. Data runs a little bit behind.

21 Q. So you got 25 percent of them out to a  
22 safer place?

23 A. No. We had the agreement to reduce it by  
24 25 percent in March '04, and work began on that.  
25 One of the big pieces of that was shifting the

1 Clusters to management, DDSN management, and then  
2 working towards its closure.

3 I will tell you, because we may get to it  
4 in a moment anyways, is that we continued to track  
5 data. We did reviews of the program's periodic  
6 indicators that Kathi Lacy oversaw, how they were  
7 doing in different program areas.

8 And in the fall of '04, the trend line  
9 still was not good for the agency as a whole on  
10 quality. So what I did was I met with the Board  
11 and said we have to reduce by 50 percent. We have  
12 to go from 634 beds to 317 beds in 18 months, and  
13 that's what we did. And so --

14 Q. So you did actually reduce by 50 percent?

15 A. Yeah, that's right.

16 Q. And you met that mark?

17 A. Yes.

18 Q. Would it surprise you to know that  
19 Dr. Johnson testified in Federal Court that that  
20 mark was not met and in fact you -- your agency was  
21 giving her additional new people?

22 A. At the time I left the agency, the only  
23 people that she got or the agency got was when  
24 there were some vacancies. We didn't have -- if  
25 you went back and looked at, for example, the 500

1 beds that were new development, none of those went  
2 to Babcock.

3 Q. So Dr. Lacy's testimony was not accurate?

4 A. I don't know when she testified, and I  
5 don't know what the question was that she was  
6 asked.

7 MR. WOODINGTON: You mean Dr. Johnson.

8 MS. HARRISON: Dr. Johnson, I'm sorry.

9 THE WITNESS: Let me ask you, when did she  
10 testify to that effect?

11 BY MS. HARRISON:

12 Q. She testified to that in '07, I believe it  
13 was.

14 A. Yeah. No.

15 Q. That's not true?

16 A. It's not true that they got any beds --  
17 that we were funding any new beds with them.

18 Q. Now, you said Dr. Lacy was the person who  
19 was taking this data and analyzing it and giving  
20 you advice?

21 A. On how they're doing and so forth, uh-huh.

22 Q. So when an entity is having problems, it's  
23 her responsibility to go in and gather data and  
24 figure it out and come to you. Is that correct?

25 A. Well, there's much more involved with it

1 than that. It's not Dr. Lacy -- and I know you  
2 don't mean this -- riding around to every program  
3 in the state seeing how they're doing.

4 We depend on the results from licensing.  
5 We depend on the results from the quality  
6 improvement organization data. We depend on  
7 looking at -- we track -- they track incidents of  
8 allegations of abuse, whose seem to be higher,  
9 whose seems to be lower, to make a determination if  
10 there's overreporting or underreporting.

11 Q. And who is doing this tracking?

12 A. The tracking would be in Kathi's office,  
13 with her and her director of quality assurance and  
14 that sort of thing, her staff.

15 Q. And you make your decisions based on what  
16 she tells you?

17 A. I make the decisions based on the  
18 information I have, which may be information that  
19 she provides me. She doesn't tell me what I'm  
20 going to do, no.

21 Q. Now, when this 2006 audit came out --

22 A. Yes.

23 Q. -- it also showed, did it not, that HHS  
24 could not track Medicaid dollars once they were  
25 paid?

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19 she provides me. She doesn't tell me what I'm  
20 going to do, no.

21 Q. Now, when this 2006 audit came out --

22 A. Yes.

23 Q. -- it also showed, did it not, that HHS  
24 could not track Medicaid dollars once they were  
25 paid?

1           A. I think there was a finding in there by  
2 Ms. Schneider to that effect, that they couldn't  
3 track where the money went after the agency got it.

4           What it doesn't, of course, report is that  
5 they didn't find that we were -- what was not  
6 included in what you're commenting on was that they  
7 found no problem with the way we managed our funds.

8           It's almost the same -- let me give you an  
9 example. It's almost the same as like going to a  
10 nursing home, which, say, has a hundred beds, has  
11 some people functioning fairly well, stabilized,  
12 some that might be having increased chronic  
13 problems or acute problems. So the amount of  
14 ~~activity that anybody would be getting would vary~~  
15 over time. They get reimbursed.

16           So what the nursing home would not be able  
17 to tell you is where the money went for any  
18 particular person. They're reimbursed on an  
19 average.

20           And that's what the model for the funding  
21 band system is, that it's an average, based on  
22 people with like needs would get XYZ level of  
23 service or funding.

24           In turn, each year the actual units of  
25 services that are provided are captured, and that's

1 what's billed to Medicaid. So what Medicaid pays  
2 for is only what's provided.

3 Q. I understand your theory. Don't agree  
4 with your theory, but I understand your theory.

5 So is it not true that when the  
6 Legislative Audit Council came in and released  
7 their report in '08, that they also said that HHS  
8 recommended an independent financial audit and we  
9 still believe that -- we can't follow the money,  
10 there needs to be an independent financial audit?

11 A. Well, they said something like that, but  
12 what -- I think the main thing that I would tell  
13 anybody who had any concern about this or that in  
14 ~~the LAC audit was that they state very clearly in~~  
15 that audit that they found no material problems  
16 with DDS funding, no material problems.

17 Now, I think what you're referencing  
18 relates to an '04 recommendation by CMS that there  
19 would be an independent audit of DDSN funding and  
20 the relationship -- the funding relationship with  
21 Medicaid.

22 Mr. Kerr, at that time, was director of  
23 HHS. Mr. Kerr wrote back and said he doesn't think  
24 it's necessary. In 2006, Mr. Kerr later said,  
25 well, why don't we go ahead and do this. Let's do

1 an independent audit.

2 So in fact there was discussion. We can't  
3 decide as an agency, nor can HHS, on an independent  
4 audit. That goes through the state auditor. That  
5 has to be negotiated and worked through and so  
6 forth.

7 That was one of the things that was a  
8 finding in the LAC report, that the response by the  
9 Agency said in this calendar year there would be an  
10 external audit of those findings as completed.

11 Q. Would it surprise you to know that  
12 Mr. Kerr met with the head of the House Ways and  
13 Means and another legislator in the spring of '07  
14 and told him that he could not follow the money  
15 once it's paid to your agency and an audit is  
16 needed?

17 A. Nobody ever told us that, no.

18 Q. Would that surprise you?

19 A. It would because that's not what he was  
20 telling us. I mean, I can tell you I've never  
21 received anything from him that says right away we  
22 need to do this audit, and this or that, to help  
23 explain things. He in fact understands how our  
24 funding is set up.

25 Q. Now, your agency paid him to do a study,

1 didn't you?

2 A. Uh-huh.

3 Q. And tell me how that came to be.

4 A. We asked him to -- after he left his job  
5 as director of Health and Human Services, to look  
6 at our funding mechanisms and stuff like that.  
7 Based on his expertise in funding and knowledge of  
8 our system, we thought it would be a good thing to  
9 do because there were occasional questions about,  
10 well, is this properly set up or not properly set  
11 up, that type of thing.

12 Q. And how much did you pay him to do that?

13 A. I believe it was about \$2,500, something  
14 in that range.

15 Q. And whose idea was that to hire Robbie  
16 Kerr to do that?

17 A. Bill Barfield suggested it. I said that's  
18 a terrific idea. We went ahead and did it.

19 Q. And I only have one of these, but I'm  
20 going to pass this to your lawyers first and then I  
21 want you to take a look at that and tell me if you  
22 can tell me what that is.

23 A. It says it's a picture of Edward Mims.

24 MR. WOODINGTON: I'd like to get that  
25 marked, by the way, as Plaintiff's next.

1 ( (PLF. EXH. 21, Photo with Attached Notes,  
2 was marked for identification.)

3 MS. HARRISON: And I'm going to need the  
4 original back. Can you make copies and get me the  
5 original back?

6 THE WITNESS: So then it's statements by a  
7 bunch of people that said they didn't notice any  
8 marks on his face, referring to this picture?

9 BY MS. HARRISON:

10 Q. I'm asking you what it appears to be.

11 A. Well, it appears to be a picture of Edward  
12 with a mark on his face, or he got into somebody's  
13 makeup, a mark on his face, and then there are  
14 ~~statements-- this one's undated, didn't see any~~

15 marks. This one is the day after, when the picture  
16 was identified as being taken. The next one's not  
17 dated. The next one is the same day that the  
18 pictures were taken, so I'm not sure what that  
19 tells us.

20 Q. Does that appear, maybe, to be statements  
21 taken by people who were working?

22 A. Yeah, that has the appearance of it. And  
23 then there's one statement, says day before, that  
24 he didn't see any red marks on his face.

25 Q. So would you have received this report?

1 A. We normally wouldn't get pictures of  
2 somebody's injury. What we get is a report, a  
3 critical incident, saying somebody had a mark on  
4 his face and it's being reviewed.

5 Q. So you don't get the firsthand reports?

6 MS. HARRISON: I'd like to mark that,  
7 please, as the next exhibit, and I will need the  
8 original back when we take the deposition of  
9 Dr. Johnson.

10 BY MS. HARRISON:

11 Q. So you don't get the original version,  
12 it's rewritten or you get a different version that  
13 you review. Is that true?

14 A. We normally wouldn't get a picture of  
15 somebody. We might occasionally get a picture of  
16 somebody. What we get is a cover sheet saying what  
17 happened and so forth, witnesses and stuff like  
18 that.

19 And we might get some personal statements,  
20 but usually the statements would become more as the  
21 process of investigation goes forward.

22 But this was '01, and I don't believe  
23 Ms. Johnson was there in '01, December '01.

24 MS. HARRISON: If we can mark that as  
25 next, please.

1 BY MS. HARRISON:

2 Q. Are you aware that the individual who beat  
3 Edward with the belt later was moved to Ida Lane  
4 and beat another individual with a belt a few  
5 months later?

6 A. I don't have a memory of that, no. Could  
7 have happened.

8 MR. STEGMAIER: Ms. Harrison, let me ask  
9 you this, in reference to that particular event,  
10 what was the year? What was the approximate year  
11 of that?

12 MS. HARRISON: That would have been '01 or  
13 '02.

14 ~~MR. STEGMAIER: Was that before or after~~  
15 Dr. Johnson came to Babcock?

16 MS. HARRISON: She came sometime in '02.

17 MR. STEGMAIER: Thank you.

18 BY MS. HARRISON:

19 Q. So are you aware of the rape -- alleged  
20 rape of the 78-year-old individual at Ida Lane?

21 A. Yes. Alleged, I think, is the operative  
22 word. There are two ER physicians that examined  
23 them that said no rape occurred.

24 Q. Is that what the ER physicians said?

25 A. Yeah, there are statements to that effect

1 that I've seen that there was nothing that was  
2 consistent with sexual assault.

3 Q. That's what the ER --

4 A. That's what I'm saying, that two -- I'm  
5 saying that two physicians found that no sexual  
6 assault occurred.

7 Q. Did CMS investigate?

8 A. They reviewed that.

9 Q. And what did CMS say?

10 A. The draft CMS said that maybe there was a  
11 problem there. The final CMS report didn't  
12 identify it as an issue, didn't see anything that  
13 the Agency had to do different.

-----14----- They would have -- and I called them on  
15 that one, I believe. They said if we had had a  
16 finding in anything on that regard, we would have  
17 asked for a plan of correction, which we didn't.  
18 And that's your answer, Dr. Butkus.

19 Q. But did you know it was the same  
20 perpetrator that beat Edward and then later beat an  
21 elderly man in another facility? Did anyone ever  
22 tell you that?

23 A. I don't recall if they said it was the  
24 same person.

25 You shifted a verb from "beat" -- from

1 "sexual assault" to "beat," and, you know, in  
2 either case I don't know.

3 Q. Were you aware that before the alleged  
4 sexual assault occurred at Ida Lane that the same  
5 perpetrator beat JJ?

6 MR. STEGMAIER: Hold on. Was this the  
7 same client?

8 MS. HARRISON: This is the elderly  
9 gentleman.

10 MR. STEGMAIER: Is it the same person  
11 we're talking about?

12 MS. HARRISON: The individual beat Edward  
13 Mims, 16-year-old.

14 MR. STEGMAIER: We're not talking about  
15 the perpetrator. We're talking about this --

16 MS. HARRISON: We're talking about the  
17 perpetrator beat Edward Mims.

18 MR. STEGMAIER: Right.

19 MS. HARRISON: The perpetrator was moved  
20 to Ida Lane, and the perpetrator beat J.J. and then  
21 the perpetrator allegedly raped J.J.

22 MR. STEGMAIER: Okay. Thank you.

23 MR. WOODINGTON: J.J. is the 78-year-old?

24 MS. HARRISON: The 78-year-old.

25 MR. STEGMAIER: Thank you.

1 BY MS. HARRISON:

2 Q. Tell me what you know about the  
3 investigation of the beating prior to the alleged  
4 assault.

5 A. That's really going back. I would have  
6 been apprised, of course, of a situation like that,  
7 would be the extent of it, and my involvement would  
8 be to make sure that people were doing what they  
9 needed to do to investigate it thoroughly.

10 Q. Are you aware that Dr. Johnson has  
11 testified that she talked to you about that alleged  
12 rape and that you told her it was not necessary to  
13 report that to the ombudsman?

14 A. I don't recall that. But I would remind  
15 you that when he went to the ER room, that I  
16 believe the police were notified. The police have  
17 an obligation to report to the ombudsman if they  
18 think something's needed.

19 So if she asked me the question, I would  
20 have told her -- which I don't recall her asking  
21 me -- I would have told her it's already been  
22 reported by -- to the authorities it needed to be  
23 reported to.

24 Q. Did you know at that point that the  
25 police -- now, we're talking about J.J. now.

1 A. Uh-huh.

2 Q. So you're saying it was reported to the  
3 police at the hospital?

4 A. I believe it was, and they consulted with  
5 the physicians, and they didn't do anything further  
6 based on what they knew from the medical  
7 perspective.

8 Q. Do you know whether Dr. Johnson had a  
9 police report?

10 A. I don't know if she had a police report.  
11 I know that the police didn't do anything because  
12 they didn't think there was any evidence to do  
13 anything based on the medical report.

----- 14 ----- Q. So Dr. Johnson -- do you deny that she  
15 called you and asked you whether she needed to  
16 report the rape of the 78-year-old?

17 A. I don't recall. I don't recall if she did  
18 or not. My position's always been if you think  
19 something needs to be reported, report it. If it's  
20 already been reported, there's a little bit of  
21 redundancy in there, but I don't know the  
22 circumstance of whether I told her that or not.

23 Q. So you're denying that you told her that  
24 you don't have to report an alleged rape if it's  
25 client on client?

1           A. I didn't say anything like that. I said  
2           to your question, which I believe was something  
3           like did you tell her not to report or did we  
4           discuss it, I said I don't recall discussing it, so  
5           I certainly don't recall if I told her to report or  
6           not.

7           Q. Would you ever tell her not to report an  
8           alleged rape because the perpetrator was a  
9           consumer?

10          A. No.

11          Q. So you would never tell her that?

12          A. No. If she's -- I mean, it depends if she  
13          posed the question, I don't know what to do about  
14          this situation, if it was a consumer or if it was  
15          neglect, what do you think? I'd say, if you're in  
16          doubt, make sure you report it.

17                 If it's something that's already occurred,  
18          the police have looked at it, we've got information  
19          about it, there wasn't any finding of anything  
20          needed to be done, I'd say, well, I think it's  
21          already been reported, but do what you need to do.

22                 I think you had posed, Ms. Harrison, that  
23          same of type of question to me in the past, and  
24          that's always been my response too, that if it's  
25          been reported, it's been reported. If you would

1 like to report it additionally to someone else,  
 2 feel free, but law enforcement has an obligation as  
 3 well to notify the ombudsman, under the old rules.

4 Q. Describe your relationship with  
 5 Dr. Johnson.

6 A. Dr. Johnson is executive director of  
 7 Babcock Center, one of 30-something organizations  
 8 DDSN contracts with.

9 Q. Do you think she does a good job of  
 10 managing that organization?

11 A. I think overall she has done a pretty darn  
 12 good job of pulling an agency out of a downward  
 13 quality situation.

14 ~~There had been some neglect, I think,~~  
 15 under the previous governance, executive director.  
 16 Lots of senior staff left, and I think she ended up  
 17 inheriting an organization that was not in good  
 18 shape.

19 And I think that she did a pretty good job  
 20 all things considered. I'm not saying I won't  
 21 disagree with her at different times, whatever, but  
 22 all things considered, she did a pretty darn good  
 23 job pulling that agency back to a point of  
 24 respectability, back to a point where, for example,  
 25 if you want -- indicators of quality would be that

1 they're at the statewide average now on abuse,  
2 neglect, and exploitation allegations.

3 Q. So the problems -- there were problems  
4 with the former executive director? How did it --

5 A. Not so much him. I think after he left,  
6 what happened was that the Agency kind of descended  
7 for a while, and I think the Board was involved.  
8 You were involved, I believe, is my memory in some  
9 of the executive activities, and a lot of the  
10 senior staff -- a number of the senior staff were  
11 terminated.

12 And you may recall that I called you  
13 around that time to register my concern to you as  
14 ~~the Chair, that if a lot of people were going to be~~  
15 terminated, you need to have a basis for doing it,  
16 otherwise there could be some consequences legally.  
17 They might sue the agency.

18 And so we did set up -- I did schedule a  
19 review, an audit of what went on there. And my  
20 recollection is something like seven people brought  
21 suit of wrongful termination, seven or eight, and  
22 the Agency settled with most of them, found --

23 Q. Did you have anything to do --

24 MR. STEGMAIER: Hold on.

25 BY MS. HARRISON:

1 Q. Go ahead.

2 A. They found for the people that issued the  
3 complaint against the Agency.

4 Q. Who found for the people?

5 A. The insurance companies agreed to pay the  
6 people. They didn't contest it, the termination.

7 Q. What involvement did you have in those  
8 lawsuits?

9 A. None. Those were actions that individual  
10 former employees of Babcock Center took against the  
11 Babcock Board.

12 Q. Were some of these people terminated based  
13 on your agency's audit?

14 A. I don't think so.

15 Q. Ross Robinson, did your agency find that  
16 he had failed to -- he had rehired someone with a  
17 substantiated case of abuse?

18 A. I talked specifically with Steve Jeffcoat  
19 about that, and he said -- he did the audit, as  
20 you're well aware. He didn't think -- although  
21 Ross had made some errors like that, he didn't  
22 think the evidence substantiated or required that  
23 he be terminated. That was what Steve said. He  
24 thought it was over the top.

25 Q. But your audit found that he rehired

1 someone with a substantiated case of abuse?

2 A. Yes, that's right. That's right.

3 Q. And who made the decision to terminate  
4 Ross Robinson?

5 A. I think it was probably the -- by that  
6 time Mr. Christian -- Dr. Christian was the acting  
7 director.

8 Q. It was Judy Johnson that terminated --

9 A. Okay.

10 Q. -- Ross Robinson, wasn't it?

11 A. Maybe it was later on. Okay.

12 Q. Did you give him a recommendation for the  
13 job in Calhoun County?

14 A. No, ma'am.

15 Q. Did you have anything to do with that?

16 A. Absolutely nothing.

17 Q. The review of your agency by Dave Murday,  
18 tell me about that. And I know you're going to --  
19 what's your --

20 A. I can be brief.

21 MR. STEGMAIER: Let's go off the record.

22 (Off-the-record discussion.)

23 BY MS. HARRISON:

24 Q. Dr. Butkus, tell me about the study by  
25 Dave Murday and the School of Public Health.

1 A. Yes. That was done, I think, a couple  
2 years ago now, and it was asked to be done by  
3 Robbie Kerr when Robbie was still director at  
4 Health and Human Services.

5 We got the report. Our take on it was  
6 that -- the simplest way I can say it is that the  
7 methodology was inappropriate as far as trying to  
8 get the answers, I think, they were after. And  
9 then the data collection was off, the data that was  
10 collected to complete the methodological approach.

11 So usually if one of those things or the  
12 other is off, you don't get what you're after.  
13 When both of them are off, like inadequate or  
14 flawed methodology and poor data, then the results  
15 are predictable and it's not of any value.

16 So he went through the report. What I did  
17 was when I got it, I read it, and I spoke with Emma  
18 Forkner, who was probably then director of HHS, and  
19 I said to her, I don't think that there's anything  
20 in this report that we can act on because of these  
21 various inaccuracies.

22 The additional thing I did was I asked an  
23 expert from Syracuse University, that does a lot of  
24 research, knows methodologies and so forth, to do a  
25 review of the methodology and so forth. And his

1 answer was basically the same, is that there's  
2 nothing there that you can utilize.

3 When I asked --

4 Q. What was his name?

5 A. Steve something. It will come to me. It  
6 will come to me in a minute. Steve something.

7 Q. How did you find him?

8 A. Well, Syracuse is -- the Office of the  
9 School of Human Development is a widely known mecca  
10 for research and disability.

11 So we -- Steve Biklen. Steve Biklen, I  
12 believe it was.

13 Q. Pickle?

14 A. Biklen, B-I-K-L-E-N.

15 Q. So Steve Biklen knows more about the South  
16 Carolina Medicaid waiver than the --

17 A. He wasn't asked to look at the South  
18 Carolina Medicaid waiver. He was asked to look at  
19 the report that Dr. Murday and the School of Public  
20 Health did.

21 Now, there were aspects that would relate  
22 to the waiver.

23 Q. So you don't give the USC School of Public  
24 Health study any credibility?

25 A. I think that report is fatally flawed to

1 the point -- let me finish -- to the point where  
2 when I asked Dr. Forkner, Ms. Forkner, I said, I  
3 don't think that there's anything we can take from  
4 this, and she says nor do I. I said, can you  
5 e-mail me a comment to that effect, and she did.

6 And she said, basically, other than for  
7 information purposes, there's nothing that we'll  
8 expect your agency to do based on this report.

9 Q. Tell me about the Carolina Medical Review.  
10 They did a review at the request of Dr. --  
11 Mr. Kerr, and they found that the Babcock Center  
12 ICF/MRS were not meeting federal regulations, did  
13 they not?

14 A. Right.

15 Q. Tell me about that.

16 A. It was completed in early '05, I think.

17 I had mentioned in earlier testimony that  
18 the information that we were tracking told us that  
19 we didn't think Babcock Center could function  
20 effectively at 600 beds.

21 So on December 15th, thereabouts, in '04,  
22 I made the decision, presented it to the Chair of  
23 Babcock, the executive director, the Chair of  
24 Richland-Lexington DSN, and the executive director,  
25 that we were going to reduce the program by 50

1 percent. So the report really confirmed the action  
2 we were taking.

3 There was some issues -- I don't agree  
4 with necessarily everything the way they portrayed  
5 it. They were not experts in ICF/MRs. To my  
6 knowledge, they've never done any reviews of  
7 ICF/MRs. Most of their experience is in ICFs.

8 Some of the same regulatory history  
9 applies to both, but there was -- we already  
10 knew -- in other words, we already knew that. It  
11 didn't add great value to what we needed to do as  
12 an organization with Babcock.

13 Q. So you already knew that Babcock ICF/MRs  
14 were out of compliance with federal regs?

15 A. We knew that we were not satisfied with  
16 the level of quality at Babcock Center as Babcock  
17 Center. Any of the residential programs, we were  
18 not satisfied in.

19 And I had -- on many public occasions with  
20 family members that were frightfully scared that  
21 their son or daughter was going to be someplace  
22 other than Babcock Center, the issue for me is I  
23 can't guarantee that your program, while it's going  
24 to be good this week, is going to be good next  
25 month, three months and so forth. So we have to

1 reduce the size.

2 Q. Now, we're getting a little --

3 A. We did that, and we actually got some  
4 pushback, gentle pushback from some legislators and  
5 also a person in the governor's office, do you  
6 think maybe we ought to negotiate back to 35  
7 percent?

8 And my answer in both instances was I  
9 can't guarantee what's going to happen if the  
10 Agency doesn't get down to a reasonable size that  
11 they can say grace over it and get the results that  
12 they want.

13 Q. So you knew ahead --

14 A. Let me add one more thing to that. Is it  
15 okay? Is that Robbie Kerr's particular interest --  
16 you may or may not be aware of -- is that during  
17 that time, the contract for the Babcock ICF/MRs was  
18 not with DDSN. We did not have a contract with  
19 Babcock for that. That was a contract of some  
20 historic nature that the Department of Health and  
21 Human Services, Mr. Kerr's agency, had with  
22 Babcock.

23 So I would periodically have to call up  
24 Robbie Kerr and say there's an issue of this type  
25 or that type at Babcock. And he actually, after a

1 period of time, said, you know, we would like to  
2 put all these on your contract and we want to get  
3 out of the oversight business.

4 So I think probably some of his interest  
5 in CMR, during the review, was he had not only a  
6 Medicaid State Authority responsibility, he had a  
7 contract for those specific services at specific  
8 locations.

9 Q. So you had no responsibility for the  
10 Babcock Center ICF/MRs?

11 A. No, I didn't say that.

12 Q. Did you have -- what responsibility --

13 A. No. What I added to what I had to say in  
14 -- why we took the decision prior to whatever CMR did  
15 was, I, as a CEO, said this isn't working out.  
16 We're going from 634 down to 317, which any way you  
17 state it says in a pretty dramatic way that the  
18 state director is taking action to correct a  
19 situation that he didn't think is acceptable.

20 So for you to say to me that did I think I  
21 didn't have any responsibility for Babcock is way  
22 off from what the actual facts are.

23 Q. But you found the ICF/MR situation at  
24 Babcock to be unacceptable?

25 A. We found the ICF -- no, I'm broader than

1 that.

2 Q. Did you find the ICF/MR --

3 A. Yes. Yes.

4 Q. Excuse me, did you find the ICF/MR  
5 situation at the Babcock Center to be unacceptable,  
6 yes or no?

7 A. Yes. In December, mid-December '04, that  
8 was my conclusion.

9 And in -- I would add, in April of '04,  
10 that my decision -- with their agreement that  
11 they'd reduce by 25 percent was also a statement  
12 that we're unsatisfied and that we would close the  
13 Clusters, which was 48 ICF/MR beds, was further  
14 ~~evidence about how we felt things were going.~~

15 Q. Now, there had been a previous study your  
16 agency did of the Babcock Center, the limited scope  
17 audit, was there not?

18 A. Right. That's the one that I called you  
19 about, I believe, and said we need to do an audit.

20 Q. And did that audit find problems?

21 A. The audit that we did, headed by Steve  
22 Jeffcoat, found various issues. And in a  
23 subsequent HHS audit, those findings were  
24 reconfirmed.

25 There's a little bit of misunderstanding,

1 I think, from time to time about the audit that  
2 DDSN did of Babcock with Steve leaving. And what  
3 the misunderstanding is is that there was -- there  
4 have been discussions that it didn't deal with  
5 abuse, neglect, the quality issues.

6 You may recall that after I suggested that  
7 we do this audit, that I invited you, Mr. Schmidt,  
8 and I want to say Reggie, the CPA who used to be on  
9 the board, to meet with me and Mr. Jeffcoat in the  
10 executive suite to discuss exactly what we needed  
11 to look at in a review of Babcock, an audit review.

12 And Mr. Jeffcoat -- I don't have it, but  
13 Mr. Jeffcoat has a list of things. They're all  
14 financial, contractual, and so forth. There wasn't  
15 one item on that list that had anything at all to  
16 do with health, safety, welfare, not one item.

17 Q. Thank you for your recollection of that.

18 Now --

19 A. That's what I'm here for.

20 Q. Did you call Mr. Robey, who was on the  
21 Babcock Center Board, when Mr. Lender left and  
22 insist that the agency pay \$120,000 to Mr. Lender?

23 A. No.

24 Let me go back to the beginning of that  
25 story. You called me one day and wanted to meet.

1 I think we met here. And you informed me that  
2 there was a decision by the Board to release  
3 Mr. Lender.

4 And you further told me that you were  
5 concerned that there would be some pushback, people  
6 would be unhappy, and did I have any  
7 recommendations.

8 And I asked you if the situation was  
9 irreconcilable, and you said yes, it was  
10 irreconcilable. And I said you might want to  
11 consider giving him a separation payment of some  
12 type. I said six months or a year.

13 Subsequently, parenthetically, I learned  
14 ~~that the attorney for the Babcock Board,~~  
15 Mr. Savage, had recommended the same thing. So  
16 that was my recommendation.

17 You said that there might be some concern  
18 about that with some board members. So I knew Jim  
19 Robey and I said -- so I called him and said, you  
20 might want to consider this, it's up to you, it's  
21 a -- something that's done in this field and other  
22 businesses to give somebody a separation bonus,  
23 that kind of thing.

24 You remember that Babcock as an agency had  
25 been doing okay. In fact, to the point six months

1 before he stepped down and was terminated, you had  
2 written our agency, as Chair, asking us to please  
3 give Mr. -- allow Mr. Lender to get a raise beyond  
4 the maximum that the Agency allowed in our  
5 contract. And we didn't do that.

6 Q. Let's talk about salaries. You set the  
7 salaries, do you not? Do you not limit the  
8 salaries?

9 A. We do.

10 Q. And determine -- and is it not based on  
11 the funding provided to that -- how do you base the  
12 salaries?

13 A. Budget size.

14 Q. Budget size. Okay.

15 A. So there would be a range of -- might  
16 be -- I don't know what the exact is. Might be  
17 five or six. Like if the budget's under five  
18 million, the pay range is this, if it's between 15  
19 and 20, it would be this.

20 Q. So when you reduced the size of the  
21 Babcock Center, did you reduce the salary?

22 A. It was still in the range of what the  
23 higher-end boards, larger boards would get  
24 budgetwise.

25 Q. Now, after Edward Mims went home, are you

1 aware that he repeatedly asked that the Babcock  
2 Center have nothing to do with his funding or his  
3 services?

4 A. I don't recall anybody ever mentioning  
5 that to me.

6 Q. Can you explain to me why his band payment  
7 continued to be paid to the Babcock Center?

8 A. Are you saying that they were responsible  
9 for his care and he wasn't getting any services  
10 from Babcock?

11 Q. That is true. At one point in time he was  
12 receiving no services from the Babcock Center and  
13 they were getting his band payment.

14 A. What was the length of -- do you recall?

15 Q. At least six months to a year. Can you  
16 tell me why his money was still going to the  
17 Babcock Center?

18 A. Was he getting service coordination?

19 Q. He was getting service coordination from  
20 Rich/Lex.

21 A. Well, that would be one reason right  
22 there, probably the main reason. He would have had  
23 the reduced band because he wouldn't be in an  
24 ICF/MR, and the ICF/MR probably -- they typically  
25 were in the highest band at the time.

1 Q. If you'd speak up, please.

2 A. Okay. He would have got a reduced band  
3 because the ICF/MRS -- you typically got the  
4 highest band on the funding bands.

5 And in the home situation, where he would  
6 just be getting service coordination, that would  
7 tend to be part of the lowest band.

8 Q. Tell me about the money follows the  
9 person.

10 A. The money follows the person was the  
11 design that I promoted very hard in this state. As  
12 we shifted to person-centered services, we wanted  
13 the concept where people have a say in their life,  
14 ~~how they want their life to be and services to be~~  
15 supportive of that direction they want their life  
16 to go.

17 I felt that it was most important to be  
18 able to separate the funding from the service  
19 provider and link it more to the person. So we  
20 created a funding band process that we implemented  
21 over a three-year period to effect that, and that  
22 the person -- the policy that we acted on was that  
23 anybody could pick any qualified provider to do  
24 services that are identified in their plan within  
25 the dollars that are available for the person. So

1 it wasn't --

2 Q. If a person moves --

3 A. Excuse me.

4 So it was a design -- I might add one of  
5 the first in the country -- that set up a way to  
6 separate the money and let the money follow the  
7 person. It's one aspect of a number of different  
8 things that we've done, yes.

9 Q. When you left, was that the policy of the  
10 agency, the money follows the person?

11 A. Sure, oh, yeah, absolutely. I think he,  
12 you know -- I don't remember the exact dates he  
13 left. We began implementing the money follows the  
14 person phase-in, I believe, in the '98, '97, '98

15 time frame, phased in over three years. So I think  
16 at least by 2000 that would have been the policy.

17 The contracts even reflected that with the  
18 boards, said in so many words that they were  
19 required via the contract, if somebody in their  
20 care picked some other provider, that is, the  
21 Board, that they had to make arrangements to  
22 coordinate the person to go to the other service  
23 that they wanted, and the money for that would be  
24 taken out of the band.

25 Q. So the individual has the right to choose

1 for their money to go to another provider?

2 A. Yes. There are limitations and so forth,  
3 but as a general statement, yes.

4 Q. How do you assure that that happens?

5 A. Well, that's kind of one of the things  
6 you'd find out by exception. It's an expectation  
7 it's in the contract and so forth. If somebody  
8 said I wanted to go to this other program, but the  
9 Board wouldn't assist me in doing that, I'm  
10 appealing my situation based on the plan of care's  
11 not being implemented the way me or my family  
12 signed off on.

13 Q. Why did you leave DDSN?

-----14-----A. Why did I leave DDSN? Well, the governor  
15 was restructuring the Commission, some new members,  
16 and I thought it would be a good time to move on.

17 Q. Did the governor ask you to leave?

18 A. I've had no -- the only conversation I  
19 think I've ever had with the governor was in our  
20 first budget presentation where he complimented us  
21 on creating the money follows the person concept,  
22 because I think he felt that it was an analog to  
23 the voucher system for schools. He liked that.

24 Q. Did your Commission ask you to leave?

25 A. They apprised me of what the situation was

1 and where they thought the governor's sense that  
2 things were going, and they said, you know, you may  
3 want to consider this, and so -- but to say you've  
4 got to leave, I never got a statement from them  
5 saying we demand you leave or we're going to fire  
6 you, something like that.

7 Q. Mr. Vaughn, Reverend Vaughn, does your  
8 agency pay any money to his school directly or  
9 indirectly?

10 A. No.

11 Q. What is his financial interest in DDSN?

12 A. Dr. Vaughn's financial interest in DDSN?

13 Q. Uh-huh.

14 ~~A. As with any other commissioner that I know~~  
15 of, he has none.

16 Q. Do children in his school receive waiver  
17 services?

18 A. I don't believe any of them do. I mean,  
19 it could be here and there. A lot of them are from  
20 out of state. It's, as you said, school-age kids,  
21 and most of it's private paid by families.

22 While I was on the Commission and so  
23 forth, that topic never came up, and, to my  
24 knowledge, nobody, say locally from South Carolina  
25 who had a waiver and decided to go there was in his

1 school.

2 But I can tell you again, to my knowledge,  
3 he's not an approved waiver provider, his school.  
4 I believe he's no longer on the Commission anyways.

5 Q. I think that's all I have. Let me look at  
6 my notes for a minute.

7 Have you ever had any disciplinary actions  
8 taken against you at any position you've held?

9 A. No.

10 Q. Have you ever been asked to leave a  
11 position?

12 A. One -- a summer job paving driveways,  
13 somebody's friend of a friend needed a job and I  
14 was let go, but it wasn't a particularly nice job.

15 We paved driveways by hand.

16 Q. Do you know where Paul Peterson is now?

17 A. The last I know he was in Maine.

18 Q. What was he doing there?

19 A. He was working for a local agency. That's  
20 all I know.

21 Q. Do you know how he might be reached? Do  
22 you have a contact number for him?

23 A. No, I don't.

24 Q. Do you know anyone else at the agency who  
25 would have a contact number for him?

1 A. No.

2 Q. Is he working in the developmental  
3 disabilities?

4 A. He was working in the mental health field  
5 the last I knew.

6 Q. And what was that job?

7 A. He was working with adult -- folks with  
8 adult mental health, I think, overseeing emergency  
9 services.

10 Q. What was his job when he was here?

11 A. He was director of quality assurance.

12 Q. Did you have any disagreements -- did he  
13 have any disagreements with you about how the  
14 ~~quality assurance was being handled?~~

15 A. No. No, I think he liked it.

16 Q. So he thought it was just fine the way the  
17 Agency was handling the quality assurance?

18 A. He never told me if he had a problem with  
19 it, and he was at the heart of designing a lot of  
20 the approaches that we have.

21 Q. Why did he leave?

22 A. He wanted to go back to Maine. His wife  
23 wanted to go back to Maine and they just decided to  
24 do it. Their parents -- his parents and her  
25 parents were becoming medically fragile and they

1 wanted to be closer to home.

2 Q. Where does he live in Maine?

3 A. I don't know.

4 Q. You don't have any idea what part of Maine  
5 he's in?

6 A. I don't know where he lives in Maine.

7 Q. You don't know where the agency is where  
8 he works, what town in Maine?

9 A. The last agency that I knew he worked for,  
10 I believe, was in Biddeford, Maine.

11 Q. How do you spell that?

12 A. B-I-D-D-E-F-O-R-D.

13 MS. HARRISON: Ken, who was the other

~~14 person-y'all were looking for? Will asked me~~  
15 for --

16 MR. WOODINGTON: Oh, I don't know, to be  
17 honest with you. I honestly don't know.

18 BY MS. HARRISON:

19 Q. How would you -- what kind of grade would  
20 you give the agency now?

21 A. I don't know what they've done since I  
22 left at the end of February; but, overall, I think  
23 it's a very, very good agency, managing a system  
24 that many states envy.

25 I think the leadership within the

1 agency -- any number of us folks would lead that  
2 agency or many other state public human service  
3 agencies in South Carolina.

4 I think we're way ahead by any benchmark  
5 that folks who want to look at what's going on in  
6 the Southeast. Nationally I think we've been  
7 leaders in quality assurance, person-centered  
8 services, and have been asked to present many times  
9 around the country on different things of that  
10 nature.

11 Q. One thing about the LAC audit, it said  
12 that 20 some odd million was used to purchase real  
13 estate and that that wasn't authorized by the

14 Commission.

15 A. I don't think that that's accurate.

16 Q. Did the commissioners -- what document  
17 would I see where they authorized the purchase of  
18 that real estate?

19 A. It's called the spending plan.

20 Q. Did it have in there 20 million dollars  
21 for purchase of real estate?

22 A. Each year there will be a spending plan,  
23 capital plan, and the amount will be identified in  
24 there that we would spend on certain properties.  
25 And then when the actual purchase came up, the date

1 and so forth, then that would be -- as an item  
2 would be on the Commission and generally would be  
3 reapproved typically.

4 Q. The purchase of the real estate at the  
5 Emerald Center, now the Burton Center and the  
6 Superfund site, was that discussed by the  
7 Commission?

8 A. Yeah. All of the purchases and so forth  
9 typically would be discussed by the Commission.

10 There's one thing related to that --  
11 there's some, you know, just kind of noise about  
12 how can we be spending this money on real estate --  
13 is that we put up 500 new beds residentially.

-----14-----Those people had to go someplace during the  
15 daytime.

16 And the additional development thing that  
17 we did, that people are forgetting because we did  
18 it fairly quickly, is 1500 people went on the home  
19 and community based waiver. All those folks had to  
20 go someplace during the day.

21 When the van showed up, congratulations,  
22 you're in the program. The van showed up at their  
23 home, then they'd have to go someplace. 82 percent  
24 of everybody that DDSN serves lives at home  
25 compared to nationally it's only 60 percent. So we

1 have to have places for people to go.

2 Q. Why do those people not have the choice of  
3 adult companion services?

4 A. Well, it's pretty straightforward. If  
5 you're in the waiver, that's not a service you can  
6 be in. It's very much if you're in the waiver, you  
7 cannot be in an ICF/MR. They're mutually  
8 exclusive.

9 Q. So why can't these people, instead of  
10 going to workshops, choose to have adult companion  
11 services?

12 A. Well, they could, but if there's no way to  
13 pay for it, then it's not available to them.

14 ~~Did you just shift from adult health,~~  
15 adult companion?

16 Q. I'm talking about adult companion  
17 services. You think that we've got these 500 new  
18 people, therefore we had to have 500 new slots in  
19 the workshop. Why --

20 A. Those people are in residential programs.  
21 Why do we have 500 beds? Because we had 2,000  
22 people on the waiting list for residential  
23 services.

24 Q. So if you've got 350 new people in  
25 residences, in the new residences, you're saying

1 you had to buy this real estate because you had to  
2 have a place for them to go during the day?

3 A. No. I'm saying two things. We had that  
4 development, those people had to be in programs.  
5 And, additionally, you had 1500 people -- slots  
6 available for people in the home and community  
7 based waiver, and the vast majority of those would  
8 have gone into a day program experience of some  
9 type.

10 Q. Why did you not give them the option of  
11 choosing to have adult companion services instead?

12 A. Just like we didn't give them the option  
13 of an ICF/MR. If you're in one, you can't be in  
14 ~~the other.~~

15 Q. So you're saying if you're in the waiver,  
16 you cannot get adult companion services?

17 A. That's exactly what I'm saying.

18 MS. HARRISON: That's all I have.

19 MR. WOODINGTON: Bear with me just one  
20 second.

21 MR. STEGMAIER: I'm asking questions now.

22 MR. WOODINGTON: You want to ask a  
23 question?

24 MR. STEGMAIER: Yeah. I only have a  
25 couple.

1 EXAMINATION

2 BY MR. STEGMAIER:

3 Q. Dr. Butkus, thank you for being here  
4 today.

5 A. Sure.

6 Q. You were asked a series of questions by  
7 Ms. Harrison regarding the purported injury to  
8 Mr. Mims involving his penis, and there was some  
9 questions regarding protocols with regard to  
10 involvement of law enforcement. Do you remember  
11 that line of questioning?

12 A. Yes.

13 Q. The question I've got for you is this:

-----  
14 -----Based on what you found out contemporaneous with  
15 this purported event, as well as thereafter, have  
16 you ever arrived at any conclusion that anything  
17 criminal or illegal or anything untoward occurred  
18 to Mr. Mims at Babcock with regard to this  
19 purported injury?

20 A. My conclusion was it's an unexplained  
21 injury. I base that on the medical assessment of  
22 the physician with decades of experience dealing  
23 with people with severe disabilities.

24 Q. And that's Dr. Graeme Johnson?

25 A. Yes, it is, Dr. Graeme Johnson.

1 MR. STEGMAIER: Thank you, sir.

2 EXAMINATION

3 BY MR. WOODINGTON:

4 Q. I'd like to go back to that last line of  
5 questions, being adult companion services -- adult  
6 companion services. You testified --

7 A. There's a difference --

8 Q. I'm trying to figure out what's in the  
9 waiver and what's not in the waiver that has the  
10 word "adult" in it.

11 A. That's where I was mishearing her. I  
12 might have been mishearing her. Adult day health  
13 is not in the waiver. Now, in the waiver would be  
14 ~~personal care services, things of that nature, that~~  
15 would be allowed.

16 But I think that Edward Mims now is  
17 getting personal care services or had been --  
18 sorry -- had been getting personal care services up  
19 to eight hours a day, something like that. So that  
20 would be -- in that nomenclature, companion  
21 services is more on that personal care services  
22 idea.

23 MR. STEGMAIER: What falls under the  
24 gambit of adult day health, then?

25 THE WITNESS: Well, that would be in a

1 site that's been licensed and so forth, where you  
2 would get -- a regimen of the services would be  
3 more health related, fundamental life-skill  
4 related, assistance in various things related as  
5 opposed to -- it would be fairly dependent.

6 Most people would be -- these would be  
7 individuals. Primarily they'd be living at home,  
8 for example, to the extent that there's many of  
9 them in that kind of service. I don't remember the  
10 exact numbers.

11 MR. STEGMAIER: And that's what's not  
12 contemplated under the waiver. Is that correct?

13 THE WITNESS: Day health is not a  
14 ~~reimbursable service under the waiver in my memory~~  
15 unless something's change.

16 BY MR. WOODINGTON:

17 Q. Well, let me ask it this way: If the  
18 terminology has gotten mixed up, as far as you were  
19 aware, when you were director, was DDSN compliant  
20 with the waiver document and the services that were  
21 or were not in the waiver that were authorized?

22 A. You might be guilty of what I've been  
23 accused of, mumbling.

24 Q. I'm familiar with the phenomenon.

25 If there's -- during your tenure, you were

1 familiar with the waiver document, correct?

2 A. Yes.

3 Q. And if the waiver document said one thing  
4 was in the waiver and another thing -- or by  
5 exclusion said another thing was not in the  
6 waiver --

7 A. Right.

8 Q. -- were you consistent with what was and  
9 was not in the waiver document?

10 A. Yes.

11 Q. That's what I'm trying to find out.

12 A. Okay.

13 MR. WOODINGTON: That's all I have.

~~14 ----- (The deposition concluded at 1:00 p.m.) -----~~

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SIGNATURE OF DEPONENT

I, the undersigned, STAN BUTKUS, have read the foregoing deposition consisting of 131 pages which was reported by Gina M. Smith, Notary Public in and for the State of South Carolina on June 10, 2009.

I find the transcript of this deposition to be a true and accurate transcript according to my testimony on that date with the exception of the corrections as listed on the attached correction sheet, which was filled in by me.

\_\_\_\_\_  
STAN BUTKUS

\_\_\_\_\_, 2009

1	ERRATA PAGE		
2	PAGE	LINE	CHANGE AND/OR CORRECTION
3	(AND EXPLANATION)		
4	_____	_____	_____
5	_____	_____	_____
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18  
 19 THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA  
 20 PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF  
 21 DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA  
 22 PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO  
 23 ATTACH THIS PAGE AND MY VERIFICATION TO THE  
 24 ORIGINAL TRANSCRIPT.

25 DATED: \_\_\_\_\_  
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 STAN BUTKUS

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CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of June, 2009, at Columbia, Richland County, South Carolina.

*Gina M. Smith*  
\_\_\_\_\_  
Gina M. Smith  
RPR, CSR, Notary Public,  
State of South Carolina  
at Large.  
My Commission expires  
July 23, 2013.

I N D E X

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

PROBATE COURT

CASE NO.: 2003-GC40-00172

In the Matter of )  
Guardianship of: )  
 )  
EDWARD J. MIMS )

OBJECTIONS

2005

TO: The Honorable Jacqueline D. Belton, Associate Judge, Probate Court  
Ms. Patricia L. Harrison, Esq, Attorney for Ms Margaret Mims  
Mr. Edgar S. Kneece, Esq, Guardian Ad Litem for Edward J. Mims

6-10-09  
EXHIBIT NO: 20  
G. Smith

The Objections of the South Carolina Department of Disabilities and Special Needs (SCDDSN) herein are filed with this Court pursuant to a Notice of Hearing, dated September 8, 2005. This matter began many years ago. Edward has been receiving SCDDSN services since October 1993. On October 5, 1999, Ms. Mims (the Petitioner herein) placed Edward with the Babcock Center because she was unable to care for him (Tab A) Subsequently, on/about April 3, 2001, the Petitioner requested Edward's discharge (Tab B). A Petition for Judicial Admission was filed with this Court (Tab C) and the required psychological report (S.C Code Ann §44-20-450 (C)) was filed as ordered by this Court (Tab D). A hearing was held on June 26, 2001. At that hearing it was agreed upon by SCDDSN, Edward's attorney, his guardian ad litem, and by the Petitioner with assistance of counsel, W.D. Morris, that Edward would be judicially admitted to SCDDSN. The Court's Order set out parameters for the Petitioner if she wanted to continue Edward's home visits (Tab E) The guardian ad litem testified at the hearing that the Petitioner does not drive, that she has a very modest home and has limited income due to her house cleaning jobs (see guardian ad litem's report, copy should be with Court's case file).

Later, on November 13, 2001, the Petitioner wrote to the State Attorney General asking that her son, Edward, be returned to her. SCDDSN responded to her inquiry on December 27, 20001 (Tab F)

On Friday, June 10, 2005, at about 4 00 p m. the Petitioner, with the assistance of her attorney, Ms Patricia Harrison, attempted to discharge Edward from Babcock Center, Inc., a service provider of SCDDSN. At that time, Ms. Harrison was informed of the Judicial Admission Order; yet, in violation of the Order, Ms. Harrison called the police and The Honorable Judge Amy McCulloch creating a crisis, emphasis added, late that Friday afternoon at Edward's residence at Babcock Center, Inc (Tab G). An informal meeting was held in Judge McCulloch's office the following Sunday afternoon, June 12th. It was learned at that time that the Petitioner had initiated a Petition for Guardianship of her son. Neither SCDDSN nor Edward's sister, Ms. Diane Theriot were notified of this action. Upon information, the appointed guardian ad litem, Edgar S. Kneece, made no attempt to get in touch with Ms. Theriot, nor did the Court's appointed Visitor, Ms Mary Katherine B. Miller. It is unclear whether Edward has court appointed counsel; no one has appeared in this capacity at any hearing in this matter attended by the undersigned. After much discussion, it was decided that SCDDSN would not issue a pick-up order (S C. Code Ann. §44-20-500) and that a Medicaid Waiver application would be expeditiously processed

A hearing was held on June 24, 2005, before Judge McCulloch on the matter of continuation of temporary guardianship for Edward. Ms Diane Theriot, Edward's sister, was present at this hearing and the undersigned presented her letter of June 15, 2005, to Judge McCulloch (Tab H) Dr Kathi Lacy, Associate State Director-Policy, SCDDSN, was also present and presented a recording of events since the June 12, 2005 meeting (Tab I) It should be

noted that SCDDSN on June 21, 2005, obtained eligibility for Edward in the Medicaid Home and Community Based Waiver program, a funding for services for persons residing in the community. Testimony was taken from several individuals including Dr. Lacy and the Petitioner. As recalled by the undersigned, the Court ordered that both SCDDSN and Ms. Theriot would receive notice of any further hearings in this matter. A hearing has now been scheduled for September 29, 2005, before The Honorable Jacqueline D. Belton.

**OBJECTIONS:**

1. Edward Mims is not represented by an attorney as required by S.C. Code Ann. §62-5-303 (b). Mr. Edgar Kneece has been appointed as guardian ad litem and has limited his activities to this appointment.
2. Ms. Diane Theriot was not notified of this action as required by S.C. Code Ann. §62-5-309 (3). The undersigned was informed by Judge McCulloch that there was no legal duty to inform Ms. Theriot. Respectfully, Ms. Theriot falls into category 3 as Edward's sister. She was well known by the Petitioner, her mother. Since the Petitioner cannot notify herself, the statute requires that a close relative be notified. As a matter of fairness, the Court should make itself available to the information and requests from Ms. Theriot about the guardianship of her brother.
3. Ms. Diane Theriot has expressed serious problems in obtaining counsel so that she may be heard by the Court on these issues. She informed the undersigned that she has contacted four or five attorneys without success. This Court should inquire into whether Edward's trust account can be tapped to cover her attorney expenses. It is submitted that the Petitioner and Ms. Theriot may request that this Court authorize the

trust to pay for their attorney fees. Both Ms Theriot and Ms. Mims have limited financial means.

4. This Court heard the matter concerning Judicial Admission and issued its Order on July 3, 2001. At that time, a key element for determining judicial admission was the Petitioner's inability to care for her son at her home. This issue goes not only to her financial capacity to have Edward living with her, but also to her capacity to manage his affairs and his estate. The Petitioner testified before Judge McCulloch that she knew Edward had a trust but she did not know how much was in the trust, and more importantly, where the trust was located. Soon after Edward's judicial admission, she wrote the Attorney General requesting his discharge. Additionally, after taking Edward home on June 10, 2005, she requested alternate residential placement with Mentor, Inc. These actions by the Petitioner raise a serious concern as to her capacity to care for or be a guardian for her son.

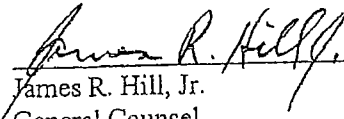
5. The Court is not limited to the Petitioner for appointment of guardian. S.C. Code Ann. §62-5-311 allows the Court to consider any competent person, emphasis added. The priority set out in this statute places the Petitioner before her daughter, Ms. Theriot, but this priority is clearly subject to the discretion of the Court. The Petitioner's actions regarding her apparent lack of understanding of the basis and significance of the prior Judicial Admission Order, her demand for discharge without appropriate and pre-arranged services, her age and poor health, her lack of knowledge of Edward's trust, it is submitted, make her a poor candidate for guardian, especially since Ms Theriot having none of these problems stands ready, willing and able to assume this fiduciary duty.

6. There is ample evidence that Edward is an incapacitated person, but the question of his need, emphasis added, has not been addressed. There has been no showing that his mother or his sister are unavailable to provide consent for health care under the Adult Health Care Consent Act, S.C. Code Ann. §44-66-10. Guardianship is not needed. Guardianship in this case, it is submitted, was a way to move Edward out of Babcock Center, Inc., even in view of the Judicial Admission. But, as a Medicaid recipient, there are other ways to move Edward without resorting to guardianship. S.C. Code Ann. §62-5-304 allows the appointment of a guardian when the Court is satisfied that the appointment is necessary or desirable as a means of providing continuing care and supervision. There has been no showing that Edward has gone lacking for care and supervision by not having a guardian. Very few people with Edward's condition have a guardian. The Visitor's report failed to address any need of Edward requiring a guardian. It is not enough to want to be the guardian of an incapacitated person; there must also be a direct, realistic need for care and supervision that would otherwise be lacking without the appointment of a guardian.

7. Lastly, the Court should consider and address the possibility of conflict, in that, this Court has already ruled, in essence, on the Petitioner's capacity to care for Edward in the Court's Order of July 3, 2001. This Petition was initially heard by Judge McCulloch and no reason has been presented why the Petition has been switched to this Court. Respectfully, the Court may want to consider recusal due to actual or perceived conflict with the prior Court's Order of July 3, 2001.

WHEREFORE, SCDDSN has submitted its objections to this action, which are in essence, serious concerns that should be addressed by this Court. More specifically, SCDDSN questions the need for a guardian for Edward, the Petitioner's capacity to function as guardian, and suggests that if guardianship is needed, the Court consider the appointment of Edward's sister, Ms. Diane Theriot. SCDDSN suggests that this Court look beyond the desires of the Petitioner and examine what is in Edward's best interest.

Respectfully submitted,



James R. Hill, Jr.  
General Counsel  
South Carolina Department of Disabilities  
and Special Needs  
P.O. Box 4706  
Columbia, SC 29240  
Phone: (803) 898-9683

September 28, 2005  
Columbia, South Carolina

Encls.

STATE OF SOUTH CAROLINA)  
)  
COUNTY OF RICHLAND)

IN THE PROBATE COURT

James G. Christian, Ed.D. )  
Director, Midlands Center, )  
SC Dept. of Disabilities and )  
Special Needs )  
PETITIONER, )  
)  
)  
)  
IN THE MATTER OF: )  
)  
EDWARD JAMES MIMS )  
(An alleged mentally retarded )  
person )  
\_\_\_\_\_ )

APPOINTMENT OF GUARDIAN  
AD LITEM

01 APR 23 PM 12:01  
AMERICAN CIVIL  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

FILED

A Petition having been filed in this Court praying for  
~~the judicial admission of EDWARD JAMES MIMS,~~ who is alleged to  
be mentally retarded and is appealing to the Court that a  
guardian ad litem should be appointed to protect the interest  
of the said EDWARD JAMES MIMS in this matter.

IT IS ORDERED that Marsha Leigh Flynn, Esquire who is  
capable of understanding the rights of the alleged mentally  
retarded person, and who has no interest in conflict with or  
adverse to the rights of this individual, be and he/she hereby  
is, appointed guardian ad litem of EDWARD JAMES MIMS for the  
purpose of appearing for and acting on behalf of the said

Mims 1497

EDWARD JAMES MIMS in all the proceedings herein.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge of Probate Court

Dated this 23 day of  
April, 2001

CONSENT TO APPOINTMENT

I do hereby consent to act as guardian ad litem for  
EDWARD JAMES MIMS for the purposes of the entitled action.

\_\_\_\_\_  
Signature

Columbia, South Carolina

April \_\_\_\_\_, 2001

Mims 1498

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND)

2001MI592  
IN THE PROBATE COURT

01 APR 23 PM 12:00  
ANY A. SULLIVAN  
PROBATE JUDGE  
RICHLAND COUNTY, SC

FILED

James G. Christian, Ed.D. )  
Director, Midlands Center, )  
SC Dept. of Disabilities and )  
Special Needs )  
PETITIONER) )

NOTICE OF PETITION FOR  
JUDICIAL ADMISSION AND  
NOTICE OF RIGHT TO COUNSEL

IN THE MATTER OF: )  
 )  
EDWARD JAMES MIMS )  
(An alleged mentally retarded )  
person) )  
\_\_\_\_\_ )

TO: Margaret Mims, 3301 Rosewood Drive, Columbia, SC 29205  
Diane Theriot, 2231 Atascadero Drive, Columbia, SC 29206  
Edward James Mims, Babcock Center, Inc., The Clusters,  
201 Duffie Drive Columbia, SC 29072  
Mr. Risley Linder, Sr., Babcock Center, P.O. Box 3817,  
Columbia, SC 29230  
Dr. James G. Christian, Midlands Center, 8301 Farrow Road,  
Columbia, SC 29203

YOUR ARE HEREBY NOTICED that on the 16th day of April, 2001, a Petition was duly filed in the Probate Court for Richland County, South Carolina, alleging that **EDWARD JAMES MIMS** is mentally retarded and in need of services from the South Carolina Department of Disabilities and Special Needs and requiring admission to a facility or service program for the mentally regarded, pursuant to the provisions of S.C. Code Ann. §44-20-450 (Supp. 2000) as amended.

YOU ARE FURTHER NOTIFIED, that pursuant to the provisions of S.C. Code Ann. § 44-20-450 (Supp. 2000), as amended, that the above-named person alleged to be mentally retarded has the right to be represented by an attorney at law in this case and proceedings, and that an opportunity is hereby given and afforded for you, or any one of you, to select, provide and employ an attorney at law to represent said person in this matter and proceedings for his judicial admission to a facility for the mentally retarded.

Mims 1499

YOU ARE FURTHER NOTIFIED, that in the event an attorney at law to represent said person is not selected, employed and provided by either him, or any of you, within three (3) days after the Petition is filed, exclusive of Saturdays, Sundays and legal holidays, or if this Probate Court is not notified thereof with such time, then this Court shall appoint an attorney at law to represent him.

Dated this 23 day  
April, 2001

*Jacqueline D. Belton*  
Judge of Probate Court, Assoc.

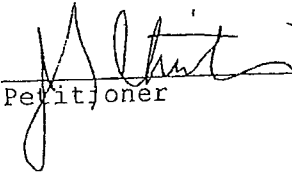
Mims 1500

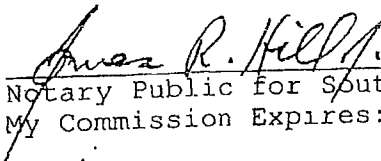
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

VERIFICATION

Personally appeared before me James G. Christian, Ed.D., who being duly sworn says that he is the Petitioner above named; that he has read the foregoing Petition, the allegations of which are true of his own knowledge, except those stated on information and belief, as to which deponent (Petitioner) believes them to be true.

Sworn to before me this 16th  
day of April, 2001

  
\_\_\_\_\_  
Petitioner

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: Sept. 18, 2010

STATE OF SOUTH CAROLINA)  
)  
COUNTY OF \_\_\_\_\_)

IN THE PROBATE COURT

James G. Christian, Ed.D. )  
Director, Midlands Center, )  
SC Dept. of Disabilities and )  
Special Needs )  
PETITIONER, )

APPOINTMENT OF COUNSEL

01 APR 23 PM 2:01  
AMY K. JOHNSON  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

FILED

IN THE MATTER OF: )  
)  
EDWARD JAMES MIMS )  
(An alleged mentally retarded )  
person )  
\_\_\_\_\_ )

An opportunity to be represented by Counsel in the above-captioned matter shall be afforded to EDWARD JAMES MIMS, a person alleged to be mentally retarded. It is made apparent to this Court, as of this date, that neither the said EDWARD JAMES MIMS nor others have engaged and provided Counsel for him, to represent him herein.

NOW, THEREFORE, pursuant to S.C. Code Ann. §44-20-450 (Supp. 2000), IT IS ORDERED that David Belding, attorney and member of the South Carolina Bar Association, is hereby appointed as Counsel of and for EDWARD JAMES MIMS, a person alleged to be mentally retarded, and is hereby charged with all duties, responsibilities, powers and privileges conferred and made incumbent upon an Attorney at Law in such cases.

AND IT IS SO ORDERED.

  
Judge of Probate Court

Dated 23 day of  
April, 2001

COPIES OF THE FOREGOING WERE THIS DATE FORWARDED TO:

Mims 1502

BABCOCK CENTER, INC.  
LEXINGTON CLUSTERS ICF/MR  
SOCIAL HISTORY

I. IDENTIFYING INFORMATION:

NAME: Edward James Mims  
DOB: [REDACTED]  
DOA: October 5, 1999  
SS #: [REDACTED]  
MEDICAID #: [REDACTED]  
MEDICARE #: Not Applicable  
PRIMARY CONTACT: Mrs. Margaret Mims (Mother)  
3301 Rosewood Drive  
Columbia, South Carolina 29205  
Phone: (803) 252-9962 (Home)

II. CURRENT SITUATION:

Edward James Mims is a twenty-seven year old Caucasian male, who was admitted to Babcock Center's, Lexington Clusters ICF/MR (House D) in Lexington, South Carolina on October 5, 1999. Prior to this Edward resided at home with his mother, Mrs. Margaret Mims of Columbia, South Carolina. Mrs. Mims is in poor health, therefore making it difficult to care for Edward who has his own medical concerns. He also wandered and did not sleep at night. Edward is currently functioning within the profound range of mental retardation. He also carries a diagnosis of Cerebral Palsy, seizures, hypertension, Esophagitis/Erosion disease. Edward is non-verbal, but communicates by using sounds, gestures and body movements. He is independently ambulatory. However, Edward uses a wheelchair for outings, because he tires easily and has difficulty keeping pace.

III. FAMILY BACKGROUND:

Edward James Mims is the youngest child born to Roy Edward Mims and Margaret Lee Gunter Mims. Mrs. Mims left Mr. Mims when Edward was one and a half years old as Mr. Mims was abusive towards her. Mr. and Mrs. Mims were divorced in 1975.

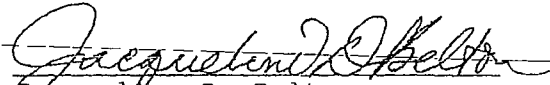
TAB A  
Mims 1503

NOW THEREFORE, IT IS ORDERED that:

1. Because of his mental retardation and special medical needs, Edward James Mims is judicially admitted to the South Carolina Department of Disabilities and Special Needs.
2. To the extent feasible and in keeping with his treatment needs, Edward James Mims shall be allowed to have weekend visits with his mother, provided, that she maintains her home in a safe condition for her son's visitation.
3. Babcock Center and/or SCDDSN staff may visit in Ms. Margaret Mims home prior to her son's visit to advise and/or assist Ms. Mims in making her home safe for her son's visit. Ms. Mims will cooperate with such visits.
4. The parties to this matter have voluntarily agreed to this Order and placed their signatures below indicating their agreement.

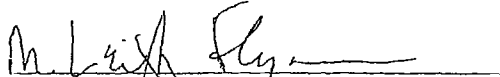
AND IT IS SO ORDERED.

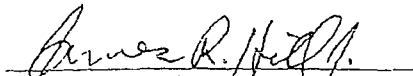
Signed this 3 day  
of July, 2001  
Columbia, South Carolina


  
Jacqueline D. Belton  
Associate Judge of Probate  
Richland County

We Consent:

  
David E. Belding

  
M. Leigh Flynn

  
James R. Hill, Jr.

  
W.D. Morris

RECEIVED

DPSN

NOV 16 2001 11-13-2001

Referred to W. Teed

Answered \_\_\_\_\_

Dear Mr. Condon,

What happen to  
Edward James Mims now,  
Edward & my right  
have been taking away  
from Edward and I.

I want my son,  
back home with me.  
please Mr. Condon,  
let my son come back  
home.

I'm afraid what going  
to happen to my son at  
Balcock Center.

Edward, Can't talk  
but I know my son

TAB F

Mims 1505

He know who cares about  
him and who don't.

Went he comes home  
Edward doesn't want to  
go back with them to  
Labcock Center.

Edward know that I love  
him and that I will take  
care of him.

Edward is some one  
special to me.

because Edward gave  
me strength to keep going!

I always let Edward  
know that Jesus made  
him, some one special  
and that he loves him.

I'm able to take care of  
Edward at home

went Edward was here

at home,

Edward got to Doctor went  
he was sick, and needed to  
go.

Because I, took Edward to  
Doctor in a cab.

Also Edward and I went  
to grocery store.

His, I send him new  
clothes and sock, always come  
home with some one else  
clothes. one sock of one kind  
and one of other kind, they  
are not his, just send 6  
pairs of sock. Don't know  
what happen to them.

O' yes, I do furnish  
his clothes to, that why  
I don't understand why he  
can't come home with

Some one else clother on  
instead of his clothes,

I Don't understand  
why he can't come back  
home.

He didn't look like he  
does when at home.

Most of time he hasn't  
been shaved and they don't  
keep his hair cut.

I kept his hair cut and shaved.

He looks like he a throw  
away went he comes home.

they have a hard time getting  
him to go back with them.

I have to make Edward go  
and that hurts like hell.

also his clothes stay all tumbled  
up. the place could be clean.

So please help me to get  
my son home. Thank. Margaret Mims



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

December 6, 2001

Ms. Margaret Mims  
3301 Rosewood Drive  
Columbia, S.C. 29205

Dear Ms. Mims,

Your letter to Attorney General Condon regarding your son, Edward James Mims, who is a client at the Babcock Center, has been referred to me for response.

The Attorney General's Office does not have any authority over the Babcock Center, or the procedures used in determining who receives services from Babcock or the Department of Disabilities and Special Needs. I can understand your concern for his well-being, however, and will forward your letter to the Department for their review.

I hope this will be helpful.

Sincerely,

A handwritten signature in cursive script that reads "Lee Teed".

Lee Teed  
Director, Constituent Services

cc: Department of Disabilities and Special Needs'

h:\corresp\Dec01\Mims

Stanley J. Butkus, Ph.D.  
Director  
T. W. Barfield  
Deputy State Director  
Administration  
Brent H. Koyle, Ph.D.  
Deputy State Director  
Services and Supports



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3440 Harden Street Ext (29203)  
PO Box 4706, Columbia, South Carolina 29240  
V/TTY: 803/898-9600, FAX: 803/898-9653  
Toll Free: 888/DSN-INFO  
Home Page: [www.state.sc.us/ddsn/](http://www.state.sc.us/ddsn/)

December 27, 2001

Ms. Margaret Mims  
3301 Rosewood Drive  
Columbia, SC 29205

Dear Ms. Mims:

Ms. Lee Teed of the Attorney General's office has forwarded your letter of November 13, 2001 to the Department of Disabilities and Special Needs. In order to assist you, I read your letter and then reviewed information regarding your son's current situation.

I understand that Edward has profound mental retardation, cerebral palsy and several other severe and complex medical conditions. He is medically fragile, takes a number of medications and requires close monitoring and assistance. At this time Edward lives in Lexington in a community residence operated by Babcock Center. Whether he should continue to live there or not was reviewed in June of this year by you, your attorney, a Guardian ad Litem assigned to help Edward, an attorney assigned to help Edward and several professional staff from DDSN. All parties agreed that Edward's significant special needs and complex medical conditions required more staffing and supervision than any one person could possibly provide. No one person can do it all to care for Edward.

It is obvious Ms. Mims, that you love your son very much and took care of him in your home for many years. We understand that you wish it were possible for him to live at home again. All of us agree that one single person is not enough people to provide care for Edward. It is impossible because of his conditions and the fact that several different people have to be awake and around him all the time. This is hard to accept because you love Edward so much and miss his company. We understand and appreciate a mother's love for her son.

COASTAL REGION  
Field Office - Phone 843/832-5502  
9995 Jamison Rd., Summerville, SC 29485  
Coastal Center - Phone 843/873-5750

MIDLANDS REGION  
Field Office - Phone 803/935-7412  
8301 Farrow Road, Columbia, SC 29203  
Midlands Center - Phone 803/935-7500

PEE DEE REGION  
Field Office - Phone 843/664-2655  
PO Box 3209, Florence, SC 29502-3209  
Pee Dee Center - Phone 843/664-2600  
Santee Center - Phone 843/332-4104

PIEDMONT REGION  
Field Office - Phone 864/938-3101  
PO Box 239, Clinton, SC 29325  
Whitton Center - Phone 864/833-2733

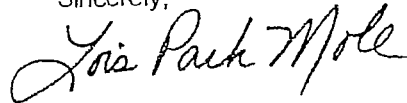
Mims 1510

Ms. Margaret Mims  
December 27, 2001  
Page 2

While Edward needs to stay at Babcock, we can help with your concerns regarding the clothes he is dressed in, his haircut, how his face is shaved and his overall appearance. By copy of this letter I am asking Ms. Tonya Flake, Consumer Advocate of Babcock Center to follow up with you personally to review your concerns and work with you and the residential staff to resolve them. You should hear from her soon.

Again, Ms. Mims, we know you love Edward very much and want the best for him. We want what's best for him too, and to work with you.

Sincerely,



Lois Park Mole  
Director  
Government and Community Relations

LPM/vet

cc: Ms. Tonya Flake, Babcock Center  
Ms. Lee Teed, Office of the Attorney General

Mims 1511

Hill, Jim

From: Hill, Jim  
Sent: Friday, June 10, 2005 6:30 PM  
To: 'Patricia L. Harrison'; Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed  
Cc: 'sbutkus@ddsn.sc.gov'; 'dgoodwin@babcockcenter.org'  
Subject: RE: Edward Mims

Patricia, I called your office this afternoon, but missed you. I believe you were in a meeting and I left a message with your assistant.

I am in receipt of your email below concerning Edward. Please note that Edward was judicially admitted to the Department on July 3, 2001. Part of the Court Order for his admission indicated that he may visit his mother on weekends provided that she provide a safe environment and access for inspections of her home to ensure that it was safe for Edward. Your email indicates that Edward will not be returned to Kensington after visitation this coming weekend. This directly violates the Court Order. Because of your written intentions to violate the Court Order, we have asked Babcock to not allow Edward to visit his mother this weekend and we will attempt to review this matter next week or at the earliest convenient time for all involved.

In your email below, you mentioned that you sent Rivermont (Rich/Lex County DSN Board) a copy of the "Court's Order." This apparently is something new and pertains to Mrs. Mims efforts to seek guardianship of her son, Edward. Please fax me a copy of this Order. We are unaware of its contents. As mentioned, Edward was committed to DDSN, not Rivermont.

~~With regard to your request to have Edward discharged to his mother's care and admitted to a local daycare with access to other services provided from Rich/Lex, this must be presented and reviewed by Edward's team in accordance with normal procedures for individual habilitation plans and ICF/MR regulations. The items that you mentioned to me and in your email below constitute a significant transition for Edward. It is my understanding that these matters must be reviewed by the team and, therefore, we cannot comment on whether they are appropriate for Edward at this time.~~

The Babcock staff have appealed the de-certification and depopulation of Kensington and the matter has been deferred until the appeal has been heard. Any issue about alternate placement of individuals at this time based on de-certification is premature pending the appeal. As you know, alternative placements can be considered at anytime as long as it is planned and approved.

I trust this responds to your email below.

Jim Hill  
General Counsel, SCDDSN

From: Patricia L. Harrison [mailto:plh.cola@worldnet.att.net]  
Sent: Friday, June 10, 2005 4:55 PM  
To: Charles Lang; Mary S. Leitner; Deirdra Singleton; Gloria Prevost; Ronald Reed; Hill, Jim  
Subject: Edward Mims  
Importance: High

6/12/2005

TAB. G  
Mims 1512

We notified Babcock Center that Edward would not be returning to Kensington on Sunday. I have sent Rivermont a copy of the Court's Order. Babcock called Mrs. Mims today to tell her that they will only send enough medicine home with him for five days. On Wednesday, I asked Mary Leitner that Carol King serve as Edward's service coordinator, but I have heard nothing back from RichLex. Carol has experience with these transitions and does a good job. We need her assistance

Babcock Center is supposed to be transitioning people from a decertified facility into a placement of their choice. Who is going to handle matters like getting Edward's pharmacy changed (and I expect that we will not be able to get meds from a new pharmacy until next month), getting him into a day program, arranging for necessary transportation, etc?

Trisha Harrison

6/12/2005

Mims 1513

COPY

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Edythe C. Dove



3440 Harden Street Ext (29203)  
PO Box 4706, Columbia, South Carolina 29240  
V/TTY: 803/898-9600, FAX: 803/898-9653  
Toll Free: 888/DSN-INFO  
Home Page: www.state.sc.us/ddsn/

Stukus, Ph.D.  
State Director  
Robert W. Barfield  
Deputy State Director  
Administration  
Ronald G. Dozier  
Associate State Director  
Operations  
Kathl K. Lacy, Ph.D.  
Associate State Director  
Policy

June 22, 2005

Mr. Edgar S. Kneece, Esq  
455 St. Andrews Road  
Bldg. D, Suite 3-A  
Columbia, SC 29210

Re: Guardianship of Edward Mims

Dear Mr. Kneece:

As court appointed Guardian Ad Litem (GAL) for Mr. Mims in this matter, I wanted to bring to your attention a letter that was sent to me by Ms. Diane Theriot, Edward's older sister. She has expressed a desire to be involved in this case and she has information concerning the issues before the Court.

As GAL for Edward, I assume that you would want this information. It may be relevant to your position as GAL in protecting Edward's best interests.

By copy of this letter, I am informing Ms. Theriot that the Richland County Probate Court will be hearing this matter at 11:30 a.m. on June 24<sup>th</sup> in courtroom 2F and that she may contact you by phone at 750-3000.

Sincerely,

James R. Hill, Jr.  
General Counsel

JRH/cch

Encl.

cc: The Honorable Amy McCulloch, Judge-Probate Court  
Ms Patricia Harrison, Esq., Attorney for the Petitioner  
Mr Chris Stegmaier, Attorney for Babcock Center, Inc  
Ms Diane Theriot

DISTRICT I  
8301 Farrow Road, Columbia, SC 29203  
Phone 803/935-7412

Midlands Center - Phone 803/935-7500  
Whitson Center - Phone 864/831-7731

DISTRICT II  
PO Box 3709 Florence, SC 29502-3709  
Phone 843/664-2655

TAB H  
Mims 1514

June 15, 2005

RECEIVED

JUN 16 2005

LEGAL SERVICES

Mr. Jim Hill,  
Attorney, DDSN  
3440 Harden Street Ext. (29203)  
PO Box 4706  
Columbia, SC 29240

Re: Edward James Mims

Dear Mr. Hill:

I am writing in regards to my younger brother, Edward J. Mims, and his placement with the Babcock Center. I am of the understanding that our mother, Ms. Margaret Mims, wishes to have Edward discharged from the agency back to her home. This possibility deeply disturbs me, as I feel this could be detrimental to her health.

After speaking with Mother on Sunday, June 12, I am aware of the situation prompting her actions. I am also aware that she has retained the services of one Patricia Harrison. This concerns me. I fear for the well being of Mother as well as Edward, especially with Ms. Harrison's involvement. I fear her agenda, as I do not feel she has the family's best interest at heart. I also fear that, should an emergency situation arise Ms. Harrison will not be there in the long run. I am further concerned at the attempt on Ms. Harrison's part to keep me out of the loop. As a daughter and a sister, I feel I should be involved.

If memory serves, Edward was judicially admitted due to Mother's inability to care for him in the home. Over the past three years, she has been hospitalized several times due to emergency situations. She has heart trouble, which has been treated with two heart cath and three stints, requiring hospital stays and lengthy, painful recovery time. She has been transported via ambulance to the Providence Hospital and admitted due to dehydration from a case of gastroenteritis and had a long run of the Flu earlier this year, requiring several doctor's visits, and bed rest. If you were to subpoena her medical records, you would be able to verify this information. Her physicians' names are available upon request.

Mother is aware I am not in favor of Edward's potential discharge home. I have informed her that, if she really feels that he is in danger, and wishes him removed from Babcock Center care, to at least discharge Edward to another provider, and to continue placement as is until a new provider can be found. My concern with this will be that no one in Columbia will consider placement with Ms. Harrison aboard. That Edward would be placed outside the Columbia area, making visitation improbable. I have also informed Mother that, had I the means, I would seek legal guardianship of Edward, as I feel she is not making sound decisions regarding his welfare, that she is allowing herself to be manipulated to suit Ms. Harrison's purposes

Mims 1515

I am making an appeal to your agency, as well as the Probate Court, to reconsider Mother's temporary guardianship of Edward and request that he remain in the care of Babcock Center. I am offering all assistance possible regarding Edward and his care. If there is anyway possible that I may be named guardian, I would gladly accept the responsibility. My contact numbers are (803) 799-1970, ext. 163 and (803) 782-1790. I may be contacted at any time.

I greatly appreciate all your assistance in this matter and look forward to hearing from you in the near future.

Sincerely,



Diane Theriot  
Sister, Edward J. Mims

cc: Margaret Mims, Mother  
Patricia Harrison, Attorney  
Dr. Judy Johnson, Executive Director  
Dorothy Goodwin, Residential Director  
Richland County Probate Court

Mims 1516



Stanley J. Butkus, Ph.D.  
 Director  
 Art W. Barfield  
 Deputy State Director  
 Administration  
 Ronald G. Dozier  
 Associate State Director  
 Operations  
 Kathi K. Lacy, Ph.D.  
 Associate State Director  
 Policy

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 PO Box 4706, Columbia, South Carolina 29240  
 V/TTY: 803/898-9600, FAX: 803/898-9653  
 Toll Free: 888/DSN-INFO  
 Home Page: www.state.sc.us/ddsn/

MEMORANDUM

TO: Memo for the Record  
 FROM: Kathi K. Lacy *Kathi*  
 Associate State Director for Policy  
 DATE: June 21, 2005  
 SUBJECT: Edward Mims

Recording of events since meeting with the Honorable Amy W. McCulloch,  
 Richland County Judge of Probate, on Sunday, June 12, 2005.

Sunday, June 12, 2005:

(10:40 PM): Email from Patricia Harrison to Bill Alexander (DDSN  
 Commission Chair) et. al refusing Midlands Center as an option and  
 requesting MR/RD waiver services immediately.

Monday, June 13, 2005:

(10:30 AM): I learned from Dorothy Goodwin (Babcock Center) that Edward  
 did not return to his Babcock residence named Kensington but remained in  
 his mother's home.

(10:45 AM): I met with Jennifer Duell (DDSN) to ask her to initiate and  
 coordinate the MR/RD waiver application for Edward. I communicated to her  
 that our goal is to get services in the home as quickly as possible but not to  
 bend or break any rules/laws

DISTRICT I

8301 Farrow Road Columbia, SC 29203  
 Phone 803/935-7417

Midlands Center - Phone 803/935-7500  
 Whitten Center - Phone. 804/833-2733

DISTRICT II

PO Box 3209 Florence SC 29502-3209  
 Phone 843/664-2655

C  
 P  
 S  
 TAB I  
 Mims 1517

(11:37 AM): I sent an email to Deirdra Singleton and Sam Waldrep (DHHS) with an overview of events to keep the Medicaid agency current on events and involved in the process (see attached).

Wednesday, June 15, 2005:

Patricia Harrison calls Jennifer Duell (DDSN) to get an update on Edward's waiver status. Ms. Harrison inquired about Adult Day Health Care services for Edward. Ms. Duell e-mailed Adult Day Health Care forms to Ms. Harrison to be completed by Edward's doctor and returned to us for review against criteria for approval. Dot Goodwin (Babcock) arranges for Edward to get additional medications through June 20<sup>th</sup> (see letter).

Thursday, June 16, 2005:

(9:19 AM): Patricia Harrison faxes letter dated June 15, 2005 to Jennifer Duell (DDSN) requesting Midland's Center placement for Edward (see letter).

(11:00 AM): I receive an email from Dr. Michelle Ford (DDSN) that Ms. Lynn Morton Epps, Executive Director of Mentor, received a phone call from Patricia Harrison requesting their residential services. I call Ms. Epps to find out about her conversation with Ms. Harrison. She reported that Ms. Harrison indeed requested CTH II services from Mentor. Ms. Epps indicates she has a vacancy in one of their High Management Group Homes (which is higher level of care than needed by Edward) but she agreed to serve him at a Band E (his current funding level) pending an assessment of Edward to determine if he'd be a good match with the other men in the home.

(12:00 PM): At this time, I became concerned that things may not be working out at the Mims' home. It is difficult for me to ascertain from Ms. Harrison's actions what if anything has happened in the home (i.e., writing to DDSN's Commission Chair twice with 2 very different requests for services, writing to Jennifer Duell with requests for yet another set of services, the phone call to Mentor requesting residential services immediately, etc.).

(3:00 PM) I called the GAL, Edgar Kneece to find out what is going on at the Mims' home. He returns my call at 4:00 PM. He does not know anything at this time. I invite him to make a home visit with DDSN staff but I do not hear back from him.

(4:45 PM): I arrange for Vivian Koon, RN (DDSN) and Sonja Blyther (Mentor) to make a visit to the Mims' home pending Ms. Harrison's approval.

The purposes of the visit are to:

1. Obtain a valid assessment of the home environment, and the care and support provided to Edward, including if he is getting his medications and assistance with his activities of daily living;

2. To determine the urgency of moving Edward out of the home due to health and safety concerns.
3. To allow Mentor to assess Edward for possible temporary placement in a HMGH.
4. To provide and review MR/RD Waiver Information and provide Ms. Mims with a copy of the Mental Retardation/Related Disabilities (MR/RD) Waiver Information Sheet.
5. To review the MR/RD Waiver Freedom of Choice Form which includes an explanation of feasible alternatives under the Waiver, an opportunity to choose to receive services in the community or an institution, and appeals information regarding Edward's enrollment in the MR/RD Waiver.
6. To review the MR/RD Waiver Acknowledgement of Rights and Responsibilities

Friday, June 17, 2005:

(9:15 AM or there about): I called Patricia Harrison to get her perspective on the current status of Edward and to obtain her consent to send two people to the Mims' home. She reported that Mrs. Mims realized that she couldn't take care of Edward like she thought she could. She went on to say that Mrs. Mims would have always resented DDSN and Babcock Center if she had not gone through this experience to realize she just couldn't provide the care Edward required. She said Mrs. Mims observed some behaviors of Edward that Mrs. Mims had not observed in the past, such as pinching. Patricia informed me that Edward seemed anxious. She also reported that Mrs. Mims needed to work and that having Edward at home prevented her from doing so. I inquired about the supports discussed with Judge McCulloch but received no response.

I informed Ms. Harrison that I had arranged for DDSN and Mentor to make a home visit at 11:00 AM today. She gave me her consent. She asked me if Edward would move today or Monday so she could let Mrs. Mims know. I said if the assessment by Mentor indicates a good match and they feel they can assure his health and safety, that it would not be today, but Monday.

(11:00 AM): Home visit/assessment conducted.

(12:45 PM): I received a telephone call from Vivian Koon (DDSN) to provide a status report of the home visit. She reported to me that Edward was not in any type of danger or in any environment that would require immediate removal. She indicated that Mrs. Mims really loved her son but couldn't take care of him and keep up with her domestic work schedule to make ends meet. (See report dated June 17, 2005.)

At this time, I am concerned that Mrs. Mims has received no support as was indicated on Sunday, June 12<sup>th</sup> except for the additional medication that Babcock provided to her.

(4:12 PM): I emailed Mrs. Harrison about the visit (see email).

Monday, June 20, 2005:

(4:00 PM): I received a telephone call from Lynn Morton Epps (Mentor) informing me that Ms. Harrison had called her to see what time Mentor was picking up Edward from Mrs. Mims' house. Ms. Epps informed Ms. Harrison that Edward was not appropriate for the home where they had a vacancy. Ms. Epps told me that Edward was much too vulnerable for the home and that the other men in the home were too aggressive.

Ms. Epps said that they would continue to look for other homes for Edward but that it would take a minimum of 60-90 days at best.

(4:15 PM): I called Patricia Harrison based on my conversation with Ms Epps. Ms. Harrison was furious that Mentor could not take Edward and kept insisting that I told her that Edward would definitely move on Monday. She then kept asking me what I was going to do for Edward. Ms. Harrison raised her voice with me throughout the phone call (which can be attested by Ron Dozier, DDSN). I told her that we had given her several options on Sunday with Judge McCulloch. She asked me whether or not Midlands Center was still an option on the table. I asked her several times about the couple she had found that would help Mrs. Mims until MR/RD waiver services could be put into place. She told me that this option didn't work out.

After several attempts to get Ms. Harrison to calm down, I informed Ms. Harrison that I would call her tomorrow after I regroup with my team to get updates on activities to determine next steps. I informed her that I would have some options at that time.

June 21, 2005:

(10:00 AM): Opened email from Ms. Harrison dated 06/20/05 at 8:53 AM. She is requesting day services for Edward (likely through Babcock Center since they are the only provider in town) until residential services can be put into place.

(10:15 AM): Received update from Jennifer Duell on Edward's MR/RD waiver enrollment status. Everything was successfully completed and he is ready to be enrolled.

(11:15 AM): Received an email from Ms. Harrison via Bill Alexander (DDSN Commission Chair) requesting residential placement in a community setting (CTH I or CTH II) preferably in the Midlands area and MR/RD waiver services

until a safe residential setting is arranged and family support funding from DDSN for Adult Day Health Care services until the paperwork for Adult Day Health Care was completed and the service approved (or otherwise).

(11:20 AM): Called Mary Leitner (Richland/Lexington DSN Board) to inquire about service coordination for Edward. They have assigned Lynn Lugo.

(11:35 AM): Called Dot Goodwin (Babcock) to ascertain if Babcock would agree to provide day services to Edward. They agreed to serve him tomorrow.

(3:45 PM): I saw Ms. Harrison in person at DDSN and asked her if she desired for Edward to go to Babcock's Day Program tomorrow. She said "No" because she was going to place him in the Adult Day Health Care Program (Columbia Adult Care). I said the request for the service still requires DDSN's review of the doctor's assessment to determine if he meets the criteria. She said it will be approved by Thursday (June 23) and that she didn't want Babcock any longer.

June 23, 2005:

(8:56 AM): I emailed Ms. Harrison to confirm her denial of Babcock services pending approval of Adult Day Health Care services (see email).

(9:19 AM): Ms. Harrison replied, "Edward will be attending Columbia Adult Care" and she attached the chronology of injuries to Edward while at Babcock (see email).

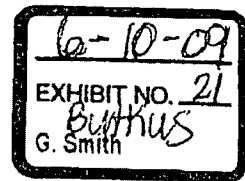
My overall assessment of this two week period follows:

1. None of Ms. Harrison's actions were instrumental in getting Edward his MR/RD waiver slot.
2. Ms. Harrison changed her mind so many times about what she wanted for Edward (without consulting Mrs. Mims) that it was very difficult to keep up or ascertain what was interference and what was fact.
3. Ms. Harrison contacted people in the organization needlessly and attempted to by-pass all policies and procedures. The system worked for Edward; it was not a result of Ms. Harrison's involvement.
4. Mrs. Mims has put her confidence in Ms. Harrison. Ms. Harrison advised her client to keep her son at home without a single support. In my opinion, Ms. Harrison set Mrs. Mims up to fail.
5. Mrs. Mims may still be able to support her son at home with the right supports in place. However, Ms. Harrison, as reported to me, said "I am the one encouraging Mrs. Mims to place him residentially. She had to go through this experience to know that she can't adequately care for him."

Mims 1522



Edward Mims  
12-3-01 Mims001637



Mims 1523

.. To: whom it may concern

.. I don't know about any marks, never  
.. saw any marks.

Robert Middleton  
Mrs I

Mims001638

Mims 1524

12-4-01

To Whom it may concern

I, Jemelah Franklin didn't notice any  
(bruis) MARKS ON EDWARD MIMS at any time the  
weekend of 12/30-12-2.

Jemelah Franklin

Mims001639

Mims 1525

To whom it's concern,

I didn't notice anything  
wrong with Edward Jones while on  
duty.

J. L. Jones

Mims001640

Mims 1526

Dec. 3, 2001

To whom it may concern, I

Natscha J. Wilson did not  
noticed any scratches on Edward  
Mims neck or his fingers  
being blue.

Natscha J. Wilson

Mims001641

Mims 1527

12-2-01

I Tonia James on 2nd shift gave E. Mims  
a shower. I did not see no scratch on his neck  
or a bruise on his finger on 12-2-01

Tonia James

Mims001642

Mims 1528

12/2/01

I MARY TYLER OF HOUSE C AT CLUSTERS  
WAS UNAWARE OF ANY STRUTCH OR RED  
MARK ON EDWARD MIMS  
NOVEMBER 30 ~~Also~~ Dec 2, 2001

Mary Tyler

Mims001643

Mims 1529

<p>State of South Carolina )                  ) In the Court of Common Pleas                  County of Richland )</p> <p>Edward Mims, by and ) C/A No 07-CP-40-3365                  through his legal )                  guardian, Margaret Mims, )                  )                  Plaintiff(s), ) Deposition                  )                  vs. ) of                  )                  Babcock Center, Inc., Judy ) MARGARET MIMS                  Johnson, the South )                  Carolina Department of )                  Disabilities and Special )                  Needs, Kathi Lacy and )                  Stanley Buckus, )                  )                  Defendant(s), )</p> <p>Deposition of MARGARET MIMS, taken before Jennifer L. Thompson, C/R, Nationally Certified Verbatim Court Reporter and Notary Public in and for the State of South Carolina, scheduled for 10:00 a.m. and commencing at the hour of 10:06 a.m., Tuesday, June 23, 2009, at the office of Davidson &amp; Lindemann, P.A., Columbia, South Carolina</p> <p>Reported by                  Jennifer L. Thompson, C/R</p>	<p>Defendant's Exhibit No. 7: Letter 7/12/2005 (1 pg)</p> <p>Defendant's Exhibit No. 8: Order of Dismissal (1 pg)</p> <p>Defendant's Exhibit No. 9: Remittitur (1 pg)</p>
<p style="text-align: center;">APPEARANCES</p> <p>For the Plaintiff(s):                  Patricia L. Harrison, Esquire                  611 Holly Street                  Columbia, SC 29205</p> <p>For the Defendant(s):                  William H. Davidson, II, Esquire                  Davidson &amp; Lindemann, P.A.                  1611 Devonshire Drive, Second Floor                  Columbia, SC 29206</p> <p>Christian Stegmaler, Esquire                  Collins and Lacy, P.C.                  1330 Lady Street, 6th Floor                  Columbia, SC 29201</p> <p style="text-align: center;">INDEX</p> <p>Stipulations . . . . . 4                  Direct Examination by Mr. Davidson . . . . . 5                  Examination by Mr. Stegmaler . . . . . 93                  Errata . . . . . 112                  Certificate . . . . . 113</p> <p style="text-align: center;">EXHIBITS</p> <p>Defendant's Exhibit No. 1: List of Exhibits (134 pgs)                  Defendant's Exhibit No. 2: Client Accident/Medical Problem Reporting Schedule (1 pg)                  Defendant's Exhibit No. 3: Client Accident/Medical Problem Reporting Schedule (1 pg)                  Defendant's Exhibit No. 4: Babcock Center Initial Report of Alleged Abuse, Neglect or . . . (1 pg)                  Defendant's Exhibit No. 5: Letter of October 28, 2003 (2 pgs)                  Defendant's Exhibit No. 6: Report of Dr. Graeme Johnson (3 pgs)</p>	<p style="text-align: right;">4</p> <p style="text-align: center;">STIPULATIONS</p> <p>1                  2 This deposition is being taken pursuant to the                  3 South Carolina Rules of Civil Procedure                  4                  5                  6 The reading and signing of this deposition is                  7 reserved by the deponent and counsel for the                  8 respective parties.                  9                  10 Whereupon,                  11 MARGARET MIMS, being duly sworn and cautioned                  12 to speak the truth, the whole truth, and                  13 nothing but the truth, testified and deposed                  14 as follows:                  15 Court Reporter. State your full name for the                  16 record, please                  17 Witness: Margaret L. Mims                  18                  19                  20 MR. DAVIDSON. And just for the record, are we doing                  21 this deposition pursuant to the Court's                  22 directive regarding objections or do you want                  23 to note objection and say as to the form of                  24 the question?                  25 MS. HARRISON. I believe we have the Court's --                  Wasn't the agreement that it would apply to</p>

9

1 A Three.  
 2 Q And is that five days a week?  
 3 A No.  
 4 Q How many days a week is that?  
 5 A Well, usually on Tuesdays, I work two jobs on  
 6 Tuesday and one Wednesday and one on Thursday.  
 7 Q Is that all cleaning houses?  
 8 A Yes.  
 9 Q Can you tell me -- In reading the records, I saw  
 10 that several years ago you had had a heart attack  
 11 and had a stent put in, is that correct?  
 12 A Yes.  
 13 Q Do you regularly see a doctor for your health?  
 14 A Yes, I do.  
 15 Q Who do you see?  
 16 A Dr. Grainger.  
 17 Q Dr Grainger Where is Dr Grainger?  
 18 A He's at the Heart Center on Laurel Street.  
 19 Q Is that Terry Grainger?  
 20 A Yes.  
 21 Q And have you had any other problems with your heart  
 22 since you had the stent?  
 23 A Yes.  
 24 Q When was that?  
 25 A The first of May of this year.

10

1 Q The first of May of this year?  
 2 A Yes.  
 3 Q What happened?  
 4 A Well, the other stent that they had last -- in  
 5 2008, it didn't work,, so I ended up having to go  
 6 over to them.  
 7 Q Okay. So you've had how many stents now?  
 8 A I got three.  
 9 Q Three. And they one they did in '08 had to be  
 10 redone in '08?  
 11 A No, it had to be done this year.  
 12 Q Oh, it had to be done this year?  
 13 A Right.  
 14 Q And had to be redone this year also?  
 15 A Uh-huh.  
 16 Q Do you have angina? Do you know what I mean by  
 17 angina? When you exert yourself, do you feel chest  
 18 pain?  
 19 A No, I don't.  
 20 Q Any other health issues other than your heart?  
 21 A No.  
 22 Q Has the doctor, Dr. Grainger, placed you on any  
 23 restrictions as a result of your heart condition?  
 24 A No.  
 25 Q Are you presently today on any medication?

11

1 A Yes, heart medicine.  
 2 Q What type medicine, do you know?  
 3 A Well, I take -- I don't know the -- Topin [sic],  
 4 Plavix, and it's a heart vitamin. It starts with a  
 5 f-b-. Then I take Zocor for cholesterol.  
 6 Q And do you have a driver's license?  
 7 A Yes, I do.  
 8 Q Do you own a car?  
 9 A No.  
 10 Q Do you use public transportation?  
 11 A No. If I have to go at the doctor, I use a cab.  
 12 Q And to get to work - cab or bus?  
 13 A No, I walk. I have one job where a lady picks me  
 14 up on Wednesdays.  
 15 Q We're here today in regard to a lawsuit you have  
 16 brought on behalf of your son, Edward What's  
 17 Edward's full name?  
 18 A Edward James Mims.  
 19 Q What's his date of birth?  
 20 A [REDACTED]  
 21 Q And I understand Edward has mental retardation?  
 22 A Right.  
 23 Q And has he had that since birth?  
 24 A Yes.  
 25 Q Does he have any trust account or assets?

12

1 A Trust account?  
 2 Q Yes, ma'am.  
 3 A Yes.  
 4 Q And who is the trustee of that account?  
 5 A Babcock Center is.  
 6 Q And do you know how much money is in that account?  
 7 A Not right off.  
 8 Q Do you know who set that trust up?  
 9 A I did.  
 10 Q And did you use an attorney?  
 11 A No. I went through the Social Security office,  
 12 because it was left from his dad's death.  
 13 Q Where is Edward today?  
 14 A Edward? Oh, he's being took care of.  
 15 Q I understand that, but where is he being taken care  
 16 of?  
 17 A Being taken care of by a place.  
 18 Q What's the name of the place?  
 19 A Through Cerebral Palsy --  
 20 Q You can't look at Ms Harrison, so you're going to  
 21 have to answer my questions Who runs where Edward  
 22 is today?  
 23 A Brad Bradford.  
 24 Q Excuse me.  
 25 A Brad Bradford.

9	<p>1 A Three.</p> <p>2 Q And is that five days a week?</p> <p>3 A No.</p> <p>4 Q How many days a week is that?</p> <p>5 A Well, usually on Tuesdays, I work two jobs on</p> <p>6 Tuesday and one Wednesday and one on Thursday.</p> <p>7 Q Is that all cleaning houses?</p> <p>8 A Yes.</p> <p>9 Q Can you tell me -- In reading the records, I saw</p> <p>10 that several years ago you had had a heart attack</p> <p>11 and had a stent put in, is that correct?</p> <p>12 A Yes.</p> <p>13 Q Do you regularly see a doctor for your health?</p> <p>14 A Yes, I do.</p> <p>15 Q Who do you see?</p> <p>16 A Dr. Grainger.</p> <p>17 Q Dr. Grainger. Where is Dr. Grainger?</p> <p>18 A He's at the Heart Center on Laurel Street.</p> <p>19 Q Is that Terry Grainger?</p> <p>20 A Yes.</p> <p>21 Q And have you had any other problems with your heart</p> <p>22 since you had the stent?</p> <p>23 A Yes.</p> <p>24 Q When was that?</p> <p>25 A The first of May of this year.</p>	11
10	<p>1 Q The first of May of this year?</p> <p>2 A Yes.</p> <p>3 Q What happened?</p> <p>4 A Well, the other stent that they had last -- in</p> <p>5 2008, it didn't work,, so I ended up having to go</p> <p>6 over to them.</p> <p>7 Q Okay. So you've had how many stents now?</p> <p>8 A I got three.</p> <p>9 Q Three And they one they did in '08 had to be</p> <p>10 redone in '08?</p> <p>11 A No, it had to be done this year.</p> <p>12 Q Oh, it had to be done this year?</p> <p>13 A Right.</p> <p>14 Q And had to be redone this year also?</p> <p>15 A Uh-huh.</p> <p>16 Q Do you have angina? Do you know what I mean by</p> <p>17 angina? When you exert yourself, do you feel chest</p> <p>18 pain?</p> <p>19 A No, I don't.</p> <p>20 Q Any other health issues other than your heart?</p> <p>21 A No.</p> <p>22 Q Has the doctor, Dr. Grainger, placed you on any</p> <p>23 restrictions as a result of your heart condition?</p> <p>24 A No.</p> <p>25 Q Are you presently today on any medication?</p>	12
9	<p>1 A Yes, heart medicine.</p> <p>2 Q What type medicine, do you know?</p> <p>3 A Well, I take -- I don't know the -- Topin [sic],</p> <p>4 Plavix, and it's a heart vitamin. It starts with a</p> <p>5 f-b-. Then I take Zocor for cholesterol.</p> <p>6 Q And do you have a driver's license?</p> <p>7 A Yes, I do.</p> <p>8 Q Do you own a car?</p> <p>9 A No.</p> <p>10 Q Do you use public transportation?</p> <p>11 A No. If I have to go at the doctor, I use a cab.</p> <p>12 Q And to get to work - cab or bus?</p> <p>13 A No, I walk. I have one job where a lady picks me</p> <p>14 up on Wednesdays.</p> <p>15 Q We're here today in regard to a lawsuit you have</p> <p>16 brought on behalf of your son, Edward. What's</p> <p>17 Edward's full name?</p> <p>18 A Edward James Mims.</p> <p>19 Q What's his date of birth?</p> <p>20 A [REDACTED]</p> <p>21 Q And I understand Edward has mental retardation?</p> <p>22 A Right.</p> <p>23 Q And has he had that since birth?</p> <p>24 A Yes.</p> <p>25 Q Does he have any trust account or assets?</p>	11
10	<p>1 A Trust account?</p> <p>2 Q Yes, ma'am.</p> <p>3 A Yes.</p> <p>4 Q And who is the trustee of that account?</p> <p>5 A Babcock Center is.</p> <p>6 Q And do you know how much money is in that account?</p> <p>7 A Not right off.</p> <p>8 Q Do you know who set that trust up?</p> <p>9 A I did.</p> <p>10 Q And did you use an attorney?</p> <p>11 A No I went through the Social Security office,</p> <p>12 because it was left from his dad's death.</p> <p>13 Q Where is Edward today?</p> <p>14 A Edward? Oh, he's being took care of.</p> <p>15 Q I understand that, but where is he being taken care</p> <p>16 of?</p> <p>17 A Being taken care of by a place.</p> <p>18 Q What's the name of the place?</p> <p>19 A Through Cerebral Palsy --</p> <p>20 Q You can't look at Ms. Harrison, so you're going to</p> <p>21 have to answer my questions Who runs where Edward</p> <p>22 is today?</p> <p>23 A Brad Bradford.</p> <p>24 Q Excuse me.</p> <p>25 A Brad Bradford.</p>	12

13	<p>1 Q Brad Bradford, all right. And that's the 2 gentleman.</p> <p>3 A Yeah.</p> <p>4 Q And who does he work for?</p> <p>5 A Cerebral Palsy.</p> <p>6 Q Cerebral Palsy?</p> <p>7 A Uh-huh.</p> <p>8 Q And is Edward located in Richland County?</p> <p>9 A Yes.</p> <p>10 Q How long has he been at the United Cerebral Palsy 11 facility?</p> <p>12 A About a month.</p> <p>13 Q And prior to that, where was Edward?</p> <p>14 A At home with me.</p> <p>15 Q And what's that address?</p> <p>16 A 3301 Rosewood Drive.</p> <p>17 Q And does anyone live there other -- When Edward was 18 there, did anyone live there other than you?</p> <p>19 A No.</p> <p>20 Q When you were working, how many hours during a day 21 do you normally work?</p> <p>22 A Probably over eight hours a day.</p> <p>23 Q And that's on Tuesdays --</p> <p>24 A Yeah.</p> <p>25 Q -- and Wednesdays?</p>	15
14	<p>1 A Usually, I get home about 6:30, a little after, on 2 Tuesdays.</p> <p>3 Q Okay.</p> <p>4 A Wednesday I get home about 6:30. On Thursdays, I 5 have a half a day. I get home probably about one.</p> <p>6 Q What time do you leave in the morning?</p> <p>7 A Eight o'clock.</p> <p>8 Q Eight o'clock And when Edward was living at home 9 with you, when you were gone from eight until six, 10 who took care of him?</p> <p>11 A Carla Rogers.</p> <p>12 Q Carl Rogers?</p> <p>13 A Uh-huh.</p> <p>14 Q Is that C-a --</p> <p>15 A C-a-r-l-a.</p> <p>16 Q Carla Rogers?</p> <p>17 A Uh-huh.</p> <p>18 Q And how many days a week did Carla Rogers come to 19 your house on Rosewood?</p> <p>20 A The days I worked.</p> <p>21 Q The days you worked</p> <p>22 A Uh-huh.</p> <p>23 Q Did she ever come in on any of the days you did not 24 work to allow you to run errands or anything like 25 that?</p>	16
15	<p>1 A Well, sometimes she would. If I had to go take 2 Edward to the doctor, she would come and go with me 3 to take him.</p> <p>4 Q If you had to go to the doctor, would she come and 5 keep Edward?</p> <p>6 A No, she would go with me to take him when he had to 7 go.</p> <p>8 Q Okay. What about when you had to go?</p> <p>9 A Well, sometimes she would take me, but most the 10 time I go in a cab.</p> <p>11 Q Did she come and stay with Edward at the house 12 while you went to the doctor?</p> <p>13 A Well, sometime I have took him with me to the 14 doctor.</p> <p>15 Q And was Ms Rogers being paid through the respite 16 program?</p> <p>17 A Yes.</p> <p>18 Q Do you have a power of attorney for Edward?</p> <p>19 A Yeah, I'm Edward's power of attorney. Ms. Harrison 20 has power of attorney.</p> <p>21 Q Okay. So, both you and Ms Harrison have power of 22 attorney?</p> <p>23 A (Non-verbal response)</p> <p>24 Q You have to answer yes or no.</p> <p>25 A Yes.</p>	17
16	<p>1 Q And do you know how long you've had those powers of 2 attorney?</p> <p>3 A Since last year.</p> <p>4 Q Since when?</p> <p>5 A Last year.</p> <p>6 Q Last year. Prior to last year, did you have a 7 power of attorney?</p> <p>8 A For Edward?</p> <p>9 Q Yes, ma'am.</p> <p>10 A No.</p> <p>11 Q And do you know when last year y'all got the power 12 of attorney for Edward?</p> <p>13 A No, I don't.</p> <p>14 Q Do you have copies of them?</p> <p>15 A Yes.</p> <p>16 Q Okay. Could you make those available if we ask Ms 17 Harrison for them?</p> <p>18 A Yes.</p> <p>19 Q Other than in Richland and maybe Lexington County, 20 has Edward ever lived in any other counties in 21 South Carolina?</p> <p>22 A No.</p> <p>23 Q He's never lived in Spartanburg County?</p> <p>24 A No.</p> <p>25 Q Or Sumter County?</p>	18

21	<p>1 Q Okay Do you have those records at home that</p> <p>2 you've reviewed from the Department of Disabilities</p> <p>3 and Special Needs?</p> <p>4 A Probably.</p> <p>5 Q When did you first meet Ms. Harrison?</p> <p>6 A In 2005.</p> <p>7 Q And what were the circumstances of you meeting Ms.</p> <p>8 Harrison in 2005?</p> <p>9 A About Edward.</p> <p>10 Q And what precipitated you going to see Ms Harrison</p> <p>11 in 2005? Don't want to know what y'all talked</p> <p>12 about, but what precipitated you going to her in</p> <p>13 2005?</p> <p>14 A Well, because he came home - He was supposed to</p> <p>15 come home like on a Friday, came home on a Saturday</p> <p>16 - And I noticed that his little privates was hurt.</p> <p>17 They had told me they had take him to the hospital,</p> <p>18 and he was molested. That was why I got in touch</p> <p>19 with her.</p> <p>20 Q Do you recall who brought Edward home, or did you</p> <p>21 go pick him up?</p> <p>22 A I forgot the guy's name, but he brought Edward home</p> <p>23 a lot in the van from Kensington.</p> <p>24 Q And do you recall -- You indicated he had been</p> <p>25 molested. Is that what you determined based on</p>	23	<p>1 A No.</p> <p>2 Q Do you know anything about what Kathi Lacy's job is</p> <p>3 at the Department of Disabilities and Special</p> <p>4 Needs?</p> <p>5 A No, I don't.</p> <p>6 Q Do you know anything about the job of Dr. Butkus at</p> <p>7 the Department of Disabilities and Special Needs?</p> <p>8 A No, I don't.</p> <p>9 Q Do you have any knowledge of your own self of</p> <p>10 whether or not Kathi Lacy or Stan Butkus have had</p> <p>11 any involvement with Babcock Center?</p> <p>12 A I don't know.</p> <p>13 Q Do you know whether or not Kathi Lacy or Stan</p> <p>14 Butkus have had any involvement with Edward?</p> <p>15 A I don't know.</p> <p>16 Q In your Complaint, -- Have you read your lawsuit?</p> <p>17 A (Non-verbal response)</p> <p>18 Q You have to answer yes or no.</p> <p>19 A Yes.</p> <p>20 Q And you've read the one that was filed in 2008?</p> <p>21 A (Non-verbal response)</p> <p>22 Q You have to answer --</p> <p>23 A Yes.</p> <p>24 Q Did you read the one filed in 2007?</p> <p>25 A Yes.</p>
22	<p>1 your knowledge of the facts of this case?</p> <p>2 A Well, he had a cut, a five inch centimeters cut on</p> <p>3 his privates.</p> <p>4 Q Okay.</p> <p>5 A So that's the reason he was molested.</p> <p>6 Q So the fact that he had a cut on his penis is what</p> <p>7 made you believe that he had been molested,</p> <p>8 correct?</p> <p>9 A Right.</p> <p>10 Q Did you ever review any of the records concerning</p> <p>11 that incident?</p> <p>12 A Yeah. I have the statements from the hospital.</p> <p>13 Q Now, you filed the lawsuit in this case involving</p> <p>14 Babcock Center, Ms Johnson, Ms. Lacy, and Dr</p> <p>15 Butkus.</p> <p>16 Have you ever talked with Kathi Lacy, to your</p> <p>17 knowledge?</p> <p>18 A No.</p> <p>19 Q To your knowledge, have you ever talked with Stan</p> <p>20 Butkus?</p> <p>21 A No.</p> <p>22 Q Have you ever written Kathi Lacy, to your</p> <p>23 knowledge?</p> <p>24 A No.</p> <p>25 Q Have you ever written Stan Butkus?</p>	24	<p>1 Q And did you -- At the time you were reviewing the</p> <p>2 Complaint, had they already been filed or were they</p> <p>3 about to be filed, if you know?</p> <p>4 A I don't know.</p> <p>5 Q In the Complaint, you indicate that certain</p> <p>6 employees of the Department of Disabilities and</p> <p>7 Special Needs failed to report incidences of abuse,</p> <p>8 neglect, and exploitation to appropriate</p> <p>9 authorities and failed to take appropriate action</p> <p>10 to investigate reports of abuse and neglect.</p> <p>11 Do you know who those officials are?</p> <p>12 A No, I don't.</p> <p>13 Q And do you know what reports of abuse, neglect, and</p> <p>14 exploitations were not reported?</p> <p>15 A About Edward?</p> <p>16 Q Yes, ma'am.</p> <p>17 A I never did get any. They never did let me know</p> <p>18 what happened to Edward about a lot of things.</p> <p>19 Q Okay. My question is, do you know which reports of</p> <p>20 abuse, neglect, and exploitations were not reported</p> <p>21 to appropriate authorities? And if you don't know,</p> <p>22 that's fine.</p> <p>23 A No, I don't.</p> <p>24 Q You also indicated that, at one point, employees of</p> <p>25 Babcock Center and the Department accused you of</p>

17	<p>1 A No.</p> <p>2 Q Or Clarendon?</p> <p>3 A No</p> <p>4 Q Have you ever received services for Edward from either the Spartanburg County Disability Board or -</p> <p>5</p> <p>6</p> <p>7 A No.</p> <p>8 Q -- Charles Lee Center?</p> <p>9 A No</p> <p>10 Q Or from the Clarendon County Disability Board?</p> <p>11 A No.</p> <p>12 Q Or the Sumter County Disability Board?</p> <p>13 A No.</p> <p>14 Q Can you tell me a little bit about Edward's condition What problems does he have, other than the fact I understand he's mentally retarded Does he have -- Like does he have seizures, those type things?</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 A Yes, he has seizures.</p> <p>20 Q Does he have any medical problems?</p> <p>21 A Other than taking medicine for seizures, he has acid reflux.</p> <p>22</p> <p>23 Q Anything else?</p> <p>24 A He can't talk. He has a lot of ear infections.</p> <p>25 Q Anything else?</p>	19	<p>1 A No.</p> <p>2 Q So he had not received any services --</p> <p>3 A No.</p> <p>4 Q -- from either the State --</p> <p>5 A No.</p> <p>6 Q -- or from Babcock Center prior to 1999?</p> <p>7 A No.</p> <p>8 Q And how long were you in the hospital, do you recall?</p> <p>9</p> <p>10 A Just a week.</p> <p>11 Q And do you recall who you talked to about having Edward kept at Babcock Center in '99?</p> <p>12</p> <p>13 A Not right off, I don't.</p> <p>14 Q And do you recall, when you got out of the hospital, did you go back and talk with anyone about seeing if you could bring Edward home?</p> <p>15</p> <p>16</p> <p>17 A They said no</p> <p>18 Q Who said no?</p> <p>19 A I don't remember. It's been a long time, so I don't remember. Only thing I know I could not get him back home. That's the only thing I remember.</p> <p>20</p> <p>21</p> <p>22 Q Do you recall what agency that individual worked for?</p> <p>23</p> <p>24 A They worked for Babcock Center, I know that.</p> <p>25 Q Prior to 2005, if Edward needed something, who made</p>
18	<p>1 A That's about all I can -- That's about it.</p> <p>2 Q Okay. I saw somewhere in some of the records that your lawyer provided that Edward's had a problem at times with dry skin which, at points, has caused dandruff.</p> <p>3</p> <p>4</p> <p>5</p> <p>6 A Yes.</p> <p>7 Q Has he always had problems with dry skin?</p> <p>8 A In his hair, yes. He has -- they use skin conditioner to treat his hair with when you wash it. It's a kind of shampoo.</p> <p>9</p> <p>10</p> <p>11 Q Do you use lotions on him like hand cream or thing to keep your skin soft and things like that?</p> <p>12</p> <p>13 A No. His skin stays soft.</p> <p>14 Q Okay. In regard to Edward, when did he first go to Babcock Center?</p> <p>15</p> <p>16 A October 5, 1999.</p> <p>17 Q And what was the reason for that?</p> <p>18 A What was the reason?</p> <p>19 Q Yes, ma'am.</p> <p>20 A I had got sick and I needed someone to keep him. I had no one to keep him. So that's the reason he was put at Babcock Center. But I was supposed to get him back home when I got out of the hospital.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 Q And at that point in time, had he been receiving services?</p> <p>25</p>	20	<p>1 the decisions regarding his care or treatment or whatever he needed?</p> <p>2</p> <p>3 A You mean when he was at Babcock Center?</p> <p>4 Q Before 2005 while he was at Babcock.</p> <p>5 A Babcock Center made the decision.</p> <p>6 Q Okay. Have you, since the filing of this lawsuit or even prior to the filing of this lawsuit, reviewed the entire Babcock Center record concerning Edward?</p> <p>7</p> <p>8</p> <p>9</p> <p>10 A Yes, sir, I have.</p> <p>11 Q Have you made any notes concerning it?</p> <p>12 A I don't have to make notes. I know what happened to Edward. That's the only thing I got to say.</p> <p>13</p> <p>14 Q My question is -- And I appreciate that, Ms. Mims. I was just asking the question, while you were reviewing the records, did you make any notes?</p> <p>15</p> <p>16</p> <p>17 A No, I did not.</p> <p>18 Q Have you reviewed any of the records from the State Department of Disabilities and Special Needs concerning Edward?</p> <p>19</p> <p>20</p> <p>21 A Yes, I have</p> <p>22 Q And what have you reviewed from the state office?</p> <p>23 A Just certain things. There's a lot of things I don't understand. But a lot of things I know that happened to Edward was true.</p> <p>24</p> <p>25</p>

25

1 neglect and abusing Edward at home.  
 2 A Yes, they did.  
 3 Q Which employees of the Department of Disabilities  
 4 and Special Needs, do you know?  
 5 A No, I don't.  
 6 Q And are you aware if any individual with DDSN  
 7 reported such neglect or abuse?  
 8 A I don't know.  
 9 Q Other than your knowledge of Edward, do you have  
 10 any knowledge of any other families that have  
 11 received services from DDSN or the Babcock Center?  
 12 A No.  
 13 Q Have you ever talked with any other mothers,  
 14 fathers of children who have received services  
 15 through the Babcock Center?  
 16 A Not as I know of.  
 17 Q So I'd be correct that none -- no other mother,  
 18 father, or family member of an individual who has  
 19 received services from Babcock Center has  
 20 complained to you about services they have received  
 21 at Babcock Center, correct?  
 22 A Right.  
 23 Q Now, my understanding is that, in this case, you  
 24 gave an affidavit. Are you aware of that?  
 25 A Yes.

26

1  
 2 (Whereupon, Itemization and copies of  
 3 exhibits to affidavit of Margaret Mims,  
 4 consisting of 134 pages, was marked  
 5 Exhibit No 1 for identification )  
 6  
 7 Q Ms. Mims, I'm going to hand you a list of exhibits  
 8 as well as the exhibits that were attached to your  
 9 affidavit and ask if you can identify what's been  
 10 marked as Defendant's Exhibit No. 1.  
 11 Are you familiar with those documents?  
 12 A Uh-huh.  
 13 Q Now, I assume you assisted in pulling together  
 14 these documents for your affidavit.  
 15 A Yes.  
 16 Q You felt that these were the important documents in  
 17 regard to Edward?  
 18 A Yes.  
 19 Q Now, you indicated in your Complaint that you  
 20 reported to law enforcement problems with Edward.  
 21 I would assume would that be the time that he was  
 22 assaulted by Mr Anthony?  
 23 A Yes.  
 24 Q Or was that the time in regard -- Did you ever  
 25 report the scratch on the penis incident to law

27

1 enforcement?  
 2 A Yes.  
 3 Q Okay. When you reported the matter concerning Mr.  
 4 Anthony, that was in what year, do you recall?  
 5 A 2001.  
 6 Q Now, it was shortly thereafter that a hearing was  
 7 held or a petition was filed to have Edward  
 8 judicially committed?  
 9 A Yes, it was.  
 10 Q Did you view that as retaliation for you reporting  
 11 the matter regarding Mr. Anthony to law  
 12 enforcement?  
 13 A Yes, I think so.  
 14 Q Now, did you have a lawyer at that hearing?  
 15 A Yes.  
 16 Q Okay. If you don't mind, if you would look at, I  
 17 believe it's your page 28, Exhibit 5. That's the  
 18 petition for judicial admission. If you don't mind  
 19 looking --  
 20 A Yeah. I don't have to look at it.  
 21 Q And it indicates that at that time Edward had  
 22 cerebral palsy. He was in fragile health. He was  
 23 profoundly retarded. He had seizures,  
 24 hypertension, esophagitis erosion disease, that he  
 25 could be self abusive, non-verbal, and had pica-

28

1 like behavior. What is pica-like behavior? Pica,  
 2 p-i-c-a, do you know?  
 3 A I don't know.  
 4 Q It says in parentheses eats non-food items Did  
 5 Edward do that occasionally?  
 6 A Sometime he did. Not very often.  
 7 Q Okay. Indicated that at that point in 2001 that  
 8 you were in poor health, unable to take care of him  
 9 and you had limited means and resources. Do you  
 10 remember reading that?  
 11 A Yeah, I remember reading it.  
 12 Q Okay Were you handling or having the same type  
 13 employment back in 2001 that you have now?  
 14 A Yes, I did.  
 15 Q Was it more or less than what --  
 16 A Less.  
 17 Q And how much annually do you make, ballpark? 2000  
 18 A I don't think this has any concern.  
 19 Q Do you know, in 2001, approximately how much you  
 20 would have made annually?  
 21 A Not right off.  
 22 Q Did you file income taxes?  
 23 A Yes, I did.  
 24 Q And I think there was actually a hearing set up in  
 25 this matter, and ultimately, an order was issued on

29

1 the 3rd of July, 2001 And that's Exhibit, I  
 2 believe, 7 on page 32 If you don't mind, flip to  
 3 that, please, ma'am  
 4 A I don't have my glasses. I didn't know I was going  
 5 to need glasses to see.  
 6 Q Did you check your pocketbook to make sure they're  
 7 not in there?  
 8 A Yeah. I ain't got them.  
 9 Q Because you're going to need to read a little bit  
 10 for me. Do you need reading glasses, Ms Mims?  
 11 A (No response)  
 12 Q Have you got the Order?  
 13 A Yeah, I've got it.  
 14 Q Indicates that Edward had an attorney, does it not,  
 15 a David Belding.  
 16 A Yeah.  
 17 Q It also indicates that there was a guardian ad  
 18 litem.  
 19 A Yes.  
 20 Q Okay. And that you had an attorney.  
 21 A Yes.  
 22 Q And that a psychologist was there from the  
 23 Department of Disabilities and Special Needs --  
 24 A Yes.  
 25 Q -- who issued a report, right?

30

1 A Yeah.  
 2 Q Did you hire Mr. Morris as your attorney?  
 3 A Yes, I did.  
 4 Q And did you know Mr Morris prior to him becoming  
 5 involved in this hearing?  
 6 A Yeah, I worked for him.  
 7 Q You worked for Mr. Morris Was he the one -- Was  
 8 he one of the ones that you did his house?  
 9 A Uh-huh.  
 10 Q And were you comfortable with Mr. Morris as your  
 11 attorney?  
 12 A Yes.  
 13 Q Do you think he did a good job for you at this  
 14 hearing?  
 15 A Yes.  
 16 Q Did you have any complaints about the way he  
 17 handled matters that went before Judge Belton? I  
 18 believe Jacqueline D Belton. Were you happy with  
 19 the way he presented your case before Judge Belton?  
 20 A Yes.  
 21 Q Did you have an opportunity to talk with Mr Morris  
 22 and discuss with him any concerns you had about  
 23 Edward?  
 24 A Yes, I did.  
 25 Q And, to your knowledge -- it appears did you review

31

1 this order or did Mr. Morris send you this order to  
 2 review in 2001 once it was signed?  
 3 A He sent a copy of it to me.  
 4 Q And did you review it?  
 5 A Yes.  
 6 Q And did you have any questions for Mr. Morris?  
 7 A Yes.  
 8 Q And what question did you have for Mr. Morris?  
 9 A Well, with this, I didn't understand it because my  
 10 -- I was afraid that if I didn't sign this, I  
 11 wouldn't see Edward again.  
 12 Q Okay. And did you explain that to Mr Morris?  
 13 A Yes.  
 14 Q And did you give him permission to sign his consent  
 15 to this order?  
 16 A He had to.  
 17 Q My question is did you give him your consent to  
 18 sign this order?  
 19 A Not as I knew of, I didn't.  
 20 Q Did you ever petition the court to set aside this  
 21 order?  
 22 A No, I didn't.  
 23 Q Were you present in the court when the diagnostic  
 24 report of a Jane McCausland, a psychologist with  
 25 the Department, was introduced into evidence before

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1 Judge Belton?  
 2 A Yes, I was.  
 3 Q At any time during the hearing, did you interpose  
 4 or advise Judge Belton of any concerns, criticisms,  
 5 or fears you had in regard to Edward?  
 6 A They didn't let me say a word.  
 7 Q Okay. Your lawyer did not let you say a word,  
 8 correct?  
 9 A Right.  
 10 Q To your knowledge, it appears that -- did you ever  
 11 speak with a Leigh Flynn, the guardian ad litem for  
 12 Edward?  
 13 A Yes. She was his -- supposed to come to the house  
 14 and check things out.  
 15 Q Did she ever come to the house and check things  
 16 out?  
 17 A Yes, she did.  
 18 Q Okay. And was that before or after the hearing?  
 19 A After the hearing.  
 20 Q Okay. And did prior to the hearing, to your  
 21 knowledge, did she ever talk with you or come to  
 22 the house and discuss with you Edward and your  
 23 ability or lack of ability to take care of Edward  
 24 at home, before the hearing?  
 25 A Not as I remember.

33

1 Q To your knowledge, did you talk with Mrs. Flynn  
 2 during the hearing before Judge Belton?  
 3 A No.  
 4 Q To your knowledge, was she in agreement with the  
 5 conditions of this order?  
 6 A Yes, she was.  
 7 Q Did you feel that she and your attorney and others  
 8 who were present were essentially getting together  
 9 to bamboozle you in regard to Edward? Do you know  
 10 what the word "bamboozle" means?  
 11 A I think so.  
 12 Q You think they got together to try to pull  
 13 something over on you?  
 14 A Oh, they did.  
 15 Q And you believe you Ms Flynn was involved in that?  
 16 A (Non-verbal response)  
 17 Q You have to answer yes or no, please.  
 18 A Yes.  
 19 Q The report that -- Ms Jane McCausland's report, I  
 20 think is Exhibit 6, right before the order. I  
 21 think it's page 30. It's like a two page letter,  
 22 Ms. Mims.  
 23 Obviously, you've read this letter because  
 24 you've included it in the packet or material with  
 25 your affidavit, is that correct?

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1 A Yes.  
 2 Q Okay. And in reading this, did you have any  
 3 disagreements with any of Mrs McCausland's  
 4 findings? Take a moment and just review it.  
 5  
 6 MS. HARRISON: Are you able to read it, Ms. Mims,  
 7 without your glasses?  
 8 MR DAVIDSON: Do you need reading glasses? I have  
 9 an extra pair, Ms Mims.  
 10 MS MIMS I thought I had mine in here I must  
 11 have took them --  
 12 MR DAVIDSON: Where would they be?  
 13 MS MIMS: I don't have them in here.  
 14 MR. DAVIDSON: Let's take a break and let me see if  
 15 I've got an extra pair that maybe will help  
 16 you.  
 17 MS. MIMS. I can kind of make it out.  
 18 MR DAVIDSON: Can you make it out without any  
 19 problem?  
 20 MS. MIMS Uh-huh.  
 21 MR DAVIDSON. Ms Mims, one thing I don't want to  
 22 have happen is later you come back and say you  
 23 weren't able to read it, because I'm going to  
 24 be asking you some questions about a lot of  
 25 documents. So I need to make sure that you

35

1 can read the documents in question So if you  
 2 don't think you can read them or you're going  
 3 to be at a disadvantage, you need to tell me  
 4 now and you can go get your glasses  
 5 MS MIMS: Well, see, I didn't know I was going to  
 6 have to do a lot of reading.  
 7 MR DAVIDSON Do you want to see if maybe you and  
 8 your lawyer could run to your house and get  
 9 your glasses?  
 10 MS HARRISON Do you want to try his reading  
 11 glasses and see if they work?  
 12 MS. MIMS: You have an extra pair?  
 13 MR. DAVIDSON. I've got an extra pair  
 14 MS. MIMS. I'll try them  
 15  
 16 (Off the Record)  
 17  
 18 Q You've read the report?  
 19 A Yes.  
 20 Q And is that a pretty accurate assessment of Edward?  
 21 A Yes.  
 22 Q Anything that you've reviewed in that report that  
 23 you would disagree with?  
 24 A No.  
 25 Q Now, you indicated that you were threatened that

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1 you wouldn't be able to see your son if you did not  
 2 sign or didn't agree to the voluntary commitment.  
 3 A Yes.  
 4 Q Who told you that?  
 5 A It just was my opinion. That's the way I felt.  
 6 Q Did Mr. Morris ever tell you that?  
 7 A No.  
 8 Q Did Ms Flynn, the guardian ad litem?  
 9 A No.  
 10 Q Anybody with Babcock?  
 11 A That was my impression - If I didn't sign the  
 12 papers, I would not be able to see Edward again.  
 13 Q I appreciate that, and I understand your  
 14 impression, but what I'm trying to find out is did  
 15 anyone from Babcock Center tell you that directly?  
 16 A No.  
 17 Q Did anyone with the Department of Disabilities and  
 18 Special Needs tell you that directly?  
 19 A In a way. That's the impression I got is the way I  
 20 felt. If I didn't -- No. What I'm saying if I  
 21 didn't sign the papers, I would not be able to see  
 22 Edward again.  
 23 Q That was the impression you got from sitting in the  
 24 courtroom?  
 25 A Right.

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1 Q Did anyone, either inside the courtroom or outside  
 2 the courtroom, tell you that directly?  
 3 A No. But I didn't get to see him.  
 4 Q That's my question, though. No one ever told you,  
 5 okay. Now --  
 6  
 7 MS. HARRISON: Did she finish her response?  
 8  
 9 Q Did you finish, Ms. Mims?  
 10 A I guess. You said that's all you wanted to know.  
 11 Q So, your impression from hearing the conversation  
 12 in the courtroom is what made you feel that if you  
 13 didn't agree, you wouldn't be able to see Edward?  
 14 A That's right, that I would not be able to see  
 15 Edward again.  
 16 Q To your knowledge, did the judge ever prevent you  
 17 from speaking in that hearing?  
 18 A They would not let me say a word. All the people  
 19 that was there answered everything. I was not  
 20 given an opportunity to say anything, because  
 21 that's the reason I'm telling you now that's why  
 22 they didn't let me say anything because they knew  
 23 they was not going to let me see Edward again.  
 24 Q Did, at any point, the judge indicate to you that  
 25 you were not allowed to speak during the hearing?

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1 A I was told I couldn't say anything.  
 2 Q And that was told to you by the judge?  
 3 A Because I was told to set there and not say a word.  
 4 Q Okay. Was that expressed to you by the judge?  
 5 A Not as I remember, but that's the impression that I  
 6 got.  
 7 Q Okay And who did you get that impression from?  
 8 A My -- Like I told you. Everyone that was sitting  
 9 around the table.  
 10 Q Who did you get the impression that you were not  
 11 able to speak your lawyer or the judge --  
 12 A The judge. All of them that was sitting there.  
 13 Q Okay This order was signed in July 2001. Is that  
 14 what the record reflects, that order? Right after  
 15 -- It's right after that letter.  
 16 A Yeah.  
 17 Q Now, in November of 2001, you wrote the attorney  
 18 general's office. That's the next exhibit, I think  
 19 Exhibit 8. And who told you to write the attorney  
 20 general's office about Edward?  
 21 A I did.  
 22 Q Did you talk with anyone prior to writing General  
 23 Condon about Edward?  
 24 A Yes, I did. I talked to the people at Babcock  
 25 Center, at Clusters, that Edward was being abused;

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1 because when he come home, he got where he didn't  
 2 want to go back. I would have to make him get on  
 3 the van and go back.  
 4 Q My question is, did you ever -- did anybody ever  
 5 tell you to write the AG's office?  
 6 A No.  
 7 Q In the letter to Mr Condon, you do not mention  
 8 anything about the judicial commitment hearing and  
 9 the fact that you were forced to consent or felt  
 10 forced to consent. You didn't bring that up to  
 11 Attorney General Condon, correct, in your letter?  
 12 A Right.  
 13 Q You are aware, are you not, that if a lawyer, or  
 14 for that matter a judge, violates their oath and  
 15 does something like forces a client or a litigant  
 16 to do something against their will that that can be  
 17 reported to the attorney general's office? Were  
 18 you aware of that?  
 19 A Well, I didn't know that.  
 20 Q Okay. Your letter to the attorney general's office  
 21 was responded to by not only the attorney general's  
 22 office but also by the Department of Disabilities  
 23 and Special Needs, correct?  
 24 A (Non-verbal response)  
 25 Q Do you know if anyone looked into your complaints

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1 at Babcock Center one way or the other?  
 2 A I don't know. The only thing that I know that they  
 3 came out after the abuse. The attorney general's  
 4 office did to investigate.  
 5 Q And do you recall what their findings were and when  
 6 that was?  
 7 A I wrote about the abuse about Edward about him  
 8 being abused which I was cause of the abuse, which  
 9 I did not. Come to find out later that's when they  
 10 found out about Anthony, Carl Anthony.  
 11 That's the only reason that was brought up,  
 12 because I had wrote the attorney general about the  
 13 abuse, and they investigated it. And that's when  
 14 they found out about Carl Anthony.  
 15 Q And that was a result of your letter --  
 16 A Right.  
 17 Q -- of November 2001?  
 18 A That's right. Yes.  
 19 Q So no action, nothing had been reported regarding  
 20 Carl Anthony prior to your November 2001 letter?  
 21 A No Because no one believed me. They was blaming  
 22 everything on me.  
 23 Q All right. Listen to my question very carefully  
 24 A I'm answering your question.  
 25 Q I understand. I just want to make sure we're --

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1 I'm not confused. No action and no information  
 2 concerning Carl Anthony came to the forefront, came  
 3 to be known to anyone, until you wrote the attorney  
 4 general's office in November of '01.  
 5 A Right. I went to the hearing myself down in  
 6 Swansea when they had the hearing about Carl  
 7 Anthony. I was there.  
 8 Q When he pled guilty?  
 9 A Yes.  
 10 Q Did anybody go with you?  
 11 A Yes. My sister went with me.  
 12 Q And where does she live?  
 13 A My sister's passed -- My sister's deceased.  
 14 Q I'm sorry to hear that.  
 15 All right. You also indicate in your  
 16 Complaint that employees of Babcock and DDSN  
 17 falsely informed the probate court, and the court  
 18 appointed guardian that you were neglecting your  
 19 son. Who did that, do you know?  
 20 A I do not know. I never did neglect my son. I  
 21 always took care of him like we supposed to.  
 22 Q To your knowledge, was that during the hearing that  
 23 you basically were told that you couldn't speak up?  
 24 A Probably.  
 25 Q Do you type?

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1 A No.  
 2 Q In the exhibits, there is a chronology, which I  
 3 think is the first exhibit. Who prepared that, if  
 4 you know?  
 5 A I don't know. That was at Babcock Center.  
 6 Q Okay. My question is do you know who prepared this  
 7 document, --  
 8 A No, I do not.  
 9 Q -- Exhibit 1 --  
 10 A No.  
 11 Q -- Edward Mims chronology?  
 12 A I do not.  
 13 Q Okay. And can you vouch for its accuracy one way  
 14 or the other, since you didn't prepare it?  
 15 A Not really.  
 16 Q Prior to today, had you ever seen that chronology?  
 17 A About Edward?  
 18 Q Yes, ma'am.  
 19 A I think I have.  
 20 Q Prior to signing your affidavit, did you see it?  
 21 And if you don't know or don't recall --  
 22 A I don't recall.  
 23 Q All right. In the exhibits, page 27, it's a note  
 24 from you, 4/3/2001, where you indicated that you  
 25 wanted Edward to come back home

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1 A Yes, I did.  
 2 Q Is that the first time you had indicated in writing  
 3 that you wanted Edward to come home?  
 4 A Yeah.  
 5 Q Now, Mr. Mims, your son Edward was, I believe, hit  
 6 by a Babcock employee. And I believe that was  
 7 sometime in 2000, is that correct?  
 8 A Yes.  
 9 Q And, at that point, do you know whether or not  
 10 there was or was not an investigation into that  
 11 matter?  
 12 A I don't know.  
 13 Q Were you advised that they were undertaking an  
 14 investigation as a result of Edward having some  
 15 scratches and bruising on him in 2000?  
 16 A After I got him home.  
 17 Q Okay. After you saw him when he came home?  
 18 A Yeah.  
 19 Q And, to your knowledge, who contacted law  
 20 enforcement to swear out a warrant on ...  
 21 A I did.  
 22 Q Okay.  
 23 A Because the attorney general's office came to my  
 24 house and they investigated. I had to sign papers.  
 25 They swore the warrant out for Carl Anthony.

44

1 Q Do you know why it took the AG -- Did the AG's  
 2 office investigate this matter?  
 3 A Yes.  
 4 Q Do you know if the ombudsman's office investigated  
 5 --  
 6 A I don't know. Only thing I know they attorney  
 7 general's office came and talked with me after they  
 8 got a letter. They investigated. That's when they  
 9 found out about Carl Anthony.  
 10 Q Okay. Were you aware that the state ombudsman's  
 11 office was advised of the incident, on August 14,  
 12 2000, a day after it occurred. Were you aware of  
 13 that?  
 14 A No, I wasn't.  
 15 Q If you don't mind looking at page 25. Now, you see  
 16 at the bottom of the page. This is a letter dated  
 17 July 28, 2003 from Health and Human Services. You  
 18 see that letter?  
 19 A August 13?  
 20 Q No, excuse me. July 28, 2003  
 21 A Oh, I see it.  
 22 Q Okay. And you see under findings?  
 23 A Yeah, down at the bottom?  
 24 Q Yes, ma'am. I think Edward was attacked by Carl  
 25 Anthony on August 13, 2000. That sound about

45

1 right?

2 A Uh-huh.

3 Q Notice it says at the bottom, "Facility records

4 document that physical abuse incident occurred on

5 August 13, 2000, and was reported to the

6 ombudsman's program on August 14, 2000. Complaint

7 was reported to law enforcement. Perpetrator pled

8 guilty to simple assault " You see that?

9 A Uh-huh.

10 Q You weren't aware that the day after the incident

11 this matter was reported to the state ombudsman's

12 office?

13 A No, I was not.

14 Q Do you recall reading that when you prepared your

15 affidavit?

16 A (No response)

17 Q Do you, Ms Mims?

18 A No.

19 Q Does that appear to be significant to you that it

20 was in fact reported to the state ombudsman's

21 office?

22 A I don't know.

23 Q You indicate that Edward was actually attacked by

24 another consumer while at Babcock. Were you aware

25 of that? Was hit with a belt.

46

1 A Yes.

2 Q Okay. I think you indicate sometime around

3 December -- I'm going to show you This is part of

4 the Babcock record.

5

6 (Whereupon, Client Accident/Medical

7 Problem Reporting Schedule for Charge

8 Person, consisting of 1 page, was marked

9 Exhibit No. 2 for identification )

10

11 Q Ms. Mims, I'll show you an accident reporting

12 schedule regarding Edward. And in your Complaint,

13 you talk about a December 2001 where he was beaten.

14

15 MS HARRISON Do you have a copy of that?

16 MR. DAVIDSON I'll have to make one, that's mine.

17 MS HARRISON Are you talking about ours?

18 MR. DAVIDSON: No, no, no. This is something

19 MS. HARRISON: Are you going to make a copy for me

20 before you show it to my client?

21 MR. DAVIDSON: Sure. I just didn't have an extra

22 Let's take a short break anyway. We've been

23 going about an hour.

24

25 (Short Break)

47

1

2 Q Ms. Mims, I'll show you what's been marked as

3 Defendant's Exhibit No. 2, which is part of

4 Edward's Babcock file. And I think I've already

5 asked you - You've read his entire Babcock file,

6 haven't you?

7 A Uh-huh.

8 Q And do you recall seeing that form in the material

9 you read from Babcock?

10 A I don't know. I don't remember.

11 Q In your Complaint, you say that on December 16,

12 2001 that Edward was beaten at Babcock Center.

13 This appears to be on December 15, 2001. Is this

14 the incident you're referring to with Mr. Anderson,

15 to your knowledge?

16 A Yes.

17 Q And you see in the description of the incident

18 where Mr. Anderson admitted hitting Edward?

19 A Yes.

20 Q Okay. And having read this report -- Have you

21 taken a moment to look at this report?

22 A Yeah.

23 Q Anything on this report that you disagree with?

24 A No. I remember him being hit.

25

48

1 (Whereupon, Client Accident/Medical

2 Problem Reporting Schedule for Charge,

3 consisting of 1 page, was marked Exhibit

4 No. 3 for identification )

5

6 Q Again, I'll show you Defendant's Exhibit No. 3.

7 Again, that is one of the documents from the

8 Babcock file. And I did not see that in the

9 materials you pulled out, or someone pulled out,

10 for you to do your affidavit. Do you recall seeing

11 that in the material, the exhibits?

12 A No.

13 Q Okay. This is a client accident medical problem

14 reporting schedule for charge person dated January

15 24, 2003. And actually, in your Complaint,

16 paragraph 27, you say that the Plaintiff was beaten

17 at Clusters by another individual with a belt, and

18 I'm paraphrasing Does this appear to be that

19 incident?

20 A Yes.

21 Q And having reviewed this document, do you see

22 anything on the document that you disagree with

23 based on your knowledge of what happened back in

24 2002?

25 A See, I don't know about all these accident. I

49

1 didn't get no report on them. I mean, they didn't  
 2 keep up with me about everything that happened to  
 3 Edward.  
 4 Q You note on this form that it indicates that at  
 5 7:50 on the 24th, you were notified by Babcock.  
 6 See that Ms. Mims?  
 7 A If I was, I forgot.  
 8 Q Now, do you understand, what the term "immediate  
 9 jeopardy" means?  
 10 A No.  
 11 Q You have made allegations in your Complaint that  
 12 Babcock -- And I think sometime after this incident  
 13 with the belt, that your son was moved to  
 14 Kensington, correct?  
 15 A Right.  
 16 Q So they took him out of the Clusters at that point  
 17 as a result of his problems with the individual who  
 18 was striking him, a Mr. Anderson, is that right?  
 19 A (Non-verbal response)  
 20 Q You have to answer yes or no. They took him out of  
 21 Clusters and moved him to Kensington, correct?  
 22 A Yes.  
 23 Q And that was result of the problems they were  
 24 having between Mr. Mims and the individual who was  
 25 striking him, correct?

50

1 A (No response)  
 2 Q Correct, Ms Mims?  
 3 A I don't know.  
 4 Q Okay. But they moved him, nonetheless?  
 5 A Yes.  
 6 Q Okay. How did you learn that he had had a problem  
 7 with ant bites or that there were ants in his room?  
 8 A Where are you talking about?  
 9 Q Do you know anything about an incident where Edward  
 10 was bitten by ants while at Kensington or at any of  
 11 the facilities at Babcock?  
 12 A I know about Clusters.  
 13 Q Okay. In Clusters he got bitten some ants at  
 14 Clusters?  
 15 A Yes.  
 16 Q Okay Did he ever have any problems at Kensington  
 17 with being bit by ants, to your knowledge?  
 18 A Yes.  
 19 Q Do you know why that happened or how that happened?  
 20 A They was in his bed.  
 21 Q Do you know why they were in his bed?  
 22 A No, I do not.  
 23 Q And I assume it was reported to you that he had  
 24 been bitten by ants and had to go to the hospital?  
 25 A No, I don't remember.

51

1 Q Okay. You don't remember?  
 2 A No.  
 3 Q May have but you just don't remember?  
 4 A Right.  
 5 Q To your knowledge, in your Complaint, you refer to  
 6 several instances where Babcock was cited as a  
 7 result of violations of health and safety  
 8 standards Do you have any personal knowledge of  
 9 any of those events?  
 10 A No.  
 11 Q Do you know whether or not Babcock appealed any  
 12 citations it received as a result of any citations  
 13 they may have received?  
 14 A I don't know.  
 15 Q In the file in the exhibits, you have placed  
 16 several medical records concerning Edward. Do you  
 17 remember doing that, and I'm going to start you on  
 18 page 45 if you want to look through them. There  
 19 are several medical records that you've actually  
 20 placed with your affidavit. You've looked at some  
 21 of these medicals?  
 22 A On page 45?  
 23 Q Yes, ma'am. In putting together your affidavit and  
 24 in reviewing the records from Babcock concerning  
 25 your son, did these appear to be the most

52

1 significant medical records concerning Edward while  
 2 at Babcock?  
 3 A Yes.  
 4 Q The first one on page 45 has to do with the penis,  
 5 correct?  
 6 A Yes.  
 7 Q Now, let me back up before we get into this. I  
 8 just want to make sure.  
 9  
 10 (Whereupon, Initial Report of Alleged  
 11 Abuse, Neglect or . . . , consisting of 1  
 12 page, was marked Exhibit No. 4 for  
 13 identification )  
 14  
 15 Q Ms Mims, I'm going to show you Defendant's Exhibit  
 16 No 4, which is an initial report of alleged abuse,  
 17 neglect And it is for your son. It regards Carl  
 18 Anthony, the perpetrator, and it is dated October  
 19 13, 2003. This is when he was assaulted by Mr.  
 20 Anthony, correct?  
 21 A (Non-verbal response)  
 22 Q And on the document itself, it shows that you were  
 23 notified about incident on our about the same date,  
 24 correct?  
 25 A No, I was not

53	<p>1 Q You notice there is an indication that you were 2 notified. What time does it show, please, ma'am? 3 A Where you talking about, at the bottom? 4 Q It shows the date, excuse me Third person down 5 beyond Tonya Flake. You see your name, 6 Parent/guardian? 7 A Yeah, I see it. 8 Q You notice that it shows notification August 14, 9 2000? 10 A They did not notify me. 11 Q My question is, on the form itself, it shows that 12 you were notified? 13 A Yeah, I see it. 14 Q Today sitting here do you recall being notified 15 sometime around August? 16 A No, I do not. 17 Q Now, the medical records, going back to that a 18 minute You've got the page 45 exhibit - I'm not 19 sure which exhibit it is, but it's identified as 20 page 45 in the packet of material - It refers to 21 this as a chief complaint laceration to the penis, 22 you see that? 23 A Yeah, I see that. 24 Q Okay You see where the doctors indicates that 25 they're uncertain how the wound occurred?</p>	55	<p>1 A Yes. 2 Q And he was discharged to your house, according to 3 the second page, correct? 4 A (No response) 5 Q Do you notice that at the very top? They indicate 6 "Would like to be discharged; for us to discharge 7 the patient and have him follow up tomorrow with 8 him in the morning. The patient is discharged home 9 in good condition with mother " You notice that? 10 A I don't remember that. 11 Q Looking at page 50. Appears he was seen at 12 Lexington Medical Center also in December of 2000 13 with a swelling of his right hand, correct? 14 A Yeah. 15 Q Okay. They actually x-rayed it? 16 A That's what it says. 17 Q Okay. Saw no fracture, correct? And they 18 diagnosed it as a minor right hand contusion, which 19 is a bruise, correct? 20 A (No response) 21 Q Correct, Ms. Mims? 22 A Yeah. 23 Q The next one is actually the January 24, 2002 belt 24 incident, on page 51. You see that? 25 A I see it.</p>
54	<p>1 A Yeah, I see it. 2 Q Do you also see under physical examination it shows 3 that the tear on the under surface measured 4 approximately four centimeters? 5 A Yes. 6 Q Okay. And it did not appear to be deep involving 7 the dermal tissue only. Do you know what the 8 dermal tissue is? 9 A They had stitches in it. 10 Q Okay. My question is, do you know what dermal 11 tissue is? 12 A No. 13 Q But you do see where it says it was not -- did not 14 appear to be deep? 15 A Yeah, I see that. 16 Q The next medical record that you found significant 17 was on page 47, correct? 18 A (No response) 19 Q See this document, Ms. Mims? 20 A Yeah, I see it. 21 Q Let me ask you a few questions about it. He was 22 actually, on July 19, 2000, taken to not only 23 urgent care facility earlier that day, but also to 24 the emergency room because of concerns that he 25 might be having an appendicitis, correct?</p>	56	<p>1 Q And they actually, the same day it occurred, took 2 him to the emergency room to be evaluated, did they 3 not? 4 A That's what it says. 5 Q And to document his injuries, correct? 6 A That's what it says. 7 Q Okay. And they actually, on page 2, got social 8 services from the hospital to be involved with DSS, 9 Department of Social Services, correct? 10 A (No response) 11 Q Correct, Ms. Mims? 12 A Yeah. 13 Q Anyone with DSS contact you? 14 A No. 15 Q On page 54, again, one of the records you pulled, 16 he was brought in again in February of '02 to the 17 urgent care with some discoloration and bruising of 18 his first and second fingers of right hand. Notice 19 that? 20 A Yeah. 21 Q Doesn't appear to be any fractures or any problems 22 with the hand; just a bruise, correct? 23 A Right. 24 Q And they indicate they're not sure how it happened, 25 if he was injured or if he hit his hand, correct?</p>

57

1 A Right.

2 Q The next page, page 55, they actually in '03,

3 January 14, '03, were concerned enough about Edward

4 to take him to the emergency room because he had a

5 possible high blood pressure. See that, Ms Mims?

6 A Yeah.

7 Q You would agree that would be an appropriate thing

8 to do, correct?

9 A Yeah.

10 Q And it appears in regard to during the hospital

11 course, on page two --

12

13 MS. HARRISON: What page are you on?

14 MR. DAVIDSON: Page 56.

15

16 Q -- the emergency department course it says the

17 following. "Patient was observed in the ED,

18 emergency department, from 6:45 until 11:30 p.m.

19 Throughout that time he had no further symptoms "

20 You see that, Ms. Mims?

21 A Uh-huh.

22 Q "He was at baseline according to mom, as well as

23 staff members. We initially tried to get an

24 urinalysis, but patient could not give a sample.

25 At this time, we do not feel that we will

58

1 traumatize the patient with a catheter. He can

2 have this follow up at Babcock. He is afebrile.

3 His white count is slightly elevated, but this may

4 be normal for the patient due to his Phenobarbital

5 therapy. At this time, he will be discharged

6 home." Which, at that point, was Babcock Center,

7 correct?

8 A Yes.

9 Q Okay. And it indicates the doctors, in fact,

10 checked with you about his baseline on blood

11 pressure, correct?

12 A (No response)

13 Q Correct, Ms. Mims?

14 A I don't remember.

15 Q You're not denying they didn't call; you just don't

16 remember one way or the other, correct?

17 A (No response)

18 Q Correct, Ms Mims?

19 A They didn't call me.

20 Q So, what you're telling me is that Dr. Gillen, G-i-

21 l-l-e-n, basically falsified a medical record at

22 Lexington Medical Center -- or, excuse me, at

23 Richland Medical Center? This is at Richland. Is

24 that your testimony?

25 A If they called me, I don't remember.

59

1 Q On the next one, page 58, November 30, 2003, he

2 again comes to Palmetto Richland Memorial Hospital

3 Seen by doctors, and his chief complaint was pain,

4 correct?

5 A Yes. That's what it says.

6 Q And, at this instance, it appears, at least from my

7 reading of the record, Edward had been with you and

8 when he went back to Babcock, you insisted that

9 they take him to Palmetto Richland to be evaluated

10 for "pain," correct?

11 A (No response)

12 Q You see that, Ms Mims?

13 A Yeah, I see it.

14 Q And they responded in a timely fashion to your

15 concerns, did they not?

16 A Yes.

17 Q And on page 60, the hospital emergency department

18 course, or how he did, appears to be uneventful

19 course, does it not? He didn't have any problems

20 while he was in the emergency room, correct?

21 A (No response)

22 Q Is that correct, Ms. Mims, it indicates his entire

23 course was very uneventful and encouraging while he

24 was in the emergency room?

25 A Yes.

60

1 Q Now, I'll show you a letter. When did you first

2 learn of UCP, do you know? Was it prior to 2008,

3 to your knowledge?

4 A I don't know.

5

6 (Whereupon, Letter dated 10/28/03,

7 consisting of 2 pages, was marked Exhibit

8 No. 5 for identification.)

9

10 Q I'll show you a letter that was written. Take your

11 time and read that, please, ma'am.

12 A I don't remember that.

13 Q This is Exhibit No 5, and I've asked you to review

14 it. Is that your signature on that document, Ms.

15 Mims?

16 A Yes, it is.

17 Q Now, can you tell me where was this letter typed?

18 A I don't know.

19 Q Ms Mims, do you remember earlier I cautioned you

20 about listening to my questions and being truthful

21 because we're under oath, remember that?

22 A Yes

23 Q Okay. And I asked you when you first got involved

24 with Ms. Harrison or had any dealings with her, and

25 you indicated 2005. Remember that, Ms. Mims?

61	<p>1 A Yes.</p> <p>2 Q Okay. Ms. Mims, I'm going to show you this letter,</p> <p>3 Defendant's Exhibit No. -- what's the number at the</p> <p>4 bottom: five? It's dated what date, please, ma'am?</p> <p>5 A October 28, 2003</p> <p>6 Q Okay. And on October 2003, you wrote, or someone</p> <p>7 on your behalf, wrote to Ms Johnson, correct?</p> <p>8 A (No response)</p> <p>9 Q Is that correct?</p> <p>10 A Yes, they did.</p> <p>11 Q And asked you to sign a letter, correct?</p> <p>12 A I don't remember. I really don't.</p> <p>13 Q Okay Do you know who a Betty Lou Barclay is?</p> <p>14 A No, I do not.</p> <p>15 Q And do you happen to know who a Diane Wilush is or</p> <p>16 a Robin Wheeler? Do you know who any of those</p> <p>17 people are?</p> <p>18 A No, I don't.</p> <p>19 Q And you've already testified you don't know who</p> <p>20 Stan Butkus is, correct? And he's identified on</p> <p>21 this letter, is that right?</p> <p>22 A He's with the Babcock Center?</p> <p>23 Q That's fine. Is that what you believe?</p> <p>24 Ms. Mims, going back to page one, you see the</p> <p>25 third paragraph? You note you say, "Please have</p>	63
62	<p>1 your staff coordinate this planning meeting with</p> <p>2 Patricia Harrison. I would like to hold the</p> <p>3 meeting at 611 Holly Street and request Betty Lou</p> <p>4 Barclay facilitate this meeting " See that?</p> <p>5 A Yes.</p> <p>6 Q Okay. 611 Holly Street is Ms. Harrison's law</p> <p>7 office, is it not?</p> <p>8 A Yes.</p> <p>9 Q Am I not correct that Ms Harrison actually</p> <p>10 prepared this letter and had you sign it, correct,</p> <p>11 Ms. Mims?</p> <p>12 A Yes.</p> <p>13 Q Ms Harrison was involved with you in regard to</p> <p>14 Edward and your dealing with him in attempting to</p> <p>15 protect his rights as early as 2003, correct?</p> <p>16 October 28, 2003</p> <p>17 A Yes, I guess.</p> <p>18 Q Did she, on October 28, 2003, have permission to</p> <p>19 prepare this letter and ultimately get you to sign</p> <p>20 it and send it on to Judy Johnson?</p> <p>21 A Yes, I guess.</p> <p>22 Q You guess Do you know? Did you authorize her to</p> <p>23 write this letter for your signature?</p> <p>24 A I don't remember this letter. I really don't. I</p> <p>25 might have signed it, but I don't remember it.</p>	64
	<p>1 Q Okay Are you sure that is your handwriting?</p> <p>2 A Yeah. Looks like it.</p> <p>3 Q Okay So at least as early as October 2003, Ms.</p> <p>4 Harrison was involved with you in attempt to</p> <p>5 protect Edward's rights in regard to services being</p> <p>6 provided either through the Department of</p> <p>7 Disability or through Babcock Center, correct?</p> <p>8 A Yes.</p> <p>9 Q And she had been involved earlier than that,</p> <p>10 correct?</p> <p>11 A Not as I know of.</p> <p>12 Q So, on October 28, 2003, is the first time you met</p> <p>13 Ms. Harrison?</p> <p>14 A Yeah, I guess.</p> <p>15 Q And as a result of that, she wrote a letter on your</p> <p>16 behalf, which you signed, correct?</p> <p>17 A Yeah.</p> <p>18 Q Was she, to your knowledge, at that time assisting</p> <p>19 you with Edward's affairs? Wasn't she, Ms. Mims?</p> <p>20 A Yeah, I guess.</p> <p>21 Q And if she -- If you or she -- If you had any</p> <p>22 concerns about Edward and the way he was being</p> <p>23 treated, you went to Ms Harrison to obtain her</p> <p>24 legal counsel, correct?</p> <p>25 A Yes.</p>	
	<p>1 Q To your knowledge, in October 2003, did you sign</p> <p>2 any formal fee agreement or any type document to</p> <p>3 compensate Ms Harrison for her legal work?</p> <p>4 A No, I did not.</p> <p>5 Q Have you ever signed such an agreement?</p> <p>6 A No.</p> <p>7 Q Either on your behalf or on Edward's behalf?</p> <p>8 A (Non-verbal response)</p> <p>9 Q You have to answer yes or no.</p> <p>10 A No.</p> <p>11 Q Ms Mims, in your Complaint, you indicate that in</p> <p>12 April of 2005, Kensington was decertified. Do you</p> <p>13 know what you meant by that in your Complaint?</p> <p>14 A Decertified?</p> <p>15 Q Yes, ma'am</p> <p>16 A They wasn't up to date in what they -- taking care</p> <p>17 of the kids.</p> <p>18 Q Now, are you aware that Babcock Center actually</p> <p>19 appealed that determination and that Kensington was</p> <p>20 not decertified as a result of the April 29, 2005</p> <p>21 issue? Were you aware of that, Ms. Mims?</p> <p>22 A No.</p> <p>23 Q If you don't mind, turn to page 109 of your</p> <p>24 exhibits. Notice at page 109 at the very bottom,</p> <p>25 this is an email from a Jim Hill, general counsel,</p>	

65	<p>1 to Ms. Harrison.</p> <p>2 A Uh-huh.</p> <p>3 Q Prior to your affidavit, had you been shown a copy</p> <p>4 of this email?</p> <p>5 A Yes.</p> <p>6 Q It indicates from Mr. Hill that Babcock had</p> <p>7 appealed the decertification and the depopulation</p> <p>8 of Kensington, and the matter has been deferred</p> <p>9 until the appeal can be heard.</p> <p>10 Do you know what that means, Ms Mims?</p> <p>11 A No, I don't.</p> <p>12 Q To your knowledge, when the court issued its order</p> <p>13 on June 14, 2005 giving you temporary guardianship</p> <p>14 over Edward it was referenced that Babcock was</p> <p>15 decertified in April of 2005. To your knowledge,</p> <p>16 was the court -- From your memory of that hearing,</p> <p>17 was the court advised that Babcock Center had</p> <p>18 appealed that decertification and that it had been</p> <p>19 deferred?</p> <p>20 A I don't know.</p> <p>21 Q Would you agree with me that if, in fact, it had</p> <p>22 been appealed and the decision concerning</p> <p>23 decertification was deferred or put off, that that</p> <p>24 would be a matter to tell the court during a</p> <p>25 hearing? Wouldn't you agree, Ms. Mims, to tell the</p>	67	<p>1 Q I'll show you a report from Dr Graeme Johnson to</p> <p>2 Ron Dozier.</p> <p>3</p> <p>4 MS HARRISON: What exhibit number is this?</p> <p>5 MR. DAVIDSON. This will be Exhibit No. 6.</p> <p>6</p> <p>7 (Whereupon, Dr Graeme Johnson report,</p> <p>8 consisting of 3 pages, was marked Exhibit</p> <p>9 No. 6 for identification.)</p> <p>10</p> <p>11 Q No one's ever brought that to your attention?</p> <p>12 A (No response)</p> <p>13 Q Have you ever seen that report?</p> <p>14 A (No response)</p> <p>15 Q Have you ever seen that report, Ms. Mims?</p> <p>16 A Yes, I think so.</p> <p>17 Q It indicates that he was evaluated by Dr. Graeme</p> <p>18 Johnson, does it not?</p> <p>19 A That's what it says.</p> <p>20 Q It indicates that he reviewed a fair amount of</p> <p>21 documentation concerning the incident regarding</p> <p>22 your son's laceration of his penis, correct?</p> <p>23 A Yeah.</p> <p>24 Q It indicates that he actually examined Edward,</p> <p>25 correct?</p>
66	<p>1 court that?</p> <p>2 A I don't know.</p> <p>3 Q Now, in your Complaint, you talk about the -- I</p> <p>4 think we already discussed this. -- You indicated</p> <p>5 that you felt, based on the fact that your son had</p> <p>6 had a laceration to his penis, that he had been</p> <p>7 molested, correct? That was your assumption based</p> <p>8 on the injury, correct?</p> <p>9 A (Non-verbal response)</p> <p>10 Q You have to answer yes or no.</p> <p>11 A Yes.</p> <p>12 Q No one ever told you that, correct?</p> <p>13 A (Non-verbal response)</p> <p>14 Q You have to answer yes or no</p> <p>15 A No.</p> <p>16 Q Are you aware that the Department of Disability and</p> <p>17 Special Needs, at a request of Babcock and the</p> <p>18 ombudsman's office, sent a doctor over, a Dr.</p> <p>19 Graeme, to try to determine how the laceration had</p> <p>20 occurred Are you aware of that? Graeme Johnson,</p> <p>21 I believe, was his name</p> <p>22 A (No response)</p> <p>23 Q Are you aware of that, Ms. Mims, because I did not</p> <p>24 see that report in your affidavit.</p> <p>25 A No.</p>	68	<p>1 A Yeah.</p> <p>2 Q It indicates he looked at the environment where he</p> <p>3 was living to try to determine a cause, correct?</p> <p>4 A Yes.</p> <p>5 Q He looked at various statements that were taken</p> <p>6 concerning the incident, correct?</p> <p>7 A Right.</p> <p>8 Q And he made no determination as to what caused the</p> <p>9 tear to your son's penis, did he?</p> <p>10 A No.</p> <p>11 Q And the emergency room doctors did not indicate a</p> <p>12 reason for the tear to the tissue -- the</p> <p>13 superficial tear to the tissue of the underside of</p> <p>14 his penis, did they?</p> <p>15 A No.</p> <p>16 Q You're aware, are you not, that emergency room</p> <p>17 doctors are required reporters if they feel there</p> <p>18 is abuse and neglect? Are you aware of that?</p> <p>19 A Yeah, I guess.</p> <p>20 Q Were you ever provided the packet of investigative</p> <p>21 material by your attorney or anyone, for that</p> <p>22 matter, concerning the investigation into the tear,</p> <p>23 the superficial tear to Edward's penis? Do you</p> <p>24 remember seeing that in the documents?</p> <p>25 A This?</p>

69

1 Q Yes, ma'am. Or any of the investigative material  
 2 concerning Edward's lacerated or torn skin of his  
 3 penis?  
 4 A Yeah, I remember. I don't remember.  
 5 Q Well, are you aware that the ombudsman's office is  
 6 a mandated state reporter that you're to report  
 7 incidences of abuse and neglect for them to  
 8 examine? Are you aware of that?  
 9 A No, I'm not.  
 10 Q Are you aware that on --  
 11  
 12 (Whereupon, Letter dated July 12, 2005,  
 13 consisting of 1 page, was marked Exhibit  
 14 No. 7 for identification )  
 15  
 16 Q Exhibit No 7 is a letter from the state  
 17 ombudsman's office. Their investigator, a Shirley  
 18 Thomas, that read, "On June 6, 2005, this office  
 19 received Tonya Bradford's investigative report on  
 20 behalf of Edward Mims as it relates to a laceration  
 21 on Mr. Mims' penis This office conducted a  
 22 review, and concluded that the interviews with  
 23 staff, Tonya Bradford and Trelas Heatley, a review  
 24 of Dr. Graeme Johnson's documentation, and a review  
 25 of the Lexington Medical Center records dated May

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1 27, 2005. As a result of this review, abuse and/or  
 2 neglect is outlined in the Omnibus Adult Protection  
 3 Act could not be substantiated." Means they did  
 4 not make a finding that he had been abused and  
 5 neglected, correct?  
 6  
 7 MS HARRISON You're asking for a legal conclusion,  
 8 Will  
 9 MR. DAVIDSON. I thought we had reserved objections  
 10  
 11 Q Correct? That's what it says Something's not  
 12 substantiated, it means it's not found, correct?  
 13 A I don't know.  
 14 Q You don't know what the word "substantiated" means?  
 15 A No, I don't.  
 16 Q Had you ever seen that before?  
 17 A No, I have not.  
 18 Q And I'm referring to Defendant's Exhibit No. 7 --  
 19 or is it Exhibit No. 8. It's that document up  
 20 here. Exhibit No 7 You've never seen that?  
 21 A I have not seen this.  
 22 Q Now, you also, in your Complaint, talked in terms  
 23 of the June 10th hearing before the probate judge  
 24 where you were made temporary guardian. You  
 25 remember that hearing? Ms Harrison went with you

71

1 at that one. It's page 107, I believe, of your  
 2 exhibits.  
 3 A (No response)  
 4 Q See this order? I think the hearing was on June --  
 5 It may have been June 9th. The order is dated June  
 6 14th. Do you remember this hearing?  
 7 A Yes.  
 8 Q Okay. It does not appear, at least at this point,  
 9 that anyone from either Babcock Center or  
 10 Disabilities and Special Needs were present,  
 11 correct?  
 12 A No.  
 13 Q Now, you indicate in your Complaint that the  
 14 Defendants attempted to obstruct the proceedings  
 15 for appointment of guardian ad litem, okay. To  
 16 your knowledge, no one with either Babcock Center  
 17 or DDSN was at this June 2005 hearing, correct?  
 18 A I don't know.  
 19 Q Well, in the actual order it says who attended  
 20 You don't see anybody referenced from the  
 21 Department or from Babcock being present, correct?  
 22 A Right.  
 23 Q I think the Department did, at some point, present  
 24 its position to the Court, did it not?  
 25 A (No response)

72

1 Q Correct?  
 2 A Yes.  
 3 Q And the Court considered that and decided to go  
 4 ahead and permanently make you guardian ad litem,  
 5 correct?  
 6 A Yes.  
 7 Q Do you know, other than presenting the position of  
 8 the Department of Disabilities and Special Needs in  
 9 regard to whether you should or should not be  
 10 guardian ad litem, in court, was there any other  
 11 action on the part of the Department or its  
 12 personnel to try to obstruct the court proceedings,  
 13 to your knowledge?  
 14 A I don't know.  
 15  
 16 MR. DAVIDSON. It's about another hour. You want to  
 17 take a short break? Does she need lunch? How  
 18 do you want to . . .  
 19 MS. HARRISON: We've done two hours.  
 20 MR. DAVIDSON: That's fine. I don't care.  
 21 MS. HARRISON. I mean, that's what you've got, is  
 22 two hours  
 23 MR. DAVIDSON: I've got as long as I need with the  
 24 Plaintiff.  
 25 MS. HARRISON: No, you don't We're done at 12 30

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1 MR. DAVIDSON: Do you plan on walking out?  
 2 MS. HARRISON: We're planning on leaving at 12:30,  
 3 and we'll give you another 15 minutes, Will,  
 4 but the Judge said that it was two hours per  
 5 witness  
 6 MR. DAVIDSON: No, ma'am  
 7 MS. HARRISON: Okay Well, we'll go till lunch and  
 8 then we're done  
 9 MR. DAVIDSON: Ms. Harrison, if you walk out, I  
 10 think you might want to call the Judge before  
 11 you do that  
 12 MS. HARRISON: Well, you can do whatever you need to  
 13 do. At lunch we're done. He said two hours  
 14 I'll give you another 20 minutes  
 15 MR. DAVIDSON: Let's just call him now.  
 16 MS. HARRISON: But two hours and we're done.  
 17 MR. DAVIDSON: Let's call him now.  
 18 MS. HARRISON: I want to put on the record, at 12:18  
 19 we went off the record.  
 20  
 21 (Off the Record)  
 22  
 23 MS. HARRISON: We had been informed previously by  
 24 the Judge that depositions would be limited to  
 25 two hours, and Ms. Mims has obligations at

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1 work, and we have now been told by the Judge -  
 2 it's two and a half hours after we started -  
 3 that Mr. Davidson is being giving additional  
 4 time.  
 5 So Ms. Mims, to meet her obligations, we  
 6 will be leaving at 1:30, and if he needs to  
 7 reconvene, we'll do that. But Ms. Mims, based  
 8 on the Judge's former instructions that the  
 9 deposition would last only two hours, has work  
 10 obligations that she'll be leaving at 1:30 to  
 11 take care of  
 12 MR. DAVIDSON: For the record, we made a phone call  
 13 to the Honorable James Barber, discussed with  
 14 Judge Barber the time limit in regard to our  
 15 deposing the Plaintiff He indicated that  
 16 there was no time limit  
 17 MR. STEGMAIER For the record, for Babcock, we do  
 18 not concur with the -- We're not making any  
 19 sort of agreement as far as reconvening the  
 20 deposition after today It's our mission,  
 21 it's our intention to take the entire  
 22 deposition today  
 23 MS. HARRISON She has obligations We're leaving  
 24 at 1:30. We'll be leaving at 1:30.  
 25 MS. MIMS: Y'all going to pay for my day's work?

75

1 MS. HARRISON: Okay, Ms. Mims, we'll talk about  
 2 that later. We'll be leaving at 1:30  
 3  
 4 BY MR. DAVIDSON (Resuming)  
 5 Q Ms. Mims, in your lawsuit - and I'm referring to  
 6 basically page ten, paragraph 51 - you reference  
 7 that "The Defendants entered into a conspiracy to  
 8 deprive the Plaintiff his civil rights and his  
 9 rights to receive services."  
 10 What civil rights are you referring to, if you  
 11 know?  
 12 A Edward's civil rights?  
 13 Q What civil rights are you indicating?  
 14 A You mean Edward's rights?  
 15 Q Yes, ma'am.  
 16 A If I don't take up for Edward, who is?  
 17 Q Okay.  
 18 A You're not.  
 19 Q Do you know what rights you're claiming were  
 20 violated?  
 21 A Well, since Edward can't talk and take up for  
 22 himself, and if he's being abused, who's going to  
 23 take up for him if I don't try.  
 24 Q Do you know if anyone has conspired against Edward?  
 25 A I don't know.

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1 Q Do you know anyone that has conspired against  
 2 Edward and Edward's rights?  
 3 A Well, when I'm not told about things that happen to  
 4 him, you think that's Edward's rights if they don't  
 5 let me know everything that happened to him?  
 6 Q Okay Now, you also indicate that you requested  
 7 adult day services and certain funding through  
 8 Medicaid, and that some of that was denied, are you  
 9 aware of that?  
 10 A It was. Yes.  
 11 Q You, I think, indicated that there was a  
 12 termination of adult day services, violation of the  
 13 service rights to give himself reasonably prompt  
 14 choice of service coordinator, --  
 15 A Yes.  
 16 Q -- right of choice of adult companion  
 17 A Yes.  
 18 Q Respite care, although I think he did get some  
 19 respite services  
 20 A He finally did get some respite care.  
 21 Q You raise the issue that he had violated -- the  
 22 certain violation of federal laws by payment of  
 23 bands for the funding to Babcock Centr. Do you  
 24 understand what bands are?  
 25 A (Non-verbal response)

77

1 Q What are they?

2 A Bands where he should get things that he needs if

3 he's asked for it.

4 Q And failing to give choice in regard to certain

5 providers he wanted, you're aware of that?

6 A Right.

7 Q Now, you've raised that in the lawsuit. Are you

8 aware that there was actually an appeal of those

9 issues to the Department of Health and Human

10 Services?

11 A (No response)

12 Q Were you aware of such an appeal?

13 A I don't know.

14 Q Did you authorize anyone to appear before the

15 Department of Health and Human Services and appeal

16 any denial of rights or denial of services on your

17 behalf back in 2006?

18 MS HARRISON: What are you looking at?

19

20

21 A (No response)

22 Q Do you recall that, Ms Mims?

23

24 MS HARRISON: Are you looking at a particular page?

25 MR. DAVIDSON: No.

78

1

2 A (No response)

3 Q Are you aware of that?

4 A Aware of what?

5 Q That there was an appeal brought to the Department

6 of Health and Human Services regarding the denial

7 of the things I just went over with you? Were you

8 aware of that?

9 A No.

10 Q Were you aware that a Leonard -- a Mr. Robert E

11 Leonard with Health and Human Services was a

12 hearing officer and basically dismissed the appeal?

13 A (No response)

14 Q Are you aware of that?

15 A No.

16 Q Were you aware that a notice of appeal was filed on

17 Edward's behalf regarding those issues that

18 essentially are alleged in your lawsuit concerning

19 funding and services and the issue concerning adult

20 day services and Babcock and the Department not

21 providing certain services? Were you aware that

22 that was appealed to the Administrative Law Court

23 in February of '07? Were you aware of that?

24 A I'm not sure.

25 Q Well, in February of '07, you were the permanent

79

1 guardian for Edward, were you not?

2 A Yes.

3 Q Do you think you should have been consulted before

4 an appeal was brought before the Administrative Law

5 Court regarding Edward?

6 A Yes.

7 Q Do you recall, were you even aware that such an

8 appeal existed?

9 A I'm not sure.

10 Q You're not sure you knew there was or was not an

11 appeal. Were you aware that the appeal was

12 dismissed? The hearing officer's decision to

13 dismiss Mr Mims' appeal was within the sound

14 discretion and authority, therefore, affirmed.

15 Were you aware that the administrative law judge

16 had dismissed the appeal of the ALJ's opinion?

17 A No, I was not.

18 Q Excuse me, HHS hearing officer's opinion? You were

19 not aware of that?

20 A (Non-verbal response)

21 Q Concerning of these very issues you've sued the

22 Department and some individuals on, you weren't

23 aware of that?

24 A Like I say, I'm not sure.

25 Q Were you aware that there was an appeal taken to

80

1 the South Carolina Court of Appeals concerning

2 these issues that you've actually -- concerning the

3 band payment, concerning respite care, concerning

4 termination of adult day services, concerning the

5 way payments are handled? Were you aware of that,

6 that it was appealed to the South Carolina Court of

7 Appeals on behalf of Edward Mims?

8 A (No response)

9

10 (Whereupon, Order of Dismissal,

11 consisting of 1 page, was marked Exhibit

12 No 8 for identification.)

13 (Whereupon, Remittitur, consisting of 1

14 page, was marked Exhibit No 9 for

15 identification.)

16

17 Q I'll show you what's been marked as Exhibits No. 8

18 and 9. Ms. Mims, you see this document, which is

19 Exhibit No. 8, which is an Order of Dismissal from

20 the South Carolina Court of Appeals?

21 A Yeah, I see it.

22 Q Notice it indicates Edward Mims as the Appellant?

23 A Yes.

24 Q Okay. To your knowledge, you were guardian for

25 Edward on April 28, 2008?

81

1 A Yes.

2 Q Did you authorize an appeal to the South Carolina

3 Court of Appeals in regard to a claim against the

4 South Carolina Department of Health and Human

5 Services?

6 A Yes.

7 Q You did, but you don't know anything about it?

8 A (No response)

9 Q Ms Mims, I'm going to ask you this again You

10 have sued individuals in their individual capacity

11 as well as state agency and the Babcock Center

12 And you have raised almost identical issues in this

13 lawsuit concerning funding and concerning adult

14 health services, day care services, respite care,

15 in this lawsuit. Were you aware that you had

16 appealed the denial of those services before the

17 ALJ and the Department of Health and Human

18 Services?

19 A I guess I did. I don't remember.

20 Q You don't remember, okay. Obviously your name is

21 not on the pleadings, correct?

22 A No.

23 Q Is today the first time you've ever heard of such

24 an appeal, to your knowledge? Isn't that right,

25 Ms. Mims?

82

1 A (No response)

2 Q Today's the first time you've heard any of this,

3 correct?

4 A (No response)

5 Q Correct, Ms Mims?

6 A I don't know.

7 Q You don't know Are you aware that the appeal was

8 dismissed because counsel did not complete and file

9 the appropriate documents with the Court? Were you

10 aware of that, Ms Mims?

11 A I don't know.

12 Q You don't know. Do you know anything about the way

13 the Department or Babcock Center pays FICA taxes to

14 any of its providers or employees?

15 A No, I don't.

16 Q Has, at any time, the Department ever been involved

17 with the denial of paying FICA taxes on behalf of

18 Edward?

19 A I don't know.

20 Q Do you know anything about whether or not the

21 Department pays in-home care givers lower wages and

22 requires those care givers to pay for background

23 checks? Do you know anything about that?

24 A No, I don't.

25 Q Do you know if that's ever happened to Edward, if

83

1 that's ever been a problem with Edward getting

2 services in the home where they have paid them a

3 lower wage than other individuals? You don't know

4 anything about that, do you?

5 A I don't know.

6 Q Do you have any indication that anyone has been in

7 violation of the Americans with Disabilities Act in

8 regard to Edward?

9 A I don't know.

10 Q To your knowledge, other than staying at Babcock in

11 a -- Was it a group home with multiple people?

12 A Yes.

13 Q -- And at your home, has he been in any other

14 facilities?

15 A No.

16 Q And I think he's presently in a group home at

17 United Cerebral Palsy?

18 A Right now.

19 Q And how many people are in that facility?

20 A Four.

21 Q Four. Is it a similar type set up that he had at

22 Babcock, both at the Clusters and at Kensington?

23 A No. It's kind of different.

24 Q Kind of different. Same number of people, though?

25 A Uh-huh.

84

1 Q To your knowledge, has Edward or you ever been

2 charged for any services that you have been

3 provided for Edward -- that have been provided for

4 Edward?

5 A No.

6 Q Department of Disabilities never charged you

7 anything?

8 A Huh-uh.

9

10 MR. STEGMAIER: I'm sorry, is that a no?

11

12 Q No. Never been charged, or Edward's never been

13 charged for any of the services?

14 A No.

15 Q Do you know of any false or misleading information

16 that was ever provided to the probate court in

17 South Carolina in regard to Edward?

18 A What you mean?

19 Q Anything that you thought was false or shouldn't

20 have been said in open court?

21 A No, not as I know of.

22

23 MS. HARRISON: Are you asking her if she provided

24 false information or if there was false

25 information provided?

85

1 MR. DAVIDSON: I've asked her the question.  
 2 MS. HARRISON: You need to clarify that, Will  
 3 MR. DAVIDSON: You can note your objection Well,  
 4 you don't even get to object, so don't worry  
 5 about it.  
 6  
 7 Q To your knowledge, has Edward been maintained in  
 8 the least restrictive environment while he was  
 9 either at your house or at Babcock, either at  
 10 Clusters or Kensington or, for that matter, United  
 11 Cerebral Palsy?  
 12 A What you mean restrictive?  
 13 Q Least restrictive. In other words, as far as you  
 14 know, he's able to do things while he's there  
 15 A Yeah.  
 16 Q Okay Have you ever attempted to have him  
 17 institutionalized?  
 18 A No.  
 19 Q Do you believe that he is appropriate to be in a  
 20 house with four other consumers?  
 21 A If it's -- If there's enough of staff to look after  
 22 him.  
 23 Q Other than a question about adult day services and  
 24 some argument over respite care, have they ever --  
 25 to your knowledge, has Edward ever been denied

86

1 services other than those two areas: adult day  
 2 services and there was a period I think there was  
 3 some question about him getting respite? Any other  
 4 areas that he's been denied services, to your  
 5 knowledge?  
 6 A No.  
 7 Q And do you know who made the decision to not allow  
 8 him to have -- or to terminate adult day services?  
 9 A No.  
 10 Q Or to have some question about respite care?  
 11 Anybody you know who made any of those decisions?  
 12 A No.  
 13  
 14 MR. DAVIDSON: Let's take a short break Let me  
 15 look at my notes.  
 16  
 17 (Short Break)  
 18  
 19 Q Ms Mims, do you ever recall speaking with a Vivian  
 20 Koon?  
 21 A Not as I know of.  
 22 Q Do you recall telling her sometime in June of '05  
 23 after you brought -- I think you brought Edward  
 24 home sometime around the end of May, first of June,  
 25 '05, correct?

87

1 A Yeah.  
 2 Q I believe you and Ms. Harrison showed up at Babcock  
 3 and demanded he be released.  
 4 A Yeah.  
 5 Q Do you recall telling Ms Koon that you would like  
 6 Edward to be placed as soon as possible so you  
 7 could go back to work?  
 8 A No, I don't remember that.  
 9 Q Do you deny saying that? In June of 2005, after  
 10 you had gone and gotten Edward out of the Babcock  
 11 Center as result of this four centimeter tear of  
 12 the penis, do you recall telling Ms Koon you  
 13 wanted him placed as soon as possible so you could  
 14 go back to work?  
 15 A No, I don't remember that.  
 16 Q Do you deny saying that?  
 17 A I could have said that. I don't remember that.  
 18 Q Just don't remember. Do you know a Patricia  
 19 Jennings, Ms. Mims?  
 20 A Patricia Jennings?  
 21 Q Yes, ma'am  
 22 A No, I don't.  
 23 Q Ever talked to a Patricia Jennings?  
 24 A Not as I know of. Not as I remember.  
 25 Q Do you know of a Brenda Bryan? Ring any bells?

88

1 A No.  
 2 Q Do you know a Debra Brown from over in Pelion,  
 3 South Carolina? Do you know Ms. Brown?  
 4 A (No response)  
 5 Q You don't know Ms Brown?  
 6 A No.  
 7 Q What about a Virginia Thomas? I'm going to read  
 8 you some names, and I'm just trying to find out if  
 9 you know of these individuals.  
 10  
 11 MS. HARRISON: Are you all right?  
 12 MR. DAVIDSON: Do you need to take a break?  
 13 MS. MIMS: No, I'm okay. I'm trying to think  
 14  
 15 Q Ring any bells?  
 16 A No.  
 17 Q What about a Risley Lindler? Do you know a Mr.  
 18 Lindler?  
 19 A No, I don't.  
 20 Q What about a Tonya Bradford, does that ring any  
 21 bells?  
 22 A I've seen her before at Babcock Center.  
 23 Q What about a Tim Cuddington? C-u-d-d-i-n-g-t-o-n  
 24 Do you know a Mr Cuddington who used to be at  
 25 Babcock Center?

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1 A No.  
 2 Q How about a Deborah Wofford?  
 3 A Huh-uh.  
 4 Q No. You know anything about that individual?  
 5 A No.  
 6 Q What about Anita McMahon. Know anybody by that  
 7 name? McMahon, excuse me  
 8 A (No response)  
 9 Q Doesn't ring any bells?  
 10 A No.  
 11 Q What about a Tad Uno? U-n-o?  
 12 A No.  
 13 Q What about a Dorothy Moore with the Governor's  
 14 office? Ever talked to Ms. Moore at the Governor's  
 15 office?  
 16 A I might have. I don't know.  
 17 Q What about a Jim Christian? Do you know Dr  
 18 Christian?  
 19 A No.  
 20 Q Do you recall ever talking with Dr Christian?  
 21 A I don't know.  
 22 Q What about a Dale Watson with the ombudsman's  
 23 office? Know anything about Mr. Watson?  
 24 A No.  
 25 Q Or a Priscilla Moore?

90

1 A No.  
 2 Q Never talked with her? What about a Curtis Loftis  
 3 at the Lieutenant Governor's office? Ever talked  
 4 to them?  
 5 A No, I don't.  
 6 Q What about a Ronald Reed from over Atlanta CMS?  
 7 A No.  
 8 Q What about a Gloria Prevost with the Protection and  
 9 Advocacy? Did you ever talk with her or anyone at  
 10 with Protection and Advocacy?  
 11 A No.  
 12 Q What about a Randolph Thomas who used to be with  
 13 the criminal justice academy? Ever talk with him?  
 14 A No.  
 15 Q What about a Steven Jeffcoat? You ever talk with a  
 16 Steve Jeffcoat?  
 17 A Not as I know of.  
 18 Q What about a Senator David Thomas? You ever talked  
 19 with Senator Thomas?  
 20 A No.  
 21 Q Lee Teed who used to be with the AG's office, he  
 22 wrote you a letter. Is that the only communication  
 23 you've had with him when you wrote the AG back in,  
 24 I think it was 2001?  
 25 A About Anthony?

91

1 Q Yes  
 2 A That's the only one I know I talked to.  
 3 Q Okay. David Pointer, ring any bells?  
 4 A No  
 5 Q How about a Deborah McPherson? Ever talked with  
 6 Ms. McPherson?  
 7 A I don't know. I don't remember all them names.  
 8 Q Ever talked with a Mary Katherine Bagnal of Senior  
 9 Matters Consulting, to your knowledge, or a Miller.  
 10 Mary Katherine Miller? Never talked with her?  
 11 A Not as I know of.  
 12 Q Okay.  
 13 A You see, it's a lot of names. I mean, I don't . .  
 14 .  
 15 Q What about a Cornell Rivers. Used to work at  
 16 Babcock. You know Mr Rivers?  
 17 A No.  
 18 Q How about Yvonne Davis? You remember Ms Davis  
 19 used to work at Babcock?  
 20 A Yvonne that worked at Kensington?  
 21 Q Yes, ma'am.  
 22 A Yeah, I remember her.  
 23 Q What kind of -- She a pretty good employee? Did  
 24 you like her?  
 25 A Yeah.

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1 Q Seemed to care about Edward?  
 2 A Yeah.  
 3 Q What about anybody -- You ever talked with anybody  
 4 at the Legislative Audit Council with the state  
 5 government?  
 6 A I don't know.  
 7 Q What about a Nancy Dixon over from over in  
 8 Leesville? Ever talked with anybody from over in  
 9 Leesville?  
 10 A Huh-uh. Not as I know of.  
 11 Q What about a Carolyn Henderson?  
 12 A No.  
 13 Q An Amy Davenport?  
 14 A No.  
 15 Q Never talked with Ms. Davenport about her daughter  
 16 or anything?  
 17 A Huh-uh.  
 18 Q Have you ever talked with a Nora Baladerian from  
 19 Los Angeles, California?  
 20 A Not as I know of.  
 21 Q Ever talked to anybody from California?  
 22 A No.  
 23 Q Ever authorized anybody to hire Ms Baladerian to  
 24 be a witness in this case? You agree to pay any  
 25 money to compensate Ms Baladerian to be a witness

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1 in this case, to your knowledge?

2 A Not as -- I don't know.

3 Q Now, you think you might remember if you hired

4 somebody to come here from California to be a

5 witness? You think you might remember that?

6 A I guess. I don't know. I don't know them people.

7

8 MR. DAVIDSON I think I'm through I'll turn it

9 over to you

10

11 -----

12 EXAMINATION

13 BY MR. STEGMAIER:

14 Q Ms Mims, I'm Christian Stegmaier.

15

16 MS. HARRISON. If we can make a note, please, that

17 it's -- What time do you have, Ms. Court

18 Reporter?

19 COURT REPORTER: It's 1:08

20

21 Q Again, Ms Mims, my name is Christian Stegmaier.

22 Our law firm, Collins & Lacy, we're general counsel

23 for the Babcock Center, and we also represent the

24 interest of Dr. Judy Johnson, who is the executive

25 director of Babcock Center

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1 Could you tell me in your own words, as best

2 you can, why you have elected to file suit in the

3 Court of Common Pleas for Richland County against

4 both Babcock Center and Dr. Johnson?

5 A Just because of all the abuse that Edward went

6 through.

7 Q Okay. When you say 'all the abuse,' what are you

8 talking about?

9 A I'm talking about the things that happened to him.

10 Q Like what things?

11 A Well, the abuse of the workers hitting him in the

12 eyes.

13 Q When was that?

14 A I don't remember what year it was, --

15 Q I'm sorry, I cut you off.

16 A That's all right. Go ahead.

17 Q Do you know which year that was?

18 A No, I don't remember.

19 Q Was it at or around 2000 or 2001?

20 A Something like that.

21 Q Okay So that was eight or nine years ago, is that

22 correct?

23 A (No response)

24 Q If today is 2009, and these events happened in

25 2000/2001, that would be eight or nine years ago,

95

1 wouldn't it?

2 A I guess.

3 Q Yes, ma'am Any other abuse that you have filed

4 suit against Babcock Center and Dr. Johnson for?

5 A You know what? I'm tired of answering of answering

6 all these questions because I don't know what all

7 y'all talking about.

8 Q Let me ask you this question because your answer

9 right now just concerns me Have you taken any

10 medication today?

11 A Who me?

12 Q Yes, ma'am.

13 A I take medicine for my heart.

14 Q Okay. The medication that you shared with Mr

15 Davidson earlier in the deposition today?

16 A Yeah, my heart medicine.

17 Q Your heart vitamin, some of the other drugs that

18 you detailed for him This is a very important

19 question. Does your taking those medications

20 impair or impact upon your ability to understand or

21 respond to the questions that we've asked you

22 today?

23 A I don't think so.

24 Q Okay. So you feel capable and competent to respond

25 to my questions, as well as the questions that have

96

1 been asked of you by Mr. Davidson, is that correct?

2 A (No response)

3 Q Is there anything keeping you from understanding

4 what I'm asking you and being able to respond to

5 it?

6 A Not really. I get tired of sitting and listening

7 to all this stuff.

8 Q Do you need to take a break?

9 A No.

10 Q You understand that because you are the Plaintiff

11 who has initiated this lawsuit in Richland County,

12 you bear the burden of proof in prosecuting your

13 claim against our clients? I'm sure that's been

14 explained to you And you understand by virtue of

15 that, we have the right to defend ourselves by way

16 of discovery, which would include asking you

17 questions at these depositions? That's why this

18 deposition today is so important.

19 I asked you initially why you have filed suit

20 against Babcock Center and Dr. Johnson, and you

21 detailed to me or responded saying the abuse that

22 Mr Mims, your son, has suffered And you told me

23 about an incident occurring in either 2000 or 2001.

24 Are there any other incidents that have caused you

25 to file suit against Babcock Center and Dr. Johnson

97	<p>1 in this lawsuit?</p> <p>2 A Well, what happened to him in 2005.</p> <p>3 Q Okay. And what happened to him in 2005?</p> <p>4 A Of being molested.</p> <p>5 Q Okay And, again, as Mr. Davidson asked you,</p> <p>6 that's your opinion, correct?</p> <p>7 A I guess.</p> <p>8 Q Okay Has anybody, whether it's a doctor or any</p> <p>9 other official or person, ever confirmed or</p> <p>10 corroborated for you that Mr. Mims was in fact</p> <p>11 molested while --</p> <p>12 A Well, they haven't denied it either. They don't</p> <p>13 know what happened.</p> <p>14 Q All right. Well, let me ask my entire question</p> <p>15 Has anybody, other than based on your suspicion or</p> <p>16 belief, has anybody, whether it's a healthcare</p> <p>17 professional, a mental retardation professional,</p> <p>18 any other official with whom you have spoken, have</p> <p>19 any of those persons either confirmed or</p> <p>20 corroborated your belief or feeling that your son,</p> <p>21 Mr. Mims, was in fact molested at Babcock Center in</p> <p>22 May 2005?</p> <p>23 A I don't know.</p> <p>24 Q Okay. Do you have any proof of the fact that your</p> <p>25 son, Mr. Mims, was molested as you have</p>	99	<p>1 made with this expert witness from California?</p> <p>2 A No, I don't.</p> <p>3 Q Have you agreed to incur those expenses related to</p> <p>4 this expert witness? Have you agreed to do that?</p> <p>5 A No.</p> <p>6 Q Have you incurred any personal expense with regard</p> <p>7 to the prosecution of this lawsuit?</p> <p>8 A No.</p> <p>9 Q Have you ever been sent a bill for services</p> <p>10 rendered by Ms. Harrison?</p> <p>11 A No.</p> <p>12 Q Can you detail for me with specificity how Dr.</p> <p>13 Johnson has been involved in a civil conspiracy in</p> <p>14 this case as it has been alleged in your lawsuit?</p> <p>15 A I don't know.</p> <p>16 Q That's a no?</p> <p>17</p> <p>18 MS. HARRISON I think she said I don't know.</p> <p>19</p> <p>20 A I don't know.</p> <p>21 Q You don't know. Mr. Davidson showed you a letter</p> <p>22 that has since been marked as Exhibit No. 5. A</p> <p>23 letter that purportedly came from you dated October</p> <p>24 28, 2003. I'll refer that to you again today.</p> <p>25 This October 2003 letter to Dr. Johnson, is</p>
98	<p>1 characterized it at Babcock's facility in May 2005?</p> <p>2 A I don't know.</p> <p>3 Q Is that a yes or a no? Do you have any proof of</p> <p>4 this?</p> <p>5 A Only that he was -- had the centimeter cuts on his</p> <p>6 penis.</p> <p>7 Q Okay. That's the only basis for your belief that</p> <p>8 your son, Mr. Mims, was molested --</p> <p>9 A That's right.</p> <p>10 Q Let me ask the entire question for purposes of the</p> <p>11 record That's the only basis for your belief that</p> <p>12 your son, Mr. Mims, was molested at Babcock's</p> <p>13 facilities in May 2005?</p> <p>14 A Right.</p> <p>15 Q The fact that he had this injury?</p> <p>16 A Yes.</p> <p>17 Q This injury that was characterized in the Lexington</p> <p>18 report as a superficial injury Is that correct?</p> <p>19 A Yes</p> <p>20 Q Mr. Davidson asked you about this expert witness</p> <p>21 that has apparently been retained from Los Angeles,</p> <p>22 California. Typically, as a matter of course in</p> <p>23 litigation in the civil venue, an expert witness</p> <p>24 charges an hourly rate. Do you know what the</p> <p>25 hourly rate or other fee agreement that has been</p>	100	<p>1 that the only communication that you have ever had</p> <p>2 with Dr. Johnson regarding your son, Mr. Mims?</p> <p>3 A I don't know.</p> <p>4 Q Are there any other instances where you have either</p> <p>5 spoken with Dr. Johnson in person or by telephone?</p> <p>6 A No, I haven't.</p> <p>7 Q Or by letter?</p> <p>8 A No.</p> <p>9 Q Or by email?</p> <p>10 A No.</p> <p>11 Q Do you have email?</p> <p>12 A No.</p> <p>13 Q Okay. Have you ever had a conversation with a</p> <p>14 member of the general assembly, either a senate</p> <p>15 member or a house of representatives member, about</p> <p>16 your son, Mr. Mims?</p> <p>17 A No.</p> <p>18 Q So there has never been a circumstance where you</p> <p>19 have advised a member of the general assembly of</p> <p>20 your concerns about abuse of Mr. Mims?</p> <p>21 A No, I haven't.</p> <p>22 Q With regard to Mr. Mims and his health condition</p> <p>23 after 2005 once you took custody of him, has he</p> <p>24 sustained any other injuries --</p> <p>25 A No, he has not.</p>

101	<p>1 Q Has he encountered any other circumstances or</p> <p>2 conditions that required a doctor's attention?</p> <p>3 A Not except for ear aches.</p> <p>4 Q Ear aches?</p> <p>5 A Uh-huh.</p> <p>6 Q Okay So he has seen a doctor since 2005?</p> <p>7 A Yes, he has.</p> <p>8 Q Who is his doctor that he sees on a routine or</p> <p>9 regular basis?</p> <p>10 A Dr. Stearn.</p> <p>11 Q Dr. Stearn?</p> <p>12 A Uh-huh.</p> <p>13 Q And where is Dr. Stearn practicing?</p> <p>14 A On Colonial Drive.</p> <p>15 Q Do you know the name of his practice?</p> <p>16 A It's one that, where Dr. Platt and all them . . .</p> <p>17 Q It's the same practice where Dr. Platt is?</p> <p>18 A Yes.</p> <p>19 Q Okay. So that's over by Columbia College, I think.</p> <p>20 A Yes. It's behind Richland Memorial Hospital.</p> <p>21 Q Who is Mr. Mims' current social security payee?</p> <p>22 You are, is that correct?</p> <p>23 A Social security.</p> <p>24 Q Okay. So you receive his social security payments?</p> <p>25 A Yes.</p>
102	<p>1 Q How much per month do you receive from social</p> <p>2 security on behalf of Mr. Mims?</p> <p>3 A I think it's 719.</p> <p>4 Q \$719? Prior to you being the social security payee</p> <p>5 who was the payee? Was it Babcock Center?</p> <p>6 A Yeah.</p> <p>7 Q Okay When did it change from Babcock Center to</p> <p>8 you?</p> <p>9 A In 2005.</p> <p>10 Q Now, Mr. Mims, he has obtained or received respite</p> <p>11 services, has he not?</p> <p>12 A Yes.</p> <p>13 Q And you've already answered the question once for</p> <p>14 Mr. Davidson, but to refresh my recollection, who</p> <p>15 was his respite provider?</p> <p>16 A Babcock Center.</p> <p>17 Q Okay. Well, was there a person that primarily</p> <p>18 provided respite services to your son from 2005</p> <p>19 until very recently? Do you know the name of the</p> <p>20 person?</p> <p>21 A (No response)</p> <p>22 Q Who was watching your son when he --</p> <p>23 A Carla Rogers.</p> <p>24 Q Carla Rogers Now, was Carla Rogers watching him</p> <p>25 at her house or at your house?</p>
103	<p>1 A She worked -- kept him at her house and then</p> <p>2 brought him home when I got home from work.</p> <p>3 Q Were there circumstances where or instances where</p> <p>4 Ms. Rogers kept your son overnight?</p> <p>5 A Yeah.</p> <p>6 Q Multiple nights at a time?</p> <p>7 A Sometime.</p> <p>8 Q Okay Within the last year, has Ms. Rogers</p> <p>9 provided respite care services to your son?</p> <p>10 A In the last year?</p> <p>11 Q Yes, ma'am.</p> <p>12 A Yes.</p> <p>13 Q And he just went to the UCP facility within the</p> <p>14 last month, is that right?</p> <p>15 A (Non-verbal response)</p> <p>16 Q What was the reason or the decision making behind</p> <p>17 your son, Mr. Mims, leaving your home and going</p> <p>18 into the UCP facility?</p> <p>19 A (No response)</p> <p>20 Q Why did he enter that facility?</p> <p>21 A Why?</p> <p>22 Q Yes, ma'am.</p> <p>23 A He's not out there to stay.</p> <p>24 Q I'm sorry?</p> <p>25 A He's not out there to stay.</p>
104	<p>1 Q Does he have all his possessions and belongings</p> <p>2 there?</p> <p>3 A No.</p> <p>4 Q Does he stay overnight there?</p> <p>5 A Yeah.</p> <p>6 Q When was the last night he stayed with you at your</p> <p>7 house?</p> <p>8 A From Thursdays to Sunday nights.</p> <p>9 Q Okay. So he stays with you on the weekends,</p> <p>10 correct?</p> <p>11 A Yeah.</p> <p>12 Q And during the week, he stays at the UCP facility,</p> <p>13 correct?</p> <p>14 A Right.</p> <p>15 Q And that's here in Columbia?</p> <p>16 A Yeah.</p> <p>17 Q I understand that he stays with you on the</p> <p>18 weekends, but what was the decision or the reason</p> <p>19 why you elected to have him live at the UCP</p> <p>20 facility during the week?</p> <p>21 A I don't know.</p> <p>22 Q You don't know? Did you make that decision or did</p> <p>23 somebody else make that decision?</p> <p>24 A Yeah, I made the decision.</p> <p>25 Q In the Complaint that you have filed with the Court</p>

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1 of Common Pleas of Richland County, you have  
 2 alleged that the Defendants in this case have  
 3 violated the Americans with Disabilities Act. I  
 4 will share with you that that is a vast and very  
 5 large piece of legislation. As we sit here today,  
 6 can you describe or detail for me the specific  
 7 provisions within the American with Disabilities  
 8 Act that you claim the Defendants have violated  
 9 with regard to your son, Mr. Mims?  
 10 A What you mean?  
 11 Q I mean it's a large piece of legislation, and you  
 12 have alleged just generally that there has been a  
 13 violation of the Americans with Disabilities Act.  
 14 What I would like to know is what are the specific  
 15 provisions which are alleged to have been violated  
 16 with regard to these Defendants?  
 17 A A lot of rights are being violated against people  
 18 with special needs.  
 19 Q Right. How about the Rehabilitation Act, the  
 20 Federal Rehabilitation Act? What specific  
 21 provisions are you alleging have been violated by  
 22 the Defendants in this case as it pertains to your  
 23 son, Mr. Mims?  
 24 A A lot of people with disability don't get the  
 25 things that they really need.

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1 Q Well, when you say that, what do you mean? What  
 2 did your son not receive while in the care and  
 3 custody of both the Department and Babcock Center?  
 4 A Well, he wasn't taken care of like he should. He  
 5 shouldn't have been abused.  
 6 Q And when you say abused, are you referring to this  
 7 2005 incident with regard to the injury of his  
 8 penis, and are you referring to the 2009 incident  
 9 involving him being struck by an employee of  
 10 Babcock Center?  
 11 A I'm referring to all the things that happened to  
 12 all the kids; not just my son. It's all the other  
 13 kids in any world.  
 14 Q That makes no sense to me. Tell me more about what  
 15 you mean by that. Have you brought a lawsuit --  
 16 Have you brought a class action on behalf of all  
 17 the consumers of Babcock Center and all of the  
 18 consumers of Department of Disabilities and Special  
 19 Needs?  
 20 A No. I wish I could if they been abused. I know I  
 21 can't do that.  
 22 Q I'm going to ask you some questions about a matter  
 23 that Mr. Davidson had inquired about, a September -  
 24 - Mr. Davidson asked you some questions regarding  
 25 an appeal to the Department of Health and Human

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1 Services that was brought in the name Edward Mims  
 2 versus the South Carolina Department of  
 3 Disabilities and Special Needs. This appeal was  
 4 ultimately disposed of by order of Robert Leonard  
 5 on January 16, 2007.  
 6 Were you a participant or were you privy to  
 7 any of the proceedings before the hearing officer  
 8 at the Department of Health and Human Services at  
 9 any point in time leading up to the January 16,  
 10 2007 Order of Dismissal?  
 11 A I don't remember.  
 12 Q You weren't ever a participant on any telephone  
 13 call or any sort of face-to-face hearing before the  
 14 hearing officer?  
 15 A I don't know.  
 16 Q Did you receive any sort of correspondence or  
 17 copies of orders or copies of other pleadings  
 18 related to this appeal contemporaneous with it  
 19 going on in 2006 and 2007?  
 20 A I don't know.  
 21 Q Okay. This matter was ultimately appealed to the  
 22 Administrative Law Court, which is here in  
 23 Columbia. Paige Gossett, who is now a federal  
 24 magistrate, was the Administrative Law judge who  
 25 heard the matter. Were you a participant or privy

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1 to any of the proceedings before the Administrative  
 2 Law judge at the Administrative Law Court here in  
 3 Columbia?  
 4 A I don't know.  
 5 Q Okay. Did you receive any sort of copies of  
 6 correspondence or orders or pleadings that were  
 7 filed in the appeal to the Administrative Law  
 8 Court?  
 9 A I don't know.  
 10 Q The matter was then appealed to the South Carolina  
 11 Court of Appeals, which is here in Columbia as  
 12 well. Briefs, from what I understand, were filed  
 13 by both the Appellant and the Respondent in this  
 14 case. Did you ever receive a copy of the briefs  
 15 that were filed by either the Appellant, which  
 16 would have been Mr. Mims, or the Respondent, which  
 17 would have been the South Carolina Department of  
 18 Disabilities and Special Needs?  
 19 A No.  
 20 Q Okay. Did you receive any other correspondence or  
 21 orders or pleadings contemporaneous with the events  
 22 at the South Carolina Court of Appeals?  
 23 A I don't know.  
 24 Q Mr. Davidson showed you a copy of the Order of  
 25 Dismissal based upon the violation or the failure

109	<p>1 to follow the rules as announced by Rule 210 of</p> <p>2 the South Carolina Appellate Court Rules. Did you</p> <p>3 ever see that Order after it was issued by the</p> <p>4 South Carolina Court of Appeals?</p> <p>5 A I don't know.</p> <p>6 Q Was today the first time you had ever seen that</p> <p>7 Order of Dismissal issued by the South Carolina</p> <p>8 Court of Appeals?</p> <p>9 A Yes.</p> <p>10 Q Is that a yes? Is that a yes?</p> <p>11 A I don't know.</p> <p>12 Q Okay. Was today the first time you had ever seen</p> <p>13 the Order of Dismissal issued by the hearing</p> <p>14 officer at the South Carolina Department of Health</p> <p>15 and Human Services?</p> <p>16 A I don't know.</p> <p>17 Q Was today the first day that you had ever seen the</p> <p>18 Order of Dismissal issued by Paige Gossett,</p> <p>19 Administrative Law Judge, with regard to the appeal</p> <p>20 from Department of Health and Human Services?</p> <p>21 A I don't know.</p> <p>22 Q Is there something that would help you remember or</p> <p>23 know? Is there something that would refresh your</p> <p>24 recollection?</p> <p>25 A I don't know.</p>	111	<p>1 -----</p> <p>2 (Whereupon, at 1:36 p.m., the deposition</p> <p>3 in the above-entitled matter was</p> <p>4 concluded.)</p>
110	<p>1 Q Do you keep a file at home of all the</p> <p>2 correspondence that you receive connected to the</p> <p>3 legal proceedings involving Mr Mims?</p> <p>4 A I think so.</p> <p>5 Q And where do you keep that file in your home?</p> <p>6 A I got them in a box.</p> <p>7 Q So if we were to forward to you a request to</p> <p>8 produce all the documents in your possession</p> <p>9 concerning the legal proceedings of Mr Mims, of</p> <p>10 course, not including attorney/client privileged</p> <p>11 communication, would you be able to produce that to</p> <p>12 your attorney?</p> <p>13 A I think so.</p> <p>14 Q Okay</p> <p>15</p> <p>16 MR STEGMAIER: Why don't we take a quick break?</p> <p>17 MS. HARRISON Are you about done?</p> <p>18 MR. STEGMAIER I'm going to ask Mr Davidson I'm</p> <p>19 going to confer with Mr Davidson quickly</p> <p>20 We're approaching it</p> <p>21</p> <p>22 (Short Break)</p> <p>23</p> <p>24 MR STEGMAIER. That's all the questions I have for</p> <p>25 you. I appreciate your time.</p>	112	<p>1 [Errata page to be attached]</p>

State of South Carolina )  
 ) CERTIFICATE  
County of Lexington )  
Be it known that the foregoing Deposition of  
MARGARET MIMS was taken by Jennifer L. Thompson, CVR,

That I was then and there a notary public in  
and for the State of South Carolina-at-Large,  
That by virtue thereof I was duly authorized  
to administer an oath,

That the witness was by me first duly sworn to  
testify the truth, the whole truth, and nothing but the  
truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true,  
accurate and complete transcription of the testimony so  
given at the time and place aforesaid to the best of my  
skill and ability,

That I am not related to nor an employee of  
any of the parties hereto, nor a relative or employee of  
any attorney or counsel employed by the parties hereto,  
nor interested in the outcome of this action.

Witness my hand and seal 25 DAY OF JUNE, 2009

Jennifer L. Thompson, CVR

Notary Public for South Carolina  
My Commission Expires 9/7/2009

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

EDWARD MIMS, BY AND THROUGH  
HIS LEGAL GUARDIAN,  
MARGARET MIMS,

Plaintiff,

Case No.: 07-CP-40-03365

vs

BABCOCK CENTER, JUDY JOHNSON,  
SCDDSN, KATHI LACY,  
STANLEY BUTKUS,

Defendants.

D E P O S I T I O N

WITNESS: SUE SLATER  
DATE: Friday, June 12, 2009  
TIME: 1:41 p.m.  
LOCATION: Law Office of Patricia Harrison  
611 Holly Street  
Columbia, South Carolina  
TAKEN BY: Attorneys for the Plaintiff  
REPORTED BY: GINA M. SMITH  
Certified Shorthand Reporter  
Registered Professional Reporter

-----

Gina M. Smith, CSR, RPR  
117 Harmon Creek Court  
Lexington, SC 29072  
803-359-5705

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF  
3 EDWARD MIMS, BY AND THROUGH HIS LEGAL  
4 GUARDIAN, MARGARET MIMS:

5 LAW OFFICE OF PATRICIA HARRISON  
6 BY: PATRICIA HARRISON, ESQ.  
7 611 Holly Street  
8 Columbia, SC 29205

9 ATTORNEYS FOR DEFENDANT  
10 BABCOCK CENTER AND JUDY JOHNSON:

11 COLLINS & LACY  
12 BY: CHRISTIAN STEGMAIER, ESQ.  
13 1330 Lady Street, Sixth Floor.  
14 P.O. Box 12487  
15 Columbia, SC 29211

16 ATTORNEYS FOR DEFENDANT  
17 SCDDSN, KATHI LACY AND STANLEY BUTKUS:

18 DAVIDSON & LINDEMANN, P.A.  
19 BY: KENNETH P. WOODINGTON, ESQ.  
20 1611 Devonshire Drive, Second Floor  
21 P.O. Box 8568  
22 Columbia, SC 29202-8568

23 ALSO PRESENT:

24 WILLIAM REESE

25 (INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION: It is stipulated by  
 2 and among Counsel that this deposition is being  
 3 taken in accordance with the South Carolina Rules  
 4 of Civil Procedure, and that the deponent does not  
 5 waive the right to read and sign the deposition  
 6 transcript..

7 - - - - -

8 SUE SLATER, being first duly sworn,  
 9 testified as follows:

10 EXAMINATION

11 BY MS. HARRISON:

12 Q. I'm Trisha Harrison, as you know, and I am  
 13 representing Edward Mims through his guardian in  
 14 this lawsuit.

15 Have you ever had your deposition taken  
 16 before?

17 A. Many, many years ago. It's been a long  
 18 time.

19 Q. And what was that in reference to?

20 A. I can't remember whether it was the Right  
 21 to Ed thing or testifying over Pennhurst. It was  
 22 one of the two.

23 Q. So you know how this works. I ask you  
 24 questions, you answer the questions. If you don't  
 25 understand a question or if something's unclear,

1 I'd ask for you to let me know and I'll try to  
2 clarify or restate the question. If you answer the  
3 question, I will assume you understood the  
4 question. Is that fair?

5 A. That's fair.

6 Q. And if you would also please make sure you  
7 speak up and that you answer verbally because our  
8 wonderful court reporter here has trouble with nods  
9 and shrugs and things that aren't verbal.

10 A. Okay.

11 Q. Tell me what you know about this lawsuit.

12 A. I met Edward once when he was at Clusters,  
13 and at that time, I observed that he had -- he was  
14 pretty severely involved and had some sort of a  
15 skin problem that I asked about it because I wasn't  
16 sure what it was.

17 I asked about the skin problem, and they  
18 said that it was something that he had for a long  
19 time. So that -- I just happened to ask about it  
20 because I was meeting the people in that group and  
21 his skin didn't look very good. And so I was told  
22 that that was what it was.

23 Other than knowing him, I do not know him.  
24 I do not know his mother. I just met him, as I  
25 say, the one time when he lived at the Clusters. I

1 was there just visiting.

2 Q. Well, were you concerned about this skin  
3 problem?

4 A. Yes.

5 Q. And what did you do to assure that your  
6 concerns were taken care of?

7 A. I talked to the nurse, and she said he was  
8 being treated.

9 Q. Which nurse did you talk with?

10 A. I have no idea, Trisha.

11 Q. But it was a nurse at Clusters?

12 A. Uh-huh.

13 MR. STEGMAIER: Yeses or nos.

14 THE WITNESS: I'm sorry.

15 BY MS. HARRISON:

16 Q. When was that?

17 A. Oh, dear, I have no idea. It was back  
18 when I was chair.

19 Q. And when were you chair?

20 A. I don't know that for sure either. I  
21 don't know -- was two terms, and I came after Rafe.  
22 I have no idea what year it was. Remember, I'm 73  
23 now. The mind is slowly going. Please make a note  
24 of that.

25 Q. When you came on the Babcock Center board,

1 how would you describe the state of the  
2 organization at that time? And when did you come  
3 on the Babcock Center board?

4 A. When you approached me to come on the  
5 Babcock Center board, and I can't remember what  
6 year that was. It might have been 2002. You were  
7 chair, weren't you? You were chair. I'm pretty  
8 sure you were.

9 Q. When you came on the board, describe the  
10 condition of the organization at that point.

11 A. At that time, they were in turmoil,  
12 getting ready -- you had hired a new executive  
13 director as chairman. She was coming on board.  
14 People were being questioned about their integrity  
15 and so forth. But as far as knowing about each of  
16 those people, I did not because I was brand-new to  
17 the board.

18 Q. Who hired the new director?

19 A. I don't know for sure, but I think it was  
20 the executive committee.

21 Q. It was the executive committee?

22 A. I'm not sure. You were the chair. Who  
23 did?

24 Q. And the way this works is that I can't  
25 answer your questions.

1 A. Oh, I'm sorry. You can't help me.

2 Q. But you are required to answer my  
3 questions, and I apologize for that.

4 A. That's all right. But I don't recall. I  
5 think it was maybe 2002. I'm not sure.

6 Q. Were there any problems with abuse and  
7 neglect when you came on the Babcock Center board?

8 A. I had been told that there was. I had not  
9 witnessed any of it or really been that involved,  
10 but I had been told that there had been abuse, but  
11 I guess you'd have to call that hearsay.

12 Q. As a member of the governing board, did  
13 you do anything to look into -- to determine for  
14 yourself whether those concerns were legitimate?

15 A. We were able to go through the board and  
16 set up so that board members could visit the  
17 houses. They also worked with the parent group to  
18 start looking at some of the houses and making them  
19 better.

20 They were in really bad shape when I first  
21 went on the board. I mean, I didn't have anything  
22 to do with that, but the houses had been neglected,  
23 and they weren't very homelike.

24 So the parent group started to visit these  
25 homes and started putting together pictures and to

1 collect some things and decorated the houses up and  
2 made them look better and also identified things  
3 that needed to be done.

4 Q. Other than decorating -- excuse me. I'm  
5 going to close this door. I apologize.

6 A. That's okay.

7 Q. Other than the cosmetics, were there any  
8 problems when you first went on the board with  
9 abuse and neglect and reporting of abuse and  
10 neglect?

11 A. Were there problems? When I first went on  
12 the board, I think there were, Trisha, but I can't  
13 remember for sure. I think there were problems,  
14 and some of the turmoil, according to hearsay, was  
15 that there were problems of that sort.

16 But when I first went on there, I was  
17 brand spanking new, had had some outside  
18 information, but not really from the governing  
19 point at that point other than, as I say, hearsay,  
20 what people had told me.

21 Q. Did you have any -- what involvement in  
22 the system had you had prior to going on the board?

23 A. In the -- what system are you talking  
24 about?

25 Q. The DDSN system.

1 A. I have a daughter who has special needs  
2 and has been served by DDSN. She has a service  
3 coordinator, has had a job coach. She was  
4 transported once a week to her job, which I paid  
5 for or she paid for. What else?

6 I had served on the Arc board, had been  
7 responsible and worked to get BabyNet together  
8 through the Department of Health and Environmental  
9 Control, had served on the board at Family  
10 Connection and helped get that started in the  
11 beginning. So I've been involved.

12 And before I came here, I was involved in  
13 the Pennhurst trial and also in Park versus The  
14 Commonwealth, which was the Right to Education law.  
15 So I have quite a background in advocacy. I was  
16 also an executive director of an Arc in  
17 Pennsylvania. And I've seen abuse. I know abuse.

18 Q. So did you take an active role when you  
19 came on the board?

20 A. An active role?

21 Q. In going out -- you mentioned you met  
22 Edward. Was that unusual for you to go out to the  
23 facilities?

24 A. No. As a matter of fact, I initiated that  
25 board members should do that. Not many did, but I

1 initiated that we should go out and visit the  
2 houses and know some of the people that we're  
3 working with, that we were supporting.

4 Q. Did you have family members ever call you  
5 about situations where neglect was or abuse was --

6 A. I had one that called me, and it was a  
7 legal issue, and I couldn't discuss it with her.

8 Q. You mentioned -- you said your daughter  
9 paid for transportation. So the Babcock Center was  
10 providing that transportation?

11 A. That came about when my husband had had  
12 his second open heart surgery, and at that time,  
13 Medicaid was paying for people to be transported  
14 two days a week.

15 Q. So Medicaid paid for your daughter to be  
16 transported?

17 A. She pays herself, and then she gets it  
18 back from somebody. Jack sends the stubs in to  
19 SSI, I guess. I don't know. That's his  
20 department.

21 Q. So Babcock Center wasn't paying for the  
22 transportation?

23 A. No, no.

24 Q. Does your daughter receive any services  
25 funded by DDSN?

1 A. Through Babcock.

2 Q. And what are those services?

3 A. She has service coordination -- that's  
4 with the autism, the Arc. I'm sorry. And she has  
5 a job coach and she has rehab and support.

6 Q. So she's receiving that through the MR/RD  
7 waiver?

8 A. No, she's not on the waiver.

9 Q. So what -- is the Babcock Center paying  
10 for that or is DDSN paying for that?

11 A. I guess funding -- whatever funding she  
12 gets comes through -- would it be Medicaid? I  
13 can't ask you. I don't know. I think it may be  
14 Medicaid.

15 I'm not. Let's put it that way. It's  
16 coming through the system, which would be, I guess,  
17 DDSN funding through Babcock. I'm not sure.

18 Q. And she pays -- how much does she pay for  
19 transportation?

20 A. Why is this -- what's this have to do with  
21 Edward Mims? I don't understand.

22 Q. How much does she pay for transportation?

23 A. I'm sorry, do I have to answer that?

24 MR. STEGMAIER: You can answer the  
25 question.

1 THE WITNESS: Pardon?

2 MR. STEGMAIER: You can answer the  
3 question.

4 THE WITNESS: Okay. \$14 a month.

5 BY MS. HARRISON:

6 Q. And how many trips a month does she  
7 receive?

8 A. One to three.

9 Q. One to three a month?

10 A. Uh-huh.

11 Q. Or a week?

12 A. One to three a month. She works one day a  
13 week.

14 Q. Is this \$14-a-month deal available to  
15 other individuals?

16 A. I don't know.

17 Q. Do you know if any other -- so you don't  
18 know if any other individuals are --

19 A. There are some other individuals that are  
20 transported, but I don't know -- I know they pay,  
21 but I don't know what they pay.

22 Q. So these three trips a month, where are  
23 they -- where do they go?

24 A. To DHEC, from Pitt's Apartments to DHEC.

25 Q. So your daughter lives at Pitt's?

1 A. No, she lives at home. Pitt's is three  
2 minutes from my house.

3 Q. So only three times a month you take her  
4 to Pitt's and then they take her to DHEC?

5 A. No. They come and get her.

6 Q. But just three times a month?

7 A. No, they have a route. They have a route.  
8 Sometimes four times a month. Sometimes Jack takes  
9 her both ways. It's not a steady, you know,  
10 four-times-a-month thing.

11 Sometimes she doesn't work and she's off.  
12 They have days when she doesn't work. But I'm  
13 saying an average of three times a month. Can we  
14 say that? I'm sorry. I keep asking questions.

15 Q. When you went on the DDSN -- I'm sorry --  
16 the Babcock Center board, did you also have any  
17 financial relationship with DDSN?

18 A. When I went on the board -- I don't  
19 remember whether I was facilitating there or not.  
20 I think I was.

21 Q. And --

22 A. I had a contract to facilitate.

23 Q. And were you paid by DDSN for that?

24 A. Through a contract, yes. That meant  
25 either one of us could leave the other.

1 Q. And do you still do that?

2 A. No.

3 Q. When did that end?

4 A. Last -- when I had my thumb done, which  
5 was last July, I guess.

6 Q. What do you know about the incidents where  
7 Ed Mims was injured at Clusters?

8 A. Anything that I know about that came out  
9 either in executive session at the board meeting or  
10 executive session at critical incident committee.

11 Q. I don't believe the critical incident  
12 committee --

13 MR. STEGMAIER: I'm going to instruct her  
14 not to answer.

15 MS. HARRISON: We'll take that up with the  
16 judge.

17 MR. STEGMAIER: Please.

18 BY MS. HARRISON:

19 Q. Who was on the critical incident  
20 committee?

21 A. Janice Summers, Rhett Eleasor, Martha  
22 McGowan. I sat on there ad hoc. Staff person was  
23 Gene Marlow and Tonya -- what's her name now? Oh,  
24 shoot. Was Flake. Bradford.

25 MS. HARRISON: Well, Christian, if you're

1 going to instruct her not to answer, we'll be  
2 asking the judge for a ruling on that. I don't  
3 think that those meetings are --

4 MR. STEGMAIER: Okay. I invite you to  
5 make a motion.

6 MS. HARRISON: And we will ask for the  
7 costs to be paid by the Babcock Center.

8 BY MS. HARRISON:

9 Q. What do you know about the beating of  
10 Edward Mims by Carl Anthony?

11 A. I don't know who Carl Anthony is.

12 Q. Are you aware that Edward Mims was beaten  
13 by a Babcock Center employee on August 13, 2000?

14 A. He was beaten? I'm sorry, I don't recall  
15 that. Should I -- I'm sorry.

16 Q. So you weren't aware that he was beaten by  
17 the Babcock Center employee?

18 A. I may have been at the time, but that's a  
19 long time ago.

20 Q. Are you aware that no report was made to  
21 law enforcement?

22 A. Well, if I'm not aware that he was beaten  
23 for sure, I'm sure I'm not aware whether one was  
24 made or not.

25 Q. Are you aware that in April of '01, DDSN

1 filed for judicial admission of Edward to the  
2 Babcock Center?

3 A. If I did, I learned it in executive  
4 session or at the critical incident committee.

5 MS. HARRISON: If this is where this is  
6 going, Christian --

7 MR. STEGMAIER: Yes, ma'am.

8 MS. HARRISON: I mean, if she knows these  
9 things, she has to answer my questions about them  
10 and she can't hide behind if she didn't know where  
11 this information occurred -- I don't think she can  
12 hide behind the critical incident committee.

13 MR. STEGMAIER: We have a divergence of  
14 opinion about that. Certainly if she's got  
15 independent knowledge she can testify to that, but  
16 if there are matters that you are inquiring about  
17 that delve into the proceedings of the critical  
18 incident committee, then I've instructed her not to  
19 answer.

20 BY MS. HARRISON:

21 Q. Are you aware that Edward Mims was  
22 judicially admitted?

23 A. I'm aware, but I think it was during  
24 critical -- or during the executive session on the  
25 board. That's how we were informed.

1 Q. So you never made any independent  
2 investigation about what was going on with Ed Mims?

3 A. Not that I know of.

4 Q. Did you ever talk to Janice Summers about  
5 Ed Mims?

6 A. If I did, it was in critical incident  
7 committee. That was very, very confidential  
8 because that was concerning the people that we  
9 worked with and that we supported, and it was  
10 information that we wanted to go through those  
11 cases and look at them and to make sure and to  
12 instruct that if other things should be done.

13 But we did not talk about them -- I didn't  
14 go to your local Bugle or whatever that paper is in  
15 Lexington or to the State to talk about that sort  
16 of thing, nor did anyone else. That was  
17 confidential information.

18 Q. What information do you know -- why was  
19 Edward Mims judicially admitted? What were the  
20 allegations that caused him to be judicially  
21 admitted?

22 A. I don't know.

23 Q. So when someone's judicially admitted, you  
24 didn't feel any need to inquire after he's been  
25 beaten and then he's judicially admitted?

1 A. I'm not going to answer that.

2 Q. As the chairman, if this came to your  
3 attention --

4 A. The chairman of the critical incident  
5 committee?

6 Q. If you were chairman of the board of the  
7 Babcock Center and this came to your attention that  
8 Edward Mims was beaten by an employee and then DDSN  
9 subsequently had him judicially admitted when his  
10 mother complained about the beating, what would be  
11 your responsibility?

12 A. If that's what happened, then I would  
13 think that it would be handled through the Babcock  
14 Center through the executive director and those who  
15 are in charge to do that sort of thing.

16 The Babcock board, as you recall, is a  
17 policy-making board and, yes, we're concerned about  
18 those kind of things, but we don't handle them  
19 personally, Trisha, other than to direct and make  
20 sure it's taken care of.

21 Q. Have you read the CMS audit of Clusters,  
22 any of the Clusters facilities?

23 A. I probably did. I've read every one of  
24 those things including lots of e-mails and so  
25 forth.

1 Q. Are you aware that CMS criticized the  
2 Babcock Center because the governing board was not  
3 fulfilling its responsibilities?

4 A. Ask that in a different way.

5 Q. Are you aware that that was one of the  
6 criticisms of CMS when they surveyed Clusters, the  
7 failure of the governing board to supervise what  
8 was going on at Clusters?

9 A. That's a specific -- you mean specifically  
10 what was going on?

11 Q. What did CMS find at Clusters?

12 A. I know that it was a mess, but I don't  
13 remember exactly what it was. This has been, what,  
14 five years ago? I'm sorry, I have to ask because I  
15 don't remember.

16 Q. What kind of mess was going on at  
17 Clusters?

18 A. There were some things that weren't being  
19 covered, and they had been happening, from what I  
20 understand, for quite some time. And it wasn't  
21 just this governing board. I think it was also  
22 going on when you were chair.

23 Q. And what did you as chair do about those  
24 problems?

25 A. We put it to the right people to go and

1 look into it and to make sure that those  
2 corrections were made. But it would be employees  
3 doing that. It wouldn't be the board doing that.

4 Q. Who has ultimate responsibility to make  
5 sure the employees do what they're supposed to do  
6 to protect the health and welfare of the consumers?

7 A. I would say the executive director with  
8 board knowledge.

9 Q. So the buck stops with the executive  
10 director?

11 A. We hired her to turn things around at  
12 Babcock -- well, you hired her, I didn't hire her,  
13 but your group hired her before I came on the  
14 board.

15 And with her background and  
16 responsibility, it was my understanding that she  
17 had done a good job at Coastal and that she could  
18 turn this program around, which I feel she has.

19 Q. Have you seen the findings of the Office  
20 of Civil Rights that discussed Dr. Johnson's -- the  
21 complaints against Dr. Johnson when she was at  
22 Whitten Center?

23 A. I don't think so. If I did, I don't  
24 remember.

25 Q. So you've never gone on and Googled Judy

1 Johnson civil rights?

2 A. No. And I don't -- no, I don't remember  
3 seeing anything negative about that.

4 Q. Would it surprise you if you knew that --  
5 if someone told you that there were complaints that  
6 she was covering up abuse and neglect at Whitten  
7 Center?

8 A. Yes, that would surprise me.

9 Q. But the board isn't aware of that report  
10 at Whitten, the investigations at Whitten?

11 A. Trisha, I truly do not remember. That's  
12 been so long ago that, you know, many, many waters  
13 have gone over the dam since then, and all that  
14 stuff is jumbled up in my head because there was so  
15 much going on at that time.

16 Q. Tell me what it means to be on one-on-one  
17 supervision.

18 A. When a person has one person -- one staff  
19 person who is responsible for them and them alone.

20 Q. And if I have a one-on-one, how close does  
21 that one-on-one have to be to me?

22 A. Arm's length sometimes. It's according to  
23 what's stated in the program, the plan, usually in  
24 the behavior plan.

25 Q. So a one-on-one isn't responsible for

1 anyone but that person?

2 A. It doesn't mean they can't help out around  
3 the house or, you know, that sort of thing, but  
4 that's their primary responsibility.

5 Q. Where would I find the policies about  
6 one-on-one?

7 A. Probably at DDSN.

8 Q. So you're required to follow DDSN's  
9 policies about one-on-one supervision?

10 A. I would think so. We're required to  
11 follow DDSN's policies.

12 Q. Now, when -- are you aware of the incident  
13 wherein Edward Mims was beaten with a belt at  
14 Clusters?

15 A. Again, that would have been discussed in  
16 critical incident or in the closed session of the  
17 board.

18 MR. STEGMAIER: Well, Ms. Slater, the  
19 question is whether you're aware of it or not.

20 THE WITNESS: Oh, I was aware of it, yes.

21 BY MS. HARRISON:

22 Q. And what did the governing board -- when  
23 did you become aware of it?

24 A. Whenever it happened.

25 Q. And what did you do?

1 A. What did I do? I don't know for sure, but  
2 my standard would be to call and to see what was  
3 happening with that and how it was being handled.

4 Q. And who would you call?

5 A. Probably the executive director. She's  
6 our one employee.

7 Q. And did the executive director give you a  
8 satisfactory response?

9 A. As far as I know, yes.

10 Q. Tell me about Clusters. I understand that  
11 CMS came in and did some surveys at Clusters, did  
12 they not? What did they find?

13 A. If I recall correctly, which I'm not sure  
14 I am, there were some things that needed to be  
15 corrected, but I can't tell you specifically what.

16 I remember that there were things to be  
17 corrected and that were out of compliance. But  
18 again, you know, Trisha, this is, what, five years  
19 ago, six years ago.

20 Q. Was there any financial exploitation of  
21 individuals at Clusters?

22 A. At Clusters? Not that I'm aware of.

23 Q. And what about the -- what did CMS find  
24 about the conditions of the facilities at Clusters?

25 A. I really do not know. I do not remember.

1 Q. What problems do you remember there were  
2 that CMS or DHEC found at Clusters?

3 A. What do I remember? Nothing specific. I  
4 know they found things, but I don't remember what  
5 it was specifically.

6 Q. Were they dust bunnies or did they find  
7 serious things?

8 A. There were some serious things, but I  
9 don't recall what they were. I remember that they  
10 were not happy and that we had to -- that we had to  
11 hurry and get these things corrected.

12 And it wasn't that, you know -- it wasn't  
13 that they weren't being corrected. There was so  
14 much to be done at that place, not just Clusters,  
15 but the whole program, when this board took over,  
16 and when you were there, there was so much to be  
17 done.

18 Houses were in terrible condition, not  
19 only Clusters, but lots of houses were in terrible  
20 condition, broken windows, holes in the floor, all  
21 those kind of things. So it's really difficult for  
22 me to remember one place and specific things in  
23 that place that were going on.

24 I don't think they had any holes in the  
25 floor because I think those are concrete floors. I

1 don't remember any broken windows. I remember that  
2 they were dark. But as far as specifics there, I  
3 don't know.

4 But it's not that we didn't care about  
5 those things, it's that there were so many things  
6 that needed done, and you know that.

7 Q. Were there things other than the  
8 facilities? Were there problems with the way  
9 services were being delivered?

10 A. I don't know. I really don't know. As I  
11 say, there was so much going on at that time that  
12 it's very difficult to pull all that together.

13 Q. So you don't know whether it was just  
14 cosmetics or whether there were problems --

15 A. Oh, some of it was cosmetic. I'm sure  
16 there were some things that were going on with, you  
17 know, meds and that kind of thing, but I can't  
18 specifically remember what was in the report and  
19 what was said, okay.

20 I know there were problems there, and at  
21 that time, I probably knew those, but five years  
22 later and at 73, I'm lucky if I know where I am.

23 Q. Do you recall that CMS found that the  
24 Babcock Center was failing to protect the residents  
25 at Clusters from assaults?

1 A. Was this client to client?

2 Q. Any kind of assault.

3 A. I can't ask her questions.

4 MR. STEGMAIER: You can ask for a more  
5 specific question.

6 THE WITNESS: Okay, more specific.

7 BY MS. HARRISON:

8 Q. Did CMS express any concern about people  
9 at Clusters being protected from assault?

10 A. Probably, but I don't know for sure. I  
11 can't really witness to that.

12 Q. Were you aware that there were a lot of  
13 allegations that there were -- people were being  
14 assaulted there?

15 A. I'm aware that there were accusations of  
16 people being assaulted there, yes.

17 Q. Did you look at those things on the  
18 critical incident committee?

19 A. I'm sure we did.

20 Q. And did you see incidents coming through  
21 where residents of Clusters were being assaulted?

22 A. I'm sure that that -- if that happened, it  
23 came through the critical incident committee.

24 Q. Did it happen? Do you recall people being  
25 assaulted at Clusters?

1 A. Vaguely. I can't tell you who -- other  
2 than you've told me that Edward Mims was assaulted,  
3 according to you, okay, but I can't tell you who  
4 was written in that critical incident report that  
5 we got.

6 Q. But do you remember other residents being  
7 assaulted at Clusters?

8 A. No. I remember a resident assaulting a  
9 staff, a couple of staff, but as far as -- other  
10 than just the one incident that I can think of  
11 right now.

12 Q. Why did Clusters close?

13 A. Because we felt it was not a good place to  
14 give good care.

15 Q. Why was it not a good place to give good  
16 care?

17 A. Because there were lots of changes that  
18 needed to be made there. That building was built  
19 many years ago, and it wasn't up to standards.

20 Q. DDSN gave Babcock Center about five or  
21 \$600,000 to get up to standards, didn't they?

22 A. Uh-huh.

23 MR. STEGMAIER: Yes or no.

24 THE WITNESS: Oh, yes. Yes, if I recall  
25 correctly. I'm not sure that's the exact figure,

1 but I know money was given to do that.

2 BY MS. HARRISON:

3 Q. And a year or more later when CMS and DHEC  
4 closed Clusters, those improvements hadn't been  
5 made, had they?

6 A. Trisha, I do not know. I know roofs were  
7 put on. I know that air conditioners were stolen  
8 and replaced, and some things like that, but as far  
9 as whether they were done or not when CMS was over  
10 there, I do not know. I'm sorry. But I just do  
11 not know. I do not remember.

12 Q. How many times did you visit Clusters?

13 A. Enough to know what it was like, yes.

14 Q. Did you -- I mean, how many times? Two?  
15 Ten?

16 A. Probably something like ten, maybe more.

17 Q. And you never heard of any allegations of  
18 people being assaulted in those ten visits?

19 A. Through closed sessions and et cetera.

20 Q. You heard of people being assaulted?

21 A. Yes. If they were, it came through those  
22 committees, okay, and if I was at the committee,  
23 which I didn't miss a meeting, I'm sure I heard  
24 that.

25 MS. HARRISON: Again, we'll be making our

1 motion, and I don't believe that information is  
2 protected, Christian.

3 THE WITNESS: I don't think I can give you  
4 much more than that anyway.

5 BY MS. HARRISON:

6 Q. Once Edward Mims was judicially admitted,  
7 do you know -- well, do you know what the  
8 allegations were about his mom?

9 A. I vaguely recall that there was  
10 something -- that because he was -- he needed 24/7  
11 care, that there was a question as to whether or  
12 not he could receive that from one person. And I'm  
13 guessing, okay.

14 Q. Are you aware that the guardian ad litem  
15 who relied upon what she was told when Edward was  
16 at Clusters later testified that she'd been lied  
17 to?

18 A. No.

19 Q. Are you aware that she told the Court that  
20 she'd represented Edward and over a dozen other  
21 people who had been abused or neglected at the  
22 Babcock Center?

23 A. No.

24 Q. Would that give you as a board member any  
25 concern?

1 A. Yes.

2 Q. Is that something you think the board  
3 needs to look into?

4 A. I think that would be up to the board,  
5 yes.

6 Q. Are you on the board now?

7 A. I'm going off as secretary.

8 Q. You're going off the board or going off  
9 the position of secretary?

10 A. Going off the position.

11 Q. But you'll stay on the board?

12 A. Yeah.

13 Q. Once Edward left Clusters, where did he  
14 go?

15 A. I think to an ICF/MR. I'm not sure which  
16 one, but I think that's where he went, because he  
17 needed a lot of care.

18 Q. Did he have a one-on-one then?

19 A. I don't recall.

20 Q. Tell me about the one-on-one process. Who  
21 determines whether someone has a one-on-one?

22 A. I don't really know who does. I know that  
23 there's an assessment that they do to see if that's  
24 needed, and I'm not sure whether it's DDSN or a  
25 staff person at Babcock.

1 I know the assessment is done. I don't  
2 really need to know that since I'm a policy maker  
3 and I don't deal with staff and so forth, hiring.

4 Q. Are you aware that after Edward was beaten  
5 with the belt at Clusters -- let me make sure I get  
6 my dates right. Hold on just a minute. Let me  
7 back up a minute.

8 Are you aware that after the employee beat  
9 Edward, his mother tried to take him out?

10 A. Yes.

11 Q. If your child had been beaten by an  
12 employee at a facility, what would you do?

13 A. We're not talking about my child, but I  
14 would be very upset if it was proven to be true.

15 Q. If your child had been at Clusters and had  
16 been beaten by an employee, would you take your  
17 child out?

18 A. My child would not have been at Clusters.

19 Q. Why would your child not have been at  
20 Clusters?

21 A. She's going to be with me and family as  
22 set up, that they want to take her to live with  
23 them. So she won't have to depend on the system  
24 for that. So I wouldn't even look at that point.

25 Q. Is Babcock policy -- does it require the

1 Agency to inform a parent if an employee beats a  
2 consumer?

3 A. It does now.

4 Q. So did Babcock policy require the Babcock  
5 Center to inform Edward's mother when he was beaten  
6 on October 3, 2001?

7 A. I don't know at that time. I know that  
8 that policy has been structured strict -- to a more  
9 strict -- no, I don't want to say strict -- to a  
10 procedure of who should be called and who should be  
11 told, and family and the parent is on there.

12 Q. So you don't know -- now, you were on the  
13 critical incident committee?

14 A. And that policy came out of there and was  
15 taken to the board to be voted on.

16 Q. So you don't know whether or not it was --  
17 Babcock policy required the Babcock Center to  
18 notify Ms. Mims on October 3, 2001, that her son  
19 had been beaten by an employee?

20 A. I do not know that. I know that it is  
21 now.

22 Q. Whose responsibility would it have been to  
23 make sure that Ms. Mims was informed that it had  
24 been investigated and that it was an employee that  
25 beat him?

1 A. I think Tonya does that. I'm not sure.  
2 Again, that's an employee identification -- what an  
3 employee does, and I don't really know what their  
4 job descriptions are.

5 Q. What responsibility does the agency  
6 director have for notifying the parent if a  
7 consumer is beaten by an employee?

8 A. She's always involved in any of those  
9 discussions.

10 Q. Where does the buck stop?

11 A. With her.

12 MR. STEGMAIER: I'm sorry, the question  
13 I've got, is this 2001 or 2009?

14 MS. HARRISON: This is 2001.

15 BY MS. HARRISON:

16 Q. Did the buck stop with the director in  
17 2001?

18 A. I don't know who was in in 2001.

19 Q. Did the buck stop with the director,  
20 whoever it was?

21 A. I would think so, but I don't know who was  
22 it.

23 Q. And if your child had been involuntarily  
24 admitted, what would you have done if after he was  
25 beaten by the employee he was beaten with a belt?

1 A. What would I have done? We're talking  
2 about my child again? Why are we talking about my  
3 child?

4 Q. Because I can ask the questions and --

5 A. I don't see -- do I have to answer that?  
6 I mean, it just --

7 MR. STEGMAIER: It's a hypothetical. It's  
8 an objectionable question, but go ahead and answer  
9 the question.

10 THE WITNESS: Well, it seems like it's  
11 coming up a lot.

12 If my child -- what would I do? Well, she  
13 wouldn't be there so I don't know what I would do.  
14 If she was beaten outside by someone, I would be  
15 very upset and go through the channels and make  
16 sure that it didn't happen to her again. I would  
17 probably take her out of there. I wouldn't ask. I  
18 would just take her out of there.

19 BY MS. HARRISON:

20 Q. Are you aware that it wasn't the Babcock  
21 Center, it was Ms. Mims that went to the Attorney  
22 General to report the employee had beaten Edward?

23 A. No, I wasn't aware. I thought that it  
24 probably went through the channel, but I don't know  
25 what the channel was at that time. I don't know

1 what the policy was before I went on the board --  
2 you know, when I first went on the board.

3 Q. Are you familiar with the review of the  
4 Babcock Center ICF/MRs by Carolina Medical Review?

5 A. Yes.

6 Q. You're familiar, are you not, with the  
7 fact that that entity found that Babcock Center was  
8 not meeting federal Medicaid participation  
9 requirements?

10 A. Yes.

11 Q. Tell me what you remember about the  
12 Carolina Medical Review report.

13 A. I don't remember specifics, but I remember  
14 that there were problems and there were things that  
15 were in the process of being fixed, and I don't  
16 mean fixed, being made better for the people we  
17 represented.

18 There were lots of stuff that had to be  
19 fixed, Trisha, lots of stuff that had to be fixed,  
20 and that's --

21 Q. Other than --

22 MR. STEGMAIER: Hold on. She didn't  
23 finish her answer.

24 THE WITNESS: And that's the reason that  
25 I'm not familiar. We had a lot of those tests --

1 or not tests. What are they -- investigations run  
2 at that time. They all run together.

3 BY MS. HARRISON:

4 Q. Are you familiar with the federal rules of  
5 participation for the Medicaid program?

6 A. Some, yes.

7 Q. Are you familiar with the assurance that  
8 the Agency protect the health and welfare of  
9 individuals?

10 A. Yes.

11 Q. And did Carolina Medical Review find that  
12 the Babcock Center was not meeting that assurance?

13 A. In some areas, yes.

14 Q. So they didn't find just problems with the  
15 physical facilities, did they, they found health  
16 and safety violations, did they not?

17 A. Yes, that had been there quite a while.

18 Q. So these weren't new problems?

19 A. No. They were problems that were given --  
20 that were dumped in our lap that had been there.  
21 You know.

22 Q. How long had those problems been going on?

23 A. My personal opinion? One heck of a long  
24 time.

25 Q. And are you familiar with the incident on

1 July 27, 2004, when Edward was taken to the  
2 emergency room with ant bites all over?

3 A. Not ant bites.

4 Q. What ER visits are you familiar with?

5 A. That's -- well, I guess from reading a  
6 deposition that there was a cut on his penis or a  
7 rip or a tear. I'm not sure what.

8 Q. What deposition have you read?

9 A. I don't remember.

10 Q. When did you read that?

11 A. Was it -- it wasn't the deposition. It  
12 was whatever you file.

13 MR. STEGMAIER: The complaint.

14 THE WITNESS: Yeah. I'm sorry. It wasn't  
15 a -- this is a deposition, right? Okay.

16 BY MS. HARRISON:

17 Q. So who have you talked to about Edward  
18 Mims?

19 A. Nobody other than the people I was  
20 supposed to talk to about it.

21 Q. And who are those people?

22 A. People on the critical incident committee  
23 as well as the board of directors.

24 Q. Have you talked to Judy Johnson about  
25 Edward Mims?

1 A. Of course.

2 Q. Have you talked to her about this lawsuit?

3 A. About this lawsuit?

4 Q. Right.

5 A. No, no, no.

6 Q. Tell me about your conversations with Judy  
7 Johnson about Edward Mims.

8 A. I was concerned because it was -- and this  
9 is -- again, I don't know whether I can talk about  
10 this.

11 MR. STEGMAIER: Let me voir dire the  
12 witness.

13 THE WITNESS: Pardon?

14 MR. STEGMAIER: I'm going to ask you some  
15 questions.

16 Ms. Harrison just asked you a question  
17 about your conversations with Dr. Johnson, and you  
18 were about to make a response. In what capacity  
19 was that conversation or in what instance or  
20 circumstance was that conversation being had?

21 THE WITNESS: It was at the board meeting.

22 MR. STEGMAIER: Was it in executive  
23 session?

24 THE WITNESS: Yes.

25 MR. STEGMAIER: I instruct you not to

1 answer that question.

2 MS. HARRISON: I'll file the appropriate  
3 motion.

4 MR. STEGMAIER: Okay.

5 BY MS. HARRISON:

6 Q. So are you aware that on July 27, 2004,  
7 Edward Mims' bed was infested with ants?

8 A. I don't recall that. I may have been  
9 aware of it if it was written up as a critical  
10 incident, but I don't remember that, and I'm sure I  
11 would have.

12 Q. Would you consider that to be a critical  
13 incident if an individual's bed is infested with  
14 ants and he is taken to the emergency room with ant  
15 bites all over?

16 A. Would I consider that a critical incident?  
17 I'd consider it a medical problem.

18 Q. A medical problem, like the flu?

19 A. No, a medical problem like ant bites.

20 Q. So you don't consider that an abuse or  
21 neglect issue?

22 A. Ants are very clever. They can go about  
23 anyplace. They can kill air conditioners and they  
24 can sneak in tiny cracks. — —

25 If it had gone on for a long time and it

1 kept going on; then it would be a critical  
2 incident. But a one-time incident I would think  
3 would be -- I mean, I've had fire ants in my house  
4 and I certainly didn't invite them.

5 Q. Have you ever had your bed infested with  
6 ants?

7 A. Not lately. No, I have not.

8 Q. Have you ever been taken to the emergency  
9 room because you had them all over your body from  
10 getting into your bed?

11 A. No, but my granddaughter did from  
12 getting -- being outside.

13 Q. But was she in her bed when she was bitten  
14 by all these ants?

15 A. No, but fire ants will go into homes. I'm  
16 not defending that, but what I'm saying is it  
17 didn't happen more than once, am I correct? Who do  
18 I ask that to? Nobody. Okay.

19 Q. Are you aware that after the beating with  
20 the belt, and I believe that was December -- let's  
21 see when the beating with the belt was.

22 Are you aware of another incident where  
23 Edward was taken to Lexington Medical Center with  
24 contusions -- I'm sorry, the beating with the belt  
25 was January 24, '02. January 24, '02, Edward Mims

1 is taken to the Lexington ER with having been  
2 beaten.

3 Are you aware that one month later Edward  
4 is taken back to Lexington Urgent Care with an  
5 unexplained contusion to his right hand?

6 A. If it was reported as a critical incident,  
7 I was aware of it. I do not remember that.

8 Q. Would that be -- if a person is taken to  
9 the urgent care with a contusion that requires  
10 medical treatment, is that something that should be  
11 reported to the critical incident committee?

12 A. It's according to what the explanation for  
13 it was.

14 Q. What if the staff says, oh, Edward was  
15 swinging his hands and hit his hands on the door?

16 A. I don't know about Edward, but I've done  
17 that.

18 Q. So you think if staff comes up with that  
19 explanation, we don't need to look any further into  
20 it?

21 A. If it continues to happen, then you do.  
22 We keep track of all that now. If this -- if  
23 there's an incident here that happens, we keep  
24 track of does it happen again, is it the same  
25 employee, dah, dah, dah, dah, dah, dah, and that's

1 all being taken into consideration now.

2 At that time, I'm not sure whether it was  
3 or not, but I see it -- you know, it could have  
4 been an accident, but if I saw it again, then I  
5 would be very concerned.

6 Q. Have you ever gone to the emergency room  
7 with contusions on your hand from hitting them on  
8 the door -- hitting it on the door?

9 A. No, but I wasn't in a public center where  
10 you might do that just to make sure that it was --  
11 that it was looked at and there was record of it.  
12 But I wouldn't do it -- if I didn't do it when I  
13 was at home when I smashed it against the laundry  
14 room door --

15 Q. I'm not quite sure -- was it serious  
16 enough for you to go to the ER when you did that to  
17 yourself?

18 A. Yeah. As a matter of fact, I broke my  
19 little finger.

20 Q. So you went to the ER?

21 A. No. I taped it to the one next to it.  
22 But in a public entity, you would have to do that,  
23 I would think. And I'm pretty sure that we would  
24 have.

25 Q. If there's these repeated incidents being

1 taken to the ER, unable to sleep, holding his hands  
2 to his eyes, and a long red scratch mark extending  
3 from the left side of his cheek, being pushed into  
4 the wall, scrape on his left hand, if all these  
5 things continue to happen, is that -- he falls out  
6 of a chair and scrapes his back up against the air  
7 conditioner and has a bruise on his back, if these  
8 things continue to happen, is it possible that  
9 staff's just coming up with explanations to cover  
10 up the abuse?

11 A. They could be, but he also could have a  
12 lack of balance. He also could be -- having poor  
13 eyesight. There are both things, and I think it  
14 should be looked at from the medical point of view,  
15 and that's what I would recommend.

16 Q. Are you familiar -- are you aware that Ed  
17 Mims was the roommate of William Cothran?

18 A. Yes.

19 Q. Are you aware that a few months before  
20 William Cothran's death their housemate James --  
21 Keith Jordan was found to have rug burns on his  
22 back?

23 A. Yes.

24 Q. Tell me about that.

25 MR. STEGMAIER: Let me just interject.

1 For purposes of our protection, don't use any names  
2 when relating this testimony.

3 THE WITNESS: Okay.

4 BY MS. HARRISON:

5 Q. Let's don't talk about names. Let's talk  
6 about an individual who lived in that house who had  
7 rug burns on his back.

8 MR. STEGMAIER: And you can use initials  
9 if you want to, but no names.

10 THE WITNESS: Okay. You told me about it.

11 BY MS. HARRISON:

12 Q. And what did you -- what did you learn  
13 about that?

14 A. What did I learn about it? I learned that  
15 there was suspicion that there had been abuse.

16 Q. Were there any other concerns at that  
17 house that you were aware of, any other allegations  
18 of abuse or neglect at Kensington?

19 A. Yes, but those came through the critical  
20 incident committee and the board.

21 MS. HARRISON: Here again --

22 THE WITNESS: You hate that. I'm sorry.

23 BY MS. HARRISON:

24 Q. We'll get back together and talk about  
25 those after I file my motion.

1 Are you aware that when Edward Mims  
2 attempted to move out, his outlier funds were taken  
3 away from him?

4 A. No.

5 Q. Are you aware of the death of William  
6 Cothran?

7 A. Yes.

8 Q. Are you aware of the investigation by CMS  
9 which occurred after the death of William Cothran?

10 A. Somewhat.

11 Q. Are you aware that CMS declared immediate  
12 jeopardy?

13 A. Yes.

14 Q. Tell me what that means.

15 A. That means that we have to leave -- I mean  
16 that the place is closed down.

17 Q. What were the findings by CMS after  
18 Mr. Cothran's death?

19 A. I don't recall. I know that staff was  
20 instructed to straighten things out and that it was  
21 done.

22 Q. Are you aware that CMS found that the  
23 house was understaffed?

24 A. No.

25 Q. And you don't recall anything about CMS

1 finding that staff was not properly trained?

2 A. That was true of all staff, and that's  
3 been taken care of.

4 Q. That at the time staff -- all staff was  
5 not properly trained? Tell me what you meant.

6 A. Well, when people came in, they weren't  
7 getting appropriate training, and that's been  
8 changed. We looked at the training that was being  
9 given under the previous administration, and new  
10 training was developed and given, you know.

11 And now every employee receives that, and  
12 other employees were brought back and trained, and  
13 they received ongoing training.

14 Q. When did that change occur?

15 A. Pretty quickly after we started to look at  
16 some of these things, but I don't know the date,  
17 Trisha. I just do not know dates. I'm sorry.

18 Q. Was it after you came on the board?

19 A. I don't know whether you had started  
20 something on this -- to this effect or not, but I  
21 know that -- I know that it happened after I came  
22 on the board, but it may have been started before I  
23 did. I'm not sure.

24 Q. So you're not aware of the finding by the  
25 federal Medicaid agency that staff was not properly

1 trained in 2004?

2 A. I could have been. I know that we changed  
3 the training, okay, and I know it's because of some  
4 of the reports, but I don't remember which one  
5 because, as I told you, there were so many of them  
6 that I can't remember which was which.

7 Q. There were so many of what?

8 A. Reports.

9 Q. What do you mean reports?

10 A. People coming in and looking at things and  
11 various -- there were four or five different groups  
12 that came in and looked. DDSN was in there. We  
13 had -- I forget what the name of the -- I don't  
14 remember the name of the groups. CMS was in there.  
15 DHEC was in there. I don't know who else.

16 Q. Did all of these groups find problems with  
17 health and safety?

18 A. They were looking pretty careful. You  
19 know, it's one of those situations I felt where  
20 somebody found some problems and then they decided  
21 we better look closer, so, you know, when you're  
22 looking for problems, you can find them.

23 Q. So what did you as a board do when  
24 Carolina Medical Review found that -- it was  
25 shortly after this, was it not, that Carolina

1 Medical Review found that in January of '05 that  
2 Babcock was not meeting federal Medicaid  
3 participation requirements? What did the board do  
4 about that?

5 A. The board told staff and told the  
6 executive director, and of course it filtered down  
7 to staff that this had to be changed. And so  
8 procedures were put in place for it to be changed.  
9 And I think the last report we got from them was  
10 very good, if it was them.

11 Q. In November -- so after CMS found  
12 immediate jeopardy in October, are you aware that  
13 in November of '04, a month later, DHEC cited  
14 Kensington for a violation of a life safety code?

15 A. Probably.

16 Q. As a board, did that give you concern,  
17 that there was immediate jeopardy in October and  
18 then a violation of a life safety code in  
19 November on a different matter?

20 A. Again, those things were being looked at  
21 and new procedures were being put in place.

22 Q. Are you aware that in March of '05 DHEC  
23 cited Kensington for failing to correct the  
24 deficiencies?

25 A. I'm sure I was. Do I remember? No.

1 Q. Did this house just not stand out? Were  
2 the other houses similar to this or was this worse  
3 than other houses?

4 A. I think there were problems in many areas,  
5 but not, you know -- I think that one stood out  
6 because it was an ICF/MR.

7 Q. Were all the ICF/MRs having equal  
8 problems?

9 A. I don't recall.

10 Q. Are you aware that in April of '05  
11 Kensington was decertified?

12 A. Yes.

13 Q. And are you aware that a month later  
14 Edward was discovered to have a four-centimeter  
15 gaping laceration on his penis?

16 A. I read that in your complaint.

17 Q. Tell me what you know about Edward's  
18 gaping laceration on his penis.

19 A. Well, as I mentioned earlier, he had a  
20 severe skin problem, not just on his penis but on  
21 other parts of his body. And if I recall  
22 correctly, he was seen by three doctors, one DDSN,  
23 one emergency room, and I think there was another  
24 one.

25 And I think in your complaint you said

1 sexually -- I can't say is that correct, but I'm  
2 pretty sure that's what I read in the complaint.  
3 And it was said that it was not sexually.

4 Q. So your opinion is that this gaping  
5 laceration was just because Edward had a  
6 dermatology problem?

7 A. I think it's a sort of eczema, I'm not  
8 sure, but the thing is there were no indications of  
9 it being a sexual attack of any sort.

10 Q. So you think it was eczema that caused  
11 this laceration?

12 A. Well, that's what three doctors said, so,  
13 you know, you sometimes -- you have to take some  
14 opinions, and they weren't really connected. I  
15 mean, they weren't all from DDSN or Babcock or  
16 anyplace like that.

17 Q. Have you ever known anyone to have six  
18 stitches on their penis because they had eczema?

19 A. I'm not a doctor.

20 Q. But personally, you've worked in this  
21 field for many years, have you not?

22 A. A long time ago, yeah.

23 Q. So have you ever known anyone to have  
24 stitches on their penis because of eczema?

25 A. I've seen it in other areas. I don't

1 think I've ever seen it on a penis, but that  
2 doesn't --

3 Q. Stitches?

4 A. Yes, where the skin cracks and opens up.

5 Q. Now, if this had been your child at  
6 Kensington and there had been several findings of  
7 immediate jeopardy in the prior year and a resident  
8 had gone to the hospital with rug burns on his back  
9 and a resident had choked and died and CMS found  
10 that staff was undertrained, the house was  
11 inadequately staffed, the death was inadequately  
12 investigated, and then there were subsequent  
13 findings of immediate jeopardy on an unrelated  
14 matter, would you have left your child in that  
15 facility?

16 A. I would have investigated that house  
17 before my child went in there, and I would have  
18 made frequent visits to that house to make sure  
19 things weren't happening that way.

20 I would also befriend some of the staff to  
21 make sure that I got feedback, which I think you  
22 did, and make sure that that -- she was safe if she  
23 was ever going to be in a house like that, but  
24 she's not.

25 I'm fortunate. I have kids that's going

1 to take her, and I don't know why we have to keep  
2 talking about her. I've already told you this.

3 Q. Would you leave her there with all these  
4 things happening?

5 A. No, because I would probably have seen  
6 them and taken her out.

7 Q. What do you think Ms. Mims should have  
8 done to protect her son?

9 A. What she should have done? I can't tell  
10 you what Ms. Mims should have done. I just told  
11 you what I would have done. But Ms. Mims, as far  
12 as that -- you were advising her at that time, I  
13 think.

14 Q. Are you aware that Ms. Mims went to the  
15 Probate Court and got an order to remove her son  
16 from Kensington?

17 A. I think -- I got an e-mail from somebody,  
18 might have been you, telling me that, yes.

19 Q. Are you aware that the Babcock Center  
20 attempted to prevent her from removing Edward from  
21 Kensington?

22 A. Yes. I think you called me.

23 Q. And what did you do about that?

24 A. I made some calls to the appropriate  
25 people.

1 Q. And what did you -- who did you call?

2 A. I called Judy Johnson.

3 Q. And tell me about that conversation.

4 A. I told her what was happening. She said  
5 she'd take care of it.

6 Q. What did you tell her was happening?

7 A. I told her that the mother had -- you were  
8 with the mother, I think, had a Court order to take  
9 him out of there and that the staff wouldn't let  
10 him go -- I don't remember who it was, but anyway,  
11 that they wouldn't let -- staff would not let him  
12 go because they felt that there was a -- that he  
13 had been adjudicated into the program -- maybe I'm  
14 using the wrong word -- and that they didn't have  
15 anything that said they could release him.

16 Q. A Court order, does that not count?

17 MR. WOODINGTON: Has that ever been made  
18 an exhibit in any deposition, this Court order?

19 MR. STEGMAIER: I would like to see that  
20 Court order. Can we take a break and make it an  
21 exhibit to the deposition?

22 MS. HARRISON: Sure.

23 MR. STEGMAIER: Thank you.

24 (A recess transpired.)

25 MS. HARRISON: I have here three documents

1 we'd like to put into the record, if they can be  
2 plaintiff's next, next, and next.

3 There is first the order appointing a  
4 temporary guardian. The second is an amended order  
5 appointing temporary guardian, correcting a typo,  
6 and the third is the order appointing a permanent  
7 guardian. And I'll pass these around.

8 (PLF. EXH. 30, Order Appointing Temporary  
9 Guardian, was marked for identification.)

10 (PLF. EXH. 31, Amended Order Appointing  
11 Temporary Guardian, was marked for identification.)

12 (PLF. EXH. 32, Order Appointing Permanent  
13 Guardian, was marked for identification.)

14 BY MS. HARRISON:

15 Q. Your attorneys have asked that we place  
16 these orders in the record, and we have --  
17 Plaintiff's Exhibit 30 is the order appointing  
18 temporary guardian, which is dated June 10th; and  
19 then we have an amended order appointing temporary  
20 guardian, which is dated June 14th, which I believe  
21 simply corrects a typo as to the date of the  
22 emergency hearing; and then we have an order  
23 appointing permanent guardian, which is dated  
24 December 19, 2005. If we can get those marked,  
25 please.

1 MR. STEGMAIER: They're marked.

2 MS. HARRISON: They're marked? Okay. I'm  
3 sorry.

4 BY MS. HARRISON:

5 Q. Tell me what you know about the events  
6 that preceded this order being granted by the  
7 Court.

8 A. I don't know what I know before this. As  
9 a matter of fact --

10 Q. No, what did you know about it, about what  
11 happened prior to and on the day this order was  
12 delivered.

13 A. Well, as we previously discussed, you said  
14 that he was not allowed to go, not allowed to leave  
15 the house, and that -- I know that he was -- had  
16 been -- I don't want to say adjudicated or there  
17 was some Court order that ordered him to DDSN and  
18 he came to Babcock. I do know those things. And  
19 then I assume that these came after that when he  
20 was not allowed to leave Babcock.

21 Q. Do you agree that the judge that  
22 judicially admits someone -- the Court that  
23 judicially admits someone has the right to appoint  
24 a guardian and remove an individual from a  
25 facility?

1 A. Do I agree what? I'm sorry.

2 Q. Do you question whether the judge had the  
3 authority to issue this order?

4 A. You're not talking about the orders I have  
5 in front of me, you're talking about the one where  
6 he could not leave the facility where he had  
7 been --

8 Q. I'm talking about the orders in front of  
9 you.

10 A. Okay. And you're asking me again? Say it  
11 again.

12 Q. Is there any question in your mind as to  
13 whether the judge had the authority to issue these  
14 orders?

15 A. I don't know, because I'm not a judge, and  
16 I'm not aware of what the law says about this.  
17 That's not where I work. So -- but evidently a  
18 judge can do about anything he wants to.

19 Q. So you had -- were you aware when the  
20 Court-appointed visitor showed up at the house with  
21 an order to examine Edward Mims the Court-appointed  
22 visitor was not allowed in the residence?

23 A. I recall that something in that --  
24 something like that happened, yes.

25 MR. STEGMAIER: Ms. Harrison, I'm sorry to

1 interrupt. For my edification, do you know the  
2 approximate date of when that visit would have  
3 occurred by the Court-appointed visitor?

4 MS. HARRISON: It would have occurred --  
5 and it's in the Probate Court records, but it would  
6 have occurred -- I think there's an affidavit in  
7 the Probate Court records.

8 MR. STEGMAIER: I understand that, but  
9 based on your knowledge --

10 MS. HARRISON: On or about June 10th,  
11 somewhere a week before or after that, of '05.

12 MR. STEGMAIER: Thank you.

13 BY MS. HARRISON:

14 Q. So you were aware that the Court-appointed  
15 visitor showed up at Kensington and was not allowed  
16 to see Edward Mims?

17 A. I am aware that she showed up at the  
18 facility, yes.

19 Q. Were you aware that she was not allowed to  
20 see Edward Mims?

21 A. I understood that Edward Mims could not  
22 leave there because of the adjudicated --  
23 adjudication into DDSN's care.

24 Q. So how did you become aware that the  
25 Court-appointed visitor had shown up to examine

1 Edward and the facility and she wasn't allowed to?  
2 How did you learn of that?

3 A. I'm not sure, but I think you may have  
4 called me.

5 Q. Did you ever discuss that with  
6 Dr. Johnson?

7 A. I called her to tell her, yes.

8 Q. And what did she say about the  
9 Court-appointed visitor not being allowed in the  
10 residence?

11 A. I don't remember discussing the visitor  
12 not being allowed. I remember discussing the fact  
13 that he could not leave the facility because he was  
14 adjudicated, or whatever the word is that I want  
15 to -- Court-appointed or whatever word I want to  
16 use there.

17 I don't remember the visitor not being  
18 able to see him. Now, that doesn't mean it didn't  
19 happen, it just means I don't remember it.

20 Q. So you don't remember talking to  
21 Dr. Johnson -- or did she ever tell you that the  
22 Court-appointed visitor was not allowed to visit  
23 him?

24 A. Not that I recall. I remember that he was  
25 not -- that was the reason I was given, there were

1 concern there, and I don't know who she had talked  
2 to, but there was concern there that he was  
3 Court-appointed, if I'm using the right words, to  
4 the DDSN system and had been placed at Babcock.

5 Q. So what did you -- tell me about the  
6 conversation with Dr. Johnson.

7 A. That's all I remember. I told her that  
8 you had called me or I'd gotten an e-mail from you,  
9 Trisha, I don't remember which, but I know we had  
10 some contact over that.

11 And I called her to see what would be --  
12 what needed to be done, and she was aware of it,  
13 and also that because of the Court-appointed -- I  
14 don't know what word to use, but anyway, because he  
15 was Court-appointed to the DDS system and was  
16 staying at Babcock, that we couldn't let him go.

17 Q. And that's what Judy Johnson told you?

18 A. I think so.

19 Q. Who else would have told you that?

20 A. Nobody.

21 Q. Did you --

22 A. But I'm not sure I have the wording  
23 correct.

24 Q. Did you -- at the time of these  
25 proceedings in June of 2005, did you discuss this

1 with any of the lawyers? Don't tell me what you  
2 discussed, but was any -- were any of your  
3 conversations about this with lawyers?

4 A. No.

5 Q. So it was not attorney-client protected,  
6 any of your -- who else did you discuss it with,  
7 anyone but Judy Johnson?

8 A. That's all.

9 Q. So you didn't say anything to Jani  
10 Summers or anyone else?

11 A. Not unless it came through the critical  
12 incident committee. Then it would have been  
13 discussed openly after -- this would have been  
14 after the fact.

15 Q. Was there an attorney present at the  
16 critical incident committee when you discussed --

17 A. I'd have to look -- it would have to be  
18 looked at the minutes to see if it's there.

19 MS. HARRISON: I think the critical  
20 incident -- unless there's an attorney present,  
21 there's no --

22 MR. STEGMAIER: You've made your position  
23 abundantly clear. We have a divergence of opinion.  
24 I invite your motion and we'll take it up.

25 MS. HARRISON: Are you instructing that --

1 MR. STEGMAIER: I'm instructing her not to  
2 make any responses with regard to matters discussed  
3 directly in a critical incident committee.

4 Plus, I don't believe the subject matter  
5 of late May, early June has anything to do with a  
6 critical incident, but I'll leave it at that.

7 BY MS. HARRISON:

8 Q. So I'm going to ask you again, and you can  
9 take your lawyer's advice, who else did you discuss  
10 this with?

11 A. Nobody unless it was -- as I say, unless  
12 it went through the critical incident committee or  
13 through the closed session of the board.

14 Q. And so it's my understanding --

15 A. Excuse me. And then I wouldn't have  
16 discussed it with them. It would have been  
17 reported, but it wouldn't have been discussed. I  
18 wouldn't have discussed it. They may have  
19 discussed it among themselves.

20 Q. Were there any lawyers at those sessions?

21 A. I don't remember. We had --

22 Q. So you're not answering my question?

23 A. What?

24 Q. Is that correct?

25 MR. STEGMAIER: I think she has answered

1 your question.

2 MS. HARRISON: I just want to get it on  
3 the record that she's not answering.

4 MR. STEGMAIER: I think she's answering  
5 the question.

6 BY MS. HARRISON:

7 Q. What are the names of the people you  
8 discussed it with?

9 MR. STEGMAIER: And she's answered that  
10 question, and she said Dr. Johnson and unless I had  
11 a conversation in the critical incident committee  
12 or the closed session of the board, that would have  
13 been it. So she's answered the question.

14 BY MS. HARRISON:

15 Q. So is your answer that you are not going  
16 to tell me about the critical incident committee or  
17 the closed session of the board?

18 MR. STEGMAIER: In what -- in what  
19 respect? This isn't a critical incident.

20 BY MS. HARRISON:

21 Q. Was this a critical incident?

22 A. I don't know, Trisha. I said if it became  
23 a critical incident -- I don't know that it would  
24 have been. I don't think so.

25 I think you called me as chairman of the

1 board, and I did what a chairman of the board  
2 should do, and I went to the executive director.

3 Q. And who -- who else specifically did you  
4 discuss this with in the executive committee or the  
5 critical incident committee?

6 A. I don't know whether it went there. What  
7 I'm telling you, that would be the only place that  
8 it would have been discussed. It's confidential  
9 information that we don't discuss outside of those  
10 closed sessions.

11 Q. So just for the record, you're refusing to  
12 answer my question. Is that correct?

13 MR. STEGMAIER: No, ma'am. She has  
14 answered your question.

15 BY MS. HARRISON:

16 Q. What did the critical -- what did that  
17 committee discuss in the spring and summer of 2005  
18 about Edward Mims?

19 MR. STEGMAIER: I will instruct the  
20 witness not to answer that question.

21 BY MS. HARRISON:

22 Q. Is your answer that you are not going to  
23 answer the question?

24 A. Yes.

25 MR. STEGMAIER: I've instructed her, she's

1 not going to answer.

2 MS. HARRISON: I just want to get that  
3 from her just for the record.

4 MR. STEGMAIER: The record has been made,  
5 believe me.

6 BY MS. HARRISON:

7 Q. So you weren't aware that the visitor  
8 wasn't allowed to visit with Edward.

9 Were you aware about whether the guardian  
10 ad litem was allowed to see Edward?

11 A. If I was, I don't recall.

12 Q. Now, when this order --

13 MR. STEGMAIER: Ms. Harrison, I'm sorry to  
14 stop you again. Again, for my edification, at this  
15 juncture, who was the Court-appointed guardian ad  
16 litem?

17 MS. HARRISON: The Court-appointed  
18 guardian ad litem was Edward Neece.

19 MR. STEGMAIER: And the Court-appointed  
20 visitor was who?

21 MS. HARRISON: Was Lennie Mullis, I  
22 believe.

23 MR. STEGMAIER: Thank you, ma'am.

24 BY MS. HARRISON:

25 Q. So after the police officer communicated

1 with the judge and allowed Edward to leave, what  
2 was your next recollection of what happened with  
3 Edward Mims?

4 A. I was told that he left.

5 Q. Were you told about the Probate Court  
6 proceedings?

7 A. No.

8 Q. So Dr. Johnson did not tell you that she  
9 sent Mr. Reese and Diane Theriot to object to the  
10 appointment of the guardian?

11 A. She may have. I remember that there was  
12 some sort of an objection, again, pointing back to  
13 the fact that there had been Court appointment of  
14 Mr. Mims to the DDSN system and Babcock Center.

15 Q. What do you remember about -- what do you  
16 remember about Diane Theriot?

17 A. I don't know who she is.

18 Q. Were you aware that Edward's sister worked  
19 for the Babcock Center?

20 A. I'd heard that, yes.

21 Q. Were you aware that the Babcock Center  
22 attempted to have her appointed as guardian?

23 A. No.

24 Q. What do you know about the -- any action  
25 that the Babcock Center took to prevent Ms. Mims

1 from being appointed his guardian?

2 A. I think the concern -- and again, this is  
3 what I remember. Whether it's right or not I don't  
4 know.

5 But I think the concern was he is a  
6 person -- Edward is a person that requires 24/7  
7 care, and there was concern that the mother could  
8 not give 24/7 care. I understand that she did have  
9 a job and that it would be very difficult to work  
10 and stay up all night and take care of somebody  
11 that needed 24/7 care.

12 Q. So do you believe Edward's health and  
13 safety would be more protected at Kensington or  
14 with mom?

15 A. I don't think I have the right to make  
16 that judgment.

17 Q. But it sounds like that's what you're  
18 telling me is that the Agency felt that the mother  
19 could not protect his health and safety. Is that  
20 correct?

21 A. If I recall correctly, that was one of the  
22 concerns, yes.

23 Q. Who gave -- who shared that concern with  
24 you?

25 A. I don't know. I don't remember.

1 Q. Did Dr. Johnson talk with you about that?

2 A. I don't know whether it came up in a  
3 meeting, one of the meetings, or whether it was  
4 discussed personally. I don't know, Patricia.

5 Q. But do you remember talking with  
6 Dr. Johnson about that?

7 A. I'm not sure it was even Dr. Johnson.

8 Q. Did she ever share her opinion with you  
9 that mom couldn't take care of Edward?

10 A. I think opinions and what happened was  
11 shared in both the closed session of the board  
12 and -- but I don't recall it being in the critical  
13 incident committee.

14 Q. So are you saying you're not going to tell  
15 me about the discussions about who said what about  
16 whether mom could --

17 A. Well, in the first place, I'm not sure I  
18 can remember who said what, but I know that that  
19 sort of subject would have been discussed in the  
20 specific areas.

21 MS. HARRISON: Same objection about the  
22 witness avoiding questions that there's no  
23 attorney-client privilege for.

24 MR. STEGMAIER: I don't know what that  
25 means. I will instruct her not to answer, but

1 she's not avoiding any questions. There are --

2 MS. HARRISON: Well, I have asked  
3 questions --

4 MR. STEGMAIER: I understand.

5 MS. HARRISON: -- and you have instructed  
6 her not to answer the question --

7 MR. STEGMAIER: That doesn't mean she's  
8 avoiding it.

9 MS. HARRISON: -- about meetings where  
10 there was no attorney present, and I will file the  
11 appropriate motion.

12 MR. STEGMAIER: Please.

13 MS. HARRISON: And we'll deal with that  
14 later.

15 THE WITNESS: Because I think you're a  
16 stickler, as well as I am, of confidentiality, and  
17 I think --

18 BY MS. HARRISON:

19 Q. Do you understand that there is no  
20 confidentiality about Edward Mims because I  
21 represent Edward Mims?

22 A. Do I understand that?

23 Q. Right.

24 MR. STEGMAIER: That's your pronouncement  
25 of the law. That's not an appropriate question.

1 BY MS. HARRISON:

2 Q. Is there any confidentiality that would  
3 keep --

4 MR. STEGMAIER: She's not a lawyer and  
5 she's not going to answer questions about the  
6 status of confidentiality as applied by our courts  
7 in South Carolina.

8 BY MS. HARRISON:

9 Q. Do you believe that anyone has the right  
10 to withhold information about your daughter because  
11 of confidentiality from you?

12 A. From me?

13 Q. From you.

14 A. Probably. She's never been adjudicated  
15 incompetent.

16 Q. But Edward Mims has, hasn't he?

17 A. I don't know.

18 Q. What knowledge do you have about how  
19 Edward got along once he left Kensington?

20 A. None.

21 Q. So you haven't talked to anyone about how  
22 he --

23 A. After he left, no.

24 Q. Are you familiar -- and I'm going to show  
25 you something that is already in the record.

1 Are you familiar with the Unequal Justice  
2 Report that was published by Protection and  
3 Advocacy?

4 A. Yes.

5 Q. Have you read it?

6 A. Yes.

7 Q. The problems that P&A identified -- were  
8 the problems at Babcock pretty indicative of the  
9 problems that were discussed in that report?

10 A. Yes, but I felt unfairly because there  
11 were things that were happening, there were places  
12 where we knew there were problems that were  
13 being -- I don't want to say fixed because I want  
14 to say they were gotten rid of. They were problems  
15 that we worked very diligently on to get those.  
16 And yes, some of them showed up in here because  
17 they'd been there a long, long time.

18 Q. And what were those problems?

19 A. Well, we talked earlier about the  
20 training. That was changed. We talked about the  
21 abuse reporting, and that was changed. I don't  
22 recall the others.

23 Q. Now, this report came out, I believe, in  
24 October of '05. Is that correct?

25 A. I don't know.

1 Q. What's the date on the letter?

2 A. October 27, '05.

3 Q. So you're saying that by then the Babcock  
4 Center had fixed all those problems?

5 A. No, I'm saying they were in process of  
6 fixing problems. You can't fix that many problems  
7 in two, three years. We're still fixing, and we'll  
8 continue to fix until we have the best program in  
9 the state.

10 Q. So are you saying that you disagree that  
11 the authors of that report -- are you saying  
12 they -- those problems weren't in existence when  
13 they did that report?

14 A. No, the problems were in existence, but  
15 there was no credit given to what was being done to  
16 correct those problems so that they were cited  
17 strictly as problems, like, you know, we're going  
18 around beating people and abuse is happening in  
19 every house, and it was not.

20 Q. Are you familiar with the audit that the  
21 South Carolina Department of Health and Human  
22 Services issued in February of 2006?

23 A. Yes, I'm sure I am.

24 Q. And it specifically discussed the health  
25 and safety problems of the Babcock Center, did it

1 not?

2 A. Yes.

3 Q. And that report issued by HHS specifically  
4 said, did it not, that the Babcock Center  
5 substantiated cases of abuse and neglect were three  
6 times the statewide average in 2003, did it not?

7 A. Yes, and that's because at that time we  
8 were turning in everything before it was even  
9 investigated so that nobody could say that we were  
10 covering up or hiding things.

11 Q. Now --

12 A. You know what it is now? We only have to  
13 meet every other month because most of it is not  
14 abuse or neglect. As a matter of fact, I don't  
15 think there's been maybe one or two things on  
16 there, and usually there's ten for a two-month  
17 period, ten to 15.

18 And some of those I would say --  
19 sometimes, much to my dismay, some of those are  
20 more concerned with van backing up into a post than  
21 it is with things that are happening to people.

22 Q. So is that a critical incident when a van  
23 backs up into a post?

24 A. If it's over \$700 damage.

25 Q. But it's not a critical incident when a

1 person's taken to the emergency room with ant bites  
2 all over his body?

3 A. I don't know how it would be handled now,  
4 but I would think that that would be handled as a  
5 critical incident medical problem that was looked  
6 into.

7 Critical incident is something that has to  
8 be done on purpose or is suspected to be done on  
9 purpose. Those ants weren't put in that young  
10 man's bed, for God's sakes.

11 If they were crawling around the room and  
12 somebody saw it and didn't extinguish them, that's  
13 one thing, but if those ants snuck into a crack and  
14 nobody noticed, then you know -- and it was only  
15 one time -- maybe it was the night they moved in.  
16 I don't know. But the thing is, at that time it  
17 was a medical problem. Fortunately he wasn't  
18 allergic.

19 Q. You know that he wasn't allergic?

20 A. I assume that he wasn't since you said  
21 that he was treated and sent home.

22 Q. So are you saying that there were -- how  
23 many -- in 2005, 2003, four, five, how often did  
24 your committee meet?

25 A. Once a month, and other times if it was

1 necessary.

2 Q. And how many cases would you review -- how  
3 many critical incidents would you review at that  
4 time?

5 A. Sometimes three pages.

6 Q. And how many on a page?

7 A. Well, it varies. It's according to how  
8 much is written up on it, but I would say eight  
9 average.

10 Q. So about 24 incidents of -- critical  
11 incidents a month?

12 A. I can't -- you'd have to get those from  
13 Tonya. I don't know the exact figures, but I know  
14 that it's greatly reduced, substantial.

15 Q. And why -- to what do you attribute that  
16 reduction?

17 A. The things that we've put in place to stop  
18 what was happening, the training and the reporting  
19 and all the things that Judy has done, and the  
20 staff, to improve the things that were happening  
21 there.

22 We're teaching people to be more -- to  
23 understand -- the new people come in, we teach them  
24 what to look for in abuse. We've put up signs  
25 telling people if you don't report, you know,

1 that's a problem, and that sort of thing.

2 So there's all kinds of things. I can't  
3 tell you everything that happened, but I know the  
4 training and those things have been greatly  
5 improved.

6 Q. So you're saying things are much better  
7 now?

8 A. Yes, as far as abuse and neglect.

9 Q. Are you saying they're significantly  
10 better now?

11 A. I would say so.

12 Q. What grade would you give them now?

13 A. Probably a B plus.

14 Q. What grade would you give them when you  
15 came onto the board?

16 A. It was probably fail or close to it. It's  
17 not that we haven't been sitting there -- we  
18 haven't just been sitting there doing nothing, and  
19 we've taken a lot of criticism, and we've been  
20 beaten more than people at the Babcock facility,  
21 but we didn't give up. We kept pushing forward to  
22 make things better there, and it is better there.

23 We had a 94 percent satisfaction rate come  
24 back from the people that we work with -- or the  
25 people that we serve, and that wasn't there before.

1 Q. What was it before?

2 A. Pardon?

3 Q. What was it in -- when you came on the  
4 board?

5 A. I don't know what it was because we  
6 weren't doing any surveys. I know there was a lot  
7 of complaints.

8 Q. The 2006 audit by HHS, it specifically  
9 talked about the Babcock Center, did it not?

10 A. Yes.

11 Q. And it cited a number of health and safety  
12 violations, did it not?

13 A. If I recall correctly, yes.

14 Q. I think it talked about med errors?

15 A. Yeah.

16 Q. And did it not talk about the failure to  
17 report a sexual assault?

18 A. I don't remember. There were some  
19 accusations that were never proven or that there  
20 wasn't enough evidence.

21 Q. Tell me about the limited scope review of  
22 financial ombudsman and programmatic issues at the  
23 Babcock Center from 2003. Were you there then?

24 A. I think so.

25 Q. Tell me about that report. What did HHS

1 find --

2 A. Trisha, that's five years ago or three,  
3 four -- six years, thank you. I don't know. I  
4 didn't memorize each one of those.

5 At the time they were discussed, at the  
6 time we went through them, at the time we tried to  
7 make changes and did make changes to improve the  
8 citings in those things.

9 And it goes back so far that we're trying  
10 to look forward, and I don't even look at this  
11 stuff because we've gotten past it.

12 Q. In the 2006 report --

13 MR. STEGMAIER: I'm sorry, Ms. Harrison,  
14 do you have all the audits together in one binder?

15 MS. HARRISON: Uh-huh.

16 MR. STEGMAIER: Okay. So that's not the  
17 P&A?

18 MS. HARRISON: They're all in here.

19 MR. STEGMAIER: Okay. Thank you.

20 BY MS. HARRISON:

21 Q. In the P&A -- I'm sorry, in the 2006 HHS  
22 audit, they found a number of licensing  
23 deficiencies, did they not?

24 A. If you see it in there, they did. I don't  
25 recall the exact licensing --

1 Q. This is already in the record, but let me  
2 just get you to read some of these problems that  
3 were cited. The ones with the -- if you'll read  
4 those for us, please.

5 A. Oh, you want me to read them out loud?  
6 Number of deficiencies cited by the DDSN state  
7 licensing divisions is one. Two, deficiencies  
8 found in multiple residential facilities, many of  
9 which were repeat issues from prior licensing  
10 surveys. Three, Babcock did not adequately address  
11 or correct all the findings in its first corrective  
12 action plan. Okay.

13 Q. And that first corrective action plan I  
14 believe was around '03. Is that right?

15 A. During that time that there were so many  
16 things to be taken care of, so many.

17 Q. So this was in 2006, and HHS found that  
18 those still had not been corrected. Is that right?

19 A. Some of them. It doesn't say all of them.  
20 I mean, God, we're human.

21 Q. So you don't recall in here the finding  
22 about the failure to report a sexual abuse, sexual  
23 assault?

24 A. I don't recall that failure, no. Which  
25 audit was that in?

1 Q. This is the '06 audit.

2 A. By whom?

3 Q. By HHS.

4 A. No, I think I know which one that was that  
5 was -- I don't think it was ever -- there was never  
6 enough evidence to prove that it was -- if it's the  
7 one I'm thinking of.

8 MR. STEGMAIER: I'm sorry, Ms. Harrison,  
9 if you find that deficiency in that HHS audit, if  
10 you'll just give the page number where that's  
11 cited.

12 MS. HARRISON: I don't want to hold this  
13 up. I'll get that to you.

14 MR. STEGMAIER: Do you know where it is?

15 MS. HARRISON: I'm looking for it. I'm  
16 not finding it as we speak.

17 BY MS. HARRISON:

18 Q. But that was also an issue, was it not,  
19 that was discussed in the Unequal Justice Report  
20 about the failure -- at that time, is it not true  
21 that the Babcock Center was not reporting sexual  
22 assaults if the perpetrator was another consumer?  
23 Is that true?

24 A. I think there was something in the law  
25 that said client to client -- anyway, it wasn't

1 reported. I think it is now. I don't know.

2 Q. And there was a specific sexual assault,  
3 was there not, that you had personal knowledge of  
4 those allegations and Dr. Johnson did not report  
5 that sexual assault to the ombudsman? Are you  
6 familiar with the J.J. case?

7 A. Yes.

8 Q. And tell me about how that allegation of  
9 sexual assault was handled by the Babcock Center.

10 A. I'm trying to think. Personal  
11 involvement, but it was also through the -- while I  
12 was on the board.

13 MR. STEGMAIER: You can answer that  
14 question.

15 THE WITNESS: So I recall the case, but I  
16 didn't really -- I think I had some discussions  
17 with you. I can't remember whether you were still  
18 on the board or not.

19 BY MS. HARRISON:

20 Q. Are you aware --

21 A. I'm foggy on that.

22 Q. Are you aware of whether Judy Johnson  
23 reported that J.J. was allegedly sexually  
24 assaulted?

25 A. That she reported it?

1 Q. Are you aware of whether she reported it?

2 A. I don't think it was reported because of  
3 the medical report on it. Again, I'm foggy on that  
4 because it goes back so far.

5 Q. Was the director instructed to report that  
6 rape?

7 A. I don't know. I do not remember. I'm  
8 sorry.

9 Q. Do you remember testifying on behalf of  
10 Dr. Johnson at a trial?

11 A. Yes.

12 Q. About whether or not she reported that  
13 rape?

14 A. Yes, but I don't remember whether she did  
15 or not.

16 Q. So you don't remember testifying that it  
17 wasn't necessary for her to report that rape?

18 A. I think because of the medical report.

19 Q. And you were on the board of directors at  
20 that time, were you not?

21 A. When I testified?

22 Q. No -- well, when you testified and when  
23 the alleged rape occurred.

24 A. Yes. And it was alleged.

25 Q. And do you remember there being

1 discussions about whether it should be reported or  
2 not?

3 A. If it was, it was discussed, again, in  
4 confidential situations such as closed session or  
5 the critical incident committee. If it was  
6 reported as suspected sexual abuse, it would have  
7 been critical incident.

8 MR. STEGMAIER: Then I'll instruct you not  
9 to answer.

10 MS. HARRISON: Same objection on my part.

11 BY MS. HARRISON:

12 Q. So you didn't have any discussions about  
13 the rape of J.J. outside of the critical incident  
14 committee?

15 A. Only, I think, with you.

16 Q. And you didn't have any discussions with  
17 any other board members about that rape?

18 A. Not outside of the board.

19 Q. In meetings outside of the board room or  
20 one on one with board members, you didn't discuss  
21 it with anyone else?

22 A. Not outside of the room. I may have  
23 discussed it one to one when sitting next to  
24 somebody, but as far as -- it was in the critical  
25 incident committee or at the board, as far as I

1 recall.

2 Q. So you testified on behalf of Dr. Johnson,  
3 did you not, defending her failure to report that  
4 alleged rape?

5 A. I answered that.

6 MR. STEGMAIER: I'm sorry, do you have  
7 that testimony in a transcript? That's the proper  
8 way to impeach a witness.

9 BY MS. HARRISON:

10 Q. Do you recall that?

11 A. I recall the idea that it was a medical  
12 problem and not sexual abuse because of the medical  
13 report from the hospital.

14 Q. Do you recall --

15 A. And that there were --

16 Q. -- your statement being read into the  
17 record, what seems to be the problem of reporting  
18 this incident? My God, I sure wouldn't want to  
19 live with someone who raped me. Rape is a crime,  
20 and I don't know of anyplace where it is written to  
21 exclude persons with disabilities --

22 A. Did I say that?

23 Q. -- this has to be reported.

24 A. Did I say that?

25 Q. Do you remember that being put into the

1 record at that trial?

2 A. Did I say that?

3 Q. I said do you remember that?

4 A. No.

5 Q. So you don't remember writing that or  
6 stating that?

7 MR. STEGMAIER: I'm sorry, from where did  
8 this -- we'll mark this in a second.

9 MS. HARRISON: That statement was made.

10 MR. STEGMAIER: The question I've got is  
11 from where does this emanate? Who created this  
12 document?

13 MS. HARRISON: That statement came out of  
14 a statement that was made.

15 MR. STEGMAIER: I understand. Who created  
16 this document?

17 MS. HARRISON: That document is a copy of  
18 a statement that Ms. Slater sent to several board  
19 members.

20 MR. STEGMAIER: In what context?

21 MS. HARRISON: I was asking her if she  
22 remembered it.

23 MR. STEGMAIER: This is just a typewritten  
24 document that you're asking --

25 MS. HARRISON: I asked her if she

1 remembered saying that.

2 MR. STEGMAIER: Let's mark that, please.

3 THE WITNESS: The answer is I don't  
4 remember saying that. I would agree with that, but  
5 it doesn't appear to be in context.

6 BY MS. HARRISON:

7 Q. So you don't remember --

8 MR. STEGMAIER: Hold on. Before we get  
9 going here, let's mark this.

10 (PLF. EXH. 33, Typed Statement, was marked  
11 for identification.)

12 BY MS. HARRISON:

13 Q. You don't remember --

14 MR. STEGMAIER: I'm sorry. Let's take a  
15 second. Let her read it and then she'll answer  
16 your questions.

17 THE WITNESS: But the law says that that  
18 does not have to be reported. I don't think that's  
19 right, but that's the way the law is written client  
20 to client.

21 But I also feel that when we talked about  
22 this that we -- I don't know whether the medical  
23 report was in context or -- in the context of this,  
24 but the medical report did say there wasn't enough  
25 evidence to prove rape, that it was more likely

1 that it would have been a hemorrhoid or there was  
2 no semen present, blah, blah, blah.

3 So all the things that they would look for  
4 in a sexual attack were not there. So it wasn't  
5 that there was a rape, it was that there wasn't  
6 enough evidence to prove it.

7 BY MS. HARRISON:

8 Q. Do you deny that you made that statement?

9 A. I don't know that I made it or not. I  
10 probably did if you say I did.

11 Q. Was rape protocol performed on that  
12 individual?

13 A. Was what?

14 MR. WOODINGTON: That individual is J.J.,  
15 now, again, right?

16 THE WITNESS: J.J., yeah.

17 BY MS. HARRISON:

18 Q. Was rape protocol performed on J.J.?

19 A. As far as I know.

20 Q. But you don't remember whether rape  
21 protocol was performed on him?

22 A. Well, there must have been something  
23 because he said there was no semen present and it  
24 appeared to be a hemorrhoid or something that had  
25 ruptured, so --

1 Q. Have you read that medical report?

2 A. I did a long time ago, yes.

3 Q. So did you read the medical reports  
4 related to Edward Mims?

5 A. I don't know.

6 Q. Have you read the Legislative Audit  
7 Council audit?

8 A. Yes.

9 Q. Tell me -- it, again, found problems at  
10 the Babcock Center, did it not?

11 A. Sure.

12 Q. And tell me what problems it found.

13 A. I don't know. I don't remember. They  
14 were all mixed together. There were all kinds of  
15 problems found in all those things that we knew  
16 were there, okay.

17 I'll admit there's problems there. I'll  
18 admit that they're in the process of being fixed.  
19 But each one of those reports picked up from the  
20 other report and it went back. There's  
21 improvements there, Trisha. Come and see.

22 Q. So that report was released in December of  
23 2008, right?

24 A. I don't know. I don't know dates.

25 Q. In the last year, Legislative Audit

1 Council?

2 A. Yeah, sometime in the last year, year and  
3 a half.

4 Q. And did it not find that there continued  
5 to be problems at the Babcock Center?

6 A. Sure. We're not perfect yet.

7 MS. HARRISON: I think that's all I have  
8 for this witness.

9 MR. STEGMAIER: Mr. Woodington.

10 MR. WOODINGTON: Nothing from me.

11 MR. STEGMAIER: I believe we're finished.

12 (The deposition concluded at 3:34 p.m.)

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SIGNATURE OF DEPONENT

I, the undersigned, SUE SLATER, have read the foregoing deposition consisting of 88 pages which was reported by Gina M. Smith, Notary Public in and for the State of South Carolina on June 12, 2009.

I find the transcript of this deposition to be a true and accurate transcript according to my testimony on that date with the exception of the corrections as listed on the attached correction sheet, which was filled in by me.

\_\_\_\_\_  
SUE SLATER

\_\_\_\_\_, 2009

1	ERRATA PAGE		
2	PAGE	LINE	CHANGE AND/OR CORRECTION
3			(AND EXPLANATION)
4	_____	_____	_____
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18  
 19 THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA  
 20 PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF  
 21 DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA  
 22 PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO  
 23 ATTACH THIS PAGE AND MY VERIFICATION TO THE  
 24 ORIGINAL TRANSCRIPT.

25 DATED: \_\_\_\_\_  
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 SUE SLATER

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CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 24th day of June, 2009, at Columbia, Richland County, South Carolina.

*Gina M. Smith*  
Gina M. Smith  
RPR, CSR, Notary Public,  
State of South Carolina  
at Large.  
My Commission expires  
July 23, 2013.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE PROBATE COURT  
Case Number: 2003-ES-40-172

IN THE MATTER OF GUARDLIANSHIP OF )  
EDWARD MIMS )  
\_\_\_\_\_ )

ORDER APPOINTING  
TEMPORARY GUARDIAN

A TRUE COPY  
ATTEST:

Amy W. McCulloch  
PROBATE JUDGE  
RICHLAND COUNTY, SC

This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the emergency hearing held on May 9, 2005 were Margaret Mims and her attorney, Patricia L. Harrison; the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece; and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

The court-appointed Visitor, Mary Katherine Miller, found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." In addition, evidence was presented of six emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Based on these findings, I find that Edward Mims is incapacitated and I find that no Guardian has been appointed previously. Evidence was presented that Edward Mims' current residence, Kensington ICF/MR, was decertified by the South Carolina Department of Health and Human Services in April of 2005. On May 27, 2005, Edward Mims was found in the facility to have a serious unexplained injury.

Based on the evidence presented to the Court, I find that the welfare of Edward Mims requires immediate action and that the emergency appointment of a temporary Guardian is appropriate pursuant to S. C. Code Ann. §62-5-310. The Guardian Ad Litem joins in the recommendation to the Court that a temporary Guardian be appointed. I find that Margaret

10-12-09  
EXHIBIT NO. 31  
Slater  
G. Smith

1 of 2 amc

Mims 1663

Mims has priority under S. C. Code Ann. §62-5-311 and that it is in the best interest of Edward Mims to appoint Margaret Mims as his temporary Guardian.

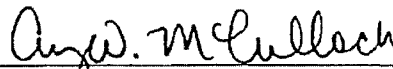
By order dated July 3, 2001, this Court found that Edward Mims was in need of services of the South Carolina Department of Disabilities and Special Needs. I find that services of the South Carolina Department of Disabilities and Special Needs are needed by Edward Mims and that Margaret Mims, as Guardian for Edward Mims, shall have the full authority to exercise all rights to these services which Edward Mims could exercise if he were competent to do so. These services shall be provided in the least restrictive environment as required by state and federal law.

Margaret Mims shall be entitled to the custody of the person of Edward Mims and shall have all statutory powers of a Guardian, including but not limited to the authority to establish his placement. The Guardian shall be authorized to give consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. In view of the emergency regarding placement, all medical providers shall provide medical records and information as requested by the Guardian.

The South Carolina Department of Disabilities and Special Needs shall be provided with notice of the hearing which has been scheduled in this Court for June 24, 2005. At that time, the Department shall provide the Court with copies of all treatment records of Edward Mims since the date of this Court's July 3, 2001 Order and shall provide the Court with notice of the appointment of a service coordinator and a treatment plan. At that hearing, the Court shall also rule on the Petitioner's request for a permanent Guardian.

IT IS SO ORDERED!

June 10, 2005  
Columbia, South Carolina

  
Honorable Amy W. McCulloch  
Richland County Judge of Probate

05 JUN 10 PM 2:18  
AMY W. MCCULLOCH  
PROBATE JUDGE  
RICHLAND COUNTY, S.C.

FILED

Mims 1664

STATE OF SOUTH CAROLINA )

FILED

IN THE PROBATE COURT

COUNTY OF RICHLAND )

Case Number: 2003-ES-40-172

05 JUN 14 AM 11:15

IN THE MATTER OF GUARDIANSHIP OF )  
EDWARD MIMS )

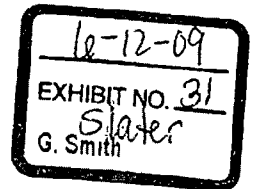
AMY E. SULLOCH  
PROBATE JUDGE  
RICHLAND COUNTY  
AMENDED ORDER APPOINTING  
TEMPORARY GUARDIAN

(This Order is amended to correct the incorrect hearing date in this paragraph, now changed to June in bold.) This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the emergency hearing held on **June 9, 2005** were Margaret Mims and her attorney, Patricia L. Harrison; the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece; and M. Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

The court-appointed Visitor, Mary Katherine Miller, found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tari Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." In addition, evidence was presented of six emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Based on these findings, I find that Edward Mims is incapacitated and I find that no Guardian has been appointed previously. Evidence was presented that Edward Mims' current residence, Kensington ICF/MR, was decertified by the South Carolina Department of Health and Human Services in April of 2005. On May 27, 2005, Edward Mims was found in the facility to have a serious unexplained injury.

Based on the evidence presented to the Court, I find that the welfare of Edward Mims requires immediate action and that the emergency appointment of a temporary Guardian is appropriate pursuant to S. C. Code Ann. §62-5-310. The Guardian Ad Litem joins in the



*1 of 2 amc*

Mims 1665  
18-1

recommendation to the Court that a temporary Guardian be appointed. I find that Margaret Mims has priority under S. C. Code Ann. §62-5-311 and that it is in the best interest of Edward Mims to appoint Margaret Mims as his temporary Guardian.

By order dated July 3, 2001, this Court found that Edward Mims was in need of services of the South Carolina Department of Disabilities and Special Needs. I find that services of the South Carolina Department of Disabilities and Special Needs are needed by Edward Mims and that Margaret Mims, as Guardian for Edward Mims, shall have the full authority to exercise all rights to these services which Edward Mims could exercise if he were competent to do so. These services shall be provided in the least restrictive environment as required by state and federal law.

Margaret Mims shall be entitled to the custody of the person of Edward Mims and shall have all statutory powers of a Guardian, including but not limited to the authority to establish his placement. The Guardian shall be authorized to give consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. In view of the emergency regarding placement, all medical providers shall provide medical records and information as requested by the Guardian.

The South Carolina Department of Disabilities and Special Needs shall be provided with notice of the hearing which has been scheduled in this Court for June 24, 2005. At that time, the Department shall provide the Court with copies of all treatment records of Edward Mims since the date of this Court's July 3, 2001 Order and shall provide the Court with notice of the appointment of a service coordinator and a treatment plan. At that hearing, the Court shall also rule on the Petitioner's request for a permanent Guardian.

IT IS SO ORDERED!

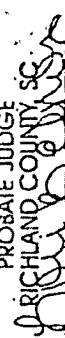
June 14, 2005  
Columbia, South Carolina

*Amy W. McCulloch*  
\_\_\_\_\_  
Honorable Amy W. McCulloch  
Richland County Judge of Probate

A TRUE COPY  
ATTEST:

Amy W. McCulloch

PROBATE JUDGE  
RICHLAND COUNTY, SC



Mims 1666  
10-5

*2002 amc*

STATE OF SOUTH CAROLINA )  
 IN THE COUNTY OF RICHLAND )  
 IN THE MATTER OF GUARDIANSHIP )  
 OF EDWARD MIMS )  
 MARGARET MIMS, )  
Petitioner )

PROBATE COURT  
 CASE NUMBER 03 GC 40 00372  
 ORDER APPOINTING  
 PERMANENT GUARDIAN

05 DEC 19 PM 5:37  
 AMY W. FICULLOCH  
 PROBATE JUDGE  
 RICHLAND COUNTY, S.O.

FILED

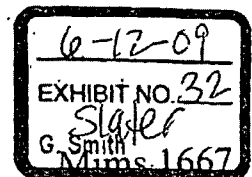
This matter came before the Court on the Petition of Margaret Mims, who is the mother of Edward Mims. In attendance at the hearing held on September 29, 2005 were Margaret Mims and her attorney, Patricia L. Harrison, the Court-appointed Guardian Ad Litem for Edward Mims, Edgar Kneece and M Leigh Flynn, who was previously appointed by this Court as Guardian Ad Litem for Edward Mims in another proceeding.

Lynn Lugo, who serves as Service Coordinator for Edward Mims at the Richland Lexington Disabilities and Special Needs Board attended the hearing. Also in attendance were James Hill, legal counsel for the South Carolina Department of Disabilities and Special Needs and Diane Theriot, who is the sister of Edward Mims.

The court-appointed Visitor previously found the residence of Margaret Mims to be clean and in good condition. She reported that Mrs. Mims was very attentive to the needs of Edward Mims and that he appeared to be familiar and comfortable at home. Examiner Tan Platt reported that Edward Mims is incompetent, and is unable to make daily living and health care decisions. A July 3, 2001 Order of this Court found Edward Mims to be "profoundly mentally retarded." The second court-appointed examiner, Lennie Mullis confirmed that Edward Mims is incapacitated. In addition, evidence was presented of a number of emergency room physicians having reported that Edward Mims is incapacitated by reason of mental retardation.

Prior to the hearing, the South Carolina Department of Disabilities and Special Needs filed written objections to the appointment of Margaret Mims as guardian for Edward Mims. At the hearing, counsel for the Department objected to the appointment of Margaret Mims, arguing that no guardian should be appointed for Mr. Mims. Alternatively, the Department recommended that the Court instead appoint Diane Theriot as permanent guardian for Edward Mims. The Department also requested that the funds of Edward Mims be used

*Exhibit 29*



to pay legal fees of Diane Theriot and requested that the Court consider recusal of Judge Belton.

The Court determined that the Department of Disabilities and Special Needs was not a party to the guardianship proceedings. It was noted that Diane Theriot had not filed a written petition for appointment as guardian of Edward Mims, which she had ample opportunity to do. As for the request that this Court recuse itself, the Court declined to recuse itself, as adequate grounds had not been presented to require such action.

As Guardian Ad Litem for Edward Mims, Mr. Kneece requested that the hearing be closed pursuant to S.C. Code of Laws §62-5-303. All persons except the Guardian Ad Litem, Margaret Mims and Patricia Harrison were removed from the courtroom and asked to wait in the hallway outside the courtroom until their testimony was required by the Court.

Mr. Kneece reported that he had visited the adult day care program which Edward has attended on weekdays since June, 2005. He reported that the director of that program, Tammy Quarles, R.N., reported to him that Edward appears to be well cared for at home and that he is doing well in the day program. Mr. Kneece recommended that the Court appoint Margaret Mims as permanent guardian for Edward Mims.

Diane Theriot testified that she has not seen Edward Mims since June 2005 and had not seen him before then since the spring of 2004. Until recently, Ms. Theriot was employed by the Babcock Center, where Edward Mims resided between 1999 and 2005. She reported that Edward Mims has not visited in her home and that she has not visited her brother on holidays for many years. Ms. Theriot testified that if she was appointed as guardian, she would place her brother in a facility operated by the South Carolina Department of Disabilities and Special Needs. She testified that she has not been close to her brother and has not participated in his care in any way, but that she objected to the appointment of Margaret Mims as guardian for Edward Mims. However, Ms. Theriot could not cite specific instances of problems that she felt would warrant Margaret Mims not being appointed as permanent guardian for Edward Mims.

Margaret Mims testified that she is capable of taking care of her son. She was able to describe the medications Edward Mims is taking and her understanding of his medical conditions. She testified that she

provided care for her son at home until he was twenty-eight years old and that he experienced episodes of abuse and neglect since he was placed in residential services at the Babcock Center in 1999. She testified that she would consider alternative residential placement if she felt that she was unable to provide continuing care in the home in the future.

Lynn Lugo provided testimony about the in-home services which are being provided to Edward Mims by the Richland Lexington Disabilities and Special Needs Board. She testified that she has visited in the home, that Mrs. Mims has done a very good job taking care of Edward, and that it would be in the best interest of Edward Mims for the Court to appoint his mother as permanent guardian. Ms. Lugo further testified that if Margaret Mims got sick, emergency respite would be provided, once Mrs. Mims called to request it.

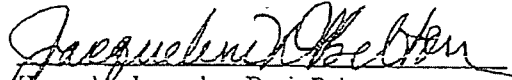
Based on the testimony and evidence presented, I find that this Court has jurisdiction, and venue is properly in Richland County. I also find that Edward Mims is incapacitated and in need of the appointment of a permanent guardian. I further find that Margaret Mims has priority for appointment as permanent guardian under South Carolina Code §62-5-311, and that she is the appropriate person to be appointed.

Margaret Mims shall have all statutory powers of a permanent guardian, including but not limited to the authority to make decisions about and establishing Edward's placement, including living at home with her. Further, given the termination of Edward Mims' judicial admission to the S.C. DDSN, Margaret Mims is to have custody of the person of Edward Mims. The guardian shall be authorized to give all consents and approvals for Edward Mims to receive medical and other professional care, counsel, treatment and services. All medical providers are ordered to provide medical records and information as requested by the guardian.

The court-appointed guardian ad litem and attorney for Edward Mims, Edward Kneece Esq., has provided services in this matter and is entitled to a reasonable fee. Mr. Kneece has not been paid since he began his representation of Mr. Mims, and his fee statement of \$3,065.00 is reasonable given the complexity of the case and time devoted to representing Mr. Mims in this matter. Mr. Kneece's fees are to be paid in their entirety or in increments, as soon as funds become available.

The guardian shall submit a report to this Court and the Guardian Ad Litem six (6) months from the date of this Order, then again twelve (12) months from that date.

IT IS SO ORDERED.

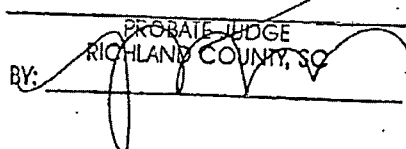
  
Honorable Jacqueline Davis Belton  
Richland County Probate Court

December 19, 2005.  
Columbia, South Carolina

A TRUE COPY  
ATTEST:

Amy W. McCulloch

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PROBATE JUDGE  
RICHLAND COUNTY, SC  
BY: 

*zdb*

6-12-09  
EXHIBIT NO. 33  
Slater  
G. SMITH  
MAY 16 1971

What seems to be the problem of reporting this incident? My God, I sure wouldn't want to live with someone who raped me. Rape is a crime and I don't know of any place where it is written to exclude persons with disabilities. This has to be reported!!!!!!

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STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

COURT OF COMMON PLEAS

EDWARD MIMS, BY AND THROUGH  
HIS LEGAL GUARDIAN,  
MARGARET MIMS,

Plaintiff,

Case No.: 07-CP-40-03365

vs

BABCOCK CENTER, JUDY JOHNSON,  
SCDDSN, KATHI LACY,  
STANLEY BUTKUS,

Defendants.

D E P O S I T I O N

WITNESS: ANDY LAURENT  
DATE: Wednesday, June 3, 2009  
TIME: 2:06 p.m.  
LOCATION: Law Office of Patricia Harrison  
611 Holly Street  
Columbia, South Carolina  
TAKEN BY: Attorneys for the Plaintiff  
REPORTED BY: GINA M. SMITH  
Certified Shorthand Reporter  
Registered Professional Reporter

-----

Gina M. Smith, CSR, RPR  
117 Harmon Creek Court  
Lexington, SC 29072  
803-359-5705

1 APPEARANCES:

2 ATTORNEYS FOR PLAINTIFF  
3 EDWARD MIMS, BY AND THROUGH HIS LEGAL  
4 GUARDIAN, MARGARET MIMS:

5 LAW OFFICE OF PATRICIA HARRISON  
6 BY: PATRICIA HARRISON, ESQ.  
7 611 Holly Street  
8 Columbia, SC 29205

9 ATTORNEYS FOR DEFENDANT  
10 BABCOCK CENTER AND JUDY JOHNSON:

11 COLLINS & LACY  
12 BY: CHRISTIAN STEGMAIER, ESQ.  
13 1330 Lady Street, Sixth Floor  
14 P.O. Box 12487  
15 Columbia, SC 29211

16 ATTORNEYS FOR DEFENDANT  
17 SCDDSN, KATHI LACY AND STANLEY BUTKUS:

18 DAVIDSON & LINDEMANN, P.A.  
19 BY: KENNETH P. WOODINGTON, ESQ.  
20 1611 Devonshire Drive, Second Floor  
21 P.O. Box 8568  
22 Columbia, SC 29202-8568

23 ALSO PRESENT:

24 TANA G. VANDERBILT  
25 KATHI LACY

(INDEX AT REAR OF TRANSCRIPT)

21  
22  
23  
24  
25

1 MS. HARRISON: I was here at ten o'clock.  
2 The witness, John Vaughn, did not appear at  
3 ten o'clock. We are holding for the judge. I  
4 received an e-mail at -- a few minutes before the  
5 eleven o'clock deposition was supposed to start  
6 with a motion which Mr. Davidson and Mr. Stegmaier  
7 are attempting to have heard today before I've had  
8 an opportunity to read the motion. And it is now  
9 11:15, and Dr. Laurent has appeared for the  
10 eleven o'clock deposition.

11 (A recess was taken.)

12 MR. WOODINGTON: We did have a hearing  
13 this morning or from about noon to one in front of  
14 Judge Barber on depositions in this lawsuit, and it  
15 lasted about an hour.

16 We had filed a motion for protective order  
17 this morning, and we had several outcomes, one of  
18 which was that Judge Barber imposed a suggested  
19 guideline, to use his word, of no more than two  
20 hours per deposition, not set in stone, but  
21 suggested guideline of two hours per deposition in  
22 this case by the plaintiff, and I assume by us as  
23 well, although I don't know.

24 And secondly -- go ahead -- secondly, the  
25 objections -- all objections are reserved until the

1 time of trial including objections as to the form  
2 of the question. So what I'd like to do is just  
3 make that statement at the beginning of  
4 Dr. Laurent's deposition.

5 We have plenty more to come, and instead  
6 of saying that same thing over and over again, just  
7 incorporate this by reference into any future  
8 depositions that are taken by plaintiff's counsel  
9 in this case, and if I said something wrong, state  
10 what it is.

11 MS. HARRISON: The two hours was a  
12 guideline and was not a limit, and Judge Barber  
13 made that clear. And my understanding was that all  
14 the issues related to both -- to all three parties  
15 in terms of any kind of suggestions for time  
16 frames.

17 And Ken is correct, we all agreed that all  
18 objections would be reserved until the time of  
19 trial other than I believe privileged, Ken, wasn't  
20 that --

21 MR. WOODINGTON: Yeah, that's not an  
22 objection but rather an -- we reserve the right to  
23 instruct him not to answer anything about  
24 attorney-client privilege or executive session  
25 matter or other privileges if they should come up,

1 and I hope they won't.

2 MR. STEGMAIER: Or any of the grounds  
3 contemplated within Rule 24 C. The judge stated  
4 that too as well.

5 MS. HARRISON: I left my rule book.

6 MR. STEGMAIER: That deals with matters  
7 pertaining to embarrassment, things along those  
8 lines, abusive discovery.

9 MS. HARRISON: I don't think anyone has  
10 asked any questions that are -- would fall within  
11 that, but I do agree with Ken's statement that all  
12 objections are reserved, and if we get to that  
13 issue, we can deal with it. And we'll see what his  
14 order says when it comes out.

15 MR. STEGMAIER: I don't anticipate he's  
16 going to issue an order.

17 MR. WOODINGTON: He's not going to issue  
18 an order. I think that's it. We have a transcript  
19 of that. And we have advised Ms. Harrison that  
20 Mr. Vaughn -- we contacted Mr. Vaughn. He was not  
21 able to make it down here this afternoon. And  
22 we'll do him on the 10th along with others  
23 presently scheduled for the 10th.

24 MS. HARRISON: And if we can at the end of  
25 this make sure we're all on board about the --

1 perhaps set up the rest or additional witnesses,  
2 that would be great. I understand you want to  
3 depose Ms. Mims, and we'll see about getting a time  
4 set on that.

5 MR. WOODINGTON: I think that concludes  
6 the introduction from us unless Christian has  
7 anything else.

8 MR. STEGMAIER: Nothing further.

9 STIPULATION: It is stipulated by  
10 and among Counsel that this deposition is being  
11 taken in accordance with the South Carolina Rules  
12 of Civil Procedure, and that the deponent waives  
13 the right to read and sign the deposition  
14 transcript.

15 - - - - -

16 ANDY LAURENT, being first duly  
17 sworn, testified as follows:

18 EXAMINATION

19 BY MS. HARRISON:

20 Q. If you'll please -- well, let me go over a  
21 few preliminaries. I'm Trisha Harrison -- we met  
22 before -- and I'm going to be taking your  
23 deposition today.

24 I'll be asking you questions. If there's  
25 anything that I'm not clear about, if you don't

1 understand the question, I'll ask you to have me  
2 restate it or clarify anything you don't  
3 understand. And if you answer the question, I'll  
4 assume you understood it. Is that fair?

5 And the other thing I will ask you is to  
6 verbally respond because she can't take nods and  
7 shrugs and eye rolls or nonverbal gestures. So I  
8 would ask that you respond --

9 A. Okay.

10 Q. So I'll be asking you questions about the  
11 lawsuit that's been filed in the matter of Mims  
12 versus DDSN and Babcock Center and various parties.

13 Have you ever had your deposition taken  
14 before?

15 A. A long time ago.

16 Q. And tell me, what case was that taken in?

17 A. I truly don't know. I think it was  
18 related to restructuring the state senate, but I  
19 really don't remember.

20 Q. But it was in something you testified  
21 in --

22 A. Yeah.

23 Q. -- in your past as a state employee?

24 And tell me something about yourself. Are  
25 you married and do you have children?

1 A. I'm married and have two children.

2 Q. And tell me about your current position  
3 and what your responsibilities are in that  
4 position.

5 A. The -- since March 24th, I've been interim  
6 state director of the Department of Developmental  
7 Disabilities and Special Needs, which involves  
8 overseeing a -- services to the mentally retarded,  
9 disabled -- well, spinal cord, head injury, autism,  
10 and so forth.

11 Q. And what are your -- what are your  
12 responsibilities as director?

13 A. Well, essentially to oversee the operation  
14 of the Department.

15 Q. Excuse me just a minute. I am sorry. I  
16 closed that door and I don't know why.

17 (Off-the-record discussion.)

18 BY MS. HARRISON:

19 Q. Go ahead, Dr. Laurent.

20 A. Well, essentially it's an oversight of the  
21 entire -- of the entire Department in terms of  
22 budget, operation. I mean, I don't know -- can you  
23 give me a little bit more?

24 Q. Now, your agency receives federal funds  
25 and state funds to provide services to people who

1 are receiving Medicaid services?

2 A. Yes.

3 Q. And as a recipient of these funds, what --  
4 do you have to provide certain assurances to the  
5 federal government?

6 A. Yes.

7 Q. And tell me what those assurances are.

8 A. I do not remember them all.

9 Q. Is one assurance you are required to make  
10 to the federal government to protect the health and  
11 welfare of Medicaid participants?

12 A. I don't remember the specific assurances,  
13 Ms. Harrison.

14 Q. So you don't remember whether there's a  
15 requirement that you assure the health and welfare?

16 A. No, I don't.

17 Q. What are the assurances you have to make  
18 to the federal government about expenditure of  
19 funds?

20 A. I do not -- I mean, I really do not  
21 remember specific assurances that you lay out in a  
22 contract. Obviously you have to track funds well,  
23 see they're spent properly, what have you. What  
24 the specific assurances are I do not remember.

25 Q. Now, you were formerly the director of

1 South Carolina Health and Human Services, were you  
2 not?

3 A. Yes, I was.

4 Q. And how long did you hold that position?

5 A. About eight and a half years.

6 Q. And now, tell me the way the Medicaid  
7 funds work. Who is ultimately responsible to the  
8 federal government to assure the federal government  
9 that those -- that those assurances -- federal  
10 assurances are met?

11 A. The same Medicaid agency, Health and Human  
12 Services, they're the ones ultimately responsible  
13 for the expenditure of Medicaid dollars.

14 Q. And you were the director of that agency?

15 A. That's correct.

16 Q. For eight and a half years?

17 A. That's correct.

18 Q. And you don't remember whether or not the  
19 Medicaid Act and the regulations under the Medicaid  
20 Act require that agency and DDSN to protect the  
21 health and welfare of consumers?

22 A. Well, I know health and welfare is an  
23 important component of what we do, but I don't  
24 remember the -- what the assurances are.

25 Q. Tell me what your understanding is as to

1 your obligations to protect the health and welfare  
2 of Medicaid participants.

3 A. That's a primary responsibility of anybody  
4 in our care, not just Medicaid.

5 Q. And who has that responsibility?

6 A. Well, it's spread throughout the system.  
7 I mean, it starts at the caregiver level and comes  
8 on up to the State Department.

9 Q. So as director of the agency, do you have  
10 any responsibilities to assure the safety of  
11 individuals in the programs you oversee?

12 A. I have a responsibility to see that the  
13 system we have out there takes care of the welfare  
14 of the individuals.

15 Q. And what is your responsibility when it's  
16 brought to your attention that there is -- there is  
17 not just one incident of abuse or neglect but that  
18 it's occurring like an epidemic in an entity?

19 A. Any instance of abuse and neglect that  
20 comes to our attention would be investigated.

21 Q. And as state director, what responsibility  
22 do you have to assure that it's promptly reported  
23 to you?

24 A. The -- we try to build a system that does  
25 that.

1 Q. And who's responsible for that?

2 A. Let me think on it. Who's responsible for  
3 being sure it's reported?

4 Q. Well, who's responsible for assuring that  
5 prompt reports of abuse and neglect are made to  
6 your agency?

7 A. The -- well, the agency is created with a  
8 set of policies that are supposed to be followed at  
9 the various steps, and it's where that happened to  
10 fall.

11 Q. As the director, if you were informed that  
12 an individual has been sexually assaulted, for  
13 example, what responsibilities would you  
14 individually have to protect that person?

15 A. The -- well, I don't know that it's  
16 individual. The system has that responsibility,  
17 which I'm over.

18 Q. So does the buck stop with you?

19 A. Yes, ma'am.

20 Q. Where does it stop?

21 A. Well, if it comes to me, it stops right  
22 there. It doesn't stop there, I put it somewhere,  
23 but --

24 Q. But you're responsible for assuring that  
25 it's taken care of?

1 A. That's right.

2 Q. And tell me about your responsibilities  
3 versus the board's responsibilities when it becomes  
4 evident that there's incidents of abuse and  
5 neglect.

6 A. Well, the board's responsibilities, in  
7 essence, involve how well I do my job and whether  
8 they hire and fire me. It's my job -- and they set  
9 the general policies that the agency operates  
10 under. And it's my job to carry those out, and if  
11 I'm not doing that, then they should be -- they  
12 would deal with me.

13 Q. So basically the buck stops with you.  
14 They aren't responsible for taking care of those  
15 problems, they bring them to your attention, and  
16 you handle them. Is that correct?

17 A. That's the way it should happen, yes.

18 Q. Is that the way it's happened over the  
19 last seven years?

20 A. I can't answer that.

21 Q. Tell me, how long have you been in the  
22 role as state director?

23 A. Well, since March 24th. So that would be  
24 four, five -- working on six weeks. Is that right?  
25 It's two months. Two months, yeah.

1 Q. Based on your two months there, what's  
2 your assessment of the job the agency is doing to  
3 protect the health and welfare of people it serves?

4 A. From what -- from my experience, the  
5 agency is doing a pretty good job, and the policies  
6 in place are extremely strict.

7 Q. Are those policies being followed?

8 A. To the best of my knowledge.

9 Q. Have you had the opportunity to review the  
10 audit the Legislative Audit Council issued on the  
11 agency?

12 A. Yes.

13 Q. They made some findings about the failure  
14 of the agency to protect the health and welfare of  
15 the individuals, didn't they?

16 A. I don't remember all the specific  
17 findings. I do have a copy on my desk. When  
18 something comes up, I look at it.

19 Q. Have you read the whole thing?

20 A. Yes. At one time I had read the whole  
21 thing, yes.

22 Q. Well, tell me what their findings were  
23 about their concerns about protecting the health  
24 and safety of individuals.

25 A. I don't -- I do not remember the finding.

1 You'll have to help me a little bit.

2 Q. Were they concerned that maybe people's  
3 health and safety was not protected?

4 A. That -- in going through everything we've  
5 been working with, that did not stand out in my  
6 mind.

7 Q. Have you met with Senator Thomas who held  
8 hearings on those findings about abuse and neglect?

9 A. I talked to Senator Thomas, yes.

10 Q. And did he share with you any concerns  
11 about the agency's failure to protect the health  
12 and welfare, health and safety of individuals being  
13 served?

14 A. If I remember, most of the -- I don't  
15 remember him addressing the abuse issue. He talked  
16 at that -- a lot about the management of the agency  
17 and dollars.

18 Q. What did he tell you?

19 A. He had some concern that maybe everything  
20 had not been handled as it should have.

21 Q. What kind of concerns did he have?

22 A. And he mentioned maybe contracts being  
23 left and people getting some dollars on the side,  
24 and there was just a general concern that  
25 everything was not as it should be.

1 Q. Did he share with you about any of the  
2 phone calls he had received about reprisals when  
3 people report abuse and neglect?

4 A. He mentioned that a number of people have  
5 come to talk with him, including some ex-employees,  
6 and that some of those -- he'd indicate -- what's  
7 the word? Reprisal's not the word, but same thing,  
8 yes.

9 Q. And what did he share with you about  
10 these --

11 A. He did not give me any specifics.

12 Q. Did you feel that that was something that  
13 you as director needed to look into?

14 A. Well, that's one of those things you put  
15 in the back of your mind, just kind of pay little  
16 attention to as you do your day-to-day business.

17 Q. So whether there have been reprisals  
18 against families is just something in the back of  
19 your mind, it's not in --

20 A. No. I was talking about reprisals versus  
21 employees, not families. I do not remember him  
22 saying anything about reprisals of families.

23 Q. Would that give you a concern if families  
24 have called him and talked about reprisals?

25 A. That would be a concern. That would be

1 something you'd have to check out.

2 Q. And did that concern you that employees  
3 felt there were reprisals?

4 A. Of course.

5 Q. And what action did you take as state  
6 director to address Senator Thomas' concerns?

7 A. The -- I asked some questions, looked  
8 around, talked to some folks.

9 Q. Have you found any credence to the reports  
10 that there might have been any reprisals against  
11 employees or families?

12 A. No.

13 Q. So you haven't found any instances since  
14 you've been there where there have been any  
15 reprisals?

16 A. I have not.

17 Q. Have you talked to any family members that  
18 believe there have been reprisals?

19 A. No family member has reported any such  
20 thing to me.

21 Q. If they did, would you take that  
22 seriously?

23 A. Yes, ma'am.

24 Q. And if they did, what would you do about  
25 it as director?

1 A. It would depend on what the circumstances  
2 were and what they gave me. I would start down the  
3 chain of command and run down and see what the  
4 story was.

5 Q. Let me give you an example. For example,  
6 if a mother called you and said an employee beat my  
7 child and I'm having trouble getting it  
8 investigated, and when I reported it, they made  
9 false allegations against me, what would you as  
10 director do?

11 A. Well, if there is a report of abuse, I  
12 would ask the staff to report that to SLED. That's  
13 the rule. If it's a report of abuse, it's  
14 investigated. I mean, SLED may not go further with  
15 it, but we -- I believe that's --

16 Q. If eventually the employee was arrested  
17 and confessed to beating that individual and the  
18 mom was still saying they're accusing me of doing  
19 things that are happening at that facility, what  
20 would you as director do?

21 A. Well, if we had that allegation, it would  
22 be the same process. I would ask staff to go find  
23 out exactly what the story was and bring it back to  
24 me..

25 Q. But you'd ask them to bring it back to you

1 and you'd make sure it was resolved?

2 A. I would hope so, yes, ma'am.

3 Q. Would you involuntarily commit this person  
4 to a facility where he was being --

5 A. What do you mean -- I mean, who's the  
6 person?

7 Q. Okay. An individual's being beaten by an  
8 employee, and the mama says they're beating my son,  
9 and would it be appropriate for you to  
10 involuntarily commit that individual to the  
11 facility where he's being beaten?

12 A. I think I -- I think you would have to  
13 know the whole circumstances, what's going on, to  
14 make that decision. As you framed the question, I  
15 think the answer is no, but I think there's  
16 probably more to it than that.

17 Q. Under what circumstances in a case like  
18 that would it be appropriate to commit the  
19 individual to the facility -- to the custody of  
20 DDSN?

21 A. The -- I haven't had that much experience  
22 with this system, but I have worked as a certified  
23 guardian, and it would all -- when you get in --  
24 using that experience, if there -- the relationship  
25 between the mother, the child, what's going on

1 there, which I have no idea in the specific  
2 instance you're talking about, and all that  
3 circumstances would make it -- if there's a  
4 question that leaving the person where they are  
5 endangers them in some fashion, then a commitment  
6 might be warranted. If not, then it would not be.

7 Q. Would it be warranted to commit the person  
8 to the facility where he was being beaten?

9 A. Well, I would assume that the whole  
10 facility did not beat the person. I mean, it would  
11 be -- if in fact it happened, you know, it was  
12 determined, as you say, I don't know what options  
13 would be available.

14 Q. Let's say the Department bamboozled you  
15 and let's say that this individual was committed  
16 based on your good faith belief that mom was  
17 neglecting him.

18 A. Okay.

19 Q. And he was committed to the same facility  
20 where he was beaten the first time. And then you  
21 get a report that he's been beaten with a belt at  
22 the same facility again. What action would you  
23 take as state director?

24 A. I think in that case it would be a --  
25 something that we would really look into extremely

1 carefully.

2 Q. And once the individual was involuntarily  
3 committed and in your agency's care, do you just  
4 leave him at that facility and not have anything  
5 else to do with him, or, if he's committed to DDSN  
6 and the statute says it's the director who has the  
7 authority to request the commitment, would you --  
8 what would be -- from your perspective as the state  
9 director, what would be the agency's responsibility  
10 to see that his needs are being met, that he's not  
11 being abused?

12 A. In essence you have the same  
13 responsibility for anybody in your care to be sure  
14 that their needs are being met and taken care of  
15 and whatever -- the plan of care is carried out.

16 I mean, I -- if there's an instance, a  
17 problem, and once that goes by, I mean, I think  
18 that person is cared for like anyone else.

19 Q. Do you not have a higher duty if you're  
20 the director and he's committed to your care to  
21 have some kind of periodic evaluation of that  
22 individual versus Gina's child who might be there  
23 and she makes sure that his needs are met?

24 A. Ms. Harrison, I don't think so. I think  
25 you've got a commitment across the board to see

1 that every consumer's taken care of.

2 Q. And so you have no greater duty to the  
3 people who have been involuntarily committed to --  
4 and can't leave than you have to people who are  
5 voluntary admissions?

6 A. I had not thought about that question  
7 until you just asked it per se. I think we have  
8 the same responsibility to everybody in our care.

9 Q. So --

10 A. Now, if conditions of that person change,  
11 that may change and come up, but still as long as  
12 they're in our care, then they're our --

13 Q. So let's say -- I'm sorry.

14 A. I was going to say they're our  
15 responsibility.

16 Q. Let's say that this individual's been  
17 committed and he's committed to the custody of DDSN  
18 and you're the director and the -- is it not true  
19 that if something -- if there are any allegations  
20 of abuse and neglect, every allegation of abuse and  
21 neglect has to be made to your agency also, doesn't  
22 it?

23 A. I believe so, yes, ma'am.

24 Q. And how promptly does it have to be made  
25 to your agency if there's an allegation somebody's

1 beaten or neglected, or what do your policies  
2 require?

3 A. I do not know what the protocol is, but  
4 I'm sure it would happen very quickly.

5 Q. And does your agency maintain records  
6 and -- so that you can tell if there's a trend at  
7 any particular provider?

8 A. Yes, we do have records.

9 Q. So let's say that this individual is  
10 committed to XYZ provider -- I'm sorry -- is  
11 committed to you, but you exercising your authority  
12 as director have placed him at XYZ, and your agency  
13 gets reports that XYZ has double the statewide  
14 average of substantiated cases of abuse and  
15 neglect. What are your duties as director to this  
16 individual who you have chosen to put at that  
17 place?

18 A. I don't -- again, I don't think my  
19 responsibility to that person is any different than  
20 we have for everybody at that place.

21 And I know we have a -- I'm trying to  
22 think. This comes from not being around long  
23 enough, but I mean, again, I think the Department's  
24 responsibility is the same across the board.

25 Q. And what is that responsibility?

1 A. To take care of the needs and welfare of  
2 the people that we have in our care.

3 Q. And when it's brought to your attention  
4 that someone's needs and safety is endangered, what  
5 is your responsibility?

6 A. When it's brought to my attention  
7 someone's needs and safety?

8 Q. Needs are not being met and his safety in  
9 danger.

10 A. We would see it's taken care of.

11 Q. And how do you do that?

12 A. I would, again, ask staff to go see  
13 exactly what was going on and bring that back to  
14 me.

15 Q. And bring that back to you?

16 A. Uh-huh.

17 Q. Let's go a little further along the line.  
18 You've committed this -- you exercising your  
19 authority as director have put this person in XYZ  
20 facility, and they've had doubled the substantiated  
21 rate of abuse. And a year or two later, the rate  
22 of substantiated abuse and neglect is four times  
23 the statewide average, and your agency makes a  
24 finding that that agency where there's no mama who  
25 can pull that person out, mama -- you've taken away

1       mama's right to pull that person out, and you are  
2       the only person, what is your responsibility then  
3       when you know that agency has four times the  
4       substantiated rate of abuse and neglect and mama is  
5       writing to you saying he's being neglected and  
6       abused at that facility?

7             A. Ms. Harrison, I can't tell you what the  
8       exact Department protocols are, but there are  
9       things in place where if a facility gets way out of  
10      line, you deal with the facility.

11            Q. But do you have any responsibility to this  
12      individual who he can't go anywhere, his mama can't  
13      take him out, his mama's telling you that he  
14      continues to be abused? You don't have any duty to  
15      get him out of that unsafe --

16            A. If they're abused, we have a duty to take  
17      care of that.

18            Q. And how -- if you tell your staff take  
19      care of it and then you get another report that  
20      that provider continues to have sexual assaults and  
21      to fail to report instances of abuse and neglect  
22      promptly, then what is your personal duty as a  
23      state director?

24            A. I think if I were -- if we take this  
25      purely hypothetically, because I have not been

1 through this exact -- this kind of circumstance,  
2 but if you have a provider who's not living up to  
3 the condition of the contract, then we as an agency  
4 should deal with that provider.

5 Q. Has your agency done that?

6 A. I believe they have in several cases, but  
7 I don't know. I mean, I was not here.

8 Q. Let's talk about your relationship, your  
9 agency's relationship, with the boards. Explain to  
10 me how the band funding process works.

11 A. The band funding, it's a mechanism -- it's  
12 a reimbursement mechanism for getting money out.  
13 The band is set -- there's a set of services, and a  
14 provider gets so many dollars to provide those  
15 services, and that's basically how it works. You  
16 try to gear the band so you're hitting the average.  
17 Some consumers may take more, some take less.

18 Q. If a person's in an ICF/MR, what does it  
19 cost a year to provide for their care there? What  
20 do you pay them per year?

21 A. I don't know.

22 Q. Do you have any idea?

23 A. No.

24 Q. Is it more than \$200 a day?

25 A. I would be surprised if it were not.

1 Q. What do you think it might be?

2 A. I don't want to guess. I really don't  
3 know, Ms. Harrison.

4 Q. Tell me how the reimbursement mechanism  
5 works for people in ICF/MRs.

6 A. The -- I've been away from this too long  
7 to know the detail, but essentially, an ICF/MR  
8 reimbursement -- I don't know the mechanism, the  
9 dollar amount we're flowing through right now, but  
10 that is a cost-settled reimbursement. So at the  
11 end of the period, DDSN's reimbursed its costs for  
12 that service.

13 Q. So is it not true that each provider, XYZ  
14 board, has an ICF/MR -- is it not true that they  
15 submit to you records of how much staff they had  
16 and what the cost of operating that facility was  
17 and that you reimburse that agency based on those  
18 cost reports?

19 A. I would expect that was true. I don't  
20 know. I know the agency turns that data in to be  
21 reimbursed. Exactly how it works between us and  
22 the provider I don't know.

23 Q. But you get reimbursed based on the cost  
24 reports that show how much staff is -- if there's  
25 three staff on this shift or two staff or --

1 A. Whatever the costs are.

2 Q. But they submit that to you, do they not?

3 A. Yes.

4 Q. And then you submit that to HHS and you  
5 get paid based on that, don't you?

6 A. Yes.

7 Q. Now, if a provider is billing you for  
8 three staff on a shift and if they're really  
9 consistently only having two staff on that shift,  
10 how do you find that out?

11 A. The -- I don't know all the answers.

12 There are mechanisms in place. There are minimums  
13 that have to be met, and that's staffing ratios,  
14 those kind of things.

15 DHEC does a review of that. There are  
16 audits. And that would be the -- the details at  
17 this point of what we red flag in the system I  
18 don't know.

19 Q. Well, let's say you're the director and  
20 somebody dies in one of these facilities and CMS  
21 comes in, and they investigate and they --

22 A. Who comes in?

23 Q. CMS.

24 A. Okay.

25 Q. And they investigate and they tell you the

1 house was understaffed and somebody died as a  
2 result and that the staff wasn't properly trained.  
3 What's your responsibility as the director of the  
4 state agency when you get that report from CMS  
5 saying that the staffing they were billing you for  
6 wasn't being provided and the staff that was there  
7 was not trained to take care of the needs of those  
8 individuals?

9 A. The -- again, that's one of those things  
10 you have to find out exactly what the story is. I  
11 assume if someone had overbilled us we would ask  
12 for dollars back.

13 Q. Have you read the 2006 audit by HHS of  
14 DDSN?

15 A. No, I haven't.

16 Q. I suggest that you read that because it  
17 says that HHS and Robbie Kerr said that they  
18 couldn't follow the dollars and they couldn't tell  
19 whether the cost reports were accurate or not.

20 As state director, does that give you  
21 heartburn?

22 A. I'd have to look at it and see exactly  
23 what they meant by that.

24 Q. Have you talked to Robbie Kerr since  
25 you've been here?

1 A. Yes, but not about that.

2 Q. So he hasn't told you about going to  
3 legislators and telling them that he couldn't  
4 follow the money?

5 A. No.

6 Q. What did you talk to Robbie Kerr about?

7 A. General things. I've known Robbie a long  
8 time. He worked for me when I was HHS. Talking  
9 about his new business and those kind of things.

10 Q. Did he share any concerns with you about  
11 DDSN? When he was the agency director, he couldn't  
12 follow the cost reports. He sent accountants out  
13 and they couldn't tell where the money was going.  
14 Did he share that?

15 A. No, he did not.

16 Q. Is that something as director you need to  
17 know?

18 A. The -- if in fact we don't know where the  
19 money's going, I would need to know, but I don't  
20 know that.

21 Q. Would that be an important thing for you  
22 as state director to read if that was the report  
23 that says that this provider, the Babcock Center's,  
24 rate of substantiated abuse and neglect was four  
25 times the statewide average?

1 A. Abuse --

2 Q. The substantiated cases of abuse and  
3 neglect are four times the statewide average, is  
4 that something you as state director would need to  
5 know?

6 A. I would hope that would come to me  
7 internally.

8 Q. It's in the audit if would you like to  
9 read that. February 28, 2006.

10 Now -- so let's assume -- since you  
11 haven't read it, let's just hypothetically assume  
12 that you get this report from CMS. And are you  
13 familiar with the review that Carolina Medical --  
14 that Robbie Kerr commissioned Carolina Medical  
15 Review to do of ICF/MRs at the Babcock Center?

16 A. No, I have not seen the report.

17 Q. It came out in 2005.

18 A. No.

19 Q. Well, since you haven't seen it, let's do  
20 a hypothetical here. You're the director of state  
21 DDSN, and Robbie Kerr hire -- are you familiar with  
22 Carolina Medical Review?

23 A. Who is it?

24 Q. It's a company that Robbie Kerr hired.

25 A. No.

1 Q. Do you have confidence in Robbie Kerr's  
2 ability?

3 A. Yeah, I do.

4 Q. Do you think he knows what he's doing?

5 A. Generally I would say yes.

6 Q. Do you think that if he hired an entity to  
7 review the ICF/MRs at the Babcock Center that it  
8 would be a competent entity?

9 A. I would assume so.

10 Q. Well, then, hypothetically, then, if  
11 Robbie Kerr has enough concerns that he hires this  
12 private independent entity to review the ICF/MRs at  
13 the Babcock Center and they send a letter -- they  
14 send a report to Robbie Kerr saying the ICF/MRs are  
15 not in compliance with Medicaid regs and, within a  
16 few months of that report, you've got a finding of  
17 immediate jeopardy by CMS at one of these and  
18 you've got a death at one of these and, subsequent  
19 to that finding by CMS, there's another immediate  
20 jeopardy at the facility declared based on a  
21 different problem -- let's put your guardian hat  
22 on.

23 You're a guardian, okay, and this  
24 individual who has been your ward for five years is  
25 in this facility, and the red flags are that

1 immediate jeopardy has been declared two or three  
2 times in a year, someone choked to death, CMS came  
3 in and determined -- declared immediate jeopardy  
4 because staff was not properly trained, the house  
5 was understaffed, and the incident was not  
6 thoroughly investigated. And you're a guardian for  
7 this individual who is in this facility, and it's  
8 decertified. What would you do as guardian?

9 A. The individual -- the facility is  
10 decertified?

11 Q. The facility is decertified, two or three  
12 immediate jeopardies have been declared at that  
13 facility in the last six months, this individual  
14 has been beaten by an employee who was convicted of  
15 being beaten at another facility, he has been  
16 beaten with a belt by a second person who's a  
17 consumer, and now he's in this facility that's had  
18 two or three findings of immediate jeopardy and has  
19 been decertified. As a guardian, what would you  
20 do?

21 A. All those things happened at that  
22 facility?

23 Q. Well, the two beatings were at another  
24 ICF/MR operated by the same entity, okay?

25 A. If in fact the facility the person was in

1 was decertified, I would move him.

2 Q. Let's say that that individual, his mother  
3 came to you as guardian -- and, now, you're a  
4 certified guardian. Tell me about that process.

5 A. Well, it's just -- in Florida, it's a much  
6 more rigorous process to be a guardian. You have  
7 to take a 40-hour course and you have to pass a  
8 test which has both Florida and national and you're  
9 certified national.

10 Q. And you're certified?

11 A. Uh-huh.

12 Q. So let's say you're the guardian of this  
13 person and the guardian ad litem who previously  
14 represented the individual comes to you and says  
15 you were named the guardian because I was told  
16 false information, and I was told that mother was  
17 abusing him and now I know she wasn't, and now I  
18 know that was false information that was provided  
19 to me and that he was being beaten at the facility  
20 that I as guardian ad litem helped get him  
21 committed to. And all of that was lies, and that's  
22 why you've been appointed his guardian, and his  
23 mother cares for him and it would be safe for him  
24 to return home and for her to be guardian. What  
25 would you do then as guardian?

1 A. Well, as a guardian, if that were true --  
2 I'd have to determine that was true.

3 Q. Right. And you look at it and you  
4 determine the guardian ad litem's right. You're  
5 Court-appointed guardian, and mom files a petition  
6 to be appointed as guardian.

7 A. I would take no position on that.

8 Q. Would you go to the Court and fight her  
9 being appointed as guardian?

10 A. No, but I would not take a position.

11 Q. Well, as guardian, you have a duty to  
12 protect him, don't you?

13 A. That's right. But basically the  
14 decision -- it would be a conflict of interest if I  
15 am the guardian for me to oppose or really support.  
16 I mean, that's -- there would be a hearing and the  
17 Court would handle that.

18 Q. So are you saying it should be decided by  
19 the Court?

20 A. Yes.

21 Q. And do you think the Court should give  
22 weight to that guardian ad litem's testimony?

23 A. Well, they give weight to the truth. I  
24 mean, again, I don't know that the guardian  
25 ad litem was exactly right or what the original was

1 exactly right, but whatever the -- that's why you  
2 have hearings.

3 Q. In any circumstances, would you force that  
4 individual to remain in that facility that's been  
5 decertified? What circumstances would you --

6 A. Well, if what you -- as you've laid it  
7 out, if the individual had been beaten and what  
8 have you, no, I would not keep him there.

9 Q. If you're guardian and that facility --  
10 you find out that his bed was infested with ants  
11 and he's been taken to the emergency room with ant  
12 bites all over his body, what would you do as his  
13 guardian?

14 A. I'd do something about it.

15 Q. What would you do about it?

16 A. I'd do something about it as state  
17 director too if I knew about that.

18 Q. Tell me what you would do about that.

19 A. Essentially your role as guardian is to  
20 protect the person and make sure they're in a safe  
21 environment, and if they're not in a safe  
22 environment, you do something about it.

23 Q. How much different is the role of guardian  
24 from the role of state director if you're the only  
25 one who can release him from that involuntary

1 commitment?

2 A. It's a different role. As a guardian,  
3 that person -- I'm directly responsible for that  
4 person. As state director, I'm responsible for  
5 everybody in the system.

6 And what I tried to say earlier, that's  
7 where you try to build systems that do the job that  
8 you accomplish taking care of everybody because, I  
9 mean, there could be lots of people all over the  
10 state, and you don't have that kind -- the same  
11 relationship with hundreds of people you do with  
12 one person you're the guardian for.

13 Q. How many people are involuntarily  
14 committed to DDSN?

15 A. I don't know.

16 Q. What do you think as state director --  
17 when you're guardian for somebody, don't you have  
18 to file periodic reports with the Court?

19 A. Yes.

20 Q. When somebody's involuntarily committed to  
21 the Department, should there not be similar reports  
22 filed with the Court, in your opinion?

23 A. Well, there could be, but there's a whole  
24 set of laws and regulations that govern the  
25 Department -- it's really a different deal --

1           whereas the guardian is an individual.

2           Q.    But you -- okay.  Let me rephrase that.

3                    Have you read the Unequal Justice Report  
4           that was issued by Protection and Advocacy?

5           A.    No.

6           Q.    Has anybody told you about that report?

7           A.    No.

8           Q.    If you were guardian for someone and this  
9           report came out saying that sexual abuse and  
10           physical abuse and there were cover-ups of all  
11           these things and they weren't adequately  
12           investigated, would you inquire about that and  
13           determine whether your ward was one of the people  
14           affected by that?

15          A.    Yeah.

16          Q.    I'd encourage you to read the 2005 Unequal  
17           Justice Report.

18                    So the limited scope audit of the Babcock  
19           Center that was issued by HHS in 2003, are you  
20           familiar with that document?

21          A.    No, I'm not.

22          Q.    And you're not familiar with the Carolina  
23           Medical Review?

24          A.    No.

25          Q.    And you're not familiar with the 2006

1 audit by HHS of DDSN and the MR/RD waiver?

2 A. No. I did misstate one thing. Robbie did  
3 say something to me about the Babcock thing and  
4 restricting them.

5 Q. And what did he say?

6 A. I don't -- I mean, I can't quote him, but  
7 it was just a -- that was, you know -- it was a  
8 mess they had to get into and work their way  
9 through.

10 Q. So are you familiar with the study that  
11 the University of South Carolina did of the MR/RD  
12 waiver program under Dave Murday?

13 A. I've heard reference to it, but I have not  
14 read it.

15 Q. So what audits have you read of the agency  
16 or of the Babcock Center?

17 A. The actual only audit I've read is the LAC  
18 audit. That's not true. There are internal audits  
19 they go through all the time that are internal  
20 audits to us, but other than those, that's what  
21 I've been through.

22 Q. Tell me about the freedom of choice  
23 requirements of the Medicaid Act. Tell me about  
24 what that requires.

25 A. People have a choice.

1 Q: And tell me about that choice. What  
2 choices do they have?

3 A. Let's move this to a specific instance --  
4 I mean a specific kind of service or what have you.

5 Q. Okay. People, are they not required to  
6 have a choice between ICF/MR or waiver services?

7 A. I don't know about that particular case.  
8 I can't answer that.

9 Q. Tell me what the Medicaid Act requires in  
10 regard to choice.

11 A. I've been away from Medicaid a long time.  
12 I wouldn't want to say.

13 Q. Tell me what the Medicaid Act says about  
14 choice of providers.

15 A. I don't know what the Medicaid Act says  
16 about choice of providers.

17 Q. Are you familiar with any of the Medicaid  
18 requirements as to choice? What's your  
19 understanding of choice? Is there any right that  
20 DDSN consumers have to choice?

21 A. Yes, they have a choice.

22 Q. And tell me how that works.

23 A. As part of a service plan every year, they  
24 should have an opportunity to choose whatever  
25 environment they'd like to have.

1 Q. Are there things your agency can do to  
2 make it more or less likely that choices will be  
3 provided?

4 A. Yes.

5 Q. And what are those things?

6 A. Well, we've been working to equalize the  
7 opportunity between private providers and the  
8 county boards, and we have, again, a set of  
9 policies, directives the county boards are supposed  
10 to be following and pushing with respect to choice.

11 Q. Let's talk about the county boards. What  
12 is a legal authority for the establishment of a  
13 county board?

14 A. It's the same -- it's all built up in the  
15 agency's authorizing legislation.

16 Q. And where is that found?

17 A. I don't know the site on it.

18 Q. But it's in the South Carolina code?

19 A. Yes, it's in the code.

20 Q. And the South Carolina code specifically  
21 states that -- how county board members are to be  
22 appointed, does it not?

23 A. Yes, ma'am.

24 Q. And the South Carolina code specifically  
25 states, does it not, that county boards are public

1 entities, does it not?

2 A. I'm sure they are, but I do not  
3 remember -- I can't say yes to that. I don't  
4 remember.

5 Q. So DDSN takes the money it gets from HHS,  
6 and it pays the band payments, does it not, to the  
7 county board?

8 A. That's correct.

9 Q. And then the county board is responsible  
10 for following the plan of care?

11 A. Well, there's a whole set of directives  
12 the county board's responsible for carrying out.

13 Q. Now, is the Babcock Center board appointed  
14 by the legislative delegation or county council?

15 A. The Babcock was made a county board, but  
16 how -- whether they changed the way -- how the  
17 board's appointed, I don't know.

18 Q. And who made them a county board?

19 A. It's in the legislation.

20 Q. It's in the legislation?

21 A. I believe so.

22 Q. Would you please --

23 A. No, again, I can't -- that's -- that's a  
24 memory. I can't take you right where it is.

25 MS. HARRISON: Ken, I'd like for you to

1 get me a copy of that statute -- that statute  
2 that the state director is relying upon to --

3 MR. WOODINGTON: Can you state exactly  
4 what the statement was? I was sort of in and out  
5 there.

6 MS. HARRISON: I can't believe you lost --  
7 this is so interesting and exciting, I just can't  
8 believe we lost you for a moment.

9 MR. WOODINGTON: As I understand it --

10 MS. HARRISON: I'm teasing you.

11 MR. WOODINGTON: I know. The question was  
12 whether or not Babcock Center was a designated  
13 county board. Is that the right --

14 MS. HARRISON: Right. Dr. Laurent just  
15 said that it's in the statute. So I would like for  
16 you to get me a copy of that statute.

17 BY MS. HARRISON:

18 Q. If it's not in the statute anywhere and  
19 DDSN is paying band payments to a private company,  
20 would that give you any heartburn?

21 A. We should not be paying band payments to a  
22 private company.

23 Q. The recipients of the band payments, they  
24 have a certain amount of control, don't they, over  
25 how those funds are used?

1 A. Well, they -- yes.

2 Q. And they can affect, can they not, how  
3 easy or difficult it is for people to get services,  
4 can't they?

5 A. They can.

6 Q. Tell me how they can do that.

7 A. I don't know all the ways. I just know  
8 that if they don't offer the alternatives, they  
9 would affect how -- whether people had the choice  
10 or not. But if they do that, then they're in  
11 violation of the Department director.

12 Q. And what do you do about that?

13 A. We'd be sure they offered the services.

14 Q. Are you familiar with the Olmstead case?

15 A. Very broadly.

16 Q. Tell me what you know about the Olmstead  
17 case.

18 A. Very little. Why don't you ask me the  
19 question. It will come back.

20 Q. Tell me what the Olmstead case says about  
21 a disabled person's right to receive services in  
22 the least restrictive environment.

23 A. We are supposed to receive services in the  
24 least restrictive environment.

25 Q. That case also, though -- the flip side of

1 that case, is it not, that the case specifically  
2 says that individuals have the right to choose the  
3 most restrictive setting, an institutional setting?  
4 Is that not correct?

5 A. I don't know that, but I would assume that  
6 would be true. That's a choice.

7 Q. It's kind of like my right to ride the  
8 bus, I have the right to do that, but you can't  
9 make me go on the bus. Is that correct?

10 A. I hate to say yes because I really don't  
11 know.

12 Q. So are you aware of any -- anything in the  
13 Olmstead case or any of the directives that have  
14 come out from CMS pursuant to Olmstead that forces  
15 someone to choose or that gives you the ability to  
16 force someone to be in a less restrictive setting?

17 A. No.

18 Q. Now, would you agree that if you need a  
19 service -- let's say you need your car washed, and  
20 if the State is buying the car wash for a private  
21 company, they're providing the facility, and  
22 they're providing -- paying off the debts of that  
23 facility. And Christian over here, he wants to get  
24 in business to wash cars, but we have Ken over here  
25 who is -- the State's bought his car wash for him,

1 and they're paying many of the bills of that car  
2 wash. Would Christian be able to provide the car  
3 wash as cheaply as Ken could?

4 A. If one had capital costs and one did not,  
5 they probably could not.

6 Q. So would that affect which one you chose  
7 if his rate -- if he can do it for less?

8 A. The -- I don't think we've got a bidding  
9 process out there.

10 Q. Tell me about -- are you aware that if a  
11 person wants to keep their family member at home,  
12 that the respite caregiver has to pay for their own  
13 SLED checks, driver's license checks, go through  
14 the training without being paid, and they don't get  
15 reimbursed for that, and that their FICA taxes  
16 aren't paid if they want to be a respite --  
17 individual respite caregiver? Are you aware of  
18 that?

19 A. Uh-uh.

20 Q. Well, would it make it harder -- let me  
21 back up a little bit.

22 Are you aware that if a person is  
23 providing care in a CTH II, that the waiver funds  
24 pay for the training for that person, for their  
25 SLED check, for all the background that it takes

1 for them to work as a caregiver? Are you aware of  
2 that?

3 A. I think that's true.

4 Q. Would it be an impediment to someone  
5 wanting to keep their child at home if they have to  
6 find the caregiver, pay for the background check,  
7 and pay for the training that the State pays for if  
8 they'll just put them in a facility?

9 A. I'm not sure those two things are  
10 absolutely comparable.

11 Q. Explain that for me.

12 A. Well, I mean, you have -- one case you're  
13 dealing with an employee in a structure, another  
14 case you're dealing with a private individual.

15 Q. Are you aware that the band payments in  
16 Richland and Lexington County are paid to the  
17 Babcock Center?

18 A. That's the county board.

19 Q. What is Rich/Lex?

20 A. I don't know exactly how that's split. I  
21 don't know that exact relationship.

22 Q. So it's your position that Babcock  
23 Center's a county board so they would get the band  
24 payment?

25 A. If they're a county board, they would.

1 Q. Are you aware that respite and adult  
2 companion caregivers are required to sign a form  
3 saying they're not employees of the Babcock Center  
4 when they provide respite --

5 A. No.

6 Q. Are you aware that they have to pay for  
7 their own SLED check, background checks, and  
8 training?

9 A. You told me that.

10 Q. Did you know that before?

11 A. No.

12 Q. Are you aware that if the Babcock Center  
13 makes it more difficult for a family member to get  
14 that caregiver to help keep their family member at  
15 home that they get to keep the money?

16 A. Give me -- come with that a little bit  
17 more.

18 Q. Let me give you an example. Are you aware  
19 of the allegations in this case, that Ed Mims was  
20 sexually assaulted at a Babcock Center facility?

21 A. Yes.

22 Q. And are you aware that his mother  
23 repeatedly asked that Babcock Center have nothing  
24 to do with Ed Mims after that?

25 A. No.

1 Q. Are you aware that his band payments  
2 continued to be made to the Babcock Center?

3 A. No.

4 Q. Are you aware that because his band  
5 payments were made to the Babcock Center, if they  
6 made it very difficult for mom to get an adult  
7 companion or a respite provider, that they would  
8 get to keep the band payments?

9 A. I mean, if he stayed at Babcock, they  
10 would keep the band payment; if he went home, they  
11 would not. Is that what you're --

12 Q. I'm talking about once Edward Mims was at  
13 home --

14 A. Okay.

15 Q. -- and he's got the waiver and he's  
16 getting --

17 A. I mean, they would continue to provide the  
18 in-home services. Is that what you're asking me?

19 Q. He's getting diapers so he keeps the  
20 waiver.

21 A. Okay.

22 Q. And in his plan of care, there's respite  
23 services and adult companion services. Would you  
24 agree with me that the local board that gets the  
25 band payment has some control over how easy or hard

1 it is to find a respite caregiver and adult  
2 companion?

3 A. I don't know how they would make it harder  
4 to identify them.

5 Q. Tell me what your understanding is of the  
6 process -- if an individual is living in the home  
7 and they've got the waiver, tell me what your  
8 understanding is of the process for that individual  
9 to get adult companion or respite services.

10 A. Well, I haven't been through the whole  
11 details. My understanding is that every year, if  
12 you're on the waiver, you have to have a care plan  
13 done, and that determines what services you get.

14 Q. So you've got a child who's being served  
15 by the Babcock and your plan of care says 30 hours  
16 a week of adult companion services.

17 A. Okay.

18 Q. How do you go about getting that? Does  
19 that mean you'll get them?

20 A. I would hope.

21 Q. Have you heard from any family members  
22 that are saying that the keepers of the band money  
23 are preventing them from using those services  
24 because they won't -- they make it difficult to  
25 find adult companions?

1 A. No, I have not had any families complain.

2 Q. Have you heard that from anybody?

3 A. I've had concern about one family or two  
4 families mentioned concern about providers having  
5 to requalify every time they change counties, and  
6 we've taken steps to handle that, but that's the  
7 only direct thing that's come to me from families.

8 Q. Do the choice requirements require that an  
9 individual have more than one choice of a service  
10 coordination provider?

11 A. I don't know that it requires that you  
12 have more than one. If there is more than one,  
13 then you have a choice.

14 Q. Can the holder of the band payment prevent  
15 or the Department prevent an individual from using  
16 service coordination in another county if they  
17 don't choose to use the service coordination  
18 provided in their county?

19 A. I don't know.

20 Q. So if I have a child in Richland and  
21 Lexington -- or Lexington County, is there any  
22 legal impediment to my choosing to use an adjacent  
23 county to provide service coordination?

24 A. Not that I'm aware of.

25 Q. As state director, would you support any

1 kind of impediment to using service coordination in  
2 another county?

3 A. The -- it's kind of hard to think through  
4 all the ramifications sitting right here right now.  
5 If someone brought that as an issue, I'd be happy  
6 to look at it.

7 Q. As state director, has it been brought to  
8 your attention that there were multiple allegations  
9 of sexual abuse in Sumter County at about the same  
10 time that Edward Mims was being sexually assaulted?

11 A. I guess I'm going to have to say no. I  
12 heard something about Sumter County, but I did not  
13 get the details. I just heard there was an issue  
14 in Sumter County.

15 Q. Do you know what that issue was?

16 A. No, I don't.

17 Q. So you don't know about the director of  
18 the Sumter DSN board being arrested for sexually  
19 abusing a client?

20 A. I think somebody did -- now that you say  
21 that, I think somebody did, but no, I don't know  
22 anything about it. I think I did hear that.

23 Q. Do you know about the lawsuit that was  
24 filed by an attorney named John Miles representing  
25 the employees who were fired when they tried to

1 report that --

2 A. No.

3 Q. -- to the local board?

4 A. No.

5 Q. As state director, if there's reprisals  
6 taken against family members or employees when  
7 consumers are being sexually abused, what is your  
8 responsibility to protect those family members or  
9 consumers from reprisals?

10 A. I missed a word in the first part of your  
11 question.

12 Q. Okay. You're the state director.

13 A. Okay.

14 Q. And it's brought to your attention that  
15 employees have been fired when they report that a  
16 consumer is being sexually abused, and later the  
17 director is arrested in connection with that.  
18 What's your responsibility as state director?

19 A. My responsibility is to get in touch with  
20 that board and be sure things are straightened up.

21 Q. And how would you go about doing that?

22 A. It really depends on the circumstances.  
23 It could come, if it was something really serious,  
24 to a direct contact with the board, asking internal  
25 audit to take a look.

1 Q. Are you -- these are exhibits, and I don't  
2 know if you have the list from yesterday. You  
3 probably don't, do you? Okay.

4 These are some articles -- if you'll pass  
5 those down. I provided those to y'all yesterday --  
6 that were -- that came out in the various  
7 newspapers about abuse and neglect at the Charles  
8 Lea Center.

9 MR. STEGMAIER: Ms. Harrison, let me stop  
10 you for a second because I just know from reading  
11 hundreds of transcripts that this is going to  
12 become very confusing.

13 MS. HARRISON: You're cutting into my two  
14 hours, Christian.

15 MR. STEGMAIER: I know it. I understand.  
16 You get credit. Let's go off the record for a  
17 second.

18 (A recess transpired.)

19 MR. STEGMAIER: Just for purposes of  
20 clarification with the record, we went ahead and  
21 coordinated yesterday the marking of the exhibits  
22 with what you've just handed out now, Exhibits 8  
23 through 13 concerning Charles Lea Center.

24 What I've done for Dr. Laurent is just  
25 marked at the top the numbers how they were marked

1 yesterday for just ease of reference. So if you're  
2 asked a question, Dr. Laurent, just be sure to  
3 reference the number.

4 THE WITNESS: Okay.

5 MS. HARRISON: And the Sumter numbers,  
6 what were those?

7 MR. STEGMAIER: Three through seven.

8 BY MS. HARRISON:

9 Q. Dr. Laurent, I have provided you with some  
10 articles about lawsuits related to abuse and  
11 neglect of individuals at the Charles Lea Center.  
12 Have any of these been brought to your attention?

13 A. No. Well, I haven't seen every one of  
14 them. Give me just a minute. No.

15 Q. Were you aware of any lawsuits Charles Lea  
16 Center settled in the last few years?

17 A. Excuse me?

18 Q. Were you aware of any lawsuits that the  
19 Charles Lea Center settled in the last few years?

20 A. No, I was not.

21 MS. HARRISON: And I would just for the  
22 record refer to Exhibits 8 through 13 from  
23 yesterday's record.

24 BY MS. HARRISON:

25 Q. Mr. Laurent -- Dr. Laurent, these are

1 articles from the -- referring to the incidents in  
2 Sumter County at the Sumter County DSN board there,  
3 and I'd like for you to take a minute to look at  
4 those.

5 A. Okay.

6 Q. Did your staff advise you of those  
7 incidents?

8 A. No.

9 Q. Who would you be relying upon in your  
10 staff to keep you apprised of things like this?

11 A. If this happened currently, the executive  
12 staff would be the ones that would bring that to my  
13 attention.

14 Q. What about do you expect them to tell you  
15 about recent history, last few years?

16 A. If it directly relates to what we're  
17 doing.

18 Q. And do you know if these lawsuits are  
19 still pending?

20 A. No, I do not.

21 Q. Is that something you would expect -- who  
22 in your staff would be responsible for telling you  
23 about these things?

24 A. The -- are we part of this lawsuit?

25 Q. The Sumter DSN board, as I understand it,

1 has been sued.

2 A. If it related directly back to us, I would  
3 assume whatever attorney is representing the State  
4 or town would bring that to my attention.

5 Q. What if it's a county DSN board that's  
6 being sued?

7 A. The -- I may or may not know about the  
8 suit.

9 Q. So you don't feel that it's necessary for  
10 you to know when a county DSN board director  
11 sexually abuses consumers and the board gets sued?

12 A. You didn't ask me that. Yes, I do. But  
13 that's -- we would be directly involved with the  
14 patient care. The suit is another matter.

15 I mean -- you know, as a general  
16 curiosity, you'd like to know, but that doesn't  
17 affect us. Our job is to be sure that board's  
18 doing what it's supposed to do.

19 Q. When somebody dies or is injured or is  
20 sexually assaulted, is that not a quality indicator  
21 that there's something wrong there?

22 A. There's something wrong.

23 Q. So is that something that you as director  
24 would want to know about?

25 A. Yes.

1 Q. What responsibility do you as director  
2 have to keep your commissioners informed about  
3 things like this?

4 A. If it -- if it directly impacts the  
5 Department, I have a responsibility to be sure they  
6 know about it.

7 Q. What if a provider that's getting the band  
8 payments is repeatedly sued, is that something you  
9 should tell your commissioners about?

10 A. If it was something -- being sued does  
11 not -- if you had confirmed allegations against a  
12 provider and we have tried to correct it and had  
13 real problems, that would be something to go to the  
14 Commission because we'd be canceling the contract.

15 Q. How many contracts have you cancelled?

16 A. I don't know.

17 Q. Did DDSN cancel the contract to the  
18 provider that had four times the substantiated rate  
19 of abuse and neglect?

20 A. I don't know who the provider was.

21 Q. According to DDSN study, that was the  
22 Babcock Center.

23 A. I think what they did was restrict the  
24 number of -- I don't have any firsthand knowledge  
25 there. I shouldn't comment.

1 Q. Have you had any communications with  
2 Dr. Stan Butkus since you were hired for this  
3 position?

4 A. I spoke to him one time.

5 Q. And when and where was that?

6 A. Well, I was in my office. We thought we  
7 were going to have a dinner -- a luncheon for the  
8 old commissioners, and I called him and invited  
9 him, but it turned out it wasn't so.

10 Q. So did you have that dinner?

11 A. No.

12 Q. Do you know where Dr. Butkus is working  
13 now?

14 A. No.

15 Q. So he hasn't called your agency and asked  
16 for a recommendation?

17 A. He hasn't called me.

18 Q. Do you know if he's called anyone at your  
19 agency --

20 A. No.

21 Q. -- and asked for a recommendation or does  
22 anyone at your agency know where he is?

23 A. I can't answer that.

24 Q. But you haven't had any communications?

25 A. No, I have not.

1 Q. You don't know what he's doing?

2 A. No.

3 Q. Do you know if he's working in the field  
4 of mental retardation --

5 A. No.

6 Q. -- developmental disabilities?

7 What do you know about the findings of the  
8 South Carolina Supreme Court as they relate to the  
9 duty of care in the Madison versus DDSN case?

10 A. Zero. I don't.

11 Q. Have you read that opinion?

12 A. No.

13 Q. Are you aware that that lawsuit is still  
14 pending?

15 A. You'd have to tell me the nature of the  
16 lawsuit.

17 Q. That is the lawsuit -- you may know it as  
18 the Stephanie Bryant lawsuit.

19 A. I was briefed on the lawsuits generally.

20 Q. So tell me -- don't tell me what your  
21 attorneys said, but tell me what you understand  
22 about that lawsuit.

23 A. But I don't remember -- that one did not  
24 stick.

25 Q. Which lawsuits are you familiar with that

1 are currently pending?

2 A. I really don't have any in-depth knowledge  
3 of any of the lawsuits.

4 Q. But which ones do you know about?

5 A. Well, I know about the Mims suit  
6 obviously, we're here. And I don't remember the  
7 names on the other suits.

8 Q. What are the other lawsuits about?

9 A. I don't remember.

10 Q. Are there any other suits alleging abuse  
11 and neglect?

12 A. I do not know.

13 Q. Tell me what you do know about the  
14 lawsuits that are pending.

15 A. Again, I've had a general briefing. I did  
16 not lock it in.

17 Q. What do you know?

18 A. Very little.

19 Q. How many of them are there?

20 A. I don't know.

21 Q. Have you discussed these lawsuits with  
22 your commissioners?

23 A. I have not, no.

24 Q. Outside -- and don't tell me anything your  
25 lawyers say, that's privileged, but I'm talking

1 about any communications when your lawyers aren't  
2 there.

3 So you don't know how many lawsuits have  
4 been filed against the Department?

5 A. No, I do not at this point.

6 Q. And you don't know whether any of those  
7 are alleging abuse or neglect?

8 Other than the Bryant Madison lawsuit, are  
9 there any lawsuits involving sexual abuse of  
10 clients?

11 A. You're claiming in Mims it's sexual abuse,  
12 are you not?

13 Q. Right. Any others?

14 A. Not that I know of.

15 Q. Tell me, how many hours is a family  
16 allowed to have for respite now?

17 A. I do not -- I don't know. I think there's  
18 not a limit on it directly. It's limited by need,  
19 I believe.

20 Q. And I believe that your agency has  
21 proposed some changes to that?

22 A. That's correct.

23 Q. And has your agency done any kind of cost  
24 effectiveness analysis to determine what's going to  
25 happen if those services are eliminated, the

1 other -- you know, for example, Edward Mims and  
2 people like Edward Mims, if they're not able to get  
3 the services they need in the home, they're going  
4 to be costing the State because they're going to be  
5 in facilities, or if somebody's not able to get  
6 respite services they need or adult companion,  
7 they're going to be -- you're not going to save  
8 that money because they're going to be going to the  
9 workshops.

10 Have you done any kind of cost analysis of  
11 what the net effect is going to be if those  
12 services are terminated?

13 A. There is a lot of ways of dealing with  
14 services, and just limiting of those services will  
15 not necessarily make someone be institutionalized.

16 Q. So if an individual like Edward Mims is  
17 receiving eight hours a day of respite so that his  
18 mom can work, do you think by eliminating respite  
19 services there won't be any offsetting costs for  
20 other services that he would be required to use?

21 A. There would be some.

22 Q. And what would those be?

23 A. I mean, it depends how he approached  
24 dealing with the issue. If they used community  
25 services, different things, yes, there are some

1 offsetting things.

2 Q. And has your agency performed a cost  
3 analysis looking -- I know you've done an analysis  
4 and you've said this many people receive these  
5 services and if we don't provide these services  
6 anymore, this is the amount that we won't pay for  
7 those services. Is that true, y'all have done that  
8 kind of analysis?

9 A. We've done that.

10 Q. What other cost -- what other analyses  
11 have you done to come up with the decision to  
12 recommend -- that you took to HHS to recommend  
13 changes to the waiver?

14 A. We have an immediate budget problem, and  
15 there are some changes to help toward that  
16 immediate budget problem. There is a longer-term  
17 budget problem.

18 Our waiver's the only waiver I'm familiar  
19 with that are not going to have some sort of cap on  
20 them because if your dollars are capped, then you  
21 cannot have growing programs.

22 Q. I don't understand that.

23 A. If services continue to grow, the only way  
24 you can pay for them is to cut slots and give  
25 people nothing.

1 Q. Let's look at the budget issue. Isn't the  
2 federal government going to increase the  
3 reimbursement rate from 70ish to somewhere  
4 79 percent?

5 A. You're talking about the stimulus.

6 Q. Stimulus money.

7 A. Yes. Yes.

8 Q. So you'll be getting more federal dollars  
9 coming in for every dollar of State?

10 A. The State will, we won't.

11 Q. But that money -- you have X dollars of  
12 State that's already been allocated?

13 A. That's correct.

14 Q. And when the federal money comes in, your  
15 State dollars will be matched with more federal  
16 dollars. Is that --

17 A. No. The way they're handling that is when  
18 the federal dollars come in, they go to an account  
19 at the comptroller general and then they're  
20 appropriated back to the agency just like any other  
21 State dollar.

22 Q. The Medicaid -- let's say that you have  
23 100 million dollars.

24 A. Okay.

25 Q. Just for example. And is it not true that

1 if you have 100 million dollars, under the old  
2 system, under the old reimbursement rate, that you  
3 would be matched about 2.33 for one for that  
4 hundred million dollars?

5 A. Okay.

6 Q. So you would get 233 million --

7 A. Close enough.

8 Q. -- to match it?

9 A. Okay.

10 Q. Now, as long as you have X State dollars,  
11 HHS just submits the bill to Medicaid and they have  
12 to pay it. Is that not correct?

13 A. We submit a bill and they pay it subject  
14 to lots of checks and balances and those kinds of  
15 things, yes.

16 Q. But if you've got a hundred million  
17 dollars, there's no cap on what you can bill HHS,  
18 you just get reimbursed for what you provide. Is  
19 that not correct?

20 A. Yes, we get reimbursed for what we  
21 provide. I don't know about limit on what we bill.  
22 Our restriction on billing are the max dollars we  
23 have.

24 Q. And those max dollars are set, the State's  
25 allocated you X dollars?

1 A. That is correct.

2 Q. And then with the stimulus money, that  
3 increased how much you'd have available, did it  
4 not?

5 A. No, ma'am.

6 Q. It didn't?

7 A. Uh-uh.

8 Q. So you're not going to have any more money  
9 prior to this increase in the stimulus than you had  
10 before?

11 A. We're going to have 20 million less.

12 Q. So -- and that's based on -- who did that  
13 analysis?

14 A. I mean, it's --

15 Q. Who's responsible for that analysis saying  
16 that there will be 20 million less after the  
17 stimulus money?

18 A. That's what's in the budget.

19 Q. And that considers all of those dollars  
20 intended for Medicaid being spent for Medicaid  
21 services?

22 A. Yes, ma'am.

23 Q. Now, if you've got -- so you're saying  
24 you've got 20 million less than you had last year?

25 A. Yes. For the base, that's correct.

1 Q. 20 million of State dollars less or  
2 20 million total less?

3 A. Okay. It's more complicated than that,  
4 Ms. Harrison. That's the problem.

5 Q. I've got an MBA, I can understand the  
6 numbers.

7 A. No, I'm talking State matched dollars.

8 Q. So you've got 20 million less --

9 A. Last year we were cut roughly 41 million  
10 dollars. This legislature gave us back 21.

11 Q. So you're talking State dollars?

12 A. State dollars.

13 Q. You're 20 million short?

14 A. Uh-huh.

15 Q. And now, though, you can take those -- so  
16 let's say we had a hundred million --

17 A. Which includes stimulus dollars.

18 Q. Let's say we had a hundred million last  
19 year.

20 A. Okay.

21 Q. State dollars.

22 A. Okay.

23 Q. Right?

24 A. That's right.

25 Q. And they've cut you by 20.

1 A. Okay.

2 Q. Then we'd have -- we would have 80 million  
3 of State dollars. Is that right?

4 A. That's correct.

5 Q. Now, previously, you were only getting a  
6 70 percent match for that hundred million. Now you  
7 get, what is it, 79 percent match?

8 A. Yes. That's what the State gets, but we  
9 do not get those dollars.

10 Q. I'm sorry, I would like for you and I to  
11 continue this discussion outside of Mims and not in  
12 a deposition.

13 A. I can show it to you.

14 MS. HARRISON: Certainly I would love for  
15 you to be there, Ken, and I am concerned from a  
16 systemic standpoint about the money. I'm not  
17 trying to talk to your client, but I don't want to  
18 use up deposition time.

19 MR. WOODINGTON: It may be fine for me if  
20 Tana's there for that and not me depending on what  
21 Dr. Laurent wants.

22 BY MS. HARRISON:

23 Q. Well, can we continue this another time?

24 A. Anytime -- well, not anytime: Whenever we  
25 can fit it in.

1 Q. I'll move on then.

2 How these changes are occurring, do you  
3 know prior to Edward Mims going into a facility how  
4 many hours of respite he was receiving?

5 A. No, I have no idea.

6 Q. So you don't know whether the amount of  
7 services under this new plan would make that more  
8 difficult for his mom to keep him at home?

9 A. I've got no idea. And --

10 Q. So tell me -- and I'm about to wrap up  
11 here. Tell me again -- I want to get straight in  
12 my mind -- you've got that analysis that says this  
13 is how much we're paying for each of these  
14 services. What other cost analysis do you have  
15 that eliminating these services will save the State  
16 of South Carolina any money?

17 A. The -- well, in essence, I don't have what  
18 you're looking for because the actual cost of the  
19 program is going to be determined by the  
20 combination of services put together for that  
21 person. Now, there's so much money that goes to  
22 each person.

23 Q. Are you intending -- have you advised the  
24 boards that their band rates will be reduced?

25 A. That's how you get the money for -- when

1 you reduce the services, you adjust the band rates  
2 down, and that's how you recoup the cost.

3 Q. So do the local boards know by this change  
4 in these services that their band rates will be  
5 reduced by that amount?

6 A. I can't say that they all do, but I don't  
7 know how they wouldn't. I've talked to them.

8 Q. How will these changes affect the ability  
9 of people like Ed Mims to remain in the home?

10 A. I hope they wouldn't affect it a whole  
11 lot. But I don't have enough knowledge of the --  
12 all the services out there and how you put them  
13 together to answer that question.

14 Q. And who does?

15 A. Dr. Lacy.

16 Q. So there's no cost analysis that's been  
17 performed projecting the offsetting services people  
18 will go to as a result of these proposed changes?

19 A. Well, we know that this waiver -- not in  
20 that exact form, no.

21 Q. Has your agency done any study of how this  
22 will affect people's ability to choose their  
23 provider?

24 A. I don't know that that would have any  
25 impact at all.

1 Q. Have you studied that?

2 A. I have not.

3 Q. Do you know if anyone has?

4 A. No.

5 Q. I might be through.

6 Do you have any opinion as to the validity  
7 of the allegations that have been made in the Mims  
8 case?

9 A. That would be hard for me to have an  
10 opinion.

11 MS. HARRISON: That's all I have.

12 MR. WOODINGTON: I don't have any  
13 questions.

14 MR. STEGMAIER: None for me.

15 (The deposition concluded at 3:53 p.m.)

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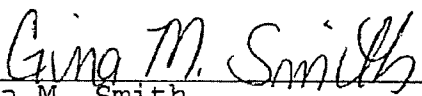
## CERTIFICATE OF REPORTER

I, Gina M. Smith, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing deposition was taken before me on the date and at the time and location stated on page 1 of this transcript; that the deponent was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the deponent and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of June, 2009, at Columbia, Richland County, South Carolina.

  
Gina M. Smith  
RPR, CSR, Notary Public,  
State of South Carolina  
at Large.  
My Commission expires  
July 23, 2013.

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(None was proffered.)



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