

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 STATE OF ILLINOIS) COUNTY OF McHENRY) SS. 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.) The deposition of DAVID A. GAGNON taken before Margaret Maggie Orton, Certified Shorthand Reporter and Registered Professional Reporter, taken pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 3421 West Elm Street, McHenry, Illinois, commencing at 1:12 p.m. on February 4, 2013. 1	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 INDEX WITNESS DAVID A. GAGNON Examination by Mr. Mast 4 Examination by Mr. Barch 188 Examination by Mr. Callahan 201 Further Examination by Mr. Mast 202 Further Examination by Mr. Callahan 210 Further Examination by Mr. Mast 210 EXHIBITS GAGNON DEPOSITION EXHIBIT No. 1 143 No. 2 180 No. 3 183 3
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 APPEARANCES: LAW OFFICES OF THOMAS J. POPOVICH, P.C. MR. HANS A. MAST 3416 West Elm Street McHenry, Illinois 60050 Phone: (815) 344-3797 E-mail: hansmast@comcast.net On behalf of the Plaintiff; LAW OFFICES OF STEVEN A. LIHOSIT MR. JOSEPH P. CALLAHAN 200 North LaSalle Street Suite 2550 Chicago, Illinois 60601 Phone: (312) 558-9800 E-mail: jcabd@allstate.com On behalf of the Defendant David Gagnon; CICERO & FRANCE MR. RONALD A. BARCH 6323 East Riverside Boulevard Suite 2 Rockford, Illinois 61114 Phone: (815) 226-7700 E-mail: rb@cicerofrance.com On behalf of the Defendants Carolyn McGuire and Bill McGuire. ***** 2	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 (Witness sworn.) MR. MAST: All right. This is the discovery deposition of David Gagnon taken pursuant to notice in accordance with the applicable rules. WHEREUPON: DAVID A. GAGNON, called as a witness herein, having been first duly sworn, was examined and testified as follows: EXAMINATION BY MR. MAST: Q Mr. Gagnon, I'm Hans Mast. I represent Paul Dulberg. I'm going to ask you some questions regarding this chain saw incident. Start out with some background information. I just want to make sure -- And I imagine you've never given a deposition before; is that correct? A I have on my own behalf. I was in a car accident several years back. Q Okay. So you know the process? A Fairly well, yeah. Q Okay. So really the process is simple. Questions and then you answer the questions and we go back and forth until we're done, okay? A Okay. 4

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1 Q I want to make sure, though, that your 2 answers are responsive to my questions. So if you 3 don't understand the question, let me know. Otherwise 4 if you answer it, we're all going to assume that you 5 understood the question, okay? 6 A I understand. 7 Q Okay. Let's see what else. You're aware 8 obviously of Paul's accident that this case is all 9 about that happened, I think, at your parents' house 10 during some chain saw work at their house? You're 11 aware of that? 12 A Yes, I'm aware of that. 13 Q Okay. And I believe, and you can correct me 14 if I'm wrong on anything obviously, but I believe it 15 happened June 28th, 2011? Does that -- 16 A Yes. 17 Q -- sound right? 18 A Yes, that sounds correct. 19 Q Okay. Do you remember what day of the week 20 that was? 21 A No, I do not. 22 Q Was it Saturday or Sunday? 23 A No, it was not. It was during the week, I'm 24 quite sure. 5	1 Q Has it always been full-time? 2 A I would have liked it to have been. As work 3 comes, I work on that; otherwise, I fill the void with 4 other things that I can perform. 5 Q All right. Have you had to fill the void 6 with other things in the last ten years? 7 A Yes, and I have been employed with other 8 people in between. 9 Q Okay. So we'll get to that in a minute, 10 then, okay? 11 A Okay. 12 Q What is your current address? 13 A 39010 90th Place, Genoa City, Wisconsin. 14 Q So that's right over the border here to the 15 north? 16 A Yeah. 53128 is the zip. 17 Q Who do you live with there? 18 A My wife. 19 Q What's her name? 20 A Pamela. 21 Q Anybody else live at that address? 22 A No. 23 Q Do you have any children? 24 A No, I do not. 7
1 Q Okay. I'd like to start now and go through 2 some background information. So why don't we start 3 with this: What's your date of birth? 4 A 4-3-67. 5 Q And that makes you how old today? 6 A I am 45. 7 Q Are you employed today? 8 A I am self-employed as I have been my entire 9 life. 10 Q What are you self-employed in doing? 11 A I do auto restorations and collision repair. 12 Q Do you do that under your own name? 13 A I do that under the name of Dave's Auto Body. 14 Q At home? 15 A Yes. 16 Q Is that an incorporation or some type of 17 formal -- 18 A No. 19 Q -- organization? 20 A No. No. 21 Q Okay. How long have you been doing auto 22 restoration and collision repair under Dave's Auto 23 Body, under that name? 24 A Probably 20 years. 6	1 Q And your Social Security number? 2 A In full? 3 Q Yes. 4 MR. CALLAHAN: Can we do this off the record 5 then? 6 MR. MAST: We can do it off the record. 7 BY MR. MAST: 8 Q Let's say on the record, what are the last 9 four digits? 10 A 2535. 11 Q 2535? 12 A Yes. 13 MR. MAST: Okay. Give it to us off the record 14 now. 15 (Discussion off the record.) 16 BY MR. MAST: 17 Q Did you give us your -- 18 MR. CALLAHAN: Back on the record? 19 MR. MAST: Back on the record. 20 BY MR. MAST: 21 Q Did you give us your full Social Security 22 number off the record? 23 A Yes. 24 Q Okay. All right. Do you have any criminal 8

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1 convictions on your record in the last ten years?	1 A That's correct.
2 A No.	2 Q Okay. And you can correct me if I say
3 Q How long have you known Paul Dulberg?	3 something that's not accurate, but so is it my
4 A 35 years.	4 feeling, even though you don't know what Paul's view
5 Q And 35 years, how did you meet him?	5 of your friendship is, this suit being filed against
6 35 years --	6 you has brought negative feelings in your mind about
7 A Riding bicycles in a place we had deemed	7 your friendship?
8 called the mini trails.	8 A Yes, and only recently, if I may.
9 Q So were you neighbors, or ...	9 Q Okay. Go ahead.
10 A We lived close by. He lives in Pistakee	10 A At first when it had arisen, this situation,
11 Terrace, my mother -- or my mother lives in Pistakee	11 we were still talking to one another and I was freely
12 Terrace; he lives in Pistakee Highlands which is	12 submitting both insurance information, whatever he
13 about, I would say, a quarter mile maybe away from one	13 requested because, you know, there wasn't a problem at
14 another.	14 that time. But things turned as Paul had said some
15 Q And the mini trails were by your mother's	15 things that didn't really go well with me.
16 house?	16 Q You mean in his deposition or somewhere else?
17 A They were closer to his home.	17 A Personally to me.
18 Q Closer?	18 Q Well, if -- I guess I've got to ask you what
19 A They were closer to his home. They were just	19 those things were then.
20 down the road from his home.	20 A Okay. After bringing him to the hospital
21 Q Okay. And since you kind of met at the	21 after this occurrence took place with his vehicle, we
22 trails and you became -- a friendship arose?	22 had left. Myself still being very (inaudible) and my
23 A Yeah. Yes.	23 heart being concerned as to his condition because he's
24 Q Okay. Has that friendship been in pretty	24 my friend, he turned to me just leaving the hospital
9	11
1 good standing since then till today?	1 and said that we can make a lot of money at this.
2 A Yes, and as of right now I don't know where	2 Q Okay. Was anybody else present during that
3 it stands. I have not spoken with him as I was	3 conversation?
4 directed not to.	4 A No. No.
5 Q Fair enough. But at least in your mind is it	5 Q Was that in your car on the way from the
6 still in good standing -- Hold on. Let me just finish	6 hospital?
7 the questions. Is your friend- -- At least in your	7 A That was in his vehicle immediately leaving
8 mind, is your friendship still in good standing with	8 the hospital and still in the parking lot at the
9 Paul Dulberg today?	9 hospital.
10 A No.	10 Q Was that the same day of your accident -- of
11 Q Okay. And is that because of the suit?	11 his accident?
12 A Yes.	12 A Yes.
13 Q Okay. Fair enough. Understood about that.	13 Q Okay. So that would have been June 28, 2011,
14 Until the suit was filed, okay, was your	14 he was discharged out of the hospital and he was in
15 friendship with Paul Dulberg in good standing?	15 his car?
16 A Yes.	16 A Passenger's seat; I was driving, yeah.
17 Q Had it been all the way for those 35 years	17 Q Okay. Did you not have a car at the time or
18 until the suit was filed?	18 something?
19 A Yes.	19 A No. His vehicle was at my house -- my
20 Q Okay. So there was never any times where	20 mother's house, I should say, where the occurrence
21 your friendship was seriously tested over that	21 happened; and when we left, he said, Just take my car,
22 35 years?	22 so we took his vehicle to the --
23 A No.	23 Q All right. Let me stop you because I
24 Q Is that correct?	24 understand what you're saying. You're saying after
10	12

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1 his injury you drove his car with him as a passenger 2 to the hospital? 3 A Yes. 4 Q He got treated, discharged, and then you were 5 back in his car going back to your mom's house? 6 A Never left the parking lot and he said that. 7 Q No, I understand that -- 8 A Yes, but that's -- 9 Q -- but that's where you were going? 10 A Yes. Yes. 11 Q All right. Let's try not to -- I'll try and 12 won't talk over you; you try not to talk over me. 13 All right. So you're leaving the 14 hospital still in his car on the way to your mother's 15 house, right? Right? That's on the way? That's 16 where you were going? 17 A Right, that's where we were going, but we 18 still had not left the parking lot. 19 Q All right. I didn't say anything about where 20 you were. I'm saying you're in the car on the way to 21 your mother's house, right? 22 A Yes. 23 Q Okay. 24 A Yes. 13	1 leaving and he had mentioned that, This may possibly 2 be the best thing that could happen to me because I 3 won't have to work the rest of my life. 4 Q Any witness to that conversation? 5 A Yes, Michael Mcartor. 6 Q Who? 7 A Michael Mcartor, who lives with him. 8 Q How do you spell the last name? 9 A Capital M small C, Artor, A R T O R or E R; 10 I'm not quite certain of that spelling, but he resides 11 with Paul there at his home. 12 Q Where Paul's living now? 13 A Yes. 14 Q Okay. And where did that conversation take 15 place four months after the accident? 16 A In his kitchen where -- In his kitchen. 17 Q And the extent of this conversation regarding 18 the financial aspects that we're talking about is that 19 he said, This might be the best thing that happened to 20 me, and what else? Was there anything else? 21 A Because I may not have to work another day of 22 my life. 23 Q Because I what? 24 A May not have to work another day of my life. 15
1 Q But before you left the parking lot, you're 2 in the car in the parking lot of the hospital and 3 that's when he made that statement? 4 A Yes. 5 Q Did he say anything else during that 6 conversation that you -- that you didn't like? 7 A No. 8 Q Okay. So that was the extent of anything 9 that he said about financial aspects of this case? 10 A Yes. 11 Q Is that the only time he said anything about 12 financial aspects of this case? 13 A No. 14 Q When is the next time he said anything like 15 that? 16 A I had visited him shortly after because we 17 were still in friendship, and I stopped in his home, 18 and ... 19 Q How soon after the accident? 20 A Oh, this is about three or four months after 21 the accident. 22 Q Okay. 23 A It was -- Now, I remember it was cold. It 24 was winter so I can't say exactly what day, but I was 14	1 Q Did he say anything else during that 2 conversation now about the financial aspects of this 3 accident? 4 A No. 5 Q Did he say anything else during that 6 conversation that you found uncomfortable or wrong? 7 A No. No. 8 Q Okay. Any other things that Paul has said 9 that you believed were wrong or had some kind of 10 financial component to this accident other than those 11 two that we've -- you've already described? 12 A There was also another instance where he 13 visited me at my home, I believe it was in 2012 when 14 things were going along here; we were still in 15 conversation with one another. 16 Q Okay. Let me just stop you. After the suit 17 was filed or before the suit was filed? 18 A It was after the suit was filed, yeah. 19 Q Okay. 20 A And he was not -- if not coaching me, 21 reassuring me that if I did make it easier, shall we 22 say, or ... that I would be awarded something for my 23 cooperation in it. 24 Q Was there any witnesses to that 16

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1 communication? 2 A No. No. 3 Q Did he say how you would be awarded? 4 A No. 5 Q Did he promise to pay you anything in 6 exchange for your testimony? 7 A Yes. 8 Q What did he promise to pay you? 9 A \$10,000. 10 Q What did he say? 11 A If he got a hundred thousand dollars. 12 Q What was the -- I need to know the exact 13 wording of that communication so that we all can 14 understand what he said. 15 A If this goes well for me, I wouldn't have a 16 problem with giving you \$10,000 if say I was to get a 17 hundred thousand dollars. 18 Q Okay. Did he, though, make that hundred -- 19 that \$10,000 conditional on what you would say or just 20 said, If it goes well for me, I'll give you 10,000 out 21 of the hundred thousand? 22 A He didn't place conditions on it. 23 Q Okay. 24 A I was assuming. 17	1 spoke of of the hundred thousand and \$10,000 offering 2 there. 3 Q Was it after suit was filed or before suit -- 4 A It was after the suit was filed. 5 Q Okay. 6 A And he showed up at my residence with an 7 iPad, which he's into techy things, things like that, 8 and I wasn't aware that there was a camera on front 9 and back but I was aware that there was a camera that 10 was on and he was showing me what was being viewed on 11 the screen, and then we proceeded into our house and 12 it was on again. He was showing me how you can look 13 at the front and the rear screen and me not being of 14 much interest of this device, I just told him, Could 15 you shut that thing off. I felt as though I was being 16 inventoried. 17 Q Okay. 18 A So that would be the only other issue. 19 Q Okay. Fair enough. 20 A Yeah. 21 Q I appreciate that. Did he say or do anything 22 that you felt was wrong or inappropriate regarding the 23 case in and of itself? 24 A No. 19
1 Q Okay. Fair enough. That's very honest of 2 you. I appreciate that. This is my question then -- 3 Well, let me go further. Did he say anything else 4 during that conversation in 2012 about anything you 5 felt was inappropriate or uncomfortable for you or 6 related to financial interests that he was -- 7 A No. 8 Q -- talking about? 9 A No, he did not. 10 Q Okay. Any other conversations with Paul now? 11 We've talked three different incidents now so I want 12 to make sure I've talked about everything. Is there 13 any other conversation you've had with Paul or contact 14 with Paul regarding any uncomfortable or uneasy 15 conversations or things he said relating to either 16 financial interests or some other component of the 17 suit or claim? 18 A There was one time where he came up and he 19 was asking for information, which I gave him, my 20 insurance. 21 Q When was this? Just give me a date so I know 22 how to ... 23 A I cannot supply you with a date. I could say 24 that it was before that last incident that I just 18	1 Q Okay. Nothing about financial interest -- 2 A Not that time, no, nothing. 3 Q Okay. Do me a favor, and you're doing very 4 good so far, but you were just kind of cutting me off 5 the last -- 6 A I'm sorry. 7 Q -- part of my sentence and I want to make 8 sure you understand the full thing I'm going to say, 9 okay? So let's try not to cut each other off. 10 All right. So at least, and you can 11 correct me if I'm wrong, as I understand it, there are 12 just three conversations where Paul made any 13 statements that felt -- that made you feel 14 uncomfortable pertaining to financial parts of the 15 lawsuit? 16 A Yes. 17 Q Okay. Or the claim; fair enough? 18 A Yes. Yes. 19 Q And that was the day of the accident where he 20 made that one-sentence statement, correct? 21 A Mm-hmm. 22 Q Yes? 23 A Yes. Yes. 24 Q And that was four months later where he made 20

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1 that statement about, This could be the best thing 2 that could happen to me because I might not have to 3 work the rest of my life? 4 A Yeah. 5 Q Yes? 6 A Yes. 7 Q And then there was the last thing that was in 8 2012 after suit was filed where he said -- although he 9 didn't condition it, he said, Hey, if I get a hundred 10 thousand, I'll give you \$10,000 of that? 11 A Yes. 12 Q Right? 13 A Yes. 14 Q Okay. And would it be fair to say, including 15 that last 2012 conversation, he never said, If you do 16 this for me, I'll do this for you; fair enough? 17 A Yes. 18 Q Is that true? 19 A That's true. 20 Q Okay. So he never -- You could make the 21 assumptions you want, and you're free to do that, 22 okay, but my question is nothing he ever said 23 pertained to having him wanting you to lie for him? 24 MR. BARCH: I'm going to object. It's 21	1 Q Those were inferences you made from what he 2 told you, correct? 3 A Yes. 4 Q Okay. Did you ever say, Hey, do you want me 5 to lie for you -- Well, let me put it this way. I'm 6 going to try to just summarize it. 7 Is it fair to say he never asked you to 8 lie for him? 9 A That is correct. 10 Q Okay. Is it fair to say he never agreed to 11 give you money in exchange for what you would say to 12 him -- say for him? 13 A There is one more thing that I said that I'm 14 recollecting now. 15 Q Okay. 16 A And I said, Well, what would you want me to 17 say, that I was freewheeling a chain saw and I was 18 negligent? 19 And he said, That sure would make things 20 easy. 21 Q Okay. And when did he say that, which 22 conversation? 23 A That same conversation when he spoke of the 24 hundred thousand dollars and the \$10,000. 23
1 argumentative, but go ahead. 2 MR. MAST: Go ahead. 3 MR. CALLAHAN: I'll join that objection. 4 BY THE WITNESS: 5 A No, he was blatantly asking me in regards to 6 what he was asking me to do to make it easier for him. 7 Q Right. 8 A And making it easier for him would not just 9 be submitting the truth in my judgment, but it would 10 be submitting to what he would want me to say so that 11 it would be easier for him. 12 Q I understand what your judgment is. 13 A Yes. 14 Q This is what I'm questioning, though. My 15 question is what he said to you, okay. You can take 16 any assumptions you want from what he said to you; 17 you're free to do that, okay. My question, though, is 18 did he ever tell you that he wanted you to lie for 19 him? 20 A He did not say he wanted me to lie for him, 21 no. 22 Q Okay. You took that from an inference of 23 what else he said that you've already told me, right? 24 A Yes. 22	1 Q So that's the 2012 conversation? 2 A Yes. Yes. 3 Q Okay. And what -- So let me get it clear 4 now. The 2012 conversation that we've already talked 5 about was after suit was filed? 6 A Yeah. 7 Q It says, If you would -- What you're saying 8 he said is if he would be awarded something, say a 9 hundred thousand dollars, he would give you \$10,000 of 10 it, right? 11 A Yes. 12 Q And now you're adding on to what else did he 13 say? 14 A He -- I said to him, Well, what would you 15 expect from me? What would you want me to say, I was 16 freewheeling a chain saw and I was negligent? I said 17 I would not do that. I'm going to tell the truth. 18 And that's basically where our friendship -- I haven't 19 spoke to him really very much or been with him or 20 conversed with him since then. 21 Q All right. You're going a little further 22 than what I'm asking, though, but that's fine. My 23 question was, what more did he say and you told me 24 what you said, all right, so let's just go straight 24

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1 with what I'm asking. I'm asking other than, Hey, if 2 I get a hundred thousand dollars, I'd be glad to give 3 you \$10,000 of that, other than Paul saying that, what 4 else do you recall Paul saying in that 2012 5 conversation at your house? 6 A Nothing. 7 Q Oh, okay. It was just what you said then? 8 A That's what I said after. I sufficed by way 9 of example, Is this what you would want? 10 And he said, That sure would make it 11 easy. 12 Q Well, then that is something that he said. 13 Listen, this is what I'm trying to get at, I'm trying 14 to find out what he said, okay? 15 A Okay. He said nothing in response to that 16 except he said, That sure would make it easy. 17 Q All right. You're interrupting me again. 18 Let's go back at it again. 19 A Okay. 20 Q I want to go step by step because I want to 21 try to find out everything you're going to say. I 22 don't want there to be any stones unturned, okay? 23 A Yeah. 24 Q You told me that in that 2012 conversation he 25	1 A Okay. 2 Q In the 2012 conversation at your house you 3 said that Paul made a statement that, If I get a 4 hundred thousand dollars of this, I'll give you -- 5 I'll be happy to give you \$10,000 of this -- of that. 6 Is that what he said? 7 A Correct. 8 Q Okay. In response to that you said, What do 9 you want me to say, that I was freewheeling and 10 negligent? I will not do that. Was that your 11 statement? 12 A That was my -- 13 MR. CALLAHAN: I thought he said freewheeling a 14 chain saw and that I was negligent. 15 BY MR. MAST: 16 Q Okay. Is that what you said? 17 A Yes. 18 Q Okay. And then in response to that, what did 19 he say? 20 A He said, That would make it easy. 21 Q Okay. Did he say that's what he wants you to 22 say or did he just say those words? 23 A He just said those words. 24 Q Okay. Is that all he ever said then after 27
1 said, If I get a hundred thousand dollars, I'd be 2 happy to give you \$10,000 of that. Is that what he 3 said? 4 A Correct, that is what he said. 5 Q Okay. In response to that, what did you say? 6 A I said, What would you want me to say, I was 7 freewheeling a chain saw and I was negligent? I said, 8 I will not do that. 9 Q Okay. All right. Stop. That's what you 10 said, okay. And then what did he say in response -- 11 A Nothing. 12 Q -- to that? 13 Okay. Nothing, right? 14 A Nothing. 15 Q Okay. Because I thought you said that he 16 said, Well, that would make it easier. 17 A Correct. I'm sorry. That was his closing 18 statement after I said that. 19 Q So he did say something? 20 A Yes, he did. I'm sorry. 21 Q Okay. So let's go through it again now. 22 A All right. 23 Q Because I want to make the chronology, I want 24 to make that correct, okay? 26	1 that conversation at the end of that conversation? 2 A Yes. 3 Q All he said was, That would make it easy? 4 A Yes. 5 Q Okay. All right. So we've got three 6 conversations, one on the day of the accident where he 7 said, We can make a lot of money at this, right? 8 A Correct. 9 Q That's all he said during that conversation 10 that was uneasy or uncomfortable or financially 11 motivated, correct? 12 A Yes. 13 Q Okay. Second conversation four months later, 14 you visited him at his house, right? 15 A Yes. 16 Q And he said, This may be the best thing that 17 happened to me; I might not have to work the rest of 18 my life? 19 A Yes. 20 Q Is that all that he said that was uneasy or 21 uncomfortable or related financially to this case? 22 A Yes. 23 Q And the third thing was 2012 where he said if 24 he gets a hundred, he'd give you ten and then you 28

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1 said, Well, what, if I say that -- What do you want me 2 to say, if I'm wheeling it, the chain saw, and 3 negligent? 4 And he said, Well, that would make it 5 easy. 6 Is that everything out of that 7 conversation that was uneasy, uncomfortable or 8 financially related? 9 A That is all, yes. 10 Q Okay. Have you now -- 11 MR. CALLAHAN: Can I object? I think he did 12 leave off that one comment, I'm sorry, the one he 13 said, I won't do that. 14 BY MR. MAST: 15 Q Okay. Yes, and you also said you wouldn't do 16 that after you -- 17 A I said that I would not do that, yes. 18 Q After your con- -- After your response to 19 what he said, you said, I would not do that? 20 A Yes. 21 Q Okay. Have we now covered everything that 22 you and Paul talked about after the accident that made 23 you feel uncomfortable, uneasy or financially related 24 to this accident? 29	1 Q Okay. 2 A This is not related to him. 3 Q So the reason you're not friends with Paul 4 anymore is after the third conversation in 2012 where 5 you said, I would not do that, and he said, That would 6 make it easy, you haven't spoken to him since; but in 7 your mind it's not friendly because of what you 8 thought he was asking you to do? 9 A Yes. 10 Q Fair enough? 11 A Yes. 12 Q Do you know in his mind if he thinks you're 13 still friends? 14 A I do not know. 15 MR. CALLAHAN: I'd just object as to relevancy 16 and as to speculation. 17 BY THE WITNESS: 18 A I don't know. 19 MR. BARCH: Join the objections. 20 BY THE WITNESS: 21 A I haven't spoken to him. I don't -- 22 Q Hold on. Just let them give the -- All 23 right. They objected. 24 MR. CALLAHAN: You may answer. 31
1 A Yes, that would be all. 2 Q Okay. Very good. That wasn't too hard. 3 A No. 4 Q Oh, one final question on those things. 5 A Okay. 6 Q Were there any witnesses to either of those 7 three conversations other than you said the -- 8 A Michael Mcartor. 9 Q Michael Mcartor was a witness to the second 10 one four months after the accident? 11 A Yes, which was at Paul's home in his kitchen, 12 yes. 13 Q Right. Any other witnesses to any other 14 parts of those communications? 15 A No. 16 Q Just you and Paul and then the second 17 conversation was with Michael? 18 A Correct. 19 Q Okay. Are you friends with Michael? Have 20 you ever been friends with Michael? 21 A I've been friends with Michael probably about 22 25 years. 23 Q Are you still friends with Michael? 24 A As far as I know, yes. 30	1 BY MR. MAST: 2 Q What's your answer to that question? Do you 3 know in Paul's mind whether he thinks you guys are 4 still friends or not? 5 A I do not know. I have not conversed with him 6 in quite a while now. 7 Q All right. And then that fourth thing that 8 you talked about didn't really have to do with any 9 statements but he had an iPad and it looked like he 10 was videoing or something. He didn't do anything 11 wrong during that; you just weren't sure what he was 12 up to, right? 13 A Right. 14 Q Okay. That didn't have anything to do with 15 any statements or anything; fair enough? 16 A Fair. 17 Q Okay. So we've covered all the statements 18 that Paul made that made you feel uncomfortable? 19 A Yes. 20 Q Okay. All right. How long have you been 21 married? 22 A I've been married since 2008, August 16th. 23 Q Okay. Does your wife Pamela know Paul? 24 A Yes. 32

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1 Q On a -- like a friendly basis or just sees 2 him every now and then? I mean, how would you 3 describe her knowledge of Paul, just passing? 4 A He's my friend and is friends with him is the 5 same; there was never anything between us until ... 6 Q I mean, did she spend as much time with 7 Paul -- 8 A No. 9 Q -- as you did? 10 A No. 11 Q Okay. Her contact with Paul was just passing 12 then? It wasn't where she would do anything with him? 13 A Correct. 14 Q Is that fair enough? 15 A Yeah, correct. 16 Q Okay. And she doesn't have any knowledge 17 regarding any communications Paul made regarding the 18 incident that were uncomfortable or financially 19 motivated? 20 A No. 21 Q Is that fair? 22 A That's fair. 23 Q Okay. Okay. What's the highest level of 24 education you have? 33	1 Illinois University? 2 A Two months. 3 Q Okay. And what program were you there, just 4 general? 5 A Program? 6 Q What type of degree? What program? 7 A Oh, engineering. 8 Q Okay. 9 A Mechanical engineering. 10 Q Okay. And what year was that, approximately? 11 A That was 1985. 12 Q Instead of going to DeKalb or at least after 13 two months of going to DeKalb, where did you go after 14 that? 15 A I pursued employment as an auto body worker. 16 Q With who? 17 A It was called Lakeland Autobody. It was in 18 Volo, Illinois. 19 Q Are they still together? 20 A No. 21 Q How long did you work there? 22 A Three years. 23 Q Doing auto body work? 24 A Correct. 35
1 A I was accepted at DeKalb University. I 2 didn't pursue it until its end, and then I went to 3 College of Lake County. 4 Q You mean Northern Illinois Medical Center -- 5 Northern Illinois University? 6 A Yeah, DeKalb College. 7 Q Okay. All right. I know, I'm just trying to 8 connect the dots here. 9 You were accepted at Northern but you 10 never went there? 11 A Oh, no, I went there and I just -- because of 12 turns of events in my life, personal, I did not 13 finish, and -- 14 Q All right. But I'm not getting to that 15 point. I'm just -- 16 A Okay. 17 Q The question was, where did you go to -- the 18 highest level of education, that's the question. 19 A I was accepted at Northern Illinois 20 University. 21 Q You weren't just accepted. You went there, 22 right? 23 A Yes. 24 Q Okay. How long did you go to Northern 34	1 Q Who was your supervisor? 2 A Owner and supervisor Brian Schuman 3 (phonetic). 4 Q Brian what? 5 A Schuman. 6 Q Schuman? 7 A Yeah, Schuman. 8 Q So after two months of DeKalb, you went to 9 Lakeland Auto? 10 A Mm-hmm. 11 Q Right? 12 A Yes, correct. 13 Q Okay. When did you go to -- You said you 14 went to another college? 15 A CLC, College of Lake County. 16 Q When was that? 17 A I believe that was 1987. 18 Q Sometime while you were at Lakeland? 19 A Yeah, I was -- Yes, I was working at the auto 20 body. 21 Q And how long were you at CLC? 22 A I want to say six months. 23 Q Okay. On what program? 24 A Same, mechanical engineering. 36

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1	Q	Did you finish that program?	1	Q	Okay.
2	A	No, I did not.	2	A	I'm not sure what town it resides in.
3	Q	Why not?	3	Q	And when did they let you go?
4	A	Because I needed to earn money, and I wasn't	4	A	They let me go just at Christmastime last
5		earning enough doing -- going to school and working.	5		year.
6	Q	Okay.	6	Q	2012 Christmas?
7	A	Pretty physical job, auto body.	7	A	Yes.
8	Q	Okay. Any other college education after high	8	Q	All right. Any other employment since high
9		school?	9		school we have not discussed?
10	A	Completed, no.	10	A	No.
11	Q	Not -- I didn't say completed, any other	11	Q	Okay. Do you have any training other than
12		college education after high school? Did you go to	12		being self-trained on working with a chain saw?
13		any other colleges?	13	A	No.
14	A	None other than the ones I had mentioned.	14	Q	So you're -- Well, let me ask you this way:
15	Q	That's what I'm asking you.	15		How long have -- Well, strike that.
16	A	Okay.	16		How long have you -- Strike that.
17	Q	You went to NIU and CLC. Any other college?	17		When's the first time you operated a
18	A	No.	18		chain saw yourself?
19	Q	Okay. Where did you graduate high school?	19	A	Age 18.
20	A	Johnsburg.	20	Q	Okay. About '85? No, wait. Is that '85?
21	Q	What year?	21		MR. CALLAHAN: Yeah.
22	A	1985.	22		BY THE WITNESS:
23	Q	Okay. After Lakeland Auto, which I'm	23	A	Yeah.
24		assuming was somewhere around -- when you finished	24	Q	Yeah. About 1985 then?
37			39		
1		somewhere around 1988, '89, somewhere around there?	1	A	Mm-hmm.
2	A	Finished ...	2	Q	Yes?
3	Q	When you finished Lakeland Auto, I'm assuming	3	A	Yes.
4		that was somewhere around '88 or '89?	4	Q	Yes. Okay.
5	A	Yes. Yes.	5		Whose chain saw was that that you
6	Q	Okay. Where did you go after that?	6		operated first?
7	A	I became self-employed performing the same.	7	A	I do not recollect. We were camping, and I
8	Q	To the present date?	8		picked up a chain saw and was cutting firewood for the
9	A	Yeah.	9		group that was there.
10	Q	Okay.	10	Q	Okay. Was Paul with you at the time?
11	A	Yes.	11	A	No.
12	Q	Okay. Have you worked for anybody else	12	Q	Okay. Have you ever owned a chain saw?
13		during 1989 until now other than yourself?	13	A	Yes.
14	A	Yes.	14	Q	Okay. Do you own one now?
15	Q	How many jobs are we talking, lots?	15	A	No.
16	A	One at a machine shop, Swiss Automation in	16	Q	Okay. During what period of time did you own
17		South Barrington, that was between 1999 and 2001, and	17		a chain saw?
18		then just currently last winter working at a place	18	A	Oh, 2000 till 2004.
19		called Advantage Auto Body for three months. They let	19	Q	And for what reason did you own it and then
20		me go.	20		no longer own it during those four years?
21	Q	Where was that?	21	A	A friend had garbage-picked it. It was an
22	A	That -- I'm not sure what town it is. It's	22		old really big chain saw that I rebuilt. I used it
23		in Wisconsin and about two miles from my home between	23		several times and then I sold it at a garage sale
24		Powers Lake and Burlington.	24		along with another unit that was just like it.
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1 Someone wanted to fix up theirs too, so ... It was an 2 old David Bradley chain saw; it was a very old model. 3 Q Wait, I missed some of that. You said you 4 had one that you got from a friend from a garage sale 5 but another, what was the other one? 6 MR. CALLAHAN: No. 7 MR. MAST: Sorry. 8 BY THE WITNESS: 9 A No, I had -- I had one that I operated and 10 then I picked one up at a garage sale. 11 Q So you had two of them? 12 A Yeah, I had two of them, and I sold them both 13 at the same time, yeah. One worked and one didn't. 14 Q And that was from 2000 to 2004? 15 A Correct. 16 Q Okay. During 2000-2004, did you use those 17 chain saws on any type of continual basis? 18 A No. 19 Q They were just there for -- because you had 20 fixed them up and you just kind of liked to have them 21 around? 22 A No, they were very useful because they were 23 large and I used them on my property to trim off a 24 large maple branch that had fallen. 41	1 chain saw they brought to the camping site and you 2 used them to cut up for camping wood? 3 A Yes. 4 Q Okay. And then beginning of 2000 you would 5 use them a little bit more frequently because it was 6 yours and you were using it on your property? 7 A Yes. 8 Q Okay. Do you have some type of forest or 9 something on your property that you use it for, or ... 10 A No, I have negligent neighbors that when 11 trees fall, they don't -- 12 Q Okay. 13 A -- they don't really seem to attend to them, 14 so I opted to do the clearing myself. 15 Q Okay. So you clear up a tree here and there? 16 A Yeah. Yes. 17 Q And I know there's no way -- easy way to do 18 this, but I still have to ask the question. From 2000 19 to 2004 what would you estimate the number of times 20 you used a chain saw? 21 A Three times. 22 Q All right. So up until 2004 the total times 23 you used a chain saw was about 15 times? 24 A Correct. 43
1 Q Oh, so you used them? 2 A I used the one that was working. The other 3 one was not operational. 4 Q The one that was working that you owned from 5 2000-2004, the one chain saw that was working, you 6 used only for your own personal use on your personal 7 property? 8 A Yes. 9 Q Had you used a chain saw from 1985 until 10 2000? 11 A Yes. 12 Q Whose chain saws? 13 A Once again, I'm a camper and there would be a 14 time when I would just elect myself to cut the wood, I 15 just ... 16 Q Let me ask it this way, maybe it will be 17 easier, because I know these aren't all easy 18 questions. Before 2000, okay, when you first got your 19 own chain saw, how many times would you have operated 20 a chain saw over the 15 years? 21 A At least a dozen times. 22 Q Were they all during camping trips? 23 A Yes. 24 Q Okay. And they were all somebody else's 42	1 Q Okay. All right. From 2004 until this 2 accident in June of 2011, how many times did you use a 3 chain saw? 4 A Four times. 5 Q And whose chain saw was it? 6 A The first time was a friend's, on his 7 property; second time, again, camping; third time on 8 my property, and the fourth and final time was at my 9 mother's place. 10 Q Now, when you say your property, whose chain 11 saw was it? 12 A That would be my friend Mike. 13 Q The first -- The first -- Well, okay. That 14 would be the same friend that you operated the chain 15 saw on his property the first time that you were 16 spelling these out? 17 A After the 2004, yes. Yes. 18 Q Yeah. So beginning in 2004 when you no 19 longer owned a chain saw, the first time you used it 20 after that was with a friend at his house? 21 A Yes. 22 Q And that's Mike's? 23 A Yeah. Not Mike Mcartor. 24 Q No, I -- 44

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1A Okay. I'm just clarifying.	1answers, I take it?
2Q That's fine. Okay. Second time was out	2MR. CALLAHAN: Yes.
3camping cutting up firewood?	3MR. MAST: All right. So we'll go through that.
4A Correct.	4We will go through that.
5Q Third time was at your house with Mike's	5BY MR. MAST:
6chain saw?	6Q Well, any -- All right. Whether it's
7A Yes.	7stepparents or real biological parents, we'll just put
8Q And fourth time was at your parents' house?	8them all in one group, okay.
9A Yes.	9Whether it's your stepparents or real
10Q Okay. And was that fourth time at your	10biological parents, have your parents, meaning
11parents' house the day of this incident or before the	11either/or, ever attempted to train you or direct you
12day of this incident?	12in the proper method or way to operate a chain saw
13A It was the day of that incident.	13your entire life until today?
14Q Okay. So if I were to -- and I know this	14A No.
15isn't the easiest thing to do, but if the day of the	15Q Okay. Might as well go through your parents
16incident was June 28, 2011, when was the last time you	16then. Bill and Carolyn McGuire, are they your
17used a chain saw before that date?	17parents?
18A Oh. Datewise?	18A My mother is my biological mother, Carolyn
19Q Some estimate, yeah. Within a month, a year,	19McGuire. William McGuire is not my biological father.
20three years?	20Q Okay. So William McGuire is your stepfather?
21A It was a year.	21A Correct.
22Q Within a year?	22Q Is your father -- your natural father living?
23A Yeah, within a year.	23A No.
24Q So it would have been the prior summer maybe?	24Q Okay. When did he pass?
45	47
1A Yes.	1A 1996.
2Q Okay.	2Q Okay. I'm assuming he had never did anything
3A Yeah, a storm took down some branches in my	3with you with regard to chain saws; is that fair to
4yard.	4say?
5Q So that third incident after 2004, which you	5A We never interacted in that way.
6spelled out four times you used a chain saw, that	6Q Okay. Did either William or Carolyn McGuire
7third incident where it was Mike's chain saw on your	7ever interact with you with regard to how to use the
8property was the one in 2010 during the summer?	8chain saw?
9A Yes.	9A No.
10Q Okay. And then the next time you used a	10Q Okay. Are your -- So when I say parents,
11chain saw was on your parents' property on the day of	11since your father passed and Carolyn is your natural,
12Paul's accident with your parents' chain saw?	12I'll just talk about Carolyn and William as your
13A Yes.	13parents, then, okay? Is that fair to you?
14Q Okay. Did your parents ever attempt to	14A That would be fair to me.
15educate you or train you on how to operate a chain saw	15Q Okay. Have your parents -- What was I going
16at any time in your life?	16to ask you? Oh, what do your parents do presently for
17A No.	17a living?
18Q Up till today?	18A They're currently both retired.
19A No.	19Q Okay. Do you know how long they'd been
20Q Okay.	20retired?
21MR. CALLAHAN: Excuse me. You say -- Just to be	21A My mother, I believe, two years now. She was
22clear, his parents, do you mean Mr. McGuire and	22employed at Intermatic --
23Mrs. McGuire or his father and Mrs. McGuire?	23Q Okay.
24MR. MAST: Okay. So those are two different	24A -- in Spring Grove, and William McGuire
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1 worked for last Tempest Construction, and he was an 2 industrial commercial drywaller. 3 Q Okay. To your knowledge -- and, again, we'll 4 probably end up deposing them soon so we'll ask them, 5 but to your knowledge do either of your parents have 6 any expertise or experience in operating chain saws 7 except just, you know, doing it on their own and 8 around the house? 9 A They never have operated. They bought that 10 tool specifically for that -- the cutting of the trees 11 that needed to be done on their property. 12 Q And they weren't going to use it then? They 13 were letting -- 14 A No. 15 Q -- you do it? 16 A Right. 17 Q Okay. So they -- The chain saw that you were 18 operating at the time of Paul's accident on their 19 property, your parents' property, that chain saw was 20 purchased by your parents for that particular project? 21 A I wouldn't say they bought it and then do 22 this, they bought the chain saw because they had known 23 that there would be -- need to be work done -- 24 Q Okay. 49	1 themselves were going to operate that chain saw? 2 A You would have to ask them that question. 3 Q So you don't know? 4 A I do not know. 5 Q Okay. Fair enough. Had you known either of 6 your parents ever to operate a chain saw before Paul's 7 accident? 8 A Neither one of them have ever operated a 9 chain saw. 10 Q You know that? 11 A I know that. 12 Q Okay. What kind of -- Are they still living 13 in the same house they were living at the time of the 14 accident? 15 A Yes. 16 Q Okay. What kind of property is that if you 17 describe it? Is it like a small little half-acre 18 property, or is it a larger -- 19 A It's a small one, third-acre residential -- 20 what is it called? -- ranch. 21 Q Okay. 22 A Ranch home, full basement. 23 Q How many trees would you say are on their 24 physical third-acre of property, if you had to give me 51
1 A -- and I later was elected to do that. 2 Q So when they purchased the chain saw -- and, 3 again, I'll ask them these questions, but I'm 4 wondering what your knowledge is, when they purchased 5 this chain saw, your parents, did they purchase it 6 knowing that you were going to use it or just that 7 somebody else and not them were going to use it? 8 MR. BARCH: Speculation, but go ahead, objection. 9 BY THE WITNESS: 10 A I can answer that when they purchased it that 11 they didn't solely purchase it with intent for me to 12 use it. 13 Q Wait. I missed the beginning of that. 14 A When they purchased that, they did not solely 15 purchase it for my usage. 16 Q Okay. 17 A They had purchased it for trimming of trees 18 on their property -- 19 Q Right. 20 A -- and then when I was elected or became the 21 person who did the work, I used that chain saw. 22 Q I understand that. My question has one 23 little branch more to it. My question was, did they 24 purchase it thinking somebody else other than 50	1 an estimate? 2 A I'm going to tell you. 3 Q Okay. 4 A Currently? 5 Q Yes. 6 A Ten. 7 Q Okay. Prior to the day of Paul's accident, 8 how many trees were on that property? 9 A 12. Oh, 13. 10 Q So on the day of Paul's accident, did you 11 take all three of those down then? 12 A I didn't take any trees down that day -- 13 Q Okay. 14 A -- or during this occurrence. 15 Q Okay. I see. Just limbs? 16 A Yes. 17 Q Okay. We're going to get to that as we go 18 here. Okay. 19 So even at the time Paul was injured, 20 there were still 13 trees on the property? 21 A Yes. 22 Q But there were less limbs on the property, I 23 take it then -- 24 A Yes. 52

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1Q -- at the time of Paul's accident? 2A Yes. 3Q All right. Who took down those three trees 4on your parents' property after Paul's accident? 5MR. BARCH: I'm going to object to the relevance, 6but go ahead. 7BY THE WITNESS: 8A Please reask the question. 9Q All right. You said there were -- You said 10there are ten trees now on your parents' property? 11A Yes. 12Q And you said at the time of Paul's accident 13there were 13 trees on the property? 14A Yes. 15Q So I'm assuming three trees were taken down; 16is that right? 17A Yes. Two were only related to that 18occurrence, though, and they were pine trees. The 19other tree that I'm saying is gone was an apple tree 20that was removed later by, I think, Bill. It was just 21a small little apple tree that was -- 22Q All right. Hold on. You're going way too 23far with my question. 24A Okay. 53	1Q Where? 2A Camping, on his property, cutting telephone 3poles that he got for free to make use out of them. 4Q Okay. Had you known him to operate a chain 5saw before the day of his accident in a fairly 6reasonable manner? 7A Yes. 8Q He wasn't, like, dangerous swinging it around 9or anything like that? 10A No. 11Q Okay. So he would operate it, would you say, 12in a safe manner before the day of the accident? 13MR. BARCH: I'm going to object to -- 14BY THE WITNESS: 15A I'm not qualified -- 16MR. BARCH: Let me object to the foundation. 17But go ahead and answer. 18BY THE WITNESS: 19A I'm not really qualified to determine what 20safe is, I mean ... 21Q Everyone has their own definition. I'm just 22asking you under your own belief of what safe is -- 23A Yes. 24Q Let me finish the question. Under your own 55
1Q My question is -- 2A Sorry for being all-inclusive. 3Q It's okay. 4A I know. I'm just apologizing. 5Q No, you don't have to apologize, and let me 6just give you kind of an idea. You're being helpful 7and open, and I appreciate that. The thing is, 8though, I'm still going to have to go through those 9questions again as I go through this so it's not going 10to cut down the time. So I'm just trying to tell you. 11A I'm in no hurry. 12Q Okay. The three trees that were taken down 13since Paul's accident -- we'll get to when and all, 14who and all that -- who took those three trees down? 15A I don't know. 16Q Okay. Okay. Before the day of Paul's 17accident, so before June 28, 2011, had you known Paul 18ever to operate a chain saw? 19A Yes. 20Q Okay. How frequently? 21A I don't know. 22Q How did you know then if he operated a chain 23saw? 24A I've seen him operating a chain saw. 54	1belief of what safe is, do you believe Paul operated 2before the day of his accident, whatever times you saw 3him, the chain saw in a safe manner? 4A Yes. 5Q Okay. Had Paul ever seen you operate a chain 6saw before the day of his accident? 7A Yes. 8Q Where was that? 9A Multiple times camping and also on my 10mother's property. 11Q Well, let's go back then because when I asked 12you how many times you operated the chain saw after 132004, you only described one time on your mother's 14property and that was on the day of the accident. 15A Does operating -- to clarify it -- include 16starting or actually cutting wood? Because there's -- 17Q Fair question but you didn't -- you didn't 18condition it when I asked you that before so that's 19why I'm going back. 20A Okay. 21Q We can -- I'm glad to define it any way you 22want. I'm just -- You didn't clarify it before so 23that's why I'm going back. 24A Okay. 56

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1 Q I asked you just recently, just the past 2 question, how many times had Paul -- I'm trying to 3 remember the question. How many times did Paul see 4 you operate a chain saw before the day of his 5 accident, right? I think that was the question. And 6 you said numerous times, I think; is that right? 7 A Yes. Paul has seen me operate a chain saw 8 before. 9 Q Before the day of his accident -- 10 A Yes. 11 Q -- on numerous occasions? 12 A Yes. 13 Q Okay. And then you were describing when and 14 under what circumstances? 15 A Yeah. 16 Q In addition to camping, those different 17 camping trips, he would sometimes be on camping trips 18 with you? 19 A Yes. 20 Q And he would see you operate a chain saw 21 during those camping trips? 22 A Yes. 23 Q And you would see him operating a chain saw 24 during those camping trips? 57	1 Q Okay. 2 A No. No. 3 Q But when I've asked you about you seeing Paul 4 operate a chain saw, you meant and referred to him 5 using the chain saw to cut things, right, that was 6 your answer? 7 A I've seen him using a chain saw to cut 8 things, yes. 9 Q Yeah, okay. 10 A Yes. 11 Q So before the day of Paul's accident, setting 12 aside the camping trips, Paul has seen you start a 13 chain saw to get it running but not use it? 14 A Yes. 15 Q Okay. Under what circumstances? 16 A It's good to start a piece of machinery every 17 now and then and you may -- 18 Q Where and when? What are we talking about? 19 At your mom's house? 20 A Yeah, probably in the garage there at my 21 mom's house. 22 Q Because they had the chain saw? 23 A No, they didn't have the chain saw then. 24 I'm -- You're talking about the chain saw that was in 59
1 A Yes. 2 Q Okay. And putting the camping trips aside, 3 had Paul ever seen you operate a chain saw any other 4 time before the day of his accident other than on 5 camping trips? And operate, if you want to know what 6 definition of operate is, I'm happy to tell you 7 that -- 8 A Yes, please. 9 Q -- in my view but you can define it any way 10 you want. Operate means using the chain saw to cut 11 wood. 12 A No, starting a chain saw and making sure that 13 it's running. That operating I thought you meant it 14 running, not literally using it. 15 Q Okay. So let's -- Let me ask the question 16 again now that we have the definition. 17 A Okay. 18 Q If we define chain saw operation as operating 19 a chain saw so as to cut wood or cut any other object 20 I guess for that purpose, have you now, based on that 21 definition, ever -- has Paul ever seen you operate a 22 chain saw before the day of his accident other than at 23 camping trips? 24 A No. 58	1 the accident? 2 Q Okay. Let's go back. 3 A Or are you talking about chain saw in 4 general? 5 Q Fair enough. Let me ask it this way: Did 6 your parents purchase a chain saw to cut trees in 7 2011? 8 A I don't know. 9 Q All right. The chain saw that you were 10 operating -- 11 A Yes. 12 Q -- at the time of Paul's accident was your 13 parents' chain saw, right? 14 A Correct. 15 Q When did they purchase that chain saw? 16 A Shortly before the incident. 17 Q Are we talking if the accident happened 18 June 28th, sometime in June? 19 A I wasn't there for the purchase. I wouldn't 20 know the purchase date. 21 Q Okay. Sometime that summer, though; fair 22 enough? 23 A Yes. 24 Q Okay. And before they purchased that chain 60

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1 saw in the summer of 2011, did your parents own any 2 other chain saws to your knowledge? 3 A No. 4 Q Okay. So the chain saw that Paul would have 5 seen before the day of his accident, see you start but 6 not operate, would be the chain saw that your parents 7 purchased in 2011 or some other chain saw? 8 A It would be some other chain saw. 9 Q Where? Putting aside the camping trips, 10 remember I talked, putting aside that. 11 A Yes, in my mother's garage. 12 Q Whose chain saw was it? 13 A I don't even recollect. I, you know ... 14 Q Okay. 15 A It was a piece of machine I was starting to 16 keep it in good working order. 17 Q Okay. But it wasn't your parents and it 18 wasn't yours? 19 A That's correct. 20 Q Okay. How many times did he see you start a 21 chain saw but not use it under your description 22 before? 23 A I don't know. 24 Q Couple, maybe two or three times? 61	1 Q No, I did ever. My word was ever, but I'll 2 say it again. Look it, I just want the truth. I 3 don't care. If you don't understand my question, I'll 4 restate it. 5 My question before, I think, if you 6 looked at the record, said had you ever operated a 7 chain saw for money. Now, maybe you meant before the 8 accident -- 9 A Yes, I did. 10 Q -- but I didn't phrase it that way. 11 A Okay. 12 Q So let's go back and correct it. Okay. We 13 can do that. 14 The question is, ever means in your 15 lifetime. Have you ever operated a chain saw for 16 money in your lifetime? 17 A Yes. 18 Q Okay. And was that -- the times you did it 19 for money, was that only with your parents? 20 A That one, yep, the occurrence that we're 21 speaking of, that was the only time that I was paid. 22 Q The day of the accident? 23 A The day of the accident. 24 Q All right. Okay. Before the day of the 63
1 A I don't know. I don't know. 2 Q Okay. At least once; fair enough? 3 A At least once, yeah. 4 Q Okay. All right. Have you ever used a chain 5 saw and operated a chain saw, meaning cut things for 6 money in your life? 7 A No. 8 Q And, I mean, whether through your employment 9 or through somebody just giving you money to do it, 10 you'd never done it for money; is that fair to say? 11 A That's fair to say. 12 Q Okay. The work you were doing, and we're 13 going to slowly get into that now, but the work you 14 were doing for your parents on the day of Paul's 15 injury, June 2011, was that work you were being paid 16 for or not? 17 A Yes, I was being compensated. 18 Q Okay. So doesn't that -- isn't that contrary 19 to the answer you just gave me then? 20 A No -- 21 MR. CALLAHAN: I'd just object to form. 22 BY THE WITNESS: 23 A -- because you asked if I did it before that 24 incident. 62	1 accident, had you ever cut -- Strike that. Let me -- 2 Let me get ... 3 Before the day of your accident, had you 4 ever cut any trees down with a chain saw or limbs, 5 parts of trees, with a chain saw at your parents' 6 house? Before the date of -- 7 A Reask that question. 8 Q Pardon? 9 A Could you please reask that question? 10 Q Okay. Before the day of Paul's accident -- 11 A Yes. 12 Q -- had you ever operated a chain saw at your 13 parents' house, meaning to cut things? 14 A No. 15 Q Okay. 16 A No. 17 Q So the day of the accident was the first day 18 in your life you ever operated a chain saw to cut 19 things at your parents' house; fair enough? 20 A Yes. 21 Q Okay. All right. So I'm assuming, given 22 that answer, the same answer would hold true for Paul. 23 Paul never assisted and/or operated a chain saw to cut 24 things at your parents' house before the day of his 64

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1 accident; is that fair to say? 2 A Yes. 3 Q Okay. And I want to make sure you caught 4 that I used the word assisted, meaning he never 5 assisted anybody, whether yourself or anybody else, in 6 the trimming of trees or cutting down of trees at your 7 parents' house before the day of his accident; is that 8 correct? 9 A That's correct. 10 Q Okay. Okay. Did Paul -- Well, let me ask it 11 this way: How frequent in the year before the 12 accident would Paul, to your knowledge, be visiting 13 your parents' house? 14 A At least twice a month. 15 Q And would it be only to visit with you or 16 would he be there sometimes when you wouldn't be 17 there, to your knowledge? 18 A He would be there when I wasn't there. 19 Q When you weren't there? 20 A Yeah. 21 Q What was his -- and that's what I'm not sure 22 about, what is his relationship with your parents that 23 would make him come to your parents' house when you're 24 not there, what's the -- 65	1 house if he knew you weren't going to be there? 2 MR. BARCH: Speculation. 3 BY THE WITNESS: 4 A A friendship. 5 Q Go ahead. 6 A Friendship again. 7 Q Okay. So would there be times Paul would 8 visit your parents' house merely to visit them and not 9 even -- whether you're there or not? 10 A No, he would arrive there with the purpose of 11 seeing me and me not being there, he would stay being 12 congenial and friendly towards my mother. 13 Q Okay. And that's why I asked the other 14 question; let me say it again. My question is, if 15 Paul knew you weren't going to be at the house, would 16 there be any -- ever any instance where you know that 17 he would visit your parents' house anyway? 18 A That would be between Paul and my parents 19 then. 20 Q So you don't know? 21 A I don't know. 22 Q Okay. That's what I was trying to get at. 23 A Okay. 24 Q Okay. Do you know if Paul ever worked at 67
1 A He would show up assuming that I was there 2 and knowing my mother since they worked at the same 3 place of employment, interacted there, that he would 4 sit and just speak with them on a friendly basis. 5 Q Okay. So he was good friends with your 6 parents? 7 A Yes. 8 Q Okay. Do you know if your parents still hold 9 goodwill to him today or whether that has changed? 10 MR. BARCH: Speculation. 11 BY THE WITNESS: 12 A I don't know. You'd have to ask them. 13 Q Do you know if your parents have overheard 14 Paul say anything that was uncomfortable or 15 financially motivated relating to this claim at all? 16 A No, I believe that they have not. 17 Q Okay. And same with your wife? I think we 18 already talked about that, right? 19 A Correct. 20 Q Okay. Would Paul have any reason, in your 21 knowledge, to visit your parents when you weren't 22 there? Now, I know he'd go there and you happened not 23 to be there so he'd talk to them; but, I mean, was 24 there anything that would take him to your parents' 66	1 your parents' house doing anything before the day of 2 his accident? 3 A Yes. 4 Q What types of things would he do at your 5 parents' house for work? 6 A Well, there was a large elm tree that was 7 removed in the front yard by another provider; I do 8 not know their name, and he said, I would like that 9 firewood. So I helped him load it onto a large 10 trailer and I believe that large pile of wood still 11 sits on his property. 12 Q Okay. 13 A To some extent. He's used some of it. 14 Q What year would that have been? 15 A Just 2010. 16 Q Okay. 17 A Just before this incident where she was 18 getting into the mode of upgrading the home, you know. 19 Q I get it. So it would have been the summer 20 before this accident then? 21 A Yes. 22 Q Okay. So -- 23 A Or it may -- it may have been that same 24 summer. 68

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1Q Okay. 2A That question would probably be better off 3answered by my mother. 4Q So the answer is, I don't know the time, 5that's your answer when that happened? You don't know 6when that happened? 7A It was before this occurrence and shortly 8before that. 9Q Okay. But the work that you're describing in 10that answer that Paul did at your parents' house 11before the day of his accident was simply to collect 12wood that had already been cut up and pile it onto a 13truck to take it to his house? 14A Correct. 15Q Okay. So I guess my question was more 16designed toward did Paul do any work for your parents 17or for the property itself at your parents' property? 18A Yeah, he -- 19Q Before the day of his accident? 20A Yes, he moved a large load of wood onto a 21trailer removing it from their property for his own 22usage. 23Q Okay. Just once? 24A That day was the -- That day we made several 69	1that fair to say? 2MR. BARCH: Foundation, but go ahead. 3BY MR. MAST: 4Q That you know of obviously. 5A That I know of. 6Q None? 7A That I know of, none. 8Q Okay. How long have your parents lived at 9that house? 10A My mother, biological mother, has lived there 11since 1971. 12Q And give us the address of the house so we 13could have that. 14A 1016 West Elder, McHenry, Illinois 600, I 15think it's, 51 now. It may have changed. 16Q Okay. And is that once -- And that's -- 17After your father passed, that's where she was 18remarried and began to live there then, correct? 19A She was remarried be- -- No, she was 20remarried before his passing. 21Q I see. 22A Yeah. 23Q Okay. So until you moved out of the house, 24you had lived at that house almost your entire 71
1trips. 2Q What day? 3A I don't know exactly what day, that's what 4was in dis- -- and we were uncertain of as to right 5there but it was before this occurrence possibly that 6same summer. 7Q All right. So this is what you're saying, 8you're saying before Paul's accident -- 9A Yes. 10Q -- whether that year or the year before, 11there was an instance where an elm tree was cut down 12and Paul made one or more trips to collect the cut up 13wood on a pickup truck to take to his house? 14A Correct. 15Q Other than that, has Paul done any other work 16on your parents' house before the day of his accident? 17A None that I'm aware of. 18Q Okay. Do your parents have any experience or 19expertise in cutting down trees? 20A No. 21Q Okay. So other than hauling firewood from 22your parents' house on one or two occasions before the 23day of his accident, Paul never did any other type of 24errands around their house, the parents' house; is 70	1childhood, right? 2A I lived there until I was 30 years old. 3Q Okay. 4A 29. 29. 29 years old. 1999 June 1st I 5moved to my new residence, which I currently live at. 6Q From your -- From about four years old, 7right? 8A Yeah. 9Q Okay. 10A Yes. 11Q All right. And let's take you to the day of 12the accident. When were you first -- Well, strike 13that. 14On the day of the accident, on the day 15the accident occurred, came upon you, did you already 16know your parents had purchased a chain saw? 17A Yes. 18Q Okay. And do you know the purpose of why 19they purchased it? 20MR. CALLAHAN: I'd just object as being asked and 21answered. 22But you may answer. 23BY THE WITNESS: 24A I don't know. I don't know. 72

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1 Q Okay. When did you first know that they 2 wanted you -- your parents wanted you to cut -- do 3 some cutting with the chain saw on their property? 4 When did you first learn that? 5 A Actually, I offered my services to them. 6 They had need to rebuild a shed and with the shed 7 down, there was an opportune time for trees to come 8 down. 9 Q What shed down, what do you mean? 10 A There was an old shed that if -- since it was 11 taken down because it was in disrepair, planning to 12 put up a new one, there was an opportunity to now drop 13 these trees where there was a clear field, clear area. 14 Q Fair enough. When was that that you offered 15 your services to cut the trees down? 16 A Two days before the occurrence. 17 Q Okay. Were you at their house when this 18 conversation arose? 19 A Yes, I was. 20 Q Okay. Was Paul with you? 21 A No. 22 Q It was just you and your two parents? 23 A Yes. 24 Q And it was discussed -- Did you bring up the 73	1 A The ones that were being trimmed up, that 2 were being considered to be removed at that time. 3 Q Okay. So let's go back to the conversation 4 two days before Paul's accident when you brought up 5 the issue of cutting the trees down, was the topic of 6 cutting the trees down involving only two trees at 7 that point? 8 A Yes. 9 Q And they were pine trees? 10 A Yes. 11 Q Okay. And how tall were the pine trees? 12 A I would -- In my best guesstimate, I would 13 say 50 feet tall. 14 Q Both of them? 15 A Yes. 16 Q And they had been on the property ever since 17 you knew? 18 A Yes. I watched my mother plant them herself. 19 Q Oh, okay. So when you were a very young 20 child? 21 A Yes. 22 Q Okay. And what necessitated that they be 23 removed given the rebuilding of the shed? 24 A At that time they had become large and an 75
1 issue or did they bring up the issue? 2 A Well, as I've mentioned, it was an ongoing 3 upgrading of the property and it was just discussed 4 that now is an opportune time to do that. 5 Q My question was, who brought up the issue, if 6 you know, about cutting the trees down? 7 A I did. 8 Q Okay. And it was something like, Hey, now's 9 a good time with the shed down, why don't we cut those 10 trees down? 11 A Yes. 12 Q Something like that. Okay. And there were 13 three trees in particular that were -- 14 A Two. 15 Q All right. Let me just finish the question. 16 My question was, there were three trees in particular 17 to cut down and you're saying there were only two? 18 A There are three trees that since that 19 occurrence are now gone. 20 Q Right. 21 A Two of which were involved in the occurrence 22 which were pine trees. 23 Q When you say involved in the occurrence, what 24 do you mean? 74	1 overburden. 2 Q Just taking up a lot of space -- 3 A Yes. 4 Q -- and in the way? 5 A Yes. Hanging over the area adjoining 6 neighbors. They were a nuisance. They needed to come 7 down. They weren't decaying at all, but they were -- 8 they were too full. 9 Q So would the trees have been about over 10 25 years old then at the time? 11 A Yes. Yes. 12 Q But they were in good health? 13 A Yes. 14 Q So it was elective in taking them down, not a 15 necessity, correct? 16 A It was a necessity as to -- Well, that was 17 the opportune time. I mean, as I said, the shed was 18 gone, so ... 19 Q I get it. I'm saying elective meaning that 20 they didn't have to be taken down for the safety of 21 anybody, they were being taken down more for 22 convenience's sake; fair enough? 23 MR. CALLAHAN: If you know. 24 76

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1 BY THE WITNESS: 2 A I don't know. I don't -- I don't really know 3 at what point they chose to. I suggested that they 4 come down and they chose to have me take them down. 5 Q Were they being taken down for any safety 6 reason? 7 A No. 8 Q Okay. The third tree, what kind of -- The 9 third tree that was taken down after Paul's accident, 10 what kind of tree was that? 11 A It was an apple tree. 12 Q And that tree being taken down, at least in 13 your view, had nothing to do with the shed issue then, 14 right? 15 A Nothing at all. 16 Q Right? 17 A Yes. 18 Q Okay. And that's why you described earlier 19 in the deposition the two trees, the two pine trees, 20 were taken down in relation to this accident because 21 you were taking trees down at the time of the accident 22 or at least the intent was to take trees down at the 23 time of the accident to make room for the shed? 24 A No, the shed was already standing before 77	1 discussed was just taking the two pine trees down, 2 correct? 3 A Yes. 4 Q All right. And that would include the limbs, 5 cutting it up into wood, and then hauling it off the 6 property? 7 A Not hauling it off the property; that's why I 8 was cutting up the limbs to stack it on the property. 9 Q Okay. So that -- Just fair enough. I just 10 want to get the scope of it. The scope was cutting 11 the tree down, including all limbs and parts of the 12 trees, the two trees, and getting them cut up into 13 stacks and then stacking the wood? 14 A Yes. 15 Q And then that would be the end of the work? 16 A Yes. 17 Q Okay. And it only involved those two pine 18 trees, right? 19 A Yes. 20 Q Are you aware of any photographs that show 21 those pine trees before they were cut? 22 A No. 23 Q Or during them being cut? 24 A No. 79
1 that. It was torn down because it was in disrepair. 2 It being torn down, it seemed as though it was an 3 opportune time to take down these trees that were 4 large and overgrown. 5 Q Okay. So you said, Hey, why don't we take 6 down the trees now. It's a good time to take down the 7 two trees, and they said yes, right? 8 A Yes. 9 Q Okay. Did you tell them how long it would 10 take to do the work? 11 A No. 12 Q Did they offer you to pay you -- Did they 13 offer to pay you some money to take the two pine trees 14 down? 15 A Yes. 16 Q How much? 17 A It was a matter of hourly wage, \$15 an hour. 18 Q Was there any scope discussed as far as how 19 long it was going to take you to do the work? 20 A No. 21 Q Any time frame on how long it would take you 22 to do it? 23 A No. 24 Q And the scope of the work that at least as 78	1 Q Or after they were cut? 2 A No. 3 Q Or how they are today? 4 A No. 5 Q Okay. Once you discussed two days before 6 Paul's accident doing the work and how much you were 7 going to get paid, what was the next step in your 8 preparation for doing the work? 9 A I by myself trimmed the trees up to about 10 40 -- 11 Q No. No. You went -- You jumped too far 12 ahead. Let me just -- I said the next step. So the 13 next step would be two days later showing up on the 14 property, getting ready to cut them off then, I'm 15 assuming, right? 16 A Mm-hmm. 17 Q Yes? 18 A Yes. 19 Q Did you do anything in the interim to 20 prepare, like go buy a set of gloves or something? 21 I'm just trying to find out what you had to do. 22 A No. 23 Q Okay. When you cut trees of this size and 24 nature down, do you have to wear goggles? 80

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1	A	I suppose that a person should.	1	A	That's correct.
2	Q	Did you?	2	Q	Okay. And when you showed up on June 28,
3	A	No.	3		2011, was that the only thing you were going to do
4	Q	Did you wear a helmet?	4		there that day at your parents' house is cut those two
5	A	No.	5		trees down?
6	Q	Gloves?	6	A	That day that I showed up, I was only going
7	A	Yes. Yes.	7		to trim the branches off of the trees.
8	Q	Okay. Work gloves?	8	Q	Prepare them for, like, the next day's work
9	A	Yes.	9		of starting to cut them down?
10	Q	Boots?	10	A	Yes.
11	A	I can't recollect if I was wearing boots or	11	Q	Okay. Were there a lot of branches on each
12		shoes that day.	12		tree?
13	Q	Okay. Any other type of particular things	13	A	Yes, it's a pine tree.
14		that you would wear specific to cutting trees down?	14	Q	Okay.
15	A	No.	15	A	There's many branches on pine trees.
16	Q	Other than gloves and clothes?	16	Q	And the branches can get thick as well,
17	A	No.	17		right?
18	Q	No. Okay.	18	A	Thick by way of ...
19		Who decided the day that you were going	19	Q	By way of being just thick.
20		to start the work?	20	A	Diameter?
21	A	I did.	21	Q	Yeah.
22	Q	Okay. Did you just show up out of the blue	22	A	No, not really. Branches --
23		or did you say, I'll be back in two days to start the	23	Q	I mean, we're not talking like a half an inch
24		work?	24		around. We're talking they can be several inches
81			83		
1	A	I said that I'll be back and start the work	1		around even on the branches.
2		on a pre- -- on the day, you know, the day I began --	2	A	There were no limbs on that tree that were
3	Q	Okay.	3		probably over 3 inches in diameter.
4	A	-- which is two days before Paul's -- the	4	Q	Okay. Fair enough. Let me ask that then,
5		incident happened.	5		just it sounds like you have some understanding. Of
6	Q	Right. So we're two days before the	6		the two trees, how many trees would you say were about
7		accident, you talked about what you were going to do,	7		3 inches in diameter on both trees?
8		how much it was going to cost, blah-blah-blah, and	8	A	How many branches?
9		then did you say, I'll come back in two days to start	9	Q	Were 3 inches in diameter at one side or one
10		the work, or how was it decided when you were going to	10		end?
11		start the work?	11	A	Between the two trees?
12	A	It's my mother. It's kind of a free -- You	12	Q	Yep.
13		know, it isn't like I've got to show up for work at	13	A	Six.
14		10:00 o'clock. It wasn't really decided. I showed up	14	Q	Okay.
15		at my own accord and began to work.	15	A	The lowermost were the thickest.
16	Q	That's all I'm asking you.	16	Q	And were you going to start at the bottom and
17	A	And then I --	17		go up or start at the top and go down?
18	Q	That's fine. So you showed up when you	18	A	Start at the bottom and go up.
19		wanted to, right?	19	Q	Okay. So if the first day of work -- And
20	A	Yes.	20		that was the day Paul was injured, the first day of
21	Q	Okay. So there wasn't any preset day that	21		work, right?
22		you were going to start the work?	22	A	No. The first day of work that I performed
23	A	No.	23		on those trees was the day before Paul showed up. I
24	Q	Is that correct?	24		had already cut down all the limbs off the trees.
82			84		

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1 Q All right. Hold on. You're going too fast 2 so -- 3 A Okay. 4 Q -- let's slow down a little bit. You showed 5 up two days after speaking to your parents to work so 6 that would have been the day before Paul's accident? 7 A Yes. 8 Q Okay. So that would have been the 27th? 9 A Yes. It was preparatory work, you know ... 10 Q I understand that, but I want to go step by 11 step. So on June 27 you show up at your parents' 12 house? 13 A Yes. 14 Q Which is two days after you first talk to 15 them about this and you showed up to do the 16 preparatory work? 17 A Yes. 18 Q Okay. And how long were you on their 19 property that day, on the 27th? 20 A Four hours. 21 Q And what did you do during that four hours on 22 the 27th? 23 A I trimmed branches up to about 40 feet on 24 both trees. 85	1 A Yes. 2 Q Okay. 3 A Decreasing in diameter as we went higher, of 4 course. 5 Q Okay. And did you work by yourself on that 6 day, the 27th? 7 A Yes. 8 Q So Paul was not on the property on that day, 9 correct? 10 A Correct. 11 Q By the time you were working on the property 12 on June 27th, 2011, did Paul know the work you were 13 doing? 14 A I don't know. 15 Q Okay. When did you first talk to Paul about 16 what work you were going to do on your parents' house 17 with these trees in June? 18 A On the 28th I had made my travels to my 19 mother's house after doing the preparatory work on the 20 27th, and I figured that Paul, since he was sitting 21 idle and unemployed and we worked together on trees 22 before, that he would possibly want to give a hand in 23 helping me to get rid of the scrub that was already on 24 the ground. 87
1 Q Up? 2 A Up. From the bottom going up. 3 Q You've got to let me -- We've got to go back 4 and forth with this because I'm not going to 5 understand you. You're saying from the ground up 6 40 feet high you trimmed all the trees off of those 7 two trees -- all the branches off those two trees on 8 June 27th? 9 A Yes. 10 Q And they were now all on the ground, those 11 limbs? 12 A Yes. 13 Q Correct? 14 A Yes. 15 Q How many limbs are we talking? 16 A I don't know. 17 Q Like 30, something like that? 18 A I would say more than that. You're talking 19 about 40 or 50 feet and if a pine tree has a limb at 20 every foot or so, you can pretty much figure out it 21 probably would be more like hundreds. 22 Q Hundreds of limbs? 23 A Yeah. 24 Q Okay. Varying sizes? 86	1 Q So you called him? 2 A I stopped by his home. 3 Q Before getting to your parents' house? 4 A Yes. 5 Q And was Paul home? 6 A Yes. 7 Q And did you say, Hey, I'm cutting some trees 8 down at my parents', do you want to help clean some of 9 it up? 10 A That's what I said. 11 Q Okay. Did you say anything else differently 12 than what I've just said? 13 A No, basically would you like to give a hand 14 at my mother's property to help me clean up the brush 15 I cut down. 16 Q Now, my assumption, you can correct me if I'm 17 wrong, but at least that conversation at Paul's house 18 the day of his accident, my assumption is you weren't 19 asking him to help you cut the tree down, but you were 20 helping him deal with what was already cut? 21 A Yes. 22 Q Okay. 23 A Our intentions that day were not to take the 24 trees down; it was to clean up the brush on the ground 88

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1 itself that I already cut the day before. 2 Q Was your intention on that day, the 28th, to 3 do any use of the chain saw? 4 A Yes. 5 Q Okay. You were going to cut up the limbs 6 that were already on the ground? 7 A Yes. 8 Q Had you begun to cut any of the limbs on the 9 ground the day before? 10 A The larger ones I had already cut on my own 11 into sections. 12 Q On the 27th? 13 A On the 27th, yeah. 14 Q Okay. 15 A And then realized I'm going to need help. 16 Q Okay. 17 A You know, there's a lot here. 18 Q So the 27th now, the four-hour work you -- 19 A Yeah. 20 Q -- the four-hour work you did on the 27th 21 included trimming up 40 feet on each tree and then 22 trimming up some of the larger limbs that are on the 23 ground now cutting them up? 24 A Yes. 89	1 A Correct, he did not use the chain saw on the 2 day of his accident. 3 Q Okay. All right. Now, when you use the word 4 brush, having Paul help you clean up brush, you mean 5 the limbs that are on the ground that you cut the day 6 before, right? 7 A Yes. 8 Q Okay. Not just a bunch of leaves and stuff. 9 It was the limbs, the actual limbs themselves? 10 A The actual limbs, yes. 11 Q So the assistance that Paul was going to give 12 since he wasn't going to be using the chain saw the 13 day of his accident, was that to hold the limbs while 14 you cut them up? 15 A It wasn't intended to be that way and I 16 didn't direct him to do so. We just kind of got to 17 work and that's the technique that we both were 18 comfortable with -- 19 Q Okay. 20 A -- and then from there moved forward with 21 doing that. 22 Q Fair enough. So the morning of Paul's 23 accident before you got to your parents' house when 24 you went to Paul's house to talk to him, you didn't 91
1 Q Okay. Then you get to the 28th and realize 2 this is a pretty big amount of work to do, you could 3 use some help? 4 A Yes. 5 Q Okay. And what specific task did you expect 6 Paul would be needed to do at your parents' house when 7 you spoke to him that morning before going to the 8 house? 9 A There was really no outline. I just simply 10 went to a friend's house and asked him if he'd like to 11 help me with my chores that I was doing that day. I 12 told him it was brush that was on the ground, and I 13 would like to cut it up for firewood or just to get -- 14 consolidate it into a pile so it could be stacked. 15 Q Were you planning on him using the chain saw 16 at all? 17 A No. 18 Q Okay. You were going to be the one to use 19 the chain saw? 20 A Yes. 21 Q And did he ever use the chain saw that day? 22 A No. 23 Q Okay. And I mean the day of his accident, he 24 never used a chain saw? 90	1 talk details, you just said, Hey, Paul, I need some 2 help cutting up some brush at my parents' house, can 3 you give me a hand? 4 A Yes. 5 Q Okay. And he said yeah? 6 A He said yes. 7 Q Did you work on any arrangement where he 8 would get paid or was it just for him to volunteer? 9 A At that time there was no questions about 10 money. 11 Q Okay. What was your assumption then, if you 12 had any? 13 A That maybe we can get the job done before the 14 day was over. 15 Q So all the limbs that you had already cut 16 that were on the ground, which you described as maybe 17 hundreds, hundreds in plural -- 18 A Mm-hmm, right. 19 Q -- you were hoping to at least get those all 20 cut up that day? 21 A Yes. 22 Q Okay. And what was your assumption as far as 23 what, if anything, you were going to pay Paul, if you 24 were going to pay him anything? I don't know. 92

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1AEqual to what I was being paid, \$15 an hour. 2QOh, so your parents were going to pay now 3both of you \$15 an hour? 4AI was assuming that they would. 5QOkay. Did they ever agree to before Paul's 6accident? 7A No. 8QOkay. Had you ever talked to Paul about that 9arrangement before his accident? 10A No. 11QOkay. That was just your -- kind of your -- 12AYeah, I was going to -- 13QHold on. Hold on. Let me finish the 14question. That was just your kind of own assumption? 15A Yes. 16QOkay. Did Paul leave with you to go to your 17parents' house or did he come at a different time in a 18different vehicle? 19AHe came about a half-hour after I had asked 20him to in his vehicle. Could have been more. 21QOkay. 22ASomewhere between a half-hour and an hour 23before he arrived. 24QFair enough. What time did you arrive at 93	1kind of time frame that we can agree on even though 2we're not sure just so that we can do the 3chronological order of things here. So if we assume 4that -- and, again, I know this is just an assumption 5but just for the purposes of figuring out when things 6happened, if we assume you arrived at 11:00 and Paul 7arrived at 11:30, okay? 8AMm-hmm. 9QAll right? 10AYes. 11QHow soon after Paul arrived at 11:30 would 12his accident have occurred? 13AI believe about an hour. 14QSo if he arrived at -- If Paul arrived at 1511:30, his accident happened around 12:30; fair 16enough? 17AYes. Or if arriving at 10:30, the accident 18happened at 11:30. 19QI get it. I get it. We can do that, I'm 20just -- I want to get the chronological time frame. 21So if we assume you get there at 11:00, Paul got there 22at 11:30, his accident happened around 12:30; fair 23enough? 24AYes. 95
1your parents' on the day of Paul's accident on the 228th? 3A10:00, 11:00 o'clock. Before noon. 4QOkay. 5AThat's the best I can recollect. 6QOkay. And how long did you anticipate it was 7going to require both you two to cut up these trees as 8you said completely? 9AI have no -- 10QThese limbs. I'm sorry. 11AI had no estimate in my mind or need to 12construct one. I just was going to work with a friend 13and get the job done. 14QOkay. Were you expecting, though, that it 15would be done that day? 16AI was hoping. I wasn't expecting. 17QOkay. Okay. So if you arrived from 10:00 to 1811:00 sometime that day of Paul's accident, you're 19saying Paul would arrive somewhere around 10:30 to 2011:30? 21AYes. 22QAnd he arrived alone in his car? 23AYes. 24QOkay. And we're going to have to use some 94	1QOkay. And when Paul's accident occurred, he 2was in the midst of helping you cut up these trees, 3right? 4AYes. 5QOkay. Other than you and -- Were you also in 6the midst of cutting down -- helping cut up the trees? 7AYes, I was -- Yes, when he showed up, I was 8already in the process of working. 9QAll right. So when Paul's accident occurred, 10both of you were working together to cut up these 11trees? 12AYes. 13QWas anyone else working with you two? 14ANo. 15QWas anyone else watching you two? 16ANo. 17QWere your parents in or out of the house 18during the time that Paul had arrived up to the time 19of his injury? 20AThey were in the house. 21QOkay. Do you know if your parents even knew 22Paul was over? 23AYes, they did because when I arrived I told 24them that Paul would be coming over to help me. 96

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1Q Okay. And that's fine but that's not quite 2what I was asking. Do you know if your parents knew 3he was actually on the property at the time of the 4accident? 5A Yes, they did know that he was on the 6property. 7Q How did they know that? 8A Because his vehicle was parked outside and 9they could visually see that his vehicle was there. 10Q Okay. And they can connect the dots; I get 11it. 12A They see him. Okay. Sorry. 13Q I can't talk while you're talking. Let me -- 14A I know. 15Q My question was, at the time of Paul's 16accident do you know if your parents were aware that 17he was on their property? Even they could have looked 18out and saw the car, I get it, but do you know if they 19were aware? 20A I don't know. 21Q Okay. Do you know anyone that was aware Paul 22was on your parents' property at the time of his 23accident other than you? 24A No, I do not know. 97	1A Paul's not a drinker to my knowledge, and I 2wouldn't know about any prescribed drugs because I'm 3not him. 4Q Okay. Did Paul seem to be acting normal 5leading up to the time of his accident? 6A Yes. 7Q Were you having any internal stressors or any 8problems internally for you at the time of this? 9A No. 10Q Okay. Were your parents keeping any type of 11watch over the work you were doing to kind of see how 12things progressed? 13A No. 14Q Okay. So the -- from the beginning to the 15end, the work that was being done by you to cut the 16trees up was done under your own supervision, under 17your own control? 18A Under my supervision. 19Q Yeah. Was anybody telling you what to do and 20how to do it? 21A No. 22Q Were your parents in any way telling you how 23to do things as far as cutting up the trees? 24A No. 99
1Q Okay. Were there any visitors or witnesses 2to the work on the property at your parents' house for 3the hour Paul was there leading up and at the time of 4his accident? 5A No. 6Q Okay. So the only witnesses you're aware of 7of the circumstances leading up to the accident and 8Paul's accident itself, the only witnesses to that are 9you and Paul, right? 10A Correct. 11Q Okay. All right. Now, I've got to ask a few 12questions that -- don't take it personally but these 13are just questions we always ask in these depositions 14of witnesses, okay? So it's nothing against you, it's 15just we always ask these. 16Any alcohol to drink that day? 17A I don't drink alcohol. 18Q Okay. Any medications? 19A None. 20Q Any drugs anyway? 21A No. 22Q Any type of drugs? 23Paul, same question for Paul, if you 24know, drugs, alcohol? 98	1Q How you did it, the method and means for 2cutting up the trees, was that done under -- by your 3own control and your own decisions? 4A By my own decisions. 5Q Okay. The manner in which the work was being 6done at the time of this accident, was that done in 7the manner that you wanted it to be done? 8A Until Paul arrived. 9Q Okay. How about when Paul arrived, did he 10change things? 11A He chose -- He chose to take up his own 12technique or helping, and I went along with it because 13we worked together in a good fashion for so many years 14previous to that. 15Q Leading up to the time of his accident, okay, 16was Paul doing anything wrong working at the property? 17A No. 18Q Okay. Was he doing everything appropriately? 19A It seemed so. 20Q Okay. And did you have to criticize him or 21instruct him to do things differently because you were 22not happy with the way Paul was doing his work leading 23up to the time of his accident? 24A No, I gave no instruction basically to him. 100

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1 Q You left it up to him to do the best for him 2 and you did the best for you? 3 A We've worked well together in the past. 4 There was no need for instructions. It was a mutual 5 understanding of two men working together. 6 Q Okay. But is my question correct, you left 7 Paul to work appropriately under his own control and 8 you were to work appropriately under your own 9 control -- 10 A Yes. 11 Q -- correct? 12 A Yes. 13 Q Okay. And leading up to the time of Paul's 14 accident, did you notice Paul doing anything unsafe or 15 wrong in your view? 16 A No. 17 Q Leading up to the time of the accident, did 18 you believe you were doing anything unsafe or wrong in 19 the process of the work leading up to Paul's accident? 20 A No. 21 Q Okay. When Paul was -- Well, Paul was 22 eventually cut by your chain saw, correct? 23 A Paul was cut by a chain saw. 24 Q A chain saw that you were using and 101	1 the photograph, where Paul was cut by the chain saw 2 you were operating at the time of his accident on 3 June 28, 2011, on his body, where? 4 A Yes, exactly where. 5 Q Where? 6 A On his right forearm. 7 Q Okay. 8 A (Indicating.) 9 Q Is that the only place he was cut? 10 A Yes. 11 Q Okay. I'm going to show you a photograph. I 12 just want to make sure it's the same injury that he 13 talked about, okay? 14 MR. CALLAHAN: Can I take a look? Thanks. 15 BY MR. MAST: 16 Q We've got what's marked as Exhibits 2A, 2B, 17 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, okay? 18 A Yes. 19 Q These aren't all I'm going to ask you about 20 but the first page, 2A, does that appear to show his 21 right arm and the scarring where he was cut by the 22 chain saw you were operating at the time of his 23 accident? 24 A Yes. 103
1 operating, right? 2 A Correct. 3 Q Okay. I said your chain saw and you're 4 probably saying well, it wasn't my chain saw; that's 5 what you're thinking, right? 6 A That's correct, yeah. 7 Q Okay. But it was -- When I meant your chain 8 saw, I meant the chain saw you had control of, 9 correct? 10 A Then that's what I'll agree to, yes. 11 Q All right. So you're agreeing and accepting 12 the fact that Paul was, during the process of working 13 at your parents' house, cut by a chain saw while you 14 were holding the chain saw and while it was running, 15 correct? 16 A Yes. 17 Q Okay. And -- Oh, here it is. I was looking 18 all around for these; they're right in front of me. 19 These photographs were marked during 20 Paul's deposition, okay? All right? 21 A (Nodding.) 22 Q You have to answer a word. 23 A Yes. 24 Q All right. Do you know, without looking at 102	1 Q Okay. Is that the only spot he was cut shown 2 in this photograph? 3 A Yes. 4 Q Okay. And maybe you can't tell on 2B, but I 5 think that's the same injury. Can you tell? 6 A Sure looks good to me. 7 Q Looks like the same one? 8 A Yeah. 9 Q Okay. How about 2C, does that look like the 10 same injury? 11 A Yes, it does. 12 Q 2D. If he has his hand down to his right, it 13 would be on the backside of the -- 14 A Yes. 15 Q -- forearm, correct? 16 A Yes. 17 Q And that's where it shows on 2D? 18 A Yes. 19 Q And that's the injury that was caused by the 20 chain saw you were operating at the time of the 21 accident? 22 A Yes. 23 Q Okay. All right. So Paul arrived about a 24 half an hour to your parents' house after you arrived 104

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1on June 28, 2011, right? 2A Yes, about a half an hour. 3Q And by that time, when Paul arrived at your 4parents' house, you had already been working? 5A Yes. 6Q Okay. So you had the chain saw in hand and 7you were cutting things or not? 8A No. 9Q What were you doing? 10A I was sorting. 11Q You were what? 12A Sorting the branches. When you have pine 13trees, they get snagged, snarled, and tangled 14together. I was placing them so that they could be 15fed in a safe manner as, you know, to lift it up and 16to work with it. 17Q Okay. What was the manner which you wanted 18to use to -- Well, strike that. 19Having Paul come and assist you, did you 20have an expected manner in which you preferred to have 21him assist you? 22A No. 23Q So you just left it up to him to decide? 24A Well, he showed up and as I had said, we just 105	1before in the past. 2Q Okay. But that's not my question, okay? 3We're hoping that he's going to hold the branch you're 4going to end up cutting, right, the same branch? 5A I never intended him to hold the branch. 6Q Okay. 7A He chose to hold the branches. 8Q All right. So you're telling me -- Well, 9what work were you wanting Paul to help you with then? 10A There was moving material, there was stacking 11wood, there was raking the ground. 12Q Moving material, stacking what? 13A Stacking wood. 14Q Okay. 15A And raking. 16Q Was there a rake available? 17A Was there a rake available? 18Q Mm-hmm. 19A Yes. 20Q Okay. Stacking wood meaning after it's all 21cut up into little foot pieces, you would stack them 22up -- 23A Into 18 inch pieces. 24Q -- to store them, correct? 107
1worked well together. We understood one another. 2Q But my question was -- 3A I didn't specifically have any expectations 4or did I direct him to do anything. 5Q So my question then was, did you just leave 6it up to him to decide what to do and how to help you 7or did you have to tell him, Hey, hold that branch. 8I'll cut that branch? 9A I left it up to him. 10Q So how would he know what branch you wanted 11to cut unless you told him what branch to cut? 12A He didn't cut. He held. 13Q How did he -- I'm sorry. I didn't say it 14right. How did he know what branch to hold unless you 15told him what branch to hold? 16A I didn't tell him. He chose -- 17Q How would he know then is the question. 18A You'd have to ask him. I don't know. 19Q Well, was he supposed to just guess what 20branch to hold on to? 21A There was no guessing, but ... 22Q How was he going to know then? 23A Because we've done this before. We've 24watched each other work. We've worked with tools 106	1A Into 18 inch pieces and then stack, yeah. 2Q You're doing fine but please let me finish my 3question before you get to the answer, okay, because 4we're going to have a hard time if we don't have 5separation, okay? So maybe give me one beat after I'm 6done and then give me your answer, okay? 7Moving material meaning what? 8A Once it's cut, to stack it and then to clean 9up the area where we were working. 10Q All right. So moving material, stacking the 11wood, and raking up the debris, those were the three 12things you envisioned Paul was going to assist you 13with? 14A Yes. 15Q Okay. Before Paul arrived at the property, 16were you envisioning that he was going to help hold 17some of the branches so you could cut them? 18A No. 19Q That was not even in the back of your mind? 20A No. 21Q Okay. Did you not want Paul to help hold the 22branches or you just didn't know if he was going to or 23not? 24A I didn't know that he was going to do that. 108

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1 Q Okay. 2 A No. 3 Q Did you want him to hold the branches or did 4 you not want him to hold the branches or did you not 5 care? 6 A It wasn't a matter of not caring. He chose 7 to and then we went with it. 8 Q Okay. So was that appropriate for you that 9 he hold the branches for you then? 10 A It seemed to be appropriate at the time. 11 Q Okay. I'm just trying to find out whether he 12 was holding these branches -- 13 A I understand. 14 Q Hold on. Hold on. I'm trying to find out 15 whether he's holding these branches against your will 16 or not. Obviously there was some -- 17 A No, he was not holding them against my will. 18 He was helping -- 19 MR. CALLAHAN: Wait until he finishes the 20 question. 21 THE WITNESS: Okay. I thought he was finished. 22 BY MR. MAST: 23 Q So he was holding the branches ultimately and 24 eventually with your acceptance and permission; fair 109	1 A Yes. 2 Q And he was doing the work in an appropriate 3 way to you, correct? 4 A Appropriate? 5 Q Yes. 6 A To me? 7 Q Right. 8 A Acceptable. I don't know about appropriate. 9 If you want to look up what is the definition of 10 appropriate. 11 Q Okay. You just don't know what the word 12 means. Okay. Because I can -- I can use a different 13 word. 14 A Oh, no, I know what the word means, it's the 15 way you're using it. You're telling me that I deemed 16 it appropriate that his actions what he was doing 17 without me telling him to do anything different were 18 okay or not okay, and what I'm saying is that it was 19 two friends -- Let me just have one moment. 20 Q Go ahead. 21 A And it was two friends working together who 22 have worked in similar situations, and I guess our 23 assumption in it was that we knew what we were doing, 24 the both of us. I didn't think that Paul would 111
1 enough? 2 A Acceptance, yes. 3 Q Well, if you didn't permit him to do it, you 4 would have told him not to, right? 5 A I don't control Paul's hands nor did I direct 6 him to do it at that time. He chose to pick them up 7 and we both started working together and that's the 8 method we chose. It wasn't like hey, this is right or 9 wrong; we just went to work. 10 Q I understand. This is what I'm saying, if 11 Paul did something you didn't want him to do, you 12 would tell him not to do that, I assume, right? 13 A I suppose, yeah. 14 Q Okay. 15 A Yes. 16 Q Did you ever have to tell Paul not to do 17 something before he got hurt and got cut by the chain 18 saw? 19 A No. 20 Q Okay. So up to the time that Paul got hurt, 21 he was doing the work in a way that was okay to you, 22 correct? 23 A Yeah. 24 Q Okay. 110	1 jeopardize himself or me and likewise. 2 Q Okay. 3 A That's where we were at. 4 Q So my question is, was Paul doing everything 5 leading up to the time he was hurt in an acceptable 6 fashion to you? 7 A Yes. 8 Q Was he doing anything inappropriate before he 9 got hurt? 10 A No. 11 Q Okay. Had he been doing -- Had Paul been 12 doing something inappropriate prior or at the time he 13 got hurt, you would have told him not to do that, 14 correct? 15 A Again, inappropriate, I don't under- -- 16 Q Okay. If he was doing something unsafe, you 17 would have told him not to do something unsafe, 18 correct? 19 A That wasn't even really considered. It 20 wasn't -- I'm honestly telling you that it wasn't a 21 thought in my mind at the time. 22 Q I'm not asking you if you considered it. If 23 you can say -- Hold on. Wait. You stopped. Let me 24 go. If you don't know, you can just say I don't know 112

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1 but the question is if Paul was doing something 2 unsafe, would you have told him or directed him not to 3 do something unsafe? 4 A Yes. 5 Q Okay. That's all I'm asking. So your 6 testimony is that you never told Paul once what to do 7 prior to his injury on that property, correct? 8 MR. CALLAHAN: I just object as to form of the 9 question. 10 BY MR. MAST: 11 Q Is that correct or not? 12 MR. CALLAHAN: You may answer. 13 BY THE WITNESS: 14 A Ask the question again, please. 15 Q My under- -- Strike that. 16 Did you ever tell Paul what to do or how 17 to do it before he got hurt by being cut by the chain 18 saw on the date of his accident -- 19 A No, I did not. 20 Q -- at your parents' house? Huh? 21 A No, I did not. 22 Q Never told him what to do? 23 A No. 24 Q Never told him how to do it? 113	1 Q I got it. Sorting branches. Paul gets there 2 and says, Can I help, right? 3 A How may I help. 4 Q How may I help. Okay. 5 And what do you say? 6 A I said, Well, I'm sorting branches. I guess 7 you can start by doing that. 8 Q Okay. So you had him start sorting branches 9 with you then? 10 A Yes. 11 Q Okay. And how long was he sorting branches 12 with you? 13 A Maybe another 15 minutes after I had spent 14 some time doing it myself. 15 Q All right. So -- Got you. So now we're at 16 about -- and I know these are just guesstimates, but I 17 just want to get a chronology. We're at about 11:45 18 now, okay? 19 A Mm-hmm. 20 Q Yes? 21 A Yes. 22 Q What happens next? 23 A The piles were sorted, time went by and chose 24 to start cutting the branches up. At first we had 115
1 A No. 2 Q Okay. So when he first arrived at, let's 3 say, 11:30, what was the first thing he did? 4 A He was watching me sort the branches and 5 said, What can I do to help? And I said -- 6 Q Let's go step by step. Okay. So he was 7 watching you sort branches, right? 8 A Yes. 9 Q Okay. I want to go just step by step now 10 because we're going to get toward the accident and I 11 don't want to go too fast, okay? 12 A Okay. 13 Q So let's go step by step here. He got there. 14 You were sorting branches. You mean putting them in 15 piles? 16 A No. They were already in a pile and as I had 17 mentioned earlier, pine, when you cut it, it needs to 18 be addressed or orientated. If you put branches like 19 this, it's going to pull out unsafely. So if you 20 stack them with the cut ends like this, you can easily 21 pull them off one another. 22 Q Okay. 23 A That's why I was sorting, so that it would 24 go ... 114	1 placed them on these horses. 2 Q Well, wait. You're going into detail now. I 3 want to go step by step. The next step; that's all I 4 asked. 5 A Okay. 6 Q The next step was to start cutting the 7 branches up? 8 A Yes. 9 Q Okay. Who decided to start cutting the 10 branches up? Was that your decision? 11 A Yes. 12 Q Okay. So after the piles were sorted, you 13 said, Let's start cutting the branches, right? 14 A Yes. 15 Q Okay. And did he say, Can I help? 16 A He was there to help. I don't recollect if 17 he specifically said -- 18 Q Okay. 19 A -- that. 20 Q So when you started cutting the branches, 21 what was Paul's task during the cutting of the 22 branches? 23 A To put them on the horses. 24 Q The sawhorses? 116

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1A Yeah.	1A Top down.
2Q How many sawhorses do you have?	2Q Okay. So let me say it again then. Instead
3A There was two there.	3of using these sawhorses, you're saying Paul took it
4Q And how far apart were they spaced?	4on his own to hold the branches with his left arm up
5A Four feet.	5and the branches down to the ground and you would cut
6Q And were you going to be putting them on the	6from the top down to the ground each branch, right?
7sawhorses too or was that only what Paul was going to	7A Yes.
8do?	8Q And that was Paul's chosen way that he was
9A That's what Paul was going to do, remove them	9going to hold the branches?
10from the sorted piles onto the sawhorses.	10A Yes.
11Q And when he puts them on the sawhorses, you	11Q Did you in any way voice any objection to him
12were going to cut them up with a chain saw?	12doing it that way?
13A Yes.	13A No.
14Q Okay. Who told Paul or who gave Paul that	14Q Okay. And for how long a period of time were
15job task? Was that you?	15you cutting these branches in that manner where Paul
16A Yes.	16was holding them up with his left arm to the ground
17Q Okay. So the next step, piles are sorted	17and you were cutting them from the top down?
18now, let's start cutting the branches. Paul, why	18A 20 minutes.
19don't you put the branches on top of the sawhorses and	19Q Okay. So now we're at about 12:20, if my
20me, meaning you, I'll cut these branches on the	20math is correct. Is that about right?
21sawhorses up with the chain saw. That's the -- what's	21MR. BARCH: Hans?
22going on, right?	22MR. MAST: Yes.
23A Yes.	23MR. BARCH: Can I just ask, are these little
24Q Okay. How long did that occur?	24horizontal cuts or are we talking --
117	119
1A Ten minutes.	1MR. MAST: Well, I was going to get to that. I
2Q All right. So we're getting close now to	2want to first get the time line down. Yeah, we'll get
3noon. What happens next?	3to that, but I will ask it now then.
4A Paul opted to stand them up.	4BY MR. MAST:
5Q Wait. Wait. Say that again. I missed that.	5Q So Paul is holding the limb -- the branches
6A Paul opted to stand them up instead of	6up with his left arm over his head, the branch is now
7working on the sawhorses, and I just continued	7from his left arm and hand going down to the ground
8cutting. It seemed like it was okay to do.	8and you were starting up below his hand and cutting
9Q Okay. Fair enough. So instead of putting	9every 18 inches?
10the branches across the two sawhorses, you're saying	10A No, I was cutting the branches off of the
11Paul on his own opted to stand them up aside of the	11limb.
12sawhorses?	12Q Got it. So you were cutting vertically up
13A Yes.	13and down. While he was holding the tree vertically,
14Q So it would be leaning up against just one	14you were cutting the horizontal branches in a vertical
15sawhorse?	15fashion --
16A No, freestanding large end.	16A Yes.
17Q Oh, you mean and hold them with his hand?	17Q -- from a top to a bottom?
18A Hold them with his hand. He was holding them	18A Yes.
19with his left hand to make a point of that.	19Q And I imagine each branch has probably 30,
20Q Got you. Got you. Okay. So instead of	2040, 50 little --
21using the sawhorses, you're saying Paul decided to	21A I would --
22hold them by himself with his left arm up while you	22Q -- branches off of it?
23cut them from ground up; is that right? I need an	23A I would say --
24answer.	24Q Hold on. Let me finish the question.
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1 A Okay. Sorry. 2 Q Let me say it again now. Every branch or 3 limb or whatever that Paul's holding above his head 4 with his left arm, I'm assuming those branches, if 5 they're reaching to the ground, are going to have 30 6 to 40 little branches coming off of it horizontally, 7 correct? 8 A Not that many. 9 Q Okay. Maybe 20 then? 10 A Or less. 11 Q Okay. So those are the 20 little branches 12 coming off of that branch that Paul was holding 13 vertically that you were cutting? 14 A Yes. 15 Q And then the branch would be left bare branch 16 from his hand to the ground? 17 A Yes. 18 Q And then what would he do with that branch 19 then, set it on the sawhorses to be cut up? 20 A Set it off to the side. We never got to 21 actually cutting up the whole load of wood because of 22 what -- 23 Q Happened? 24 A -- happened, yeah. 121	1 and it just nicked his arm. 2 Q Okay. 3 A And that's -- that's what happened. 4 Q Fair enough. Now, that's the one that sounds 5 like where his accident happened, right? 6 A Yes. 7 Q Okay. Because -- I see. Okay. Because if 8 Paul arrived at 11:30, you're saying his accident 9 happened around 12:30 which would be about the time 10 where we reached going through the task by task, 11 right? 12 A Yes. 13 Q I got you. Okay. So were you still working 14 at the time of Paul's injury with being cut by the 15 chain saw in the manner of where he's holding the 16 limbs up -- the branches up with his left hand over 17 his head and you're cutting the horizontal branches 18 off of that branch? You're still doing that at the 19 time of his injury? 20 A That's what we were doing at the time of the 21 injury. 22 Q Because you said you only did that for 23 20 minutes and then you did something and I thought 24 you were going to say you were doing something 123
1 Q His injury? 2 A Yes. 3 Q Okay. So for 20 minutes you and Paul worked 4 where he would hold a limb up with his left hand over 5 his head and the branch would be vertically down to 6 the ground and you would be cutting from top to bottom 7 each of the little limbs, 20 or so, off of that branch 8 he was holding? 9 A Correct. 10 Q And how many separate branches did you do for 11 that 20 minutes? How many separate branches did Paul 12 have to hold? 13 A I'll estimate between 25 and 30. 14 Q Okay. And then what happened after that 15 20 minutes of doing that work? What was next? 16 A We arrived at a branch being held in the same 17 fashion that was a little flimsy and in making the 18 first cut, that went well as the uppermost one, second 19 one and of course a pine, you know, they're left and 20 right so I'm not just cutting on this side. I'm over 21 here, over here, taking it down, taking it down. One 22 didn't go through; and at the same time I went to go 23 make the second cut, he put his right hand down to 24 support it so it wouldn't bow and it did go through 122	1 differently. You were still doing that at the time of 2 his injury, right? 3 A We stopped as soon as he was injured. 4 Q Okay. Let me ask it this way: Once Paul 5 opted to hold the branches up with his left hand 6 instead of using the sawhorses and you started cutting 7 the limbs now off of that branch -- 8 A Yes. 9 Q -- and you said you did 25 to 30 of those 10 branches -- 11 A Yes. 12 Q -- the last branch you did, is that the 13 branch that Paul was holding when he was hurt? 14 A Well, it was the last branch that we did 15 because he did get hurt. 16 Q That's what I just said. 17 A Yeah, we just stopped. 18 Q Let me say it again because I want -- 19 A Yes, I agree. 20 Q Let me say it again. 21 A Okay. 22 Q You gave an estimate of like for 20 minutes 23 you were cutting these horizontal limbs off of a 24 branch that Paul was holding overhead, remember that? 124

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1A Yes. 2Q You said you did that for about 20 minutes. 3A Yes. 4Q And you did 25 to 30 separate branches, 5right? Right? 6A Estimating, yes. 7Q Okay. The last branch that you did in that 8fashion, is that the branch that Paul was holding when 9he was cut? 10A Yes. 11Q Oh, okay. Because this is why I was a little 12confused. You said at around 12:00, and I know we're 13just doing estimates on times, but you said around 1412:00 you did -- for 20 minutes you cut those 25 to 30 15branches; so I thought there was something else you 16were doing then after that by the time Paul got hurt, 17but that 20 minutes is inclusive of the time of his 18injury then, right? 19A Yes. 20Q Okay. So really the time frame you gave me 21from the time Paul arrived at 11:30 until his accident 22was more 50 minutes; does that sound about right? 23A It's really hard to recollect the time frame 24when it wasn't relative at the time. There was -- 125	1giving estimates all along, but go ahead. 2BY MR. MAST: 3Q All right. So under the estimates of time 4that we're giving, Paul arrives around 11:30, you 5start the type of work that Paul is holding the trees 6up by his left hand overhead as opposed to using the 7sawhorses around noon. You do that for about 820 minutes in your estimate and that's when he's 9injured, correct? 10A Yes. 11Q All right. So that last branch that Paul was 12holding when he was injured, that's what I want to 13talk about now. And that was a branch similar to the 1425 or more before that, right -- 15A Yes. 16Q -- that you were cutting, correct? 17A Yes. 18Q And you had cut these branches 25 to 30 times 19without incident, without any problem, correct? 20A Yes. 21Q And that Paul was holding the branches the 22same way in all those 25 to 30 times without incident, 23correct? 24A Yes. 127
1Q I understand that. 2A Let me finish, please. There was no time 3frame of getting the job done nor was I aware of the 4exact time that it happened because what was most 5important at that time when it did happen was to get 6him to the hospital. 7Q I understand. 8A And the only time that -- And the only time 9that I checked the clock is when we checked into the 10emergency room. 11Q I understand all that. 12A Okay. 13Q That's not what my concern was. My concern 14was you gave me an hour after Paul arrived is when his 15accident occurred but the time line we gave was only 1650 minutes by the time his accident occurred. 17A Did you say 50 minutes? 18Q 50. 19A Okay. 20Q So I just want to make sure we're not missing 21some other element of work that he was doing. 22A No. No, we're not. 23Q Okay. 24MR. BARCH: I'm going to object because he's been 126	1Q Okay. And they were all being held over 2Paul's head if Paul's 5, 8, then they were probably 3what, maybe six and a half feet over his -- or six and 4a half feet from the ground? 5A They varied in amount of debris on each limb 6and height. As you go up a tree -- 7Q Okay. 8A -- the lengths diminish. 9Q So sometimes Paul is holding the branch 10directly out? 11A Deviating between four and six -- 12Q You've got to let me finish my question, and 13you can answer in any way you want but at least let me 14finish. 15So Paul might be holding some branches 16out directly out from his chest, some over his head 17just varying -- depending on height -- 18A Yes. 19Q -- of the branch? 20A Yes. Yes. 21Q Okay. So anywhere from four feet off the 22ground he might be holding a branch to six and a half 23feet to maybe seven feet? 24A No, not six and a half feet. I would say 128

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1 somewhere between four and five feet. 2 Q Okay. 3 A Somewhere in and around just right here. 4 Q Fair enough. 5 A Yeah. 6 Q So Paul is holding with his left arm -- or 7 left hand out from his body extending out the branch 8 is from anywhere from four feet off the ground to five 9 feet off the ground, correct? 10 A The point where he was clasping that limb, 11 yes, would be four to five feet above the ground. 12 Q And then underneath where he's grasping is 13 where you're cutting? 14 A Correct. 15 Q The first cut that you're going to make is 16 the highest off the ground is how far under his hand? 17 A A foot and a half, foot. So it really 18 depe- -- 19 Q All right. A foot and a half or a foot? 20 A May I finish? 21 Q Well, it's going to be best if you just 22 answer what I'm asking and not try to add on every 23 time. 24 A (Inaudible) sit here through that. I'm 129	1 was cutting in the crotches of them. He was holding 2 it, and I would stay away from him cutting off -- and 3 I would not, like, cut towards the top, which is 4 smaller, it's useless wood; we were just trying to get 5 rid of the debris. So he would hold it and I would 6 start cutting like this and put it over there. Off 7 the pile -- 8 Q I got you. 9 A -- another one -- 10 Q I got you. 11 A -- stump down and hold it like that. 12 Q I got you. So he is not cutting -- The base 13 of the branch that Paul's actually holding, you're not 14 cutting that? 15 A No. 16 Q You're cutting the stems or limbs that come 17 off of that horizontally? 18 A The sub limbs off the main limbs that were 19 already removed. 20 Q Is that correct? 21 A Yes. 22 Q Okay. And the -- Although there might be 23 limbs off of that branch all the way up to his hand, 24 you're starting 18 inches below his hand just to stay 131
1 sorry. 2 Q What's that? 3 A I'm sorry. It's just my character. 4 Q Well, that's fine. The question is this, 5 he's holding these branches extending his arm out and 6 holding them four to five feet off the ground 7 depending on the height of the branch, right? 8 A Yes. 9 Q Okay. And you are cutting the first cut 10 about 18 inches below his hand, correct? 11 A Yes. 12 Q That's the first cut, yes? 13 A Yes. 14 Q So that the branch that he's holding after 15 you cut it is going to be about 18 inches long, right? 16 The piece of wood that's in his hand after you make 17 your first cut is going to be 18 inches long? 18 A No. No, he was placing the whole limb -- if 19 I may, I know she can't record this. There's your 20 limb off your tree. There's a pile of them. Stump 21 down, that's where I cut it, the larger portion down 22 to the ground. He would hold the smaller portion 23 because on a pine tree they grow like this. If you 24 don't know that, they grow upwards like that. So I 130	1 away from his hand, right? 2 A Yes. Yes. 3 Q Okay. So when you're done cutting that 4 branch, there is still going to be some smaller limbs 5 coming off of that branch at the top by his hand and 6 that's okay, you can deal with it later? 7 A Correct. 8 Q Okay. So after you're done cutting 9 horizontally all those horiz- -- Strike that. 10 After you're done cutting vertically all 11 those horizontal limbs off of that branch, he puts the 12 branch back and picks up another branch and you do 13 that 25 to 30 times before Paul's injury? 14 A Yes. 15 Q Okay. The branch that Paul was holding when 16 he was injured. 17 A Yes. 18 Q Describe how high or off the ground he was 19 holding that. 20 A Five feet. 21 Q Okay. And was it a branch like all the other 22 branches? 23 MR. CALLAHAN: Just object to form of the 24 question. 132

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1 BY THE WITNESS: 2 A By way of species? 3 Q No. Was it any different from any of the 4 other 25 to 30 branches he had held previously? 5 A It may have been a smaller one that is by way 6 of diameter that he chose to hold up. 7 Q This is what I'm asking. I'm not asking what 8 you might -- what might have happened. I'm asking 9 you, based upon you being there and I wasn't there, 10 was the branch that Paul was holding when he was 11 injured different in any way that you can tell that 12 you recall than any of the 25 to 30 branches he had 13 held previously without incident? 14 A None of the branches were exactly the same. 15 Q I understand that, but I -- 16 A I don't know how to answer the question then. 17 Q Well, let -- 18 A The -- 19 Q Hold on. You answered it then. If you don't 20 know how to answer it; you've answered it. So let me 21 ask it a different way then. Other than every branch 22 being a little different in size and thickness and 23 amount of limbs off of it, is there anything unusual, 24 anything necessarily different from that branch than 133	1 A I'm waiting to see what -- 2 Q I'm not expecting you -- You don't have to 3 follow my picture. I'm just saying if I'm -- 4 A Well, I don't follow your description so I'm 5 looking at the picture. 6 Q Okay. Well, I'm drawing a picture myself 7 to -- 8 A Okay. 9 Q -- demonstrate to you -- 10 A I'll wait till you're done. 11 Q No, I can demonstrate it to you. I don't 12 care. You can look at it. 13 This is a branch and then it has all 14 these limbs coming off it in varying sizes, widths, 15 and heights, okay? Fair enough? 16 A No, it's not the description of what was 17 being cut. That's why I -- 18 Q All right. You describe what was being cut 19 then. 20 A The description of a pine branch or a limb is 21 that it starts at a certain diameter, whether it be 22 3 inches or 2 inches, and over its length, which is 23 also varying, it diminishes to just pine needles. 24 About increments of every and varying also between 135
1 the other 25 to 30 branches? 2 A No. 3 Q Okay. And in appearance, the branch looked 4 like any of the other 25 to 30 that you had cut just 5 previously, correct? 6 A Yes. 7 Q Okay. And probably a similar number of -- a 8 similar number of cuts off of this branch that Paul 9 was holding when he was injured, you were going to 10 have to make a similar number of cuts on that branch 11 as to the other 25 to 30 branches you were cutting? 12 A Generally, yes. 13 Q Okay. 14 A Okay. 15 Q How many cuts were you able to make off of 16 the branch that Paul was holding at the time of his 17 injury before he got injured? 18 A Four. 19 Q Okay. So if I'm going to draw a picture of 20 the branch, okay, and we're assuming that's a five 21 foot branch and it has limbs going all off it up and 22 down the branch, right? Right? Correct? 23 A (Nodding.) 24 Q Yes? I'm waiting for a word. 134	1 6 and 12 inches are branches again that from the 2 larger diameter where it was cut from the tree begin 3 to get lesser and lesser as you go towards the end of 4 the branch. 5 Q Okay. 6 A There is a varying amount of how many 7 branches are on there because no tree is exactly the 8 same, so I was in conflict with what you were 9 thinking -- 10 Q Okay. Fair enough. 11 A -- it looked like. 12 Q So Paul's holding the branch at the top? 13 A Correct. 14 Q Okay. With his left hand? 15 A Yes. 16 Q What's he doing with his right hand? 17 A No. 18 Q Just to the side -- to the side of him? 19 A Just aside -- aside and away, yeah. 20 Q Okay. 21 A Standing away from it actually as you had 22 physically shown it. 23 Q All right. What you're saying is he's 24 extending his left arm out in front of him keeping his 136

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1 body away -- 2 A Yes. 3 Q -- his left arm above and holding the branch 4 while his right arm is aside of him so the branch is 5 standing vertically maybe three feet from his body; 6 fair enough? 7 A Yes. 8 Q Okay. And then you start cutting these 9 horizontal limbs off the branch at about 18 inches 10 below his hand? 11 A Yes. 12 Q Okay. And do you remember how many cuts you 13 had to make at a distance of about 18 inches from his 14 hand before he was hurt? I'm not saying going further 15 down, I'm just saying at the 18-inch mark where you 16 were going to start the cuts. 17 A One. 18 Q Made one cut? 19 A One cut. 20 Q Okay. You got one cut? 21 A Very -- 22 Q Hold on. 23 A I know that. 24 Q All right. Then you go down another distance 137	1 Q All right. And then how far down is the next 2 limb that you're cutting from that one you just cut, 3 the second one? 4 A Again, 8 to 12 inches. 5 Q All right. And you're now on your fourth 6 one. How far is the fourth one from the third one? 7 A There are branches on either side of that 8 limb, which means I would cut this one, this one. 9 This one, this one (indicating). 10 Q Okay. 11 A It looks like this. 12 Q I got you. 13 A Okay. 14 Q So what you're saying is, and I'm putting on 15 my diagram on the same side -- hold on -- on the same 16 side, but what you're saying is when you cut the first 17 one, the second one is going to be on the other side? 18 A Yes. 19 Q Okay. That's fine. You can describe that. 20 So the first one is on one side; you cut that 21 18 inches from his hand. The second one's on the 22 other side; you cut that 8 to 12 inches below the 23 first one? 24 A Yes. 139
1 to make the second cut? 2 A To make another singular cut on a different 3 branch, yeah. 4 Q How far down do you go? 5 A It varies with how -- how far apart they are 6 on the branch. I would say between 6 -- 8 and 7 12 inches. 8 Q Listen, I don't want to guess so this is my 9 question, okay? Hold on. Hold on. We know he's 10 holding it at the top. 11 A Yeah. 12 Q We know it's about five feet, you said. We 13 know your first cut is 18 inches from his hand, right? 14 We know those things, right? 15 A Yes. 16 Q Okay. So my question is, based on what 17 you've just told me now, how far down from the first 18 cut that's 18 inches from his hand is the second cut 19 on -- give me your estimate. 20 A I will give you an estimate of between 8 and 21 12 inches. 22 Q Okay. So that's the next limb is 8 to 23 12 inches, right? 24 A Yes. 138	1 Q The third one's on the same side as the first 2 cut 8 to 12 inches below the second one, right? 3 A Yes. 4 Q And where's the fourth one? Same side as the 5 second one? 6 A On the right side. 7 Q Over here? 8 A Staggered one, two, three, four. 9 Q Right. So it's the same side as the second 10 cut then. If you have one, two, three, four -- 11 A I wasn't methodically approaching each branch 12 going left and right per se like, oh, I've got to 13 start here or start there. It really mattered where 14 he grabbed it and what was -- what was below his hand 15 for me to start cutting and again -- 16 Q Listen. 17 A And, again, the branches aren't aligned as 18 you are drawing them. It's relative to me because -- 19 Q Listen. The easiest process is for you to 20 either say you know something or you don't know 21 something, but you keep first leading -- 22 A Sorry. 23 Q Hold on. Hold on. Hold on. You first lead 24 me down here and then you just say well, I don't know 140

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1 then. Tell me what you don't know and I'll move on, 2 okay, but I'm going with what you're telling me. If 3 you don't know something, you just say I don't know. 4 Let's start over. He's holding his left 5 hand at the top of the branch. His first cut is about 6 18 inches below his hand, right? 7 A Yes. 8 Q On one side of that limb or branch? 9 A Yes. 10 Q Okay. So that limb is 18 inches down. You 11 cut that limb off, that horizontal limb, and then you 12 go down probably on the other side 8 to 12 inches and 13 you cut the limb on the other side? 14 A No. 15 Q Okay. What? You tell me. 16 A On a pine tree they're grouped, that's what I 17 was trying to show you, like this. They're not 18 staggered all over the place. When they grow, it's a 19 fan and they grow out like this. So it being stood 20 up, I'd go one, two, three, four. 21 Q That's what I just did here but we can do it 22 again. Let's try it again. 23 A Okay, but -- 24 Q Hold on. This is what I'm trying to 141	1 BY THE WITNESS: 2 A I'm making one cut. 3 Q Here, let me do it. I think this is what -- 4 A May I? 5 Q Hold on. Yeah, I'd be happy to. Let's 6 probably do it that way. Make it easy. 7 A Thank you. 8 Q We'll save about a half an hour of questions. 9 A Right. 10 Q I was trying to get it described that way but 11 it might be easier just to do it this way. 12 A Oh, I'm going to make it pretty. We've got 13 time. I have time. 14 Q You want some crayons? 15 A I'm going to make a Christmas tree for you. 16 That is a pine branch. 17 Q Okay. Now, let me ask the questions here. 18 All right. 19 A I'm cutting it right here in the crotch. 20 Q I've got it. See, your answers aren't going 21 to help unless they're after my questions. 22 A We'll get it all figured out. 23 Q All right. We're going to mark as Gagnon 24 Exhibit 1 that pretty tree you just drew, okay? 143
1 understand and I'm trying to make it easy, but we can 2 go through this. He's holding the branch up with his 3 left hand and I'm trying to find out what distances 4 you cut each of those four limbs until he's hurt, 5 okay? I'm trying to find that out. 6 MR. CALLAHAN: Excuse me. It's just that there's 7 a disconnect here. 8 MR. MAST: Well, that's why I have to ask these 9 questions. We'll get there. 10 MR. CALLAHAN: I understand. I'm thinking he's 11 thinking that on your branch this branch comes out 12 like -- it'd be on a 45-degree angle up -- 13 THE WITNESS: Yes. 14 MR. CALLAHAN: -- if I may. Then there's 15 branches like this and this with the pine needles on 16 them so he's cutting this one here, this one here, and 17 this one here. 18 BY MR. MAST: 19 Q Are you making three cuts on one branch? 20 MR. CALLAHAN: Four cuts. 21 MR. MAST: No, I don't think that's what he's 22 saying. 23 MR. CALLAHAN: I think that's -- 24 142	1 A Thank you. 2 MR. BARCH: You'll have to call it a -- It's a 3 single branch, not a whole tree. 4 THE WITNESS: Single branch. 5 MR. MAST: Okay. It's a branch. All right. I'm 6 sorry. I'm not good at these things. 7 BY MR. MAST: 8 Q All right. That's a -- Obviously it's not to 9 scale or anything, but it's just a drawing of a pine 10 branch, right? 11 A Correct. 12 Q And it's supposed to represent, even though 13 it's not exact, a typical type of pine branch that you 14 and Paul were cutting on the day of his accident? 15 A Correct. 16 Q Okay. Different sizes, different amount of 17 limbs coming off them but that's a representative of 18 those types of branches, right? 19 A Yes, it is. 20 Q Okay. So if we look at this, the base is 21 obviously going to be wider than the top of it, right? 22 A Yes. 23 Q So I'm going to put a T on your drawing where 24 the top of that is and a B where the base is. Did I 144

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1 just do that? 2 A Yes. 3 Q So we know what words to use? 4 A Yeah. 5 Q Okay. So I'm going to put T O P and B A S E. 6 So we can refer so that we're using the same language. 7 Paul is going to be holding with his left hand the top 8 of the branch, right? 9 A Correct. 10 Q And then the base is going to be against the 11 ground in a vertical fashion from where he's holding 12 at the top, right? 13 A Yes. 14 Q And then starting 18 inches below his hand, 15 you were going to start cutting on either side of that 16 branch the horizontal limbs that are coming off that 17 branch, right? 18 A Yes. 19 Q Okay. So if this were a branch that Paul was 20 holding, his hand would be at the top and then you 21 would make one cut -- oh, you'd start -- okay, you'd 22 skip the top of it -- 23 A Because it's -- 24 Q Hold on. You'd skip the top limbs because 145	1 half an hour, so thank you. 2 A You're welcome. 3 Q Okay. And I'm sure they weren't all six cuts 4 every branch, right? 5 A No, they varied. 6 Q Is six pretty much an average or no? 7 A No. 8 Q As far as -- 9 A There's no average. 10 Q Okay. There's maybe six, eight, ten, 11 something like that? 12 A There's no average. There's no way to 13 average it. 14 Q Okay. The branch that Paul was holding when 15 he was injured was a branch like most other branches 16 although in different sizes, correct? 17 A Yes. 18 Q Okay. And you're telling me you made four 19 cuts until he was injured? 20 A Fourth cut he got injured. 21 Q Okay. On the fourth cut? 22 A On the fourth cut. 23 Q Fair enough. So if we just start with that 24 one branch that Paul's holding and discuss what you 147
1 that's too close to his hand so you'd come down to 2 maybe the next set 18 inches below and start making a 3 cut there? 4 A Yes. 5 Q Then you'd go on the other side and make 6 another cut? 7 A Yes. 8 Q That's two. Then you'd make another cut on 9 there -- 10 A Yes. 11 Q -- that's three. Then make another cut; 12 that's four. Then cut there, five. Cut there, six. 13 And you have the whole branch cut, right? 14 A Yes. 15 Q Okay. So let's number these one, two, three, 16 four, five, six. Does that number what we just 17 discussed? 18 A Yes. 19 Q So you're basically at least on this 20 demonstrative drawing, you're making six separate cuts 21 off of this branch and then you put the branch down on 22 the ground and get a new one? 23 A Yes. 24 Q Okay. All right. That did clear up about a 146	1 did up and to the time he was injured, you made the 2 first vertical cut from the horizontal limb 18 inches 3 below his hand, you made the second one on the other 4 side just like you did on Exhibit 1 here, then you 5 went down 8 to 12 inches lower, made the third cut on 6 one side, then you're going to the other side to cut 7 the fourth cut, right? 8 A Yes, correct. 9 Q What happens when you're going from the third 10 cut to the fourth cut that you believe is what caused 11 Paul to get injured? 12 A The fourth cut, not much unlike all the other 13 ones, the branch bowed. It may have been because it 14 wasn't rigid; it may have been weaker than the rest. 15 I don't know. 16 Q Can I stop you for a minute just so I know 17 what you mean by bowed. What do you mean, it was -- 18 it was like limp? 19 A Yes. 20 Q Okay. 21 A Yes, not as rigid as the other one perhaps. 22 Q So when you say -- I don't want to jump too 23 far. When you say bowed then, that means when you 24 press the chain saw down, it kind of gives a little 148

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1 bit more? 2 A Yes. Yes. 3 Q Okay. All right. So you're saying the 4 fourth limb that you're going to cut, that limb is a 5 little more weak, it gives a little bit more than the 6 other three that you already cut? 7 A The main branch taken from the tree is what 8 I'm talking about. I'm not talking about the branch 9 I'm cutting off. As I approached the crotch, the main 10 branch which I depicted on the drawing there gave way. 11 Q Okay. So if we -- Hold on. If we define 12 then just so we know we're talking the same language, 13 the branch is the solid continuous piece of wood that 14 Paul's holding whereas the limbs are the parts that 15 come off of that branch. Let's use those terms, okay? 16 A The limb is the larger piece; the branches 17 are what come off the limb. 18 Q All right. I'm sorry. All right. We'll do 19 it that way then. Let's define it that way. 20 MR. BARCH: Don't you watch that show on TV, 21 those Ax Men? 22 MR. MAST: No. No. No, I don't. 23 BY MR. MAST: 24 Q So let's put that on the -- I'm going to 149	1 Q Okay. 2 A At that time, without moving away from that 3 instance, I approached the cut again. Simultaneously 4 Paul wanting to help me went to support it with his 5 right hand and at that same time I went through the 6 cut and I nicked his arm. 7 Q Okay. Okay. Now, when you're saying Paul 8 went to -- what did you say? -- support it? 9 A Yes, support it. 10 Q What was he -- Do you know what he was going 11 to do with his right hand? 12 A I'll tell you what he did with his right 13 hand. He actually grabbed the limb and supported it. 14 Q What part of the limb? 15 A Below the next cut that I was -- the last cut 16 that I made when it flexed and just below the one that 17 I'm talking about and followed through. 18 Q All right. 19 A The fourth cut. 20 Q So let's talk numbers. 21 A The fourth cut. 22 Q You just made the third cut. 23 A Yes. 24 Q And the fourth cut was still the same 151
1 write that on here so we use these same words. 2 Because I don't want to change the words so I put on 3 Exhibit 1 here branch for the little parts that come 4 off the main limb. 5 A Yes. 6 Q Fair enough? 7 A Yes. 8 Q That's what we're going to describe? 9 A Yes. 10 Q All right. So what you're talking about is 11 so we use the same terminology, the limb is what 12 Paul's holding with his hand that goes vertically from 13 his hand to the ground? 14 A Correct. 15 Q And the branches are the things you're 16 cutting off of that limb six to eight or so cuts, 17 right? 18 A Yes. 19 Q Okay. So what you're saying is after you cut 20 three of the branches off of the limb Paul's holding, 21 the fourth branch -- What happens with the fourth 22 branch? 23 A The limb had flexed slightly causing the 24 chain saw to come out of the crotch. 150	1 distance from the top of the limb -- 2 A Yes. 3 Q -- but it was on the other side -- 4 A Yes. 5 Q -- of the third cut, right? 6 A Yes. 7 Q And had you cut the fourth branch by the time 8 Paul was injured? 9 A No. 10 Q Okay. So the fourth branch was still there? 11 A Yes. 12 Q But you were attempting to cut it, right? 13 A Yes. 14 Q And when Paul was holding with his left hand 15 the limb, it kind of flexed because it's held up 16 against the ground? 17 A Yes. 18 Q And it kind of bowed a little bit and you're 19 saying Paul then with his right arm did what? 20 A Went to support it below that cut as I went 21 to finish the cut. 22 Q Okay. So when you cut his arm, Paul's arm, 23 was his right arm on any part of that limb or branch? 24 A Yes. 152

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1 Q What part? 2 A Below the fourth cut which did not go all the 3 way through. 4 Q Okay. 5 A He would have been like this (indicating). 6 Q All right. Hold on. So you just 7 demonstrated that his left arm was up, his right arm 8 was down on this limb, right? 9 A Correct. 10 Q So when you -- when he had his right arm on 11 the limb and his left arm on the limb together, his 12 right arm was below the fourth branch that you were 13 going to cut, right? 14 A Yes. 15 Q How far below? 16 A Maybe 8 inches. His hand was collapsed onto 17 the limb about 8 inches below that last cut that 18 didn't go through. 19 Q Fair enough. Okay. And when you made that 20 first attempt to cut that fourth branch, was his hand 21 there at that time or was that after you tried to make 22 that first attempt? 23 A It was after I made the first attempt at the 24 fourth cut. 153	1 limb standing like this flexed like that. At the same 2 time I went to finish the cut and I did finish the 3 cut. Like I said, it just -- 4 Q All right. 5 A Just -- 6 Q Hold on. You're going way too fast for us 7 and we're going to have to repeat the questions over 8 and over again and if we can just go step by step, 9 okay? 10 A Okay. 11 Q As he -- As you make the first attempt at 12 cutting that fourth branch, the tree flexes and your 13 saw blade bounces up or do you -- 14 A Slightly bounces up, yes. 15 Q Okay. Then do you immediately put it back 16 down to cut it a second time to try to cut it a second 17 time or do you wait? Do you hesitate? 18 A I didn't hesitate. 19 Q So you immediately did it then, right? 20 A Say it again. No, just the last part. 21 Q I know. I get it. Your first attempt to cut 22 the fourth branch to the second attempt to cut the 23 fourth branch there was no hesitation, it was just 24 tried to go down and get it, it bent and then you went 155
1 Q Okay. You made the first attempt at the 2 fourth cut and because the limb bowed, you were not 3 able to penetrate the fourth branch, correct? 4 A Correct. 5 Q So did you just in a split second go back and 6 try it again or did you wait a couple seconds or what 7 happened? How long was the process? 8 A Like microseconds. It was -- You know, it's 9 a matter of just going -- and at the speed you can 10 see -- I'll describe if I need to or if you want me 11 to -- cut, cut and also the manner in which I'm 12 cutting, it's called the locked elbow position. You 13 don't just freewheel a saw. Nip, nip, nip, and it 14 went ... I was like okay. And at that same time he 15 just reached over to kind of help me out so it 16 wouldn't flex and that's how it all came together. 17 Q All right. Well, if he's reaching over and 18 that's why you cut him, then that leads me to believe 19 that he's not holding on to the limb at the time that 20 you cut him. 21 A Oh, he's holding on to the limb. 22 Q So is he reaching over at the time you cut 23 him or is he already holding on to the limb? 24 A Simultaneously as he reached down to that 154	1 back down to get it and you cut it off? 2 A Yeah. 3 Q And that's -- When you went back down to get 4 it that second time, that fourth branch, that's when 5 you cut his arm? 6 A That's when he placed his hand there and got 7 it cut. 8 Q Right. 9 A Yes. 10 Q Okay. So when he was cut -- physically when 11 the cut occurred, was his right hand on the limb or 12 not? 13 A Yes, it was on the limb. 14 Q Did you know it was on the limb? 15 A Yes, I did. It was clasping the limb. 16 Q Okay. How long was his right hand clasping 17 the limb below the forth branch that you were going to 18 cut before you cut his arm? 19 A It's hard to operate a stopwatch while you're 20 operating a chain saw. I really can't give you a time 21 frame as to something that happened so quickly and 22 when two men come together. Like I said, I can't -- I 23 can't answer that question. I don't know. I don't 24 know. 156

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1Q Listen, you gave me five minutes of why you 2don't know. Just tell me you don't know, that's fine. 3We can move on. 4A I'm sorry. It's my character. I'm very 5inclusive in my answer descriptive. 6Q All right. Well, I'm just trying to tell you 7you don't need to do that. 8A And I'm working on it right now. 9Q All right. 10A I'm glad you -- 11Q So the question is, and I'm not saying is it 12five minutes between the time you first tried to cut 13it until the second time you cut it. I understand 14we're talking seconds, okay. My question is -- 15A Milliseconds. 16Q All right. Milliseconds. Fine. My question 17is, when you went down to cut that fourth branch the 18first time and the tree bent -- 19A Yes. 20Q -- and you had to go down right away and cut 21it a second time, when you went toward that fourth 22branch to cut it a second time, when you went toward 23it, was his right arm on the limb at that time or was 24he off it and going toward it to hold on to it? 157	1wasn't looking at him. 2Q So your answer is you didn't see his hand 3moving toward the -- 4A No, I did not see his hand. 5Q You've got to let me finish the question. 6A I'm sorry. 7Q We're going to be here all day. Your answer 8is you did not see his hand motioning toward the 9limb -- his right hand motioning toward the limb to 10hold on to it, you only saw it right when it clasped 11the limb right when you were going at the branch a 12second time? 13A Yes. 14Q So the time -- Simultaneously when you're 15cutting that fourth branch, that's when you go through 16that branch and then you end up going into his arm, 17correct, his forearm? 18MR. CALLAHAN: I'd just object to the form of the 19question. 20BY THE WITNESS: 21A You're leading me into cutting him and that's 22not what happened. 23Q Oh, I'm sorry. 24A I feel as though I am. 159
1A At the exact same time that my saw went 2through that fourth cut, his hand clasped that limb. 3Q That's not my question. My question is this; 4I'm going to say it again. My question is, you went 5down to cut that fourth branch off and the limb bowed 6so you went at it again; and my question is, when you 7went at it again for that second cut on that fourth 8branch, was his right hand clasping below that fourth 9branch at that point? 10A In time? 11Q Yeah. 12A Simultaneously. 13Q Okay. So that simultaneously you're saying 14when you're going after that fourth branch the second 15time -- 16A Yeah. 17Q -- he's now at the same time grasping on 18below that fourth branch to hold on to the limb? 19A Yes. 20Q Okay. And do you see him as he is moving his 21right arm toward the limb to hold on to it or do you 22just see at the last second when your saw is going 23towards the branch? 24A I was focused on the branch and the cut. I 158	1Q I get what you're saying. I'm sorry, maybe 2that wasn't the way you wanted me to word it. I'll 3try to word it differently. 4A Thank you. 5Q You're -- At least from what you're saying 6is, you are motioning toward that fourth branch a 7second time in attempts to cut it so you're moving the 8chain saw, as you said, in that rigid locked position 9with your elbow -- 10A Yes. 11Q -- toward that fourth branch to cut it, 12right? 13A Yes. 14Q So if you're going toward that fourth branch 15to cut it, and I understand you're saying his right 16arm is locking on to that limb at the same time, 17right? Right? 18A Yes. 19Q But you're moving the chain saw forward to 20cut that branch, right? 21A Yes. 22Q So when you're moving that chain saw forward 23to cut that branch, that moving forward manner ends up 24striking his forearm in the manner that it did to cut 160

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1 him, right? 2 A I think we're overlooking the word 3 simultaneous. I'm sorry that I can't just answer your 4 question but it's -- the description is -- 5 Q What do you mean? 6 A The description is not fitting the instance 7 that happened for me per se. 8 Q Put his arm movement aside for a minute. 9 A Okay. 10 Q Okay? 11 A All right. 12 Q We know simultaneously he's using his right 13 arm to grab on to that limb while you're making that 14 second cut to the fourth branch, right? 15 A Yes. 16 Q That's happening simultaneously; I understand 17 that. 18 A Yes. Okay. 19 Q My question is, while you were going down to 20 that second cut of that fourth branch, you're moving 21 the chain saw forward to cut that branch, right? 22 A Yes. 23 Q And in the process of moving the chain saw 24 forward to cut that fourth branch, that is the process 161	1 now. So you're holding the chain saw, you're going 2 for that second attempt at the fourth branch to cut 3 it, and while you are cutting that fourth branch is 4 when the -- when Paul's arm is struck; is that right? 5 A Yes. 6 Q And so the chain saw is under your control at 7 the time, right? 8 A Yes. 9 Q You're not out of control, are you? 10 A I'm in control with the chain saw, yes. 11 Q Okay. And you're wanting to cut it when this 12 happens, right? You're wanting to cut with it when it 13 happens? 14 A Yes. 15 Q Okay. You are attempting to cut the branch 16 and that's when Paul's arm is attempting to hold on to 17 the limb, right? 18 A Correct. 19 Q And the chain saw is in motion when Paul's 20 arm is struck, correct? 21 A Yes. 22 Q Okay. And the first time you see Paul's arm 23 is when his right hand is grasping the base of the 24 limb below the fourth branch, correct? 163
1 that takes your saw blade into his arm. Whether his 2 arm is moving or not, we can -- I can ask that next, 3 but the process of you moving forward with the chain 4 saw is part of what led to his arm being cut, right? 5 MR. BARCH: I'm going to object to the form of 6 the question. It's also argumentative. Go ahead. 7 BY MR. MAST: 8 Q Go ahead. 9 MR. CALLAHAN: I'll join that objection. 10 BY THE WITNESS: 11 A As you had said, it's part of how it 12 happened. 13 Q Right. 14 A It's an equal share. 15 Q Okay. Equal share meaning you're saying his 16 arm's moving near the limb as well as the chain saw 17 you are operating is pushing forward toward that limb 18 and the arm and the chain saw meet and he becomes 19 injured, correct? 20 A Correct. 21 Q Okay. 22 (A short break was had.) 23 BY MR. MAST: 24 Q All right. Finish up where we got this tree 162	1 A Yes. 2 Q You don't see it coming from the side toward 3 that bottom part of the -- 4 A No. 5 Q -- of the -- of the limb, correct? 6 A No, I did not, correct. 7 Q Is that correct? 8 A (Nodding.) 9 Q Okay. Is that correct? 10 A That is correct. 11 Q Okay. Okay. When he gets cut, what is the 12 first thing that happens? Does he scream? Do you say 13 something? What's the first thing that happens the 14 split second he's cut? 15 A I say no. He says yes. 16 Q And what do you mean by no? You mean no, 17 that's not happening or what? 18 A Yeah, like no. No, it didn't happen. 19 Q Okay. And he says what? 20 A Yes. Let's go. 21 Q Yes what? 22 A Let's go. 23 Q Let's go what? 24 A Let's get out of here. It's time to go. 164

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1 We've got to go to the hospital, you know. Yes, let's 2 go. 3 Q That's the first thing that happens once he's 4 cut, right? 5 A Yes. 6 Q And when he gets cut, are you able to see the 7 chain saw making contact with his arm, or how do you 8 first discover he's cut? 9 A It just looked like I could have nipped him. 10 It was so close that it looked like I could have 11 touched him. 12 Q Okay. 13 A That's what I did, I touched him. 14 Q All right. Had Paul ever held a limb before 15 he got cut with both hands before this? 16 A No. 17 Q Okay. So you did not expect him to do that? 18 A No, I did not. 19 Q Okay. And after you say no and he says yes, 20 do you guys -- do you basically put the chain saw down 21 and get in his car and go to the hospital? 22 A I threw the chain saw down and got in his car 23 to go to the hospital. 24 Q Was he bleeding? 165	1 ex- -- 2 A No, I don't. 3 Q Wait. Back and forth here, please, please. 4 You don't have any medical education or training, do 5 you? 6 A No. 7 Q Okay. So any type of depth of incision or 8 cut that you would be talking about would be just 9 based upon what you saw visually, correct? 10 A It was visual, yes. 11 Q You never went with your finger inside the 12 wound? 13 A No. 14 Q Or any type of object? 15 A No measuring devices were employed, no. 16 Q Okay. Did you hear the doctors talk about 17 how far it was cut in? 18 A Yes. 19 Q How far did they say? 20 A Not deep, that was their assessment. 21 Q Okay. 22 A He was lucky. 23 Q Okay. 24 A It only hit the fascia; that's what they 167
1 A Yes. 2 Q Do you know -- and, again, I don't knows are 3 fine answers. I'm not trying to imply you know things 4 but I just have to ask. Do you know how far or how 5 deep the chain saw went into his arm? 6 A I could tell you pretty accurately. I was 7 there in the operating room. It never went past the 8 epidermis. 9 Q What do you mean, the skin? 10 A Yeah. 11 Q Did it open the skin? 12 A Yes. 13 Q And it was bleeding? 14 A Yes. 15 Q Okay. Well, I mean, the doctors will be able 16 to tell us how deep it went. Are you telling me you 17 have some kind of medical ability to tell how far it 18 got cut? 19 A I'm educated to a certain extent and I was 20 educated there in the emergency room and I heard 21 everything that was being said and I was shown and 22 even Paul said look, and I was right there the whole 23 time looking. 24 Q You don't have any medical education or 166	1 said. 2 Q All right. Do you know -- You've known Paul 3 a long time before the accident? 4 A 35 years. 5 Q Okay. Have you ever known him to be injured 6 in any way before this accident? 7 A Yes. 8 Q Okay. What is that? 9 A A car accident. 10 Q When was that? 11 A I cannot put a pin date on it, but I can say 12 it was over seven years ago. 13 Q Okay. So maybe around 2006, somewhere around 14 there? 15 A I am guessing at that, but I know that there 16 was an instant which he was involved in an accident 17 and he also pursued. 18 Q Okay. Here, listen. Just follow me. If you 19 follow me, we'll go where we need to go and get there 20 fast, okay? 21 A As I said, it's a struggle because of my 22 character. 23 Q All right. 24 A I'm descriptive and inclusive. 168

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1Q Fair enough. 2A You don't have to keep correcting me -- or 3you do have to correct me; that's your job, but -- 4Q Fair enough. 5A -- I'll try to get there for you, okay? 6Q All right. Motor vehicle accident about 72006. Were you in the accident with him? 8A No. 9Q Do you know what injuries he suffered in that 10auto accident? 11A Nerve damage to the left elbow that was 12allegedly struck. 13Q In this case you mean? 14A In that other -- Yeah. 15Q Did he ever have any surgery for that left 16elbow? 17A I know he was poked and prodded. I don't 18know if he was -- had actual open surgery for it 19though. 20Q Did he ever resolve that injury up until the 21accident in this case? 22A I don't know. 23Q Okay. Other than a left elbow nerve injury 24in a motor vehicle accident around 2006, any other 169	1that. 2In the five years before this chain saw 3accident in June of 2011, was Paul in any way disabled 4or limited in what he could do physically? 5A I don't know. 6Q Okay. Well, to what extent you do know -- to 7what extent your contact you've had with him, you're 8not aware of any; fair enough? 9A Correct. 10Q Okay. Are you aware that Paul was under any 11medical consultation or treatment in the five years 12prior to Paul's chain saw accident in this case? 13A I am not aware. 14Q Okay. After this accident are you aware of 15Paul receiving medical treatment from time to time for 16his right arm laceration? 17A Yes. 18Q How many times -- Let's say in the month 19after this chain saw accident, how many times did you 20see Paul? I mean, was it every day? 21A No. No. Maybe three or four times since 22this accident I've seen him. 23Q Total? 24A Yeah. 171
1injuries from that motor vehicle accident? 2A I don't know. 3Q Okay. How do you know about that left elbow 4nerve injury then? 5A Because he showed people and talked about it 6openly. 7Q Was it a different location than where he was 8lacerated or cut in the chain saw in this case? 9A Yes, it was an entirely different arm. 10Q Oh, I'm sorry. You're right. I'm sorry. I 11wasn't thinking that far ahead. Good. In this 12case -- In this case the chain saw was the right arm. 13In that case it was the left elbow, right? 14A Yes. 15Q Okay. Any other injuries other than the 16motor vehicle accident? 17A I'm not aware of. 18Q Okay. Any other prior -- prior to this case, 19any prior injuries to Paul? 20A Not that I'm aware of. 21Q Any prior conditions of ill health with Paul 22before his chain saw accident? 23A I'm not aware of any. 24Q In the four or five year let's say -- Strike 170	1Q Up until now? 2A Yeah. 3Q Oh, I see. So it's been very infrequent 4then? 5A Yes. 6Q Okay. 7A Just the instances where we exchanged what I 8had given in the beginning of this deposition. 9Q Right. 10A Those are the only times I spoke to him. 11Q All right. So let me summarize that just to 12make sure we're clear. What you're saying is, I'm 13assuming before the accident you saw Paul a lot, 14right, or not? 15A I wouldn't even say frequency. From time to 16time. 17Q Maybe once every couple of weeks or 18something? 19A Yeah, that's honest. That's fair. 20Q All right. So let me word that all out then. 21Before the accident you were seeing Paul every couple 22of weeks maybe infrequently; fair enough? 23A Infrequently, okay, yes. 24Q Fair enough? 172

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1A Yes. 2Q After the accident you saw Paul only on those 3occasions where you had words with him that you 4described at the beginning of the deposition? 5A Correct. 6Q And that would have been, looks like, four 7times? 8A Yeah. 9Q Right? 10A Yeah. 11Q Okay. 12A With the exception of the one time when he 13did come up to help me work, but we didn't discuss 14anything that had to do with the case; he just came up 15to work. 16Q When was that? Was that a different time? 17A It was after the accident. He helped me do a 18roof on my house. 19Q So it's different than the four times we 20talked about at the beginning of the deposition? 21A Yeah, we were talking about conversation and 22this wasn't really conversation. It was -- we were 23just working. 24Q Okay. So that's why I'm trying to get this 173	1Q How many days was he helping you? 2A Just one. 3Q For how many hours? 4A Five, six hours. 5Q Okay. So you're saying after the accident in 6October of 2011, we're talking maybe about four months 7after the accident, Paul helped you on one day five to 8six hours to pull your old roof up off your house? 9A Yes. 10Q Okay. Was anybody else helping you -- 11A Yes. 12Q -- during that time? 13Who? 14A Mike Shoshie, neighborhood friend. 15Q How do you spell that? 16A S H O S H I E. 17Q Is he still a neighborhood friend? 18A Yes, he is. 19Q Where does he live? 20A Two blocks away from me. I can't give you 21his address; I don't retain it in my memory, but I 22know where he lives. I could submit that to you at a 23later time if you'd like. 24Q Very good. 175
1summarized. 2A Okay. 3Q After the accident we talked about four 4different times you had a conversation with Paul about 5various things. We talked about those, we tried to 6give approximate dates and things. 7A Yes. 8Q Okay. Other than those four conversations 9with Paul, you said there was one other time you 10had -- you were with Paul after his accident and that 11was to do a roof? 12A My roof at my home, yeah. 13Q Okay. When was that? 14A It would be October. 15Q Of what year? 16A 2011. 17Q Same year as the accident? 18A Yes. Yeah. 19Q All right. So you did -- Was he helping you 20do roofing work on your house? 21A He was helping me tear it off. 22Q Okay. Did he have any kind of bandage or 23brace on his right arm from the injury in this case? 24A No. 174	1MR. BARCH: I need to at least go on record that 2we started around 1:00. There's been some breaks, 3it's now 3:45. If Mr. Gagnon's attorney is going to 4stick to the three-hour limit, I need some time. 5MR. MAST: I'll try to wrap it up. 6MR. BARCH: I know, but I don't want to get to 7the three-hour point and have the plug pulled. 8There's only 15 to 20 minutes left. 9MR. MAST: Well, I guess that's -- that's -- I 10mean, we didn't -- Hold on. 11MR. BARCH: Well, I think you and I have a duty 12to share our time. 13MR. MAST: Before the dep we didn't really 14discuss this so it's fair that you bring that up. I 15don't know if you have a lot, but I'm trying to wrap 16it up now with me. I don't think I'm going to take 17the full -- I don't think I'm going to be a half an 18hour from now. I don't know how much time you have so 19is it -- do you have a lot of time or are you just 20looking at 10, 15 minutes? 21MR. BARCH: Yeah. 22MR. MAST: Yeah, so we should be fine. 23MR. CALLAHAN: Yeah, during the break Mr. Mast 24and I discussed this. We're told the deposition 176

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1 started at 1:12. He said he'd wrap it up so you 2 should have time. 3 MR. MAST: Yeah. 4 MR. BARCH: Okay. Good. I just want to make 5 sure we're all on the same page, that's all. 6 MR. CALLAHAN: If you go a little over, I'm not 7 going to jump up and scream. 8 BY MR. MAST: 9 Q Anyone other than Mike Shoshie, you and Paul 10 that was assisting on your roof at the time Paul was 11 helping you? 12 A No one else was assisting but there were 13 witnesses that seen him helping in those duties. 14 Q That was my next question by the way. Who 15 was that? 16 A Joe Vlk. 17 Q How do you spell the last name? 18 A V L K. No vowels. 19 Q Where does he live? 20 A In the neighborhood by me also. 21 Q Anybody else? 22 A My wife. 23 Q Okay. And are you aware of him having any 24 difficulties in helping you during those five or 177	1 Q The next one was four months later, the other 2 one was 2012 and the last one wasn't about any 3 financial thing but it was a little bit before the 4 2012 meeting; fair enough? 5 A Yes. 6 Q Okay. Have you now told me everything that 7 you had -- Well, strike that. 8 Let me ask this question first. Did you 9 and Paul at any time discuss how or why the accident 10 occurred? 11 A No. 12 Q Okay. And that's on both sides. You never 13 told Paul, Hey, why were you holding on to the branch, 14 or, I didn't know you were doing that, or, Why were 15 you grabbing with your right arm? You never told that 16 to Paul, did you? 17 A No. 18 Q And Paul never said, Hey, why were you 19 cutting the way you did, or anything like that; he 20 wasn't complaining to you? 21 A No. 22 Q Okay. Have you talked to anybody else other 23 than your attorney and your insurance company about 24 what happened? 179
1 six hours because of his injury in this case? 2 A He seemed to not exert himself fully and was, 3 if not nursing, staying away from using that arm in 4 full but nonetheless was still grappling and moving. 5 Q Fair enough. So you're allowing the fact 6 that he was reserving some of his -- saving himself a 7 little bit for the right side where he hurt his arm in 8 this chain saw accident as if there was something 9 still lingering there? 10 A Yes. 11 Q Okay. But he still was able to help you for 12 five or six hours irrespective of what might be his 13 ongoing issue? 14 A Yes. 15 Q Okay. So other than those five to six hours 16 that given day in October 2011, you had four other 17 meetings and conversations with Paul that we already 18 fully talked about and there's no more need to detail 19 those anymore; fair enough? 20 A Correct. 21 Q Okay. And the first conversation was coming 22 right out of the hospital that day of the accident, 23 right? 24 A Yes. 178	1 A No. My mother. Just back to my mother. 2 Q Oh, and you might have -- You know what? 3 This isn't a big deal, but I think in terms of just 4 being all-inclusive, you did -- I printed out what my 5 assistant wrote down from a recorded statement that 6 you knew I was taking over the phone of you, correct? 7 A Yes. 8 Q Did you read this at all? 9 A That one I -- Yeah. 10 Q Huh? 11 A Yeah. 12 Q This is the narrative from the recorded 13 statement that she took down and I'm assuming she took 14 it down right. I didn't go and read it and listen to 15 it. 16 A Yeah, I had a few blanks in there and such 17 that, you know ... 18 Q Well, hold on. The question is -- 19 A Yeah. 20 Q And I'll mark this as Exhibit 2, okay, and 21 I'll just put a 2 for now. But would you agree 22 that -- and I know you didn't listen to the recording 23 so I understand that, but would you agree that reading 24 this narrative marked as Exhibit 2 accurately states 180

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1 what you would have said on that phone call to me? 2 MR. CALLAHAN: I'd just object to the form of the 3 question and as to the number of variables with the 4 recording and with the transcription of the process 5 itself, including some of the language in the 6 transcript and ask him if he could -- I think it's 7 better if this would be pointed out page by page or -- 8 excuse me -- line by line more or less if he's 9 agreeing with that. 10 MR. MAST: I can do that. Yeah. Joe, I'm just 11 trying to make it easy. 12 MR. CALLAHAN: Yeah. 13 BY MR. MAST: 14 Q Let me put it this way: Have you read this 15 narrative from your recorded statement? 16 A Yes. 17 Q Is there anything in the narrative -- and 18 I'll let you read it again if you need to, is there 19 anything in this narrative, Exhibit 2, that you 20 believe you did not say that's attributed to you? 21 MR. BARCH: Form of the question, but go ahead. 22 BY MR. MAST: 23 Q Here, I'll give it to you again. Just read 24 it through. I don't want to go through line by line 181	1 A Yes. 2 Q Okay. And that's Exhibit 2, correct? 3 A Yes. 4 Q All right. Again, it is what it is. Let's 5 put Exhibit 2 on here so we can keep track of these 6 things. Okay. 7 Now -- 8 MR. MAST: Oh, I didn't put this on the record. 9 I'd like to put this on the record. I don't have 10 answers today of interrogatories, nor I don't think 11 this response is to my production request. Let me 12 just see. No, this response to the production request 13 is to codefendants' response. So I don't have that 14 discovery, nor answers to interrogatories to my 15 discovery. I'm assuming nothing is going to be crazy 16 or different than what went over today but to the 17 extent it does, I'm going to reserve my right to the 18 extent I need to, but let's just mark this as 19 Exhibit 3. 20 BY MR. MAST: 21 Q And what Exhibit 3 is, is what I was given 22 today right before the deposition are, Mr. Gagnon, 23 your answers to codefendants' interrogatories and 24 response to production request. Nothing that you need 183
1 unless you want to but basically I'm asking you, did 2 you say those words and is this -- 3 A This besides the blanks that are there -- 4 Q Yeah, besides the blanks. 5 A -- yeah. 6 Q Okay. All right. 7 MR. CALLAHAN: And I'd just point out too that 8 there seems to be -- like if you read that thing in 9 total, there are eight parts where the subject and 10 verb don't agree, there's parts where it goes on, it 11 doesn't make sense and that also has to be considered 12 as well as to the totality of the accuracy and the 13 candor of the statement. 14 BY MR. MAST: 15 Q Okay. This is my question, and again I know 16 you didn't compare the audio to that statement; but 17 you read that statement and all I'm asking is, you 18 generally recall giving me a statement over the phone, 19 right? 20 A Yes, I do. 21 Q And does that generally, and again we can 22 listen to it to find out specifically what it says; 23 but does that generally meet with your recollection of 24 what you said? 182	1 to concern yourself to other than I will ask you 2 Exhibit 3, is this your signed answers to 3 interrogatories that you're giving in this case? 4 A Yes, I received this in the mail and answered 5 those questions as they are printed. 6 Q And you signed it verifying these are your 7 true and correct answers, correct? 8 A Yes. 9 MR. BARCH: Do you have a signed version? I 10 don't have a signed one. 11 MR. MAST: Yeah, it's signed. 12 BY MR. MAST: 13 Q All right. Has -- I think defense counsel 14 already answered this, but I just want to make sure 15 that you haven't heard anything that your defense 16 counsel hasn't heard -- has your homeowners insurance 17 rejected or reserved their right for coverage in this 18 case at all, to your knowledge? 19 MR. CALLAHAN: I'd just object, it may call for 20 privileged conversation and I object as to it may call 21 for conversations with insurance company but -- and I 22 can answer as far as I know, there's been no rejection 23 of anything, and I'll make that stipulation -- 24 MR. MAST: I'll accept your answer then; that's 184

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1 fine. All right. Let me just look through your 2 answers to interrogatories, the ones that I've got. 3 Hold on one minute. 4 BY MR. MAST: 5 Q Have you talked to your mother -- Or strike 6 that. 7 Have you talked to your parents at all 8 about this incident with regard to whether they saw 9 anything? 10 A No. 11 Q Okay. Do you know if they saw anything 12 regarding the incident? 13 A I know they didn't see how it went down. 14 Q Did they -- Do you know if they saw the 15 process of what you and Paul were doing in cutting 16 these branches down? 17 A No. 18 Q Okay. Do you know if they knew about the 19 incident before you left the property that day? 20 A Yeah, they knew that something had 21 happened -- 22 Q Okay. 23 A -- bad. 24 Q Okay. Since you only met or spoke with Paul 185	1 doing it, were you, other than getting money for it? 2 MR. BARCH: I object to the form of that 3 question. It calls for legal opinions. 4 MR. MAST: I don't -- 5 BY MR. MAST: 6 Q Go ahead. Do you want me to ask the question 7 again? 8 A Yeah. 9 Q All right. The work you were doing in 10 cutting the tree on your parents' property when this 11 injury occurred was to benefit your parents, correct? 12 A Yes. 13 MR. BARCH: Same objection. 14 BY MR. MAST: 15 Q Okay. And you were getting paid to do it, 16 correct? 17 A Yes. 18 Q Okay. 19 MR. MAST: Go ahead. I'll let you go and see if 20 I have anything else here. 21 22 23 24 187
1 on a few various occasions after the incident, I'm 2 assuming you're not really up-to-date on the nature 3 and extent of his recovery and/or his medical injury; 4 fair enough? 5 A No, I'm not. 6 Q Is that fair enough? 7 A That's fair. 8 Q Okay. So what limitations or the severity of 9 the injury and what it's turned out to be, you don't 10 know about; fair enough? 11 A I don't know. 12 Q Okay. And the work you were doing was at the 13 request of your parents, correct? 14 A It was at the submitting of my parents for my 15 suggestion that it was a good time to do this. 16 Q It was for purposes of your parents. It was 17 their property and it was -- 18 A Yes. 19 Q -- work doing -- 20 A It was for purposes of my -- 21 Q Hold on. 22 A Okay. 23 Q It was for their purpose, your parents' 24 purpose to do it. You weren't benefiting yourself in 186	1 EXAMINATION 2 BY MR. BARCH: 3 Q Hopefully don't have to cover everything over 4 again, but I do want to back up a little bit. Mike 5 McArdle? 6 A Mike Mcartor. 7 Q Mcartor? 8 A Yeah, Mcartor. 9 Q He was a friend of yours for a long time as 10 well? 11 A Yes. 12 Q And what's the connection between him and 13 Mr. Dulberg? I mean ... 14 A They both live together in Paul's mother's 15 home. 16 Q They've been living together for years? 17 A Ten years. 18 Q Ten years? 19 And it's a sensitive question, but are 20 they a couple? 21 A A lot of people wonder. 22 Q Okay. Well, do you know? 23 A I don't know. 24 Q You've known them both for years. 188

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1A I don't know. I mean, I don't know either 2way so I just don't know. I'm not being facetious; I 3just don't know. 4Q Have you ever talked to Mr. Mcartor about 5what happened? 6A No. 7Q No? 8A No. 9Q They -- There was one conversation -- 10(Short interruption.) 11BY MR. BARCH: 12Q There was one conversation I think you had 13with Mr. Dulberg and Mr. Mcartor was present? 14A Yes. 15Q And let me see if I can remember which one 16that was. Do you remember of the four that we talked 17about earlier -- 18A Yes, it's the one in the kitchen where Mike 19was present and Paul had commented that he thought 20that this was a blessing and the best thing that could 21have happened because he won't have to work another 22day of his life. Won't have to retrain for a job, 23blah-blah-blah, on and on. 24Q Okay. Do you recall Mr. Mcartor making any 189	1Q And you were there -- If I understand what 2you're saying, you were there, there was a discussion 3as to what to do with these trees now that the shed 4was down? 5A Correct. 6Q And it was just a -- if I heard your 7testimony, a good opportunity to take down these 8overhanging trees? 9A Yes. 10Q Was there plans to put up a new shed? 11A No. Actually, we installed the same size 12shed on the same platform in the same spot after the 13trees came down. 14Q Okay. 15A As I said, it was opportune because it was 16absent now. 17Q Okay. But was there -- the long-range plan 18was to put a new shed back in the same spot? 19A Yes. 20Q A replacement? 21A Yes. 22Q All right. So before doing that, it was -- 23your thought is let's get rid of this overhanging 24tree? 191
1statements? 2A No. No, Mike is a listener. 3Q Okay. 4A He stays out of things. 5Q And I may be confused but was that the same 6conversation where he -- where you basically said you 7wouldn't tell something that wasn't true? 8A No, that was a separate conversation. I was 9leaving his house and he kind of just blurted out 10across the kitchen where Mike was witness to him 11saying it. 12Q The one that Mike was there, there wasn't any 13discussion about money or -- 14A No. 15Q -- testifying any certain way? 16A No. 17Q Okay. All right. I guess going back to this 18whole situation, what brought you out to your -- I 19guess to this -- to do this work at your mom and dad's 20place. That's your mom, right? 21A Yes. 22Q Carolyn is your mom, and Bill's been your 23stepfather for years? 24A For years, yeah. 190	1A Yes. 2Q All right. And I -- I -- This whole notion 3as to whether you were paid or not paid, did they end 4up giving you cash for doing work out there? 5A I did a multitude of things; but yes, for 6that job -- 7Q Okay. 8A -- there was many upgrades done on the 9property, so ... 10Q Did you consider yourself to be their 11employee or were you just doing a favor for them for 12money, what? 13A No, I was -- I was doing a favor and because 14of the times, I was getting money where I could and my 15mom wanted to supply me with some kind of means of 16income because I couldn't find it anywhere else and I 17provided a service for her. 18Q You called it at one point a chore -- 19A A chore. 20Q -- that you were doing for them? 21A Yeah. 22Q All right. Now, with respect to the tree 23trimming and then ultimately whether they were 24removed, did either Bill or Carolyn come out there and 192

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1 tell you how they wanted this done? 2 A No. 3 Q Prior to you undertaking that job, did you 4 sit down with them and have them tell you what they 5 wanted done, what their expectations were, or anything 6 like that? 7 A No. 8 Q Have you ever actually seen either one of 9 them use a chain saw? 10 A No. 11 Q Would you agree that you were free to cut 12 those limbs, take down the branches, to do that in any 13 way you saw fit? 14 A Yes. 15 Q And you didn't have an invoice or a written 16 contract with them -- 17 A No. 18 Q -- or anything like that? 19 A No. 20 Q And then this whole concept as to whether 21 David was there -- I'm sorry -- as to why Paul was 22 there, he was there -- you invited him over? 23 A I did. 24 Q And Mr. and Mrs. McGuire may have known he 193	1 fireplace at his home that he burns -- 2 Q Okay. 3 A -- where we don't -- or she doesn't here. 4 Q That was an assumption but was it actually a 5 subject of conversation between you and he? 6 A No, we did not discuss it. 7 Q So in terms of what, if anything, Paul might 8 get out of it, as you sit here today, you don't recall 9 any discussions with Paul about what he would get in 10 return for helping you? 11 A No, he just agreed to help a friend take down 12 some trees. 13 Q And I -- if I'm understanding your testimony 14 too, Paul wasn't trying to override anything you were 15 doing; he wasn't telling you what to do either? 16 A No. 17 Q There was a lot of unspoken things happen 18 between the two of you? 19 A Yes. 20 Q The branch that you and Mr. Dulberg were 21 working on -- I'm sorry -- the limb that you and he 22 were working on, that one you mentioned as you were 23 cutting that fourth branch as turning, that one 24 flexed? 195
1 was coming over? 2 A Yes. 3 Q You told them that? 4 A Yes. 5 Q Did you tell them that he was coming over to 6 help you? 7 A I said that I asked Paul to help me today and 8 they didn't say anything because we worked together 9 before and they're friends, so ... 10 Q And at that point, if I heard your testimony, 11 there was no discussion between you and your parents 12 about them paying for Paul's time? 13 A No. 14 Q And that wasn't something that you and Paul 15 even talked about? 16 A No. 17 Q Even up until the point of injury, that was 18 not a subject of conversation? 19 A No, it was not. 20 Q Do you know if he was planning on taking some 21 of the trimmed-up branches for firewood? 22 A I was assuming in my mind that that would 23 suffice him initially, yes, because he had already 24 taken some before from the front yard. He has a 194	1 A Yes. 2 Q And you used the word flexed, at one point 3 also bowed, you used that word? 4 A Yes. 5 Q If I'm understanding what you're saying, the 6 actual limb itself bent? 7 A Yes. 8 Q All right. Did you have that happen on any 9 of the other 24 to 29 branches that you were cutting? 10 A No. 11 Q That was the first time that happened? 12 A Yes. 13 Q All right. And the -- at the point in time 14 you described, and I don't want to go through in 15 detail what you and Mr. Mast just went over, but you 16 described how you were moving for that -- at the 17 second attempt to get that fourth branch; and if I 18 understood your testimony, simultaneously Mr. Gagnon 19 is coming in with his right arm to grab the limb -- 20 A Mr. Dulberg, yes. 21 Q -- and the saw and his arm converged 22 simultaneously? 23 A Yes. 24 Q Okay. Had Mr. Dulberg gotten his hand 196

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1 anywhere near the chain saw any closer than 12 to 2 18 inches anytime prior to that? 3 A No. 4 Q At any point in time did you perceive or fear 5 that he was getting his arm too close or hand or 6 whatever, any part of his body too close to the blade 7 of the chain saw that you were operating? 8 A No. No. 9 Q Right up until the very end? 10 A No. 11 Q Did you ex- -- As you were cutting, having 12 down 24 to 29 branches, because this happened you're 13 estimating on the twenty-fifth or thirtieth branch, 14 correct? 15 A Yeah, somewhere around there. 16 Q Limb. Did you expect him to be putting his 17 arm in there to help with the flex? 18 A No, because none of them flexed previous to 19 that. I didn't foresee it at all. 20 Q All right. And would you agree that prior to 21 June 28, 2011, indeed right up until the point where 22 Mr. -- where the saw came in contact with 23 Mr. Dulberg's arm, you knew that a chain saw could cut 24 somebody? 197	1 the chain to move? 2 A Yes. 3 Q And which elbow are you talking about being 4 locked, both of them? 5 A Right elbow locked into my ribs so that my 6 strokes were short. 7 Q Okay. So that was some -- that was a 8 technique that you were using to maintain control over 9 that chain saw? 10 A Yes. 11 Q Is that something that you learned just in 12 practice or something you heard before? 13 A No, I witnessed people doing it when they're 14 in close quarters because sometimes you'll have to do 15 that. You know, I have a friend who does tree 16 trimming and I'd just seen it performed before. 17 Q Okay. 18 A It's also less fatiguing on the worker. 19 Q And it may be elementary but correct me if 20 I'm wrong, you were -- as you were using the saw to 21 cut those branches off the limbs, part of what you 22 were doing is removing these limbs, correct? 23 A Yes. 24 Q The branches from the limbs? 199
1 A Yes. 2 Q You didn't have to be told that -- 3 A No. 4 Q -- by anybody else? 5 A Did not have to be told that. 6 Q And would you also agree that you knew that 7 it would be important if you were using a chain saw to 8 keep it clear of somebody else's arm and hands and 9 body for that matter? 10 A Yes. 11 Q You didn't have to be told that by anybody? 12 A No. 13 Q And you talked about a certain position you 14 took with the chain saw, you called it a lock -- 15 A Locked elbow. 16 Q Locked elbow? 17 A Yeah. 18 Q Is that where one hand's on there -- there's 19 like a bar that you can hold the chain saw with? 20 A Yes. 21 Q Then there's another part where there's a 22 trigger? 23 A Yes. 24 Q You actually have to pull the trigger to get 198	1 A Yeah. 2 Q And part of what you're doing is trying to 3 not hurt yourself -- 4 A Correct. 5 Q -- in the process? 6 A Yeah. 7 Q Were you also endeavoring to not hurt 8 Mr. Dulberg? 9 A Yes. I had no intentions of hurting anyone. 10 Q At any point in time prior -- right up until 11 the point where the chain blade came into contact with 12 Mr. Dulberg's arm, did you feel there was a -- did you 13 feel compelled or was there anything causing you to 14 feel compelled to tell him to keep his hands or arms 15 out of the way? 16 A No, they were not in the way. 17 Q He was doing that all the way up until that 18 point in time? 19 A Yes. 20 Q And if I heard you, you don't know all the 21 injuries -- the extent of any injuries or 22 complications Mr. Dulberg had as a result of that car 23 accident that he had? 24 A Nerve damage is all I was aware of. 200

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1Q Okay. Whether he broke his neck or had any 2residuals with the elbow, rehab or surgeries, none of 3that you don't know? 4A Yeah, I don't know. 5MR. BARCH: All right. That's all I have. 6MR. CALLAHAN: I just have one -- two quick 7questions that you may want to have some follow-up on 8if I can just go? 9MR. MAST: Okay. 10EXAMINATION 11BY MR. CALLAHAN: 12Q Mr. Gagnon, are you aware of any other work 13that Mr. Dulberg has done in addition to helping you 14tear off a roof after the date of the incident? 15A He tends a garden which is his whole front 16yard this summer, the last summer. He did some -- He 17did some renovation and tear-out work for a -- kind of 18strange you asked that, but a homosexual that lives in 19Twin Lakes and he just freely gave up, he's like, 20Yeah, I met your friend Paul. 21You know, he helped me tear out the dry 22wall in my basement and stuff and then I was like, oh, 23really? And I asked him if he would testify and he 24said, I don't want to get involved. So maybe he'd 201	1A No. 2Q The only thing you've seen him do since his 3accident as far as his garden is to pick vegetables? 4A Yeah. 5Q Okay. And that's just by when you drive by 6you see him doing that? 7A He's -- He told me at those times when I was 8there, you know, look at all the produce I have. 9Q He told you when? What are we talking about? 10A When I was there. 11Q After the accident? 12A Yeah. On those -- On those occasions that I 13mentioned, he's got all his, you know, vegetables and 14stuff lined up at his house. 15Q You're going too fast. On what occasions? 16These conversations we talked about at the beginning 17of this deposition weren't all at his house. 18A No, the one where I was in the kitchen. 19Q Right. That's the one time. You said -- 20A Such as -- Such as that, you know, and -- 21Q Wait. Wait. 22A His brother doesn't tend the garden. 23Q Hold on. Hold on. Stop. After the accident 24how many times have you been to his house? 203
1want to get involved now, I don't know, but that was 2the one example; and then of course on my home, my 3roofing. 4Q So he did some demolition work for some other 5people? 6A Yeah. 7Q And that was referred to in your statement 8that you gave Mr. Mast before this deposition? 9A Yes. 10MR. CALLAHAN: Okay. That's all I have. 11MR. MAST: Yeah, I want to follow up on that. 12FURTHER EXAMINATION 13BY MR. MAST: 14Q He tends a garden. Do you ever watch him 15tend the garden? 16A I've seen him tend to his garden. 17Q Since the accident? 18A Physically walking in his garden and picking 19vegetables, yeah. I mean, as far as tilling and that, 20no, I have not seen him labor as far as tilling, 21although he did borrow my tiller to till it. 22Did I see -- Did I see him? No. 23Q Okay. Have you ever seen him till his 24garden? 202	1A As I had said. 2Q How many? 3A As I had said. 4Q What is as I had said? What answer -- How 5many is that? 6A You've got it written down right there. 7Q How many? I don't know what you're talking 8about. How many? 9A I told you the one time in the kitchen. 10Q Right. 11A And there you go. 12Q So one time? 13A Yeah. 14Q Okay. Just say one then; that's the answer. 15So the question is, how many times have you been to 16Paul's house since his accident? It's one time, 17right? 18A Yeah. 19Q Is that a yes? 20A Yes. 21Q Okay. So the times that you've seen anything 22that he's done with his garden, have you ever visited 23him to see what he does in the garden? 24A No, I didn't witness him working in the 204

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1 garden. 2 Q Okay. So what you're saying is the testimony 3 you just gave about him tending the garden is what you 4 have had that one conversation when you were at his 5 house that one time after the accident, right? 6 A Yeah. 7 Q And that was a conversation you had with him 8 and he said, Hey, look at what I do when I tend my 9 garden? 10 A Yeah. I was figuring maybe the dog helped 11 him, you know. 12 Q You know, I'm not trying to be funny. I'm 13 just trying to get the facts, okay? Because what you 14 say might -- you might not understand but it leaves a 15 lot of inferences. I'm trying to finish -- find out 16 exactly what you mean as far as so I don't have to 17 infer what you mean, okay? 18 A Okay. 19 Q So I'm not trying to be funny about it. You 20 were there at his house one time after the accident, 21 right? 22 A Yes. 23 Q And that was the time four months after the 24 accident? 205	1 him do? 2 A Harvesting vegetables. 3 Q Picking vegetables? 4 A Yes. 5 Q Okay. With his hands? 6 A Yes. 7 Q Putting them in some type of basket or 8 something? 9 A Yes. 10 Q Okay. And you would see him just by passing 11 by so it'd be a matter of a couple seconds you would 12 see him, right? 13 A Yes. 14 Q For each of those ten times, right? 15 A Yes. 16 Q And those are ten separate dates? 17 A Yes. 18 Q Over a course of a summer? 19 A Over the course of since this occurrence. 20 Q Okay. So that would be two summers? 21 A So two summers, right. 22 Q Okay. Very good. Let's talk about that 23 renovation work then. The renovation work that you're 24 talking about isn't something you saw him do, it's 207
1 A Yes. 2 Q Okay. And that's the information then that 3 you got about him tending his garden, correct? 4 A Yes. 5 Q Okay. You've never seen him tend his garden 6 since the accident, have you? 7 A Picking fruit, tending? Yeah. I mean, are 8 you talking about tilling soil? Are you talking about 9 walking in the garden in the sense -- 10 Q Have you seen -- 11 A What are you saying is tending? 12 Q All right. 13 A I don't understand. 14 Q Okay. I understand that. 15 A Okay. 16 Q How many times have you seen him in his 17 garden since the accident? 18 A We'll say ten times driving by his house, 19 going into the neighborhood that I used to live in, no 20 conversations, not stopping by, not talking to him. 21 Q I got the answer, ten times. 22 A But I'd usually seen him in his garden. 23 Q During those ten times you've seen him in his 24 garden since the accident, what things have you seen 206	1 something that somebody else told you that he has 2 done, right? 3 A Yes. 4 Q And who is the individual, what's his name? 5 A Mike Thomas. 6 Q Mike Thomas? 7 A Yeah. 8 Q He's the homosexual you were talking about? 9 A Yes. 10 Q And he lives in where? 11 A He lives in Twin Lakes. 12 Q Okay. Are you friends with him? 13 A No. 14 Q Okay. So you don't know personally what Paul 15 did, if anything, at Mike Thomas's house, you just 16 know what Mike Thomas told you, correct? 17 A Correct. 18 Q Okay. So whether he actually did renovation 19 work, meaning Paul, you don't know; fair enough? 20 A His basement was renovated. 21 Q Whether Paul did the work or not, you don't 22 know; fair enough? 23 A I was told that he did the work. 24 Q Right, and so now I'm asking do you know if 208

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1 Paul did the work or just through what you were told?	1 MR. MAST: All right.
2 A I was informed that Paul had done the work	2 MR. CALLAHAN: Signature reserved.
3 inadvertently without asking for me to be revealed	3 (Witness excused.)
4 that someone -- someone had told me that I know this	4
5 person.	5
6 Q All right. Here, let me say it a different	6
7 way.	7
8 A I know, you're trying to work it your way.	8
9 Q I'm not trying to work -- I'm just trying to	9
10 get the basis of what you're saying and you didn't see	10
11 him do the work, right?	11
12 A No, I didn't see him do the work.	12
13 Q So you don't know if he really did the work,	13
14 do you, other than what somebody told you, correct?	14
15 A That's a fair assumption.	15
16 Q And Mike is the only person that told you he	16
17 did the renovation work, right?	17
18 A That is correct.	18
19 Q And what part of the renovation work you	19
20 don't know; fair enough?	20
21 A That's a fair assumption.	21
22 Q Okay.	22
23 MR. MAST: That's all I have. Thanks.	23
24	24
209	211
1 FURTHER EXAMINATION	1 STATE OF ILLINOIS } SS.
2 BY MR. CALLAHAN:	2 COUNTY OF McHENRY)
3 Q I hate to do this but one more question.	3 IN THE CIRCUIT COURT FOR THE TWENTY-SECOND
4 Have you seen Mr. -- In the time you've seen	4 JUDICIAL CIRCUIT
5 Mr. Dulberg after the accident, have you seen him	5 McHENRY COUNTY, ILLINOIS
6 working on his computer?	6 PAUL DULBERG,)
7 A I've seen him working on his computer, yes.	7 Plaintiff,)
8 Q All right. And he seems to be able to use	8 vs.) No. 12 LA 178
9 both hands on the computer?	9 DAVID GAGNON, Individually,)
10 A He's always on his computer, yeah.	10 and as Agent of CAROLINE)
11 Q Okay.	11 McGuIRE and BILL McGuIRE;)
12 A That's what he does.	12 and CAROLINE McGuIRE and)
13 MR. CALLAHAN: That's all I have. Thank you.	13 BILL McGuIRE, Individually,)
14 MR. MAST: Now I've got to ask you that. All	14 Defendants.)
15 right.	15 I, DAVID A. GAGNON, state that I have read the
16 FURTHER EXAMINATION	16 foregoing transcript of the testimony given by me at
17 BY MR. MAST:	17 my deposition on February 4, 2013, and that said
18 Q How many times have you been to Paul's house	18 transcript constitutes a true and correct record of
19 since the accident, just that one time?	19 the testimony given by me at the said deposition
20 A Yes.	20 except as I have so indicated on the errata sheets
21 Q Is that the only time you've seen him operate	21 provided herein.
22 his computer after the accident?	22 I, DAVID A. GAGNON, state that I have read the
23 A That was the time that I've seen him, yeah.	23 foregoing transcript of the testimony given by me at
24 Q Okay. Fair enough.	24 my deposition on February 4, 2013, and that said
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Page 212 is misaligned to top edge of page.

Correct Year.
CORRECT DATE is PROOF someone didn't completely botch this 2019 RECONSTRUCTED FORGERY. See POP 001297 - POP 001298.

Incorrect year.
INCORRECT DATE is PROOF of 2019 RECONSTRUCTED FORGERY.

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF COOK)

3
4 I, Margaret Maggie Orton, Certified Shorthand
5 Reporter and Registered Professional Reporter, do
6 hereby certify that on February 4, 2013, the
7 deposition of the witness, DAVID A. GAGNON, called by
8 the Plaintiff, was taken before me, reported
9 stenographically, and was thereafter reduced to
10 typewriting under my direction.
11 The said deposition was taken at the offices of
12 Thomas J. Popovich, 3421 West Elm Street, McHenry,
13 Illinois; and there were present counsel as previously
14 set forth.
15 The said witness, DAVID A. GAGNON, was first
16 duly sworn to tell the truth, the whole truth, and
17 nothing but the truth, and was then examined upon oral
18 interrogatories.
19 I further certify that the foregoing is a true,
20 accurate, and complete record of the questions asked
21 of and answers made by the said witness, DAVID A.
22 GAGNON, at the time and place hereinabove referred to.
23
24

213

1 The signature of the witness, DAVID A. GAGNON,
2 was reserved by agreement of counsel.
3 The undersigned is not interested in the within
4 case, nor of kin or counsel to any of the parties.
5 Witness my official signature on this 9th day of
6 December, 2019
7
8
9
10
11 _____
12 MARGARET MAGGIE ORTON, CSR, RPR

13 CSR No. 084-004046
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INCORRECT DATE is PROOF of 2019 RECONSTRUCTED FORGERY.

UNSIGNED = ROUGH DRAFT.
NOT SUITABLE AS EVIDENCE.

Any reference to URBANSKI REPORTING COMPANY is MISSING

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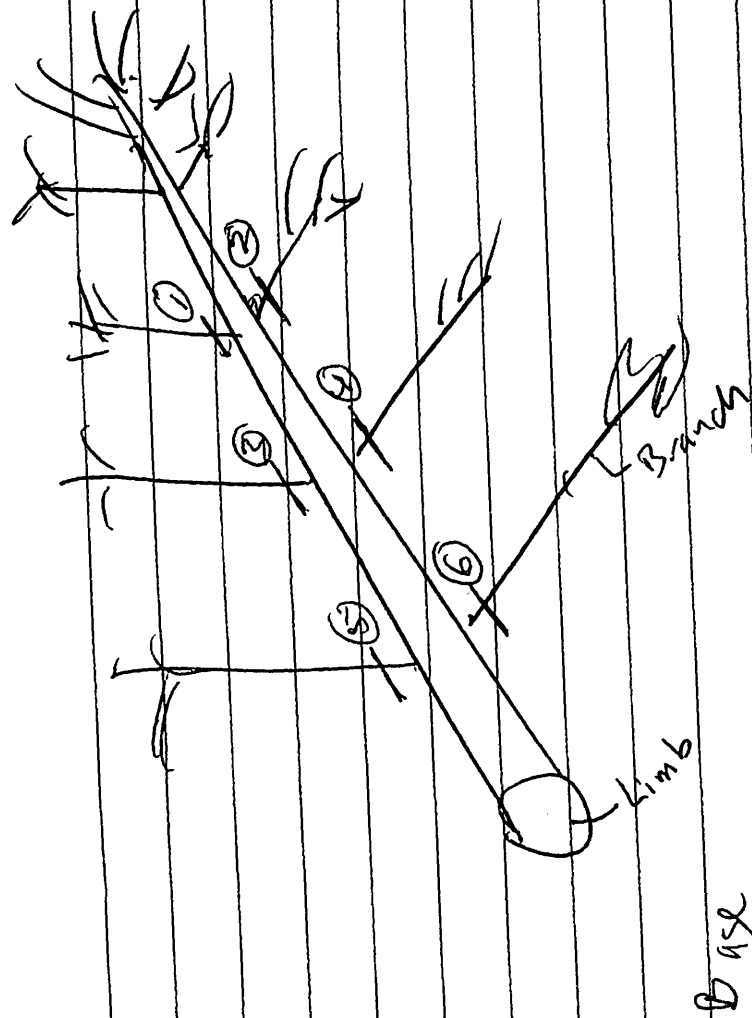
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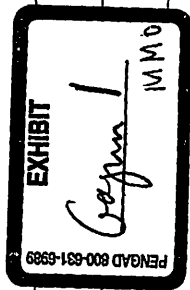
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Base



This EXHIBIT is MISSING in the 2013 version

MEMORANDUM

TO: File

FROM: Hans

DATE: April 13, 2012

SUBJECT: PAUL DULBERG - RECORDED PHONE STATEMENT FROM
DEFENDANT, DAVID GAGNON

Recorded statement saved under “Dulberg file - starts 9:16 to 6:03.

I was turning _____ so that the back was going to cut and an easier go at it. Therefore, the branches that came down, I guess I can say “we” without saying “me” opted to stand the branches up and proceeded to cut. We done this many times, basically scalding off the small branches to make in size of 2 or 3 inch diameter pine needles left, nothing of real value to something to clean up. So, in doing so we had cut probably, I don’t know, have a cord of little tiny pieces and had some left and we got to one where I didn’t change position, and just so you it was the way that I was operating the saw and it checked, in other words, I wasn’t free wheeling it out in front of me, always in position and we got to a branch that maybe we shouldn’t have tried to cut, it was a little flimsy, so when I hit the crotch it flexed. At that time, yes I was handling the saw, but Paul at the same time and just because we know each other so well, I assumed it would be ok to support it. In doing so, I was already into the cut and the crotch just _____ and I just nicked his arm. So I am wondering at this point, I was there in the operating room I looked into his flesh I was there weeping with him not accepting negligence or responsibility in full but certainly feeling my friend’s pain, calling my mother of course she is concerned, she provided for all of the information and such for his medical bills and whatever to be paid and paid for his medication that day for pain and actually gave him some money for, you know, doing the work. I think _____ and he worked and he probably had intentions of getting something and actually I am wondering what is the premise that he is suing on and to what extent if you can answer those questions for me because I have known Paul for a long time, ok, I am going to tell you something else, he helped me roof my roof this summer, he did renovation work for a guy over here in Twins Lakes and ironically we talked and you know and I’m like yeah I know that guy, his name is Mike Thomas and, I mean, what is the premise that is he suing on?

Hans - I would be happy to tell ya, I mean, I don’t know if you know this, our lines are recorded, but I don’t have to keep it if you don’t want me to.

No, I don’t care, everything I am saying is the truth and that’s the way that I operate and I’m glad that it is recorded and that we are both verified and so continue.

Hans - I don’t expect you to tell me anything but the truth anyway, so as long as that is a good deal then fine.

What he said, you know, is that, we can make a lot of money in this, and I said we? I said Paul, I’m still thinking about your arm and getting home and getting your meds and he say ah, we’ll talk about it later. So, once again, per law I understand that he is entitled to something but there should be



... need why it should be hyped, pumped, exaggerated it and what I just told you was the truth. ok, as far as his injury my face was right in there. I mean he was all... and got pain medication and their_____filing away at his flesh, but when it came down to it, I'm not a doctor, but I can tell ya the facia is a white membrane underneath your, separates your muscle from your fatty tissue of your epidermis, that is how deep it went. Now, we are not to judge or to say how bad it is, but as far as I'm concerned and anyone there, he had 7 stitches I think, 2 inside and then 6 outside, it was a deep superficial gouge and cutting the nerves, tendons, muscle.

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

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

PAUL DULBERG,

Plaintiff(s),

CASE NO. 12LA000178

vs.

DAVID GAGNON, Individually, and as
Agent of CAROLINE MCGUIRE and
BILL MCGUIRE, and CAROLINE
MCGUIRE and BILL MCGUIRE,
Individually,

Defendant(s).

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states
as follows:

1. State the full name, present residence address and birth date of the person answering these
Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

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: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

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: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul
Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder



Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

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

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. 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: I do not know.

8. 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: I do not know.

9. 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: I do not know.

10. 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: The accident occurred in ^{BACK}front of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. 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: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

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

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. 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: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON 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: I was trimming a tree for my parents.

17. 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, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. 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, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

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

ANSWER: None.

21. 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.

ANSWER: No.

22. 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: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 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/she verily believes the same to be true.


DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

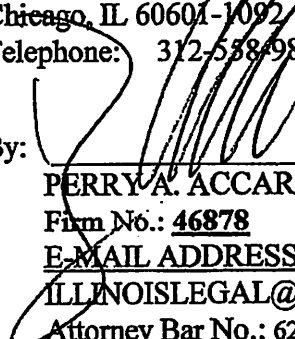
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January 31, 2013

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd
Rockford, IL 61114

Re: Dulberg vs. Gagnon, et al.
Court Number: 12LA000178
Date of Loss: June 28, 2011
Our File Number: 0245281968.1 SKO

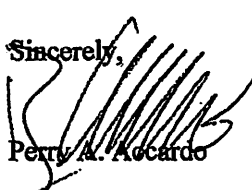
Dear Counsel:

In response to your Notice to Produce, dated 10/1/2012, please be advised that we have none of the material requested except the following:

1. None other than those received via Compex subpoena; parties had notice of said subpoena.
2. Please see response to request number 1 above.
3. None.
4. None.
5. Please see response to request number 1 above.
6. None.
7. None.
8. None.
9. None.

I, Perry A. Accardo, regarding my letter to Ronald A. Barch, Attorney(s) at Law, dated January 31, 2013, state that it is complete and in compliance with Supreme Court Rule 214 in disclosing discovery material in my possession requested by the Production Notice propounded on 10/1/2012, by Ronald A. Barch.

Sincerely,


Perry A. Accardo

PAA

cc: Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.*
3416 W Elm St
McHenry, IL 60050