

Paul Dulberg  
1/24/2013

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG, )  
 ) No. 12 LA 178  
Plaintiff, )  
 ) DISCOVERY  
vs. ) DEPOSITION OF  
 ) PAUL R. DULBERG  
DAVID GAGNON, Individually, )  
and as Agent of CAROLINE ) 1-24-13  
McGUIRE and BILL McGUIRE, )  
and CAROLINE McGUIRE and )  
BILL McGUIRE, Individually, )  
 )  
Defendants. )

Discovery deposition of PAUL R. DULBERG,  
taken on behalf of the defendants, Caroline McGuire  
and Bill McGuire, in the above-entitled action in the  
offices of Attorney Thomas J. Popovich, 3416 West Elm  
Street, in the City of McHenry, Illinois, on the 24th  
day of January, 2013, commencing at 12:17 p.m., as  
reported and transcribed by Angela D. Oldenburg,  
Certified Shorthand Reporter in and for the State of  
Illinois.

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1 APPEARANCES: ATTORNEY THERESA M. FREEMAN  
Law Offices of Thomas J. Popovich  
2 3416 West Elm Street  
McHenry, Illinois  
3 Appeared on behalf of the plaintiff.  
4  
ATTORNEY RONALD A. BARCH  
Cicero, France, Barch & Alexander  
5 6323 East Riverside Boulevard  
Rockford, Illinois  
6 Appeared on behalf of the  
defendants, Caroline McGuire and  
7 Bill McGuire.  
8  
ATTORNEY PERRY A. ACCARDO  
Law Office of M. Gerard Gregoire  
9 200 North LaSalle Street  
Chicago, Illinois  
10 Appeared on behalf of the defendant,  
David Gagnon.  
11  
12  
13  
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4	6
1 PAUL R. DULBERG, 2 being first duly sworn, was examined and testified as 3 follows: 4 EXAMINATION BY MR. ACCARDO: 5 Q. Sir, would you please state and spell your name 6 for the record? 7 A. Paul Dulberg, D-u-l-b-e-r-g. 8 MR. ACCARDO: Let the record reflect 9 this is the discovery deposition of Paul 10 Dulberg taken pursuant to notice and continued 11 from time to time, taken in accordance with 12 the Rules of Civil Procedure of McHenry 13 County and the Rules of the Supreme Court 14 of the State of Illinois and any other 15 applicable local court rules. 16 Good afternoon, Mr. Dulberg. My name 17 is Perry Accardo. I'm going to be asking 18 you some questions today. 19 MR. BARCH: Is this your notice? 20 MR. ACCARDO: Did you issue the notice? 21 I thought I did. If you want to do it, 22 that's fine. 23 MR. BARCH: Well, I mean, if you issued 24 one --	1 THE WITNESS: Yes. 2 MR. BARCH: Couple of things to keep 3 in mind as we go along. There is a lady over 4 there to your left taking everything down 5 that we're saying, so it will be important 6 when we do have a conversation that we use 7 words. Here in Midwest we use a lot of 8 uh-huhs, uh-uhs and shoulder shrugs. During 9 conversation it's easier to interpret face 10 to face, but it doesn't translate well to a 11 record. Okay? 12 THE WITNESS: (Indicates affirmatively.) 13 MR. BARCH: So if you happen to do that, 14 one of us in the room may ask you to clarify 15 what you mean. All right? 16 THE WITNESS: Okay. 17 MR. BARCH: And the other thing to do 18 is some of the questions that come out may 19 be easy to interpret or anticipate, and 20 witnesses, for whatever reason, have a 21 tendency to want to get the answers out and 22 may start talking over the question. You may 23 not do that, but if you happen to start 24 talking or giving an answer before the whole
5	7
1 MR. ACCARDO: (Interrupting) I'm not 2 sure whose notice it is. 3 MR. BARCH: I thought it was mine. 4 MR. ACCARDO: I'm sorry, I assumed it 5 was mine, but if you want to do it. 6 MR. BARCH: I mean, sooner or later we 7 both need to ask the questions. 8 MR. ACCARDO: If you want to do it, 9 that's fine. 10 MR. BARCH: Let's go forward. 11 MR. ACCARDO: All right. 12 MR. BARCH: We'll pick up where 13 Mr. Accardo left off. We're taking this 14 deposition pursuant to an agreement of the 15 parties, a notice and in accordance with 16 the Illinois Code of Civil Procedure. 17 We're going to do what is a called 18 discovery deposition. I'm sure your attorney 19 talked to you about it. It's a fancy word 20 for a question-and-answer session. Hopefully 21 we will ask questions that you hear and 22 understand. And then if you do hear and 23 understand the question, it's our expectation 24 you answer truthfully. All right?	1 question is out, I may ask you to stop, okay, 2 so I can get the whole question out and then 3 we'll give you a chance to get your whole 4 answer out. All right? 5 THE WITNESS: (Indicates affirmatively.) 6 MR. BARCH: The same is true of me. If 7 I start a question before you finish your 8 answer, please tell me. I want to give you 9 a chance to get your whole answer out. Fair 10 enough? 11 THE WITNESS: Yes. 12 MR. BARCH: You might hear the word 13 objection at some point. That would come 14 from one of the attorneys not asking you 15 questions. If you hear the word objection, 16 you should stop your answer or don't even 17 begin one and then look to your attorney for 18 direction as to how to proceed. Okay? 19 THE WITNESS: Yes. 20 MR. BARCH: This is not an endurance 21 test. If you need to use the restroom, get 22 a drink of coffee, whatever you need to do, 23 just let us know. Okay? 24 THE WITNESS: Yes.

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4 (Pages 4 to 7)



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8	10
1 EXAMINATION BY MR. BARCH:	1 Q. How do you spell McArtor?
2 Q. Could you please state your full name for the	2 A. M-c-A-r-t-o-r.
3 record?	3 Q. Does Mike still reside with you and your mom?
4 A. Paul Dulberg.	4 A. Yes.
5 Q. Middle name?	5 Q. Tell me a little bit about your educational
6 A. Raymond.	6 background. Did you finish high school?
7 Q. Where do you reside?	7 A. Yes.
8 A. 4606 Hayden Court.	8 Q. Where?
9 Q. Did you say Hayden?	9 A. Johnsburg.
10 A. Hayden.	10 Q. When did you finish?
11 Q. How do you spell it?	11 A. 1988.
12 A. H-a-y-d-e-n.	12 Q. Did you move on to college?
13 Q. And that's in McHenry?	13 A. Some college.
14 A. Yes.	14 Q. Tell me a little bit about that.
15 Q. The incident we're here to talk about did not	15 A. I took a few years. I never finished.
16 take place on your property; is that true?	16 Q. Where did you enroll?
17 A. True.	17 A. MacMurray College.
18 Q. Where is 4606 Hayden Court in relation to	18 Q. Was that a community college or a four-year?
19 1016 West Elder?	19 A. Private college down in Springfield, Illinois.
20 A. They are in the same neighborhood.	20 Q. You say you took a few years. Could you be more
21 Q. Are they adjacent properties?	21 specific if you can? One? Two? Three?
22 A. No.	22 A. Two.
23 Q. Are we talking like houses away? Blocks away?	23 Q. Did you acquire an associate's degree?
24 Miles?	24 A. No.
9	11
1 A. Less than a minute and a half by car.	1 Q. What was your major?
2 Q. Can you see the 1016 West Elder property from	2 A. I believe it was political science.
3 your property?	3 Q. And any particular reason you left?
4 A. No.	4 A. I had to go home.
5 Q. Okay. And what is your date of birth?	5 Q. What was the reason you had to go home? To care
6 A. 3-19-70.	6 for your mom?
7 Q. And the incident that we're here to talk about,	7 A. Family.
8 do you recall it happening on June 28, 2011?	8 Q. What was that?
9 A. I believe that's the date.	9 A. It was family.
10 Q. How old were you then?	10 Q. And you never went back?
11 A. 41.	11 A. No.
12 Q. Are you married, sir?	12 Q. Was that immediately after high school?
13 A. No.	13 A. No.
14 Q. Have you ever been married?	14 Q. When was it in relation to high school?
15 A. No.	15 A. It was about three years after high school.
16 Q. Back in June of 2011 did anybody reside with you	16 Q. So early '90s?
17 at the Hayden Court property?	17 A. Yes. You made me think about that.
18 A. Yes.	18 Q. Besides the course work that you participated in
19 Q. Who?	19 at MacMurray College, have you had any other
20 A. My mother and a friend, Mike McArtor.	20 college courses at any other school local?
21 Q. Mom's name?	21 A. I remember once I took a course over here at MCC.
22 A. Barbara Dulberg.	22 Q. What course was that?
23 Q. And the friend that was living there?	23 A. I believe it was college algebra.
24 A. Mike McArtor.	24 Q. Was it before or after MacMurray?

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12	14
1 A. Before.	1 Q. Rocket design?
2 Q. Since leaving MacMurray have you taken any	2 A. Graphic design.
3 additional college level course work?	3 Q. Okay. Where did you take those?
4 A. No.	4 A. Various locations throughout the suburbs.
5 Q. Have you had any vocational training of any kind?	5 Q. Are we talking like one-week seminar-type
6 A. Yes.	6 programs, or is this a --
7 Q. What is the nature of that?	7 A. (Interrupting) Some were seminars. Some were
8 A. Heidelberg Academy.	8 personal where a company hired a teacher to come
9 Q. What is that Heidelberg Academy?	9 in and teach us the new aspects of the program.
10 A. It's to learn how to run printing presses.	10 Q. If I'm hearing what you're saying, you were
11 Q. Where is Heidelberg Academy located?	11 trained on how to operate graphic design
12 A. When I took it, it was in -- I don't know. It	12 software?
13 was down in the city, a suburb.	13 A. Yes.
14 Q. Suburbs of Chicago?	14 Q. Was that for a specific employer of any kind?
15 A. Yes.	15 A. Intermatic, Incorporated.
16 Q. Tell me about that course. Is that just -- is	16 Q. So the graphic design software training and also
17 that pretty short? Long? Is it intensive? What	17 the printing program. What else? Anything else
18 is it?	18 that brings to mind?
19 A. It's intensive, but it's short.	19 A. That's it.
20 Q. When you say short, is it a day? A month? A	20 Q. When did you have the -- I guess strike that
21 year?	21 question. When were you employed at Intermatic?
22 A. However long you want to pay to go until you're	22 A. I believe it was 1998 through 2008, 2009,
23 comfortable running.	23 somewhere in there. I don't remember the exact.
24 Q. How long did you go?	24 Q. Are you employed today?

13	15
1 A. Two weeks. It was more of a certificate for me.	1 A. No.
2 Q. Did you take the vocational training in operating	2 Q. When was the last time you were employed,
3 printing presses for a particular employer?	3 starting from today and working backwards?
4 A. Yes.	4 A. May of 2011.
5 Q. Who was that?	5 Q. So if I'm hearing what you just said, you have
6 A. Intermatic, Incorporated.	6 not had a job since this incident on June 28,
7 Q. Okay. And did you say you received a certificate	7 2011?
8 of some sort?	8 A. Correct.
9 A. Yes.	9 Q. And where were you working? What was the job you
10 Q. How would you describe the certificate that you	10 had that ended in May of 2011?
11 received?	11 A. It was for Juskie Printing.
12 A. I'm trying to picture it in my head. It's a form	12 Q. Juskie Printing?
13 that says that I completed the work. I haven't	13 A. Yes.
14 looked at it in years.	14 Q. How do you spell that?
15 Q. The training for a particular printing press?	15 A. J-u-s-k-i-e Printing.
16 A. Yes.	16 Q. And that ended in May of 2011?
17 Q. And what was the name of the printing press?	17 A. Yes.
18 A. It was an SM 74.	18 Q. When did you start at Juskie?
19 Q. All right. Besides the training certificate for	19 A. Years earlier.
20 the SM 74 have you had any additional vocational	20 Q. Was it a transition directly from Intermatic to
21 training of any sort?	21 Juskie?
22 A. Yes.	22 A. Not directly, no.
23 Q. And why don't you tell me about that.	23 Q. So it would have been sometime after 2008 and
24 A. I had several courses in graphic design.	24 2009 when you started at Juskie?

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16	18
1 A. Yes.	1 Q. So prior to 1998 to 2008/2009, whenever you
2 Q. Was there any other employer in between those two	2 actually left, you were an employee?
3 companies?	3 A. Yes.
4 A. I had my -- I did a side business.	4 Q. And after that you still did work for them on an
5 Q. Tell me about the side business.	5 independent contract basis?
6 A. Its name was Sharp Printing, Incorporated.	6 A. Yes.
7 Q. Sharp?	7 Q. Okay. Now, the work that you did at Intermatic,
8 A. Printing, Incorporated, or Inc.	8 what was the nature of your business, your work?
9 Q. Okay. When were you running Sharp Printing?	9 A. When I was running the printing presses or when
10 A. Yes. I started that in 1999, and I ended it the	10 I was doing the graphic design?
11 year this happened.	11 Q. Whatever you want to tell me about first.
12 Q. So you ended it in 2011?	12 A. When I was running the printing presses, it's
13 A. Yes.	13 exactly what it is. I ran a printing press.
14 Q. Did you end it before or after the incident on	14 Q. How long over that period of 1998 to roughly
15 June 28, 2011?	15 2008/2009 were you running the printing press?
16 A. I ended it just before.	16 A. Until I think it was 2003 or 2004.
17 Q. So I take it then you're not blaming the demise	17 Q. And did you stop working the printing press
18 or the dissolution of the Sharp Printing, Inc.	18 position to take on some other role?
19 company on this occurrence?	19 A. I was a -- yes, in the office.
20 A. Correct.	20 Q. And what was that role you took on?
21 Q. Okay. And then was there a period of time where	21 A. Graphic designer.
22 the Sharp Printing, Inc. business overlapped with	22 Q. And that could encompass a lot of things for a
23 your work at Juskie Printing?	23 layperson. When you say you were a graphics
24 A. Yes.	24 designer for Intermatic, what kind of work were
17	19
1 Q. And as you sit here today can you get any closer	1 you doing for them?
2 in terms of your period of employment at Juskie	2 A. I did catalog design, package design, collateral,
3 other than sometime after 2008 or '9 and then May	3 signage, brochures. Everything from business --
4 of 2011?	4 everything their company needed.
5 A. I had -- it was a 1099, and I had done work for	5 Q. For Intermatic?
6 Mark prior to me leaving Intermatic and after.	6 A. Yes.
7 It was an ongoing-type thing.	7 Q. So you were in-house -- you were doing in-house
8 Q. Okay. So you weren't actually employed then by	8 graphics design work for Intermatic?
9 Juskie? You're not on their payroll, I take it?	9 A. Correct.
10 A. I was 1099. So, no, I guess not.	10 Q. You weren't in commercial graphic design or
11 Q. When you say 1099, are you saying that you were	11 anything where your sole business was to do that
12 an independent contractor?	12 for other companies?
13 A. Yes.	13 A. No.
14 Q. So you would do work for them, and they would pay	14 Q. And did you take -- did you hold -- did you have
15 you, and you would report the income based upon	15 a name for that position?
16 the gross payment?	16 A. Graphic designer.
17 A. Correct.	17 Q. Did you hold that position then with Intermatic
18 Q. And did you record that income then and report it	18 until you left?
19 through Sharp Printing?	19 A. Yes.
20 A. No. That was a self-employment.	20 Q. And the graphic design work that you did, was it
21 Q. Okay. The position you had at Intermatic, was	21 all computer-assisted?
22 that the 1099 position, or were you actually	22 A. It was all computer graphics.
23 employed?	23 Q. Is it all mouse entry, or is it keyboard entry --
24 A. It was 1099. After I left Intermatic.	24 A. (Interrupting) Mouse and keyboard, yes.

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20	1 Q. -- or a combination? And is that the software 2 training that you would get from time to time -- 3 A. (Interrupting) Yes. 4 Q. -- that you mentioned earlier? 5 A. Yes. 6 Q. If there was a new program that came on or new 7 version of the program, you would go get trained 8 on it? 9 A. Yes. 10 Q. I don't want to oversimplify this, but is that 11 what you're talking about? 12 A. Yes. 13 Q. And then there was a period of time where you 14 were doing 1099 work for Intermatic and also for 15 Juskie Printing? 16 A. Yes. 17 Q. Doing the same type of stuff? 18 A. Yes. 19 Q. When you worked at Juskie, was that also work for 20 Juskie itself, or was it for customers of Juskie? 21 A. Juskie is a print broker, so it was for its 22 customers. I worked for him, but . . . 23 Q. All right. And since June 28 of 2011 I take it 24 you have not done any graphic design work	22	1 Thomas, what did you attempt to do? 2 A. I tried to do the graphic design for the scratch 3 cards. 4 Q. Okay. And if you could elaborate on that more, 5 are you actually coming up with a concept or a 6 picture that is going to be printed on the card? 7 A. Yes. 8 Q. And were you given parameters as to what they 9 wanted it to look like, and you were trying to 10 draw it, replicate it? 11 A. I would get the parameters, what size they wanted 12 me to do it, and it was my job to come up with 13 the concept and the design. They had input on 14 what they thought they wanted it to be. 15 Q. And, again, I'm not trying to oversimplify what 16 you were doing, but I get the impression as a 17 layperson you're trying to come up with a picture 18 that would be on the computer screen that would 19 then be a concept you could flow past the 20 customer to see if it would work for the scratch 21 game? 22 A. Correct. 23 Q. And that's the program you used to do that which 24 requires a series of key entries and mouse
21	1 whatsoever? 2 A. I have tried. 3 Q. When you say you have tried, what did you try? 4 A. I tried using a keyboard and a mouse. 5 Q. And when in relation to June 28, 2011 did you 6 attempt to use a keyboard or mouse to do graphics 7 design work? 8 A. I would say probably two or three months after 9 that incident. 10 Q. Was that for Juskie? 11 A. No. 12 Q. Who did you try and do work for? 13 A. I'm trying to remember his name. New person. 14 Mike Thomas. 15 Q. What kind of business does Mike Thomas have? 16 A. I can't recall the name of the business right now 17 but I can tell you the type of business. He did 18 scratch-off game pieces. 19 Q. For like a lottery company or something? 20 A. Yes. But it wasn't lottery. It was where 21 companies wanted to give away a TV to their 22 employees, and they'd give them all scratch cards 23 and see who won, stuff like that. Promotions. 24 Q. When you say you tried to do some work for Mike	23	1 clicks? 2 A. Key entry and mouse, yes. 3 Q. What was it about -- two or three months after 4 this incident what was it that you were unable to 5 do? 6 A. Type. I could finger peck. I couldn't type 7 anymore. Grabbing a mouse isn't exactly working 8 either. 9 Q. Okay. And so you were only able to finger peck 10 after this? That was one impairment or 11 impediment to the job, correct? 12 A. Yes. 13 Q. And then you said something about the mouse. 14 What is it about the mouse that is the problem? 15 A. Grabbing it. 16 Q. All right. So you tried that two to three months 17 after the incident, correct? 18 A. (Indicates affirmatively.) 19 Q. What is it exactly -- which hand are you 20 complaining about, by the way? 21 A. My right hand. 22 Q. Right hand. And what is it about the right hand 23 that impedes your ability to type with it? 24 A. It doesn't work right. It hurts.

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8 (Pages 20 to 23)

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24	1 Q. And you're saying it doesn't work right and it 2 hurts. Is that the same problem that affects 3 your ability to use a mouse? 4 A. Yes. 5 Q. Is your left hand problematic in any way? 6 A. It is, yes. 7 Q. What is wrong with your left hand? 8 A. They call it tennis elbow or something. 9 Q. Okay. What have you been told this tennis elbow 10 is? 11 A. He said it's something about a tear in the muscle 12 or ligament or something. 13 Q. And which part of your arm? 14 A. Elbow. 15 Q. And are you connecting that to the events of 16 June 28, 2011? 17 A. They said that it is the natural -- what is the 18 word he used -- the doctor used? He said it's 19 perfectly natural that because of having to use 20 my left arm for everything, that it's overused. 21 Q. When did you begin having problems with your left 22 arm? 23 A. About two months ago. It got real acute about 24 two months ago. I was having little issues	26	1 Q. When you try to extend your arm straight out, it 2 hurts? 3 A. Yes. 4 Q. And when you try and pull it in as far as it will 5 go, it hurts? 6 A. Yes. In between it's pretty good. 7 Q. You have seen some doctors concerning your left 8 elbow? 9 A. Yes. 10 Q. Who have you seen on the left elbow? 11 A. Dr. Sagerman. 12 Q. Where is Dr. Sagerman located? 13 A. He has two offices; one in Vernon Hills and the 14 other in -- it's down near Northwest Community. 15 I don't know the name of the town. 16 Q. What is Dr. Sagerman's first name? 17 A. Scott. 18 Q. And have you seen anybody else for the left elbow 19 tennis elbow problem you have just explained to 20 us? 21 A. No. 22 Q. What kind of treatment have you had on the left 23 elbow? 24 A. I just started physical therapy.
25	1 building up to it, but then it got real acute. 2 Q. When you say "acute," it became real problematic? 3 A. Strong, yes. 4 Q. What kind of symptoms did you get with the left 5 hand two months ago? What flared up exactly? 6 A. That side of my elbow (indicating), the outside 7 (indicating). 8 Q. Just for the record, you held your left arm 9 across your body and pointed to the outside part 10 of your elbow? 11 A. Yes. 12 Q. Is that a fair description? 13 A. Yes. 14 Q. And was it painful? 15 A. Yes. 16 Q. Do you still have the range of motion? It's just 17 painful? 18 A. It's the range of motion that hurts when you 19 extend it out or pull it all the way in like 20 you're going to eat. 21 Q. So it's painful as you're going through range of 22 motion? 23 A. The center range is fine. It's the extensor all 24 the way out and all the way in.	27	1 Q. All right. You have seen a doctor concerning the 2 left elbow then. Have you ever heard the doctor 3 use the word extension? 4 A. He uses words I don't understand all the time. 5 Q. Flexion? Have you ever heard the word flexion? 6 A. He may have. 7 Q. But that doesn't register for you, though, what 8 those mean? 9 A. No. I showed him where it was. He knew right 10 away. He just -- that's . . . 11 Q. So far you have talked about -- 12 A. (Interrupting) He ran a couple of tests. He 13 said, "This is what you have." 14 MS. FREEMAN: Wait for the question. 15 Q. You talked about you extending your arm and 16 pulling it back toward you. That hurts at the 17 extreme ends, correct? 18 A. Yes. 19 Q. What about turning the wrist palm up and palm 20 down? Does that hurt in the elbow area? 21 A. In the extended, yes. 22 Q. And which position makes the elbow hurt? Is it 23 palm up or palm down or both? 24 A. Palm down, fingers up.

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28	1 Q. Have you heard the phrase supination, pronation? 2 A. Those words I don't know. 3 Q. Okay. So other than with your arm straight out 4 at full extension and palm down, that is when you 5 describe it hurts, correct? 6 A. Fingers up (indicating). 7 Q. So you have to -- you're closing your hand? 8 A. Fingers up (indicating). 9 Q. So the wrist is pointed up as well? 10 A. Yes. 11 Q. All right. So you have got your arm out at full 12 extension and your wrist tilted with your fingers 13 reaching upward? 14 A. That hurts. 15 Q. That hurts? 16 A. Yes. 17 Q. And can you think of any other part of the range 18 of motion of the elbow or I guess in combination 19 with the hand that causes pain? 20 A. There are so many things that happen that I do 21 that sets it off. Just from putting on your 22 jacket to all sorts of -- I mean, grab a coffee 23 cup and bend the wrist the wrong way when you 24 turn it. I can't explain.	30	1 until -- I mean, it bothered me, but I said 2 something to Dr. Sagerman two visits ago and/or 3 -- sorry -- yes, I think it was two visits ago, 4 and he ran me through range of motion tests and 5 did some stuff, and he said this is perfectly 6 natural. It can be treated. This is what, you 7 know, it is. 8 Q. When you say last fall, we're talking about the 9 fall of 2012? 10 A. Yes. 11 Q. Other than the physical therapy, have you had any 12 injections in the elbow? 13 A. No. 14 Q. On the right arm you went and had an EMG study 15 where they check the nerves that go through your 16 arm? 17 A. Yes, they did some tests. 18 Q. Did they do the EMG test on the left arm as well? 19 A. No. 20 Q. What test do you recall them doing on the left 21 arm other than just taking it through range of 22 motion and touching it and doing things of that 23 nature? 24 A. That was it. It's new, so we're going to hope
29	1 Q. Okay. What are you wearing on your left wrist 2 today? 3 A. They gave me a splint to wear. 4 Q. And is it something that it's hard plastic where 5 you can't move your wrist, or is it a band of 6 some sort? 7 A. It's got a metal plate in here. I think it's 8 metal -- metal, plastic. 9 Q. The metal or plastic plate goes from the palm to 10 the wrist? 11 A. Yes. It holds the wrist up at an angle. 12 Q. Does it prevent you from putting your wrist down? 13 A. Down or up. 14 Q. Or up. Has anybody talked to you about carpal 15 tunnel syndrome? 16 A. They said that it's -- that this is like that. 17 The tendons are torn or something. I don't know. 18 Q. Okay. And how soon after June 28, 2011 was it 19 before you started noticing symptoms with your 20 left arm? Because this is the first notice -- I 21 haven't seen it in any of the records I have 22 received. 23 A. It started bothering me this past fall, and I 24 didn't really -- I didn't even think about it	31	1 physical therapy does it, you know. 2 Q. And so based upon what he saw, this Dr. Sagerman 3 then, so far he's put you on physical therapy? 4 A. Yes. 5 Q. Are you on any medications for the left elbow -- 6 (Interrupting) No. 7 MS. FREEMAN: Paul, I just want to 8 remind you to wait until he gets his question 9 out, okay, and then just listen to the 10 question. Okay? 11 Q. So that is where we're at now with respect to the 12 left elbow? It's been diagnosed as tennis elbow, 13 as far as you recall, and is being treated with 14 physical therapy? 15 A. Yes. 16 Q. And has the doctor given you a prognosis in terms 17 of when that may go away, if at all? 18 A. He said it takes time. 19 Q. That is all you can tell me right now is it takes 20 time? 21 A. I think he is hoping to see the -- I can't say 22 what he's hoping to see. I don't know. 23 Q. Okay. I want to go back to the attempts two to 24 three months after the event when you tried to do

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32	1 some graphics design work. The left elbow wasn't 2 a problem at that time -- 3 A. (Interrupting) No. 4 Q. -- correct? So it was the right arm that would 5 have been a problem? 6 A. Yes. 7 Q. And what was it about the right arm that you were 8 unable to do the graphics design work? 9 A. What was it? 10 Q. Yes. 11 A. I think it was the fact that a chain saw went 12 through the muscle group. 13 Q. Well, I'm not trying to be a smart aleck. I'm 14 asking symptomwise what was it about your right 15 arm that prevented you from doing graphics design 16 work two to three months after the event? 17 A. It hurt. 18 Q. What part of your arm hurt, starting with your 19 fingertip up to your shoulder? 20 A. These two fingers (indicating) through to the 21 elbow. 22 Q. All right. For the record, you have pointed to 23 -- we call it the pinky finger? 24 A. Yes.	34	1 A. Yes. 2 Q. That was painful, correct? 3 A. Yes. 4 Q. And you say it was on fire. Is that the way you 5 described the pain, or was there some other 6 symptom? 7 A. It was a burning sensation. Along with tingles, 8 along with cold. 9 Q. So cold bothered it? 10 A. Cold bothers it immensely. 11 Q. You had tingles and a burning sensation? 12 A. Yes. 13 Q. Anything else you can think of in the fingers you 14 have talked about and the forearm? 15 A. The forearm I have -- it's not the same thing. 16 It is not the same -- I don't know. The muscles 17 hurt when I try to type or try to grab things. 18 Q. Okay. So with respect to the typing then, moving 19 the fingers and thumb, did that enhance or 20 increase the burning, tingling and pain? 21 A. Yes. 22 Q. In the fingers and thumb and the arm? Or just 23 all those areas? 24 A. It was from here to here (indicating).
33	1 Q. And then what some people may refer to as a ring 2 finger? 3 A. Yes. 4 Q. And the middle finger, index or the pointer, and 5 the thumb were not painful? 6 A. The thumb hurts when I pull it in. 7 Q. Is this how it was back two to three months after 8 the event? That is the period we're talking 9 about now. 10 A. It was on fire back then. 11 Q. The pinky, the ring finger and the thumb? 12 A. Yes. 13 Q. Painful and on fire? 14 A. Yes. 15 Q. All right. Now, you also said that the pain went 16 up your arm to your elbow? 17 A. Yes. 18 Q. And which part of your arm? Like the underside? 19 The top? Which part? 20 A. Next to the bone on this side (indicating). 21 Q. Okay. So no question it was painful in those 22 fingers, the two fingers you described, and the 23 thumb, and also running down the forearm -- the 24 underside of the forearm to the elbow?	35	1 Q. And then you say when you grab things, too? 2 A. Yes. 3 Q. You grab and try to pick things up? 4 A. Yes. 5 Q. That would also exacerbate these complaints you 6 talked about; the burning, tingling and -- 7 A. (Interrupting) Yes. 8 Q. Other activities -- any activity involving 9 grabbing or using the fingers would create 10 problems then? 11 A. Yes. I don't even know where to begin on that 12 list. 13 Q. All right. And certainly using the keyboard or 14 grabbing the mouse, those are two activities that 15 you described are part and parcel of the graphics 16 design work? 17 A. Yes. 18 Q. And those two activities would create, if I'm 19 understanding your testimony, the pain? 20 A. Yes. 21 Q. What about if your right arm was just resting and 22 your hand was resting? Was it painful at rest? 23 A. Yes. 24 Q. Was it tingling at rest?

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36	1 A. Yes. 2 Q. Was it burning at rest? 3 A. At times. 4 Q. All right. So that was two to three months after 5 the event, correct, when you tried the graphics 6 design work? 7 A. Yes. 8 Q. Yes? 9 A. Yes. 10 Q. Have you tried it again since then? 11 A. I have a computer at home and once in a while I 12 sit down and try to do some stuff. I can't get 13 in more than ten minutes. 14 Q. Okay. So if I'm hearing your testimony then, 15 since this happened you have not been able to 16 utilize your right arm and hand for computer work 17 for more than ten minutes? 18 A. Correct. 19 Q. You have not been able to -- after ten minutes 20 you're no longer able to bear the symptoms then 21 that arise? 22 A. It starts ramping up, and I have to quit. 23 Q. Have you applied for disability? 24 A. Yes.	38	1 the incident. 2 Q. What were you going to do there, as you recall? 3 A. I was going to do material handling part-time. 4 Q. What does material handling mean to you? 5 A. Moving material. 6 Q. What kind of material? 7 A. Steel. 8 Q. Were you going to use -- were you going to use 9 your hands to lift it or operate a forklift? 10 What? 11 A. Well, from what I understood, the job was you 12 take -- they make screws, so you take these 13 little things of screws, you put them into bigger 14 buckets. You take the bigger buckets, put it on 15 a rack, and then roll the rack down to where they 16 wash them or something. 17 Q. You understood it then that the machine was going 18 to be pouring all the screws into a bucket, the 19 screws that are being made? 20 A. It dumps them into this -- they showed it to me. 21 It dumps it into a stringer thing. 22 Q. So they were going to -- you were going to be at 23 a machine that was dumping screws into a small 24 holding device of some sort, and you were going
37	1 Q. Did you get it? 2 A. I am in the application process. 3 Q. When did you first apply? 4 A. I think it was January of last year, so about a 5 year ago. 6 Q. Where does the process stand? Did you apply and 7 get rejected, or are you appealing? 8 A. The first thing I was told, they rejected the 9 first, and now I'm in -- they call it an appeal 10 process I think. 11 Q. What was the nature of the rejection, if you 12 recall? 13 A. They recognize that I was severely impaired but 14 not disabled. That's what the letter said. 15 Q. Okay. All right. Since then, June 28 of 2011, 16 you have not -- I know there was a job that you 17 referenced in your Interrogatory answers that you 18 had applied for and received an offer of 19 employment? 20 A. I was working for Mike -- you're referring to 21 Mike Thomas? 22 Q. No. AMS Screw or something? 23 A. I was due to start AMS Screw prior to the 24 incident. I was due to start it the week after	39	1 to put that into a larger bin? 2 A. Yes. 3 Q. Which was on some kind of a movable cart? 4 A. Then from there you had to put it on the movable 5 cart. 6 Q. So you were going to -- the screws were going to 7 pour into some smaller container, you were going 8 to pick that up, dump it into a larger one, fill 9 that up and then put that onto a cart? 10 A. Yes. 11 Q. What was going to be the weight of those? 12 A. I was told approximately 70 pounds. 13 Q. 70 pounds for the bigger one that you would be 14 moving to the cart? 15 A. Yes. 16 Q. What leads you to believe you actually had a 17 position other than applying for it? 18 A. They told me to start that following Monday. 19 Q. Was this all oral? 20 A. No -- well, yes. They already had me on the 21 books. I had done work for them in the past. 22 Q. When did you do that? 23 A. The year earlier. 24 Q. So that was something in addition to the 1099

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40	42
1 work you were doing?	1 there by fall full-time. But whether that ever
2 A. That -- yes, yes.	2 flew or not, I -- it never happened.
3 Q. All right.	3 Q. Okay. Prior to this happening you would get
4 A. I forgot all about that.	4 calls from your supervisor saying "Look, we have
5 Q. Tell me --	5 some part-time work for you"?
6 A. (Interrupting) Yes.	6 A. Well, what would happen -- I can kind of explain
7 Q. -- when did you start doing this work, the	7 this. What would happen is I would call Joe.
8 material handling work for AMS Screw?	8 He's the guy that runs it.
9 A. 2009 or 2010, somewhere in there. I'm not sure	9 Q. What is Joe's last name?
10 exactly when.	10 A. Groves.
11 Q. Was it just a part-time deal?	11 Q. Groves?
12 A. It was. I was hoping it would lead to something	12 A. Groves, G-r-o-v-e-s. And I would say, "I have a
13 more stable, yes.	13 couple of weeks open. Do you have anything?"
14 Q. Was it on a temp basis directly through AMS Screw	14 Q. Okay.
15 or through an agency of some sort?	15 A. And then he would keep that in mind and then get
16 A. It was directly through them.	16 back to me when he did.
17 Q. And how would you know when to come in and when	17 Q. So Joe Groves knew that you were available? If
18 not to come in when you were doing the temp work?	18 circumstances on his end warranted it, he would
19 A. The supervisor would call me and say, "We have a	19 just call you?
20 spot for you. You want to come in?"	20 A. I wasn't available all the time.
21 Q. And it was just -- those were temporary stints?	21 Q. Right. He would call you. If you were
22 A. They were. And he was working with me to try to	22 available, you would go in?
23 make it full-time, so I was doing all of these	23 A. Yes.
24 part-time hoping to get the full-time.	24 Q. And that happened how often prior to June 28 of
41	43
1 Q. And the work you were doing, the part-time work	1 2011?
2 while you were waiting for hopefully full-time	2 A. I think twice. I don't remember exactly. I
3 work, was it the same job you were telling us	3 think twice.
4 about a minute ago?	4 Q. Okay. And then the situation, whether it was
5 A. Yes.	5 going to be the next day or within a week after
6 Q. The one where you'd take the screws, pour them	6 this occurrence, you were planning to go
7 into the bigger container and move them onto a	7 participate in one of these temporary stints
8 cart?	8 after this event, correct?
9 A. Yes.	9 A. Yes.
10 Q. And then you were going to start you say the	10 Q. Do you believe that the stint that was planned
11 following Monday after this happened?	11 after the event was any more or was different in
12 A. I believe it was the following -- it was the	12 any way than the prior stints?
13 following week. It was -- it was right before	13 A. No.
14 the Fourth, so I don't remember. I would have to	14 Q. If you understand the question.
15 look at a calendar.	15 A. No.
16 Q. So relatively soon after this happened it was	16 Q. It was the same?
17 your expectation you were going to begin	17 A. Yes.
18 employment with AMS?	18 Q. It was your hope that the more you did these
19 A. Yes.	19 temporary stints, the more likely you would have
20 Q. Was it going to be more than just one of these	20 a chance to get full-time employment?
21 part-time stints that you were talking about?	21 A. Yes.
22 A. It was scheduled to be either a week or two	22 Q. Would you agree that as of June 28, 2011, though,
23 weeks. I don't remember. And Joe, the guy who	23 you had not had a promise of full-time
24 runs it, said he is going to try to get me in	24 employment?

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44	46
1 A. I had no promise of full-time employment.	1 Q. Okay. So you went for some interviews for a
2 Q. Have you tried to go back at any time since	2 couple of graphics design positions?
3 June 28 of 2011 to I guess fill one of these	3 A. Yes.
4 temporary stints that you have done in the past?	4 Q. To do similar things to what you were doing
5 A. No. They called.	5 before?
6 Q. When you say "they," Joe called?	6 A. Yes.
7 A. Yes.	7 Q. And did you get either one of those jobs?
8 Q. So Joe Groves called when in relation to June 28,	8 A. No.
9 2011?	9 Q. Why is it, if you know?
10 A. A few months after.	10 A. I'm not sure.
11 Q. And what happened on that event where he called	11 Q. Did they have you sit down at a computer terminal
12 to see if you were interested?	12 and try and generate any work?
13 A. Yes.	13 A. Yes.
14 Q. What happened?	14 Q. And were you able to do it?
15 A. He knew what had happened. He said, "Do you	15 A. They saw the shaking of the hands and whatnot.
16 think you can do it?" And I said, "I don't think	16 Basically said "We can't use you."
17 so."	17 Q. Where were these two companies that you sat for
18 Q. Is that the only time there was an exchange over	18 and attempted to do graphics design or at least
19 possibly taking another temporary stint?	19 illustrate your abilities?
20 A. He actually came out to my home. He knew where I	20 A. One of them was on the northwest side of the
21 lived, and he came out to my home, and he knew	21 city. I only went in there once.
22 right away I couldn't do what they were asking to	22 Q. The name of it?
23 be done.	23 A. I'm trying to remember. I can go back through my
24 Q. So you have tried going back to the graphics	24 e-mails and find the name where they contacted me
45	47
1 design work?	1 through. I don't know it offhand. They were
2 A. Yes.	2 kind -- they told me that they found somebody
3 Q. And that's too painful to do because of the	3 more compatible.
4 keyboard entry and the mouse function?	4 Q. So there was one company, and you said it was on
5 A. Yes.	5 the northwest side of the city, meaning Chicago?
6 Q. And then you kind of self -- you made a decision	6 A. It's the suburbs.
7 on your own, given your situation, it was	7 Q. Okay. Northwest suburbs. And you would try, if
8 unlikely that you could do the work for AMS	8 we asked your attorney, to locate the name of
9 Group; is that right?	9 that company?
10 A. Oh, I knew I couldn't do it.	10 A. I can try if I still have the contact.
11 Q. Right. You decided that?	11 Q. And you said there was a second one as well.
12 A. I don't think I decided it. I think my body	12 Where was that?
13 decided it.	13 A. I'm pulling a blank.
14 Q. Okay. So your body was telling you that you	14 Q. There was one, but you're drawing a blank on it?
15 couldn't do that job?	15 A. Yes.
16 A. I couldn't pick up those buckets, no.	16 Q. Is it possible that your computer database at
17 Q. Other than those two potential avenues of	17 home would have some information that might
18 employment or income, have you undertaken any	18 refresh your memory?
19 other effort to find a job?	19 A. It may. I haven't used that computer in so long
20 A. Yes. I went on several different interviews.	20 anymore, I don't even know if it will boot up.
21 Q. For what kind of jobs?	21 But, yes, it may.
22 A. Graphic design.	22 Q. And at least one of these companies you went to
23 Q. I thought you said you can't do that.	23 you had to sit down and illustrate your graphic
24 A. When you got bills, you try.	24 design abilities?

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14 (Pages 44 to 47)

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48	50
1 A. Yes.	1 you were unable to do that temporary stint that
2 Q. Did you have to do that at both or just the one,	2 you had lined up?
3 if you recall?	3 A. Right.
4 A. Just one.	4 Q. How many days or weeks was that planned for when
5 Q. All right. For the graphics design positions,	5 you were working?
6 you have at least tried to get two others since	6 A. I don't remember, but it was one or two. I know
7 then, right?	7 that.
8 A. Yes.	8 Q. One or two days or weeks?
9 Q. Were you going to be doing 1099 work for them or	9 A. Weeks.
10 actually be employed by those two companies?	10 Q. All right. So if it was a 40-hour week, it would
11 A. I was trying to be employed.	11 be 40 times the \$10 hourly rate?
12 Q. And then besides these two attempts at graphics	12 A. Yes.
13 design positions, any other attempts of	13 Q. And if it was the two weeks, it would be that
14 employment since June 28, 2011?	14 80 hours at ten bucks an hour?
15 A. No.	15 A. Yes.
16 Q. Do you remember signing Interrogatory answers	16 Q. Past that have you made any other calculations on
17 saying that you would be making a claim for lost	17 your end I guess pursuant to what you believe you
18 earnings?	18 have lost in the form of income?
19 A. I don't know what you mean by Interrogatory	19 A. The biggest loss I suffered was not being able to
20 answer.	20 renew with Juskie later on.
21 Q. There is some written questions that we sent to	21 Q. Renew in what sense -- so, first of all, with
22 your attorney to have you answer. And I don't	22 respect to AMR, other than that one to two-week
23 want to get into what you and either your	23 stint, from your vantage point are you claiming
24 attorney here or Mr. Mast may have talked	24 that you have lost more income that you could
49	51
1 about --	1 have received through AMS Screw?
2 A. (Interrupting) I remember he asked me some stuff.	2 A. With Juskie Printing the contract that he had was
3 Q. Take a look at the last page -- nope, not the	3 up in May prior to this incident. That is why I
4 last page. It will be the fourth from the back.	4 was looking for other work to fill, pending
5 Is that your signature?	5 Juskie getting a new contract with his customer,
6 A. Yes.	6 okay, which would have extended my work there as
7 Q. I should say for the record I tendered to you	7 well.
8 Exhibit No. 1. That is your signature on the	8 Q. Okay. So your hope at the time this happened was
9 fourth-to-the-last page?	9 not to go full-time with AMS Screw? You were
10 A. Yes.	10 hoping that Juskie renewed their contract so you
11 Q. Question No. 6 asked about whether you would be	11 could continue 1099 work?
12 claiming any lost income as a result of the	12 A. I was hoping to get work anywhere I could get it.
13 injuries, including wages and salaries, and then	13 Q. Well, I know that turned out to be the case; but
14 there is this listing of AMS Screw Products.	14 heading into this event on June 28, 2011, was it
15 Do you see that?	15 your hope that you would be able to do the 1099
16 A. Yes.	16 work for Juskie or leave that --
17 Q. And Joe Groves, that's the guy you mentioned that	17 A. (Interrupting) It was my hope I could do both.
18 would call you from time to time?	18 Q. All right. So your hope was to continue to do
19 A. Yes.	19 1099 work for Juskie, and also as needed, fill in
20 Q. Is that the hourly rate you would get for your	20 at AMR, potentially get a full-time job?
21 temporary work?	21 A. AMS.
22 A. Yes.	22 Q. AMS. Let me start the question over then. So
23 Q. And then when we talk about being hired but not	23 heading into this event that happened on June 28,
24 able to pursue employment due to the accident,	24 2011, were you not actively doing work for Juskie

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15 (Pages 48 to 51)



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52	54
1 because their contract had ended?	1 does. How did you learn that Juskie actually got
2 A. Yes.	2 the contract that may have been able to provide
3 Q. And you were doing temporary work periodically	3 you with more 1099 work?
4 for AMS?	4 A. He told me.
5 A. Yes.	5 Q. Mark did?
6 Q. And that was on an as-needed basis when Joe	6 A. Yes.
7 Groves called?	7 Q. Did he call afterwards and say, "Hey, we're ready
8 A. Yes.	8 for you"?
9 Q. That was your hope moving forward, that there	9 A. Yes.
10 would be a new contract for Juskie and that you	10 Q. And you had to tell him you couldn't do the work?
11 could do some 1099 work, correct?	11 A. I couldn't do anything at that point.
12 A. Yes.	12 Q. Is that when you tried -- you said two to three
13 Q. And then also as-needed fill in at AMS?	13 months afterwards you tried to do the work and
14 A. Yes.	14 you couldn't?
15 Q. And hopefully get a full-time job at AMS if that	15 A. Mark called not long after the incident, within a
16 ever arose?	16 month, and I couldn't do anything at that point.
17 A. Yes.	17 You didn't see me come out of my house.
18 Q. And when you were doing 1099 work for Juskie,	18 Q. So he called within a month of this thing
19 what did that mean to you in terms of gross	19 happening and you told him there is no way you
20 receipts?	20 can do it?
21 A. I can tell you what I made that year from him in	21 A. Yes.
22 five months. You can do the math from there.	22 Q. Did he ever revisit the possibility of doing work
23 Q. Okay. Well, what did you make?	23 for Juskie with you?
24 A. It was 18,000.	24 A. I have known Mark for a lot of years. We talk on
53	55
1 Q. The first five months of 2011 you made	1 and off about various things.
2 18,000 as a 1099 worker for them?	2 Q. Does that mean he did or he did not? I don't
3 A. Yes.	3 know.
4 Q. And you would have to take all of your expenses	4 A. Yes. He's probed. He knows it's done.
5 out of that?	5 Q. So periodically he will inquire about it, and
6 A. Yes.	6 each time you have told him no, I take it?
7 Q. And then at AMS do you have a recall what you may	7 A. (Indicates affirmatively.)
8 have made at AMS during that first --	8 Q. Is that a yes?
9 A. (Interrupting) Not much more than that, the \$10	9 A. Yes.
10 an hour. They didn't pay.	10 Q. Juskie -- what is the full name of that company?
11 Q. And there was two or three stints where you	11 A. Juskie Printing, Inc.
12 worked for them, as you recall?	12 Q. Where is it located?
13 A. Yes.	13 A. The last, it was down on Chicago Avenue out near
14 Q. And those might have been a week or two each?	14 -- I used to take -- I know how to get there. I
15 A. Right.	15 don't know the town it's in. I used to take 355
16 Q. All right. And do you know, did Juskie get that	16 down, get off in --
17 contract?	17 Q. (Interrupting) Do you have a phone number for
18 A. Yes, he did.	18 Juskie?
19 Q. Who was your contact person at Juskie?	19 A. I have it at home.
20 A. Mark.	20 Q. Okay. So other sources of income that you had
21 Q. What is his last name?	21 before the incident besides Juskie that we have
22 A. I know his last name, and I'm drawing a blank. I	22 talked about and then AMS? Were there any others
23 know his last name well.	23 that stick out in your mind?
24 Q. Maybe it will come to you later. Tell me if it	24 A. That was it.

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16 (Pages 52 to 55)

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56	1 Q. And you have not had any income from either of 2 those two sources -- 3 A. (Interrupting) The only other place I was getting 4 income prior to that was Intermatic when they 5 needed work, and that was -- that was less than 6 Juskie. 7 Q. Did you get any work from Intermatic in the five 8 to six months in 2011 that preceded this event? 9 A. (Indicates negatively.) 10 Q. I take it then you haven't done any projections 11 of lost income? 12 A. No. 13 Q. Have you ever been in the union? 14 A. No. 15 Q. Ever been in the military? 16 A. Yes. 17 Q. Which branch? 18 A. Army National Guard. 19 Q. Were you active service Army or just National 20 Guard? I'm not diminishing it, but I'm trying to 21 distinguish those two. 22 A. Two weeks out of the year you're active service. 23 The rest of the time you're National Guard. 24 Q. Okay. And so what period of time were you Army	58	1 Q. What is the connection? 2 A. He is Caroline's son. 3 Q. Are you and David grade school buddies? Middle 4 school buddies? 5 A. High school. 6 Q. At Johnsbury? 7 A. Yes. 8 Q. Were you and he like close socially in high 9 school? 10 A. More right after high school. 11 Q. How was it that the two of you became connected 12 more so after high school? You knew who he was 13 in high school, I take it? 14 A. I think we knew all the same people. 15 Q. So there was a common group of acquaintances 16 through high school? 17 A. Yes. 18 Q. And then describe the relationship as it evolved. 19 I mean, did you see each other socially? 20 Recreationally? I mean how? 21 A. It was we would do dumb things together, you 22 know. Socially, recreationally. 23 Q. You ever work together? 24 A. On the job?
57	1 National Guard? 2 A. Oh, from the time I was 18 or 19 until the time I 3 was 22 or 23. Somewhere in there. 4 Q. Did I ask you -- have you ever been married? 5 A. Yes, I think so. 6 Q. Have you? 7 A. No. 8 Q. All right. I'm going be -- I'm going to shift 9 over to the event that is the subject of the 10 lawsuit. Where did this happen? 11 A. At Caroline McGuire and Bill McGuire's house. 12 Q. That is listed in the Complaint as 1016 West 13 Elder? 14 A. That sounds like it. 15 Q. Did you know the McGuires prior to this 16 happening? 17 A. Yes. 18 Q. How is it that you knew the McGuires? 19 A. Grew up in that neighborhood. 20 Q. There is another fellow that is named in the 21 lawsuit, Dave Gagnon? 22 A. Yes. 23 Q. Is he connected to the McGuires, if you know? 24 A. Yes.	59	1 Q. Anywhere. 2 A. Like as employment, no. 3 Q. Okay. What kind of social or recreational 4 activities would you participate in from time to 5 time with him? Bowling leagues? Golf leagues? 6 A. Did a bowling league together. He was into 7 restoring cars, and he did it in his mom's 8 garage, and everybody kind of kicked in a hand to 9 help him. 10 Q. Okay. Is he married, if you know? 11 A. He is. 12 Q. Did you go to their wedding? 13 A. Yes, I did. 14 Q. Do you know if he has any children? 15 A. No children -- oh, wait. He might have -- I 16 don't know. That's . . . 17 Q. Did he have any back in June of 2011, if you 18 know? 19 A. He may have. I'm not sure. 20 Q. I take it you're not like a godfather or anything 21 to his child? 22 A. No. 23 Q. I mean, I can keep asking more and more questions 24 that come into my mind about how you might have

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17 (Pages 56 to 59)

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60	62
1 -- or what your relationship with Gagnon may have	1 each other from time to time as needed?
2 been before this. I was hoping to hear from you	2 A. Yes.
3 how you describe it.	3 Q. Okay. What kind of stuff do you recall over the
4 A. Well, it was just friends hanging out after years	4 years helping David with or him helping you with?
5 of high school.	5 A. I remember pulling his car out of the ditch when
6 Q. How often would you see him then I guess on a	6 it snowed and he called me. I remember
7 monthly basis?	7 approximately ten years earlier him helping me
8 A. Recently or --	8 fix my roof after a storm. Earlier than that I
9 Q. (Interrupting) Before this happened.	9 helped him numerous amounts of time with sanding
10 A. How long before this happened?	10 body parts to a car when we were in our 20s.
11 Q. Let's go with the first two years immediately	11 Q. Okay. What about -- obviously we're going to
12 preceding this incident. How often would you see	12 need to talk about chain saw usage prior to
13 him?	13 June 28, 2011. Had you ever been anywhere with
14 A. Oh, not that often. Once or twice a year maybe.	14 David Gagnon where a chain saw was involved?
15 Q. Okay. Was there a higher frequency immediately	15 A. Yes.
16 after high school?	16 Q. Okay. Where was that?
17 A. Oh, yes.	17 A. It was on Carol's property.
18 Q. Apparently it waned over time?	18 Q. All right. Anywhere else besides Caroline
19 A. Yes.	19 McGuire's property?
20 Q. So in the two years or so before this happened,	20 A. I'm not sure. I don't think so.
21 June 28, 2011, you would only see him once or	21 Q. Put Mr. Gagnon aside. Have you ever used a chain
22 twice a year?	22 saw --
23 A. Maybe three or four. A few times a year. I	23 A. (Interrupting) Yes.
24 mean, I'm not sure of the exact number.	24 Q. -- personally?
61	63
1 Q. Okay. And this is an estimate, correct?	1 A. Yes.
2 A. Yes.	2 Q. Prior to this day, June 28, 2011?
3 Q. And would this just be in passing, or was it set	3 A. Yes.
4 plans to see him?	4 Q. How many times do you think you might have been
5 A. For -- well, for some reason or another he would	5 on Caroline McGuire's property prior to June 28,
6 want to see Mike, who was living with me, or	6 2011 where you were engaged in any activity
7 another friend of ours, and he would say, "I'm	7 involving a chain saw?
8 going over here. I'll meet you there," you know,	8 A. I vividly remember once.
9 and we would run into each other, you know.	9 Q. One other time?
10 Q. So it would be the contact you had with him then	10 A. Yes.
11 in recent years prior to the event was more just	11 Q. And how and when in relation to June 28 of 2011
12 happenstance, overlapping of friends and	12 was that?
13 acquaintances?	13 A. A few weeks prior.
14 A. Yeah. Well, if he needed help or I needed help,	14 Q. Okay. And other than that one that you actually
15 you know, I think that that was a given.	15 recall and then June 28, 2011, that is the extent
16 Q. Okay. I asked you if you ever worked together.	16 as you sit here today you can recall?
17 You guys never worked for a company or an	17 A. Yes.
18 employer where you were both on payroll there	18 Q. Did you ever work with a chain saw in combination
19 together, correct?	19 with David Gagnon on any other person's property?
20 A. Correct.	20 A. Not that I remember.
21 Q. Now, obviously there is this incident on June 28	21 Q. Before June 28 of 2011 did you personally have an
22 of 2011 where you were with him, correct?	22 appreciation for any risks that might be
23 A. I was on the property, yes.	23 presented by a chain saw?
24 Q. And then you mentioned that you guys would help	24 A. Say that again.

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18 (Pages 60 to 63)



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64	66
1 Q. Sure. I want to know if you had -- heading into	1 and Mr. McArtor may have been involved in
2 June 28 of 2011 if you had any understanding as	2 projects where a chain saw was used?
3 to any hazards that might be associated with	3 A. Yes.
4 chain saw use.	4 Q. And in those situations would you be the
5 A. Yes. It's dangerous.	5 operator, or would you be the helper?
6 Q. What is dangerous? What was dangerous about it	6 A. I would be the helper.
7 from your vantage point?	7 Q. Did you ever have a situation where he was
8 A. A chain saw is dangerous, period.	8 helping you and you were operating a chain saw
9 Q. Okay. I mean, if it's just sitting there not	9 then?
10 running, is it dangerous?	10 A. Where Mike McArtor was helping me and I was
11 A. I'm not sure what you mean.	11 operating it?
12 Q. Okay. You mentioned that you had used chain saws	12 Q. Yes. Correct.
13 before?	13 A. Yes.
14 A. Yes.	14 Q. Are you able to count how many times that
15 Q. And you have used them without David Gagnon being	15 occurred?
16 present?	16 A. I'm not sure, but it's more than a few.
17 A. Yes.	17 Q. On those few -- well, were there other people
18 Q. Can you give me any estimate as to how many times	18 from time to time that helped you as well while
19 you might have used a chain saw prior to June 28,	19 you were using a chain saw?
20 2011?	20 A. Yes.
21 A. Myself?	21 Q. And on those occasions where it was somebody else
22 Q. Yes.	22 or maybe it was Mr. McArtor, did you form any
23 A. Hundreds. Maybe not hundreds, but enough where I	23 opinions about the potential hazards or risks to
24 can't count.	24 the people that were helping you that a chain saw
65	67
1 Q. All right. And during those periods where you	1 might present?
2 were using a chain saw, you formed the view that	2 A. Yes.
3 chain saws can be dangerous?	3 Q. What kinds of risks are those to the other
4 A. Very.	4 people?
5 Q. And what type of dangers did the chain saw	5 A. Keep them as far away from it as possible.
6 present from your experience using it?	6 Q. And the risk to the helper is also --
7 A. It cuts through things very rapidly.	7 A. (Interrupting) If they are too close, yes.
8 Q. So the operator could be cut?	8 Q. -- being cut --
9 A. Yes.	9 A. (Interrupting) Yes.
10 Q. And you knew that before June 28 of 2011,	10 Q. And at any point in your lifetime prior to
11 correct?	11 June 28 of 2011 had you ever been trained by
12 A. Yes.	12 somebody who was a skilled chain saw operator?
13 Q. Did you ever use a chain saw in tandem with	13 A. No.
14 anybody else helping you prior to June 28, 2011?	14 Q. Had you ever had a job where your primary purpose
15 A. Yes.	15 was to use a chain saw?
16 Q. This fellow that lives with you and your mom,	16 A. No.
17 what is his name again?	17 Q. All your experience with a chain saw, would you
18 A. Mike.	18 agree, would be just personal use and experience?
19 Q. Mike. What is his last name?	19 A. Just backyard trimming down limbs.
20 A. McArtor.	20 Q. Kind of on-the-job training?
21 Q. Did Mr. McArtor ever assist you while using a	21 A. Just my house.
22 chain saw?	22 Q. Do you recall ever sitting down any time prior to
23 A. Yes.	23 June 28, 2011 on those occasions where you were
24 Q. I mean, is that multiple times in the past you	24 using a chain saw and reading an operator's

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19 (Pages 64 to 67)

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68	70
1 manual?	1 user or helper.
2 A. Oh, yes.	2 A. Heat.
3 Q. You have read an operator's manual for a chain	3 Q. Heat?
4 saw?	4 A. Yes.
5 A. When I was younger, yes.	5 Q. Anything else you can think of?
6 Q. We're going back to like immediately after high	6 A. Fragments. The wood chips, you know.
7 school?	7 Q. The saw dust and debris that might fly off --
8 A. We're going back to eighth grade.	8 A. (Interrupting) Yes.
9 Q. Eighth grade?	9 Q. -- during cutting?
10 A. Yes.	10 A. Yes.
11 Q. So this was going back when you first started	11 Q. Okay. Anything else that brings to mind?
12 using a chain saw?	12 A. I'm trying to think back of -- way back when he
13 A. Yes.	13 taught me that.
14 Q. When you first started using a chain saw, did you	14 Q. If something comes up, let me know. Have you
15 take it upon yourself to read the manual and	15 heard the phrase of binding or blade bind?
16 begin using, or did some adult help you with that	16 A. I know what binding is, yes.
17 process?	17 Q. What does it mean to you?
18 A. Somebody helped me.	18 A. It means the blade bound. It froze up. It may
19 Q. Who was it? Your dad?	19 have overheated, you know. Lack of lubrication,
20 A. Yes.	20 something along those lines. There are many
21 Q. Is he still alive?	21 things that could happen.
22 A. No.	22 Q. Blade binding to you then is something where the
23 Q. And I know this is going back a ways. What do	23 blade just stops, the motion of the blade stops?
24 you recall your father telling you about chain	24 A. No.

69	71
1 saw operation when he first taught you how to do	1 Q. Okay. You said it has something to do with
2 it?	2 overheating or lack of lube?
3 A. Same thing he told me about all power tools.	3 A. Well, you can bind anything, any power tool, when
4 Q. What was that?	4 you're cutting something either by bending it. I
5 A. Handle them with extreme care.	5 would guess I have -- I had a blade bind once on
6 Q. So you should handle any power tool with extreme	6 me.
7 care?	7 Q. A chain saw blade?
8 A. Yes.	8 A. Yes.
9 Q. Do you recall any specific instructions or	9 Q. And what happened?
10 admonitions about chain saw usage?	10 A. It bent the bar that the chain rides on.
11 A. He taught me the maintenance. He taught me how	11 Q. Okay. All right. So I need to get a little more
12 to use it, how to -- what side of the blade to	12 detail about what you understand binding or blade
13 cut with, things like that, yes.	13 bind might be. It can happen, you said, if the
14 Q. So he demonstrated it for you?	14 blade overheats?
15 A. Yes.	15 A. Yes.
16 Q. Besides the risks, are you -- strike that	16 Q. If I understand, the chain just goes around on
17 question. Are you aware of any other known risks	17 that blade, correct?
18 associated with a chain saw other than cutting	18 A. Yes.
19 from the chain?	19 Q. There is a long metal blade that comes out from
20 A. No.	20 the power portion of the chain saw, right?
21 Q. And I'm not -- I'm not even saying there are any.	21 A. Correct.
22 I'm just asking you what other risks that you're	22 Q. And there is a groove where the chain goes around
23 aware of that might be associated with a chain	23 in a circular fashion?
24 saw other than the actual blade injuries to a	24 A. Yes.

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20 (Pages 68 to 71)

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72	74
1 Q. And the motor propels that blade? That's a	1 with part of that blade?
2 simple description of it, but that is how it	2 A. Yes.
3 works?	3 Q. And what is the kickback zone, as you understand
4 A. Yes.	4 it?
5 Q. And when we talk about binding, are you talking	5 A. I don't know what technically it would be, but I
6 about the blade getting bent?	6 wouldn't want to be in the way of it.
7 A. That is the way that I have had it bind.	7 Q. All right. So you don't have a specific
8 Q. So if the blade that has the groove that the	8 understanding heading into June 28 of 2011 what
9 chain operates on, if that bends, the chain	9 the kickback zone may be, correct?
10 wouldn't move?	10 A. No.
11 A. Correct.	11 Q. But you were aware that there is such a thing as
12 Q. Or if part of it needs to be lubed, to get a good	12 a kickback?
13 free flow of that chain, the chain needs some	13 A. Have I heard of that? Yes.
14 lubricant as it glides around on that blade,	14 Q. And have you ever seen that happen prior to
15 correct?	15 June 28 of 2011?
16 A. Yes.	16 A. I've felt it happen when I have operated a chain
17 Q. And if there is no lubricant, that can affect the	17 saw when I was younger.
18 ability of the blade to -- I'm sorry -- the chain	18 Q. And have you ever seen it happen to somebody
19 to spin on that blade?	19 else?
20 A. Yes.	20 A. No. I'm usually the one that operates. It's
21 Q. And if there is inadequate lubricant, then the	21 very rare that I'm standing assisting.
22 blade can actually heat up?	22 Q. The kickback, that is the situation, in
23 A. Yes.	23 layperson's terms, where the blade actually comes
24 Q. And at that point can the motion of the chain	24 back toward the operator?
73	75
1 just stop because it's overheated?	1 A. (Indicates affirmatively.)
2 A. Yes.	2 Q. Yes?
3 Q. Have you ever heard the phrase binding or blade	3 A. Yes.
4 bind used in connection with an actual cutting	4 Q. And you said you experienced that once?
5 operation?	5 A. Yes.
6 A. Yes.	6 Q. Where the blade actually kicked back toward you?
7 Q. As the cut is occurring, the pressure of the log	7 Or were you holding it such that it wouldn't?
8 or tree that is being cut can pinch against that	8 A. In my case the blade kicked forward. It pulled
9 blade?	9 the saw. It didn't kick back. I was kind of
10 A. I can see that happening, yes.	10 reversed.
11 Q. Are you aware of that? Is that a risk that you	11 Q. You have never experienced where it actually came
12 know of or knew of before June 28, 2011?	12 back toward the user?
13 A. Yes.	13 A. I have never had the type of debris around that
14 Q. Have you ever heard of a kickback?	14 would cause that, I don't think.
15 A. Yes.	15 Q. Have you ever read any manuals or been taught as
16 Q. What is a kickback, as you understand it?	16 to ways to avoid kickback?
17 A. It's usually when something other than what	17 A. Remove all the debris surrounding the area.
18 you're intending to cut is in the way, and like	18 Q. Okay.
19 you actually hit a second log, okay, and it will	19 A. I was warned what kickback was when I was first
20 kick back because you're trying to cut through	20 taught it. You don't want anything in the way
21 two different items. That's my understanding of	21 other than what you're cutting. My understanding
22 it. I may not be technically right, but . . .	22 of kickback, the way that I was taught, it
23 Q. Okay. Are you aware -- maybe you have never	23 usually requires hitting a second object.
24 heard this -- there is a kickback zone associated	24 MS. FREEMAN: Wait for the question.

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21 (Pages 72 to 75)

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76	78
1 Okay?	1 Q. Okay. So you haven't talked to him at all for
2 THE WITNESS: All right.	2 the last six months?
3 Q. In terms of how to hold the chain saw, as you	3 A. No.
4 recall, what was the training you received in how	4 Q. And that takes us into the middle of 2012. There
5 to hold the chain saw?	5 is still like a whole year in there between the
6 A. Both hands.	6 accident and when the communication stopped.
7 Q. Okay. Where would your dominant hand be?	7 What was the frequency of contact over that year
8 A. On the trigger.	8 before all the communication stopped?
9 Q. And then you would use the right hand on the	9 A. Right after the incident he was coming by every
10 trigger?	10 couple of weeks for about a month and a half, two
11 A. Yes.	11 months, three months maybe. And I even went up
12 Q. Left hand on the bar that is on the top of the	12 to his place once or twice.
13 chain saw?	13 Q. What happened a year out that stopped all the
14 A. Yes.	14 communication, if you know?
15 Q. Have you ever personally experienced a situation	15 A. He got a letter from an attorney's office.
16 where you were cutting a branch or a limb of some	16 Q. Did he call you to talk about that letter?
17 sort that had pressure on it that was bending it?	17 A. Yes.
18 A. Yes.	18 Q. Okay. What do you recall the substance of the
19 Q. Yes?	19 conversation -- strike that. That's a bad
20 A. Yes.	20 question. Do you recall the conversation you had
21 Q. And were you taught or did you learn any risks	21 with him once he got that letter?
22 that might be associated with doing that	22 A. I recall, yes.
23 activity, cutting a branch that had downward	23 Q. Tell me what you recall talking to him about.
24 pressure on one end of it?	24 Who called who?
77	79
1 A. I was taught to attack the pressure from the	1 A. He wanted to know what it was.
2 other side so that you didn't get the bind in	2 Q. He called you?
3 there.	3 A. Yes.
4 Q. And to avoid binding, if you cut right into the	4 Q. Tell me about the conversation, what he said and
5 pressure area, the pressure zone, what could	5 what you said.
6 potentially happen that you're trying to avoid?	6 A. He said, "Why am I getting letters at my home
7 A. The weight of the limb will pinch the chain and	7 when it happened at my mom's house?"
8 thus bending the bar.	8 Q. Did you share with him any thoughts on that?
9 Q. And if the blade of the chain saw gets pinched,	9 A. I said, "It's from my attorney."
10 I guess it gets in combination, the chain is also	10 Q. Did you talk about the day of the event when he
11 likely to be pinched?	11 called you?
12 A. Yes.	12 A. Not so much. He was upset. And from what I
13 Q. Now, we talked about your connection to	13 gathered out of the whole thing, he may not have
14 Mr. Gagnon before the June 28, 2011 incident,	14 told his wife the entire truth about it, and she
15 seeing him a few times a year during that last	15 is the one who got the letter.
16 two years leading up to it, correct?	16 Q. Okay.
17 A. Yes.	17 A. He was real upset.
18 Q. What about since this happened? How often do you	18 Q. What is it that you believe he didn't tell his
19 see him?	19 wife?
20 A. Immediately after I saw him. He came over and	20 A. That there may be any aftermath.
21 wanted to see how I was doing. But since -- I	21 Q. Did he share something with you that caused you
22 want to say I don't know how long it's been now,	22 to believe that, or is that just your
23 but it's been at least six months, maybe a little	23 supposition?
24 longer that he hasn't talked to me at all.	24 A. He kind of said -- well, he basically said, you

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22 (Pages 76 to 79)



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80	82
1 know, his wife didn't know, and he didn't	1 and Hans or me. Your conversations with the
2 appreciate the letters coming to his house. He	2 defendant.
3 wanted my attorney to stop sending them.	3 MR. BARCH: That's right.
4 Q. Okay. Other than him calling to ask why the	4 A. Okay. He was just very upset that he was
5 letters were coming and you telling him that it	5 receiving all of this stuff at his house. Can
6 was your attorney sending it and whatever	6 you repeat where you were at?
7 discussion occurred that caused you to believe	7 Q. I'm just trying to figure out if there was
8 his wife didn't know about it, any other	8 anything else you and Mr. Gagnon discussed that
9 discussion or any other subjects that you recall	9 last phone call you had together besides him
10 being discussed during that phone call?	10 being mad about getting letters, your belief his
11 A. Yes.	11 wife might not have known the whole story, and
12 Q. What?	12 also him being upset about the whole thing.
13 A. May I confer with her for a minute? Can we have	13 A. Yes. He was very upset. I'm not going to tell
14 a break?	14 you some of the profanity, but he was very upset.
15 Q. Was your attorney there for that telephone call?	15 Q. I take it then he was very upset that he was
16 A. No. But he was e-mailed right thereafter the	16 being sued?
17 same day.	17 A. He didn't understand why he was responsible at
18 MR. BARCH: Well, I don't want to deprive	18 all if it happened on his mom's property. That
19 you of a chance to talk to your attorney. Go	19 was his big . . .
20 ahead.	20 Q. Did you and he talk about the idea that he was
21 (At this time a short recess was taken.)	21 running the chain saw?
22 CONTINUED EXAMINATION BY MR. BARCH:	22 A. I said, "Yeah, you are responsible," and I said,
23 Q. Mr. Dulberg, I was asking you about the phone	23 "It's time you have to tell people about this.
24 conversation you had with Mr. Gagnon, the one	24 You know, they are going to want to know." And
81	83
1 that precipitated the break-off of	1 he did not want to do -- he said he was tired of
2 communications. Okay? And we have talked about	2 the whole thing. He had heard from his mom about
3 him calling wanting to know why he was getting	3 it for months, and he did not want to hear it
4 letters, your view that maybe his wife was upset	4 anymore, and he is sick of it, and he went on,
5 with him. And I'm paraphrasing, of course.	5 and he was ranting.
6 A. Uh-huh.	6 Q. During this rant and your effort to explain to
7 Q. And you also mentioned that you did not really	7 him why he was getting letters, did you and he
8 talk about what happened on June 28, 2011. And	8 ever discuss the subject of what happened?
9 then I asked the question I thought about -- I	9 A. I think we both know what happened.
10 thought I asked whether or not there was anything	10 Q. Did you actually discuss it that day during the
11 else that you recall being discussed that day	11 call?
12 during that phone conversation. And then I	12 A. No. Not the details of what happened, no.
13 thought that was the impetus to your request to	13 Q. No comments about "Well, you were running the
14 meet with your counsel. Does that get us back to	14 saw," or "You were holding the limb"? Nothing
15 where we were?	15 along those lines? No details about what
16 A. Yes.	16 happened?
17 Q. Okay. And it may be difficult to talk about, you	17 A. I said, "You're the one who was operating the
18 know, this breakdown in communication between you	18 chain saw. Of course the lawyers are going to
19 and Mr. Gagnon because you have known him for	19 want to talk to you. They are going to send you
20 years, but it's important to me to know what you	20 papers."
21 guys talked about. So to the extent it doesn't	21 Q. And in response did he make any comments to you
22 involve your attorney, I would like to know what	22 about your involvement that day?
23 you guys discussed.	23 A. He just went on about how he did not want to hear
24 MS. FREEMAN: No conversations between you	24 it.

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23 (Pages 80 to 83)

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84	86
1 Q. Okay.	1 A. No.
2 A. That was the gist of it.	2 Q. They didn't have you over to parties or anything?
3 Q. All right. So you have known David for a long	3 A. I should correct that. I did go over there a
4 time prior to this. And then Mr. and	4 couple of times just to see Caroline right after
5 Mrs. McGuire, Caroline and Bill, they are	5 Intermatic did their big layoff. That was more
6 married, of course?	6 about work.
7 A. Yes, I believe so.	7 Q. When did the big layoff occur?
8 Q. How often would you encounter the McGuires?	8 A. It went on for a couple of years. They've phased
9 A. In recent years I would actually encounter the	9 down. It was between 2007 or '8 and 2010. I
10 McGuires more than I would David.	10 think they are still laying off. They are
11 Q. How is it you would have more contact with them	11 probably going to go out of business.
12 than David?	12 Q. The visit or two that you had at her home during
13 A. Caroline worked with me at Intermatic for ten	13 the layoff would have been sometime during this
14 years. Not side by side, but she worked there.	14 period you were talking about, 2008 to 2010?
15 Q. Is it Intermatic did you say?	15 A. Yes, somewhere in there. When I heard that she
16 A. Yes.	16 lost her job, that is when I stopped over.
17 Q. Different jobs?	17 Q. Just to basically express your sympathy or what
18 A. Yes.	18 have you, empathy?
19 Q. Just worked for the same employer?	19 A. (Indicates affirmatively.)
20 A. Yes.	20 Q. All right. Prior to June 28 of 2011 had you ever
21 Q. Did you guys have lunches together or anything	21 been to the McGuires' house to perform any type
22 like that?	22 of function around their house; repair,
23 A. No.	23 maintenance, handyman work, anything?
24 Q. So other than seeing her in passing, did you even	24 A. Prior to it?
85	87
1 really talk to her?	1 Q. Yes.
2 A. If I had some downtime and she was working near	2 A. Mostly it was years earlier, and it was body
3 me, I would go over and say, "Hey, how's it	3 restoration in her garage with her son David. I
4 going?"	4 don't think I ever repaired anything around there
5 Q. Just general pleasantries?	5 in the house or anything. I may have helped
6 A. Yes.	6 shovel the driveway once as a kid.
7 Q. You did not see Caroline and Bill on a social	7 Q. All right. So we have got the -- you have
8 basis?	8 mentioned that early on right after high school
9 A. No.	9 you would help David with the restoration of old
10 Q. And outside of your contact with her at	10 cars?
11 Intermatic over the ten years leading up to this	11 A. Yes.
12 event, how often would you see either her or	12 Q. That was done in the garage at the McGuires'?
13 Bill?	13 A. Yes.
14 A. Outside of work, couple of times a year at the	14 Q. Putting that activity -- and that was years ago,
15 grocery store or something. I mean, just say hi.	15 correct?
16 In fact, I just ran into Bill two weeks ago.	16 A. Yes.
17 Q. So would it be fair to characterize your contact	17 Q. But we're talking like more than five or ten?
18 with the McGuires during the -- and putting your	18 A. Oh, yes.
19 contact with Caroline at Intermatic aside, but	19 Q. And then you mentioned that you might have helped
20 outside of work, your contact with the McGuires	20 David shovel when you were kids?
21 would just be happenstance, bumping into them?	21 A. Yes.
22 A. Yes.	22 Q. All right. But let's get into like the last five
23 Q. There was no reason for you to go over there and	23 to ten years. Did you ever go over to the
24 visit with them?	24 McGuires' house to perform any type of

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24 (Pages 84 to 87)

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88	90
1 maintenance function at their home, any repair	1 Q. What happened to -- it was your trailer?
2 function at the home?	2 A. Yes.
3 A. No.	3 Q. Where did it go?
4 Q. Or any kind of handyman work of any kind?	4 A. It went around the block to my house, and then I
5 A. The closest thing to that I think was she needed	5 took it over to the scrap place.
6 to go to Menards to get some wood, and I had a	6 Q. Did you use it for a period of time?
7 truck and a trailer, and I took her over there,	7 A. It sat there. I threw some hoses in there when I
8 her and her son, and got the wood and drove her	8 got more stuff to go to the scrap guy. Took it
9 back home. And that was it. I didn't actually	9 all over.
10 perform any function.	10 Q. When did you dispose of it?
11 Q. And when was that in relation to 2011?	11 A. This year. No. 2012.
12 A. Wait. Wait. I stand corrected. The month or	12 Q. So you had it through the winter of 2011-2012?
13 two prior to this incident I took down a shed.	13 A. Yes.
14 It wasn't just me. And we didn't take it down.	14 Q. So you used it about a year and then got rid of
15 They just unbolted it from the bottom, and we all	15 it?
16 just carried it out to the front of the yard and	16 A. Yes. It was just sitting there. I didn't want
17 put it on my trailer. They needed as many hands	17 to use it. It wasn't --
18 as they could get, and I happened to be free.	18 Q. (Interrupting) When you were there -- when you
19 Q. Okay. So a month or two before this event there	19 were there to have this thing put onto your
20 was a shed that was removed from the property?	20 trailer, who else was there besides you?
21 A. Yes. I don't even know if it was a month. Maybe	21 A. David, Bill and Carol.
22 four weeks.	22 Q. So did all four of you then lift this thing up?
23 Q. Sometime before?	23 A. You need one on each corner.
24 A. Just right before, yes.	24 Q. Okay. Besides helping them get the shed off the

89	91
1 Q. It still would have been 2011?	1 property, do you recall any other work that you
2 A. (Indicates affirmatively.)	2 may have done or assistance you may have offered
3 Q. Yes?	3 around the property prior to June 28 of 2011?
4 A. Yes.	4 A. Recently. That's about it.
5 Q. This shed, you say it was just unbolted from its	5 Q. Did Mr. or Mrs. McGuire -- I'm going to use them
6 foundation?	6 in combination. If one or the other did
7 A. Yes. It was one of those flimsy steel sheds.	7 something, tell me. But did either of the
8 Q. Steel deal?	8 McGuires ever train you on how to use a chain
9 A. Real light.	9 saw?
10 Q. How big was it?	10 A. No.
11 A. It was a big one.	11 Q. Did either of the McGuires ever demonstrate how
12 Q. You're talking 10 feet by 9? I mean, how big?	12 to use a chain saw for you?
13 Do you recall?	13 A. No.
14 A. I would guess -- and I don't know. They know	14 Q. Did you ever help Bill or Caroline cut trees down
15 what size it was. It was a bigger one. Probably	15 prior to June 28, 2011?
16 10 by 12.	16 A. Once.
17 Q. That is an estimate, right?	17 Q. And when was that?
18 A. Yes.	18 A. Again, it was a few weeks prior. About the same
19 Q. And then did you say a group of people picked it	19 time we took the shed.
20 up whole and put it onto a trailer?	20 Q. Okay. So there was another occasion where you
21 A. Yes.	21 were out there tending to trees?
22 Q. Was it placed on like a flatbed trailer or	22 A. No. Her son David called me and asked me if he
23 something?	23 could borrow my chain saw.
24 A. Yes.	24 Q. Okay.

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25 (Pages 88 to 91)



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92	94
1 A. And I brought it over.	1 A. I got pop.
2 Q. So David called you for a chain saw?	2 Q. Pop. Were you expecting money?
3 A. Yes.	3 A. No. I wasn't there to do any work.
4 Q. And other than bringing it over, did you help	4 Q. And you don't have any insight as to the
5 David at all?	5 connection between David -- strike that. You
6 A. I picked up some sticks on the ground. He did	6 don't have any insight as to the arrangement
7 all of the cutting except for I did cut one	7 between the McGuires and Mr. Gagnon on that day
8 thing, and it was -- when it was all done and	8 when he was taking down the apple tree?
9 cleaned up, they had a stump, and I tried to make	9 A. No.
10 it as close to the ground as possible, and that	10 Q. For all you know it could have been a favor for
11 was it. That's the only cutting I did.	11 his parents?
12 Q. When you say you picked up some branches --	12 A. Yes.
13 A. (Interrupting) Yes.	13 Q. Or perhaps he was paid? We don't know? You
14 Q. When you say picked up branches, what are you	14 don't know?
15 talking about? Bundles? A couple twigs?	15 A. Right.
16 A. It was an apple tree. So they were small, and	16 Q. When you said that David was the one that took
17 David cut it. He cut the whole tree down, and	17 the tree down by himself that time, the apple
18 Bill and I were standing there talking, and we	18 tree --
19 were taking them over to where they were -- their	19 A. (Interrupting) Yes.
20 garden area.	20 Q. -- do you happen to know, prior to David setting
21 Q. So on this occasion David cut down the entire	21 out to do the tree, whether Mr. McGuire or
22 apple tree?	22 Mrs. McGuire gave him any instruction on how to
23 A. Yes.	23 use a chain saw?
24 Q. With the exception of that stump that you tidied	24 A. Not to my knowledge.

93	95
1 up?	1 Q. Do you know if they were even out in the property
2 A. Right. About four inches of stump sticking up,	2 -- out in the yard when he was doing that work?
3 yes.	3 A. Yes, they were.
4 Q. And the assistance that you gave, you helped get	4 Q. They were there as he was cutting or afterward?
5 that stump to a more presentable condition closer	5 A. Both.
6 to the ground?	6 Q. You saw the McGuires present when David was using
7 A. Yes, I did.	7 the chain saw?
8 Q. And then you helped Bill move some of the	8 A. Yes.
9 branches to a different area on the property?	9 MS. FREEMAN: Counsel, are we talking
10 A. They were already cut up, so yes.	10 about the apple tree?
11 Q. Were they tied in bundles, or did you --	11 MR. BARCH: Yes, the apple tree.
12 A. (Interrupting) They were just loose.	12 Q. And while you were there -- I guess you were
13 Q. Loose. Did you just pick them up and carry them?	13 present, I take it, then, when the McGuires were
14 A. Yes.	14 on the property and David was using the chain saw
15 Q. Did you get paid by the McGuires?	15 to cut the apple tree apart?
16 A. No.	16 A. Yes.
17 Q. Do you know if David was paid by the McGuires to	17 Q. Do you recall over hearing or seeing Mr. McGuire
18 take down that tree?	18 or Mrs. McGuire instructing David on how to use
19 A. Which tree?	19 that chain saw while you were there?
20 Q. The apple tree.	20 A. Not how to use the chain saw. Just what they
21 A. I don't know.	21 wanted gone.
22 Q. Did you get any kind of remuneration or	22 Q. So they were telling him which parts of the tree
23 consideration or gifts of any kind for helping	23 they wanted gone?
24 that day with your chain saw?	24 A. They wanted the whole tree gone.

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26 (Pages 92 to 95)

96	98
1 Q. So anything beyond that, saying take the whole	1 A. Right.
2 thing down?	2 Q. You don't recall Mr. McGuire telling David how to
3 A. The two of them were bickering back and forth	3 use the chain saw, though? That didn't happen in
4 about all different things. They were talking	4 your presence?
5 about all different trees they wanted -- I didn't	5 A. No.
6 keep up with --	6 Q. Correct?
7 Q. (Interrupting) The two of them meaning Mr. and	7 A. Correct.
8 Mrs. McGuire?	8 Q. And you don't recall Mr. McGuire demonstrating
9 A. Yes. And her son. I didn't get into any of	9 the chain saw for Mr. Gagnon that day either,
10 that. That is whatever they wanted to do.	10 correct?
11 Q. So there is some banter, bickering, whatever you	11 A. No -- yes, that's correct.
12 want to call it, over which trees needed to come	12 Q. David was just using the chain saw in his
13 down?	13 presence? Is that how you recalled it?
14 A. Right.	14 A. Yes.
15 Q. Besides identifying the trees that they wanted	15 Q. Now, you were going to say you do recall
16 either trimmed or removed, do you recall	16 something else that happened as we were asking
17 Mr. McGuire or Mrs. McGuire telling David how to	17 questions about it.
18 go about taking down the tree with the chain saw?	18 A. You were asking about instruction, and Caroline
19 A. I think Bill and Dave talked about that a little	19 was worried because part of the tree was over the
20 bit, how they were going to do it.	20 house, and she was telling him to take it -- they
21 Q. Okay.	21 were talking about the way to take the tree down
22 A. I didn't have anything to do with it.	22 without any of it touching the house at all; and
23 Q. What did you overhear David saying to Bill or	23 they worked it out and did it, you know.
24 Bill saying to David with respect to the apple	24 Q. All right. So that is something that sticks out
97	99
1 tree?	1 in your mind? There was a tree -- part of the
2 A. Well, the only thing that I did anything about, I	2 tree is over the house, and there was a concern
3 remember Bill was complaining that it was	3 about damaging the house?
4 sticking up out of the ground, and I was putting	4 A. I remember that, yes.
5 the chain saw away in the case so I could take it	5 Q. And there was a discussion as to how to get the
6 home, and I took it back out of the case and	6 tree removed without hurting the house?
7 said, "I'll take the four inches off for you,"	7 A. Yes.
8 because David was already gone or he was in the	8 Q. Was it successful? Did they do it?
9 house doing something, and I just wanted to get	9 A. Yes.
10 it done and head out of there. I didn't want to	10 Q. Did anybody get hurt, as far as you know, that
11 wait for him, so I did that. But as far as them	11 day with the chain saw?
12 instructing each other, they were mostly talking	12 A. No.
13 amongst each other.	13 Q. And you had no connection to any of the cutting
14 Q. What I'm driving at is you recall hearing them	14 that day, correct?
15 discuss/bicker over --	15 A. Other than picking up the sticks and cutting the
16 A. (Interrupting) I do remember. I do remember.	16 stump, that was it.
17 Q. Hold on. You do recall hearing them bicker or	17 Q. That's right. I take it back. You did cut the
18 discuss which trees needed to come down totally	18 stump closer to the ground?
19 or which ones needed to be trimmed? That is	19 A. Yes.
20 something you recall them bickering about,	20 Q. But in terms of the work, David did the actual
21 correct?	21 severing of the branches and cutting the limbs
22 A. Yes.	22 and things? You were not helping him do that?
23 Q. And you recall Mr. McGuire being dissatisfied	23 A. I was just taking the cut branches over to the
24 with the way the stump looked after David left?	24 pile where they were going to burn it or whatever

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27 (Pages 96 to 99)

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100	102
1 they wanted to do with it.	1 Q. And so when you went to the McGuires' that day, I
2 Q. Let's go to June 28, 2011 then. Did Mr. or	2 take it you didn't bring anything with you?
3 Mrs. McGuire ask you to come over?	3 A. Just my truck.
4 A. David did.	4 Q. Just your truck?
5 Q. So Mr. and Mrs. McGuire did not call you up and	5 A. Yes. And my dog.
6 ask you to come over?	6 Q. Your dog did you say?
7 A. No.	7 A. Yes.
8 Q. So your involvement started with a call from	8 Q. Did you have a pickup truck?
9 David?	9 A. Tahoe.
10 A. Yes.	10 Q. What were you going to do -- where were you going
11 Q. What do you recall him saying when he called you?	11 to put the wood if you did take some?
12 A. He said he was taking down another tree for his	12 A. I was going to go back home and get a trailer.
13 mom. And I said, "Do you need the chain saw?"	13 Q. You weren't even sure you were taking wood at
14 And he said, "No." And I was like "Oh." He	14 that point?
15 said, "Do you want the wood?" "Well, I'll come	15 A. Yes, exactly.
16 over and see what you got." Because he was	16 Q. You went out there in your personal vehicle with
17 trying to explain to me which tree it was, but I	17 your dog?
18 wasn't sure. So I said, you know, "I can come	18 A. Yes.
19 over and take a look in the morning."	19 Q. At that point you were not planning to assist
20 Q. I forgot to ask you. Did you take any of the	20 him; just to check the wood to see if you wanted
21 wood that was cut down of the apple tree wood?	21 it?
22 A. No.	22 A. Correct.
23 Q. Okay. So you agreed to come over and take a look	23 Q. On arrival who was there?
24 at the wood that was being -- I guess the tree	24 A. David, his mom Caroline, Bill. And at some point
101	103
1 wood that was -- strike that -- the remains of	1 in there his sister showed up.
2 the tree that was being taken down on June 28?	2 Q. Bill's sister?
3 A. Right.	3 A. No, David's sister Diane. She was there. I
4 Q. And heading over there was it your plan or did	4 don't remember when she came and went. She was
5 you anticipate helping him?	5 there.
6 A. Not with -- he said he had a chain saw, and he	6 Q. And on arrival are they all in the house, or is
7 does it all himself. So I anticipated just	7 the cutting ongoing and they are all outside?
8 getting the wood, you know, if I wanted it.	8 What do you recall?
9 Q. Okay. And prior to arriving at the property did	9 A. David was -- he came walking around the side of
10 you call the McGuires?	10 the house as I pulled up -- they must have seen
11 A. I don't think so, no -- you know what, I --	11 me -- and said, "Hey, how's it going," you know,
12 strike that. I don't remember if I called to	12 and I said, "Morning." He wanted to show me what
13 make sure he was there before I left in the	13 he had.
14 morning or not. I don't remember. I may have.	14 Q. So you went around back and looked?
15 Q. So he called you not on the day of, but some	15 A. Yes.
16 other point to alert you he would be there on	16 Q. How much of the tree was down at this point?
17 that day?	17 A. None.
18 A. Yes.	18 Q. What kind of tree was it?
19 Q. So you may have checked just to see if he was	19 A. Pine.
20 there?	20 Q. We're talking like a Christmas tree type, or the
21 A. Yes.	21 big one with all the ugly branches?
22 Q. Do you recall that being the case, or it's just a	22 A. They all have big ugly branches. It was the
23 possibility?	23 Christmas tree type.
24 A. It's a possibility.	24 Q. How tall was this thing?

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104	106
1 A. We all guessed at that. I think around 60 feet.	1 A. (Interrupting) They bicker like cats and dogs.
2 Q. And that's an estimate, correct?	2 Q. You have used that phrase "bicker." When you say
3 A. Yes.	3 bicker --
4 Q. None of it had been trimmed up at that point?	4 A. (Interrupting) Discuss.
5 A. Correct.	5 Q. Was she telling him she wanted certain trees down
6 Q. All right. And now you and David are back there	6 and he did not want to take those down or --
7 looking at it, correct?	7 A. (Interrupting) Yes.
8 A. Bill came out. Carol came out. They were all	8 Q. -- he wanted some down that she did not want
9 out there.	9 down?
10 Q. That is what I was going to ask next. Who else	10 A. Both ways.
11 was back there with you when you were looking at	11 Q. Okay. So other than identifying which additional
12 it before the work started?	12 trees had to be trimmed or cut down versus, you
13 A. Everybody.	13 know, left alone, do you recall any other
14 Q. Okay. And at some point the cutting began?	14 discussion between David and Caroline prior to
15 A. Yes.	15 him undertaking the effort to actually cut
16 Q. All right. Between the time you arrived and you	16 things?
17 went back with David to look at the tree -- and I	17 A. She was telling him about she -- the putting oil
18 think you said Bill and Carol were there, too?	18 in the chain saw. And he was like "I know. I
19 A. Uh-huh.	19 know, Mom," you know. Because it was brand-new.
20 Q. Yes?	20 They had just bought it. It was all little
21 A. Yes.	21 things. And a lot of the discussion didn't have
22 Q. Between that point in time and the time the tree	22 anything to do with the tree. We're talking
23 cutting actually started what discussions do you	23 about other things like other kids in the family
24 recall about this project?	24 and -- you know.
105	107
1 A. They showed me the new chain saw they bought.	1 Q. When David explained his plan for taking down the
2 Q. Okay.	2 tree, you heard part of that?
3 A. After that I was joking around with Bill a little	3 A. Yes.
4 bit. He was telling me about his vacation. Did	4 Q. Okay. Do you recall Caroline disagreeing with
5 a lot of talking about his vacation. We talked	5 him about how to go about taking down that tree?
6 about that all day.	6 A. Not too much, no.
7 Q. Okay.	7 Q. What about Bill?
8 A. I was playing with the dog. Carol loves my dog.	8 A. Bill just stood -- Bill wanted to make sure it
9 Just simple pleasantries. Nothing -- it wasn't	9 wouldn't hit the pool or the garage. Same thing
10 really about the work.	10 with Caroline. They did not want any damage to
11 Q. Do you recall any discussion about the work	11 their property other than it falling on the
12 between the time you went behind the house to	12 grass.
13 look at the tree and the time David started work	13 Q. That would seem to be any property owner's
14 on the tree?	14 concern is that they didn't get other damage.
15 A. David was talking about the work that he was	15 A. Sure.
16 going to do, where he was going to drop it, how	16 Q. But in terms of how to go about doing that, other
17 he was going to take it down. He was telling	17 than alerting Mr. Gagnon that they did not want
18 Bill and Carol how he was going to do this.	18 the house hurt or the pool damaged or anything
19 Q. Do you recall during that process Caroline	19 like that, do you recall any comments from either
20 McGuire trying to override any decision that	20 Mr. McGuire or Mrs. McGuire as to how to go about
21 David had?	21 doing that, or was that a decision that -- or a
22 A. Yes. But not about that tree. About other	22 plan that Paul -- I'm sorry -- Mr. Gagnon came up
23 trees.	23 with, from your vantage point?
24 Q. Okay. Well, what do you recall Caroline's --	24 A. He came up with it. He said what he was going to

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108	110
1 do, and he did.	1 A. No.
2 Q. Okay. In terms of discussions then leading, I	2 Q. At what point between the time they started
3 guess, from the time you got behind the house to	3 cutting to the point where you were hurt did they
4 the point in time where David started working on	4 leave?
5 the tree -- and specifically I'm talking about	5 A. Well, Bill was in and out of the house getting
6 conversations you overheard with the McGuires and	6 things to drink and whatnot and talking to
7 Mr. Gagnon -- there was concern about not	7 Caroline. I don't know when he disappeared that
8 damaging the house or pool?	8 last time. But Dave's sister was in the pool,
9 A. Uh-huh.	9 and she disappeared, too. I think she went home.
10 Q. And there was also discussion over which tree	10 I don't know what happened to her. But, yes, it
11 should be cut and which tree should not be cut --	11 was -- he was in and out, you know.
12 A. (Interrupting) Uh-huh.	12 Q. Okay. Why don't you tell me about the work you
13 Q. -- correct? And then you remember them talking	13 saw David do between the time he started it and
14 about the chain saw being new and Mrs. McGuire	14 the time you actually started helping him with
15 concerned about making sure there is oil in it?	15 any aspect of it.
16 A. Yes.	16 A. He was taking off the lower branches of the pine
17 Q. Anything else you can recall?	17 tree.
18 A. That's about it. I'm sure there were other	18 Q. Okay. So you're just standing there watching
19 things.	19 this?
20 Q. Did David consult with you about how to get the	20 A. Oh, yes.
21 tree down?	21 Q. And so the first task that you saw him undertake,
22 A. Not much. He asked me how tall I thought it was.	22 he was using the chain saw to cut some of the
23 But he knew how to measure out pacing or	23 lower branches off of this pine tree?
24 something, some trigonometry thing. He figured	24 A. Yes.
109	111
1 out how tall it was.	1 Q. And that was from the ground level?
2 Q. So, I mean, did it appear to you that he looked	2 A. Pretty much the first lower branches, you know.
3 like he knew what he was doing?	3 Q. Okay.
4 A. Oh, yes.	4 A. And then he worked his way up, you know.
5 Q. You say you saw him actually measuring things?	5 Q. Got you. How far along with the cutting process
6 A. Yes.	6 was he before you did anything to assist him?
7 Q. Like just walking it off in feet, or did he have	7 A. He was pretty high in the tree. Probably 25 --
8 a tape measure out there?	8 well, 20 feet. I'm getting -- his chain saw died
9 A. No. He paced it off. He was estimating the	9 on him. He had a rope. And he lowered it down,
10 height of the tree from where it would fall.	10 and he asked for me or Bill to restart it for
11 Q. Okay. Any other preparations that you observed	11 him, and I restarted it. And then he raised it
12 him undertake before he actually began cutting?	12 back up in the tree and pulled it back up there
13 A. Preparations? Getting the chain saw ready. He	13 and then just kept going.
14 ate breakfast in between. He's the kind of guy	14 Q. Okay. And so how is he getting up the tree?
15 that would work for 10 minutes and then take a	15 A. He's climbing.
16 20-minute break and work for 10, you know.	16 Q. He's climbing the tree?
17 Q. Okay. So at some point the chain saw gets fired	17 A. Yes.
18 up, I take it?	18 Q. Does he have little spikes on his shoes?
19 A. Yes.	19 A. I didn't see spikes, no.
20 Q. And are the McGuires still out in the yard?	20 Q. So is he cutting the branch and using the stump
21 A. I believe so.	21 as a step?
22 Q. From the Interrogatory answers it looks to me	22 A. Yes. He had some sort of belt he had wrapped
23 like they were not present in the area when you	23 around the tree. I have never done anything like
24 actually got hurt?	24 that, so I -- that's not -- I have -- not that

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30 (Pages 108 to 111)

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112	114
1 skilled.	1 for me. I'll pull it back up."
2 Q. You have never cut a tree down the size of this	2 Q. You believe it stalled, and he lowered it down to
3 one?	3 have somebody else start it?
4 A. No.	4 A. Yes.
5 Q. And you have never used any straps or belts or	5 Q. Did you recall him saying, "It's too dangerous to
6 harnesses to ascend the tree?	6 start up here on my own"? Is it just something
7 A. I wouldn't climb into a tree like that, no.	7 you assumed?
8 Q. Now, I mean, you're watching him do it?	8 A. I assumed it. I would think it would be too
9 A. It looks scary.	9 dangerous.
10 Q. You're watching him do this?	10 Q. So you did restart it?
11 A. Yes.	11 A. Yes.
12 Q. How many branches do you think he cut, I mean, up	12 Q. And so when it goes up on the rope, it's running,
13 to this point where --	13 but the blade is not turning, obviously?
14 A. (Interrupting) There was a lot of branches. I	14 A. Correct.
15 mean, I was surprised how many branches are on a	15 Q. You have to use the trigger to get the chain to
16 pine tree. So I can't guess the number, but	16 move?
17 there was a lot.	17 A. Correct.
18 Q. And he's got some kind of a strap holding him to	18 Q. And I presume the rope is not going through the
19 the tree, and he's using his feet as support?	19 trigger area?
20 A. Standing on the stumps that he had cut for it,	20 A. No, it's not.
21 yes.	21 Q. There is a --
22 Q. And and then the chain saw is attached to a rope	22 A. (Interrupting) It's tied around the bar.
23 of some sort?	23 Q. Got you. So it gets back up to him. Does he
24 A. Yes. He had tied a rope around the handle of the	24 continue on with the cutting?
113	115
1 chain saw and had it up in the tree with him.	1 A. Yes.
2 Q. And is Mr. McGuire out there for this?	2 Q. And what is the next involvement of any sort that
3 A. Yes.	3 you had?
4 Q. Mrs. McGuire, too?	4 A. Bill wanted to get some of the sticks that he was
5 A. At times.	5 cutting down off the ground and into a pile so he
6 Q. Are they doing anything other than watching him?	6 started doing that. And then my dog went and
7 A. Bill was talking to me. He really liked his	7 grabbed some sticks because he sees sticks, you
8 vacation, and he was -- he had story after story.	8 know. So I went over, and I was helping Bill put
9 Q. So he's really kind of a spectator more than	9 the sticks into a pile next to the garden. They
10 anything, and he's having conversations with you?	10 were just laying on the ground. We were standing
11 A. Both of us were, yes.	11 there doing nothing.
12 Q. He's not directly assisting David up there in the	12 Q. Okay. So you were basically just helping Bill
13 tree?	13 move some of the debris over into a pile?
14 A. Bill did -- yes, exactly.	14 A. Yes.
15 Q. Did Bill ever climb the tree?	15 Q. The smaller stuff?
16 A. No.	16 A. Well, the long --
17 Q. All right. So he's about 20 to 25 feet up when	17 Q. (Interrupting) The limbs?
18 he -- did it run out of gas or something?	18 A. Yes.
19 A. I think it just died.	19 Q. And what was the plan for those, if you know?
20 Q. It died. He needed somebody else to start it?	20 Were they going to be chipped up?
21 A. (Indicates affirmatively.)	21 A. Well, Bill wanted to burn then. In fact, he
22 Q. He didn't try to start it himself up in the tree?	22 started a fire and was burning them.
23 A. No. He said it was dangerous. He said, "I'm	23 Q. Okay.
24 going to lower it down to the ground. Start it	24 A. And somewhere along the way David wanted to save

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31 (Pages 112 to 115)

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116	118
1 them.	1 Q. For a good portion of time?
2 Q. All right. So all you're doing is taking the	2 A. Yes.
3 stuff that has fallen off the tree and dragging	3 Q. At some point Bill started dragging these
4 it into a separate area at this point?	4 branches to a different area, and you lent a
5 A. Yes.	5 hand?
6 Q. All right. And did Bill ask you to help, or you	6 A. Yes.
7 were just there and you decided to help him?	7 Q. You didn't do that anticipating any payment of
8 A. I just decided to help him.	8 any sort, correct?
9 Q. Did you at that point discuss, you know, payment	9 A. Correct.
10 for doing this?	10 Q. And then how long does this go on where you're
11 A. No.	11 moving branches?
12 Q. Did you consider yourself doing him a favor by	12 A. Well, some time. David, he took some good long
13 just helping?	13 breaks. So a few hours. At least a couple. I
14 A. Yes.	14 mean, we weren't moving branches for two hours.
15 Q. Was it your plan to maybe -- had you decided at	15 You move them for two minutes and you're done for
16 that point to take any of the wood as firewood?	16 20 minutes, you know.
17 A. No. I told him I didn't want it.	17 Q. Until there is some more down?
18 Q. None of it?	18 A. Yes.
19 A. None of it. It's pine.	19 Q. Because you're not standing under there as they
20 Q. Even the trunk of it once it was done?	20 are dropping down?
21 A. None of it is any good for burning in a	21 A. Right.
22 fireplace.	22 Q. So it's off and on for a couple of hours you're
23 Q. So once you got back there and saw it was going	23 moving these branches?
24 to be a pine tree coming down, you knew you	24 A. Yes.

117	119
1 weren't going to be taking advantage of any of	1 Q. At some point does David get the whole -- the
2 the wood?	2 whole trunk, it's eliminated with -- all the
3 A. Correct.	3 smaller branches are gone?
4 Q. It wasn't your chain saw, correct?	4 A. He got it pretty far up. And when he came down,
5 A. Right.	5 he looked pretty scared. I was like "I wouldn't
6 Q. What purpose other than talking to Bill did you	6 want to do that. I have to give it to you
7 have for staying?	7 because I wouldn't climb up like that."
8 A. Well, Carol talked to me about -- it was just	8 Q. Did he get all the way to the top, very top of
9 social. Carol was talking about old people that	9 that, 50 or 60 feet high?
10 worked at Intermatic. Bill was telling me about	10 A. No, no.
11 his vacation. And it was just talk, you know. I	11 Q. So at some point he comes down, and there is
12 didn't plan on staying that long at all, but they	12 still some of the triangular part of the tree
13 just keep talking. I didn't have anything else	13 with the branches?
14 to do that day, so I just . . .	14 A. Yes. There was a good -- better than a third of
15 Q. What day of the week was it?	15 it, maybe a little more, left.
16 A. I don't recall offhand.	16 Q. So roughly two-thirds of it is free of the limbs?
17 Q. Was it a weekend?	17 A. Between a half and two-thirds, yes. Somewhere in
18 A. No, it was not a weekend.	18 there.
19 Q. All right. So you decided you weren't going to	19 Q. And then he comes down. Is that when he falls
20 take any wood, and it was really by -- you were	20 the tree?
21 kind of hanging out socializing with the	21 A. No.
22 McGuires, if I'm understanding what you're	22 Q. Did he ever cut the tree and see it fall over?
23 saying?	23 A. No.
24 A. Yes.	24 Q. Did you get injured before that happened?

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32 (Pages 116 to 119)

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120	122
1 A. Yes.	1 like that, no.
2 Q. So he comes off of the tree having cut down half	2 MS. FREEMAN: Just answer the question.
3 to two-thirds of the limbs?	3 A. No.
4 A. Uh-huh.	4 Q. All right. So now David needed some help with
5 Q. Right?	5 something. What was it, as you recall? What did
6 A. Uh-huh.	6 he need help with?
7 Q. Is that a yes?	7 A. He had accumulated a very large pile of, you
8 A. Yes.	8 know, the long pine branches. He asked if I
9 Q. All right. And then during that period of time	9 could help him for a few minutes. I said sure.
10 while he was up there, that is when you and Bill	10 He says, "I need you to hold these while I cut
11 were dragging some of these branches over to a	11 off the things on them." And he showed me what
12 different area?	12 he wanted, showed me where to stand. And I said,
13 A. Yes.	13 "Yeah, I can do that," you know. And -- yes.
14 Q. And at what point is it that you're involved in	14 Q. All right. So I guess from what I envision,
15 any activity which resulted in your injury?	15 he's cut all of these limbs off of that pine
16 A. When David came down, he took a good long break.	16 tree. Now there is a big pile of them; one you
17 He was tired. He was climbing the tree. He was	17 guys weren't able to move, you and Bill?
18 tired. I think he ate something for lunch. I	18 A. He had another pile from the tree right next to
19 was offered a pop. You know, I sat there and	19 it, yes.
20 drank a pop, was playing with my dog. After	20 Q. And what was he going to do? Trim some of the
21 lunch Dave went back over there to do some more	21 smaller branches off the limbs?
22 work. He started trimming on the tree next to	22 A. That's what he wanted to do. He wanted to save
23 it. Wasn't even the same tree. Same thing,	23 the center part for firewood or something like
24 taking off the lower branches. And it was when	24 that for campfires or something. I don't know.

121	123
1 he was doing that, when he was done with trimming	1 Q. So by cleaning off the smaller branches, then
2 that tree, that is when he asked me to come over	2 there would be some logs that could be cut up
3 and hold something for him.	3 that would be suitable for firewood?
4 Q. So after lunch he stopped working on the tree	4 A. Correct.
5 that you saw him work on all morning, correct?	5 Q. Did you and he actually -- did he tell you what
6 A. Uh-huh.	6 his plan was or what he was going to do?
7 Q. And started working on an adjacent tree?	7 A. He told me exactly what to do. He knew what he
8 A. Uh-huh.	8 was doing. You know, seemed that way to me.
9 Q. He was at ground level again just cutting off	9 Q. And he told you what he wanted you to do?
10 branches?	10 A. Yes.
11 A. Uh-huh.	11 Q. And what did he tell you to do?
12 Q. That was the first time he directly asked you for	12 A. Took the branch, pull it over here so it's away
13 help?	13 from the rest of them. Hold the one end up, and
14 A. Yes -- well, other than start the chain saw	14 he would cut the smaller stuff off the other end.
15 earlier.	15 And when that was done, put it down, grab the
16 Q. Yes. So up until that point in time I take it	16 next one, put it up and -- you know, yes.
17 you had not offered David any thoughts about how	17 Q. So I'm understanding, you're taking a limb that
18 to proceed with the tree trimming, whatever he	18 had been cut off the tree, you're holding it
19 was doing? You're just watching?	19 upright?
20 A. Yes.	20 A. No.
21 Q. You didn't offer him any comments on how to do	21 Q. No?
22 this, the way he was going about getting this	22 A. Can I do -- I don't know how it translates.
23 stuff done?	23 Q. We'll explain it on record. But if that straw
24 A. I have never seen it done, that big of a tree	24 will help you orient us as to what you were

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33 (Pages 120 to 123)

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124	126
1 doing --	1 A. That's what he wanted those for is to cut it in
2 A. (Interrupting) The branch would be like this	2 smaller pieces.
3 (indicating) to the ground.	3 Q. Did he do that task, too, each time you --
4 Q. All right. So the heavier -- the thicker part of	4 A. (Interrupting) I think he did the first few, and
5 the branch is laying on the ground?	5 then we just started taking the other ones, the
6 A. Actually, the thinner part was. That is the way	6 longer things off. He dictated what he wanted.
7 he wanted it.	7 Some of them he wanted -- you know, he wanted to
8 Q. So you're holding the heavier part of the limb?	8 see what he could get out of it first.
9 A. Yes.	9 Q. All right. So the first couple you trimmed the
10 Q. The long part of it?	10 branches up and then cut them into smaller logs
11 A. Yes.	11 immediately?
12 Q. And he's trimming off the smaller branches?	12 A. Yes.
13 A. Yes.	13 Q. Did you hold the longer limb as he cut it into
14 Q. Off his limb?	14 smaller sections?
15 A. Yes.	15 A. No. He had set up a -- from the apple tree he
16 Q. Does he start at the end and work his way closer	16 set up two logs and was able to set it on there
17 to you?	17 and just (indicating).
18 A. Yes.	18 Q. So you didn't hold the log as he was trimming
19 Q. And how long are these limbs?	19 them into smaller pieces?
20 A. They're pretty long. I would only be able to	20 A. The middle part, no. I was there when he took
21 guess. I would have to say 20 feet. Pretty big.	21 off the little pieces.
22 Especially the lower ones off the pines, you	22 Q. So the first couple of these he trimmed it down
23 know.	23 and then immediately made them into logs?
24 Q. Okay. So how many of these things do you think	24 A. Yes.

125	127
1 you were able to accomplish before you were	1 Q. And then after a while he decided he was going to
2 injured?	2 trim all the branches off while you were there to
3 A. We did quite a few.	3 help?
4 Q. And are you able to quantify that in any way?	4 A. Yes.
5 More than one, obviously?	5 Q. And you were doing it with a couple of dozen of
6 A. Yes. More than a few. Maybe a few dozen. Maybe	6 these before you got hurt?
7 a little more. We did it -- you know, we did	7 A. Yes.
8 that for about I would say a good -- you know, it	8 Q. All right. So he told you how he wanted -- he
9 was a while. I don't know exactly. I didn't	9 basically told you he wanted you to hold the
10 have a watch.	10 end --
11 Q. Are we talking a half hour or more?	11 A. (Interrupting) Yes.
12 A. Yes.	12 Q. -- while he trimmed those up?
13 Q. All right.	13 A. Yes.
14 A. It wasn't --	14 Q. And did he tell you to do anything other than
15 Q. (Interrupting) A dozen? At least a couple of	15 stand there and hold up the one end?
16 dozen of these things you have gone through this	16 A. When they were done they had to be put over here
17 process trimming all these branches off in the	17 and then grab a new one, you know, bring it over
18 way he told you to do it, you hold the end and	18 to this spot so he could start again.
19 he's going to work his way up?	19 Q. He would stay there, and you would drag the log
20 A. Right.	20 to a pile and then drag a new branch over?
21 Q. Once all of those little branches are off	21 A. Yes.
22 there -- is it kind of a longer log?	22 Q. Prior to undertaking this trimming did he offer
23 A. Yes.	23 you any instructions beyond "Here, hold this"?
24 Q. Did he then cut that into smaller pieces?	24 Did he say, "Keep your hands free. Stay away"?

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34 (Pages 124 to 127)

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128	130
1 A. He said, "Stand here. Hold it here and don't	1 that phase of the job?
2 move." He said don't allow it to move because it	2 A. No.
3 would roll, you know, so you had to hold it	3 Q. Did you at that point believe you were taking
4 tight.	4 instruction from Mr. Gagnon?
5 Q. So other than telling you where to stand and how	5 A. Yes.
6 to hold it and not let it spin, did he give you	6 Q. You were doing what he told you to do?
7 any warnings that were safety-oriented like "Keep	7 A. Yes.
8 your hands free. When I get close to you, keep	8 Q. Did you think you were taking instructions from
9 your hands to you," anything --	9 the McGuires at that point?
10 A. (Interrupting) No.	10 A. They didn't say much.
11 Q. Anything about that -- obviously, to the point	11 Q. And the entire time you're trimming -- during
12 you got hurt, did anything about that task	12 this phase where the branches are being trimmed
13 concern you from a safety standpoint?	13 off the limbs, I take it Mr. McGuire wasn't there
14 A. He was far enough away from me it wasn't . . .	14 helping you holding these limbs?
15 Q. So up until you were actually hurt he kept a	15 A. No. We were -- it was getting into the afternoon
16 certain amount of distance away from you?	16 after -- like after lunch, and I think he was
17 A. Yes.	17 getting tired. That is the way I feel. He was
18 Q. How close was the nearest he got to you prior to	18 older.
19 when you got hurt?	19 Q. The particular phase of the project, the trimming
20 A. Maybe three or four feet, maybe five feet,	20 of the limbs, that was you and Mr. Gagnon?
21 somewhere in there. There was a good chunk of	21 A. Yes. I remember Mr. McGuire saying that he
22 those branches that were next to the trunk that	22 wanted to burn the limbs, and David wanted to
23 didn't have anything on them, you know. They	23 save them.
24 didn't have the growth. The growth was out in	24 Q. And at no time that day did you run the chain
129	131
1 the ends.	1 saw?
2 Q. All right. And during this 20 or 24 more limbs	2 A. I started it.
3 that you guys trimmed up before you were hurt,	3 Q. But you didn't run it --
4 was Mr. McGuire out there?	4 A. (Interrupting) No.
5 A. Yes -- wait a minute. I was working, so I wasn't	5 Q. -- and apply it to any limbs or logs?
6 paying attention at that point. I was helping	6 A. No.
7 hold the limb. You know, I was paying attention	7 Q. All right. Why don't you get to -- we have got
8 to what I was doing. I stopped paying attention	8 to the dozen or two dozen or so of these limbs
9 to Bill and Carol, so I don't know where they	9 before you were hurt. Tell me, as you can
10 were. You know, I know they were coming in and	10 recall, what happened.
11 out of the house.	11 A. Do you mean the actual incident?
12 Q. Okay. So whether they were there or not during	12 Q. Actual incident. You have done a couple of dozen
13 the trimming part you're not sure?	13 of these without incident?
14 A. Yes.	14 A. Right.
15 Q. It could be? Maybe not?	15 Q. And then what happened?
16 A. Yes.	16 A. He walked towards me, and the chain saw came up,
17 Q. That being the case, I take it you don't recall	17 and it cut me. I tried to get out of the way,
18 either one of the McGuires intervening, saying,	18 but . . .
19 "Hey, that doesn't look safe," or "Be careful,"	19 Q. Were you guys actually working on trimming a limb
20 or anything like that during the trimming part?	20 at that point?
21 A. No.	21 A. I was holding a limb up, yes.
22 Q. And you recall Mr. Gagnon telling you where to	22 Q. You were holding a limb?
23 stand and how to hold the branches. Did either	23 A. Yes.
24 of the McGuires give you any instructions during	24 Q. With which hands?

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35 (Pages 128 to 131)

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132	134
1 A. My right hand.	1 Q. Before you got hit with the saw?
2 Q. So you're able to hold these with one hand up in	2 A. Yes.
3 the air?	3 Q. And I take it unlike the other branches, there
4 A. They were only this (indicating) -- you're	4 may have been a branch closer than the four to
5 talking logs. I call them sticks.	5 five feet?
6 Q. Okay. I didn't ask that question so I'm glad you	6 A. No. He stopped cutting the limb, chain saw went
7 clarified. The limbs that we're talking about,	7 down, went to idle. You know, he walked toward
8 what was the diameter on average?	8 me, and I thought he was going to say something
9 A. The side that I was holding?	9 like next instruction, what to do, okay, and I
10 Q. Yes.	10 don't know what he was thinking or what he was
11 A. Maybe -- I don't know what you consider that	11 doing or what, but the chain saw started coming
12 (indicating). Three inches. Your guess is as	12 up, and the gas went on, and I tried getting the
13 good as mine.	13 hell out of the way and -- yes.
14 Q. Okay. Well, it's certainly not the full width of	14 Q. So it wasn't during a cutting process that you
15 your fingers?	15 were hurt?
16 A. No. I can hold it with one hand.	16 A. Yes, you're right.
17 Q. It's about the width of a pop can -- diameter	17 Q. He disengaged from trimming the branch, if I'm
18 width of a pop can?	18 understanding your testimony, and the chain went
19 A. Coffee cup there, yes.	19 into an idle position?
20 Q. They were like three to four inches?	20 A. The motor went to idle.
21 A. Yes.	21 Q. And the chain is not even moving, and he's
22 Q. And that was how all the other ones were, too?	22 holding it down to his side?
23 A. Yes.	23 A. Both hands.
24 Q. And then you were strong enough, and at least at	24 Q. With both hands. But the chain is not moving?

133	135
1 that point you were healthy enough to hold it	1 A. Yes.
2 with which hand?	2 Q. And he closes the gap between you and him in
3 A. Right here (indicating).	3 terms of space?
4 Q. Right.	4 A. Right.
5 A. Right.	5 Q. And you were still holding the branch at this
6 Q. And you're right hand dominant?	6 point?
7 A. Yes.	7 A. Yes.
8 Q. So you could hold those out?	8 Q. And somehow the chain, it gets activated?
9 A. Yes.	9 A. When I heard the chain saw, the motor speed up
10 Q. And so you would hold it kind of horizontally,	10 and I saw with my eyes it start to come up, I
11 and the rest of it would stretch out towards	11 dropped the branch, tried to get the heck out of
12 Mr. --	12 there because it's coming up between me and the
13 A. (Interrupting) Yes. Go down along the ground	13 branch. "What the fuck are you thinking?" I
14 there.	14 don't know how to say -- you know, I screamed.
15 Q. And then you say Mr. -- you described it as	15 Whether he was going after something he thought
16 Mr. Gagnon walking towards you with the chain saw	16 he saw coming off the branch, I don't know.
17 and then you just got cut. Can you elaborate on	17 Q. Okay.
18 that a little bit? He didn't just -- you were	18 MS. FREEMAN: Wait for a question.
19 actually -- he was actually working on trimming a	19 Q. So you're holding the branch with your right hand
20 tree branch, correct?	20 just like you had done on the two dozen or more
21 A. Yes.	21 before. He's trimming branches off this thing
22 Q. And so I take it he was trimming, getting closer	22 and stops trimming, correct?
23 and closer to you?	23 A. Yes. He was done.
24 A. Before it, yes.	24 Q. And then he --

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36 (Pages 132 to 135)



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136	138
1 MS. FREEMAN: (Interrupting) Wait until	1 A. I had no idea, and I went into panic mode.
2 he finishes.	2 Q. All right. And so I think you said you had
3 Q. And he then walks toward you holding the chain	3 released the branch before the saw came in
4 saw in a position where he might be able to cut	4 contact with your arm?
5 if the chain was moving?	5 A. (Indicates affirmatively.)
6 A. It was pointed downward.	6 Q. Is that right?
7 Q. Pointed downward?	7 A. Yes.
8 A. Yes --	8 Q. And did you turn your body?
9 Q. (Interrupting) But the chain is not moving --	9 A. Uh-huh.
10 A. -- towards the ground.	10 Q. Describe for me this point in time where you see
11 Q. The chain is not moving?	11 this blade coming up with the saw moving and all
12 A. Right.	12 of a sudden -- and then at that point where your
13 Q. And he gets close enough to you to reach you,	13 arm is hit. What did you do?
14 obviously?	14 A. I let go of the branch, and I tried bringing my
15 A. (Indicates affirmatively.)	15 arm up and away from the saw blade and out and
16 Q. Then you hear the chain saw, the rpms ramp up?	16 around to get away. It was coming right up, you
17 A. Oh, yes.	17 know, and it was coming up. It was fast.
18 Q. And when you heard it ramp up, was it a concern	18 Q. All right. So you tried to get your arm out of
19 of yours that the chain might be moving at that	19 the way. The blade is coming up, but you didn't
20 point?	20 get it away fast enough?
21 A. It was an instant high alert on my part, yes.	21 A. Obviously got it away enough to keep my hand and
22 Q. Did you see the chain saw blade with the chain	22 my arm. I'm lucky to have that.
23 moving at any point before it made contact with	23 Q. And then at this point where your arm is actually
24 your arm?	24 injured, do you believe that either one of the
137	139
1 A. Oh, yes.	1 McGuires was present to see that?
2 Q. So you heard it ramp up in terms of rpms and	2 A. No. I know they weren't. They said they
3 looked?	3 weren't.
4 A. Oh, yes.	4 Q. All right. So if I'm understanding your
5 Q. Are you still holding the branch at this point?	5 testimony then, at the time the blade made
6 A. I was letting go.	6 contact with you, you were not actively assisting
7 Q. And as you hear the thing fire up, you turn to	7 him by holding a branch? You had, in fact,
8 look at it, correct?	8 released the branch?
9 A. I was looking at it while I was watching him.	9 A. Oh, yes.
10 You know, I never turned away.	10 Q. And there was no dialogue from Mr. Gagnon as he
11 Q. And so it's pointed down, and then the rpms ramp	11 approached with the blade as to what his
12 up, and you see the blade coming toward you?	12 intention was at that point in time where the saw
13 A. Uh-huh.	13 became I guess --
14 Q. And you let go of the tree?	14 A. (Interrupting) Pointed downward.
15 A. Yes.	15 Q. -- pointed downward and began moving upward?
16 Q. But the blade, nonetheless, still makes contact	16 A. Right.
17 with your arm?	17 Q. There was no statement out of him at all?
18 A. Yes.	18 A. No. I was looking to see if he was going to say
19 Q. Did it ever make contact with the tree branch?	19 something to me because it looked like he was
20 A. No.	20 approaching me to say something; he wanted me to
21 Q. From your vantage point was it -- well, strike	21 do something else, or, you know, I thought there
22 that. Did Mr. Gagnon tell you what his plan was	22 was an instruction coming.
23 when he got near you and turned the saw on and	23 Q. But ultimately there was no additional comment
24 had lifted the blade toward you?	24 made by him prior to the rpms on the chain saw

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37 (Pages 136 to 139)

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140	142
1 ramping up and the blade coming up toward you?	1 A. No.
2 A. Correct.	2 Q. So he may have a different version of what
3 Q. And so this isn't a situation where the blade and	3 kickback means, but the kickback definition or
4 the saw -- I'm sorry -- the blade and the chain	4 your impression of a kickback that you described
5 made contact with the branch and kicked it toward	5 earlier, that is not what you recall happening?
6 you?	6 A. Correct.
7 A. No.	7 Q. If I'm hearing what you're saying, he might have
8 Q. This isn't a situation where the blade was	8 been trying to get toward that branch to cut it
9 cutting through a branch and caught the very tip	9 but he never got there? He got to your arm
10 of the saw and fired back at you?	10 before he made any contact with the tree?
11 A. No, it's not.	11 A. Well, I was holding the end of the branch. There
12 Q. There was no cutting actually involved of a	12 was no branch beyond my hand.
13 branch when you got struck with the blade?	13 Q. And that's what I'm getting at is from your
14 A. Correct.	14 recollection of what went down, regardless of
15 Q. After this happened did you ask Mr. Gagnon what	15 what his intentions were, he lifted up the chain
16 he was trying to accomplish at that point in	16 saw, the rpms ramped up, and the chain is moving.
17 time?	17 You tried to get out of the way of the blade, but
18 A. After I screamed my head off, that was the first	18 you were not able to get out of the way in time?
19 thing that came out of my mouth was -- excuse the	19 A. Correct.
20 expletive -- "What the fuck are you thinking?"	20 Q. That is what happened?
21 Q. Did he have a response for you?	21 A. Correct.
22 A. He became immediately I think distraught would be	22 Q. And other than him mentioning something about a
23 the word, confused. "Oh, my God." Panic, yes.	23 kickback when you're in the emergency room, as we
24 Q. So he didn't make any comment to you about what	24 sit here today have you ever discussed the
141	143
1 he was trying -- the task he was trying to	1 dynamics of what happened in a situation where he
2 accomplish? It was more shock and stunned about	2 explained what he was trying to do?
3 this scene having happened?	3 A. Of course I asked him, and I don't remember at
4 A. Yes.	4 what point I asked him, and he could never
5 Q. Since that point in time where you got hit with	5 explain it. He just (indicating). You know, I
6 the blade and now did he ever tell you in his	6 don't think he knows. I honestly don't think he
7 words what he was specifically trying to do at	7 knows.
8 the time this happened?	8 Q. So as you sit here today, regardless of how many
9 A. In the emergency room he used the word kickback,	9 times you asked him -- and it's more than once, I
10 but I didn't understand what he meant or how, you	10 take it, correct?
11 know. And they are going in to sew me up and put	11 A. Oh, yes.
12 the muscles back together, you know, as best they	12 Q. In your mind, he's never articulated specifically
13 can. I don't know what happened there.	13 what he was doing at the point in time where the
14 Q. All right. So you definitely recall him in the	14 blade made contact with your arm?
15 ER using the phrase kickback?	15 A. Correct.
16 A. Yes.	16 Q. Other than referencing a kickback in the ER?
17 Q. All right. But from your vantage point this idea	17 A. Yes.
18 of a kickback, it wouldn't have anything to do	18 Q. Okay. With respect to the McGuires, at what
19 with a kickoff of a branch or a log or a limb	19 point in time was your first notice that
20 that was being cut?	20 Mr. McGuire or Mrs. McGuire were aware of you
21 A. No. It had nothing to do with that.	21 being potentially hurt?
22 Q. And you didn't see the saw come onto a tree	22 A. Immediately. They heard me scream.
23 branch, that tree branch you were dropping, and	23 Q. Okay. Do you believe they came from inside the
24 then kick toward you? You didn't see that?	24 house?

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38 (Pages 140 to 143)

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144	146
1 A. Yes.	1 A. No.
2 Q. And when they came out, was there any discussion	2 Q. Did Mr. Gagnon ever tell you he was going to pay
3 between you and Mr. Gagnon about what had	3 you anything?
4 happened?	4 A. No.
5 A. No.	5 Q. Did he ever make any comment to you that he was
6 Q. Would it be fair to describe the post injury part	6 being paid to get this done by his parents?
7 on the premises as being more concern about how	7 A. He did say he was getting something for it. I
8 you were doing than what happened?	8 don't know what. I don't know the terms. I
9 A. It was pretty important to me.	9 remember something in there he was referring to
10 Q. Right.	10 he had to do this because he owed his mom money
11 A. Yes, it was very important. Carol was very	11 or something. I don't know.
12 concerned. She come out yelling. "I heard it.	12 Q. And I take it Gagnon didn't promise to share
13 I knew my son cut you." She came out screaming,	13 payment he may have been receiving with you?
14 you know, and -- yes -- yes.	14 A. No.
15 Q. Did either of the McGuires ever make any comments	15 Q. Did you consider yourself a volunteer out there?
16 to you to suggest or pursuant to which you formed	16 A. Yes.
17 the impression that they saw what happened?	17 Q. But obviously you felt you were taking directions
18 A. No. They said they didn't. She said she heard	18 from Gagnon but you were volunteering?
19 it. She heard the screams. She heard what was	19 A. Yes.
20 said right after. She heard all of that. She	20 Q. You didn't expect to get anything out of this?
21 was right there in the kitchen.	21 A. No.
22 Q. She heard the screams, and her thought was	22 Q. Certainly not an injured arm?
23 somebody was cut?	23 A. Definitely not this, no. Maybe a pop, you know.
24 A. (Indicates affirmatively.)	24 Q. All right. So we have all of your medical

145	147
1 Q. How soon after this happening did you move on to	1 records but I want to go through this a little
2 the emergency room?	2 bit. At the emergency room they evaluated your
3 A. I don't know timewise. I was in shock. It	3 arm, correct?
4 seemed like it took forever. So I can't tell you	4 A. Yes.
5 whether it was five minutes or ten minutes. I am	5 Q. They cleaned out the wound?
6 not capable of doing that for you. I can tell	6 A. Yes.
7 you that I started giving orders at that point.	7 Q. Did they do some X-rays at the ER?
8 First time all day. And I needed a towel, I	8 A. Yes.
9 needed something to put on it, I needed to tie it	9 Q. Did they tell you that it didn't reach the point
10 off. We needed to go to the emergency room now,	10 where it hit any of your bones?
11 and there was no waiting.	11 A. No, it did not.
12 Q. So once you got hurt, you became more focused	12 Q. Initially was it the impression, as you
13 about getting the care you needed?	13 understood it, that it was a tear through the
14 A. Yes.	14 skin and into the muscle?
15 Q. Up until --	15 A. Yes.
16 A. (Interrupting) I was quite vocal.	16 Q. There was no belief there was nerve involvement
17 Q. Up until the point where you were cut with the	17 initially?
18 chain saw had the situation ever turned from a	18 A. You know, once they gave me the painkiller, I
19 volunteer situation like you described early on	19 don't -- I was in la-la land.
20 to an employment situation were you thought you	20 Q. To the best of your understanding, did they do
21 were going to be compensated?	21 anything else in the emergency room other than
22 A. No.	22 clean it and then stitch it up?
23 Q. Did the McGuires ever promise to pay you	23 A. Yes. They did the stitches and closed it up and,
24 anything?	24 you know, X-rays. I don't remember what all.

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39 (Pages 144 to 147)

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148	150
1 Q. In the emergency room did they have you use your	1 Q. And even today you're still having problems?
2 hand and move it to see if you were still	2 A. Yes.
3 functioning?	3 Q. Sometime I think later in 2011, maybe it was
4 A. Yes.	4 early 2012, you had an EMG study done on your
5 Q. And was it still functioning at that point?	5 right arm?
6 A. Parts, yes. They didn't really check it. I did	6 A. I think I had a few of those.
7 that. I wanted to know what would work, and I am	7 Q. Nerve conduction study?
8 moving my hand around to see what is going on.	8 A. Yes.
9 And once the pain medicine they gave me kicked	9 Q. And there was something done early on with the
10 in, you know, I was able to move a little bit but	10 Shoulder to Hand Clinic, Dr. Talerico or
11 not a whole lot.	11 something like that?
12 Q. Once the pain medicine kicked in, I take it the	12 A. I remember Talerico. I did go see him.
13 injury itself felt a little better?	13 Q. That doctor had evaluated the EMG study, and he
14 A. Oh, I went (indicating). It was --	14 evaluated you, didn't feel there was any nerve
15 MS. FREEMAN: (Interrupting) Just answer	15 impairment. Do you recall that?
16 the question.	16 A. He said -- well, I left Dr. Talerico because I
17 Q. It did?	17 don't think he knew who he was talking to. He
18 A. Yes.	18 started yelling at me about asking for pain
19 Q. And then how long was it before -- well, strike	19 medication, and I never even got anything from
20 that. Eventually did you have to go somewhere	20 that man ever in my life. And I left seeing him
21 and have the stitches out?	21 because I don't think he -- there was something
22 A. Yes.	22 wrong there. And I only saw him twice, and I was
23 Q. And who did that?	23 out of there.
24 A. Dr. Sek.	24 Q. Do you recall him giving the opinion that he

149	151
1 Q. Where is Dr. Sek?	1 didn't think there was anything surgically he
2 A. He's right here on Elm Street.	2 could do for you?
3 Q. He's still operating here?	3 A. Not at that point. He did say time will tell.
4 A. I have known him since I was five years old.	4 Q. Okay. And then you left Dr. Talerico?
5 MS. FREEMAN: Just answer the question.	5 A. Yes.
6 Q. We have sent a records request for him several	6 Q. And did you go somewhere else?
7 times and there has never been a response. He's	7 A. Yes.
8 still working here somewhere in McHenry?	8 Q. Because my records stop at the very beginning of
9 A. Yes.	9 2012.
10 Q. He took the stitches out?	10 A. Dr. Sagerman.
11 A. Yes.	11 Q. Where is Dr. Sagerman?
12 Q. Over the first month or two or three did you do	12 A. I gave you his address earlier, or his place,
13 any physical therapy?	13 Vernon Hills.
14 A. I was told by Dr. Sek give it some time, it's	14 Q. Oh, that's right. And when did you start seeing
15 going to take time. He did not send me to	15 Dr. Sagerman?
16 physical therapy or anything else.	16 A. I don't remember the date. I'll be honest with
17 Q. And I know from the record that, as you have	17 you.
18 explained already, when you tried to use the	18 Q. He was after Dr. --
19 computer, that you continued to have some	19 A. (Interrupting) Talerico.
20 symptoms with the right arm and hand even after	20 Q. -- Talerico?
21 I guess the laceration had healed?	21 A. Yes, yes.
22 A. Right.	22 Q. All right. And then did Dr. Sagerman do anything
23 Q. All right?	23 for your right arm different than what
24 A. Right.	24 Dr. Talerico did?

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40 (Pages 148 to 151)



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152	154
1 A. He continued the physical therapy.	1 A. Yes.
2 Q. All right. And anything beyond the physical	2 Q. Earlier on you described the pain that was with
3 therapy?	3 the tendinitis, the forearm and everything. Is
4 A. He ordered up a new EMG.	4 the forearm implicated on the right?
5 Q. And then what?	5 A. On the right?
6 A. More physical therapy. It was a lot of physical	6 Q. Yes, in terms of pains or sensation?
7 therapy.	7 A. I get a pain right next to the bone. There is a
8 Q. Has anybody done any surgeries on your arm?	8 big lump of scar tissue, you can feel it, and it
9 A. Yes. He did.	9 hurts there when I try to grab too much stuff
10 Q. When did he do that?	10 that is heavier or anything with weight.
11 A. July of this year.	11 Q. So if you strain the right arm, you will realize
12 Q. As you understand it as the patient, what did	12 some pain right where the laceration was?
13 Dr. Sagerman do to the right arm?	13 A. Yes, it will burn a little.
14 A. Removed a ton of scar tissue, he said. And he	14 Q. So then with respect to the right arm, you
15 said -- and what they call -- it's a neurosis or	15 described the numbness in the pinky and the ring
16 -- I don't know the words he used.	16 finger, a weakened grip and then occasional
17 Q. I don't know either. I don't have any of these	17 shooting pain where the laceration was with heavy
18 records.	18 strain. And what else do you notice about the
19 A. Okay.	19 arm today, the right arm?
20 Q. So there was some kind of a surgery. Which parts	20 A. You play with the scar tissue ball that is
21 of your arm did he work on?	21 forming in there, and it burns under the elbow.
22 A. Forearm and the elbow.	22 It's like a direct link. If you pinch it, it's
23 Q. All right. And that was in July?	23 (indicating).
24 A. Yes.	24 Q. And is there any further recommended treatment
153	155
1 Q. Have you had any more surgeries since then?	1 for the right arm or any of the symptoms that are
2 A. No.	2 lingering?
3 Q. Are there any planned?	3 A. Yes. I am on medication for it.
4 A. No.	4 Q. What do you take?
5 Q. Are you still doing physical therapy?	5 A. Gabapentin.
6 A. Not for my right arm anymore but for my left.	6 Q. Is that an anti-inflammatory or pain med?
7 Q. How is the right arm now since this procedure	7 A. It's a type of pain medication, I believe.
8 done by Dr. Sagerman?	8 Q. Okay. Besides taking that, anything else?
9 A. It's better in the sense the pain level is down.	9 A. I take an anti-inflammatory.
10 Q. Okay. Same; the pinky, the ring finger and the	10 Q. Is that for the left arm or the right arm?
11 thumb?	11 A. It's all right. I take -- I'm trying to think
12 A. Those are the most affected, yes.	12 now. Well, I have, in case I need it, and I try
13 Q. What about the index and the middle fingers? Are	13 not to take them, but Tramadol and hydrocodone,
14 those impacted as well?	14 but I try not to take those.
15 A. Yes.	15 Q. Okay. So that's the medicine that you're still
16 Q. Are the ones that are affected the worst the	16 taking. Is there anything -- and there is no
17 pinky, the ring finger and the thumb on your	17 physical therapy with respect to the right arm
18 right hand?	18 currently?
19 A. All of the fingers are affected in the sense of a	19 A. No. We're pretty much done with that.
20 grip. The ones that feel numb are the pinky and	20 Q. And then in terms of function, you have mentioned
21 the ring finger.	21 there is weakened grip?
22 Q. So there is a weakened grip overall?	22 A. Yes.
23 A. Oh, yes.	23 Q. And you have the numbness in the pinky and ring
24 Q. And then the pinky and the ring finger are numb?	24 finger. What other limitations can you

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41 (Pages 152 to 155)

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156	158
1 appreciate with respect to the right arm?	1 A. Yes, yes. The pinky and the ring finger and the
2 A. Pinky.	2 thumb is -- I have a problem with the thumb
3 Q. What about it?	3 coming in here (indicating). Not like this
4 A. It wouldn't go in.	4 (indicating), but this way (indicating). And my
5 Q. So you can't --	5 hand shakes.
6 A. (Interrupting) I can't (indicating).	6 Q. Has the doctor told you -- that would be Sagerman
7 Q. You can't move the pinky so it abuts the index	7 -- when you can expect any further improvement,
8 finger?	8 or is this what you're going to have?
9 A. Or the ring finger.	9 A. He said nerve damage takes a long time to heal
10 Q. The ring finger?	10 especially as we get older. He wouldn't rule out
11 A. Correct.	11 a full healing. He wouldn't say I was going to
12 Q. And anything else? Do you still have the full	12 be stuck like this forever. He just said time
13 range of motion in your hand?	13 will tell.
14 A. Yes. As long as I do it controlled and slow. If	14 Q. So we don't know yet, and he doesn't know for
15 I start forgetting and -- you know, because I	15 sure?
16 feel good and I start doing things fast, it's	16 A. Right.
17 like all of a sudden I'll get -- it will burn	17 Q. I'm going to show you what I'm going to mark as
18 here (indicating), burn under here (indicating),	18 2.
19 and it will like pang all the way down. It will	19 A. He knows more about it than I do.
20 start tingling real bad again.	20 MS. FREEMAN: There is no question
21 Q. So in terms of the shoulder movement, fine?	21 pending.
22 A. Shoulder is fine.	22 THE WITNESS: Got you.
23 Q. Elbow movement fine?	23 Q. I think I know the answer to this, but this is
24 A. No. The elbow is a bit sore. I think it's	24 medical expenses as of March 19, 2012, \$7,333.04.
157	159
1 because of the surgery he did in there. He had	1 There is more medical expenses we don't have?
2 to do a nerve release or something. It was	2 A. Right.
3 tight.	3 Q. The surgery in July and the physical therapy
4 Q. And did the doctor tell you whether that nerve	4 and --
5 release in the elbow was somehow related to the	5 A. (Interrupting) Yes.
6 injury to the mid forearm?	6 Q. I take it you're making a claim for the tennis
7 A. He said that it's natural. You know, the way he	7 elbow as well?
8 explained it to me, it tore through the middle.	8 A. You know, they tell me it's a natural part of it
9 It's not a cut, it's a tear. Things got pulled	9 because of the not using this arm (indicating)
10 from both ends, you know, and that's the next	10 and using this thing (indicating) for everything
11 spot that will be affected from the pull. So	11 from drinking to driving to everything that I do.
12 that's the way it was kind of explained to me.	12 And they -- yes.
13 He said it's natural with what happened, with	13 Q. So there may be expenses associated with the left
14 this type of thing that happened.	14 arm that we don't have?
15 Q. Okay. The elbow is sore when you're moving it.	15 A. It's a result of.
16 Is that all the time or just periodically?	16 Q. You have had medical expenses for the treatments
17 A. It's sore pretty much all the time.	17 and care of the left arm?
18 Q. And you can still move it in all directions,	18 A. Yes, minimal.
19 though?	19 Q. We don't have those as part of this as well,
20 A. Yes. As long as I'm careful.	20 correct?
21 Q. And then the hand, with respect to the movement	21 A. Right.
22 of -- it is a weakened grip, but in terms of	22 Q. I just want to go through some photos here. This
23 moving it, with the exception of the pinky, it	23 is a photo of your arm after the chain saw
24 still moves the same?	24 injury, obviously, correct? 2A?

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42 (Pages 156 to 159)

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160	162
1 A. This is a long time after, yes.	1 A. Yes.
2 MR. BARCH: Now I need to make that medical	2 Q. Where is this?
3 expense summary Exhibit No. 3. Sorry.	3 A. That's at his home.
4 (Exhibit No. 3 marked for	4 Q. When did you take that?
5 identification by Mr. Barch.)	5 A. That phone conversation you asked me I talked to
6 MR. BARCH: I shouldn't have premarked	6 him about, I went up there to get his address for
7 the other ones.	7 his house for Hans, and he was outside.
8 Q. The other questions I was asking you when I was	8 Q. Oh, so when your attorney needed his address, you
9 referring to Exhibit 2, it's now 3. The answers	9 went up there to get it?
10 would be the same? We don't have all the medical	10 A. I knew where he lived. I didn't know the
11 expenses?	11 address, so I just drove past.
12 A. Right.	12 Q. And did you shoot this from the car or something?
13 Q. 2A, that is your forearm after the chain saw	13 A. As I drove by the house, yes.
14 injury?	14 Q. Did he know you were taking that?
15 A. Yes.	15 A. Yes. I showed it to him.
16 Q. Is that how it looks today?	16 Q. And then I guess 2J, this was just part of the
17 A. No.	17 records. Is this before the second -- before the
18 Q. What is that --	18 July surgery or --
19 A. (Interrupting) No.	19 A. (Interrupting) This is the X-ray from the
20 Q. What is going on now?	20 emergency room.
21 A. It's now got a scar that crosses it where they	21 Q. Okay.
22 went in.	22 A. Kind of shows --
23 Q. Okay. So that is the second surgery, though?	23 MS. FREEMAN: (Interrupting) There is no
24 A. Yes.	24 question pending.

161	163
1 Q. The second procedure. So these are all pre --	1 THE WITNESS: Sorry.
2 A. (Interrupting) Pre the July surgery, yes.	2 MR. BARCH: I think's all I have for now.
3 Q. The July, 2012. This is what it would have	3 EXAMINATION BY MR. ACCARDO:
4 looked like, I take it then, had you not had the	4 Q. For your left arm and left elbow, you had injured
5 additional surgery?	5 those before 2011; is that right?
6 A. Correct.	6 A. Excuse me?
7 Q. Same thing with 2D and 2E?	7 Q. You had injured your left arm and your left elbow
8 A. Yes. These are all from pre.	8 before 2011?
9 Q. Now we go over to 2F. There is an additional	9 A. Correct.
10 photo with some more of I guess an incision that	10 Q. And that was in a car accident?
11 runs up and down your forearm?	11 A. Yes.
12 A. Yes.	12 Q. And that took place when?
13 Q. And there is also one -- that's the July, 2012	13 A. Ten years ago.
14 stuff?	14 Q. What type of injury did you suffer in that car
15 A. Yes.	15 accident?
16 Q. You have scars now on your arm from those as	16 A. I suffered a broken neck, and I had to have an
17 well?	17 ulnar nerve transposition done.
18 A. Yes.	18 Q. Okay. And where was that done?
19 Q. 2F, G, H show the arm after that July, 2012	19 A. That was done I think late -- what did they call
20 surgery?	20 that? That was a long time ago at the hospital,
21 A. Correct.	21 Lake Forest Hospital.
22 Q. What is I? This came from your counsel, too, 2I.	22 Q. Do you remember which doctor performed that?
23 A. That's David.	23 A. The same doctor.
24 Q. That's Mr. Gagnon?	24 Q. The same doctor as what?

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43 (Pages 160 to 163)

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164	166
1 A. Sagerman.	1 employed the chain saw?
2 Q. Okay.	2 A. No.
3 A. That's why I knew him.	3 Q. And before the accident the day you were cutting
4 MS. FREEMAN: Just answer the question.	4 down the pine tree did you have any criticism
5 Q. And after the surgery after the automobile	5 with the way David was using or employing the
6 accident about ten years ago did you still have	6 chain saw?
7 trouble with the left arm?	7 A. No.
8 A. Still do today.	8 Q. Was there any alcohol involved in the June, 2011
9 Q. From the time of the car accident up until the	9 incident?
10 time of the accident with the chain saw in June	10 A. Possibly on Bill's part, Bill McGuire, but
11 of 2011 did you have trouble with the left arm	11 neither of us.
12 and the left elbow?	12 Q. Not on David's part?
13 A. Yes.	13 A. No.
14 Q. And has that changed since the accident in June	14 Q. Any reason to believe that David was under the
15 of 2011?	15 influence of any type of drugs or alcohol at the
16 A. Yes.	16 time of the accident?
17 Q. How so?	17 A. No.
18 A. The other side of the elbow hurts.	18 Q. At any point before the actual accident took
19 Q. Okay. Which side of the elbow hurt before?	19 place when you were cutting down the pine tree
20 A. This side (indicating) was from the car accident.	20 did you express any displeasure or any concern
21 It's like the funny bone.	21 over the process that David had set up for
22 Q. We're talking about more of the inside of your	22 trimming the limbs?
23 elbow?	23 A. No.
24 A. Yes.	24 Q. You didn't see any problem with it?

165	167
1 Q. All right.	1 A. He seemed like he knew what he was doing.
2 A. Where this is out up here (indicating).	2 Q. My question to you was did you see any problem
3 Q. Okay. And by "out here" (indicating), you're	3 with it, though?
4 talking about the outer part of the elbow?	4 A. No. I wouldn't know.
5 A. Yes.	5 Q. Now, I just want to go back to right before you
6 Q. You still have trouble with the inner part of the	6 got cut and talk a little bit about the saw
7 elbow?	7 because I am a little confused. When David
8 A. Yes. Cold days.	8 started walking towards you, was the chain still
9 Q. The time when you were working with David on the	9 going or had it already been put into idle at
10 apple tree --	10 that point?
11 A. (Interrupting) Yes.	11 A. He was cutting, stopped, came up, took the finger
12 Q. -- was that the only time you had worked with him	12 off the trigger because the whole thing went
13 where there was a chain saw involved before June	13 down, you know -- I think it stopped. The chain
14 of 2011?	14 pretty much stopped.
15 A. With him with the chain saw, yes. There was a	15 Q. Okay. And then he starts walking toward you?
16 tree down in the front yard, but I don't know who	16 A. Right.
17 did it. I assumed he did.	17 Q. And at any point did you see his finger hit the
18 Q. I'm just talking about you working with him with	18 trigger?
19 the chain saw before 2011.	19 A. I didn't see his finger hit the trigger, no.
20 A. Yes.	20 Q. You just heard?
21 Q. Was it just the apple tree?	21 A. Yes.
22 A. That was it.	22 Q. And then you saw the chain --
23 Q. During the cutting of the apple tree did you have	23 A. (Interrupting) Yes.
24 any criticism with the way that David used or	24 Q. -- start to speed up?

ALL 4 PAGES are in the WRONG FONT and is MISSING the BOLD FONT on ALL ANSWERS and PAGE NUMBERS.

Border is lower on page. 2013 version was higher.  
(This is significant because the date was added to the top and "Rockford, Illinois" was removed from the bottom of every page.)

MISSING TEXT -- "44 of 63 sheets"

WRONG TEXT -- "Page 164 to 167 of 176"

\* It should be noted that FISHER COURT REPORTING was NOT in GOOD STANDING with the ILLINOIS SECRETARY OF STATE in January of 2013.

Issue on bottom of every page:  
WRONG FONT, ALL CAPS & NO ITALICS  
MISSING "Rockford, Illinois" 2013 version looked more like this:

Fisher Court Reporting  
Rockford, Illinois  
815/226-9755

FISHER COURT REPORTING  
815/226-9755

44 (Pages 164 to 167)



DATE has been ADDED outside of border on every page.  
2013 versions DO NOT have the DATE on every page.

168	170
1 A. Yes.	1 pointing towards the sky about 45 degrees?
2 Q. Or you actually saw the chain engage?	2 A. Yes.
3 A. Yes.	3 Q. And how would you describe the manner in which he
4 Q. Okay.	4 did that? Was that something that was --
5 A. Start to move.	5 A. (Interrupting) Just raise it.
6 Q. About how much time elapsed from the time he put	6 Q. Was that something that was fast? Was it slow?
7 the saw into idle or took his finger off the	7 Was it sudden?
8 trigger until you heard or saw the chain engage	8 A. It was very sudden and fast.
9 again? Was it just a matter of seconds?	9 Q. Did it look like he had lost control of the saw,
10 A. Yes, it was seconds.	10 or did it look like he did it on purpose?
11 Q. And then about how much time elapsed from the	11 A. No, it looked like he was in control, but I don't
12 time you saw or heard the chain engage until the	12 know -- I have asked him. I don't know if he
13 time you were actually cut?	13 tripped over something --
14 A. Split seconds. It came fast.	14 Q. (Interrupting) I'm not -- I'm just asking you
15 Q. After the chain or saw engaged right before you	15 if --
16 were cut, did you see David move in any	16 A. -- or what. I don't know the answer to that.
17 particular way?	17 Q. Okay. You said you were holding the branch with
18 A. Say that again. I lost you in the middle.	18 your right arm or your right hand, right?
19 Q. After you saw the chain and the saw engage before	19 A. Uh-huh.
20 you were cut, did you see David's body move in	20 Q. Okay. And you were facing with your body towards
21 any particular way? Did you see any type of	21 David?
22 jerking movement or anything like that?	22 A. Yes.
23 A. No. He started walking towards me.	23 Q. Okay. And then when you heard and saw the chain
24 Q. But at some point I think you said you saw the	24 engage, you dropped the branch?

169	171
1 saw coming up?	1 A. Yes.
2 A. Yes.	2 Q. And then you I think motioned -- you said you
3 Q. Okay. How high was the saw when it cut you?	3 turned your body it would have been to the right
4 A. It was my eye height. My eyes.	4 and up and away?
5 Q. And how was David holding it at that point?	5 A. Yes. First I went up, and then I was trying to
6 A. (Indicating).	6 get up and out of the way because that saw blade
7 Q. Okay. You're showing me --	7 came up to a 45, and I had to get the heck out of
8 A. (Interrupting) Saw pointing up.	8 there.
9 Q. Saw pointing up. One hand would have been on the	9 Q. Where was your arm when it actually got cut, and
10 bar?	10 in what position was it?
11 A. Yes.	11 A. Can I stand up and show you so I can describe it?
12 Q. The safety bar?	12 Q. Yes.
13 A. Yes.	13 A. It was -- I was turned like this (indicating),
14 Q. And then the other hand where?	14 and it cut me right here (indicating).
15 A. Down on the trigger.	15 Q. Okay.
16 Q. Okay. And the actual saw was pointed straight up	16 MR. ACCARDO: So let the record reflect
17 in the air?	17 that Mr. Dulberg's right arm was basically
18 A. No. It was maybe a 45 it went to.	18 parallel with his nose and eyes.
19 Q. When you heard and saw the chain engage, where	19 Q. Is that about right?
20 was the saw pointing?	20 A. Yes, it was. Yes.
21 A. Down toward the ground at about a 45.	21 Q. And your body was turned about --
22 Q. So from the time you heard or saw the chain	22 A. (Interrupting) I was in the middle of pivoting to
23 engage up until the time you were cut, David	23 get away.
24 moved it from about 45 degrees to the ground up	24 Q. Okay. After the chain and the saw engaged did

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FISHER COURT REPORTING  
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45 (Pages 168 to 171)

MISSING TEXT -- "45 of 63 sheets"

WRONG TEXT -- "Page 168 to 171 of 176"

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Issue on bottom of every page:  
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2013 versions DO NOT have the DATE on every page.

172	174
1 David keep walking towards you, or was it just	1 me, if you know, what specifically has David told
2 more of a movement with his hands and arms?	2 you about what he thinks happened on the date of
3 A. Say it again.	3 the accident?
4 Q. After you saw the saw and the chain engaged did	4 A. He doesn't know.
5 David keep walking towards you, or was it simply	5 Q. Has he offered any type of explanation as to what
6 a motion with his hands and arms?	6 happened?
7 A. It was a motion up.	7 A. No. I think he's afraid to. I don't know.
8 Q. So he had stopped walking or moving towards you?	8 MS. FREEMAN: There is no question pending.
9 A. I think that there were still forward momentum	9 Q. Why do you think he's afraid to?
10 going on, yes, because it started, and it came up	10 A. Because I don't think he knows.
11 -- yes, there had to be. I don't know. There	11 Q. As you sit here today do you think this is
12 had to be, though. My eyes were on the blade at	12 something he did on purpose or intentionally?
13 that point.	13 A. I think he screwed up and had a brain fart.
14 Q. And now I know you said when you were in the	14 Q. So the answer to my question would be no?
15 emergency room that David said something about	15 A. Right.
16 kickback?	16 Q. At any point while you were in the emergency room
17 A. I asked him -- the emergency room staff asked	17 did you ever have a discussion with David where
18 what the heck happened, and that was his	18 you indicated to him that you thought that both
19 response.	19 of you could make a lot of money off of this?
20 Q. Did you overhear what he told to the people at	20 Did that conversation ever happen?
21 the emergency room?	21 A. No.
22 A. Yes.	22 MR. ACCARDO: I don't have anything
23 Q. What did he tell the people at the emergency	23 else.
24 room?	24 MR. BARCH: Only question I have in
173	175
1 A. He said kickback or something. I just don't know	1 follow-up -- just one.
2 . He took his hands, put them on the head and	2 EXAMINATION BY MR. BARCH:
3 put them between his knees and just stayed there	3 Q. You mentioned that you and Mr. Gagnon were not
4 and did not say nothing.	4 drinking that afternoon, correct?
5 Q. Did they ask him more than once what happened?	5 A. Correct.
6 A. Yes, a couple of times, and I just looked at the	6 Q. And you said Bill. I guess you're referring to
7 emergency room staff, and I said, "I think it's	7 Bill McGuire may have been drinking?
8 an accident. Let's just get this done."	8 A. He's been known to.
9 Q. When they asked him the second or the third time	9 Q. Okay. As you sit here today do you believe that
10 what happened, what was his response?	10 if he had consumed beer or something that day,
11 A. At that point he had his head between his knees,	11 that that played some role in what happened to
12 and he just goes "I don't know what happened. I	12 you with the chain saw?
13 just don't know."	13 A. It played no role.
14 Q. At any point did you have a conversation with	14 MR. BARCH: That's all.
15 David in the emergency room, outside of the	15 MR. ACCARDO: Nothing else.
16 presentation of the emergency room personnel,	16 MS. FREEMAN: I think we will waive
17 about what happened?	17 signature.
18 A. No.	18 (The deposition of this witness came
19 Q. Now, I know that when you were asked before about	19 to a close at 3:33 p.m.)
20 some discussions or attempts at discussions about	20
21 what has happened from the time of the accident	21
22 up until today's date, I think you sort of just	22
23 -- sort of made some noises and said David did	23
24 not want to talk about it. I want you to tell	24

ALL 4 PAGES are in the WRONG FONT and is MISSING the BOLD FONT on ALL ANSWERS and PAGE NUMBERS.

Border is lower on page. 2013 version was higher.  
(This is significant because the date was added to the top and "Rockford, Illinois" was removed from the bottom of every page.)

FISHER COURT REPORTING  
815/226-9755

46 (Pages 172 to 175)

MISSING TEXT -- "46 of 63 sheets"

WRONG TEXT -- "Page 172 to 175 of 176"

\* It should be noted that FISHER COURT REPORTING was NOT in GOOD STANDING with the ILLINOIS SECRETARY OF STATE in January of 2013.

Issue on bottom of every page:  
WRONG FONT, ALL CAPS & NO ITALICS  
MISSING "Rockford, Illinois" 2013 version looked more like this:

Fisher Court Reporting  
Rockford, Illinois  
815/226-9755

Paul Dulberg  
1/24/2013

1 CERTIFICATE OF SHORTHAND REPORTER

2

3 I, Angela D. Oldenburg, a Certified

4 Shorthand Reporter in and for the State of Illinois,

5 do certify that, pursuant to the agreement hereto

6 annexed, there came before me on the 24th day of

7 January, 2013, at 12:17 p.m., the following-named

8 person, to wit: Paul R. Dulberg, who was by me duly

9 sworn to testify to the truth and nothing but the

10 truth of his knowledge concerning the matters in

11 controversy in this cause; that he was thereupon

12 examined on his oath and his examination reduced to

13 writing under my supervision; that the deposition is

14 a true record of the testimony given by the witness

15 and that the reading and signing of the deposition by

16 the said witness were expressly waived.

17

18 I further certify that I am neither

19 attorney or counsel for, nor related to or employed

20 by any of the parties to the action in which this

21 deposition is taken, and further that I am not a

22 relative or employee of any attorney or counsel

23 employed by the parties hereto or financially

24 interested in the action.

Dated this 28th day of January, 2013,

Certified Shorthand Reporter  
922 North Lyford Road  
Rockford, Illinois  
(815) 226-9755

2019 RECONSTRUCTED FORGERY.

This PAGE NUMBER is in the WRONG LOCATION. In 2013 the page numbers were inside the Black Border NOT outside the Black Border .

DATE has been ADDED outside of border on every page. 2013 versions DO NOT have the DATE on every page.

Correct Year.  
CORRECT DATE is PROOF someone didn't completely botch this 2019 RECONSTRUCTED FORGERY.

This entire page is in the WRONG FONT.  
This entire page is NOT in BOLD FONT.  
2013 version IS in DIFFERENT and BOLDED FONT.

Border is shifted right.  
Border is lower on page. 2013 version was higher.  
(This is significant because the date was added to the top and "Rockford, Illinois" was removed from the bottom of every page.)

This is NOT a FULL PAGE in the 2013 version. This is a MINI PAGE in the 2013 version.

UNSIGNED = ROUGH DRAFT  
NOT SUITABLE AS EVIDENCE

MISSING LINE for SIGNATURE (2013 version has a line here)

\* It should be noted that the Shorthand Reporters STATE OF ILLINOIS C. S. R. LICENSE NO. is MISSING from every version.

MISSING TEXT – "47 of 63 sheets"

MISSING TEXT – "Page 176 to 176 of 176"

\* It should be noted that FISHER COURT REPORTING was NOT in GOOD STANDING with the ILLINOIS SECRETARY OF STATE in January of 2013.

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<b>A</b>	<b>action</b> 1:18	4:16	<b>annexed</b>	165:10,21	150:5	69:22	78:15
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<b>above-enti...</b>	25:1,2	169:17	<b>anticipated</b>	39:12 62:7	94:6	69:23	<b>back</b> 9:16
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<b>accident</b>	<b>admonitions</b>	<b>allow</b> 128:2	<b>apart</b> 95:15	28:3,11	<b>aside</b> 62:21	22:1	75:9,12
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58:15	174:9	<b>and/or</b> 30:2	95:15	143:14	<b>asking</b> 4:17	81:22	10:6
61:13	<b>aftermath</b>	<b>Angela</b> 1:22	96:24	146:22	7:14 32:14	162:8	<b>backwards</b>
<b>acquire</b>	79:20	176:3	100:21	147:3	44:22	176:11,12	15:3
10:23	<b>afternoon</b>	<b>angle</b> 29:11	126:15	149:20	59:23	<b>attorney's</b>	

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This 2019 RECONSTRUCTED FORGERY's INDEX is different than the 2013 version.

– This 2019 RECONSTRUCTED FORGERY's INDEX is in the WRONG FONT.

– 2013 version's INDEX is 16 Pages  
This 2019 RECONSTRUCTED FORGERY's index is 18 pages and gives the user less usable information.

– The 2013 version has 5 columns across.  
This 2019 RECONSTRUCTED FORGERY has 8 columns across.

– 2013 version's INDEX starts with special characters (\$, '), numbers (1-9) then the alphabet (A to Z)  
This 2019 RECONSTRUCTED FORGERY starts with the alphabet (A to Z) then numbers (0-9) and includes no special charactors.  
Why have a 0 in the index if nothing spoken starts with zero?

– Below is an example of the 2013 version having more usable information per entry and taking up less space:  
able [19] - 23:9, 36:15,  
36:19, 36:20, 46:14,  
49:24, 50:19, 51:15,  
54:2, 66:14, 122:17,  
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125:4, 126:16,  
132:2, 136:4,  
142:18, 148:10

– Below is an example of this 2019 RECONSTRUCTED FORGERY having less usable information per entry and taking up more space:  
able 23:9  
36:15,19  
36:20  
46:14  
49:24  
50:19  
51:15 54:2  
66:14  
122:17  
124:20  
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Vernon	31:23	88:14	we're 5:13	105:12	116:16	152:21	147:24

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(See first or last page of this INDEX for points on the differences)

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<b>Y</b>	<b>1016</b> 8:19	15:16	29:18	<b>6</b> 49:11			
<b>yard</b> 88:16	9:2 57:12	16:12,15	37:15	<b>60</b> 104:1			
95:2	<b>1099</b> 17:5,10	17:4 20:23	42:24	119:9			
109:20	17:11,22	21:5 24:16	43:22 44:3	<b>6323</b> 2:5			
165:16	17:24	29:18	44:8 48:14				
<b>Yeah</b> 61:14	20:14	37:15 43:1	51:14,23	<b>7</b>			
82:22	39:24 48:9	43:22 44:3	60:21	<b>7,333.04</b>			
122:13	51:11,15	44:9 48:14	61:21	158:24			
<b>year</b> 12:21	51:19	51:14,24	62:13 63:2	<b>70</b> 39:12,13			
16:11 37:4	52:11,18	53:1 56:8	63:5,11,15	<b>74</b> 13:18,20			
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52:21	<b>12</b> 1:5 89:16	60:21	64:19	<b>8</b>			
56:22	<b>12:17</b> 1:21	61:22	65:10,14	<b>8</b> 3:4 86:9			
60:14,22	176:5	62:13 63:2	67:11,23	<b>80</b> 50:14			
60:23	<b>160</b> 3:13	63:6,11,15	73:12 74:8	<b>815)226-97...</b>			
77:15 78:5	<b>163</b> 3:5	63:21 64:2	74:15	176:20			
78:7,13	<b>175</b> 3:6	64:20	77:14 81:8	<b>9</b>			
85:14	<b>176</b> 3:24	65:10,14	86:20 91:3	<b>9</b> 17:3 89:12			
90:11,14	<b>178</b> 1:5	67:11,23	91:15	<b>90s</b> 11:16			
152:11	<b>18</b> 57:2	73:12 74:8	100:2	<b>922</b> 176:19			
<b>years</b> 10:15	<b>18,000</b> 52:24	74:15	101:2				
10:20	53:2	77:14 81:8	<b>28th</b> 176:14				
11:15	<b>19</b> 57:2	86:20	<b>2A</b> 159:24				
13:14	158:24	88:11 89:1	160:13				
15:19	<b>1988</b> 10:11	91:3,15	<b>2D</b> 161:7				
54:24 60:4	<b>1998</b> 14:22	100:2	<b>2E</b> 161:7				
60:11,20	18:1,14	150:3	<b>2F</b> 161:9,19				
61:11 62:4	<b>1999</b> 16:10	163:5,8	<b>2I</b> 161:22				
62:7 77:16	<b>2</b>	164:11,15	<b>2J</b> 162:16				
81:20 84:9	<b>2</b> 3:12	165:14,19	<b>3</b>				
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<b>yelling</b>	129:2	151:9	<b>355</b> 55:15				
144:12	<b>20-minute</b>	158:24	<b>4</b>				
150:18	109:16	161:3,13	<b>4</b> 3:3				
<b>younger</b> 68:5	<b>200</b> 2:9	161:19	<b>40</b> 50:11				
74:17	<b>2003</b> 18:16	<b>2013</b> 1:21	<b>40-hour</b>				
	<b>2004</b> 18:16	176:5,14	50:10				
<b>Z</b>	<b>2007</b> 86:9	<b>20s</b> 62:10	<b>41</b> 9:11				
<b>zone</b> 73:24	<b>2008</b> 14:22	<b>22</b> 57:3	<b>45</b> 169:18,21				
74:3,9 77:5	15:23 17:3	<b>22nd</b> 1:2					
<b>0</b>	86:14	<b>23</b> 57:3					
	<b>24</b> 129:2	<b>24</b> 129:2	169:24				
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<b>1</b> 3:11 49:8	18:1,15	176:4	171:7				
<b>1-24-13</b> 1:8	<b>2009</b> 14:22	<b>25</b> 111:7	<b>4606</b> 8:8,18				
<b>10</b> 50:11	15:24 40:9	113:17	<b>5</b>				
53:9 89:12	<b>2010</b> 40:9	<b>28</b> 9:8 15:6	<b>50</b> 119:9				
89:16	86:9,14	16:15	<b>6</b>				
109:15,16	<b>2011</b> 9:8,16	20:23 21:5					
	15:4,7,10	24:16					

2019 RECONSTRUCTED FORGERY.

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This 2019 RECONSTRUCTED FORGERY’s INDEX is different than the 2013 version.

– This 2019 RECONSTRUCTED FORGERY’s INDEX is in the WRONG FONT.

– 2013 version’s INDEX is 16 Pages  
This 2019 RECONSTRUCTED FORGERY’s INDEX is 18 pages and gives the user less usable information.

– The 2013 version’s INDEX has 5 columns across.  
This 2019 RECONSTRUCTED FORGERY’s INDEX has 8 columns across.

– 2013 version’s INDEX starts with special characters (\$, '), numbers (1-9) then the alphabet (A to Z)  
This 2019 RECONSTRUCTED FORGERY’s INDEX starts with the alphabet (A to Z) then numbers (0-9) and includes no special charactors.  
Why have a 0 in the index if nothing spoken starts with zero?

– Below is an example of the 2013 version’s INDEX having more usable information per entry and taking up less space:  
able [19] - 23:9, 36:15,  
36:19, 36:20, 46:14,  
49:24, 50:19, 51:15,  
54:2, 66:14, 122:17,  
124:20, 125:1,  
125:4, 126:16,  
132:2, 136:4,  
142:18, 148:10

– Below is an example of this 2019 RECONSTRUCTED FORGERY’s INDEX having less usable information per entry and taking up more space:  
able 23:9  
36:15,19  
36:20  
46:14  
49:24  
50:19  
51:15 54:2  
66:14  
122:17  
124:20  
125:1,4  
126:16  
132:2  
136:4  
142:18  
148:10

– THIS PAGE SHOULD NOT EXIST –

Correct Year.  
CORRECT DATE is PROOF someone didn’t completely botch this 2019 RECONSTRUCTED FORGERY.

Why does this 0 (zero) catagory exist?

This 2019 RECONSTRUCTED FORGERY’s INDEX is obviously generated using different formatting and indexing setting’s in the software program (if it is the same software program) and is a clear indicator that this more likely than not is generated by a different Shorthand Reporter (Most likely Urbanski Reporting Service) and is an absolute forgery.

— ALL EXHIBITS are MISSING (NOT ATTACHED) in the 2013 version. —

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*Fisher Court Reporting  
Rockford, Illinois  
815/226-9755*

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT  
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, )  
 )  
Plaintiff, )  
 )  
vs. ) No. 12 LA 178  
 )  
DAVID GAGNON, Individually, and as )  
Agent of CAROLINE McGUIRE and BILL )  
McGUIRE and CAROLINE McGUIRE )  
and BILL McGUIRE, Individually, )  
 )  
Defendants. )

PLAINTIFF'S ANSWERS TO INTERROGATORIES

1. State the full name, present residence address, birthdate, birthplace and Social Security number of the person answering these Interrogatories; and state PAUL DULBERG's full name, present residence address, birthdate, birthplace and Social Security number.

ANSWER: Paul Dulberg  
4606 Hayden Ct.  
McHenry  
DOB: 3-19-70  
SS: 323-76-4001  
Born: Elk Grove Village

2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Single

3. State the full name and present or last known address (indicating which) of each person who:  
(a) Witnessed or claims to have witnessed the occurrence in question.  
(b) Was present or claims to have been present at the scene immediately before said occurrence.  
(c) Was present or claims to have been present immediately after said occurrence.  
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: Plaintiff and Defendant Gagnon. McGuire's were on the premises.



2019 RECONSTRUCTED FORGERY.

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This exhibit should only be 10 pages - Barch removed last 2 pages and made them exhibit 3 (POP 001414 - POP 001415).

See (POP 001369 or Dulberg 000994) Page 160 lines 2-7

Page 160  
2 MR. BARCH: Now I need to make that medical  
3 expense summary Exhibit No. 3. Sorry.  
4 (Exhibit No. 3 marked for  
5 identification by Mr. Barch.)  
6 MR. BARCH: I shouldn't have premarked  
7 the other ones.

Exhibit 1 should only be 10 pages. Here in the Popovich bates numbered document disclosure Exhibit 1 is 12 pages and still has these two pages as part of Exhibit 1 and these two pages separately as Exhibit 3.

Popovich would have us believe that this March 19, 2012 Expense Report can magically duplicate itself and appear in both Exhibits 1 and 3 simultaneously.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained to PAUL DULBERG as a result of said occurrence.

ANSWER: Objection, requires medical narrative. Without waiving, Plaintiff suffered deep laceration of right arm with nerve involvement. Investigation continues.

5. With regard to said injuries, state:
- (a) The name and address of each treating and/or consulting practitioner.
  - (b) The name and address of each hospital or clinic where PAUL DULBERG was treated and the date or inclusive dates on which each hospital or clinic rendered PAUL DULBERG service.
  - (c) The amount to date of their respective bills for services.
  - (d) Those from whom you have written reports. (Pursuant to Supreme Court Rule 214, please attach a legible copy of said report to the answers hereto.)

ANSWER: See attached Medical Expense Report. Additional bills and records to be obtained from Drs. Marcus Talerico (Mid America Hand to Shoulder) and Karen Levin/Mitchell Grobman (Associated Neurology), Biofora/Sagerman (Hand Surgery Associates) and Fox Lake Dynamic Hand Therapy.

6. As a result of said personal injuries to PAUL DULBERG, are you claiming any loss of income including, but not limited to, wages or salaries? If so, state:

- (a) The name and address of your employer at the time of the occurrence.
- (b) The dates or inclusive dates on which you were unable to work and the amount of income loss claimed.

ANSWER: AMS Screw Products, High View, Spring Grove, Illinois.  
Supervisor: Joe Groves  
Approx. \$10 per hours. 40 hours a week.  
Was hired but could not pursue employment due to accident.  
Investigation continues.

7. State the name and address of each witness or defendant from whom you have obtained statements, indicating whether such statements are written or oral, who has possession of such statements, and pursuant to Supreme Court Rule 214, attach legible copies of any written statements hereto.

ANSWER: Gagnon gave a statement to Plaintiff's counsel and it will be transcribed and produced.

8. State the name and address of PAUL DULBERG's family practice physician.

ANSWER: Dr. Sek, 4601 W. Rt. 120, McHenry

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9. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: Prior: Last 20 years. Involved in auto accident in 2002, I suffered neck injury and left arm. Treated with Northern Illinois Medical Center and left arm surgery with Dr. Sagerman and Grobman (Libertyville).  
Since: no

10. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: Yes. On right arm. Investigation continues.

11. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: Yes, as it concerns my above auto accident. The degree of any disability is to be determined by my physician.

12. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: Behind the garage of the Defendant's home - as alleged.

13. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Objection, irrelevant - improperly worded. Defect is Gagnon's conduct. See Complaint.

14. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: Holding a branch at the request of Mr. Gagnon.

15. State with particularity your basis for alleging that on or about June 28, 2011, David Gagnon living and/or staying at the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois.

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ANSWER: He was at his mother’s residence.

16. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: Dave invited me.

17. State with particularity your basis for alleging that David Gagnon was contracted and/or hired by Defendants Bill McGuire and Carolyn McGuire to cut down, trim and/or maintain the trees and brush at their premises. as further alleged in Plaintiffs Complaint.

ANSWER: Dave told me.

18. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence alleged in Plaintiffs Complaint.

ANSWER: He was working at their property under their control.

19. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence alleged in Plaintiffs Complaint.

ANSWER: It was the McGuires chain saw.

- 20 State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiffs Complaint.

ANSWER: Unknown

21. State whether you have any information indicating or otherwise suggesting that Defendants Bill McGuire and/or Carolyn McGuire knew or should have known that PAUL DULBERG was about to assist or was assisting David Gagnon with tree cutting and/or trimming on the date and in the location of the occurrence alleged in Plaintiff’s Complaint. If your answer is in the affirmative, further state with particularity the bases for your contention that Defendants Bill McGuire and/or Carolyn McGuire knew or should have known that PAUL DULBERG was about to assist and/or was assisting David Gagnon with tree cutting and/or trimming on the date and in the location of the occurrence alleged in Plaintiff’s Complaint.

ANSWER: The McGuires saw me with Mr. Gagnon.

22. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

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ANSWER: Not on the date in question, but I will be produced photos of my injury.

23. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

- (a) For each lay witness, identify the subjects on which the witness will testify.
- (b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.
- (c) For each controlled expert witness, identify:
  - (i) the subject matter on which the witness will testify;
  - (ii) the conclusions and opinions of the witness and the bases therefor;
  - (iii) the qualifications of the witness; and
  - (iv) any reports prepared by the witness about the case.

ANSWER: PLAINTIFF'S RESPONSE TO 213 INTERROGATORIES

Plaintiff will testify to all matters concerning the circumstances of the accident and injury including, but not limited to, all matters set forth in any discovery responses, affidavit, statements and/or deposition testimony, and to those matters and opinions naturally flowing from their personal knowledge and involvement in this matter, and will testify to matters including, but not limited to the following: date, time and location of accident, observations at the accident scene, *weather*, defendant's negligence in X; *continuing medical care to date; medical expense as set forth in updated Medical Expense Reports*; payment of bills; lack of prior related symptoms, treatment; need for past and future treatment including, if applicable; pain and suffering and disability; lost time at work, including rate of pay, time lost, income and benefits lost; ongoing treatment during pending case including **recent exam** by treating physician(s); all other foundational requirements for admitting photos and medical bills into evidence.

Barabara Dulhberg, s/a/a to testify to the pain and disability experienced by the Plaintiff due to injuries suffered in the accident and the lack of prior symptoms or disability, inability to work, hours and wage history and loss of income from work as a result.

Defendants, each of them, will be called as an adverse witness pursuant to Section 2-1102 of the Illinois Code of Civil Procedure, to testify to matters involving the accident.

All witnesses identified by Defendant and/or deposed, on matters so identified or testified to.

Court Reporters present during evidence and/or discovery depositions of those parties and witnesses now or in the future deposed in this or any similar cause to testify to the accuracy of the transcripts and testimony stated therein by each witness including exhibits marked and testified to during the deposition.

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All other independent witnesses disclosed by answer to previous interrogatory will testify to those matters and opinions naturally flowing from their personal knowledge and involvement in this matter and those matters specifically disclosed and or to be disclosed in the future.

Drs. Marcus Talerico (Mid America Hand to Shoulder) and Karen Levin/Mitchell Grobman (Associated Neurology), Biofora/Sagerman (Hand Surgery Associates), are intended to be called as opinion witness(es) to testify to the care and treatment of the Plaintiff to the extent allowed under Rule 213 and to all matters expressly and/or impliedly set forth in the patient's chart including matters flowing therefrom, including, but not limited to, history, exam, diagnostics/findings, exam/findings, diagnosis, treatment, physical therapy, medication, follow-up and continuing treatment through to trial; the nature and extent of injuries sustained by Plaintiff as set forth above and in deposition including injuries, and that such injuries were caused/aggravated by the underlying trauma; that the treatment for such injuries was/is reasonable and medically necessary and causally related to underlying accident, and any other opinions or matters set forth or described in the patients medical file or hospital chart, in addition to any matters and/or opinions naturally flowing from the witnesses work or personal knowledge and involvement in this matter, in addition to testimony and opinions on the following issues:

- Plaintiff suffered and is diagnosed as having the above injuries, not limited to: traumatic injury to right arm including numbness, neuropathy, scarring, and branch nerve involvement;
- Plaintiff's injury is consistent with mechanism of injury/history;
- Plaintiff's injury was caused/aggravated by the underlying accident based upon history and findings and experience;
- Plaintiff's injury is confirmed through exam and diagnostics;
- Plaintiff will require ongoing and continual treatment for the injury(s);
- Plaintiff's conservative treatment did not resolve symptoms, requiring surgery and chronic pain;
- Plaintiff's symptoms and disability are permanent;
- Review and interpretation of all diagnostics;
- Plaintiff may require surgery to correct the condition(s);
- Plaintiff's surgery and costs is medically necessitated and causally related to the accident;
- Plaintiff's symptoms are disabling from activities;
- Plaintiff's injury is pain producing;
- Plaintiff's injury limits and will limit in the future Plaintiff's activity at home and at work;
- Plaintiff's injury disabled him/her from work for a period of time causing a loss in income;
- The charges or expense for the medical treatment received from each and every treater or facility referenced by Plaintiff in deposition or by Medical Expense Report was/is customary, reasonable, and medically necessary and due to the auto

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- accident based upon his/her expertise and experience and knowledge of the billing/charges for the same or similar treatment;
- Plaintiff is susceptible to re-injury in the future due to injury sustained in case, requiring future care and treatment, surgery and expense;
- Plaintiff will require future medical treatment and care and expense due to injury, estimate of \$10,000 annually;
- That Doctors' practice involves treating patients with similar injuries under similar settings and causes;
- The witnesses report(s) are contained in medical records produced in discovery;
- This witnesses opinions are based upon the witnesses expertise, experience, education, treatment of same and similar injuries, review of history, records of all treating physicians and care providers, films/reports, and exam - all which is customary for the witness to rely upon in his/her practice.
- Foundational matters for purposes of admission of medical records into evidence;
- The testimony is also based upon a **recent exam** conducted before arbitration and/or trial.

Plaintiff expressly reserves the right to withdraw and/or not to call any 213 witnesses heretofore disclosed (or fewer than those disclosed) depending on counsel's legal determination at the time of trial and his judgment on the necessity of such testimony given the issues and evidence to be presented at the time of trial.

The accounts/financial services/billing representatives (any or each of them) from each of the facilities whereat the Plaintiff treated, as set forth in his discovery and deposition and Medical Expense Report(s) produced in discovery, including { } will each and themselves testify that based upon their experience and customs and practices and the practices of their internal office and those on their behalf, in their opinion the charges pertaining to Plaintiff's medical treatment in this case, as outlined in the Medical Expense Report, are reasonable and customary in the industry within the area. No one individual has been identified by the facility to testify, but if the defense wants to depose a specific individual before the evidence deposition of the representative is taken, Plaintiff will then designate a person for this purpose, otherwise the evidence deposition notice may simply designate the "representative with knowledge of the customary charges for such treatment" at each facility.

The records keepers from each of the facilities whereat the Plaintiff treated, as set forth in his/her discovery responses and deposition and Medical Expense Report provided throughout the course of this case, will each themselves testify to all foundational matters and requirements for admission of such records into evidence, including testimony as to the custody of the records kept in the ordinary course of business, and history provided by the patient and reliance upon such in the treatment or care of the plaintiff.

Plaintiff reserves the right to update these disclosures in the future in accordance with the order of the court, to add or delete witnesses as may be appropriate and in accordance with the court's order and reserves the right not to call a witness above as may be

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appropriate at trial.

  
HANS A. MAST, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH  
3416 West Elm Street  
McHenry, IL 60050  
815-344-3797  
Attorney Registration No. 06203684

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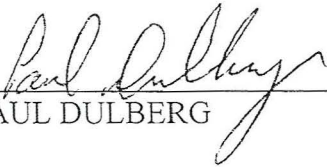
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Verification by Certification

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

  
\_\_\_\_\_  
PAUL DULBERG

DATE: 7-20-12

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## MEDICAL EXPENSE REPORT

PAUL DULBERG

DATE OF ACCIDENT: JUNE 28, 2011

DATE OF REPORT: MARCH 19, 2012

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MEDICAL EXPENSES

Paul Dulberg

Date of Accident: June 28, 2011  
Date of Report: March 19, 2012

<hr/>		
Northern Illinois Medical Center		
4201 Medical Center Drive		
McHenry, IL 60050-8409		
815-344-5000 - Acct. 11179-00323		
06/28/11	\$1,323.75	\$1,323.75
Moraine Emergency Physicians		
PO Box 8759		
Philadelphia, PA 19101-8759		
800-355-2470 - Acct. MNI711179003233		
06/28/11	\$1,346.00	\$1,346.00
McHenry Radiologists Imaging Associates		
PO Box 220		
McHenry, IL 60051-0220		
815-759-0800 - Acct. 235130-QMRIG		
06/28/11	\$50.00	\$50.00
Associated Neurology SC		
Attn: Dr. Levin		
1900 Hollister Drive		
Suite 250		
Libertyville, IL 60048		
847-549-0055 - Chart # 18062		
07/28/11	\$225.00	
08/10/11	<u>930.00</u>	
Total		\$1,155.00
Open Advanced MRI of Round Lake		
Medchex		
PO Box 502		
Katoah, NY 10536		
866-959-1100 - Acct. 265065		
02/03/12	\$3,390.00	\$3,390.00

Walgreens  
3925 W. Elm Street

2019 RECONSTRUCTED FORGERY.

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McHenry, IL 60050  
815-363-0722  
06/28/11 .....\$48.68 ..... \$48.68

TOTAL EXPENSES:..... \$7,313.43

Misc Expenses  
    Medical Supplies ..... \$19.61  
    Total Misc. Expenses ..... \$19.61

TOTAL ALL EXPENSES ..... \$7,333.04

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POP 001409



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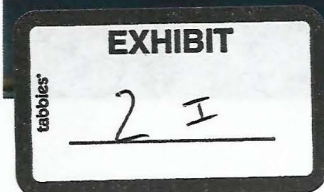


EXHIBIT  
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This photograph was CROPPED - MISSING house address on outside wall of structure in original photograph.





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MEDICAL EXPENSES

Paul Dulberg

Date of Accident: June 28, 2011  
Date of Report: March 19, 2012

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McHenry Radiologists Imaging Associates		
PO Box 220		
McHenry, IL 60051-0220		
815-759-0800 - Acct. 235130-QMRIG		
06/28/11	\$50.00	\$50.00
Associated Neurology SC		
Attn: Dr. Levin		
1900 Hollister Drive		
Suite 250		
Libertyville, IL 60048		
847-549-0055 - Chart # 18062		
07/28/11	\$225.00	
08/10/11	<u>930.00</u>	
Total		\$1,155.00
Open Advanced MRI of Round Lake		
Medchex		
PO Box 502		
Katoah, NY 10536		
866-959-1100 - Acct. 265065		
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