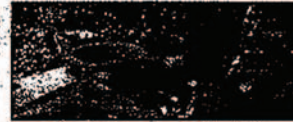
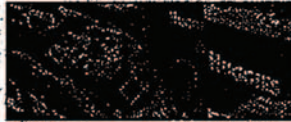


SATURDAY

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Arkansas Democrat Gazette

ARKANSAS' NEWSPAPER

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Printed at Little Rock • Saturday, July 23, 2005

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Beverly holding back, must pay, judge says

BY CRISTAL CODY
ARKANSAS DEMOCRAT-GAZETTE

A Saline County judge ordered Beverly Enterprises Inc to post a \$20 million bond after the company intentionally delayed releasing documents to plaintiffs in a nursing-home case, according to the ruling filed Friday.

Saline County Circuit Judge Grisham Phillips ordered Beverly to pay the bond within 10

business days of last Tuesday's hearing because of delays in releasing information to plaintiffs. The discovery process provides that the defendant and plaintiff exchange information relevant to the case.

The bond ruling comes after Phillips threatened Beverly executives with jail last month when he found the company in contempt of court for failing to release e-mails and other elec-

tronic data. The order filed Friday was based on a status hearing Tuesday "as a sequel" to the contempt order, Phillips said in the latest ruling.

The 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 all resi-

dents who stayed in the Regional Nursing Center of Bryant in Saline County from Dec. 16, 1998, to June 30, 2004.

Fort Smith-based nursing-home giant Beverly, also known as BEI, said the bond ruling has no precedent, and the company will appeal. The company said last month that it already has turned over more than 1 million pages of documents in the

Beverly

case.

"Bonds are permitted to secure judgments only if a jury finds an individual or organization liable for its actions, and if there is reasonable risk, payment cannot or will not be made. Neither situation applies in BEI's case," the company said in a statement Friday.

The company said it does not have to post the bond while the decision is appealed.

The bond order "will be appealed through various avenues available to us, and we are certain it will be reversed — by the trial judge himself once he fully understands the facts and the law that govern the matter, or in another court," Beverly said in the statement.

However, plaintiffs' attorneys Jack Wagoner and Gene Ludwig said Friday that other courts, including in Michigan, Montana and New York, have ordered corporate defendants to post bonds as high as \$1.2 million over discovery delay tactics.

Phillips said in the order that he also will appoint a special master to oversee the case's

plaintiffs receive Beverly documents, and "not just that information has been provided, but that all information has been provided."

Howard Brill, the Vincent Foster professor of legal ethics and professional responsibility at the University of Arkansas at Fayetteville, said trial judges have "a great deal of power to compel litigants to cooperate with discovery. A bond means that I promise to do something, and if I don't, I forfeit the bond."

Wagoner and Ludwig, both of Little Rock firms, said the plaintiffs asked for the bond since more "delays might compromise efforts to collect any judgment because of the company's uncertain status."

Beverly Enterprises, which has nearly \$2 billion in annual revenue, is up for auction and will become a private company once the new owners take control.

The company operates 356 nursing homes across the country, including 19 in Arkansas.

Beverly said in Friday's statement that if the appeal fails, it has "adequate reserves and insurance in place to cover any potential judgment, so a bond is not necessary. And the pending

change any of this."

Beverly already faces its first class-action lawsuit after another Arkansas judge grew impatient last month with the company's release of documents and issued a default judgment in favor of the plaintiffs.

Bradley County Circuit Judge Robert Bynum Gibson granted the class-action status and the default judgment after he said Beverly had practiced a shell game throughout the discovery process in a lawsuit involving the company's Warren nursing home.

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

The court had ordered Jan. 28 that Beverly provide plaintiffs' attorneys with a list of residents in the Warren nursing home from August 1999 to September 2003, when the facility closed. Beverly provided 171 names, but at a March 7 hearing, plaintiffs' attorneys reported that they found six more names by researching local obituary announcements. The total number has grown to more than 240.

Beverly said it is appealing the certification and the default

The company's stock, traded on the New York Stock Exchange, closed Friday at \$12.76, up 6 cents, in composite trading. Shares traded as low as \$6.78 over the past year before rising to a high of \$12.85 after offers to purchase the company were made public in January.