

# BUSINESS & FARM

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## State high court backs judge, orders Beverly to post \$20 million bond

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ARKANSAS DEMOCRAT-GAZETTE

The Arkansas Supreme Court ordered Beverly Enterprises Inc. on Monday to comply with a judge's ruling to post a \$20 million bond for failing to produce documents in a lawsuit.

The court granted Fort Smith-

based Beverly a temporary stay in its appeal last week.

Saline County Circuit Judge Grisham Phillips ordered Beverly in a July 22 filing to post the bond by Aug. 2 after becoming frustrated in obtaining documents in a nursing home care case. Phillips had threatened

Beverly executives with jail in June after he found the company in contempt for failing to release e-mail messages and other electronic data.

Beverly's appeal of Phillips' order was denied Monday, and the company was ordered to comply with the circuit court's order.

Company executives were not immediately available for comment.

The Saline County lawsuit, filed on behalf of former residents of the company's Bryant nursing home, alleges that Beverly executives maximized profits by failing to provide enough

staff for proper care. The suit also seeks class-action certification for residents who stayed in the Regional Nursing Center of Bryant from Dec. 16, 1998, to June 30, 2004.

Beverly said in its appeal and motion for an accelerated hear-

## Beverly

ing before the state Supreme Court that the requirement of a bond is without precedent and unconstitutional.

Larry Joseph, Beverly's vice president of risk management, filed an affidavit in the appeal stating that he had not been able to secure a bond because of the company's impending sale. An auction of the nursing home operator has been under way since March.

Beverly, also known as BEI, said in its appeal that it would be forced to pay the bond in cash, which would hinder the auction.

The company has nearly \$2 billion in annual revenue and operates 356 nursing homes across the country, including 19 in Arkansas.

Beverly also is defending itself against about 350 lawsuits nationwide, according to the appeal.

Plaintiffs' attorneys Jack Waggoner and Gene Ludwig, both of Little Rock firms, said in their Friday response to the court that the company's stalling had gone on long enough.

"Given the Beverly petitioners' year-long pattern of delaying and dodging discovery, and the circuit court's repeated orders, this compliance bond simply cannot be equated with some pre-judgment attachment

done in the dark of night," the attorneys said in the filing.

Cheryl Shuffield, a certified public accountant with Moore Stephens Frost PLC in Little Rock hired by the plaintiffs to determine Beverly's ability to post a bond, found the company has more than \$160 million in cash in a liability reserve fund, as well as property in Arkansas that could support a bond. Under Arkansas law, a letter of credit also will suffice, and Beverly has more than \$100 million in unused credit, according to the company's March 2005 financial statement.

Beverly faces its first class-action lawsuit after another Arkansas judge grew impatient in June with the company's release

of documents and issued a default judgment in favor of the plaintiffs.

Bradley County Circuit Judge Robert Bynum Gibson said Beverly had practiced a shell game throughout the discovery process in a lawsuit involving the company's Warren nursing home.

The company turned over a partial list of former residents' names, while defendants were able to find additional names by researching area obituary announcements.

The lawsuit, filed on behalf of former residents, also alleges that Beverly executives profited by not providing enough staff.

Beverly said it is appealing the judge's decisions.