ORIGINAL

Discovery Deposition of **DAVID GAGNON**

Date: February 4, 2013

Case: Dulberg v. Gagnon

START with 5-6' stick & measure ABOUT DAVID'S Explanation and Placement of Paws Hands along with Chainsaw Cuts.... Compair with which side of Arm is cut along with angle of cut its just NOT Possible!

NAME ONE Campground in THE U.S That allows Campers TO USE chainsaws FOR FIREWOOD?

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Dulberg 007894

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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.

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On behalf of the Defendants Carolyn McGuire and Bill McGuire.

* * * * * *

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(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.

Q I want to make sure, though, that your answers are responsive to my questions. So if you don't understand the question, let me know. Otherwise if you answer it, we're all going to assume that you understood the question, okay?

A I understand.

Q Okay. Let's see what else. You're aware obviously of Paul's accident that this case is all about that happened, I think, at your parents' house during some chain saw work at their house? You're aware of that?

A Yes, I'm aware of that.

Q Okay. And I believe, and you can correct me if I'm wrong on anything obviously, but I believe it happened June 28th, 2011? Does that --

A Yes.

Q -- sound right?

A Yes, that sounds correct.

Q Okay. Do you remember what day of the week that was?

A No, I do not.

Q Was it Saturday or Sunday?

A No, it was not. It was during the week, I'm quite sure.

page 6 –

? DAVE'S AUTO BODY

– BUSINESS ID #

SEARCH FOR DAVE'S AUTO BODY
+ SEARCH FOR TELEPHONE #
FOR DAVE'S AUTO BODY OF GENOA
CITY, WIS CAME UP EMPTY

DAVID GAGNON HAS BEEN
UNEMPLOYED FOR APPROXIMATELY
~~15~~ 25 YEARS OF THE PAST
29 YEARS SINCE HIS 18TH BIRTHDAY.

Dulberg 007899

Q Okay. I'd like to start now and go through some background information. So why don't we start with this: What's your date of birth?

A 4-3-67.

Q And that makes you how old today?

A I am 45.

Q Are you employed today?

A I am self-employed as I have been my entire life.

Q What are you self-employed in doing?

A I do auto restorations and collision repair.

Q Do you do that under your own name?

A I do that under the name of Dave's Auto Body.

Q At home?

A Yes.

Q Is that an incorporation or some type of formal --

A No.

Q -- organization?

A No. No.

Q Okay. How long have you been doing auto restoration and collision repair under Dave's Auto Body, under that name?

A Probably 20 years.

CABIN WISCONSIN LLC
Twin Lakes, WI

All-season rentals

Page 7

PAMELA'S LAST NAME
CAME UP WITH:
DIXON
KNIGHT
MATTIO
GAGNON

DAVID HAS A SON: COLIN BAZILEWICH
CHILD SUPPORT SETTEMENT
RECORDED IN McHENRY COUNTY
MOTHER: NICOLE - LIVES IN FLORIDA



Lakefront & Lakeview Cabins



Lake Mary frontage

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Dulberg 007901

Q Has it always been full-time?

A I would have liked it to have been. As work comes, I work on that; otherwise, I fill the void with other things that I can perform.

Q All right. Have you had to fill the void with other things in the last ten years?

A Yes, and I have been employed with other people in between.

Q Okay. So we'll get to that in a minute, then, okay?

A Okay.

Q What is your current address?

A 39010 90th Place, Genoa City, Wisconsin.

Q So that's right over the border here to the north?

A Yeah. 53128 is the zip.

Q Who do you live with there?

A My wife.

Q What's her name?

A Pamela.

Q Anybody else live at that address?

A No.

Q Do you have any children?

A No, I do not.

Q And your Social Security number?

A In full?

Q Yes.

MR. CALLAHAN: Can we do this off the record then?

MR. MAST: We can do it off the record.

BY MR. MAST:

Q Let's say on the record, what are the last four digits?

A 2535.

Q 2535?

A Yes.

MR. MAST: Okay. Give it to us off the record now.

(Discussion off the record.)

BY MR. MAST:

Q Did you give us your --

MR. CALLAHAN: Back on the record?

MR. MAST: Back on the record.

BY MR. MAST:

Q Did you give us your full Social Security number off the record?

A Yes.

Q Okay. All right. Do you have any criminal

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DAVID GAGNON & PAUL DULBERG KNEW OF EACH OTHER STARTING ABOUT ~~25~~ 18 YEARS AGO THRU PAUL'S FRIENDS. PAUL NEVER EVEN TALKED TO DAVID PRIOR TO THIS TIME.

#7 PAUL WAS BEING BABYSAT AT SUE DVORAK'S HOUSE AT THE TIME DAVID SAYS THEY MET ON "BIKE TRAILS". DAVID ~~WAS~~ IS OLDER THAN PAUL BY ABOUT 3 or 4 YEARS & DID NOT EVEN KNOW PAUL 35 YEARS AGO

Dulberg 007904

convictions on your record in the last ten years?

A No.

Q How long have you known Paul Dulberg?

A 35 years.

Q And 35 years, how did you meet him?

35 years --

A Riding bicycles in a place we had deemed called the mini trails.

Q So were you neighbors, or ...

A We lived close by. He lives in Pistakee Terrace, my mother -- or my mother lives in Pistakee Terrace; he lives in Pistakee Highlands which is about, I would say, a quarter mile maybe away from one another.

Q And the mini trails were by your mother's house?

A They were closer to his home.

Q Closer?

A They were closer to his home. They were just down the road from his home.

Q Okay. And since you kind of met at the trails and you became -- a friendship arose?

A Yeah. Yes.

Q Okay. Has that friendship been in pretty

2. NO - ~~I TOLD HIM~~ DAVE TOLD PAUL HE WAS GOING TO CAUSE A DIVORCE BETWEEN DAVE + PAM IF HE SUED FOR THE INJURY TO HIS ARM

3. DAVE + PAUL WERE NEVER GOOD OR CLOSE FRIENDS.

Dulberg 007906

good standing since then till today?

A Yes, and as of right now I don't know where it stands. I have not spoken with him as I was directed not to.

Q Fair enough. But at least in your mind is it still in good standing -- Hold on. Let me just finish the questions. Is your friend- -- At least in your mind, is your friendship still in good standing with Paul Dulberg today?

A No.

Q Okay. And is that because of the suit?

A Yes.

Q Okay. Fair enough. Understood about that.

Until the suit was filed, okay, was your friendship with Paul Dulberg in good standing?

A Yes.

Q Had it been all the way for those ~~35~~ 18 years until the suit was filed?

A Yes.

Q Okay. So there was never any times where your friendship was seriously tested over that ~~35~~ 20 years?

A No.

Q Is that correct?

#20 Thru 24 - Heresay -

Bullshit

Paul was very drugged up
when he left the hospital.
He had a prescription for
pain pills that he had to
screen at David to get filled.
Told David all he wanted was
to get prescription filled and
to go home.

David finally released and
allowed Paul's prescription to be
filled but refused to take Paul
home and instead took him back
to Bill & Carolyn's house

A That's correct.

Q Okay. And you can correct me if I say something that's not accurate, but so is it my feeling, even though you don't know what Paul's view of your friendship is, this suit being filed against you has brought negative feelings in your mind about your friendship?

A Yes, and only recently, if I may.

Q Okay. Go ahead.

A At first when it had arisen, this situation, we were still talking to one another and I was freely submitting both insurance information, whatever he requested because, you know, there wasn't a problem at that time. But things turned as Paul had said some things that didn't really go well with me.

Q You mean in his deposition or somewhere else?

A Personally to me.

Q Well, if -- I guess I've got to ask you what those things were then.

A Okay. After bringing him to the hospital after this occurrence took place with his vehicle, we had left. Myself still being very (inaudible) and my heart being concerned as to his condition because he's my friend, he turned to me just leaving the hospital

PAGE 12 & 13

DAVID & CAROLYN REFUSED TO CALL 911. THEY WENT IN THE HOUSE, SLAMMED DOOR SHUT & LEFT PAUL IN THE YARD.

DAVID WOULDN'T ALLOW PAUL IN DAVID'S CAR BECAUSE PAUL WAS BLEEDING BADLY.

PAUL TOLD DAVID - THEN TAKE MY TRUCK, I NEED TO GO TO THE HOSPITAL

Dulberg 007910

and said that we can make a lot of money at this.

Q Okay. Was anybody else present during that conversation?

A No. No.

Q Was that in your car on the way from the hospital?

A That was in his vehicle immediately leaving the hospital and still in the parking lot at the hospital.

Q Was that the same day of your accident -- of his accident?

A Yes.

Q Okay. So that would have been June 28, 2011, he was discharged out of the hospital and he was in his car?

A Passenger's seat; I was driving, yeah.

Q Okay. Did you not have a car at the time or something?

A No. His vehicle was at my house -- my mother's house, I should say, where the occurrence happened; and when we left, he said, Just take my car, so we took his vehicle to the --

Q All right. Let me stop you because I understand what you're saying. You're saying after

his injury you drove his car with him as a passenger to the hospital?

A Yes.

Q He got treated, discharged, and then you were back in his car going back to your mom's house?

A Never left the parking lot and he said that.

Q No, I understand that --

A Yes, but that's --

Q -- but that's where you were going?

A Yes. Yes.

Q All right. Let's try not to -- I'll try and won't talk over you; you try not to talk over me.

All right. So you're leaving the hospital still in his car on the way to your mother's house, right? Right? That's on the way? That's where you were going?

A Right, that's where we were going, but we still had not left the parking lot.

Q All right. I didn't say anything about where you were. I'm saying you're in the car on the way to your mother's house, right?

A Yes.

Q Okay.

A Yes.

Q But before you left the parking lot, you're in the car in the parking lot of the hospital and that's when he made that statement?

A Yes.

Q Did he say anything else during that conversation that you -- that you didn't like?

A No.

Q Okay. So that was the extent of anything that he said about financial aspects of this case?

A Yes.

Q Is that the only time he said anything about financial aspects of this case?

A No.

Q When is the next time he said anything like that?

A I had visited him shortly after because we were still in friendship, and I stopped in his home, and ...

Q How soon after the accident?

A Oh, this is about three or four months after the accident.

Q Okay.

A It was -- Now, I remember it was cold. It was winter so I can't say exactly what day, but I was

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~~Page 14 & PAGE 13~~

#1 thru #10 - NEVER HAPPENED

#13 - ~~ABUSE~~ DAVE MADE PROFIT SUGGESTION TO PAUL -
2 WITNESSES - MIKE McARTOR & TOM KOST

#16 CONVERSATION TOOK PLACE IN BASEMENT AWAY FROM PAUL'S MOTHER WHO WAS IN THE KITCHEN

Dulberg 007914

leaving and he had mentioned that, This may possibly be the best thing that could happen to me because I won't have to work the rest of my life.

Q Any witness to that conversation?

A Yes, Michael Mcartor.

Q Who?

A Michael Mcartor, who lives with him.

Q How do you spell the last name?

A Capital M small C, Artor, A R T O R or E R; I'm not quite certain of that spelling, but he resides with Paul there at his home.

Q Where Paul's living now?

A Yes.

Q Okay. And where did that conversation take place four months after the accident?

A In his kitchen where -- In his kitchen.

Q And the extent of this conversation regarding the financial aspects that we're talking about is that he said, This might be the best thing that happened to me, and what else? Was there anything else?

A Because I may not have to work another day of my life.

Q Because I what?

A May not have to work another day of my life.

WENT TO DAVE'S
RESIDENCE WITH I-PAD
TO TAKE A PICTURE OF
MAILBOX OR ANYTHING THAT
WOULD REVEAL DAVE'S STREET
ADDRESS.
12 Thru 20 - 21E

Q Did he say anything else during that conversation now about the financial aspects of this accident?

A No.

Q Did he say anything else during that conversation that you found uncomfortable or wrong?

A No. No.

Q Okay. Any other things that Paul has said that you believed were wrong or had some kind of financial component to this accident other than those two that we've -- you've already described?

A There was also another instance where he visited me at my home, I believe it was in 2012 when things were going along here; we were still in conversation with one another.

Q Okay. Let me just stop you. After the suit was filed or before the suit was filed?

A It was after the suit was filed, yeah.

Q Okay.

A And he was not -- if not coaching me, reassuring me that if I did make it easier, shall we say, or ... that I would be awarded something for my cooperation in it.

Q Was there any witnesses to that

PAUL HAD NO WAY AT THE TIME OF KNOWING WHAT & IF ANY HOME INSURANCE WOULD COVER THIS SO NO WAY COULD HE SPOUT $100,000

#1 thru 24 - LIE

Dulberg 007918

communication?

A No. No.

Q Did he say how you would be awarded?

A No.

Q Did he promise to pay you anything in exchange for your testimony?

A Yes.

Q What did he promise to pay you?

A $10,000.

Q What did he say?

A If he got a hundred thousand dollars.

Q What was the -- I need to know the exact wording of that communication so that we all can understand what he said.

A If this goes well for me, I wouldn't have a problem with giving you $10,000 if say I was to get a hundred thousand dollars.

Q Okay. Did he, though, make that hundred -- that $10,000 conditional on what you would say or just said, If it goes well for me, I'll give you 10,000 out of the hundred thousand?

A He didn't place conditions on it.

Q Okay.

A I was assuming.

Q Okay. Fair enough. That's very honest of you. I appreciate that. This is my question then -- Well, let me go further. Did he say anything else during that conversation in 2012 about anything you felt was inappropriate or uncomfortable for you or related to financial interests that he was --

A No.

Q -- talking about?

A No, he did not.

Q Okay. Any other conversations with Paul now? We've talked three different incidents now so I want to make sure I've talked about everything. Is there any other conversation you've had with Paul or contact with Paul regarding any uncomfortable or uneasy conversations or things he said relating to either financial interests or some other component of the suit or claim?

A There was one time where he came up and he was asking for information, which I gave him, my insurance.

Q When was this? Just give me a date so I know how to ...

A I cannot supply you with a date. I could say that it was before that last incident that I just

spoke of of the hundred thousand and $10,000 offering there.

Q Was it after suit was filed or before suit --

A It was after the suit was filed.

Q Okay.

A And he showed up at my residence with an iPad, which he's into techy things, things like that, and I wasn't aware that there was a camera on front and back but I was aware that there was a camera that was on and he was showing me what was being viewed on the screen, and then we proceeded into our house and it was on again. He was showing me how you can look at the front and the rear screen and me not being of much interest of this device, I just told him, Could you shut that thing off. I felt as though I was being inventoried.

Q Okay.

A So that would be the only other issue.

Q Okay. Fair enough.

A Yeah.

Q I appreciate that. Did he say or do anything that you felt was wrong or inappropriate regarding the case in and of itself?

A No.

Q Okay. Nothing about financial interest --

A Not that time, no, nothing.

Q Okay. Do me a favor, and you're doing very good so far, but you were just kind of cutting me off the last --

A I'm sorry.

Q -- part of my sentence and I want to make sure you understand the full thing I'm going to say, okay? So let's try not to cut each other off.

All right. So at least, and you can correct me if I'm wrong, as I understand it, there are just three conversations where Paul made any statements that felt -- that made you feel uncomfortable pertaining to financial parts of the lawsuit?

A Yes.

Q Okay. Or the claim; fair enough?

A Yes. Yes.

Q And that was the day of the accident where he made that one-sentence statement, correct?

A Mm-hmm.

Q Yes?

A Yes. Yes.

Q And that was four months later where he made

that statement about, This could be the best thing that could happen to me because I might not have to work the rest of my life?

A Yeah.

Q Yes?

A Yes.

Q And then there was the last thing that was in 2012 after suit was filed where he said -- although he didn't condition it, he said, Hey, if I get a hundred thousand, I'll give you $10,000 of that?

A Yes.

Q Right?

A Yes.

Q Okay. And would it be fair to say, including that last 2012 conversation, he never said, If you do this for me, I'll do this for you; fair enough?

A Yes.

Q Is that true?

A That's true.

Q Okay. So he never -- You could make the assumptions you want, and you're free to do that, okay, but my question is nothing he ever said pertained to having him wanting you to lie for him?

MR. BARCH: I'm going to object. It's

argumentative, but go ahead.

MR. MAST: Go ahead.

MR. CALLAHAN: I'll join that objection.

BY THE WITNESS:

A No, he was blatantly asking me in regards to what he was asking me to do to make it easier for him.

Q Right.

A And making it easier for him would not just be submitting the truth in my judgment, but it would be submitting to what he would want me to say so that it would be easier for him.

Q I understand what your judgment is.

A Yes.

Q This is what I'm questioning, though. My question is what he said to you, okay. You can take any assumptions you want from what he said to you; you're free to do that, okay. My question, though, is did he ever tell you that he wanted you to lie for him?

A He did not say he wanted me to lie for him, no.

Q Okay. You took that from an inference of what else he said that you've already told me, right?

A Yes.

Page 23

#16 - #24
EMBELLISHING ON HIS
LIE

Q Those were inferences you made from what he told you, correct?

A Yes.

Q Okay. Did you ever say, Hey, do you want me to lie for you -- Well, let me put it this way. I'm going to try to just summarize it.

Is it fair to say he never asked you to lie for him?

A That is correct.

Q Okay. Is it fair to say he never agreed to give you money in exchange for what you would say to him -- say for him?

A There is one more thing that I said that I'm recollecting now.

Q Okay.

A And I said, Well, what would you want me to say, that I was freewheeling a chain saw and I was negligent?

And he said, That sure would make things easy.

Q Okay. And when did he say that, which conversation?

A That same conversation when he spoke of the hundred thousand dollars and the $10,000.

Q So that's the 2012 conversation?

A Yes. Yes.

Q Okay. And what -- So let me get it clear now. The 2012 conversation that we've already talked about was after suit was filed?

A Yeah.

Q It says, If you would -- What you're saying he said is if he would be awarded something, say a hundred thousand dollars, he would give you $10,000 of it, right?

A Yes.

Q And now you're adding on to what else did he say?

A He -- I said to him, Well, what would you expect from me? What would you want me to say, I was freewheeling a chain saw and I was negligent? I said I would not do that. I'm going to tell the truth. And that's basically where our friendship -- I haven't spoke to him really very much or been with him or conversed with him since then.

Q All right. You're going a little further than what I'm asking, though, but that's fine. My question was, what more did he say and you told me what you said, all right, so let's just go straight

with what I'm asking. I'm asking other than, Hey, if I get a hundred thousand dollars, I'd be glad to give you $10,000 of that, other than Paul saying that, what else do you recall Paul saying in that 2012 conversation at your house?

A Nothing.

Q Oh, okay. It was just what you said then?

A That's what I said after. I sufficed by way of example, Is this what you would want?

And he said, That sure would make it easy.

Q Well, then that is something that he said. Listen, this is what I'm trying to get at, I'm trying to find out what he said, okay?

A Okay. He said nothing in response to that except he said, That sure would make it easy.

Q All right. You're interrupting me again. Let's go back at it again.

A Okay.

Q I want to go step by step because I want to try to find out everything you're going to say. I don't want there to be any stones unturned, okay?

A Yeah.

Q You told me that in that 2012 conversation he

said, If I get a hundred thousand dollars, I'd be happy to give you $10,000 of that. Is that what he said?

A Correct, that is what he said.

Q Okay. In response to that, what did you say?

A I said, What would you want me to say, I was freewheeling a chain saw and I was negligent? I said, I will not do that.

Q Okay. All right. Stop. That's what you said, okay. And then what did he say in response --

A Nothing.

Q -- to that?

Okay. Nothing, right?

A Nothing.

Q Okay. Because I thought you said that he said, Well, that would make it easier.

A Correct. I'm sorry. That was his closing statement after I said that.

Q So he did say something?

A Yes, he did. I'm sorry.

Q Okay. So let's go through it again now.

A All right.

Q Because I want to make the chronology, I want to make that correct, okay?

A Okay.

Q In the 2012 conversation at your house you said that Paul made a statement that, If I get a hundred thousand dollars of this, I'll give you -- I'll be happy to give you $10,000 of this -- of that. Is that what he said?

A Correct.

Q Okay. In response to that you said, What do you want me to say, that I was freewheeling and negligent? I will not do that. Was that your statement?

A That was my --

MR. CALLAHAN: I thought he said freewheeling a chain saw and that I was negligent.

BY MR. MAST:

Q Okay. Is that what you said?

A Yes.

Q Okay. And then in response to that, what did he say?

A He said, That would make it easy.

Q Okay. Did he say that's what he wants you to say or did he just say those words?

A He just said those words.

Q Okay. Is that all he ever said then after

that conversation at the end of that conversation?

A Yes.

Q All he said was, That would make it easy?

A Yes.

Q Okay. All right. So we've got three conversations, one on the day of the accident where he said, We can make a lot of money at this, right?

A Correct.

Q That's all he said during that conversation that was uneasy or uncomfortable or financially motivated, correct?

A Yes.

Q Okay. Second conversation four months later, you visited him at his house, right?

A Yes.

Q And he said, This may be the best thing that happened to me; I might not have to work the rest of my life?

A Yes.

Q Is that all that he said that was uneasy or uncomfortable or related financially to this case?

A Yes.

Q And the third thing was 2012 where he said if he gets a hundred, he'd give you ten and then you

said, Well, what, if I say that -- What do you want me to say, if I'm wheeling it, the chain saw, and negligent?

And he said, Well, that would make it easy.

Is that everything out of that conversation that was uneasy, uncomfortable or financially related?

A That is all, yes.

Q Okay. Have you now --

MR. CALLAHAN: Can I object? I think he did leave off that one comment, I'm sorry, the one he said, I won't do that.

BY MR. MAST:

Q Okay. Yes, and you also said you wouldn't do that after you --

A I said that I would not do that, yes.

Q After your con- -- After your response to what he said, you said, I would not do that?

A Yes.

Q Okay. Have we now covered everything that you and Paul talked about after the accident that made you feel uncomfortable, uneasy or financially related to this accident?

A Yes, that would be all.

Q Okay. Very good. That wasn't too hard.

A No.

Q Oh, one final question on those things.

A Okay.

Q Were there any witnesses to either of those three conversations other than you said the --

A Michael Mcartor.

Q Michael Mcartor was a witness to the second one four months after the accident?

A Yes, which was at Paul's home in his kitchen, yes.

Q Right. Any other witnesses to any other parts of those communications?

A No.

Q Just you and Paul and then the second conversation was with Michael?

A Correct.

Q Okay. Are you friends with Michael? Have you ever been friends with Michael?

A I've been friends with Michael probably about 25 years.

Q Are you still friends with Michael?

A As far as I know, yes.

Q Okay.

A This is not related to him.

Q So the reason you're not friends with Paul anymore is after the third conversation in 2012 where you said, I would not do that, and he said, That would make it easy, you haven't spoken to him since; but in your mind it's not friendly because of what you thought he was asking you to do?

A Yes.

Q Fair enough?

A Yes.

Q Do you know in his mind if he thinks you're still friends?

A I do not know.

MR. CALLAHAN: I'd just object as to relevancy and as to speculation.

BY THE WITNESS:

A I don't know.

MR. BARCH: Join the objections.

BY THE WITNESS:

A I haven't spoken to him. I don't --

Q Hold on. Just let them give the -- All right. They objected.

MR. CALLAHAN: You may answer.

BY MR. MAST:

Q What's your answer to that question? Do you know in Paul's mind whether he thinks you guys are still friends or not?

A I do not know. I have not conversed with him in quite a while now.

Q All right. And then that fourth thing that you talked about didn't really have to do with any statements but he had an iPad and it looked like he was videoing or something. He didn't do anything wrong during that; you just weren't sure what he was up to, right?

A Right.

Q Okay. That didn't have anything to do with any statements or anything; fair enough?

A Fair.

Q Okay. So we've covered all the statements that Paul made that made you feel uncomfortable?

A Yes.

Q Okay. All right. How long have you been married?

A I've been married since 2008, August 16th.

Q Okay. Does your wife Pamela know Paul?

A Yes.

Q On a -- like a friendly basis or just sees him every now and then? I mean, how would you describe her knowledge of Paul, just passing?

A He's my friend and is friends with him is the same; there was never anything between us until ...

Q I mean, did she spend as much time with Paul --

A No.

Q -- as you did?

A No.

Q Okay. Her contact with Paul was just passing then? It wasn't where she would do anything with him?

A Correct.

Q Is that fair enough?

A Yeah, correct.

Q Okay. And she doesn't have any knowledge regarding any communications Paul made regarding the incident that were uncomfortable or financially motivated?

A No.

Q Is that fair?

A That's fair.

Q Okay. Okay. What's the highest level of education you have?

A I was accepted at DeKalb University. I didn't pursue it until its end, and then I went to College of Lake County.

Q You mean Northern Illinois Medical Center -- Northern Illinois University?

A Yeah, DeKalb College.

Q Okay. All right. I know, I'm just trying to connect the dots here.

You were accepted at Northern but you never went there?

A Oh, no, I went there and I just -- because of turns of events in my life, personal, I did not finish, and --

Q All right. But I'm not getting to that point. I'm just --

A Okay.

Q The question was, where did you go to -- the highest level of education, that's the question.

A I was accepted at Northern Illinois University.

Q You weren't just accepted. You went there, right?

A Yes.

Q Okay. How long did you go to Northern

Illinois University?

A Two months.

Q Okay. And what program were you there, just general?

A Program?

Q What type of degree? What program?

A Oh, engineering.

Q Okay.

A Mechanical engineering.

Q Okay. And what year was that, approximately?

A That was 1985.

Q Instead of going to DeKalb or at least after two months of going to DeKalb, where did you go after that?

A I pursued employment as an auto body worker.

Q With who?

A It was called Lakeland Autobody. It was in Volo, Illinois.

Q Are they still together?

A No.

Q How long did you work there?

A Three years.

Q Doing auto body work?

A Correct.

Q Who was your supervisor?

A Owner and supervisor Brian Schuman (phonetic).

Q Brian what?

A Schuman.

Q Schuman?

A Yeah, Schuman.

Q So after two months of DeKalb, you went to Lakeland Auto?

A Mm-hmm.

Q Right?

A Yes, correct.

Q Okay. When did you go to -- You said you went to another college?

A CLC, College of Lake County.

Q When was that?

A I believe that was 1987.

Q Sometime while you were at Lakeland?

A Yeah, I was -- Yes, I was working at the auto body.

Q And how long were you at CLC?

A I want to say six months.

Q Okay. On what program?

A Same, mechanical engineering.

Q Did you finish that program?

A No, I did not.

Q Why not?

A Because I needed to earn money, and I wasn't earning enough doing -- going to school and working.

Q Okay.

A Pretty physical job, auto body.

Q Okay. Any other college education after high school?

A Completed, no.

Q Not -- I didn't say completed, any other college education after high school? Did you go to any other colleges?

A None other than the ones I had mentioned.

Q That's what I'm asking you.

A Okay.

Q You went to NIU and CLC. Any other college?

A No.

Q Okay. Where did you graduate high school?

A Johnsburg.

Q What year?

A 1985.

Q Okay. After Lakeland Auto, which I'm assuming was somewhere around -- when you finished

somewhere around 1988, '89, somewhere around there?

A Finished ...

Q When you finished Lakeland Auto, I'm assuming that was somewhere around '88 or '89?

A Yes. Yes.

Q Okay. Where did you go after that?

A I became self-employed performing the same.

Q To the present date?

A Yeah.

Q Okay.

A Yes.

Q Okay. Have you worked for anybody else during 1989 until now other than yourself?

A Yes.

Q How many jobs are we talking, lots?

A One at a machine shop, Swiss Automation in South Barrington, that was between 1999 and 2001, and then just currently last winter working at a place called Advantage Auto Body for three months. They let me go.

Q Where was that?

A That -- I'm not sure what town it is. It's in Wisconsin and about two miles from my home between Powers Lake and Burlington.

Q Okay.

A I'm not sure what town it resides in.

Q And when did they let you go?

A They let me go just at Christmastime last year.

Q 2012 Christmas?

A Yes.

Q All right. Any other employment since high school we have not discussed?

A No.

Q Okay. Do you have any training other than being self-trained on working with a chain saw?

A No.

Q So you're -- Well, let me ask you this way: How long have -- Well, strike that.

How long have you -- Strike that.

When's the first time you operated a chain saw yourself?

A Age 18.

Q Okay. About '85? No, wait. Is that '85?

MR. CALLAHAN: Yeah.

BY THE WITNESS:

A Yeah.

Q Yeah. About 1985 then?

A Mm-hmm.

Q Yes?

A Yes.

Q Yes. Okay.

Whose chain saw was that that you operated first?

A I do not recollect. We were camping, and I picked up a chain saw and was cutting firewood for the group that was there.

Q Okay. Was Paul with you at the time?

A No.

Q Okay. Have you ever owned a chain saw?

A Yes.

Q Okay. Do you own one now?

A No.

Q Okay. During what period of time did you own a chain saw?

A Oh, 2000 till 2004.

Q And for what reason did you own it and then no longer own it during those four years?

A A friend had garbage-picked it. It was an old really big chain saw that I rebuilt. I used it several times and then I sold it at a garage sale along with another unit that was just like it.

Someone wanted to fix up theirs too, so ... It was an old David Bradley chain saw; it was a very old model.

Q Wait, I missed some of that. You said you had one that you got from a friend from a garage sale but another, what was the other one?

MR. CALLAHAN: No.

MR. MAST: Sorry.

BY THE WITNESS:

A No, I had -- I had one that I operated and then I picked one up at a garage sale.

Q So you had two of them?

A Yeah, I had two of them, and I sold them both at the same time, yeah. One worked and one didn't.

Q And that was from 2000 to 2004?

A Correct.

Q Okay. During 2000-2004, did you use those chain saws on any type of continual basis?

A No.

Q They were just there for -- because you had fixed them up and you just kind of liked to have them around?

A No, they were very useful because they were large and I used them on my property to trim off a large maple branch that had fallen.

Q Oh, so you used them?

A I used the one that was working. The other one was not operational.

Q The one that was working that you owned from 2000-2004, the one chain saw that was working, you used only for your own personal use on your personal property?

A Yes.

Q Had you used a chain saw from 1985 until 2000?

A Yes.

Q Whose chain saws?

A Once again, I'm a camper and there would be a time when I would just elect myself to cut the wood, I just ...

Q Let me ask it this way, maybe it will be easier, because I know these aren't all easy questions. Before 2000, okay, when you first got your own chain saw, how many times would you have operated a chain saw over the 15 years?

A At least a dozen times.

Q Were they all during camping trips?

A Yes.

Q Okay. And they were all somebody else's

chain saw they brought to the camping site and you used them to cut up for camping wood?

A Yes.

Q Okay. And then beginning of 2000 you would use them a little bit more frequently because it was yours and you were using it on your property?

A Yes.

Q Okay. Do you have some type of forest or something on your property that you use it for, or ...

A No, I have negligent neighbors that when trees fall, they don't -- who?

Q Okay.

A -- they don't really seem to attend to them, so I opted to do the clearing myself.

Q Okay. So you clear up a tree here and there?

A Yeah. Yes.

Q And I know there's no way -- easy way to do this, but I still have to ask the question. From 2000 to 2004 what would you estimate the number of times you used a chain saw?

A Three times.

Q All right. So up until 2004 the total times you used a chain saw was about 15 times?

A Correct.

Q Okay. All right. From 2004 until this accident in June of 2011, how many times did you use a chain saw?

A Four times.

Q And whose chain saw was it?

A The first time was a friend's, on his property; second time, again, camping; third time on my property, and the fourth and final time was at my mother's place.

Q Now, when you say your property, whose chain saw was it?

A That would be my friend Mike.

Q The first -- The first -- Well, okay. That would be the same friend that you operated the chain saw on his property the first time that you were spelling these out?

A After the 2004, yes. Yes.

Q Yeah. So beginning in 2004 when you no longer owned a chain saw, the first time you used it after that was with a friend at his house?

A Yes.

Q And that's Mike's?

A Yeah. Not Mike Mcartor.

Q No, I --

A Okay. I'm just clarifying.

Q That's fine. Okay. Second time was out camping cutting up firewood?

A Correct. - what campground allows chainsaws?

Q Third time was at your house with Mike's chain saw?

A Yes.

Q And fourth time was at your parents' house?

A Yes.

Q Okay. And was that fourth time at your parents' house the day of this incident or before the day of this incident?

A It was the day of that incident.

Q Okay. So if I were to -- and I know this isn't the easiest thing to do, but if the day of the incident was June 28, 2011, when was the last time you used a chain saw before that date?

A Oh. Datewise?

Q Some estimate, yeah. Within a month, a year, three years?

A It was a year.

Q Within a year?

A Yeah, within a year.

Q So it would have been the prior summer maybe?

A Yes.

Q Okay.

A Yeah, a storm took down some branches in my yard.

Q So that third incident after 2004, which you spelled out four times you used a chain saw, that third incident where it was Mike's chain saw on your property was the one in 2010 during the summer?

A Yes.

Q Okay. And then the next time you used a chain saw was on your parents' property on the day of Paul's accident with your parents' chain saw?

A Yes.

Q Okay. Did your parents ever attempt to educate you or train you on how to operate a chain saw at any time in your life?

A No.

Q Up till today?

A No.

Q Okay.

MR. CALLAHAN: Excuse me. You say -- Just to be clear, his parents, do you mean Mr. McGuire and Mrs. McGuire or his father and Mrs. McGuire?

MR. MAST: Okay. So those are two different

answers, I take it?

MR. CALLAHAN: Yes.

MR. MAST: All right. So we'll go through that. We will go through that.

BY MR. MAST:

Q Well, any -- All right. Whether it's stepparents or real biological parents, we'll just put them all in one group, okay.

Whether it's your stepparents or real biological parents, have your parents, meaning either/or, ever attempted to train you or direct you in the proper method or way to operate a chain saw your entire life until today?

A No.

Q Okay. Might as well go through your parents then. Bill and Carolyn McGuire, are they your parents?

A My mother is my biological mother, Carolyn McGuire. William McGuire is not my biological father.

Q Okay. So William McGuire is your stepfather?

A Correct.

Q Is your father -- your natural father living?

A No.

Q Okay. When did he pass?

A 1996.

Q Okay. I'm assuming he had never did anything with you with regard to chain saws; is that fair to say?

A We never interacted in that way.

Q Okay. Did either William or Carolyn McGuire ever interact with you with regard to how to use the chain saw?

A No.

Q Okay. Are your -- So when I say parents, since your father passed and Carolyn is your natural, I'll just talk about Carolyn and William as your parents, then, okay? Is that fair to you?

A That would be fair to me.

Q Okay. Have your parents -- What was I going to ask you? Oh, what do your parents do presently for a living?

A They're currently both retired.

Q Okay. Do you know how long they'd been retired?

A My mother, I believe, two years now. She was employed at Intermatic --

Q Okay.

A -- in Spring Grove, and William McGuire

worked for last Tempest Construction, and he was an industrial commercial drywaller.

Q Okay. To your knowledge -- and, again, we'll probably end up deposing them soon so we'll ask them, but to your knowledge do either of your parents have any expertise or experience in operating chain saws except just, you know, doing it on their own and around the house?

A They never have operated. They bought that tool specifically for that -- the cutting of the trees that needed to be done on their property.

Q And they weren't going to use it then? They were letting --

A No.

Q -- you do it?

A Right.

Q Okay. So they -- The chain saw that you were operating at the time of Paul's accident on their property, your parents' property, that chain saw was purchased by your parents for that particular project?

A I wouldn't say they bought it and then do this, they bought the chain saw because they had known that there would be -- need to be work done --

Q Okay.

A -- and I later was elected to do that.

Q So when they purchased the chain saw -- and, again, I'll ask them these questions, but I'm wondering what your knowledge is, when they purchased this chain saw, your parents, did they purchase it knowing that you were going to use it or just that somebody else and not them were going to use it?

MR. BARCH: Speculation, but go ahead, objection.

BY THE WITNESS:

A I can answer that when they purchased it that they didn't solely purchase it with intent for me to use it.

Q Wait. I missed the beginning of that.

A When they purchased that, they did not solely purchase it for my usage.

Q Okay.

A They had purchased it for trimming of trees on their property --

Q Right.

A -- and then when I was elected or became the person who did the work, I used that chain saw.

Q I understand that. My question has one little branch more to it. My question was, did they purchase it thinking somebody else other than

themselves were going to operate that chain saw?

A You would have to ask them that question.

Q So you don't know?

A I do not know.

Q Okay. Fair enough. Had you known either of your parents ever to operate a chain saw before Paul's accident?

A Neither one of them have ever operated a chain saw.

Q You know that?

A I know that.

Q Okay. What kind of -- Are they still living in the same house they were living at the time of the accident?

A Yes.

Q Okay. What kind of property is that if you describe it? Is it like a small little half-acre property, or is it a larger --

A It's a small one, third-acre residential -- what is it called? -- ranch.

Q Okay.

A Ranch home, full basement.

Q How many trees would you say are on their physical third-acre of property, if you had to give me

an estimate?

A I'm going to tell you.

Q Okay.

A Currently?

Q Yes.

A Ten.

Q Okay. Prior to the day of Paul's accident, how many trees were on that property?

A 12. Oh, 13.

Q So on the day of Paul's accident, did you take all three of those down then?

A I didn't take any trees down that day --

Q Okay.

A -- or during this occurrence.

Q Okay. I see. Just limbs?

A Yes.

Q Okay. We're going to get to that as we go here. Okay.

So even at the time Paul was injured, there were still 13 trees on the property?

A Yes.

Q But there were less limbs on the property, I take it then --

A Yes.

Q -- at the time of Paul's accident?

A Yes.

Q All right. Who took down those three trees on your parents' property after Paul's accident?

MR. BARCH: I'm going to object to the relevance, but go ahead.

BY THE WITNESS:

A Please reask the question.

Q All right. You said there were -- You said there are ten trees now on your parents' property?

A Yes.

Q And you said at the time of Paul's accident there were 13 trees on the property?

A Yes.

Q So I'm assuming three trees were taken down; is that right?

A Yes. Two were only related to that occurrence, though, and they were pine trees. The other tree that I'm saying is gone was an apple tree that was removed later by, I think, Bill. It was just a small little apple tree that was --

Q All right. Hold on. You're going way too far with my question.

A Okay.

Q My question is --

A Sorry for being all-inclusive.

Q It's okay.

A I know. I'm just apologizing.

Q No, you don't have to apologize, and let me just give you kind of an idea. You're being helpful and open, and I appreciate that. The thing is, though, I'm still going to have to go through those questions again as I go through this so it's not going to cut down the time. So I'm just trying to tell you.

A I'm in no hurry.

Q Okay. The three trees that were taken down since Paul's accident -- we'll get to when and all, who and all that -- who took those three trees down?

A I don't know.

Q Okay. Okay. Before the day of Paul's accident, so before June 28, 2011, had you known Paul ever to operate a chain saw?

A Yes.

Q Okay. How frequently?

A I don't know.

Q How did you know then if he operated a chain saw?

A I've seen him operating a chain saw.

Q Where?

A Camping, on his property, cutting telephone poles that he got for free to make use out of them.

Q Okay. Had you known him to operate a chain saw before the day of his accident in a fairly reasonable manner?

A Yes.

Q He wasn't, like, dangerous swinging it around or anything like that?

A No.

Q Okay. So he would operate it, would you say, in a safe manner before the day of the accident?

MR. BARCH: I'm going to object to --

BY THE WITNESS:

A I'm not qualified --

MR. BARCH: Let me object to the foundation.

But go ahead and answer.

BY THE WITNESS:

A I'm not really qualified to determine what safe is, I mean ...

Q Everyone has their own definition. I'm just asking you under your own belief of what safe is --

A Yes.

Q Let me finish the question. Under your own

belief of what safe is, do you believe Paul operated before the day of his accident, whatever times you saw him, the chain saw in a safe manner?

A Yes.

Q Okay. Had Paul ever seen you operate a chain saw before the day of his accident?

A Yes.

Q Where was that?

A Multiple times camping and also on my mother's property.

Q Well, let's go back then because when I asked you how many times you operated the chain saw after 2004, you only described one time on your mother's property and that was on the day of the accident.

A Does operating -- to clarify it -- include starting or actually cutting wood? Because there's --

Q Fair question but you didn't -- you didn't condition it when I asked you that before so that's why I'm going back.

A Okay.

Q We can -- I'm glad to define it any way you want. I'm just -- You didn't clarify it before so that's why I'm going back.

A Okay.

Q I asked you just recently, just the past question, how many times had Paul -- I'm trying to remember the question. How many times did Paul see you operate a chain saw before the day of his accident, right? I think that was the question. And you said numerous times, I think; is that right?

A Yes. Paul has seen me operate a chain saw before.

Q Before the day of his accident --

A Yes.

Q -- on numerous occasions?

A Yes.

Q Okay. And then you were describing when and under what circumstances?

A Yeah.

Q In addition to camping, those different camping trips, he would sometimes be on camping trips with you?

A Yes.

Q And he would see you operate a chain saw during those camping trips?

A Yes.

Q And you would see him operating a chain saw during those camping trips?

A Yes.

Q Okay. And putting the camping trips aside, had Paul ever seen you operate a chain saw any other time before the day of his accident other than on camping trips? And operate, if you want to know what definition of operate is, I'm happy to tell you that --

A Yes, please.

Q -- in my view but you can define it any way you want. Operate means using the chain saw to cut wood.

A No, starting a chain saw and making sure that it's running. That operating I thought you meant it running, not literally using it.

Q Okay. So let's -- Let me ask the question again now that we have the definition.

A Okay.

Q If we define chain saw operation as operating a chain saw so as to cut wood or cut any other object I guess for that purpose, have you now, based on that definition, ever -- has Paul ever seen you operate a chain saw before the day of his accident other than at camping trips?

A No.

Q Okay.

A No. No.

Q But when I've asked you about you seeing Paul operate a chain saw, you meant and referred to him using the chain saw to cut things, right, that was your answer?

A I've seen him using a chain saw to cut things, yes.

Q Yeah, okay.

A Yes.

Q So before the day of Paul's accident, setting aside the camping trips, Paul has seen you start a chain saw to get it running but not use it?

A Yes.

Q Okay. Under what circumstances?

A It's good to start a piece of machinery every now and then and you may --

Q Where and when? What are we talking about? At your mom's house?

A Yeah, probably in the garage there at my mom's house.

Q Because they had the chain saw?

A No, they didn't have the chain saw then. I'm -- You're talking about the chain saw that was in

the accident?

Q Okay. Let's go back.

A Or are you talking about chain saw in general?

Q Fair enough. Let me ask it this way: Did your parents purchase a chain saw to cut trees in 2011?

A I don't know.

Q All right. The chain saw that you were operating --

A Yes.

Q -- at the time of Paul's accident was your parents' chain saw, right?

A Correct.

Q When did they purchase that chain saw?

A Shortly before the incident.

Q Are we talking if the accident happened June 28th, sometime in June?

A I wasn't there for the purchase. I wouldn't know the purchase date.

Q Okay. Sometime that summer, though; fair enough?

A Yes.

Q Okay. And before they purchased that chain

saw in the summer of 2011, did your parents own any other chain saws to your knowledge?

A No.

Q Okay. So the chain saw that Paul would have seen before the day of his accident, see you start but not operate, would be the chain saw that your parents purchased in 2011 or some other chain saw?

A It would be some other chain saw.

Q Where? Putting aside the camping trips, remember I talked, putting aside that.

A Yes, in my mother's garage.

Q Whose chain saw was it?

A I don't even recollect. I, you know ...

Q Okay.

A It was a piece of machine I was starting to keep it in good working order.

Q Okay. But it wasn't your parents and it wasn't yours?

A That's correct.

Q Okay. How many times did he see you start a chain saw but not use it under your description before?

A I don't know.

Q Couple, maybe two or three times?

A I don't know. I don't know.

Q Okay. At least once; fair enough?

A At least once, yeah.

Q Okay. All right. Have you ever used a chain saw and operated a chain saw, meaning cut things for money in your life?

A No.—

Q And, I mean, whether through your employment or through somebody just giving you money to do it, you'd never done it for money; is that fair to say?

A That's fair to say.

Q Okay. The work you were doing, and we're going to slowly get into that now, but the work you were doing for your parents on the day of Paul's injury, June 2011, was that work you were being paid for or not?

A Yes, I was being compensated.

Q Okay. So doesn't that -- isn't that contrary to the answer you just gave me then?

A No --

MR. CALLAHAN: I'd just object to form.

BY THE WITNESS:

A -- because you asked if I did it before that incident.

Q No, I did ever. My word was ever, but I'll say it again. Look it, I just want the truth. I don't care. If you don't understand my question, I'll restate it.

My question before, I think, if you looked at the record, said had you ever operated a chain saw for money. Now, maybe you meant before the accident --

A Yes, I did.

Q -- but I didn't phrase it that way.

A Okay.

Q So let's go back and correct it. Okay. We can do that.

The question is, ever means in your lifetime. Have you ever operated a chain saw for money in your lifetime?

A Yes.

Q Okay. And was that -- the times you did it for money, was that only with your parents?

A That one, yep, the occurrence that we're speaking of, that was the only time that I was paid.

Q The day of the accident?

A The day of the accident.

Q All right. Okay. Before the day of the

accident, had you ever cut -- Strike that. Let me -- Let me get ...

Before the day of your accident, had you ever cut any trees down with a chain saw or limbs, parts of trees, with a chain saw at your parents' house? Before the date of --

A Reask that question.

Q Pardon?

A Could you please reask that question?

Q Okay. Before the day of Paul's accident --

A Yes.

Q -- had you ever operated a chain saw at your parents' house, meaning to cut things?

A No.

Q Okay.

A No.

Q So the day of the accident was the first day in your life you ever operated a chain saw to cut things at your parents' house; fair enough?

A Yes.

Q Okay. All right. So I'm assuming, given that answer, the same answer would hold true for Paul. Paul never assisted and/or operated a chain saw to cut things at your parents' house before the day of his

accident; is that fair to say?

A Yes.

Q Okay. And I want to make sure you caught that I used the word assisted, meaning he never assisted anybody, whether yourself or anybody else, in the trimming of trees or cutting down of trees at your parents' house before the day of his accident; is that correct?

A That's correct.

Q Okay. Okay. Did Paul -- Well, let me ask it this way: How frequent in the year before the accident would Paul, to your knowledge, be visiting your parents' house?

A At least twice a month.

Q And would it be only to visit with you or would he be there sometimes when you wouldn't be there, to your knowledge?

A He would be there when I wasn't there.

Q When you weren't there?

A Yeah.

Q What was his -- and that's what I'm not sure about, what is his relationship with your parents that would make him come to your parents' house when you're not there, what's the --

A He would show up assuming that I was there and knowing my mother since they worked at the same place of employment, interacted there, that he would sit and just speak with them on a friendly basis.

Q Okay. So he was good friends with your parents?

A Yes.

Q Okay. Do you know if your parents still hold goodwill to him today or whether that has changed?

MR. BARCH: Speculation.

BY THE WITNESS:

A I don't know. You'd have to ask them.

Q Do you know if your parents have overheard Paul say anything that was uncomfortable or financially motivated relating to this claim at all?

A No, I believe that they have not.

Q Okay. And same with your wife? I think we already talked about that, right?

A Correct.

Q Okay. Would Paul have any reason, in your knowledge, to visit your parents when you weren't there? Now, I know he'd go there and you happened not to be there so he'd talk to them; but, I mean, was there anything that would take him to your parents'

house if he knew you weren't going to be there?

MR. BARCH: Speculation.

BY THE WITNESS:

A A friendship.

Q Go ahead.

A Friendship again.

Q Okay. So would there be times Paul would visit your parents' house merely to visit them and not even -- whether you're there or not?

A No, he would arrive there with the purpose of seeing me and me not being there, he would stay being congenial and friendly towards my mother. - Dave Didn't Live There ~~for~~ FOR MANY/MANY YRS.

Q Okay. And that's why I asked the other question; let me say it again. My question is, if Paul knew you weren't going to be at the house, would there be any -- ever any instance where you know that he would visit your parents' house anyway?

A That would be between Paul and my parents then.

Q So you don't know?

A I don't know.

Q Okay. That's what I was trying to get at.

A Okay.

Q Okay. Do you know if Paul ever worked at

your parents' house doing anything before the day of his accident?

A Yes.

Q What types of things would he do at your parents' house for work?

A Well, there was a large elm tree that was removed in the front yard by another provider; I do not know their name, and he said, I would like that firewood. So I helped him load it onto a large trailer and I believe that large pile of wood still sits on his property.

Q Okay.

A To some extent. He's used some of it.

Q What year would that have been?

A Just 2010.

Q Okay.

A Just before this incident where she was getting into the mode of upgrading the home, you know.

Q I get it. So it would have been the summer before this accident then?

A Yes.

Q Okay. So --

A Or it may -- it may have been that same summer.

Q Okay.

A That question would probably be better off answered by my mother.

Q So the answer is, I don't know the time, that's your answer when that happened? You don't know when that happened?

A It was before this occurrence and shortly before that.

Q Okay. But the work that you're describing in that answer that Paul did at your parents' house before the day of his accident was simply to collect wood that had already been cut up and pile it onto a truck to take it to his house?

A Correct.

Q Okay. So I guess my question was more designed toward did Paul do any work for your parents or for the property itself at your parents' property?

A Yeah, he --

Q Before the day of his accident?

A Yes, he moved a large load of wood onto a trailer removing it from their property for his own usage.

Q Okay. Just once?

A That day was the -- That day we made several

trips.

Q What day?

A I don't know exactly what day, that's what was in dis- -- and we were uncertain of as to right there but it was before this occurrence possibly that same summer.

Q All right. So this is what you're saying, you're saying before Paul's accident --.

A Yes.

Q -- whether that year or the year before, there was an instance where an elm tree was cut down and Paul made one or more trips to collect the cut up wood on a pickup truck to take to his house?

A Correct.

Q Other than that, has Paul done any other work on your parents' house before the day of his accident?

A None that I'm aware of.

Q Okay. Do your parents have any experience or expertise in cutting down trees?

A No.

Q Okay. So other than hauling firewood from your parents' house on one or two occasions before the day of his accident, Paul never did any other type of errands around their house, the parents' house; is

that fair to say?

MR. BARCH: Foundation, but go ahead.

BY MR. MAST:

Q That you know of obviously.

A That I know of.

Q None?

A That I know of, none.

Q Okay. How long have your parents lived at that house?

A My mother, biological mother, has lived there since 1971.

Q And give us the address of the house so we could have that.

A 1016 West Elder, McHenry, Illinois 600, I think it's, 51 now. It may have changed.

Q Okay. And is that once -- And that's -- After your father passed, that's where she was remarried and began to live there then, correct?

A She was remarried be- -- No, she was remarried before his passing.

Q I see.

A Yeah.

Q Okay. So until you moved out of the house, you had lived at that house almost your entire

childhood, right?

A I lived there until I was 30 years old.

Q Okay.

A 29. 29. 29 years old. 1999 June 1st I moved to my new residence, which I currently live at.

Q From your -- From about four years old, right?

A Yeah.

Q Okay.

A Yes.

Q All right. And let's take you to the day of the accident. When were you first -- Well, strike that.

On the day of the accident, on the day the accident occurred, came upon you, did you already know your parents had purchased a chain saw?

A Yes.

Q Okay. And do you know the purpose of why they purchased it?

MR. CALLAHAN: I'd just object as being asked and answered.

But you may answer.

BY THE WITNESS:

A I don't know. I don't know.

Q Okay. When did you first know that they wanted you -- your parents wanted you to cut -- do some cutting with the chain saw on their property? When did you first learn that?

A Actually, I offered my services to them. They had need to rebuild a shed and with the shed down, there was an opportune time for trees to come down.

Q What shed down, what do you mean?

A There was an old shed that if -- since it was taken down because it was in disrepair, planning to put up a new one, there was an opportunity to now drop these trees where there was a clear field, clear area.

Q Fair enough. When was that that you offered your services to cut the trees down?

A Two days before the occurrence.

Q Okay. Were you at their house when this conversation arose?

A Yes, I was.

Q Okay. Was Paul with you?

A No.

Q It was just you and your two parents?

A Yes.

Q And it was discussed -- Did you bring up the

issue or did they bring up the issue?

A Well, as I've mentioned, it was an ongoing upgrading of the property and it was just discussed that now is an opportune time to do that.

Q My question was, who brought up the issue, if you know, about cutting the trees down?

A I did.

Q Okay. And it was something like, Hey, now's a good time with the shed down, why don't we cut those trees down?

A Yes.

Q Something like that. Okay. And there were three trees in particular that were --

A Two.

Q All right. Let me just finish the question. My question was, there were three trees in particular to cut down and you're saying there were only two?

A There are three trees that since that occurrence are now gone.

Q Right.

A Two of which were involved in the occurrence which were pine trees.

Q When you say involved in the occurrence, what do you mean?

A The ones that were being trimmed up, that were being considered to be removed at that time.

Q Okay. So let's go back to the conversation two days before Paul's accident when you brought up the issue of cutting the trees down, was the topic of cutting the trees down involving only two trees at that point?

A Yes.

Q And they were pine trees?

A Yes.

Q Okay. And how tall were the pine trees?

A I would -- In my best guesstimate, I would say 50 feet tall.

Q Both of them?

A Yes.

Q And they had been on the property ever since you knew?

A Yes. I watched my mother plant them herself.

Q Oh, okay. So when you were a very young child?

A Yes.

Q Okay. And what necessitated that they be removed given the rebuilding of the shed?

A At that time they had become large and an

overburden.

Q Just taking up a lot of space --

A Yes.

Q -- and in the way?

A Yes. Hanging over the area adjoining neighbors. They were a nuisance. They needed to come down. They weren't decaying at all, but they were -- they were too full.

Q So would the trees have been about over 25 years old then at the time?

A Yes. Yes.

Q But they were in good health?

A Yes.

Q So it was elective in taking them down, not a necessity, correct?

A It was a necessity as to -- Well, that was the opportune time. I mean, as I said, the shed was gone, so ...

Q I get it. I'm saying elective meaning that they didn't have to be taken down for the safety of anybody, they were being taken down more for convenience's sake; fair enough?

MR. CALLAHAN: If you know.

BY THE WITNESS:

A I don't know. I don't -- I don't really know at what point they chose to. I suggested that they come down and they chose to have me take them down.

Q Were they being taken down for any safety reason?

A No.

Q Okay. The third tree, what kind of -- The third tree that was taken down after Paul's accident, what kind of tree was that?

A It was an apple tree.

Q And that tree being taken down, at least in your view, had nothing to do with the shed issue then, right?

A Nothing at all.

Q Right?

A Yes.

Q Okay. And that's why you described earlier in the deposition the two trees, the two pine trees, were taken down in relation to this accident because you were taking trees down at the time of the accident or at least the intent was to take trees down at the time of the accident to make room for the shed?

A No, the shed was already standing before

that. It was torn down because it was in disrepair. It being torn down, it seemed as though it was an opportune time to take down these trees that were large and overgrown.

Q Okay. So you said, Hey, why don't we take down the trees now. It's a good time to take down the two trees, and they said yes, right?

A Yes.

Q Okay. Did you tell them how long it would take to do the work?

A No.

Q Did they offer you to pay you -- Did they offer to pay you some money to take the two pine trees down?

A Yes.

Bill & Carol Dent ↓

Q How much?

A It was a matter of hourly wage, $15 an hour.

Q Was there any scope discussed as far as how long it was going to take you to do the work?

A No.

Q Any time frame on how long it would take you to do it?

A No.

Q And the scope of the work that at least as

discussed was just taking the two pine trees down, correct?

A Yes.

Q All right. And that would include the limbs, cutting it up into wood, and then hauling it off the property?

A Not hauling it off the property; that's why I was cutting up the limbs to stack it on the property.

Q Okay. So that -- Just fair enough. I just want to get the scope of it. The scope was cutting the tree down, including all limbs and parts of the trees, the two trees, and getting them cut up into stacks and then stacking the wood?

A Yes.

Q And then that would be the end of the work?

A Yes.

Q Okay. And it only involved those two pine trees, right?

A Yes.

Q Are you aware of any photographs that show those pine trees before they were cut?

A No.

Q Or during them being cut?

A No.

Q Or after they were cut?

A No.

Q Or how they are today?

A No.

Q Okay. Once you discussed two days before Paul's accident doing the work and how much you were going to get paid, what was the next step in your preparation for doing the work?

A I by myself trimmed the trees up to about 40 --

Q No. No. You went -- You jumped too far ahead. Let me just -- I said the next step. So the next step would be two days later showing up on the property, getting ready to cut them off then, I'm assuming, right?

A Mm-hmm.

Q Yes?

A Yes.

Q Did you do anything in the interim to prepare, like go buy a set of gloves or something? I'm just trying to find out what you had to do.

A No.

Q Okay. When you cut trees of this size and nature down, do you have to wear goggles?

A I suppose that a person should.

Q Did you?

A No.

Q Did you wear a helmet?

A No.

Q Gloves?

A Yes. Yes.

Q Okay. Work gloves?

A Yes.

Q Boots?

A I can't recollect if I was wearing boots or shoes that day.

Q Okay. Any other type of particular things that you would wear specific to cutting trees down?

A No.

Q Other than gloves and clothes?

A No.

Q No. Okay.

Who decided the day that you were going to start the work?

A I did.

Q Okay. Did you just show up out of the blue or did you say, I'll be back in two days to start the work?

A I said that I'll be back and start the work on a pre- -- on the day, you know, the day I began --

Q Okay.

A -- which is two days before Paul's -- the incident happened.

Q Right. So we're two days before the accident, you talked about what you were going to do, how much it was going to cost, blah-blah-blah, and then did you say, I'll come back in two days to start the work, or how was it decided when you were going to start the work?

A It's my mother. It's kind of a free -- You know, it isn't like I've got to show up for work at 10:00 o'clock. It wasn't really decided. I showed up at my own accord and began to work.

Q That's all I'm asking you.

A And then I --

Q That's fine. So you showed up when you wanted to, right?

A Yes.

Q Okay. So there wasn't any preset day that you were going to start the work?

A No.

Q Is that correct?

A That's correct.

Q Okay. And when you showed up on June 28, 2011, was that the only thing you were going to do there that day at your parents' house is cut those two trees down?

A That day that I showed up, I was only going to trim the branches off of the trees.

Q Prepare them for, like, the next day's work of starting to cut them down?

A Yes.

Q Okay. Were there a lot of branches on each tree?

A Yes, it's a pine tree.

Q Okay.

A There's many branches on pine trees.

Q And the branches can get thick as well, right?

A Thick by way of ...

Q By way of being just thick.

A Diameter?

Q Yeah.

A No, not really. Branches --

Q I mean, we're not talking like a half an inch around. We're talking they can be several inches

around even on the branches.

A There were no limbs on that tree that were probably over 3 inches in diameter.

Q Okay. Fair enough. Let me ask that then, just it sounds like you have some understanding. Of the two trees, how many trees would you say were about 3 inches in diameter on both trees?

A How many branches?

Q Were 3 inches in diameter at one side or one end?

A Between the two trees?

Q Yep.

A Six.

Q Okay.

A The lowermost were the thickest.

Q And were you going to start at the bottom and go up or start at the top and go down?

A Start at the bottom and go up.

Q Okay. So if the first day of work -- And that was the day Paul was injured, the first day of work, right?

A No. The first day of work that I performed on those trees was the day before Paul showed up. I had already cut down all the limbs off the trees.

A.M.

Q All right. Hold on. You're going too fast so --

A Okay.

Q -- let's slow down a little bit. You showed up two days after speaking to your parents to work so that would have been the day before Paul's accident?

A Yes.

Q Okay. So that would have been the 27th?

A Yes. It was preparatory work, you know ...

Q I understand that, but I want to go step by step. So on June 27 you show up at your parents' house?

A Yes.

Q Which is two days after you first talk to them about this and you showed up to do the preparatory work?

A Yes.

Q Okay. And how long were you on their property that day, on the 27th?

A Four hours.

Q And what did you do during that four hours on the 27th?

A I trimmed branches up to about 40 feet on both trees.

Q Up?

A Up. From the bottom going up.

Q You've got to let me -- We've got to go back and forth with this because I'm not going to understand you. You're saying from the ground up 40 feet high you trimmed all the trees off of those two trees -- all the branches off those two trees on June 27th?

A Yes.

Q And they were now all on the ground, those limbs?

A Yes.

Q Correct?

A Yes.

Q How many limbs are we talking?

A I don't know.

Q Like 30, something like that?

A I would say more than that. You're talking about 40 or 50 feet and if a pine tree has a limb at every foot or so, you can pretty much figure out it probably would be more like hundreds.

Q Hundreds of limbs?

A Yeah.

Q Okay. Varying sizes?

A Yes.

Q Okay.

A Decreasing in diameter as we went higher, of course.

Q Okay. And did you work by yourself on that day, the 27th?

A Yes.

Q So Paul was not on the property on that day, correct?

A Correct.

Q By the time you were working on the property on June 27th, 2011, did Paul know the work you were doing?

A I don't know.

Q Okay. When did you first talk to Paul about what work you were going to do on your parents' house with these trees in June?

A On the 28th I had made my travels to my mother's house after doing the preparatory work on the 27th, and I figured that Paul, since he was sitting idle and unemployed and we worked together on trees before, that he would possibly want to give a hand in helping me to get rid of the scrub that was already on the ground.

Slang - Loser who thinks He is Something

DOES DAVE Know what scrub means - TO Rub or wash?

Q So you called him?

A I stopped by his home.

Q Before getting to your parents' house?

A Yes.

Q And was Paul home?

A Yes.

Q And did you say, Hey, I'm cutting some trees down at my parents', do you want to help clean some of it up?

A That's what I said.

Q Okay. Did you say anything else differently than what I've just said?

A No, basically would you like to give a hand at my mother's property to help me clean up the brush I cut down.

Q Now, my assumption, you can correct me if I'm wrong, but at least that conversation at Paul's house the day of his accident, my assumption is you weren't asking him to help you cut the tree down, but you were helping him deal with what was already cut?

A Yes.

Q Okay.

A Our intentions that day were not to take the trees down; it was to clean up the brush on the ground

itself that I already cut the day before.

Q Was your intention on that day, the 28th, to do any use of the chain saw?

A Yes.

Q Okay. You were going to cut up the limbs that were already on the ground?

A Yes.

Q Had you begun to cut any of the limbs on the ground the day before?

A The larger ones I had already cut on my own into sections.

Q On the 27th?

A On the 27th, yeah.

Q Okay.

A And then realized I'm going to need help.

Q Okay.

A You know, there's a lot here.

Q So the 27th now, the four-hour work you --

A Yeah.

Q -- the four-hour work you did on the 27th included trimming up 40 feet on each tree and then trimming up some of the larger limbs that are on the ground now cutting them up?

A Yes.

Q Okay. Then you get to the 28th and realize this is a pretty big amount of work to do, you could use some help?

A Yes.

Q Okay. And what specific task did you expect Paul would be needed to do at your parents' house when you spoke to him that morning before going to the house?

A There was really no outline. I just simply went to a friend's house and asked him if he'd like to help me with my chores that I was doing that day. I told him it was brush that was on the ground, and I would like to cut it up for firewood or just to get -- consolidate it into a pile so it could be stacked. thought it was already stacked in a pile

Q Were you planning on him using the chain saw at all?

A No.

Q Okay. You were going to be the one to use the chain saw?

A Yes.

Q And did he ever use the chain saw that day?

A No.

Q Okay. And I mean the day of his accident, he never used a chain saw?

A Correct, he did not use the chain saw on the day of his accident.

Q Okay. All right. Now, when you use the word brush, having Paul help you clean up brush, you mean the limbs that are on the ground that you cut the day before, right?

A Yes.

Q Okay. Not just a bunch of leaves and stuff. It was the limbs, the actual limbs themselves?

A The actual limbs, yes.

Q So the assistance that Paul was going to give since he wasn't going to be using the chain saw the day of his accident, was that to hold the limbs while you cut them up?

A It wasn't intended to be that way and I didn't direct him to do so. We just kind of got to work and that's the technique that we both were comfortable with --

Q Okay.

A -- and then from there moved forward with doing that.

Q Fair enough. So the morning of Paul's accident before you got to your parents' house when you went to Paul's house to talk to him, you didn't

talk details, you just said, Hey, Paul, I need some help cutting up some brush at my parents' house, can you give me a hand?

A Yes. – Dave never stopped by Paul's the morning of

Q Okay. And he said yeah?

A He said yes.

Q Did you work on any arrangement where he would get paid or was it just for him to volunteer?

A At that time there was no questions about money.

Q Okay. What was your assumption then, if you had any?

A That maybe we can get the job done before the day was over.

Q So all the limbs that you had already cut that were on the ground, which you described as maybe hundreds, hundreds in plural --

A Mm-hmm, right.

Q -- you were hoping to at least get those all cut up that day?

A Yes.

Q Okay. And what was your assumption as far as what, if anything, you were going to pay Paul, if you were going to pay him anything? I don't know.

A Equal to what I was being paid, $15 an hour.

Q Oh, so your parents were going to pay now both of you $15 an hour?

A I was assuming that they would.

Q Okay. Did they ever agree to before Paul's accident?

A No.

Q Okay. Had you ever talked to Paul about that arrangement before his accident?

A No.

Q Okay. That was just your -- kind of your --

A Yeah, I was going to --

Q Hold on. Hold on. Let me finish the question. That was just your kind of own assumption?

A Yes.

Q Okay. Did Paul leave with you to go to your parents' house or did he come at a different time in a different vehicle? time?

A He came about a half-hour after I had asked him to in his vehicle. Could have been more.

Q Okay.

A Somewhere between a half-hour and an hour before he arrived.

Q Fair enough. What time did you arrive at

your parents' on the day of Paul's accident on the 28th?

A 10:00, 11:00 o'clock. Before noon.

Q Okay.

A That's the best I can recollect.

Q Okay. And how long did you anticipate it was going to require both you two to cut up these trees as you said completely?

A I have no --

Q These limbs. I'm sorry.

A I had no estimate in my mind or need to construct one. I just was going to work with a friend and get the job done.

Q Okay. Were you expecting, though, that it would be done that day?

A I was hoping. I wasn't expecting.

Q Okay. Okay. So if you arrived from 10:00 to 11:00 sometime that day of Paul's accident, you're saying Paul would arrive somewhere around 10:30 to 11:30?

A Yes.

Q And he arrived alone in his car?

A Yes.

Q Okay. And we're going to have to use some

kind of time frame that we can agree on even though we're not sure just so that we can do the chronological order of things here. So if we assume that -- and, again, I know this is just an assumption but just for the purposes of figuring out when things happened, if we assume you arrived at 11:00 and Paul arrived at 11:30, okay?

A Mm-hmm.

Q All right?

A Yes.

Q How soon after Paul arrived at 11:30 would his accident have occurred?

A I believe about an hour.

2:46 pm checked in to Hospital
17 min TRIP TO Hospital
15 min-APPROX to get into car
2:14-APPROX Time of accident

Q So if he arrived at -- If Paul arrived at 11:30, his accident happened around 12:30; fair enough?

A Yes. Or if arriving at 10:30, the accident happened at 11:30. — wow - and he wasn't the one hurt - what a time Distortion

Q I get it. I get it. We can do that, I'm just -- I want to get the chronological time frame. So if we assume you get there at 11:00, Paul got there at 11:30, his accident happened around 12:30; fair enough?

A Yes.

Q Okay. And when Paul's accident occurred, he was in the midst of helping you cut up these trees, right?

A Yes.

Q Okay. Other than you and -- Were you also in the midst of cutting down -- helping cut up the trees?

A Yes, I was -- Yes, when he showed up, I was already in the process of working.

Q All right. So when Paul's accident occurred, both of you were working together to cut up these trees?

A Yes.

Q Was anyone else working with you two?

A No. was earlier

Q Was anyone else watching you two?

A No.

Q Were your parents in or out of the house during the time that Paul had arrived up to the time of his injury?

A They were in the house. Lie - Both were outside

Q Okay. Do you know if your parents even knew Paul was over?

A Yes, they did because when I arrived I told them that Paul would be coming over to help me.

Q Okay. And that's fine but that's not quite what I was asking. Do you know if your parents knew he was actually on the property at the time of the accident?

A Yes, they did know that he was on the property.

Q How did they know that?

A Because his vehicle was parked outside and they could visually see that his vehicle was there.

Q Okay. And they can connect the dots; I get it.

A They see him. Okay. Sorry.

Q I can't talk while you're talking. Let me --

A I know.

Q My question was, at the time of Paul's accident do you know if your parents were aware that he was on their property? Even they could have looked out and saw the car, I get it, but do you know if they were aware?

A I don't know.

Q Okay. Do you know anyone that was aware Paul was on your parents' property at the time of his accident other than you?

A No, I do not know.

Q Okay. Were there any visitors or witnesses to the work on the property at your parents' house for the hour Paul was there leading up and at the time of his accident?

A No.

Q Okay. So the only witnesses you're aware of of the circumstances leading up to the accident and Paul's accident itself, the only witnesses to that are you and Paul, right?

A Correct.

Q Okay. All right. Now, I've got to ask a few questions that -- don't take it personally but these are just questions we always ask in these depositions of witnesses, okay? So it's nothing against you, it's just we always ask these.

Any alcohol to drink that day?

A I don't drink alcohol.

Q Okay. Any medications?

A None.

Q Any drugs anyway?

A No.

Q Any type of drugs?

Paul, same question for Paul, if you know, drugs, alcohol?

A Paul's not a drinker to my knowledge, and I wouldn't know about any prescribed drugs because I'm not him. - TRUE

Q Okay. Did Paul seem to be acting normal leading up to the time of his accident?

A Yes.

Q Were you having any internal stressors or any problems internally for you at the time of this?

A No. - Didn't Dave Have expectations of what he wanted to accomplish that DAY?

Q Okay. Were your parents keeping any type of watch over the work you were doing to kind of see how things progressed? → How would He know that?

A No. - Carol admits Bringing out water Both Carol + Bill admit Beggy out there Playing with my Dog. - very small yard - hard not to see & hear chainsaw cutting

Q Okay. So the -- from the beginning to the end, the work that was being done by you to cut the trees up was done under your own supervision, under your own control?

A Under my supervision.

Q Yeah. Was anybody telling you what to do and how to do it?

A No. - TRUE THROUGHOUT Parents had ~~s~~ input all MORNING into afternoon

Q Were your parents in any way telling you how to do things as far as cutting up the trees?

A No. - Yes, They wanted it to FALL IN a certain spot So it Didn't hit Garage or Pool. Bill ~~was~~ was & wanted to Burn the Branches - Dave insisted on cutting them

Q How you did it, the method and means for cutting up the trees, was that done under -- by your own control and your own decisions?

A By my own decisions. — Not Paul's?

Q Okay. The manner in which the work was being done at the time of this accident, was that done in the manner that you wanted it to be done?

A Until Paul arrived.

out of context Pats Control in Paul's Hands?

Q Okay. How about when Paul arrived, did he change things?

A He chose -- He chose to take up his own technique or helping, and I went along with it because we worked together in a good fashion for so many years previous to that.

when at How Did many years Dave work Together?

when I Apple Trees

Q Leading up to the time of his accident, okay, was Paul doing anything wrong working at the property?

A No.

Q Okay. Was he doing everything appropriately?

A It seemed so.

Q Okay. And did you have to criticize him or instruct him to do things differently because you were not happy with the way Paul was doing his work leading up to the time of his accident?

How did I know what he Needed?

A No, I gave no instruction basically to him.

Denial again

Q You left it up to him to do the best for him and you did the best for you?

A We've worked well together in the past. There was no need for instructions. It was a mutual understanding of two men working together.

Q Okay. But is my question correct, you left Paul to work appropriately under his own control and you were to work appropriately under your own control --

A Yes.

Q -- correct?

A Yes.

Q Okay. And leading up to the time of Paul's accident, did you notice Paul doing anything unsafe or wrong in your view?

A No.

Q Leading up to the time of the accident, did you believe you were doing anything unsafe or wrong in the process of the work leading up to Paul's accident?

A No.

Q Okay. When Paul was -- Well, Paul was eventually cut by your chain saw, correct?

A Paul was cut by a chain saw.

Q A chain saw that you were using and

operating, right?

A Correct.

Q Okay. I said your chain saw and you're probably saying well, it wasn't my chain saw; that's what you're thinking, right?

A That's correct, yeah.

Q Okay. But it was -- When I meant your chain saw, I meant the chain saw you had control of, correct?

A Then that's what I'll agree to, yes.

Q All right. So you're agreeing and accepting the fact that Paul was, during the process of working at your parents' house, cut by a chain saw while you were holding the chain saw and while it was running, correct?

A Yes.

Q Okay. And -- Oh, here it is. I was looking all around for these; they're right in front of me.

These photographs were marked during Paul's deposition, okay? All right?

A (Nodding.)

Q You have to answer a word.

A Yes.

Q All right. Do you know, without looking at

the photograph, where Paul was cut by the chain saw you were operating at the time of his accident on June 28, 2011, on his body, where?

A Yes, exactly where.

Q Where?

A On his right forearm.

Q Okay.

A (Indicating.)

Should have been made to articulate where outside, inside - TOP, Bottom?

Q Is that the only place he was cut?

A Yes.

Q Okay. I'm going to show you a photograph. I just want to make sure it's the same injury that he talked about, okay?

MR. CALLAHAN: Can I take a look? Thanks.

BY MR. MAST:

Q We've got what's marked as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, okay?

A Yes.

Q These aren't all I'm going to ask you about but the first page, 2A, does that appear to show his right arm and the scarring where he was cut by the chain saw you were operating at the time of his accident?

A Yes.

Q Okay. Is that the only spot he was cut shown in this photograph?

A Yes.

Q Okay. And maybe you can't tell on 2B, but I think that's the same injury. Can you tell?

A Sure looks good to me.

Q Looks like the same one?

A Yeah.

Q Okay. How about 2C, does that look like the same injury?

A Yes, it does.

Q 2D. If he has his hand down to his right, it would be on the backside of the --

A Yes. His Description of the accident Does not Place it there

Q -- forearm, correct?

A Yes.

Q And that's where it shows on 2D?

A Yes.

Q And that's the injury that was caused by the chain saw you were operating at the time of the accident?

A Yes.

Q Okay. All right. So Paul arrived about a half an hour to your parents' house after you arrived

on June 28, 2011, right?

A Yes, about a half an hour.

Q And by that time, when Paul arrived at your parents' house, you had already been working?

A Yes.

Q Okay. So you had the chain saw in hand and you were cutting things or not?

A No.

Q What were you doing?

A I was sorting.

Q You were what?

A Sorting the branches. When you have pine trees, they get snaggled, snarled, and tangled together. I was placing them so that they could be fed in a safe manner as, you know, to lift it up and to work with it.

Q Okay. What was the manner which you wanted to use to -- Well, strike that.

Having Paul come and assist you, did you have an expected manner in which you preferred to have him assist you?

A No.

Q So you just left it up to him to decide?

A Well, he showed up and as I had said, we just

worked well together. We understood one another.

Q But my question was --

A I didn't specifically have any expectations or did I direct him to do anything.

Q So my question then was, did you just leave it up to him to decide what to do and how to help you or did you have to tell him, Hey, hold that branch. I'll cut that branch?

A I left it up to him.

Q So how would he know what branch you wanted to cut unless you told him what branch to cut?

A He didn't cut. He held.

Q How did he -- I'm sorry. I didn't say it right. How did he know what branch to hold unless you told him what branch to hold?

A I didn't tell him. He chose --

Q How would he know then is the question.

A You'd have to ask him. I don't know.

Q Well, was he supposed to just guess what branch to hold on to?

A There was no guessing, but ...

Q How was he going to know then?

A Because we've done this before. We've watched each other work. We've worked with tools

before in the past.

Q Okay. But that's not my question, okay? We're hoping that he's going to hold the branch you're going to end up cutting, right, the same branch?

A I never intended him to hold the branch.

Q Okay.

A He chose to hold the branches.

Q All right. So you're telling me -- Well, what work were you wanting Paul to help you with then?

A There was moving material, there was stacking wood, there was raking the ground.

Q Moving material, stacking what?

A Stacking wood.

Q Okay.

A And raking.

Q Was there a rake available?

A Was there a rake available?

Q Mm-hmm.

A Yes.

Q Okay. Stacking wood meaning after it's all cut up into little foot pieces, you would stack them up --

A Into 18 inch pieces.

Q -- to store them, correct?

A Into 18 inch pieces and then stack, yeah.

Q You're doing fine but please let me finish my question before you get to the answer, okay, because we're going to have a hard time if we don't have separation, okay? So maybe give me one beat after I'm done and then give me your answer, okay?

Moving material meaning what?

A Once it's cut, to stack it and then to clean up the area where we were working.

Q All right. So moving material, stacking the wood, and raking up the debris, those were the three things you envisioned Paul was going to assist you with?

A Yes.

Q Okay. Before Paul arrived at the property, were you envisioning that he was going to help hold some of the branches so you could cut them?

A No.

Q That was not even in the back of your mind?

A No.

Q Okay. Did you not want Paul to help hold the branches or you just didn't know if he was going to or not?

A I didn't know that he was going to do that.

Q Okay.

A No.

Q Did you want him to hold the branches or did you not want him to hold the branches or did you not care?

A It wasn't a matter of not caring. He chose to and then we went with it. — I'm in charge of his project again. LOL

Q Okay. So was that appropriate for you that he hold the branches for you then?

A It seemed to be appropriate at the time. yes?

Q Okay. I'm just trying to find out whether he was holding these branches --

A I understand.

Q Hold on. Hold on. I'm trying to find out whether he's holding these branches against your will or not. Obviously there was some --

A No, he was not holding them against my will. He was helping --

MR. CALLAHAN: Wait until he finishes the question.

THE WITNESS: Okay. I thought he was finished.

BY MR. MAST:

Q So he was holding the branches ultimately and eventually with your acceptance and permission; fair

enough?

A Acceptance, yes.

Q Well, if you didn't permit him to do it, you would have told him not to, right?

A I don't control Paul's hands nor did I direct him to do it at that time. He chose to pick them up and we both started working together and that's the method we chose. It wasn't like hey, this is right or wrong; we just went to work.

Q I understand. This is what I'm saying, if Paul did something you didn't want him to do, you would tell him not to do that, I assume, right?

A I suppose, yeah.

Q Okay.

A Yes.

Q Did you ever have to tell Paul not to do something before he got hurt and got cut by the chain saw?

A No.

Q Okay. So up to the time that Paul got hurt, he was doing the work in a way that was okay to you, correct?

A Yeah.

Q Okay.

A Yes.

Q And he was doing the work in an appropriate way to you, correct?

A Appropriate?

Q Yes.

A To me?

Q Right.

A Acceptable. I don't know about appropriate. If you want to look up what is the definition of appropriate.

Q Okay. You just don't know what the word means. Okay. Because I can -- I can use a different word.

A Oh, no, I know what the word means, it's the way you're using it. You're telling me that I deemed it appropriate that his actions what he was doing without me telling him to do anything different were okay or not okay, and what I'm saying is that it was two friends -- Let me just have one moment.

Q Go ahead.

A And it was two friends working together who have worked in similar situations, and I guess our assumption in it was that we knew what we were doing, the both of us. I didn't think that Paul would

jeopardize himself or me and likewise.

Q Okay.

A That's where we were at.

Q So my question is, was Paul doing everything leading up to the time he was hurt in an acceptable fashion to you?

A Yes.

Q Was he doing anything inappropriate before he got hurt?

A No.

Q Okay. Had he been doing -- Had Paul been doing something inappropriate prior or at the time he got hurt, you would have told him not to do that, correct?

A Again, inappropriate, I don't under- --

Q Okay. If he was doing something unsafe, you would have told him not to do something unsafe, correct?

A That wasn't even really considered. It wasn't -- I'm honestly telling you that it wasn't a thought in my mind at the time.

Q I'm not asking you if you considered it. If you can say -- Hold on. Wait. You stopped. Let me go. If you don't know, you can just say I don't know

but the question is if Paul was doing something unsafe, would you have told him or directed him not to do something unsafe?

A Yes.

Q Okay. That's all I'm asking. So your testimony is that you never told Paul once what to do prior to his injury on that property, correct?

MR. CALLAHAN: I just object as to form of the question.

BY MR. MAST:

Q Is that correct or not?

MR. CALLAHAN: You may answer.

BY THE WITNESS:

A Ask the question again, please.

Q My under- -- Strike that.

Did you ever tell Paul what to do or how to do it before he got hurt by being cut by the chain saw on the date of his accident --

A No, I did not. — Wow.

Q -- at your parents' house? Huh?

A No, I did not. — Denial till He's Dead?

Q Never told him what to do?

A No. — again

Q Never told him how to do it?

A No. unbelievable

Q Okay. So when he first arrived at, let's say, 11:30, what was the first thing he did?

A He was watching me sort the branches and said, What can I do to help? ask. And I said command?

Q Let's go step by step. Okay. So he was watching you sort branches, right?

A Yes. ~~Thought~~ Didn't he state earlier that he had SORTED all the Branches before Paul showed up? - NEED to go Back & Look.

Q Okay. I want to go just step by step now because we're going to get toward the accident and I don't want to go too fast, okay?

A Okay.

Q So let's go step by step here. He got there. You were sorting branches. You mean putting them in piles?

A No. They were already in a pile and as I had mentioned earlier, pine, when you cut it, it needs to be addressed or orientated. why? If you put branches like this, it's going to pull out unsafely. Why? what's unsafe? So if you stack them with the cut ends like this, you can easily pull them off one another. like what?

Q Okay.

A That's why I was sorting, so that it would go ... - Dave had a plan?

Q I got it. Sorting branches. Paul gets there and says, Can I help, right?

A How may I help.

Q How may I help. Okay.

And what do you say?

A I said, Well, I'm sorting branches. I guess you can start by doing that.

Q Okay. So you had him start sorting branches with you then?

A Yes.

Q Okay. And how long was he sorting branches with you?

A Maybe another 15 minutes after I had spent some time doing it myself.

Q All right. So -- Got you. So now we're at about -- and I know these are just guesstimates, but I just want to get a chronology. We're at about 11:45 now, okay?

A Mm-hmm.

Q Yes?

A Yes.

Q What happens next?

A The piles were sorted, time went by and chose to start cutting the branches up. At first we had

placed them on these horses.

Q Well, wait. You're going into detail now. I want to go step by step. The next step; that's all I asked.

A Okay.

Q The next step was to start cutting the branches up?

A Yes.

Q Okay. Who decided to start cutting the branches up? Was that your decision?

A Yes.

Q Okay. So after the piles were sorted, you said, Let's start cutting the branches, right?

A Yes.

Q Okay. And did he say, Can I help?

A He was there to help. I don't recollect if he specifically said --

Q Okay.

A -- that.

Q So when you started cutting the branches, what was Paul's task during the cutting of the branches?

A To put them on the horses.

Q The sawhorses?

A Yeah.

Q How many sawhorses do you have?

A There was two there.

Q And how far apart were they spaced?

A Four feet.

Q And were you going to be putting them on the sawhorses too or was that only what Paul was going to do?

A That's what Paul was going to do, remove them from the sorted piles onto the sawhorses.

Q And when he puts them on the sawhorses, you were going to cut them up with a chain saw?

A Yes.

Q Okay. Who told Paul or who gave Paul that job task? Was that you?

A Yes.

Q Okay. So the next step, piles are sorted now, let's start cutting the branches. Paul, why don't you put the branches on top of the sawhorses and me, meaning you, I'll cut these branches on the sawhorses up with the chain saw. That's the -- what's going on, right?

A Yes.

Q Okay. How long did that occur?

A Ten minutes.

Q All right. So we're getting close now to noon. What happens next?

A Paul opted to stand them up.

Q Wait. Wait. Say that again. I missed that.

A Paul opted to stand them up instead of working on the sawhorses, and I just continued cutting. It seemed like it was okay to do.

Q Okay. Fair enough. So instead of putting the branches across the two sawhorses, you're saying Paul on his own opted to stand them up aside of the sawhorses?

A Yes.

Q So it would be leaning up against just one sawhorse?

A No, freestanding large end.

Q Oh, you mean and hold them with his hand?

A Hold them with his hand. He was holding them with his left hand to make a point of that.

Q Got you. Got you. Okay. So instead of using the sawhorses, you're saying Paul decided to hold them by himself with his left arm up while you cut them from around up; is that right? I need an answer.

A Top down.

Q Okay. So let me say it again then. Instead of using these sawhorses, you're saying Paul took it on his own to hold the branches with his left arm up and the branches down to the ground and you would cut from the top down to the ground each branch, right?

A Yes.

Q And that was Paul's chosen way that he was going to hold the branches?

A Yes.

Q Did you in any way voice any objection to him doing it that way?

A No. - why the Hell NOT?

Q Okay. And for how long a period of time were you cutting these branches in that manner where Paul was holding them up with his left arm to the ground and you were cutting them from the top down?

A 20 minutes.

Q Okay. So now we're at about 12:20, if my math is correct. Is that about right?

MR. BARCH: Hans?

MR. MAST: Yes.

MR. BARCH: Can I just ask, are these little horizontal cuts or are we talking --

MR. MAST: Well, I was going to get to that. I want to first get the time line down. Yeah, we'll get to that, but I will ask it now then.

BY MR. MAST:

Q So Paul is holding the limb -- the branches up with his left arm over his head, the branch is now from his left arm and hand going down to the ground and you were starting up below his hand and cutting every 18 inches?

A No, I was cutting the branches off of the limb.

Q Got it. So you were cutting vertically up and down while he was holding the tree vertically, you were cutting the horizontal branches in a vertical fashion --

A Yes.

Q -- from a top to a bottom?

A Yes.

Q And I imagine each branch has probably 30, 40, 50 little --

A I would --

Q -- branches off of it?

A I would say --

Q Hold on. Let me finish the question.

A Okay. Sorry.

Q Let me say it again now. Every branch or limb or whatever that Paul's holding above his head with his left arm, I'm assuming those branches, if they're reaching to the ground, are going to have 30 to 40 little branches coming off of it horizontally, correct?

A Not that many.

Q Okay. Maybe 20 then?

A Or less.

Q Okay. So those are the 20 little branches coming off of that branch that Paul was holding vertically that you were cutting?

A Yes.

Q And then the branch would be left bare branch from his hand to the ground?

A Yes

Q And then what would he do with that branch then, set it on the sawhorses to be cut up?

A Set it off to the side. We never got to actually cutting up the whole load of wood because of what --

Q Happened?

A -- happened, yeah.

Q His injury?

A Yes.

Q Okay. So for 20 minutes you and Paul worked where he would hold a limb up with his left hand over his head and the branch would be vertically down to the ground and you would be cutting from top to bottom each of the little limbs, 20 or so, off of that branch he was holding?

A Correct.

Q And how many separate branches did you do for that 20 minutes? How many separate branches did Paul have to hold?

A I'll estimate between 25 and 30. more than 1 Pam note!

Q Okay. And then what happened after that 20 minutes of doing that work? What was next?

A We arrived at a branch being held in the same fashion that was a little flimsy and in making the first cut, that went well as the uppermost one, second one and of course a pine, you know, they're left and right so I'm not just cutting on this side. I'm over here, over there, taking it down, taking it down. One didn't go through, and at the same time I went to go make the second cut, he put his right hand down to support it so it wouldn't bow and it did go through

and it just knocked his arm.

Q Okay.

A And that's -- that's what happened.

Q Fair enough. Now, that's the one that sounds like where his accident happened, right?

A Yes.

Q Okay. Because -- I see. Okay. Because if Paul arrived at 11:30, you're saying his accident happened around 12:30 which would be about the time where we reached going through the task by task, right?

ARRIVED AT Hospital at 2:46 PM
17 min TRIP - Did Paul JUST CA
FOR 2 HRS. With a cut that went through
40% of his FOREARM?

A Yes.

Q I got you. Okay. So were you still working at the time of Paul's injury with being cut by the chain saw in the manner of where he's holding the limbs up -- the branches up with his left hand over his head and you're cutting the horizontal branches off of that branch? You're still doing that at the time of his injury?

A That's what we were doing at the time of the injury.

Q Because you said you only did that for 20 minutes and then you did something and I thought you were going to say you were doing something

differently. You were still doing that at the time of his injury, right?

A We stopped as soon as he was injured. — TRUE

Q Okay. Let me ask it this way: Once Paul opted to hold the branches up with his left hand instead of using the sawhorses and you started cutting the limbs now off of that branch --

A Yes.

Q -- and you said you did 25 to 30 of those branches --

A Yes.

Q -- the last branch you did, is that the branch that Paul was holding when he was hurt?

A Well, it was the last branch that we did because he did get hurt.

Q That's what I just said.

A Yeah, we just stopped.

Q Let me say it again because I want --

A Yes, I agree.

Q Let me say it again.

A Okay.

Q You gave an estimate of like for 20 minutes you were cutting these horizontal limbs off of a branch that Paul was holding overhead, remember that?

A Yes.

Q You said you did that for about 20 minutes.

A Yes.

Q And you did 25 to 30 separate branches, right? Right? — Less than 1 min per Branch?

A Estimating, yes.

Q Okay. The last branch that you did in that fashion, is that the branch that Paul was holding when he was cut?

A Yes.

Q Oh, okay. Because this is why I was a little confused. You said at around 12:00, and I know we're just doing estimates on times, but you said around 12:00 you did -- for 20 minutes you cut those 25 to 30 branches; so I thought there was something else you were doing then after that by the time Paul got hurt, but that 20 minutes is inclusive of the time of his injury then, right?

A Yes.

Q Okay. So really the time frame you gave me from the time Paul arrived at 11:30 until his accident was more 50 minutes; does that sound about right?

A It's really hard to recollect the time frame when it wasn't relative at the time. There was --

Q I understand that.

A Let me finish, please. There was no time frame of getting the job done nor was I aware of the exact time that it happened because what was most important at that time when it did happen was to get him to the hospital.

Q I understand.

A And the only time that -- And the only time that I checked the clock is when we checked into the emergency room.

Q I understand all that.

A Okay.

Q That's not what my concern was. My concern was you gave me an hour after Paul arrived is when his accident occurred but the time line we gave was only 50 minutes by the time his accident occurred.

A Did you say 50 minutes?

Q 50.

A Okay.

Q So I just want to make sure we're not missing some other element of work that he was doing.

A No. No, we're not.

Q Okay.

MR. BARCH: I'm going to object because he's been

But HE precisely knew the time at the hospital 2-3 hr difference?

giving estimates all along, but go ahead.

BY MR. MAST:

Q All right. So under the estimates of time that we're giving, Paul arrives around 11:30, you start the type of work that Paul is holding the trees up by his left hand overhead as opposed to using the sawhorses around noon. You do that for about 20 minutes in your estimate and that's when he's injured, correct?

A Yes.

Q All right. So that last branch that Paul was holding when he was injured, that's what I want to talk about now. And that was a branch similar to the 25 or more before that, right --

A Yes.

Q -- that you were cutting, correct?

A Yes.

Q And you had cut these branches 25 to 30 times without incident, without any problem, correct?

A Yes.

Q And that Paul was holding the branches the same way in all those 25 to 30 times without incident, correct?

A Yes.

Q Okay. And they were all being held over Paul's head if Paul's 5, 8, then they were probably what, maybe six and a half feet over his -- or six and a half feet from the ground?

A They varied in amount of debris on each limb and height. As you go up a tree --

Q Okay.

A -- the lengths diminish.

Q So sometimes Paul is holding the branch directly out?

A Deviating between four and six --

Q You've got to let me finish my question, and you can answer in any way you want but at least let me finish.

So Paul might be holding some branches out directly out from his chest, some over his head just varying -- depending on height --

A Yes.

Q -- of the branch?

A Yes. Yes.

Q Okay. So anywhere from four feet off the ground he might be holding a branch to six and a half feet to maybe seven feet?

A No, not six and a half feet. I would say

somewhere between four and five feet. 4-5'

Q Okay.

A Somewhere in and around just right here.

Q Fair enough.

A Yeah.

Q So Paul is holding with his left arm -- or left hand out from his body extending out the branch is from anywhere from four feet off the ground to five feet off the ground, correct?

A The point where he was clasping that limb, yes, would be four to five feet above the ground.

Q And then underneath where he's grasping is where you're cutting?

A Correct.

Q The first cut that you're going to make is the highest off the ground is how far under his hand?

A A foot and a half, foot. So it really depe- --

Q All right. A foot and a half or a foot?

A May I finish?

Q Well, it's going to be best if you just answer what I'm asking and not try to add on every time.

A (Inaudible) sit here through that. I'm

sorry.

Q What's that?

A I'm sorry. It's just my character.

Q Well, that's fine. The question is this, he's holding these branches extending his arm out and holding them four to five feet off the ground depending on the height of the branch, right?

A Yes.

Q Okay. And you are cutting the first cut about 18 inches below his hand, correct?

A Yes.

Q That's the first cut, yes?

A Yes.

Q So that the branch that he's holding after you cut it is going to be about 18 inches long, right? The piece of wood that's in his hand after you make your first cut is going to be 18 inches long?

A No. No, he was placing the whole limb -- if I may, I know she can't record this. There's your limb off your tree. There's a pile of them. Stump down, that's where I cut it, the larger portion down to the ground. He would hold the smaller portion because on a pine tree they grow like this. If you don't know that, they grow upwards like that. So I

was cutting in the crotches of them. He was holding it, and I would stay away from him cutting off -- and I would not, like, cut towards the top, which is smaller, it's useless wood; we were just trying to get rid of the debris. So he would hold it and I would start cutting like this and put it over there. Off the pile --

Q I got you.

A -- another one --

Q I got you.

A -- stump down and hold it like that.

Q I got you. So he is not cutting -- The base of the branch that Paul's actually holding, you're not cutting that?

A No.

Q You're cutting the stems or limbs that come off of that horizontally?

A The sub limbs off the main limbs that were already removed.

Q Is that correct?

A Yes.

Q Okay. And the -- Although there might be limbs off of that branch all the way up to his hand, you're starting 18 inches below his hand just to stay

away from his hand, right?

A Yes. Yes.

Q Okay. So when you're done cutting that branch, there is still going to be some smaller limbs coming off of that branch at the top by his hand and that's okay, you can deal with it later?

A Correct.

Q Okay. So after you're done cutting horizontally all those horiz- -- Strike that.

After you're done cutting vertically all those horizontal limbs off of that branch, he puts the branch back and picks up another branch and you do that 25 to 30 times before Paul's injury?

A Yes. ~ 20 minutes

Q Okay. The branch that Paul was holding when he was injured.

A Yes.

Q Describe how high or off the ground he was holding that.

A Five feet.

Q Okay. And was it a branch like all the other branches?

MR. CALLAHAN: Just object to form of the question.

BY THE WITNESS:

A By way of species?

Q No. Was it any different from any of the other 25 to 30 branches he had held previously?

A It may have been a smaller one that is by way of diameter that he chose to hold up

He's trying to inject Fault again

Q This is what I'm asking. I'm not asking what you might -- what might have happened. I'm asking you, based upon you being there and I wasn't there, was the branch that Paul was holding when he was injured different in any way that you can tell that you recall than any of the 25 to 30 branches he had held previously without incident?

A None of the branches were exactly the same.

Q I understand that, but I --

A I don't know how to answer the question then.

Q Well, let --

A The --

Q Hold on. You answered it then. If you don't know how to answer it; you've answered it. So let me ask it a different way then. Other than every branch being a little different in size and thickness and amount of limbs off of it, is there anything unusual, anything necessarily different from that branch than

the other 25 to 30 branches?

A No.

Q Okay. And in appearance, the branch looked like any of the other 25 to 30 that you had cut just previously, correct?

A Yes.

Q Okay. And probably a similar number of -- a similar number of cuts off of this branch that Paul was holding when he was injured, you were going to have to make a similar number of cuts on that branch as to the other 25 to 30 branches you were cutting?

A Generally, yes.

Q Okay.

A Okay.

Q How many cuts were you able to make off of the branch that Paul was holding at the time of his injury before he got injured?

A Four.

Q Okay. So if I'm going to draw a picture of the branch, okay, and we're assuming that's a five foot branch and it has limbs going all off it up and down the branch, right? Right? Correct?

A (Nodding.)

Q Yes? I'm waiting for a word.

A I'm waiting to see what --

Q I'm not expecting you -- You don't have to follow my picture. I'm just saying if I'm --

A Well, I don't follow your description so I'm looking at the picture.

Q Okay. Well, I'm drawing a picture myself to --

A Okay.

Q -- demonstrate to you --

A I'll wait till you're done.

Q No, I can demonstrate it to you. I don't care. You can look at it.

This is a branch and then it has all these limbs coming off it in varying sizes, widths, and heights, okay? Fair enough?

A No, it's not the description of what was being cut. That's why I --

Q All right. You describe what was being cut then.

A The description of a pine branch or a limb is that it starts at a certain diameter, whether it be 3 inches or 2 inches, and over its length, which is also varying, it diminishes to just pine needles. About increments of every and varying also between

6 and 12 inches are branches again that from the larger diameter where it was cut from the tree begin to get lesser and lesser as you go towards the end of the branch.

Q Okay.

A There is a varying amount of how many branches are on there because no tree is exactly the same, so I was in conflict with what you were thinking --

Q Okay. Fair enough.

A -- it looked like.

Q So Paul's holding the branch at the top?

A Correct.

Q Okay. With his left hand?

A Yes.

Q What's he doing with his right hand?

A No. — NO what?

Q Just to the side -- to the side of him?

A Just aside -- aside and away, yeah.

Q Okay.

A Standing away from it actually as you had physically shown it. — Describe it.

Q All right. What you're saying is he's extending his left arm out in front of him keeping his

Developing his thoughts on the fly rather than true recollection

Continue again after longer Pause

Pause

Both? Oxymoron?

body away --

A Yes.

Q -- his left arm above and holding the branch while his right arm is aside of him so the branch is standing vertically maybe three feet from his body; fair enough?

A Yes.

- It's 2' from armpit to end of middle finger. 18 1/2" from armpit to wrist.

Q Okay. And then you start cutting these horizontal limbs off the branch at about 18 inches below his hand?

A Yes.

Q Okay. And do you remember how many cuts you had to make at a distance of about 18 inches from his hand before he was hurt? I'm not saying going further down, I'm just saying at the 18-inch mark where you were going to start the cuts.

A One.

Q Made one cut?

A One cut.

Q Okay. You got one cut?

A Very --

Q Hold on.

A I know that.

Q All right. Then you go down another distance

to make the second cut?

A To make another singular cut on a different branch, yeah.

Q How far down do you go?

A It varies with how -- how far apart they are on the branch. I would say between 6 -- 8 and 12 inches.

Q Listen, I don't want to guess so this is my question, okay? Hold on. Hold on. We know he's holding it at the top.

A Yeah.

Q We know it's about five feet, you said. We know your first cut is 18 inches from his hand, right? We know those things, right?

A Yes.

Q Okay. So my question is, based on what you've just told me now, how far down from the first cut that's 18 inches from his hand is the second cut on -- give me your estimate.

A I will give you an estimate of between 8 and 12 inches.

Q Okay. So that's the next limb is 8 to 12 inches, right?

A Yes.

Q All right. And then how far down is the next limb that you're cutting from that one you just cut, the second one?

A Again, 8 to 12 inches.

Q All right. And you're now on your fourth one. How far is the fourth one from the third one?

A There are branches on either side of that limb, which means I would cut this one, this one. This one, this one (indicating).

Q Okay.

A It looks like this.

Q I got you.

A Okay.

Q So what you're saying is, and I'm putting on my diagram on the same side -- hold on -- on the same side, but what you're saying is when you cut the first one, the second one is going to be on the other side?

A Yes.

Q Okay. That's fine. You can describe that. So the first one is on one side, you cut that 18 inches from his hand. The second one's on the other side, you cut that 8 to 12 inches below the first one?

A Yes.

Q The third one's on the same side as the first cut 8 to 12 inches below the second one, right?

A Yes.

Q And where's the fourth one? Same side as the second one?

A On the right side.

Q Over here?

A Staggered one, two, three, four.

Q Right. So it's the same side as the second cut then. If you have one, two, three, four --

A I wasn't methodically approaching each branch going left and right per se like, oh, I've got to start here or start there. It really mattered where he grabbed it and what was -- what was below his hand for me to start cutting and again --

Q Listen.

A And, again, the branches aren't aligned as you are drawing them. It's relative to me because --

Q Listen. The easiest process is for you to either say you know something or you don't know something, but you keep first leading --

A Sorry.

Q Hold on. Hold on. Hold on. You first lead me down here and then you just say well, I don't know

then. Tell me what you don't know and I'll move on, okay, but I'm going with what you're telling me. If you don't know something, you just say I don't know.

Let's start over. He's holding his left hand at the top of the branch. His first cut is about 18 inches below his hand, right?

A Yes.

Q On one side of that limb or branch?

A Yes.

Q Okay. So that limb is 18 inches down. You cut that limb off, that horizontal limb, and then you go down probably on the other side 8 to 12 inches and you cut the limb on the other side?

A No.

Q Okay. What? You tell me.

A On a pine tree they're grouped, that's what I was trying to show you, like this. They're not staggered all over the place. When they grow, it's a fan and they grow out like this, so it being stood up, I'd go one, two, three, four.

Q That's what I just did here but we can do it again. Let's try it again.

A Okay, but --

Q Hold on. This is what I'm trying to

understand and I'm trying to make it easy, but we can go through this. He's holding the branch up with his left hand and I'm trying to find out what distances you cut each of those four limbs until he's hurt, okay? I'm trying to find that out.

MR. CALLAHAN: Excuse me. It's just that there's a disconnect here. - Because Dave is making it up as he goes Rather than Recalling a memory

MR. MAST: Well, that's why I have to ask these questions. We'll get there.

MR. CALLAHAN: I understand. I'm thinking he's thinking that on your branch this branch comes out like -- it'd be on a 45 degree angle up? - What is 45°

THE WITNESS: Yes.

MR. CALLAHAN: -- if I may. Then there's branches like this and this with the pine needles on them so he's cutting this one here, this one here, and this one here.

BY MR. MAST:

Q Are you making three cuts on one branch?

MR. CALLAHAN: Four cuts.

MR. MAST: No, I don't think that's what he's saying.

MR. CALLAHAN: I think that's --

BY THE WITNESS:

A I'm making one cut.

Q Here, let me do it. I think this is what --

A May I?

Q Hold on. Yeah, I'd be happy to. Let's probably do it that way. Make it easy.

A Thank you.

Q We'll save about a half an hour of questions.

A Right.

Q I was trying to get it described that way but it might be easier just to do it this way.

A Oh, I'm going to make it pretty. We've got time. I have time.

Q You want some crayons?

A I'm going to make a Christmas tree for you. That is a pine branch.

Q Okay. Now, let me ask the questions here. All right.

A I'm cutting it right here in the crotch.

Q I've got it. See, your answers aren't going to help unless they're after my questions.

A We'll get it all figured out.

Q All right. We're going to mark as Gagnon Exhibit 1 that pretty tree you just drew, okay?

A Thank you.

MR. BARCH: You'll have to call it a -- It's a single branch, not a whole tree.

THE WITNESS: Single branch.

MR. MAST: Okay. It's a branch. All right. I'm sorry. I'm not good at these things.

BY MR. MAST:

Q All right. That's a -- Obviously it's not to scale or anything, but it's just a drawing of a pine branch, right?

A Correct.

Q And it's supposed to represent, even though it's not exact, a typical type of pine branch that you and Paul were cutting on the day of his accident?

A Correct.

Q Okay. Different sizes, different amount of limbs coming off them but that's a representative of those types of branches, right?

A Yes, it is.

Q Okay. So if we look at this, the base is obviously going to be wider than the top of it, right?

A Yes.

Q So I'm going to put a T on your drawing where the top of that is and a B where the base is. Did I

just do that?

A Yes.

Q So we know what words to use?

A Yeah.

Q Okay. So I'm going to put T O P and B A S E. So we can refer so that we're using the same language. Paul is going to be holding with his left hand the top of the branch, right?

A Correct.

Q And then the base is going to be against the ground in a vertical fashion from where he's holding at the top, right?

A Yes.

Q And then starting 18 inches below his hand, you were going to start cutting on either side of that branch the horizontal limbs that are coming off that branch, right?

A Yes.

Q Okay. So if this were a branch that Paul was holding, his hand would be at the top and then you would make one cut -- oh, you'd start -- okay, you'd skip the top of it --

A Because it's --

Q Hold on. You'd skip the top limbs because

that's too close to his hand so you'd come down to maybe the next set 18 inches below and start making a cut there?

was the first cut ON Dares Left or Right of Center Branch?

A Yes.

Q Then you'd go on the other side and make another cut?

A Yes.

Q That's two. Then you'd make another cut on there --

A Yes.

Q -- that's three. Then make another cut, that's four. Then cut there, five. Cut there, six. And you have the whole branch cut, right?

A Yes.

Q Okay. So let's number these one, two, three, four, five, six. Does that number what we just discussed?

A Yes.

Q So you're basically at least on this demonstrative drawing, you're making six separate cuts off of this branch and then you put the branch down on the ground and get a new one?

A Yes.

Q Okay. All right. That did clear up about a

half an hour, so thank you.

A You're welcome.

Q Okay. And I'm sure they weren't all six cuts every branch, right?

A No, they varied.

Q [redacted]?

A [redacted]

Q As far as --

A There's no average.

Q Okay. There's maybe six, eight, ten, something like that?

A There's no average. There's no way to average it.

Q Okay. The branch that Paul was holding when he was injured was a branch like most other branches although in different sizes, correct?

A Yes.

Q Okay. And you're telling me you made four cuts until he was injured?

A [redacted].

Q Okay. On the fourth cut?

A [redacted].

Q Fair enough. So if we just start with that one branch that Paul's holding and discuss what you

did up and to the time he was injured, you made the first vertical cut from the horizontal limb 18 inches below his hand, you made the second one on the other side just like you did on Exhibit 1 here, then you went down 8 to 12 inches lower, made the third cut on one side, then you're going to the other side to cut the fourth cut, right?

A Yes, correct.

Q What happens when you're going from the third cut to the fourth cut that you believe is what caused Paul to get injured?

A The fourth cut, not much unlike all the other ones, the branch bowed. It may have been because it wasn't rigid, it may have been weaker than the rest. I don't know.

Q Can I stop you for a minute just so I know what you mean by bowed. What do you mean, it was -- it was like limp?

A Yes.

Q Okay.

A Yes, not as rigid as the other one perhaps.

Q So when you say -- I don't want to jump too far. When you say bowed then, that means when you press the chain saw down, it kind of gives a little

bit more?

A Yes. Yes.

Q Okay. All right. So you're saying the fourth limb that you're going to cut, that limb is a little more weak, it gives a little bit more than the other three that you already cut?

A The main branch taken from the tree is what I'm talking about. I'm not talking about the branch I'm cutting off. As I approached the crotch the main branch which I depicted on the drawing there gave way.

Q Okay. So if we -- Hold on. If we define then just so we know we're talking the same language, the branch is the solid continuous piece of wood that Paul's holding whereas the limbs are the parts that come off of that branch. Let's use those terms, okay?

A The limb is the larger piece; the branches are what come off the limb.

Q All right. I'm sorry. All right. We'll do it that way then. Let's define it that way.

MR. BARCH: Don't you watch that show on TV, those Ax Men?

MR. MAST: No. No. No, I don't.

BY MR. MAST:

Q So let's put that on the -- I'm going to

write that on here so we use these same words. Because I don't want to change the words so I put on Exhibit 1 here branch for the little parts that come off the main limb.

A Yes.

Q Fair enough?

A Yes.

Q That's what we're going to describe?

A Yes.

Q All right. So what you're talking about is so we use the same terminology, the limb is what Paul's holding with his hand that goes vertically from his hand to the ground?

A Correct.

Q And the branches are the things you're cutting off of that limb six to eight or so cuts right?

A Yes.

Q Okay. So what you're saying is after you cut three of the branches off of the limb Paul's holding, the fourth branch -- What happens with the fourth branch?

Now it's when his saw is already cutting vs. giving way?

A The limb had flexed slightly causing the chain saw to come out of the crotch.

Q Okay.

A At that time, without moving away from that instance, I approached the cut again. Simultaneously Paul wanting to help me went to support it with his right hand and at that same time I went through the cut and kicked his arm.

Q Okay. Okay. Now, when you're saying Paul went to -- what did you say? -- support it?

A Yes, support it.

Q What was he -- Do you know what he was going to do with his right hand?

A I'll tell you what he did with his right hand. He actually grabbed the limb and supported it.

Q What part of the limb?

A Below the next cut that I was -- the last cut that I made when it flexed and just below the one that I'm talking about and followed through.

Q All right.

A The fourth cut.

Q So let's talk numbers.

A The fourth cut.

Q You just made the third cut.

A Yes.

Q And the fourth cut was still the same

distance from the top of the limb --

A Yes.

Q -- but it was on the other side --

A Yes.

Q -- of the third cut, right?

A Yes.

Q And had you cut the fourth branch by the time Paul was injured?

A No. Then what made the limb Bow?

Q Okay. So the fourth branch was still there?

A Yes.

Q But you were attempting to cut it, right?

A Yes.

Q And when Paul was holding with his left hand, the limb, it kind of flexed because it's held up against the ground?

A Yes.

Q And it kind of bowed a little bit and you're saying Paul then with his right arm did what? Below which cut

A Went to support it below that cut as I went to finish the cut.

Q Okay. So when you cut his arm, Paul's arm was his right arm on any part of that limb or branch?

A Yes. ARM or Hand?

Q What part?

A Below the fourth cut which did not go all the way through.

Q Okay.

A He would have been like this (indicating).

Q All right. Hold on. So you just demonstrated that his left arm was up, his right arm was down on this limb, right?

A Correct.

Q So when you -- when he had his right arm on the limb and his left arm on the limb together, his right arm was below the fourth branch that you were going to cut, right?

A Yes.

Q How far below?

A Maybe 8 inches. His hand was collapsed onto the limb about 8 inches below that last cut that didn't go through.

Q Fair enough. Okay. And when you made that first attempt to cut that fourth branch, was his hand there at that time or was that after you tried to make that first attempt?

A It was after I made the first attempt at the fourth cut.

Q Okay. You made the first attempt at the fourth cut and because the limb bowed, you were not able to penetrate the fourth branch, correct?

A Correct.

Q So did you just in a split second go back and try it again or did you wait a couple seconds or what happened? How long was the process?

A Like microseconds. It was -- You know, it's a matter of just going -- and at the speed you can see -- I'll describe it if I need to or if you want me to -- cut, cut and also the manner in which I'm cutting, it's called the locked elbow position. You don't just freewheel a saw. Nip, nip, nip, and it went... I was like okay. And at that same time he just reached over to kind of help me out so it wouldn't flex and that's how it all came together.

Q All right. Well, if he's reaching over and that's why you cut him, then that leads me to believe that he's not holding on to the limb at the time that you cut him.

A Oh, he's holding on to the limb.

Q So is he reaching over at the time you cut him or is he already holding on to the limb?

A Simultaneously as he reached down to that

limb standing like this flexed like that. At the same time I went to finish the cut and I did finish the cut. Like I said, it just -- Didn't the limb snap back from the ~~flex~~ after weight Boss of chainsaw was lifted

Q All right.

A Just --

Q Hold on. You're going way too fast for us and we're going to have to repeat the questions over and over again and if we can just go step by step, okay?

A Okay.

Q As he -- As you make the first attempt at cutting that fourth branch, the tree flexes and your saw blade bounces up or do you --

A Slightly bounces up, yes. -- Bounces from what?

Q Okay. Then do you immediately put it back down to cut it a second time to try to cut it a second time or do you wait? Do you hesitate?

A I didn't hesitate. --

Q So you immediately did it then, right?

A Say it again. No, just the last part.

Q I know. I get it. Your first attempt to cut the fourth branch to the second attempt to cut the fourth branch there was no hesitation, it was just tried to go down and get it, it bent and then you went

back down to get it and you cut it off?

A Yeah.

Q And that's -- when you went back down to get it that second time, that fourth branch, that's when you cut his arm?

A That's when he placed his hand there and got it cut. ← Puts Blame on PAUL

Q Right.

A Yes.

Q Okay. So when he was cut -- physically when the cut occurred, was his right hand on the limb or not?

A Yes, it was on the limb. - clinched?

Q Did you know it was on the limb?

A Yes, I did. It was clasping the limb.

Q Okay. How long was his right hand clasping the limb below the forth branch that you were going to cut before you cut his arm?

A It's hard to operate a stopwatch while you're operating a chain saw. I really can't give you a time frame as to something that happened so quickly and when two men come together. Like I said, I can't -- I can't answer that question. I don't know. I don't know. — He seemed to know earlier

Microseconds? Simultaneous??

Microseconds?

Losing it again

Seem to Lose it

Dulberg 008059

Q Listen, you gave me five minutes of why you don't know. Just tell me you don't know, that's fine. We can move on.

A I'm sorry. It's my character. I'm very inclusive in my answer descriptive.

Q All right. Well, I'm just trying to tell you you don't need to do that.

A And I'm working on it right now.

Q All right.

A I'm glad you --

Q So the question is, and I'm not saying is it five minutes between the time you first tried to cut it until the second time you cut it. I understand we're talking seconds, okay. My question is --

A Milliseconds.

Q All right. Milliseconds. Fine. My question is, when you went down to cut that fourth branch the first time and the tree bent --

A Yes.

Q -- and you had to go down right away and cut it a second time, when you went toward that fourth branch to cut it a second time, when you went toward it, was his right arm on the limb at that time or was he off it and going toward it to hold on to it?

A At the exact same time that my saw went through that fourth cut, his hand clasped that limb.

Q That's not my question. My question is this; I'm going to say it again. My question is, you went down to cut that fourth branch off and the limb bowed so you went at it again; and my question is, when you went at it again for that second cut on that fourth branch, was his right hand grasping below that fourth branch at that point?

A In time?

Q Yeah.

A Simultaneously.

Q Okay. So that simultaneously you're saying when you're going after that fourth branch the second time --

A Yeah.

Q -- he's now at the same time grasping on below that fourth branch to hold on to the limb?

A Yes.

Q Okay. And do you see him as he is moving his right arm toward the limb to hold on to it or do you just see at the last second when your saw is going towards the branch?

A I was focused on the branch and the cut. I

wasn't looking at him. — How does he know I was reacting to the branch?

Q So your answer is you didn't see his hand moving toward the --

A No, I did not see his hand. — Wait, That changed! Thought it was moving in, clasping etc--

Q You've got to let me finish the question.

A I'm sorry.

Q We're going to be here all day. Your answer is you did not see his hand motioning toward the limb -- his right hand motioning toward the limb to hold on to it, you only saw it right when it clasped the limb right when you were going at the branch a second time?

A Yes. — Again He's changing story

Q So the time -- Simultaneously when you're cutting that fourth branch, that's when you go through that branch and then you end up going into his arm, correct, his forearm?

MR. CALLAHAN: I'd just object to the form of the question.

BY THE WITNESS:

A You're leading me into cutting him and that's not what happened. — yes it is!

Q Oh, I'm sorry.

A I feel as though I am. — what, you are what?

Q I get what you're saying. I'm sorry, maybe that wasn't the way you wanted me to word it. I'll try to word it differently.

A Thank you.

Q You're -- At least from what you're saying is, you are motioning toward that fourth branch a second time in attempts to cut it so you're moving the chain saw, as you said, in that rigid locked position with your elbow --

A Yes.

Q -- toward that fourth branch to cut it, right?

A Yes.

Q So if you're going toward that fourth branch to cut it, and I understand you're saying his right arm is locking on to that limb at the same time, right? Right?

A Yes.

Q But you're moving the chain saw forward to cut that branch, right?

A Yes.

Q So when you're moving that chain saw forward to cut that branch, that moving forward manner ends up striking his forearm in the manner that it did to cut

him, right?

A I think we're overlooking the word simultaneous. I'm sorry that I can't just answer your question but it's -- the description is --

Still can't accept Fault + Blames Victim

Q What do you mean?

A The description is not fitting the instance that happened for me per se.

who talks like this?

Q Put his arm movement aside for a minute.

A Okay.

Q Okay?

A All right.

Q We know simultaneously he's using his right arm to grab on to that limb while you're making that second cut to the fourth branch, right?

A Yes.

Q That's happening simultaneously; I understand that.

A Yes. Okay.

Q My question is, while you were going down to that second cut of that fourth branch, you're moving the chain saw forward to cut that branch, right?

A Yes.

Q And in the process of moving the chain saw forward to cut that fourth branch, that is the process

that takes your saw blade into his arm. Whether his arm is moving or not, we can -- I can ask that next, but the process of you moving forward with the chain saw is part of what led to his arm being cut, right?

MR. BARCH: I'm going to object to the form of the question. It's also argumentative. Go ahead.

BY MR. MAST:

Q Go ahead.

MR. CALLAHAN: I'll join that objection.

BY THE WITNESS:

A As you had said, it's part of how it happened.

Q Right.

A It's an equal share.

share of what?

moving Dolan's moving forward?

Q Okay. Equal share meaning you're saying his arm's moving near the limb as well as the chain saw you are operating is pushing forward toward that limb and the arm and the chain saw meet and he becomes injured, correct?

A Correct.

Q Okay.

(A short break was had.)

BY MR. MAST:

Q All right. Finish up where we got this tree

now. So you're holding the chain saw, you're going for that second attempt at the fourth branch to cut it, and while you are cutting that fourth branch is when the -- when Paul's arm is struck; is that right?

A Yes.

Q And so the chain saw is under your control at the time, right?

A Yes.

Q You're not out of control, are you?

A I'm in control with the chain saw, yes.

Q Okay. And you're wanting to cut it when this happens, right? You're wanting to cut with it when it happens?

A Yes.

Q Okay. You are attempting to cut the branch and that's when Paul's arm is attempting to hold on to the limb, right?

A Correct.

Q And the chain saw is in motion when Paul's arm is struck, correct?

A Yes.

Q Okay. And the first time you see Paul's arm is when his right hand is grasping the base of the limb below the fourth branch, correct?

Puts Chainsaw above? cut is underside of ARM

A Yes.

Q You don't see it coming from the side toward that bottom part of the --

A No. —

Q -- of the -- of the limb, correct?

A No, I did not, correct. — I thought

Earlier He Said I was moving in to help him.

Q Is that correct?

A (Nodding.)

Q Okay. Is that correct?

A That is correct. — 3×

Q Okay. Okay. When he gets cut, what is the first thing that happens? Does he scream? Do you say something? What's the first thing that happens the split second he's cut?

A I say no. He says yes.

That's one hell of a tolerance I might have

Q And what do you mean by no? You mean no, that's not happening or what?

He did Deny his part But that's Not what was Said.

A Yeah, like no. No, it didn't happen.

Q Okay. And he says what?

A Yes. Let's go.

Q Yes what?

A Let's go.

Dave wanted out of there. HE Just DOES not want to help.

Q Let's go what?

A Let's get out of here. It's time to go.

We've got to go to the hospital, you know? Yes, let's go.

Q That's the first thing that happens once he's cut, right?

A Yes.

Q And when he gets cut, are you able to see the chain saw making contact with his arm, or how do you first discover he's cut?

A It just looked like I could have nipped him. It was so close that it looked like I could have touched him.

Q Okay.

A That's what I did, I touched him.

Q All right. Had Paul ever held a limb before he got cut with both hands before this?

A No.

Q Okay. So you did not expect him to do that?

A No, I did not.

Q Okay. And after you say no and he says yes, do you guys -- do you basically put the chain saw down and get in his car and go to the hospital?

A I threw the chain saw down and got in his car to go to the hospital.

Q Was he bleeding?

A Yes. — TRUE

Q Do you know -- and, again, I don't knows are fine answers. I'm not trying to imply you know things but I just have to ask. Do you know how far or how deep the chain saw went into his arm?

A I could tell you pretty accurately. I was there in the operating room. It never went past the epidermis. — All the DRS & STAFF + x-rays were wrong!

Q What do you mean, the skin?

A Yeah.

Q Did it open the skin? 40% of AKA was CUT!

A Yes. — TRUE

Q And it was bleeding?

A Yes. — TRUE

Q Okay. Well, I mean, the doctors will be able to tell us how deep it went. Are you telling me you have some kind of medical ability to tell how far it got cut?

A I'm educated (12th grade) to a certain extent and I was educated there in the emergency room and I heard everything that was being said and I was shown and even Paul said look, and I was right there the whole time looking. — DR. DAVE KNOWS ALL — LOL

Q You don't have any medical education or

ex- --

A No, I don't.

Q Wait. Back and forth here, please, please. You don't have any medical education or training, do you?

A No.

Q Okay. So any type of depth of incision or cut that you would be talking about would be just based upon what you saw visually, correct?

A It was visual, yes. - Thought he just said he was there in the ER. & heard everything

Q You never went with your finger inside the wound?

A No.

Q Or any type of object?

A No measuring devices were employed, no.

Q Okay. Did you hear the doctors talk about how far it was cut in?

A Yes.

Q How far did they say?

A Not deep, that was their assessment.

Q Okay.

A He was lucky.

Q Okay.

A It only hit the fascia; that's what they

said.

Q All right. Do you know -- You've known Paul a long time before the accident?

A 35 years.

Q Okay. Have you ever known him to be injured in any way before this accident?

A Yes.

Q Okay. What is that?

A A car accident.

Q When was that?

A I cannot put a pin date on it, but I can say it was over seven years ago.

Q Okay. So maybe around 2006, somewhere around there?

A I am guessing at that, but I know that there was an instant which he was involved in an accident and he also pursued.

Q Okay. Here, listen. Just follow me. If you follow me, we'll go where we need to go and get there fast, okay?

A As I said, it's a struggle because of my character.

Q All right.

A I'm descriptive and inclusive.

Q Fair enough.

A You don't have to keep correcting me -- or you do have to correct me; that's your job, but --

Q Fair enough.

A -- I'll try to get there for you, okay?

Q All right. Motor vehicle accident about 2006. Were you in the accident with him?

A No.

Q Do you know what injuries he suffered in that auto accident?

A Nerve damage to the left elbow that was allegedly struck.

Q In this case you mean?

A In that other -- Yeah.

Q Did he ever have any surgery for that left elbow?

A I know he was poked and prodded. I don't know if he was -- had actual open surgery for it though.

Q Did he ever resolve that injury up until the accident in this case?

A I don't know.

Q Okay. Other than a left elbow nerve injury in a motor vehicle accident around 2006, any other

injuries from that motor vehicle accident?

A I don't know.

Q Okay. How do you know about that left elbow nerve injury then?

A Because he showed people and talked about it openly.

Q Was it a different location than where he was lacerated or cut in the chain saw in this case?

A Yes, it was an entirely different arm.

Q Oh, I'm sorry. You're right. I'm sorry. I wasn't thinking that far ahead. Good. In this case -- In this case the chain saw was the right arm. In that case it was the left elbow, right?

A Yes.

Q Okay. Any other injuries other than the motor vehicle accident?

A I'm not aware of.

Q Okay. Any other prior -- prior to this case, any prior injuries to Paul?

A Not that I'm aware of.

Q Any prior conditions of ill health with Paul before his chain saw accident?

A I'm not aware of any.

Q In the four or five year let's say -- Strike

that.

In the five years before this chain saw accident in June of 2011, was Paul in any way disabled or limited in what he could do physically?

A I don't know.

Q Okay. Well, to what extent you do know -- to what extent your contact you've had with him, you're not aware of any; fair enough?

A Correct.

Q Okay. Are you aware that Paul was under any medical consultation or treatment in the five years prior to Paul's chain saw accident in this case?

A I am not aware.

Q Okay. After this accident are you aware of Paul receiving medical treatment from time to time for his right arm laceration?

A Yes.

Q How many times -- Let's say in the month after this chain saw accident, how many times did you see Paul? I mean, was it every day?

A No. No. Maybe three or four times since this accident I've seen him.

Q Total?

A Yeah.

Q Up until now?

A Yeah.

Q Oh, I see. So it's been very infrequent then?

A Yes.

Q Okay.

A Just the instances where we exchanged what I had given in the beginning of this deposition.

Q Right.

A Those are the only times I spoke to him.

Q All right. So let me summarize that just to make sure we're clear. What you're saying is, I'm assuming before the accident you saw Paul a lot, right, or not?

A I wouldn't even say frequency. From time to time.

Q Maybe once every couple of weeks or something?

A Yeah, that's honest. That's fair.

Q All right. So let me word that all out then. Before the accident you were seeing Paul every couple of weeks maybe infrequently; fair enough?

A Infrequently, okay, yes.

Q Fair enough?

A Yes.

Q After the accident you saw Paul only on those occasions where you had words with him that you described at the beginning of the deposition?

A Correct.

Q And that would have been, looks like, four times?

A Yeah.

Q Right?

A Yeah.

Q Okay.

A With the exception of the one time when he did come up to help me work, but we didn't discuss anything that had to do with the case; he just came up to work.

Q When was that? Was that a different time?

A It was after the accident. He helped me do a roof on my house.

Q So it's different than the four times we talked about at the beginning of the deposition?

A Yeah, we were talking about conversation and this wasn't really conversation. It was -- we were just working.

Q Okay. So that's why I'm trying to get this

summarized.

A Okay.

Q After the accident we talked about four different times you had a conversation with Paul about various things. We talked about those, we tried to give approximate dates and things.

A Yes.

Q Okay. Other than those four conversations with Paul, you said there was one other time you had -- you were with Paul after his accident and that was to do a roof?

A My roof at my home, yeah.

Q Okay. When was that?

A It would be October.

Q Of what year?

A 2011.

Q Same year as the accident?

A Yes. Yeah.

Q All right. So you did -- Was he helping you do roofing work on your house?

A He was helping me tear it off.

Q Okay. Did he have any kind of bandage or brace on his right arm from the injury in this case?

A No.

Q How many days was he helping you?

A Just one.

Q For how many hours?

A Five, six hours. — 2 or 3 hours - I gave up + left

Q Okay. So you're saying after the accident in October of 2011, we're talking maybe about four months after the accident, Paul helped you on one day five to six hours to pull your old roof up off your house?

A Yes.

Q Okay. Was anybody else helping you --

A Yes.

Q -- during that time?

Who?

A Mike Shoshie, neighborhood friend. ← Found out Dave & this guy are Partners in Crime, & don't Can't Find this guy on Internet at all. wonder why

Q How do you spell that?

A S H O S H I E.

Q Is he still a neighborhood friend?

A Yes, he is.

Q Where does he live?

A Two blocks away from me. I can't give you his address; I don't retain it in my memory, but I know where he lives. I could submit that to you at a later time if you'd like. - Please DO

Q Very good.

MR. BARCH: I need to at least go on record that we started around 1:00. There's been some breaks, it's now 3:45. If Mr. Gagnon's attorney is going to stick to the three-hour limit, I need some time.

MR. MAST: I'll try to wrap it up.

MR. BARCH: I know, but I don't want to get to the three-hour point and have the plug pulled. There's only 15 to 20 minutes left.

MR. MAST: Well, I guess that's -- that's -- I mean, we didn't -- Hold on.

MR. BARCH: Well, I think you and I have a duty to share our time.

MR. MAST: Before the dep we didn't really discuss this so it's fair that you bring that up. I don't know if you have a lot, but I'm trying to wrap it up now with me. I don't think I'm going to take the full -- I don't think I'm going to be a half an hour from now. I don't know how much time you have so is it -- do you have a lot of time or are you just looking at 10, 15 minutes?

MR. BARCH: Yeah.

MR. MAST: Yeah, so we should be fine.

MR. CALLAHAN: Yeah, during the break Mr. Mast and I discussed this. We're told the deposition

started at 1:12. He said he'd wrap it up so you should have time.

MR. MAST: Yeah.

MR. BARCH: Okay. Good. I just want to make sure we're all on the same page, that's all.

MR. CALLAHAN: If you go a little over, I'm not going to jump up and scream.

BY MR. MAST:

Q Anyone other than Mike Shoshie, you and Paul that was assisting on your roof at the time Paul was helping you?

A No one else was assisting but there were witnesses that seen him helping in those duties.

Q That was my next question by the way. Who was that?

A Joe Vlk. another Partner I Don't Know either witness and Don't know how they know me.

Q How do you spell the last name?

A V L K. No vowels.

Q Where does he live?

A In the neighborhood by me also.

Q Anybody else?

A My wife.

Q Okay. And are you aware of him having any difficulties in helping you during those five or

VLK can be found on Internet and ~~is~~ is listed in Geneva city.

six hours because of his injury in this case?

A He seemed to not exert himself fully and was, if not nursing, staying away from using that arm in full but nonetheless was still grappling and moving.

Q Fair enough. So you're allowing the fact that he was reserving some of his -- saving himself a little bit for the right side where he hurt his arm in this chain saw accident as if there was something still lingering there?

A Yes.

Q Okay. But he still was able to help you for five or six hours irrespective of what might be his ongoing issue?

A Yes.

Q Okay. So other than those five to six hours that given day in October 2011, you had four other meetings and conversations with Paul that we already fully talked about and there's no more need to detail those anymore; fair enough?

A Correct.

Q Okay. And the first conversation was coming right out of the hospital that day of the accident, right?

A Yes.

Q The next one was four months later, the other one was 2012 and the last one wasn't about any financial thing but it was a little bit before the 2012 meeting; fair enough?

A Yes.

Q Okay. Have you now told me everything that you had -- Well, strike that.

Let me ask this question first. Did you and Paul at any time discuss how or why the accident occurred?

A No.

Q Okay. And that's on both sides. You never told Paul, Hey, why were you holding on to the branch, or, I didn't know you were doing that, or, Why were you grabbing with your right arm? You never told that to Paul, did you?

A No.

Q And Paul never said, Hey, why were you cutting the way you did, or anything like that; he wasn't complaining to you?

A No.

Q Okay. Have you talked to anybody else other than your attorney and your insurance company about what happened?

A No. My mother. Just back to my mother.

Q Oh, and you might have -- You know what? This isn't a big deal, but I think in terms of just being all-inclusive, you did -- I printed out what my assistant wrote down from a recorded statement that you knew I was taking over the phone of you, correct?

A Yes.

Q Did you read this at all?

A That one I -- Yeah.

Q Huh?

A Yeah.

Q This is the narrative from the recorded statement that she took down and I'm assuming she took it down right. I didn't go and read it and listen to it.

A Yeah, I had a few blanks in there and such that, you know ...

Q Well, hold on. The question is --

A Yeah.

Q And I'll mark this as Exhibit 2, okay, and I'll just put a 2 for now. But would you agree that -- and I know you didn't listen to the recording so I understand that, but would you agree that reading this narrative marked as Exhibit 2 accurately states

what you would have said on that phone call to me?

MR. CALLAHAN: I'd just object to the form of the question and as to the number of variables with the recording and with the transcription of the process itself, including some of the language in the transcript and ask him if he could -- I think it's better if this would be pointed out page by page or -- excuse me -- line by line more or less if he's agreeing with that.

MR. MAST: I can do that. Yeah. Joe, I'm just trying to make it easy.

MR. CALLAHAN: Yeah.

BY MR. MAST:

Q Let me put it this way: Have you read this narrative from your recorded statement?

A Yes.

Q Is there anything in the narrative -- and I'll let you read it again if you need to, is there anything in this narrative, Exhibit 2, that you believe you did not say that's attributed to you?

MR. BARCH: Form of the question, but go ahead.

BY MR. MAST:

Q Here, I'll give it to you again. Just read it through. I don't want to go through line by line

unless you want to but basically I'm asking you, did you say those words and is this --

A This besides the blanks that are there --

Q Yeah, besides the blanks.

A -- yeah.

Q Okay. All right.

MR. CALLAHAN: And I'd just point out too that there seems to be -- like if you read that thing in total, there are eight parts where the subject and verb don't agree, there's parts where it goes on, it doesn't make sense and that also has to be considered as well as to the totality of the accuracy and the candor of the statement.

BY MR. MAST:

Q Okay. This is my question, and again I know you didn't compare the audio to that statement; but you read that statement and all I'm asking is, you generally recall giving me a statement over the phone, right?

A Yes, I do.

Q And does that generally, and again we can listen to it to find out specifically what it says; but does that generally meet with your recollection of what you said?

A Yes.

Q Okay. And that's Exhibit 2, correct?

A Yes.

Q All right. Again, it is what it is. Let's put Exhibit 2 on here so we can keep track of these things. Okay.

Now --

MR. MAST: Oh, I didn't put this on the record. I'd like to put this on the record. I don't have answers today of interrogatories, nor I don't think this response is to my production request. Let me just see. No, this response to the production request is to codefendants' response. So I don't have that discovery, nor answers to interrogatories to my discovery. I'm assuming nothing is going to be crazy or different than what went over today but to the extent it does, I'm going to reserve my right to the extent I need to, but let's just mark this as Exhibit 3.

BY MR. MAST:

Q And what Exhibit 3 is, is what I was given today right before the deposition are, Mr. Gagnon, your answers to codefendants' interrogatories and response to production request. Nothing that you need

to concern yourself to other than I will ask you Exhibit 3, is this your signed answers to interrogatories that you're giving in this case?

A Yes, I received this in the mail and answered those questions as they are printed.

Q And you signed it verifying these are your true and correct answers, correct?

A Yes.

MR. BARCH: Do you have a signed version? I don't have a signed one.

MR. MAST: Yeah, it's signed.

BY MR. MAST:

Q All right. Has -- I think defense counsel already answered this, but I just want to make sure that you haven't heard anything that your defense counsel hasn't heard -- has your homeowners insurance rejected or reserved their right for coverage in this case at all, to your knowledge?

MR. CALLAHAN: I'd just object, it may call for privileged conversation and I object as to it may call for conversations with insurance company but -- and I can answer as far as I know, there's been no rejection of anything, and I'll make that stipulation --

MR. MAST: I'll accept your answer then; that's

fine. All right. Let me just look through your answers to interrogatories, the ones that I've got. Hold on one minute.

BY MR. MAST:

Q Have you talked to your mother -- Or strike that.

Have you talked to your parents at all about this incident with regard to whether they saw anything?

- He admitted + can't say ONLY spoke with mom

A No.

Q Okay. Do you know if they saw anything regarding the incident?

A I know they didn't see how it went down.

Q Did they -- Do you know if they saw the process of what you and Paul were doing in cutting these branches down?

Did when he was the Pool. So Did Dian when she used the Pool

A No.

Q Okay. Do you know if they knew about the incident before you left the property that day?

A Yeah, they knew that something had happened --

Q Okay.

A -- bad.

Q Okay. Since you only met or spoke with Paul

on a few various occasions after the incident, I'm assuming you're not really up-to-date on the nature and extent of his recovery and/or his medical injury; fair enough?

A No, I'm not.

Q Is that fair enough?

A That's fair.

Q Okay. So what limitations or the severity of the injury and what it's turned out to be, you don't know about; fair enough?

A I don't know.

Q Okay. And the work you were doing was at the request of your parents, correct?

A It was at the submitting of my parents for my suggestion that it was a good time to do this.

Q It was for purposes of your parents. It was their property and it was --

A Yes.

Q -- work doing --

A It was for purposes of my --

Q Hold on.

A Okay.

Q It was for their purpose, your parents' purpose to do it. You weren't benefiting yourself in

doing it, were you, other than getting money for it?

MR. BARCH: I object to the form of that question. It calls for legal opinions.

Not According To Parents

MR. MAST: I don't --

BY MR. MAST:

Q Go ahead. Do you want me to ask the question again?

A Yeah.

Q All right. The work you were doing in cutting the tree on your parents' property when this injury occurred was to benefit your parents, correct?

A Yes.

MR. BARCH: Same objection.

BY MR. MAST:

Q Okay. And you were getting paid to do it, correct?

A Yes. – Not According To Parents

Q Okay.

MR. MAST: Go ahead. I'll let you go and see if I have anything else here.

EXAMINATION

BY MR. BARCH:

Q Hopefully don't have to cover everything over again, but I do want to back up a little bit. Mike McArdle?

A Mike Mcartor.

Q Mcartor?

A Yeah, Mcartor.

Q He was a friend of yours for a long time as well?

A Yes.

Q And what's the connection between him and Mr. Dulberg? I mean ...

Paul owned House Not Mother

A They both live together in Paul's mother's home.

Q They've been living together for years?

A Ten years. — 4 yrs. Not 10

Q Ten years?

And it's a sensitive question, but are they a couple?

A A lot of people wonder. — Is David homophobic?

Q Okay. Well, do you know?

A I don't know.

Q You've known them both for years.

A I don't know. I mean, I don't know either way so I just don't know. I'm not being facetious; I just don't know.

Q Have you ever talked to Mr. Mcartor about what happened?

A No.

Q No?

A No.

Q They -- There was one conversation --

(Short interruption.)

BY MR. BARCH:

Q There was one conversation I think you had with Mr. Dulberg and Mr. Mcartor was present?

A Yes.

Q And let me see if I can remember which one that was. Do you remember of the four that we talked about earlier --

A Yes, it's the one in the kitchen where Mike was present and Paul had commented that he thought that this was a blessing and the best thing that could have happened because he won't have to work another day of his life. Won't have to retrain for a job, blah-blah-blah, on and on.

Q Okay. Do you recall Mr. Mcartor making any

He knows But knows This doesn't know If Mike is gay?

statements?

A No. No, Mike is a listener.

Q Okay.

A He stays out of things.

Q And I may be confused but was that the same conversation where he -- where you basically said you wouldn't tell something that wasn't true?

A No, that was a separate conversation. I was leaving his house and he kind of just blurted out across the kitchen where Mike was witness to him saying it.

Q The one that Mike was there, there wasn't any discussion about money or --

A No.

Q -- testifying any certain way?

A No.

Q Okay. All right. I guess going back to this whole situation, what brought you out to your -- I guess to this -- to do this work at your mom and dad's place. That's your mom, right?

A Yes.

Q Carolyn is your mom, and Bill's been your stepfather for years?

A For years, yeah.

Q And you were there -- If I understand what you're saying, you were there, there was a discussion as to what to do with these trees now that the shed was down?

A Correct.

Q And it was just a -- if I heard your testimony, a good opportunity to take down these overhanging trees?

A Yes.

Q Was there plans to put up a new shed?

A No. Actually, we installed the same size shed on the same platform in the same spot after the trees came down.

Q Okay.

A As I said, it was opportune because it was absent now.

Q Okay. But was there -- the long-range plan was to put a new shed back in the same spot?

A Yes.

Q A replacement?

A Yes.

Q All right. So before doing that, it was -- your thought is let's get rid of this overhanging tree?

A Yes.

Q All right. And I -- I -- This whole notion as to whether you were paid or not paid, did they end up giving you cash for doing work out there?

A I did a multitude of things; but yes, for that job --

Q Okay.

A -- there was many upgrades done on the property, so ...

Q Did you consider yourself to be their employee or were you just doing a favor for them for money, what?

A No, I was -- I was doing a favor and because of the times, I was getting money where I could and my mom wanted to supply me with some kind of means of income because I couldn't find it anywhere else and I provided a service for her.

Q You called it at one point a chore --

A A chore.

Q -- that you were doing for them?

A Yeah.

Q All right. Now, with respect to the tree trimming and then ultimately whether they were removed, did either Bill or Carolyn come out there and

tell you how they wanted this done?

A No.

Q Prior to you undertaking that job, did you sit down with them and have them tell you what they wanted done, what their expectations were, or anything like that?

A No.

Q Have you ever actually seen either one of them use a chain saw?

A No.

Q Would you agree that you were free to cut those limbs, take down the branches, to do that in any way you saw fit?

A Yes.

Q And you didn't have an invoice or a written contract with them --

A No.

Q -- or anything like that?

A No.

Q And then this whole concept as to whether David was there -- I'm sorry -- as to why Paul was there, he was there -- you invited him over?

A I did.

Q And Mr. and Mrs. McGuire may have known he

was coming over?

A Yes.

Q You told them that?

A Yes.

Q Did you tell them that he was coming over to help you?

A I said that I asked Paul to help me today and they didn't say anything because we worked together before and they're friends, so ...

Q And at that point, if I heard your testimony, there was no discussion between you and your parents about them paying for Paul's time?

A No.

Q And that wasn't something that you and Paul even talked about?

A No.

Q Even up until the point of injury, that was not a subject of conversation?

A No, it was not.

Q Do you know if he was planning on taking some of the trimmed-up branches for firewood?

A I was assuming in my mind that that would suffice him initially, yes, because he had already taken some before from the front yard. He has a

fireplace at his home that he burns --

Q Okay.

A -- where we don't -- or she doesn't here.

Q That was an assumption but was it actually a subject of conversation between you and he?

A No, we did not discuss it.

Q So in terms of what, if anything, Paul might get out of it, as you sit here today, you don't recall any discussions with Paul about what he would get in return for helping you?

A No, he just agreed to help a friend take down some trees.

Q And I -- if I'm understanding your testimony too, Paul wasn't trying to override anything you were doing; he wasn't telling you what to do either?

A No.

Q There was a lot of unspoken things happen between the two of you?

A Yes.

Q The branch that you and Mr. Dulberg were working on -- I'm sorry -- the limb that you and he were working on, that one you mentioned as you were cutting that fourth branch as turning, that one flexed?

A Yes.

Q And you used the word flexed, at one point also bowed, you used that word?

A Yes.

Q If I'm understanding what you're saying, the actual limb itself bent?

A Yes.

Q All right. Did you have that happen on any of the other 24 to 29 branches that you were cutting?

A No.

Q That was the first time that happened?

A Yes.

Q All right. And the -- at the point in time you described, and I don't want to go through in detail what you and Mr. Mast just went over, but you described how you were moving for that -- at the second attempt to get that fourth branch; and if I understood your testimony, simultaneously Mr. Gagnon is coming in with his right arm to grab the limb --

A Mr. Dulberg, yes.

Q -- and the saw and his arm converged simultaneously?

A Yes.

Q Okay. Had Mr. Dulberg gotten his hand

anywhere near the chain saw any closer than 12 to 18 inches anytime prior to that?

A No.

Q At any point in time did you perceive or fear that he was getting his arm too close or hand or whatever, any part of his body too close to the blade of the chain saw that you were operating?

A No. No.

Q Right up until the very end?

A No.

Q Did you ex- -- As you were cutting, having down 24 to 29 branches, because this happened you're estimating on the twenty-fifth or thirtieth branch, correct?

A Yeah, somewhere around there.

Q Limb. Did you expect him to be putting his arm in there to help with the flex?

A No, because none of them flexed previous to that. I didn't foresee it at all.

Then why earlier did Dave say he saw it + thought it would be OK?

Q All right. And would you agree that prior to June 28, 2011, indeed right up until the point where Mr. -- where the saw came in contact with Mr. Dulberg's arm, you knew that a chain saw could cut somebody?

A Yes.

Q You didn't have to be told that --

A No.

Q -- by anybody else?

A Did not have to be told that.

Q And would you also agree that you knew that it would be important if you were using a chain saw to keep it clear of somebody else's arm and hands and body for that matter?

A Yes.

Q You didn't have to be told that by anybody?

A No.

Q And you talked about a certain position you took with the chain saw, you called it a lock --

A Locked elbow.

Q Locked elbow?

A Yeah.

Q Is that where one hand's on there -- there's like a bar that you can hold the chain saw with?

A Yes.

Q Then there's another part where there's a trigger?

A Yes.

Q You actually have to pull the trigger to get

the chain to move?

A Yes.

Q And which elbow are you talking about being locked, both of them?

A Right elbow locked into my ribs so that my strokes were short.

Q Okay. So that was some -- that was a technique that you were using to maintain control over that chain saw?

A Yes.

Q Is that something that you learned just in practice or something you heard before?

A No, I witnessed people doing it when they're in close quarters because sometimes you'll have to do that. You know, I have a friend who does tree trimming and I'd just seen it performed before.

Q Okay.

A It's also less fatiguing on the worker.

Q And it may be elementary but correct me if I'm wrong, you were -- as you were using the saw to cut those branches off the limbs, part of what you were doing is removing these limbs, correct?

A Yes.

Q The branches from the limbs?

A Yeah.

Q And part of what you're doing is trying to not hurt yourself --

A Correct.

Q -- in the process?

A Yeah.

Q Were you also endeavoring to not hurt Mr. Dulberg?

A Yes. I had no intentions of hurting anyone.

Q At any point in time prior -- right up until the point where the chain blade came into contact with Mr. Dulberg's arm, did you feel there was a -- did you feel compelled or was there anything causing you to feel compelled to tell him to keep his hands or arms out of the way?

A No, they were not in the way.

Q He was doing that all the way up until that point in time?

A Yes.

Q And if I heard you, you don't know all the injuries -- the extent of any injuries or complications Mr. Dulberg had as a result of that car accident that he had?

A Nerve damage is all I was aware of.

Q Okay. Whether he broke his neck or had any residuals with the elbow, rehab or surgeries, none of that you don't know?

A Yeah, I don't know.

MR. BARCH: All right. That's all I have.

MR. CALLAHAN: I just have one -- two quick questions that you may want to have some follow-up on if I can just go?

MR. MAST: Okay.

EXAMINATION

BY MR. CALLAHAN:

Q Mr. Gagnon, are you aware of any other work that Mr. Dulberg has done in addition to helping you tear off a roof after the date of the incident?

A He tends a garden which is his whole front yard this summer, the last summer. He did some -- He did some renovation and tear-out work for a -- kind of strange you asked that, but a homosexual that lives in Twin Lakes and he just freely gave up, he's like, Yeah, I met your friend Paul. You know, he helped me tear out the dry wall in my basement and stuff and then I was like, oh, really? And I asked him if he would testify and he said, I don't want to get involved. So maybe he'd

want to get involved now, I don't know, but that was the one example; and then of course on my home, my roofing.

Q So he did some demolition work for some other people?

A Yeah.

Q And that was referred to in your statement that you gave Mr. Mast before this deposition?

A Yes.

MR. CALLAHAN: Okay. That's all I have.

MR. MAST: Yeah, I want to follow up on that.

FURTHER EXAMINATION

BY MR. MAST:

Q He tends a garden. Do you ever watch him tend the garden?

A I've seen him tend to his garden.

Q Since the accident?

A Physically walking in his garden and picking vegetables, yeah. I mean, as far as tilling and that, no, I have not seen him labor as far as tilling, although he did borrow my tiller to till it.

Did I see -- Did I see him? No.

Q Okay. Have you ever seen him till his garden?

A No.

Q The only thing you've seen him do since his accident as far as his garden is to pick vegetables?

A Yeah.

Q Okay. And that's just by when you drive by you see him doing that?

A He's -- He told me at those times when I was there, you know, look at all the produce I have.

Q He told you when? What are we talking about?

A When I was there.

Q After the accident?

A Yeah. On those -- On those occasions that I mentioned, he's got all his, you know, vegetables and stuff lined up at his house.

Q You're going too fast. On what occasions? These conversations we talked about at the beginning of this deposition weren't all at his house.

A No, the one where I was in the kitchen.

Q Right. That's the one time. You said --

A Such as -- Such as that, you know, and --

Q Wait. Wait.

A His brother doesn't tend the garden.

Q Hold on. Hold on. Stop. After the accident how many times have you been to his house?

A As I had said.

Q How many?

A As I had said.

Q What is as I had said? What answer -- How many is that?

A You've got it written down right there.

Q How many? I don't know what you're talking about. How many?

A I told you the one time in the kitchen.

Q Right.

A And there you go.

Q So one time?

A Yeah.

Q Okay. Just say one then; that's the answer. So the question is, how many times have you been to Paul's house since his accident? It's one time, right?

A Yeah.

Q Is that a yes?

A Yes.

Q Okay. So the times that you've seen anything that he's done with his garden, have you ever visited him to see what he does in the garden?

A No, I didn't witness him working in the

garden.

Q Okay. So what you're saying is the testimony you just gave about him tending the garden is what you have had that one conversation when you were at his house that one time after the accident, right?

A Yeah.

Q And that was a conversation you had with him and he said, Hey, look at what I do when I tend my garden?

A Yeah. I was figuring maybe the dog helped him, you know.

Q You know, I'm not trying to be funny. I'm just trying to get the facts, okay? Because what you say might -- you might not understand but it leaves a lot of inferences. I'm trying to finish -- find out exactly what you mean as far as so I don't have to infer what you mean, okay?

A Okay.

Q So I'm not trying to be funny about it. You were there at his house one time after the accident, right?

A Yes.

Q And that was the time four months after the accident?

A Yes.

Q Okay. And that's the information then that you got about him tending his garden, correct?

A Yes.

Q Okay. You've never seen him tend his garden since the accident, have you?

A Picking fruit, tending? Yeah. I mean, are you talking about tilling soil? Are you talking about walking in the garden in the sense --

Q Have you seen --

A What are you saying is tending?

Q All right.

A I don't understand.

Q Okay. I understand that.

A Okay.

Q How many times have you seen him in his garden since the accident?

A We'll say ten times driving by his house, going into the neighborhood that I used to live in, no conversations, not stopping by, not talking to him.

Q I got the answer, ten times.

A But I'd usually seen him in his garden.

Q During those ten times you've seen him in his garden since the accident, what things have you seen

him do?

A Harvesting vegetables.

Q Picking vegetables?

A Yes.

Q Okay. With his hands?

A Yes.

Q Putting them in some type of basket or something?

A Yes.

Q Okay. And you would see him just by passing by so it'd be a matter of a couple seconds you would see him, right?

A Yes.

Q For each of those ten times, right?

A Yes.

Q And those are ten separate dates?

A Yes.

Q Over a course of a summer?

A Over the course of since this occurrence.

Q Okay. So that would be two summers?

A So two summers, right.

Q Okay. Very good. Let's talk about that renovation work then. The renovation work that you're talking about isn't something you saw him do, it's

something that somebody else told you that he has done, right?

A Yes.

Q And who is the individual, what's his name?

A Mike Thomas.

Q Mike Thomas?

A Yeah.

Q He's the homosexual you were talking about?

A Yes.

Q And he lives in where?

A He lives in Twin Lakes.

Q Okay. Are you friends with him?

A No.

Q Okay. So you don't know personally what Paul did, if anything, at Mike Thomas's house, you just know what Mike Thomas told you, correct?

A Correct.

Q Okay. So whether he actually did renovation work, meaning Paul, you don't know; fair enough?

A His basement was renovated.

Q Whether Paul did the work or not, you don't know; fair enough?

A I was told that he did the work.

Q Right, and so now I'm asking do you know if

Paul did the work or just through what you were told?

A I was informed that Paul had done the work inadvertently without asking for me to be revealed that someone -- someone had told me that I know this person.

Q All right. Here, let me say it a different way.

A I know, you're trying to work it your way.

Q I'm not trying to work -- I'm just trying to get the basis of what you're saying and you didn't see him do the work, right?

A No, I didn't see him do the work.

Q So you don't know if he really did the work, do you, other than what somebody told you, correct?

A That's a fair assumption.

Q And Mike is the only person that told you he did the renovation work, right?

A That is correct.

Q And what part of the renovation work you don't know; fair enough?

A That's a fair assumption.

Q Okay.

MR. MAST: That's all I have. Thanks.

FURTHER EXAMINATION

BY MR. CALLAHAN:

Q I hate to do this but one more question. Have you seen Mr. -- In the time you've seen Mr. Dulberg after the accident, have you seen him working on his computer?

A I've seen him working on his computer, yes.

Q All right. And he seems to be able to use both hands on the computer?

A He's always on his computer, yeah.

Q Okay.

A That's what he does.

MR. CALLAHAN: That's all I have. Thank you.

MR. MAST: Now I've got to ask you that. All right.

FURTHER EXAMINATION

BY MR. MAST:

Q How many times have you been to Paul's house since the accident, just that one time?

A Yes.

Q Is that the only time you've seen him operate his computer after the accident?

A That was the time that I've seen him, yeah.

Q Okay. Fair enough.

MR. MAST: All right.

MR. CALLAHAN: Signature reserved.

(Witness excused.)

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

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

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

I, DAVID A. GAGNON, state that I have read the foregoing transcript of the testimony given by me at my deposition on February 4, 2013, and that said transcript constitutes a true and correct record of the testimony given by me at the said deposition except as I have so indicated on the errata sheets provided herein.

_____
DAVID A. GAGNON

No corrections (Please initial)_____
Number of errata sheets submitted_____(pgs.)

SUBSCRIBED AND SWORN to
before me this _____ day
of _____, 2013.

_____
NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Margaret Maggie Orton, Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify that on February 4, 2013, the deposition of the witness, DAVID A. GAGNON, called by the Plaintiff, was taken before me, reported stenographically, and was thereafter reduced to typewriting under my direction.

The said deposition was taken at the offices of Thomas J. Popovich, 3421 West Elm Street, McHenry, Illinois; and there were present counsel as previously set forth.

The said witness, DAVID A. GAGNON, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate, and complete record of the questions asked of and answers made by the said witness, DAVID A. GAGNON, at the time and place hereinabove referred to.

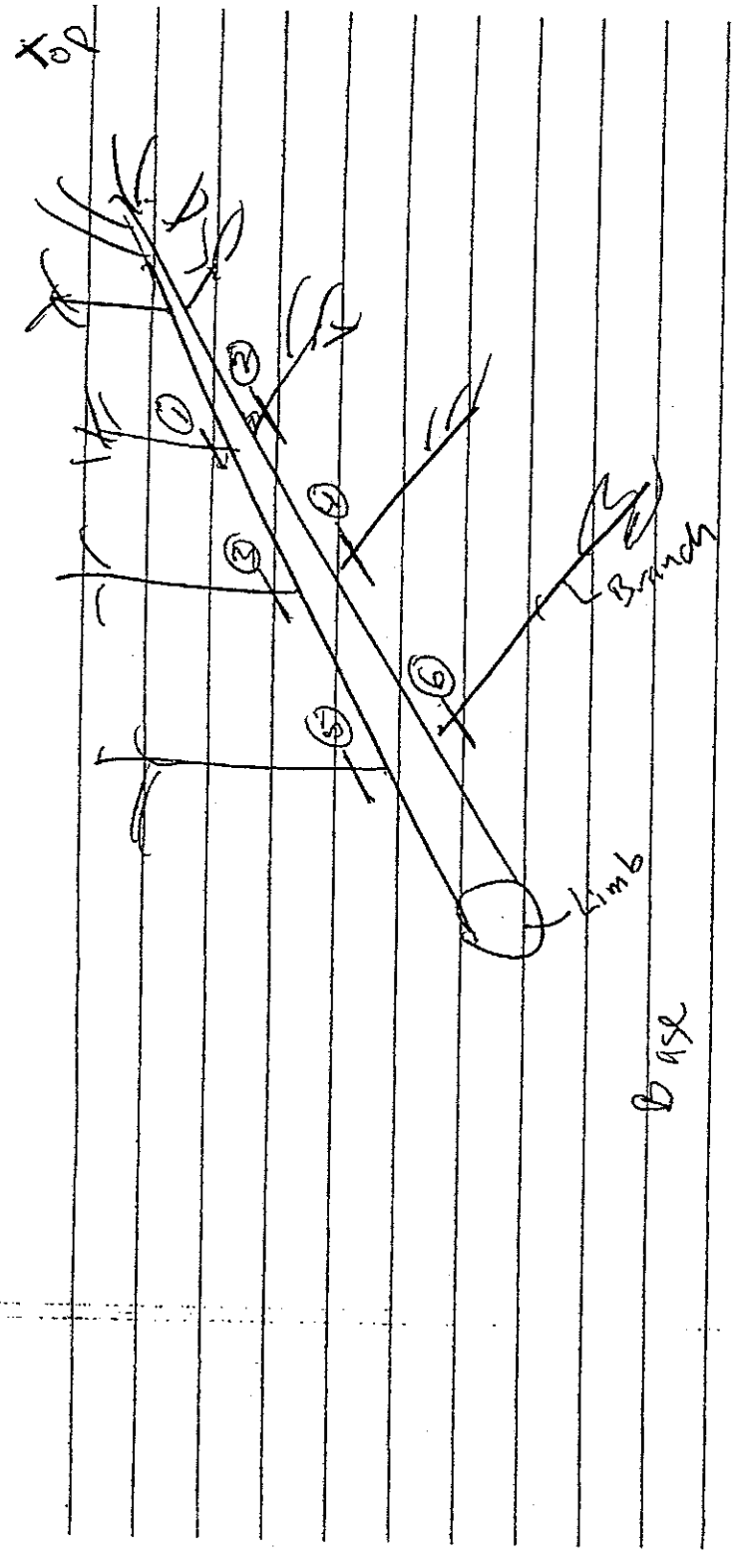
The signature of the witness, DAVID A. GAGNON, was reserved by agreement of counsel.

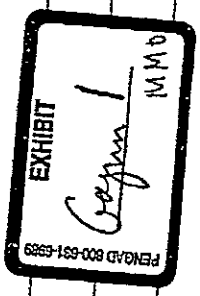
The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature on this 9th day of December, 2013.

MARGARET MAGGIE ORTON, CSR, RPR

CSR No. 084-004046


Top
Branch
Limb
Base


EXHIBIT
PENDAD 800-631-6989

MEMORANDUM

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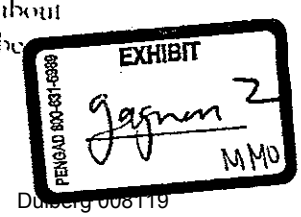
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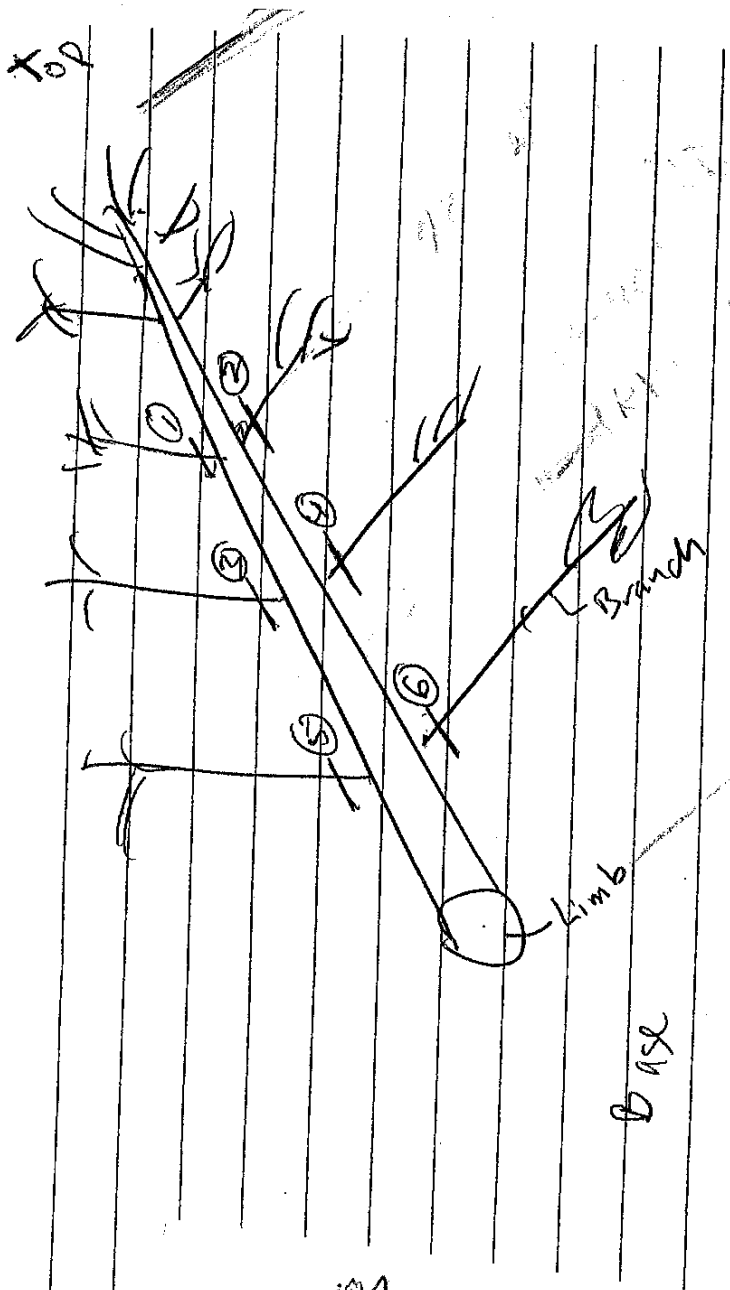


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MAST

Dulberg
v
Gagnon

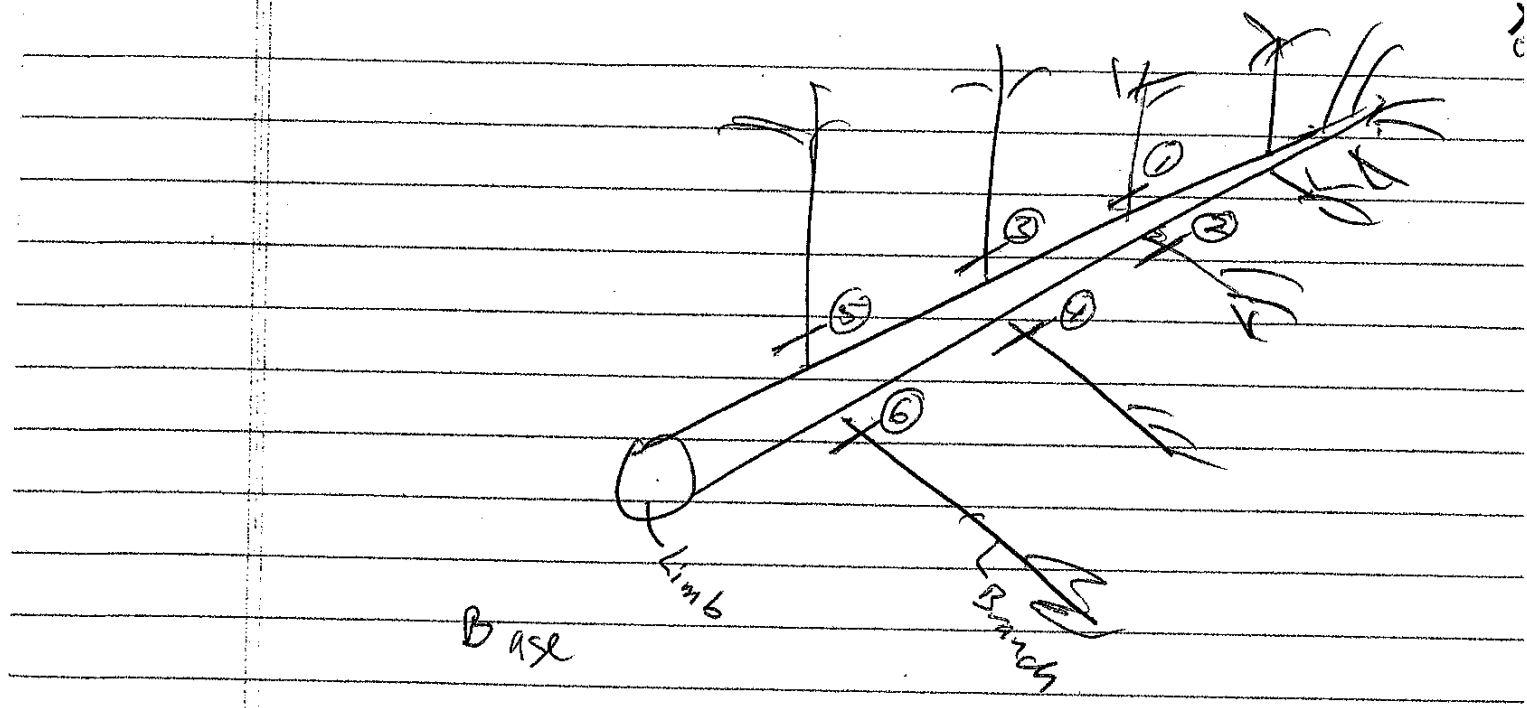

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Base


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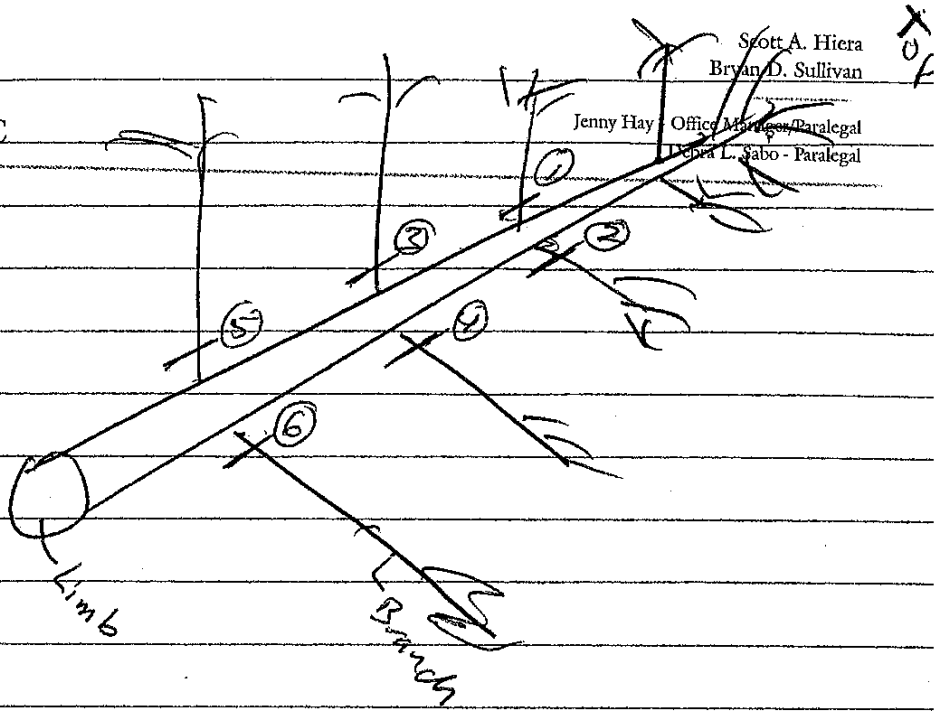


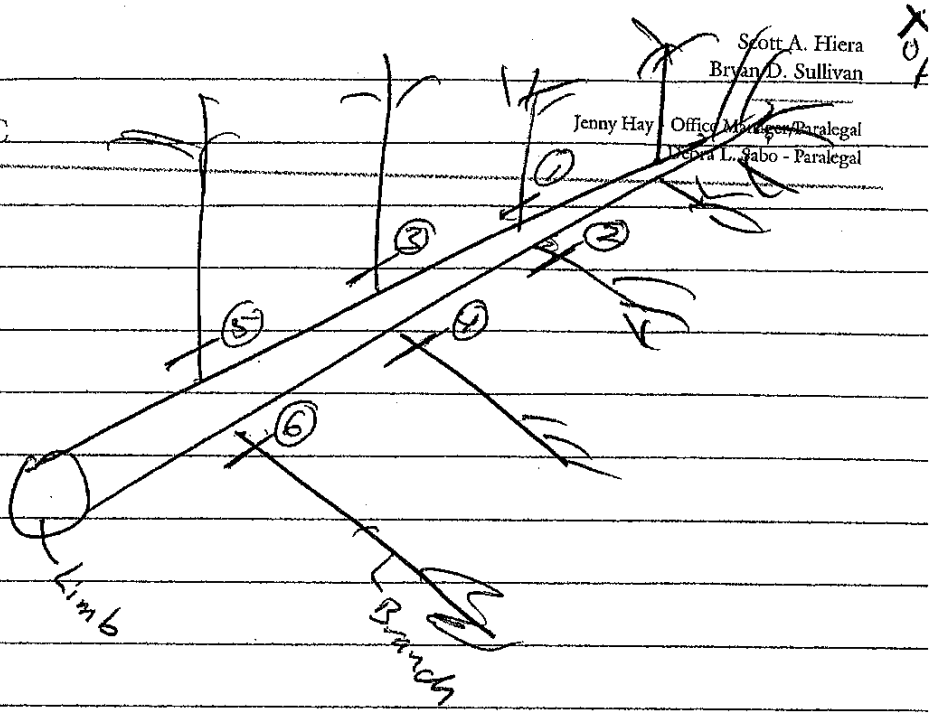
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MMD
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www.got-injured.com www.bad-marriage.com

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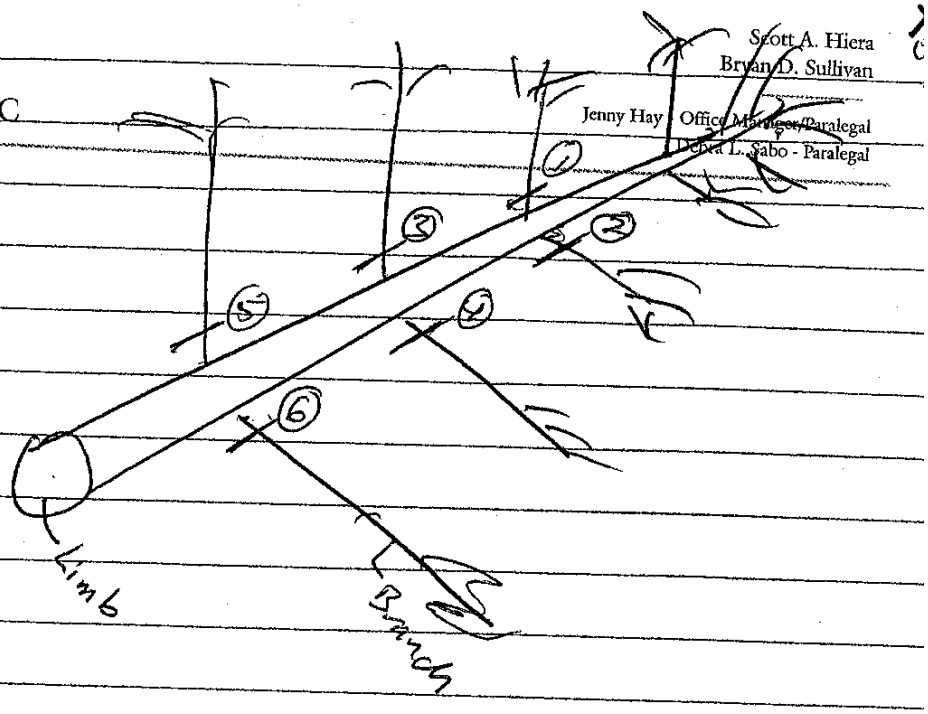




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what is meant By Checked?

Back of What?

Scalding is Burning

He Assumed in Microseconds

Paul wasn't weeping Didn't See Dave weeping either

EXHIBIT
PENCOM 800-631-6989
Gagnon 2
MMD
Dulberg 008126

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S:\Main\DULBERG, PAUL\Memos\Memo re phone call of David Gagnon 3-13-12.wpd

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.

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FISHER COURT REPORTING
922 North Lyford Road Rockford, IL 61107

November 22, 2013

Law Office of Thomas Popovich
3415 West Elm Street
McHenry, IL 60050

Re: Dulberg vs. Gagnon, et al.

Dear Sir:

Enclosed please find Exhibits 1 through 3 which were marked during the course of Paul Dulberg's deposition. The exhibits should have been attached to the transcript when it was sent to your office but were inadvertently left behind. My apologies for any inconvenience this has caused.

Sincerely,

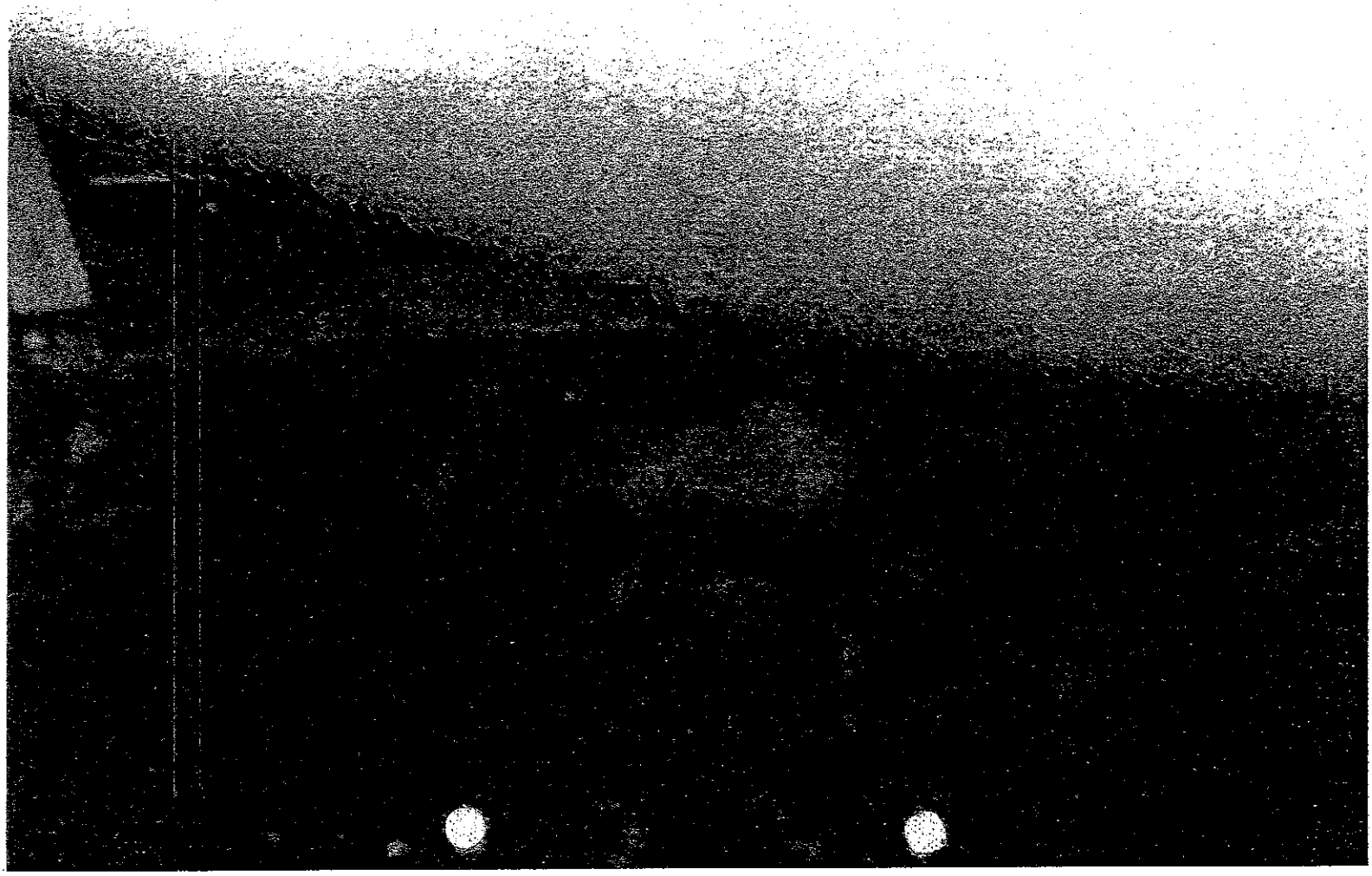
Deb Fisher

Deb Fisher

Enclosures

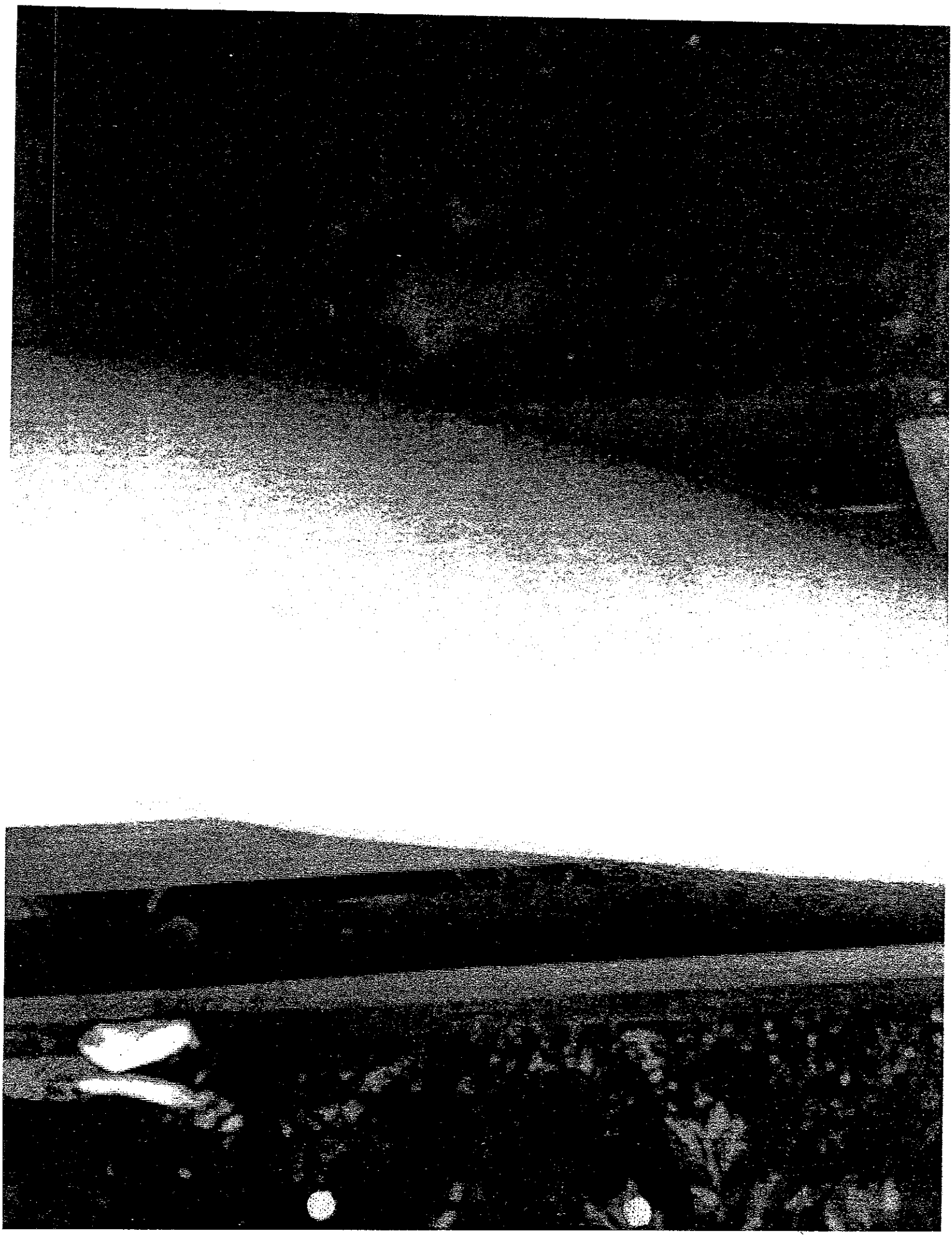
PHONE (815) 226-9755 FAX (815) 395-9510 E-mail fisherreporting@sbcglobal.net



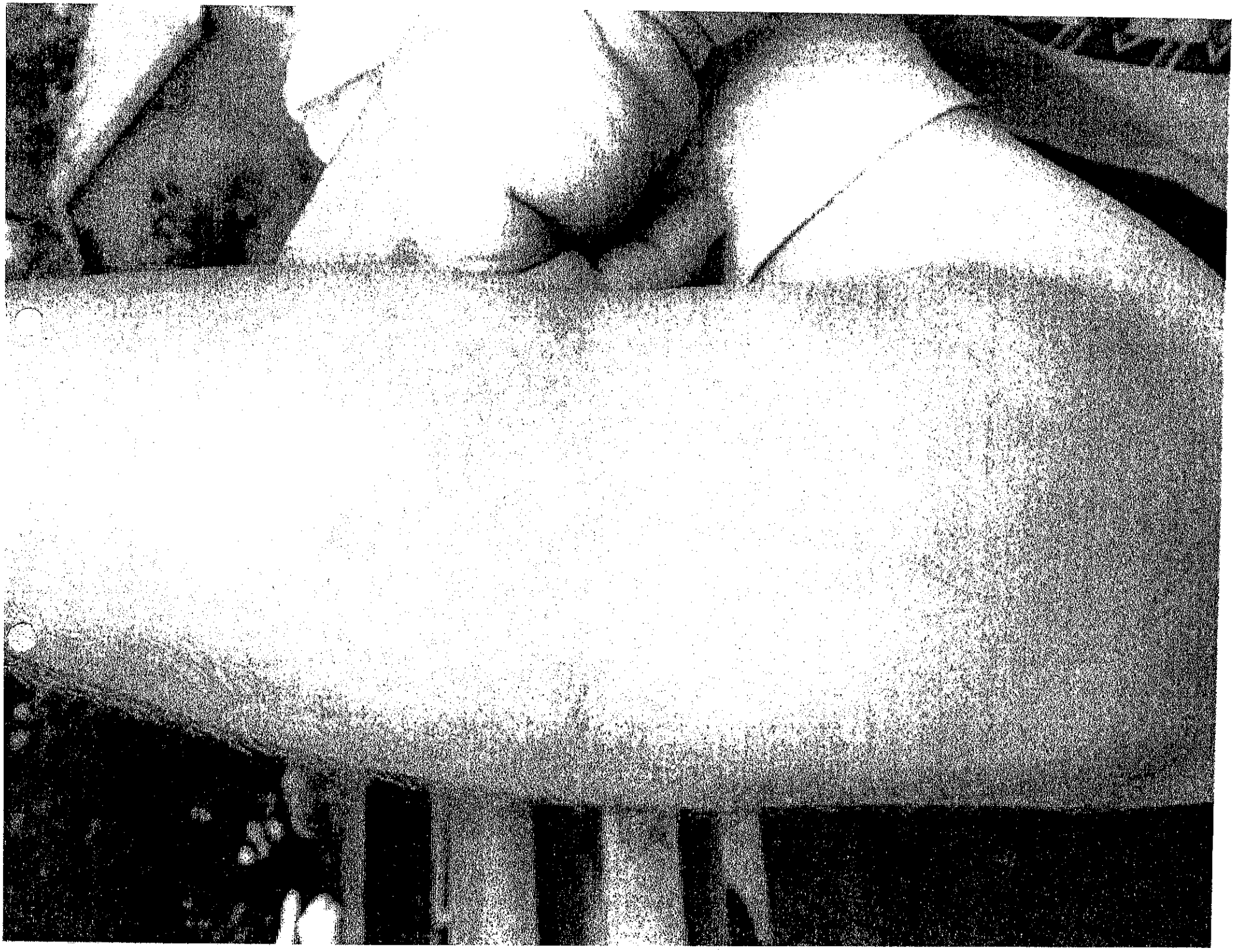


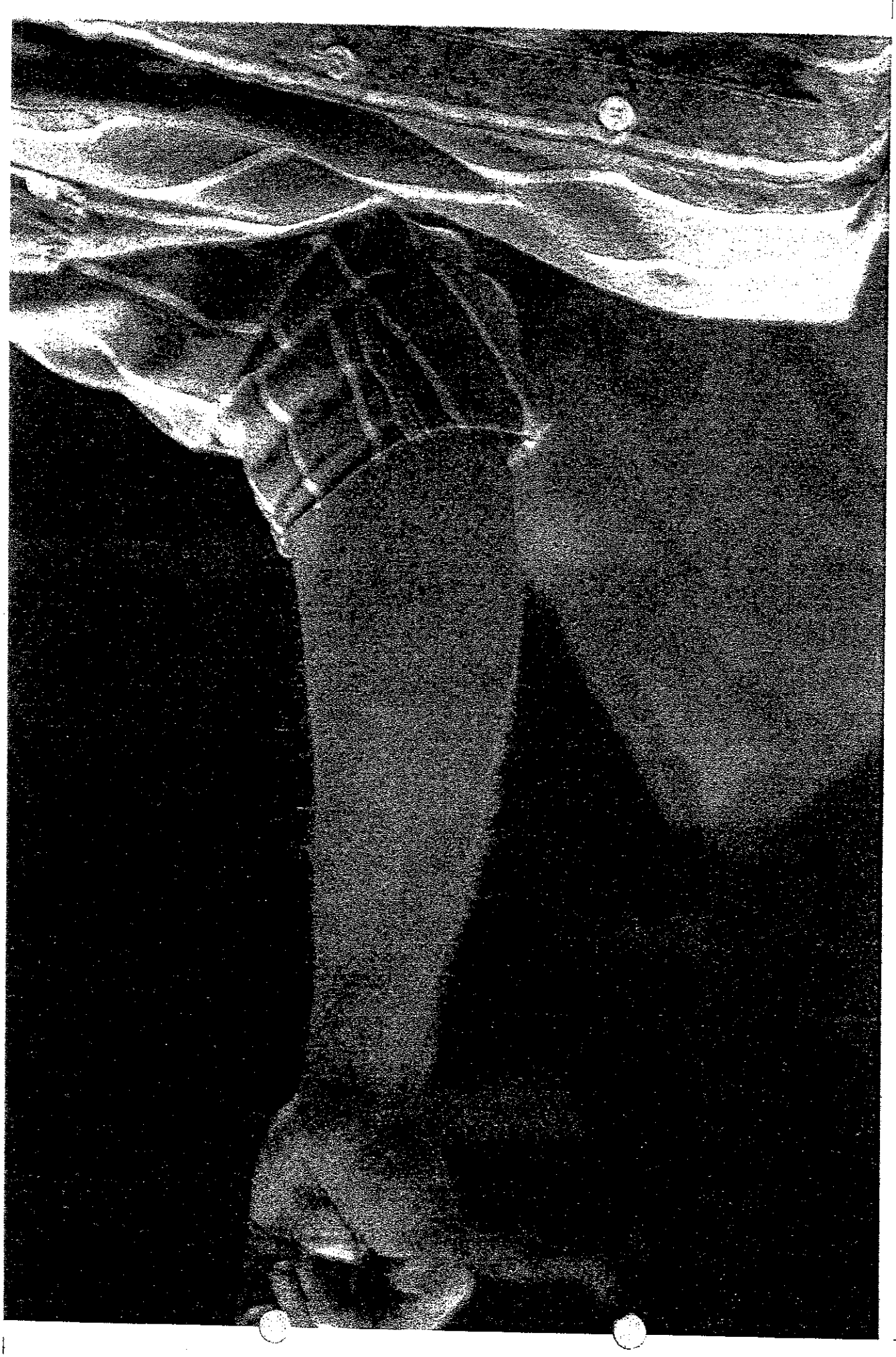


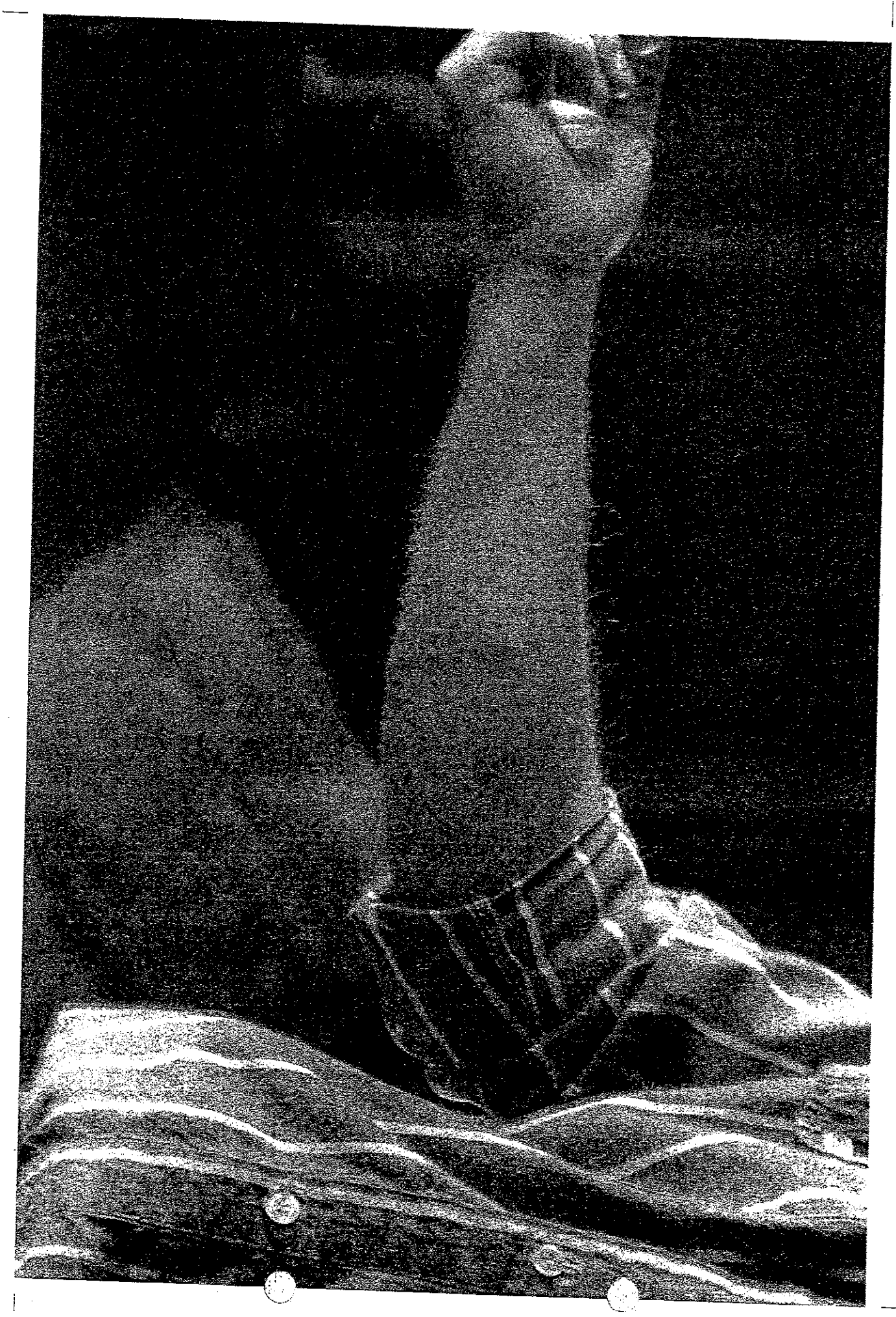






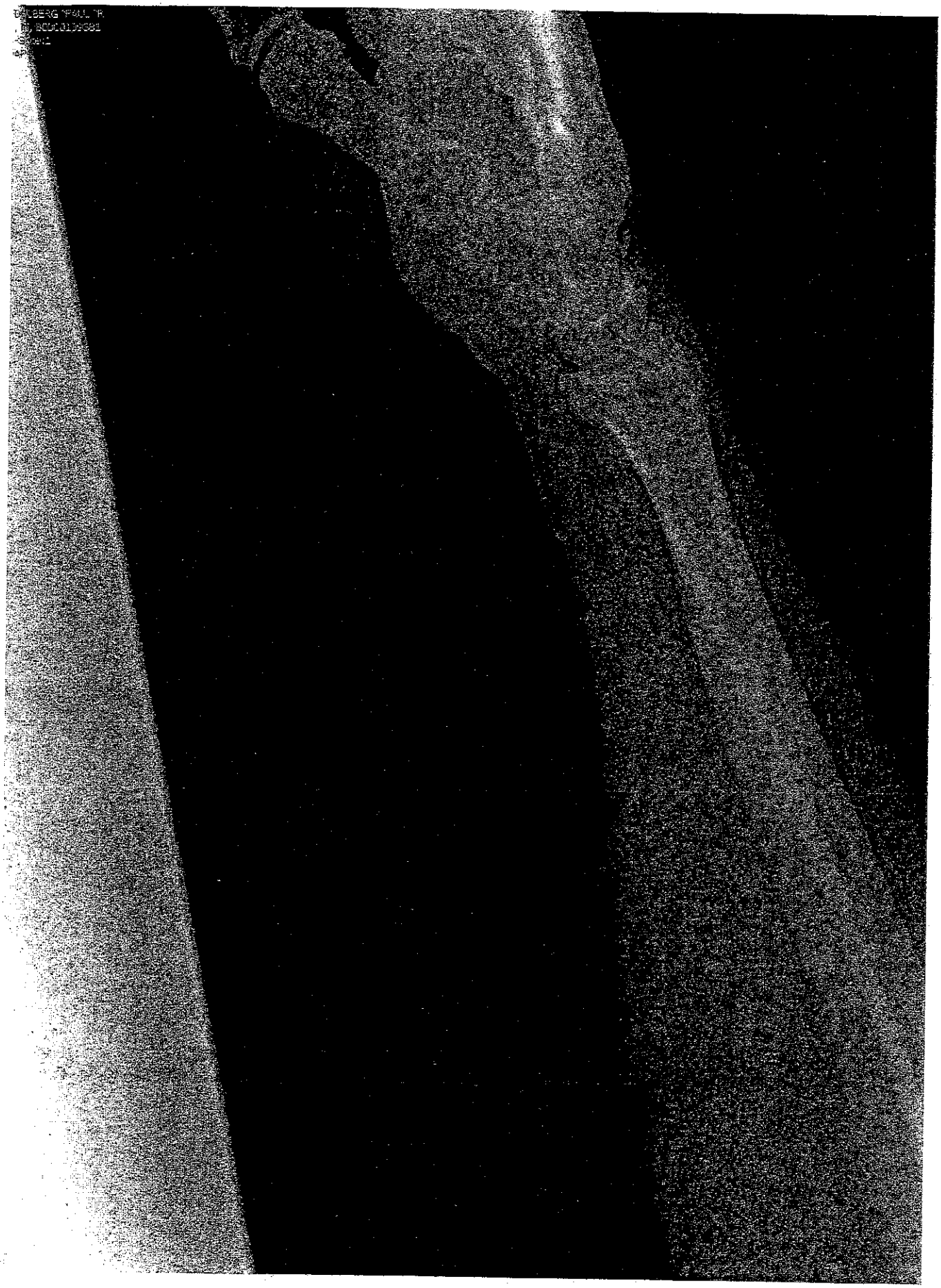








Dulberg 008150









Dulberg 008154



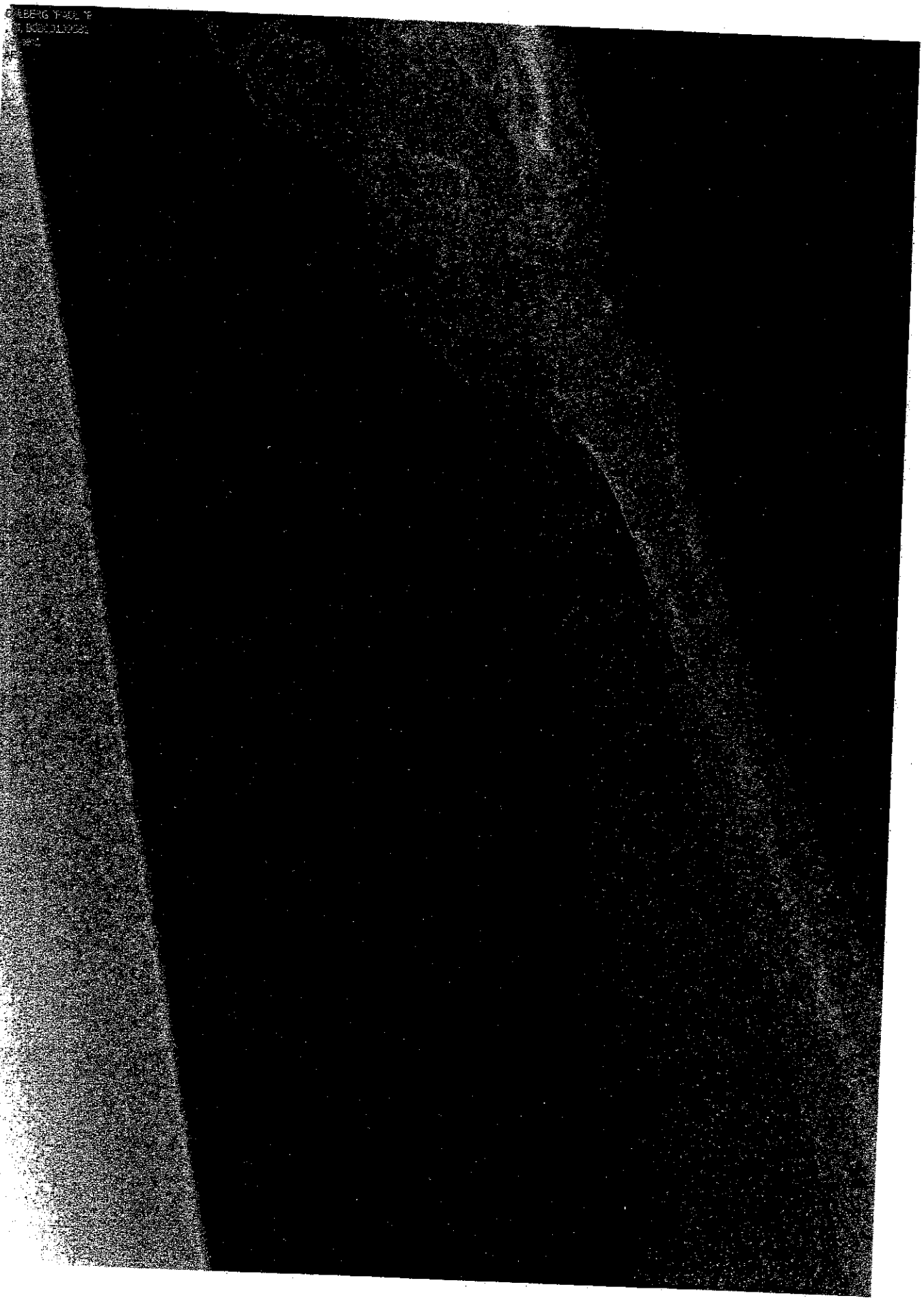



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COPY 1

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

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

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

APPEARANCES:

ATTORNEY THERESA M. FREEMAN
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, Illinois
Appeared on behalf of the plaintiff.

ATTORNEY RONALD A. BARCH
Cicero, France, Barch & Alexander
6323 East Riverside Boulevard
Rockford, Illinois
Appeared on behalf of the defendants, Caroline McGuire and Bill McGuire.

ATTORNEY PERRY A. ACCARDO
Law Office of M. Gerard Gregoire
200 North LaSalle Street
Chicago, Illinois
Appeared on behalf of the defendant, David Gagnon.

INDEX

WITNESS		EXAMINATION
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	(Mr. Barch).....	8
	(Mr. Accardo).....	163
	(Mr. Barch).....	175

EXHIBITS

EXHIBIT		MARKED
Exhibit No. 1....	(previously marked)....	
Exhibit No. 2....	(previously marked)....	
Exhibit No. 3.....		160

Certificate of Shorthand Reporter..... 176

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PAUL R. DULBERG,
being first duly sworn, was examined and testified as follows:
EXAMINATION BY MR. ACCARDO:
Q. Sir, would you please state and spell your name for the record?
A. **Paul Dulberg, D-u-l-b-e-r-g.**
MR. ACCARDO: Let the record reflect this is the discovery deposition of Paul Dulberg taken pursuant to notice and continued from time to time, taken in accordance with the Rules of Civil Procedure of McHenry County and the Rules of the Supreme Court of the State of Illinois and any other applicable local court rules.
Good afternoon, Mr. Dulberg. My name is Perry Accardo. I'm going to be asking you some questions today.
MR. BARCH: Is this your notice?
MR. ACCARDO: Did you issue the notice? I thought I did. If you want to do it, that's fine.
MR. BARCH: Well, I mean, if you issued one --

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MR. ACCARDO: (Interrupting) I'm not sure whose notice it is.
MR. BARCH: I thought it was mine.
MR. ACCARDO: I'm sorry, I assumed it was mine, but if you want to do it.
MR. BARCH: I mean, sooner or later we both need to ask the questions.
MR. ACCARDO: If you want to do it, that's fine.
MR. BARCH: Let's go forward.
MR. ACCARDO: All right.
MR. BARCH: We'll pick up where Mr. Accardo left off. We're taking this deposition pursuant to an agreement of the parties, a notice and in accordance with the Illinois Code of Civil Procedure.
We're going to do what is a called discovery deposition. I'm sure your attorney talked to you about it. It's a fancy word for a question-and-answer session. Hopefully we will ask questions that you hear and understand. And then if you do hear and understand the question, it's our expectation you answer truthfully. All right?

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THE WITNESS: Yes.
MR. BARCH: Couple of things to keep in mind as we go along. There is a lady over there to your left taking everything down that we're saying, so it will be important when we do have a conversation that we use words. Here in Midwest we use a lot of uh-huhs, uh-uhs and shoulder shrugs. During conversation it's easier to interpret face to face, but it doesn't translate well to a record. Okay?
THE WITNESS: (Indicates affirmatively.)
MR. BARCH: So if you happen to do that, one of us in the room may ask you to clarify what you mean. All right?
THE WITNESS: Okay.
MR. BARCH: And the other thing to do is some of the questions that come out may be easy to interpret or anticipate, and witnesses, for whatever reason, have a tendency to want to get the answers out and may start talking over the question. You may not do that, but if you happen to start talking or giving an answer before the whole

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question is out, I may ask you to stop, okay, so I can get the whole question out and then we'll give you a chance to get your whole answer out. All right?
THE WITNESS: (Indicates affirmatively.)
MR. BARCH: The same is true of me. If I start a question before you finish your answer, please tell me. I want to give you a chance to get your whole answer out. Fair enough?
THE WITNESS: Yes.
MR. BARCH: You might hear the word objection at some point. That would come from one of the attorneys not asking you questions. If you hear the word objection, you should stop your answer or don't even begin one and then look to your attorney for direction as to how to proceed. Okay?
THE WITNESS: Yes.
MR. BARCH: This is not an endurance test. If you need to use the restroom, get a drink of coffee, whatever you need to do, just let us know. Okay?
THE WITNESS: Yes.

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EXAMINATION BY MR. BARCH:
Q. Could you please state your full name for the record?
A. Paul Dulberg.
Q. Middle name?
A. Raymond.
Q. Where do you reside?
A. 4606 Hayden Court.
Q. Did you say Hayden?
A. Hayden.
Q. How do you spell it?
A. H-a-y-d-e-n.
Q. And that's in McHenry?
A. Yes.
Q. The incident we're here to talk about did not take place on your property; is that true?
A. True.
Q. Where is 4606 Hayden Court in relation to 1016 West Elder?
A. They are in the same neighborhood.
Q. Are they adjacent properties?
A. No.
Q. Are we talking like houses away? Blocks away? Miles?

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A. Less than a minute and a half by car.
Q. Can you see the 1016 West Elder property from your property?
A. No.
Q. Okay. And what is your date of birth?
A. 3-19-70.
Q. And the incident that we're here to talk about, do you recall it happening on June 28, 2011?
A. I believe that's the date.
Q. How old were you then?
A. 41.
Q. Are you married, sir?
A. No.
Q. Have you ever been married?
A. No.
Q. Back in June of 2011 did anybody reside with you at the Hayden Court property?
A. Yes.
Q. Who?
A. My mother and a friend, Mike McArtor.
Q. Mom's name?
A. Barbara Dulberg.
Q. And the friend that was living there?
A. Mike McArtor.

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Q. How do you spell McArtor?
A. M-c-A-r-t-o-r.
Q. Does Mike still reside with you and your mom?
A. Yes.
Q. Tell me a little bit about your educational background. Did you finish high school?
A. Yes.
Q. Where?
A. Johnsburg.
Q. When did you finish?
A. 1988.
Q. Did you move on to college?
A. Some college.
Q. Tell me a little bit about that.
A. I took a few years. I never finished.
Q. Where did you enroll?
A. MacMurray College.
Q. Was that a community college or a four-year?
A. Private college down in Springfield, Illinois.
Q. You say you took a few years. Could you be more specific if you can? One? Two? Three?
A. Two.
Q. Did you acquire an associate's degree?
A. No.

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Q. What was your major?
A. I believe it was political science.
Q. And any particular reason you left?
A. I had to go home.
Q. What was the reason you had to go home? To care for your mom?
A. Family.
Q. What was that?
A. It was family.
Q. And you never went back?
A. No.
Q. Was that immediately after high school?
A. No.
Q. When was it in relation to high school?
A. It was about three years after high school.
Q. So early '90s?
A. Yes. You made me think about that.
Q. Besides the course work that you participated in at MacMurray College, have you had any other college courses at any other school local?
A. I remember once I took a course over here at MCC.
Q. What course was that?
A. I believe it was college algebra.
Q. Was it before or after MacMurray?

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A. Before.
Q. Since leaving MacMurray have you taken any additional college level course work?
A. No.
Q. Have you had any vocational training of any kind?
A. Yes.
Q. What is the nature of that?
A. Heidelberg Academy.
Q. What is that Heidelberg Academy?
A. It's to learn how to run printing presses.
Q. Where is Heidelberg Academy located?
A. When I took it, it was in -- I don't know. It was down in the city, a suburb.
Q. Suburbs of Chicago?
A. Yes.
Q. Tell me about that course. Is that just – is that pretty short? Long? Is it intensive? What is it?
A. It's intensive, but it's short.
Q. When you say short, is it a day? A month? A year?
A. However long you want to pay to go until you're comfortable running.
Q. How long did you go?

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A. Two weeks. It was more of a certificate for me.
Q. Did you take the vocational training in operating printing presses for a particular employer?
A. Yes.
Q. Who was that?
A. Intermatic, Incorporated.
Q. Okay. And did you say you received a certificate of some sort?
A. Yes.
Q. How would you describe the certificate that you received?
A. I'm trying to picture it in my head. It's a form that says that I completed the work. I haven't looked at it in years.
Q. The training for a particular printing press?
A. Yes.
Q. And what was the name of the printing press?
A. It was an SM 74.
Q. All right. Besides the training certificate for the SM 74 have you had any additional vocational training of any sort?
A. Yes.
Q. And why don't you tell me about that.
A. I had several courses in graphic design.

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Q. Rocket design?
A. Graphic design.
Q. Okay. Where did you take those?
A. Various locations throughout the suburbs.
Q. Are we talking like one-week seminar-type programs, or is this a –
A. (Interrupting) Some were seminars. Some were personal where a company hired a teacher to come in and teach us the new aspects of the program.
Q. If I'm hearing what you're saying, you were trained on how to operate graphic design software?
A. Yes.
Q. Was that for a specific employer of any kind?
A. Intermatic, Incorporated.
Q. So the graphic design software training and also the printing program. What else? Anything else that brings to mind?
A. That's it.
Q. When did you have the – I guess strike that question. When were you employed at Intermatic?
A. I believe it was 1998 through 2008, 2009, somewhere in there. I don't remember the exact.
Q. Are you employed today?

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A. No.
Q. When was the last time you were employed, starting from today and working backwards?
A. May of 2011.
Q. So if I'm hearing what you just said, you have not had a job since this incident on June 28, 2011?
A. Correct.
Q. And where were you working? What was the job you had that ended in May of 2011?
A. It was for Juskie Printing.
Q. Juskie Printing?
A. Yes.
Q. How do you spell that?
A. J-u-s-k-i-e Printing.
Q. And that ended in May of 2011?
A. Yes.
Q. When did you start at Juskie?
A. Years earlier.
Q. Was it a transition directly from Intermatic to Juskie?
A. Not directly, no.
Q. So it would have been sometime after 2008 and 2009 when you started at Juskie?

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A. **Yes.**
Q. Was there any other employer in between those two companies?
A. **I had my -- I did a side business.**
Q. Tell me about the side business.
A. **Its name was Sharp Printing, Incorporated.**
Q. Sharp?
A. **Printing, Incorporated, or Inc.**
Q. Okay. When were you running Sharp Printing?
A. **Yes. I started that in 1999, and I ended it the year this happened.**
Q. So you ended it in 2011?
A. **Yes.**
Q. Did you end it before or after the incident on June 28, 2011?
A. **I ended it just before.**
Q. So I take it then you're not blaming the demise or the dissolution of the Sharp Printing, Inc. company on this occurrence?
A. **Correct.**
Q. Okay. And then was there a period of time where the Sharp Printing, Inc. business overlapped with your work at Juskie Printing?
A. **Yes.**

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Q. And as you sit here today can you get any closer in terms of your period of employment at Juskie other than sometime after 2008 or '9 and then May of 2011?
A. **I had -- it was a 1099, and I had done work for Mark prior to me leaving Intermatic and after. It was an ongoing-type thing.**
Q. Okay. So you weren't actually employed then by Juskie? You're not on their payroll, I take it?
A. **I was 1099. So, no, I guess not.**
Q. When you say 1099, are you saying that you were an independent contractor?
A. **Yes.**
Q. So you would do work for them, and they would pay you, and you would report the income based upon the gross payment?
A. **Correct.**
Q. And did you record that income then and report it through Sharp Printing?
A. **No. That was a self-employment.**
Q. Okay. The position you had at Intermatic, was that the 1099 position, or were you actually employed?
A. **It was 1099. After I left Intermatic.**

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Q. So prior to 1998 to 2008/2009, whenever you actually left, you were an employee?
A. **Yes.**
Q. And after that you still did work for them on an independent contract basis?
A. **Yes.**
Q. Okay. Now, the work that you did at Intermatic, what was the nature of your business, your work?
A. **When I was running the printing presses or when I was doing the graphic design?**
Q. Whatever you want to tell me about first.
A. **When I was running the printing presses, it's exactly what it is. I ran a printing press.**
Q. How long over that period of 1998 to roughly 2008/2009 were you running the printing press?
A. **Until I think it was 2003 or 2004.**
Q. And did you stop working the printing press position to take on some other role?
A. **I was a -- yes, in the office.**
Q. And what was that role you took on?
A. **Graphic designer.**
Q. And that could encompass a lot of things for a layperson. When you say you were a graphics designer for Intermatic, what kind of work were

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you doing for them?
A. **I did catalog design, package design, collateral, signage, brochures. Everything from business -- everything their company needed.**
Q. For Intermatic?
A. **Yes.**
Q. So you were in-house -- you were doing in-house graphics design work for Intermatic?
A. **Correct.**
Q. You weren't in commercial graphic design or anything where your sole business was to do that for other companies?
A. **No.**
Q. And did you take -- did you hold -- did you have a name for that position?
A. **Graphic designer.**
Q. Did you hold that position then with Intermatic until you left?
A. **Yes.**
Q. And the graphic design work that you did, was it all computer-assisted?
A. **It was all computer graphics.**
Q. Is it all mouse entry, or is it keyboard entry --
A. **(Interrupting) Mouse and keyboard, yes.**

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Q. – or a combination? And is that the software training that you would get from time to time –
A. **(Interrupting) Yes.**
Q. – that you mentioned earlier?
A. **Yes.**
Q. If there was a new program that came on or new version of the program, you would go get trained on it?
A. **Yes.**
Q. I don't want to oversimplify this, but is that what you're talking about?
A. **Yes.**
Q. And then there was a period of time where you were doing 1099 work for Intermatic and also for Juskie Printing?
A. **Yes.**
Q. Doing the same type of stuff?
A. **Yes.**
Q. When you worked at Juskie, was that also work for Juskie itself, or was it for customers of Juskie?
A. **Juskie is a print broker, so it was for its customers. I worked for him, but . . .**
Q. All right. And since June 28 of 2011 I take it you have not done any graphic design work

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whatsoever?
A. **I have tried.**
Q. When you say you have tried, what did you try?
A. **I tried using a keyboard and a mouse.**
Q. And when in relation to June 28, 2011 did you attempt to use a keyboard or mouse to do graphics design work?
A. **I would say probably two or three months after that incident.**
Q. Was that for Juskie?
A. **No.**
Q. Who did you try and do work for?
A. **I'm trying to remember his name. New person. Mike Thomas.**
Q. What kind of business does Mike Thomas have?
A. **I can't recall the name of the business right now but I can tell you the type of business. He did scratch-off game pieces.**
Q. For like a lottery company or something?
A. **Yes. But it wasn't lottery. It was where companies wanted to give away a TV to their employees, and they'd give them all scratch cards and see who won, stuff like that. Promotions.**
Q. When you say you tried to do some work for Mike

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Thomas, what did you attempt to do?
A. **I tried to do the graphic design for the scratch cards.**
Q. Okay. And if you could elaborate on that more, are you actually coming up with a concept or a picture that is going to be printed on the card?
A. **Yes.**
Q. And were you given parameters as to what they wanted it to look like, and you were trying to draw it, replicate it?
A. **I would get the parameters, what size they wanted me to do it, and it was my job to come up with the concept and the design. They had input on what they thought they wanted it to be.**
Q. And, again, I'm not trying to oversimplify what you were doing, but I get the impression as a layperson you're trying to come up with a picture that would be on the computer screen that would then be a concept you could flow past the customer to see if it would work for the scratch game?
A. **Correct.**
Q. And that's the program you used to do that which requires a series of key entries and mouse

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clicks?
A. **Key entry and mouse, yes.**
Q. What was it about – two or three months after this incident what was it that you were unable to do?
A. **Type. I could finger peck. I couldn't type anymore. Grabbing a mouse isn't exactly working either.**
Q. Okay. And so you were only able to finger peck after this? That was one impairment or impediment to the job, correct?
A. **Yes.**
Q. And then you said something about the mouse. What is it about the mouse that is the problem?
A. **Grabbing it.**
Q. All right. So you tried that two to three months after the incident, correct?
A. **(Indicates affirmatively.)**
Q. What is it exactly – which hand are you complaining about, by the way?
A. **My right hand.**
Q. Right hand. And what is it about the right hand that impedes your ability to type with it?
A. **It doesn't work right. It hurts.**

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Q. And you're saying it doesn't work right and it hurts. Is that the same problem that affects your ability to use a mouse?
A. Yes.
Q. Is your left hand problematic in any way?
A. It is, yes.
Q. What is wrong with your left hand?
A. They call it tennis elbow or something.
Q. Okay. What have you been told this tennis elbow is?
A. He said it's something about a tear in the muscle or ligament or something.
Q. And which part of your arm?
A. Elbow.
Q. And are you connecting that to the events of June 28, 2011?
A. They said that it is the natural -- what is the word he used -- the doctor used? He said it's perfectly natural that because of having to use my left arm for everything, that it's overused.
Q. When did you begin having problems with your left arm?
A. About two months ago. It got real acute about two months ago. I was having little issues

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building up to it, but then it got real acute.
Q. When you say "acute," it became real problematic?
A. Strong, yes.
Q. What kind of symptoms did you get with the left hand two months ago? What flared up exactly?
A. That side of my elbow (indicating), the outside (indicating).
Q. Just for the record, you held your left arm across your body and pointed to the outside part of your elbow?
A. Yes.
Q. Is that a fair description?
A. Yes.
Q. And was it painful?
A. Yes.
Q. Do you still have the range of motion? It's just painful?
A. It's the range of motion that hurts when you extend it out or pull it all the way in like you're going to eat.
Q. So it's painful as you're going through range of motion?
A. The center range is fine. It's the extensor all the way out and all the way in.

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Q. When you try to extend your arm straight out, it hurts?
A. Yes.
Q. And when you try and pull it in as far as it will go, it hurts?
A. Yes. In between it's pretty good.
Q. You have seen some doctors concerning your left elbow?
A. Yes.
Q. Who have you seen on the left elbow?
A. Dr. Sagerman.
Q. Where is Dr. Sagerman located?
A. He has two offices; one in Vernon Hills and the other in -- it's down near Northwest Community. I don't know the name of the town.
Q. What is Dr. Sagerman's first name?
A. Scott.
Q. And have you seen anybody else for the left elbow tennis elbow problem you have just explained to us?
A. No.
Q. What kind of treatment have you had on the left elbow?
A. I just started physical therapy.

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Q. All right. You have seen a doctor concerning the left elbow then. Have you ever heard the doctor use the word extension?
A. He uses words I don't understand all the time.
Q. Flexion? Have you ever heard the word flexion?
A. He may have.
Q. But that doesn't register for you, though, what those mean?
A. No. I showed him where it was. He knew right away. He just -- that's . . .
Q. So far you have talked about --
A. (Interrupting) He ran a couple of tests. He said, "This is what you have."
MS. FREEMAN: Wait for the question.
Q. You talked about you extending your arm and pulling it back toward you. That hurts at the extreme ends, correct?
A. Yes.
Q. What about turning the wrist palm up and palm down? Does that hurt in the elbow area?
A. In the extended, yes.
Q. And which position makes the elbow hurt? Is it palm up or palm down or both?
A. Palm down, fingers up.

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Q. Have you heard the phrase supination, pronation?
A. Those words I don't know.
Q. Okay. So other than with your arm straight out at full extension and palm down, that is when you describe it hurts, correct?
A. Fingers up (indicating).
Q. So you have to -- you're closing your hand?
A. Fingers up (indicating).
Q. So the wrist is pointed up as well?
A. Yes.
Q. All right. So you have got your arm out at full extension and your wrist tilted with your fingers reaching upward?
A. That hurts.
Q. That hurts?
A. Yes.
Q. And can you think of any other part of the range of motion of the elbow or I guess in combination with the hand that causes pain?
A. There are so many things that happen that I do that sets it off. Just from putting on your jacket to all sorts of -- I mean, grab a coffee cup and bend the wrist the wrong way when you turn it. I can't explain.

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Q. Okay. What are you wearing on your left wrist today?
A. They gave me a splint to wear.
Q. And is it something that it's hard plastic where you can't move your wrist, or is it a band of some sort?
A. It's got a metal plate in here. I think it's metal -- metal, plastic.
Q. The metal or plastic plate goes from the palm to the wrist?
A. Yes. It holds the wrist up at an angle.
Q. Does it prevent you from putting your wrist down?
A. Down or up.
Q. Or up. Has anybody talked to you about carpal tunnel syndrome?
A. They said that it's -- that this is like that. The tendons are torn or something. I don't know.
Q. Okay. And how soon after June 28, 2011 was it before you started noticing symptoms with your left arm? Because this is the first notice -- I haven't seen it in any of the records I have received.
A. It started bothering me this past fall, and I didn't really -- I didn't even think about it

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until -- I mean, it bothered me, but I said something to Dr. Sagerman two visits ago and/or -- sorry -- yes, I think it was two visits ago, and he ran me through range of motion tests and did some stuff, and he said this is perfectly natural. It can be treated. This is what, you know, it is.
Q. When you say last fall, we're talking about the fall of 2012?
A. Yes.
Q. Other than the physical therapy, have you had any injections in the elbow?
A. No.
Q. On the right arm you went and had an EMG study where they check the nerves that go through your arm?
A. Yes, they did some tests.
Q. Did they do the EMG test on the left arm as well?
A. No.
Q. What test do you recall them doing on the left arm other than just taking it through range of motion and touching it and doing things of that nature?
A. That was it. It's new, so we're going to hope

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physical therapy does it, you know.
Q. And so based upon what he saw, this Dr. Sagerman then, so far he's put you on physical therapy?
A. Yes.
Q. Are you on any medications for the left elbow --
A. (Interrupting) No.
MS. FREEMAN: Paul, I just want to remind you to wait until he gets his question out, okay, and then just listen to the question. Okay?
Q. So that is where we're at now with respect to the left elbow? It's been diagnosed as tennis elbow, as far as you recall, and is being treated with physical therapy?
A. Yes.
Q. And has the doctor given you a prognosis in terms of when that may go away, if at all?
A. He said it takes time.
Q. That is all you can tell me right now is it takes time?
A. I think he is hoping to see the -- I can't say what he's hoping to see. I don't know.
Q. Okay. I want to go back to the attempts two to three months after the event when you tried to do

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some graphics design work. The left elbow wasn't a problem at that time --

A. (Interrupting) No.

Q. -- correct? So it was the right arm that would have been a problem?

A. Yes.

Q. And what was it about the right arm that you were unable to do the graphics design work?

A. What was it?

Q. Yes.

A. I think it was the fact that a chain saw went through the muscle group.

Q. Well, I'm not trying to be a smart aleck. I'm asking symptomwise what was it about your right arm that prevented you from doing graphics design work two to three months after the event?

A. It hurt.

Q. What part of your arm hurt, starting with your fingertip up to your shoulder?

A. These two fingers (indicating) through to the elbow.

Q. All right. For the record, you have pointed to -- we call it the pinky finger?

A. Yes.

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Q. And then what some people may refer to as a ring finger?

A. Yes.

Q. And the middle finger, index or the pointer, and the thumb were not painful?

A. The thumb hurts when I pull it in.

Q. Is this how it was back two to three months after the event? That is the period we're talking about now.

A. It was on fire back then.

Q. The pinky, the ring finger and the thumb?

A. Yes.

Q. Painful and on fire?

A. Yes.

Q. All right. Now, you also said that the pain went up your arm to your elbow?

A. Yes.

Q. And which part of your arm? Like the underside? The top? Which part?

A. Next to the bone on this side (indicating).

Q. Okay. So no question it was painful in those fingers, the two fingers you described, and the thumb, and also running down the forearm -- the underside of the forearm to the elbow?

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A. Yes.

Q. That was painful, correct?

A. Yes.

Q. And you say it was on fire. Is that the way you described the pain, or was there some other symptom?

A. It was a burning sensation. Along with tingles, along with cold.

Q. So cold bothered it?

A. Cold bothers it immensely.

Q. You had tingles and a burning sensation?

A. Yes.

Q. Anything else you can think of in the fingers you have talked about and the forearm?

A. The forearm I have -- it's not the same thing. It is not the same -- I don't know. The muscles hurt when I try to type or try to grab things.

Q. Okay. So with respect to the typing then, moving the fingers and thumb, did that enhance or increase the burning, tingling and pain?

A. Yes.

Q. In the fingers and thumb and the arm? Or just all those areas?

A. It was from here to here (indicating).

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Q. And then you say when you grab things, too?

A. Yes.

Q. You grab and try to pick things up?

A. Yes.

Q. That would also exacerbate these complaints you talked about; the burning, tingling and --

A. (Interrupting) Yes.

Q. Other activities -- any activity involving grabbing or using the fingers would create problems then?

A. Yes. I don't even know where to begin on that list.

Q. All right. And certainly using the keyboard or grabbing the mouse, those are two activities that you described are part and parcel of the graphics design work?

A. Yes.

Q. And those two activities would create, if I'm understanding your testimony, the pain?

A. Yes.

Q. What about if your right arm was just resting and your hand was resting? Was it painful at rest?

A. Yes.

Q. Was it tingling at rest?

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A. **Yes.**
Q. Was it burning at rest?
A. **At times.**
Q. All right. So that was two to three months after the event, correct, when you tried the graphics design work?
A. **Yes.**
Q. Yes?
A. **Yes.**
Q. Have you tried it again since then?
A. **I have a computer at home and once in a while I sit down and try to do some stuff. I can't get in more than ten minutes.**
Q. Okay. So if I'm hearing your testimony then, since this happened you have not been able to utilize your right arm and hand for computer work for more than ten minutes?
A. **Correct.**
Q. You have not been able to -- after ten minutes you're no longer able to bear the symptoms then that arise?
A. **It starts ramping up, and I have to quit.**
Q. Have you applied for disability?
A. **Yes.**

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Q. Did you get it?
A. **I am in the application process.**
Q. When did you first apply?
A. **I think it was January of last year, so about a year ago.**
Q. Where does the process stand? Did you apply and get rejected, or are you appealing?
A. **The first thing I was told, they rejected the first, and now I'm in -- they call it an appeal process I think.**
Q. What was the nature of the rejection, if you recall?
A. **They recognize that I was severely impaired but not disabled. That's what the letter said.**
Q. Okay. All right. Since then, June 28 of 2011, you have not -- I know there was a job that you referenced in your Interrogatory answers that you had applied for and received an offer of employment?
A. **I was working for Mike -- you're referring to Mike Thomas?**
Q. No. AMS Screw or something?
A. **I was due to start AMS Screw prior to the incident. I was due to start it the week after**

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the incident.
Q. What were you going to do there, as you recall?
A. **I was going to do material handling part-time.**
Q. What does material handling mean to you?
A. **Moving material.**
Q. What kind of material?
A. **Steel.**
Q. Were you going to use -- were you going to use your hands to lift it or operate a forklift? What?
A. **Well, from what I understood, the job was you take -- they make screws, so you take these little things of screws, you put them into bigger buckets. You take the bigger buckets, put it on a rack, and then roll the rack down to where they wash them or something.**
Q. You understood it then that the machine was going to be pouring all the screws into a bucket, the screws that are being made?
A. **It dumps them into this -- they showed it to me. It dumps it into a stringer thing.**
Q. So they were going to -- you were going to be at a machine that was dumping screws into a small holding device of some sort, and you were going

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to put that into a larger bin?
A. **Yes.**
Q. Which was on some kind of a movable cart?
A. **Then from there you had to put it on the movable cart.**
Q. So you were going to -- the screws were going to pour into some smaller container, you were going to pick that up, dump it into a larger one, fill that up and then put that onto a cart?
A. **Yes.**
Q. What was going to be the weight of those?
A. **I was told approximately 70 pounds.**
Q. 70 pounds for the bigger one that you would be moving to the cart?
A. **Yes.**
Q. What leads you to believe you actually had a position other than applying for it?
A. **They told me to start that following Monday.**
Q. Was this all oral?
A. **No -- well, yes. They already had me on the books. I had done work for them in the past.**
Q. When did you do that?
A. **The year earlier.**
Q. So that was something in addition to the 1099

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work you were doing?
A. That – yes, yes.
Q. All right.
A. I forgot all about that.
Q. Tell me –
A. (Interrupting) Yes.
Q. – when did you start doing this work, the material handling work for AMS Screw?
A. 2009 or 2010, somewhere in there. I'm not sure exactly when.
Q. Was it just a part-time deal?
A. It was. I was hoping it would lead to something more stable, yes.
Q. Was it on a temp basis directly through AMS Screw or through an agency of some sort?
A. It was directly through them.
Q. And how would you know when to come in and when not to come in when you were doing the temp work?
A. The supervisor would call me and say, "We have a spot for you. You want to come in?"
Q. And it was just – those were temporary stints?
A. They were. And he was working with me to try to make it full-time, so I was doing all of these part-time hoping to get the full-time.

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Q. And the work you were doing, the part-time work while you were waiting for hopefully full-time work, was it the same job you were telling us about a minute ago?
A. Yes.
Q. The one where you'd take the screws, pour them into the bigger container and move them onto a cart?
A. Yes.
Q. And then you were going to start you say the following Monday after this happened?
A. I believe it was the following – it was the following week. It was – it was right before the Fourth, so I don't remember. I would have to look at a calendar.
Q. So relatively soon after this happened it was your expectation you were going to begin employment with AMS?
A. Yes.
Q. Was it going to be more than just one of these part-time stints that you were talking about?
A. It was scheduled to be either a week or two weeks. I don't remember. And Joe, the guy who runs it, said he is going to try to get me in

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there by fall full-time. But whether that ever flew or not, I – it never happened.
Q. Okay. Prior to this happening you would get calls from your supervisor saying "Look, we have some part-time work for you"?
A. Well, what would happen – I can kind of explain this. What would happen is I would call Joe. He's the guy that runs it.
Q. What is Joe's last name?
A. Groves.
Q. Groves?
A. Groves, G-r-o-v-e-s. And I would say, "I have a couple of weeks open. Do you have anything?"
Q. Okay.
A. And then he would keep that in mind and then get back to me when he did.
Q. So Joe Groves knew that you were available? If circumstances on his end warranted it, he would just call you?
A. I wasn't available all the time.
Q. Right. He would call you. If you were available, you would go in?
A. Yes.
Q. And that happened how often prior to June 28 of

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2011?
A. I think twice. I don't remember exactly. I think twice.
Q. Okay. And then the situation, whether it was going to be the next day or within a week after this occurrence, you were planning to go participate in one of these temporary stints after this event, correct?
A. Yes.
Q. Do you believe that the stint that was planned after the event was any more or was different in any way than the prior stints?
A. No.
Q. If you understand the question.
A. No.
Q. It was the same?
A. Yes.
Q. It was your hope that the more you did these temporary stints, the more likely you would have a chance to get full-time employment?
A. Yes.
Q. Would you agree that as of June 28, 2011, though, you had not had a promise of full-time employment?

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A. **I had no promise of full-time employment.**
Q. Have you tried to go back at any time since June 28 of 2011 to I guess fill one of these temporary stints that you have done in the past?
A. **No. They called.**
Q. When you say "they," Joe called?
A. **Yes.**
Q. So Joe Groves called when in relation to June 28, 2011?
A. **A few months after.**
Q. And what happened on that event where he called to see if you were interested?
A. **Yes.**
Q. What happened?
A. **He knew what had happened. He said, "Do you think you can do it?" And I said, "I don't think so."**
Q. Is that the only time there was an exchange over possibly taking another temporary stint?
A. **He actually came out to my home. He knewwhere I lived, and he came out to my home, and he knew right away I couldn't do what they were asking to be done.**
Q. So you have tried going back to the graphics

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design work?
A. **Yes.**
Q. And that's too painful to do because of the keyboard entry and the mouse function?
A. **Yes.**
Q. And then you kind of self -- you made a decision on your own, given your situation, it was unlikely that you could do the work for AMS Group; is that right?
A. **Oh, I knew I couldn't do it.**
Q. Right. You decided that?
A. **I don't think I decided it. I think my body decided it.**
Q. Okay. So your body was telling you that you couldn't do that job?
A. **I couldn't pick up those buckets, no.**
Q. Other than those two potential avenues of employment or income, have you undertaken any other effort to find a job?
A. **Yes. I went on several different interviews.**
Q. For what kind of jobs?
A. **Graphic design.**
Q. I thought you said you can't do that.
A. **When you got bills, you try.**

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Q. Okay. So you went for some interviews for a couple of graphics design positions?
A. **Yes.**
Q. To do similar things to what you were doing before?
A. **Yes.**
Q. And did you get either one of those jobs?
A. **No.**
Q. Why is it, if you know?
A. **I'm not sure.**
Q. Did they have you sit down at a computer terminal and try and generate any work?
A. **Yes.**
Q. And were you able to do it?
A. **They saw the shaking of the hands and whatnot. Basically said "We can't use you."**
Q. Where were these two companies that you sat for and attempted to do graphics design or at least illustrate your abilities?
A. **One of them was on the northwest side of the city. I only went in there once.**
Q. The name of it?
A. **I'm trying to remember. I can go back through my e-mails and find the name where they contacted me**

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through. I don't know it offhand. They were kind -- they told me that they found somebody more compatible.
Q. So there was one company, and you said it was on the northwest side of the city, meaning Chicago?
A. **It's the suburbs.**
Q. Okay. Northwest suburbs. And you would try, if we asked your attorney, to locate the name of that company?
A. **I can try if I still have the contact.**
Q. And you said there was a second one as well. Where was that?
A. **I'm pulling a blank.**
Q. There was one, but you're drawing a blank on it?
A. **Yes.**
Q. Is it possible that your computer database at home would have some information that might refresh your memory?
A. **It may. I haven't used that computer in so long anymore, I don't even know if it will boot up. But, yes, it may.**
Q. And at least one of these companies you went to you had to sit down and illustrate your graphic design abilities?

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A. **Yes.**
Q. Did you have to do that at both or just the one, if you recall?
A. **Just one.**
Q. All right. For the graphics design positions, you have at least tried to get two others since then, right?
A. **Yes.**
Q. Were you going to be doing 1099 work for them or actually be employed by those two companies?
A. **I was trying to be employed.**
Q. And then besides these two attempts at graphics design positions, any other attempts of employment since June 28, 2011?
A. **No.**
Q. Do you remember signing Interrogatory answers saying that you would be making a claim for lost earnings?
A. **I don't know what you mean by Interrogatory answer.**
Q. There is some written questions that we sent to your attorney to have you answer. And I don't want to get into what you and either your attorney here or Mr. Mast may have talked

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about –
A. **(Interrupting) I remember he asked me some stuff.**
Q. Take a look at the last page – nope, not the last page. It will be the fourth from the back. Is that your signature?
A. **Yes.**
Q. I should say for the record I tendered to you Exhibit No. 1. That is your signature on the fourth-to-the-last page?
A. **Yes.**
Q. Question No. 6 asked about whether you would be claiming any lost income as a result of the injuries, including wages and salaries, and then there is this listing of AMS Screw Products. Do you see that?
A. **Yes.**
Q. And Joe Groves, that's the guy you mentioned that would call you from time to time?
A. **Yes.**
Q. Is that the hourly rate you would get for your temporary work?
A. **Yes.**
Q. And then when we talk about being hired but not able to pursue employment due to the accident,

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you were unable to do that temporary stint that you had lined up?
A. **Right.**
Q. How many days or weeks was that planned for when you were working?
A. **I don't remember, but it was one or two. I know that.**
Q. One or two days or weeks?
A. **Weeks.**
Q. All right. So if it was a 40-hour week, it would be 40 times the $10 hourly rate?
A. **Yes.**
Q. And if it was the two weeks, it would be that 80 hours at ten bucks an hour?
A. **Yes.**
Q. Past that have you made any other calculations on your end I guess pursuant to what you believe you have lost in the form of income?
A. **The biggest loss I suffered was not being able to renew with Juskie later on.**
Q. Renew in what sense – so, first of all, with respect to AMR, other than that one to two-week stint, from your vantage point are you claiming that you have lost more income that you could

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have received through AMS Screw?
A. **With Juskie Printing the contract that he had was up in May prior to this incident. That is why I was looking for other work to fill, pending Juskie getting a new contract with his customer, okay, which would have extended my work there as well.**
Q. Okay. So your hope at the time this happened was not to go full-time with AMS Screw? You were hoping that Juskie renewed their contract so you could continue 1099 work?
A. **I was hoping to get work anywhere I could get it.**
Q. Well, I know that turned out to be the case; but heading into this event on June 28, 2011, was it your hope that you would be able to do the 1099 work for Juskie or leave that –
A. **(Interrupting) It was my hope I could do both.**
Q. All right. So your hope was to continue to do 1099 work for Juskie, and also as needed, fill in at AMR, potentially get a full-time job?
A. **AMS.**
Q. AMS. Let me start the question over then. So heading into this event that happened on June 28, 2011, were you not actively doing work for Juskie

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because their contract had ended?
A. Yes.
Q. And you were doing temporary work periodically for AMS?
A. Yes.
Q. And that was on an as-needed basis when Joe Groves called?
A. Yes.
Q. That was your hope moving forward, that there would be a new contract for Juskie and that you could do some 1099 work, correct?
A. Yes.
Q. And then also as-needed fill in at AMS?
A. Yes.
Q. And hopefully get a full-time job at AMS if that ever arose?
A. Yes.
Q. And when you were doing 1099 work for Juskie, what did that mean to you in terms of gross receipts?
A. I can tell you what I made that year from him in five months. You can do the math from there.
Q. Okay. Well, what did you make?
A. It was 18,000.

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Q. The first five months of 2011 you made 18,000 as a 1099 worker for them?
A. Yes.
Q. And you would have to take all of your expenses out of that?
A. Yes.
Q. And then at AMS do you have a recall what you may have made at AMS during that first --
A. (Interrupting) Not much more than that, the $10 an hour. They didn't pay.
Q. And there was two or three stints where you worked for them, as you recall?
A. Yes.
Q. And those might have been a week or two each?
A. Right.
Q. All right. And do you know, did Juskie get that contract?
A. Yes, he did.
Q. Who was your contact person at Juskie?
A. Mark.
Q. What is his last name?
A. I know his last name, and I'm drawing a blank. I know his last name well.
Q. Maybe it will come to you later. Tell me if it

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does. How did you learn that Juskie actually got the contract that may have been able to provide you with more 1099 work?
A. He told me.
Q. Mark did?
A. Yes.
Q. Did he call afterwards and say, "Hey, we're ready for you"?
A. Yes.
Q. And you had to tell him you couldn't do the work?
A. I couldn't do anything at that point.
Q. Is that when you tried -- you said two to three months afterwards you tried to do the work and you couldn't?
A. Mark called not long after the incident, within a month, and I couldn't do anything at that point. You didn't see me come out of my house.
Q. So he called within a month of this thing happening and you told him there is no way you can do it?
A. Yes.
Q. Did he ever revisit the possibility of doing work for Juskie with you?
A. I have known Mark for a lot of years. We talk on

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and off about various things.
Q. Does that mean he did or he did not? I don't know.
A. Yes. He's probed. He knows it's done.
Q. So periodically he will inquire about it, and each time you have told him no, I take it?
A. (Indicates affirmatively.)
Q. Is that a yes?
A. Yes.
Q. Juskie -- what is the full name of that company?
A. Juskie Printing, Inc.
Q. Where is it located?
A. The last, it was down on Chicago Avenue out near -- I used to take -- I know how to get there. I don't know the town it's in. I used to take 355 down, get off in --
Q. (Interrupting) Do you have a phone number for Juskie?
A. I have it at home.
Q. Okay. So other sources of income that you had before the incident besides Juskie that we have talked about and then AMS? Were there any others that stick out in your mind?
A. That was it.

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Q. And you have not had any income from either of those two sources --
A. (Interrupting) The only other place I was getting income prior to that was Intermatic when they needed work, and that was -- that was less than Juskie.
Q. Did you get any work from Intermatic in the five to six months in 2011 that preceded this event?
A. (Indicates negatively.)
Q. I take it then you haven't done any projections of lost income?
A. No.
Q. Have you ever been in the union?
A. No.
Q. Ever been in the military?
A. Yes.
Q. Which branch?
A. Army National Guard.
Q. Were you active service Army or just National Guard? I'm not diminishing it, but I'm trying to distinguish those two.
A. Two weeks out of the year you're active service. The rest of the time you're National Guard.
Q. Okay. And so what period of time were you Army

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National Guard?
A. Oh, from the time I was 18 or 19 until the time I was 22 or 23. Somewhere in there.
Q. Did I ask you -- have you ever been married?
A. Yes, I think so.
Q. Have you?
A. No.
Q. All right. I'm going be -- I'm going to shift over to the event that is the subject of the lawsuit. Where did this happen?
A. At Caroline McGuire and Bill McGuire's house.
Q. That is listed in the Complaint as 1016 West Elder?
A. That sounds like it.
Q. Did you know the McGuires prior to this happening?
A. Yes.
Q. How is it that you knew the McGuires?
A. Grew up in that neighborhood.
Q. There is another fellow that is named in the lawsuit, Dave Gagnon?
A. Yes.
Q. Is he connected to the McGuires, if you know?
A. Yes.

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Q. What is the connection?
A. He is Caroline's son.
Q. Are you and David grade school buddies? Middle school buddies?
A. High school.
Q. At Johnsburg?
A. Yes.
Q. Were you and he like close socially in high school?
A. More right after high school.
Q. How was it that the two of you became connected more so after high school? You knew who he was in high school, I take it?
A. I think we knew all the same people.
Q. So there was a common group of acquaintances through high school?
A. Yes.
Q. And then describe the relationship as it evolved. I mean, did you see each other socially? Recreationally? I mean how?
A. It was we would do dumb things together, you know. Socially, recreationally.
Q. You ever work together?
A. On the job?

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Q. Anywhere.
A. Like as employment, no.
Q. Okay. What kind of social or recreational activities would you participate in from time to time with him? Bowling leagues? Golf leagues?
A. Did a bowling league together. He was into restoring cars, and he did it in his mom's garage, and everybody kind of kicked in a hand to help him.
Q. Okay. Is he married, if you know?
A. He is.
Q. Did you go to their wedding?
A. Yes, I did.
Q. Do you know if he has any children?
A. No children -- oh, wait. He might have -- I don't know. That's . . .
Q. Did he have any back in June of 2011, if you know?
A. He may have. I'm not sure.
Q. I take it you're not like a godfather or anything to his child?
A. No.
Q. I mean, I can keep asking more and more questions that come into my mind about how you might have

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-- or what your relationship with Gagnon may have been before this. I was hoping to hear from you how you describe it.

A. Well, it was just friends hanging out after years of high school.

Q. How often would you see him then I guess on a monthly basis?

A. Recently or --

Q. (Interrupting) Before this happened.

A. How long before this happened?

Q. Let's go with the first two years immediately preceding this incident. How often would you see him?

A. Oh, not that often. Once or twice a year maybe.

Q. Okay. Was there a higher frequency immediately after high school?

A. Oh, yes.

Q. Apparently it waned over time?

A. Yes.

Q. So in the two years or so before this happened, June 28, 2011, you would only see him once or twice a year?

A. Maybe three or four. A few times a year. I mean, I'm not sure of the exact number.

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Q. Okay. And this is an estimate, correct?

A. Yes.

Q. And would this just be in passing, or was it set plans to see him?

A. For -- well, for some reason or another he would want to see Mike, who was living with me, or another friend of ours, and he would say, "I'm going over here. I'll meet you there," you know, and we would run into each other, you know.

Q. So it would be the contact you had with him then in recent years prior to the event was more just happenstance, overlapping of friends and acquaintances?

A. Yeah. Well, if he needed help or I needed help, you know, I think that that was a given.

Q. Okay. I asked you if you ever worked together. You guys never worked for a company or an employer where you were both on payroll there together, correct?

A. Correct.

Q. Now, obviously there is this incident on June 28 of 2011 where you were with him, correct?

A. I was on the property, yes.

Q. And then you mentioned that you guys would help each other from time to time as needed?

A. Yes.

Q. Okay. What kind of stuff do you recall over the years helping David with or him helping you with?

A. I remember pulling his car out of the ditch when it snowed and he called me. I remember approximately ten years earlier him helping me fix my roof after a storm. Earlier than that I helped him numerous amounts of time with sanding body parts to a car when we were in our 20s.

Q. Okay. What about -- obviously we're going to need to talk about chain saw usage prior to June 28, 2011. Had you ever been anywhere with David Gagnon where a chain saw was involved?

A. Yes.

Q. Okay. Where was that?

A. It was on Carol's property.

Q. All right. Anywhere else besides Caroline McGuire's property?

A. I'm not sure. I don't think so.

Q. Put Mr. Gagnon aside. Have you ever used a chain saw --

A. (Interrupting) Yes.

Q. -- personally?

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A. Yes.

Q. Prior to this day, June 28, 2011?

A. Yes.

Q. How many times do you think you might have been on Caroline McGuire's property prior to June 28, 2011 where you were engaged in any activity involving a chain saw?

A. I vividly remember once.

Q. One other time?

A. Yes.

Q. And how and when in relation to June 28 of 2011 was that?

A. A few weeks prior.

Q. Okay. And other than that one that you actually recall and then June 28, 2011, that is the extent as you sit here today you can recall?

A. Yes.

Q. Did you ever work with a chain saw in combination with David Gagnon on any other person's property?

A. Not that I remember.

Q. Before June 28 of 2011 did you personally have an appreciation for any risks that might be presented by a chain saw?

A. Say that again.

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Q. Sure. I want to know if you had -- heading into June 28 of 2011 if you had any understanding as to any hazards that might be associated with chain saw use.
A. Yes. It's dangerous.
Q. What is dangerous? What was dangerous about it from your vantage point?
A. A chain saw is dangerous, period.
Q. Okay. I mean, if it's just sitting there not running, is it dangerous?
A. I'm not sure what you mean.
Q. Okay. You mentioned that you had used chain saws before?
A. Yes.
Q. And you have used them without David Gagnon being present?
A. Yes.
Q. Can you give me any estimate as to how many times you might have used a chain saw prior to June 28, 2011?
A. Myself?
Q. Yes.
A. Hundreds. Maybe not hundreds, but enough where I can't count.

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Q. All right. And during those periods where you were using a chain saw, you formed the view that chain saws can be dangerous?
A. Very.
Q. And what type of dangers did the chain saw present from your experience using it?
A. It cuts through things very rapidly.
Q. So the operator could be cut?
A. Yes.
Q. And you knew that before June 28 of 2011, correct?
A. Yes.
Q. Did you ever use a chain saw in tandem with anybody else helping you prior to June 28, 2011?
A. Yes.
Q. This fellow that lives with you and your mom, what is his name again?
A. Mike.
Q. Mike. What is his last name?
A. McArtor.
Q. Did Mr. McArtor ever assist you while using a chain saw?
A. Yes.
Q. I mean, is that multiple times in the past you

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and Mr. McArtor may have been involved in projects where a chain saw was used?
A. Yes.
Q. And in those situations would you be the operator, or would you be the helper?
A. I would be the helper.
Q. Did you ever have a situation where he was helping you and you were operating a chain saw then?
A. Where Mike McArtor was helping me and I was operating it?
Q. Yes. Correct.
A. Yes.
Q. Are you able to count how many times that occurred?
A. I'm not sure, but it's more than a few.
Q. On those few -- well, were there other people from time to time that helped you as well while you were using a chain saw?
A. Yes.
Q. And on those occasions where it was somebody else or maybe it was Mr. McArtor, did you form any opinions about the potential hazards or risks to the people that were helping you that a chain saw

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might present?
A. Yes.
Q. What kinds of risks are those to the other people?
A. Keep them as far away from it as possible.
Q. And the risk to the helper is also --
A. (Interrupting) If they are too close, yes.
Q. -- being cut --
A. (Interrupting) Yes.
Q. And at any point in your lifetime prior to June 28 of 2011 had you ever been trained by somebody who was a skilled chain saw operator?
A. No.
Q. Had you ever had a job where your primary purpose was to use a chain saw?
A. No.
Q. All your experience with a chain saw, would you agree, would be just personal use and experience?
A. Just backyard trimming down limbs.
Q. Kind of on-the-job training?
A. Just my house.
Q. Do you recall ever sitting down any time prior to June 28, 2011 on those occasions where you were using a chain saw and reading an operator's

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manual?
A. Oh, yes.
Q. You have read an operator's manual for a chain saw?
A. When I was younger, yes.
Q. We're going back to like immediately after high school?
A. We're going back to eighth grade.
Q. Eighth grade?
A. Yes.
Q. So this was going back when you first started using a chain saw?
A. Yes.
Q. When you first started using a chain saw, did you take it upon yourself to read the manual and begin using, or did some adult help you with that process?
A. Somebody helped me.
Q. Who was it? Your dad?
A. Yes.
Q. Is he still alive?
A. No.
Q. And I know this is going back a ways. What do you recall your father telling you about chain

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saw operation when he first taught you how to do it?
A. Same thing he told me about all power tools.
Q. What was that?
A. Handle them with extreme care.
Q. So you should handle any power tool with extreme care?
A. Yes.
Q. Do you recall any specific instructions or admonitions about chain saw usage?
A. He taught me the maintenance. He taught me how to use it, how to -- what side of the blade to cut with, things like that, yes.
Q. So he demonstrated it for you?
A. Yes.
Q. Besides the risks, are you -- strike that question. Are you aware of any other known risks associated with a chain saw other than cutting from the chain?
A. No.
Q. And I'm not -- I'm not even saying there are any. I'm just asking you what other risks that you're aware of that might be associated with a chain saw other than the actual blade injuries to a

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user or helper.
A. Heat.
Q. Heat?
A. Yes.
Q. Anything else you can think of?
A. Fragments. The wood chips, you know.
Q. The saw dust and debris that might fly off --
A. (Interrupting) Yes.
Q. -- during cutting?
A. Yes.
Q. Okay. Anything else that brings to mind?
A. I'm trying to think back of -- way back when he taught me that.
Q. If something comes up, let me know. Have you heard the phrase of binding or blade bind?
A. I know what binding is, yes.
Q. What does it mean to you?
A. It means the blade bound. It froze up. It may have overheated, you know. Lack of lubrication, something along those lines. There are many things that could happen.
Q. Blade binding to you then is something where the blade just stops, the motion of the blade stops?
A. No.

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Q. Okay. You said it has something to do with overheating or lack of lube?
A. Well, you can bind anything, any power tool, when you're cutting something either by bending it. I would guess I have -- I had a blade bind once on me.
Q. A chain saw blade?
A. Yes.
Q. And what happened?
A. It bent the bar that the chain rides on.
Q. Okay. All right. So I need to get a little more detail about what you understand binding or blade bind might be. It can happen, you said, if the blade overheats?
A. Yes.
Q. If I understand, the chain just goes around on that blade, correct?
A. Yes.
Q. There is a long metal blade that comes out from the power portion of the chain saw, right?
A. Correct.
Q. And there is a groove where the chain goes around in a circular fashion?
A. Yes.

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Q. And the motor propels that blade? That's a simple description of it, but that is how it works?
A. Yes.
Q. And when we talk about binding, are you talking about the blade getting bent?
A. That is the way that I have had it bind.
Q. So if the blade that has the groove that the chain operates on, if that bends, the chain wouldn't move?
A. Correct.
Q. Or if part of it needs to be lubed, to get a good free flow of that chain, the chain needs some lubricant as it glides around on that blade, correct?
A. Yes.
Q. And if there is no lubricant, that can affect the ability of the blade to -- I'm sorry -- the chain to spin on that blade?
A. Yes.
Q. And if there is inadequate lubricant, then the blade can actually heat up?
A. Yes.
Q. And at that point can the motion of the chain

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just stop because it's overheated?
A. Yes.
Q. Have you ever heard the phrase binding or blade bind used in connection with an actual cutting operation?
A. Yes.
Q. As the cut is occurring, the pressure of the log or tree that is being cut can pinch against that blade?
A. I can see that happening, yes.
Q. Are you aware of that? Is that a risk that you know of or knew of before June 28, 2011?
A. Yes.
Q. Have you ever heard of a kickback?
A. Yes.
Q. What is a kickback, as you understand it?
A. It's usually when something other than what you're intending to cut is in the way, and like you actually hit a second log, okay, and it will kick back because you're trying to cut through two different items. That's my understanding of it. I may not be technically right, but . . .
Q. Okay. Are you aware -- maybe you have never heard this -- there is a kickback zone associated

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with part of that blade?
A. Yes.
Q. And what is the kickback zone, as you understand it?
A. I don't know what technically it would be, but I wouldn't want to be in the way of it.
Q. All right. So you don't have a specific understanding heading into June 28 of 2011 what the kickback zone may be, correct?
A. No.
Q. But you were aware that there is such a thing as a kickback?
A. Have I heard of that? Yes.
Q. And have you ever seen that happen prior to June 28 of 2011?
A. I've felt it happen when I have operated a chain saw when I was younger.
Q. And have you ever seen it happen to somebody else?
A. No. I'm usually the one that operates. It's very rare that I'm standing assisting.
Q. The kickback, that is the situation, in layperson's terms, where the blade actually comes back toward the operator?

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A. (Indicates affirmatively.)
Q. Yes?
A. Yes.
Q. And you said you experienced that once?
A. Yes.
Q. Where the blade actually kicked back toward you? Or were you holding it such that it wouldn't?
A. In my case the blade kicked forward. It pulled the saw. It didn't kick back. I was kind of reversed.
Q. You have never experienced where it actually came back toward the user?
A. I have never had the type of debris around that would cause that, I don't think.
Q. Have you ever read any manuals or been taught as to ways to avoid kickback?
A. Remove all the debris surrounding the area.
Q. Okay.
A. I was warned what kickback was when I was first taught it. You don't want anything in the way other than what you're cutting. My understanding of kickback, the way that I was taught, it usually requires hitting a second object.
MS. FREEMAN: Wait for the question.

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Okay?
THE WITNESS: All right.
Q. In terms of how to hold the chain saw, as you recall, what was the training you received in how to hold the chain saw?
A. Both hands.
Q. Okay. Where would your dominant hand be?
A. On the trigger.
Q. And then you would use the right hand on the trigger?
A. Yes.
Q. Left hand on the bar that is on the top of the chain saw?
A. Yes.
Q. Have you ever personally experienced a situation where you were cutting a branch or a limb of some sort that had pressure on it that was bending it?
A. Yes.
Q. Yes?
A. Yes.
Q. And were you taught or did you learn any risks that might be associated with doing that activity, cutting a branch that had downward pressure on one end of it?

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A. I was taught to attack the pressure from the other side so that you didn't get the bind in there.
Q. And to avoid binding, if you cut right into the pressure area, the pressure zone, what could potentially happen that you're trying to avoid?
A. The weight of the limb will pinch the chain and thus bending the bar.
Q. And if the blade of the chain saw gets pinched, I guess it gets in combination, the chain is also likely to be pinched?
A. Yes.
Q. Now, we talked about your connection to Mr. Gagnon before the June 28, 2011 incident, seeing him a few times a year during that last two years leading up to it, correct?
A. Yes.
Q. What about since this happened? How often do you see him?
A. Immediately after I saw him. He came over and wanted to see how I was doing. But since -- I want to say I don't know how long it's been now, but it's been at least six months, maybe a little longer that he hasn't talked to me at all.

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Q. Okay. So you haven't talked to him at all for the last six months?
A. No.
Q. And that takes us into the middle of 2012. There is still like a whole year in there between the accident and when the communication stopped. What was the frequency of contact over that year before all the communication stopped?
A. Right after the incident he was coming by every couple of weeks for about a month and a half, two months, three months maybe. And I even went up to his place once or twice.
Q. What happened a year out that stopped all the communication, if you know?
A. He got a letter from an attorney's office.
Q. Did he call you to talk about that letter?
A. Yes.
Q. Okay. What do you recall the substance of the conversation -- strike that. That's a bad question. Do you recall the conversation you had with him once he got that letter?
A. I recall, yes.
Q. Tell me what you recall talking to him about. Who called who?

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A. He wanted to know what it was.
Q. He called you?
A. Yes.
Q. Tell me about the conversation, what he said and what you said.
A. He said, "Why am I getting letters at my home when it happened at my mom's house?"
Q. Did you share with him any thoughts on that?
A. I said, "It's from my attorney."
Q. Did you talk about the day of the event when he called you?
A. Not so much. He was upset. And from what I gathered out of the whole thing, he may not have told his wife the entire truth about it, and she is the one who got the letter.
Q. Okay.
A. He was real upset.
Q. What is it that you believe he didn't tell his wife?
A. That there may be any aftermath.
Q. Did he share something with you that caused you to believe that, or is that just your supposition?
A. He kind of said -- well, he basically said, you

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know, his wife didn't know, and he didn't appreciate the letters coming to his house. He wanted my attorney to stop sending them.

Q. Okay. Other than him calling to ask why the letters were coming and you telling him that it was your attorney sending it and whatever discussion occurred that caused you to believe his wife didn't know about it, any other discussion or any other subjects that you recall being discussed during that phone call?

A. Yes.

Q. What?

A. May I confer with her for a minute? Can we have a break?

Q. Was your attorney there for that telephone call?

A. No. But he was e-mailed right thereafter the same day.

MR. BARCH: Well, I don't want to deprive you of a chance to talk to your attorney. Go ahead.

(At this time a short recess was taken.)

CONTINUED EXAMINATION BY MR. BARCH:

Q. Mr. Dulberg, I was asking you about the phone conversation you had with Mr. Gagnon, the one

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that precipitated the break-off of communications. Okay? And we have talked about him calling wanting to know why he was getting letters, your view that maybe his wife was upset with him. And I'm paraphrasing, of course.

A. Uh-huh.

Q. And you also mentioned that you did not really talk about what happened on June 28, 2011. And then I asked the question I thought about -- I thought I asked whether or not there was anything else that you recall being discussed that day during that phone conversation. And then I thought that was the impetus to your request to meet with your counsel. Does that get us back to where we were?

A. Yes.

Q. Okay. And it may be difficult to talk about, you know, this breakdown in communication between you and Mr. Gagnon because you have known him for years, but it's important to me to know what you guys talked about. So to the extent it doesn't involve your attorney, I would like to know what you guys discussed.

MS. FREEMAN: No conversations between you

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and Hans or me. Your conversations with the defendant.

MR. BARCH: That's right.

A. Okay. He was just very upset that he was receiving all of this stuff at his house. Can you repeat where you were at?

Q. I'm just trying to figure out if there was anything else you and Mr. Gagnon discussed that last phone call you had together besides him being mad about getting letters, your belief his wife might not have known the whole story, and also him being upset about the whole thing.

A. Yes. He was very upset. I'm not going to tell you some of the profanity, but he was very upset.

Q. I take it then he was very upset that he was being sued?

A. He didn't understand why he was responsible at all if it happened on his mom's property. That was his big . . .

Q. Did you and he talk about the idea that he was running the chain saw?

A. I said, "Yeah, you are responsible," and I said, "It's time you have to tell people about this. You know, they are going to want to know." And

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he did not want to do -- he said he was tired of the whole thing. He had heard from his mom about it for months, and he did not want to hear it anymore, and he is sick of it, and he went on, and he was ranting.

Q. During this rant and your effort to explain to him why he was getting letters, did you and he ever discuss the subject of what happened?

A. I think we both know what happened.

Q. Did you actually discuss it that day during the call?

A. No. Not the details of what happened, no.

Q. No comments about "Well, you were running the saw," or "You were holding the limb"? Nothing along those lines? No details about what happened?

A. I said, "You're the one who was operating the chain saw. Of course the lawyers are going to want to talk to you. They are going to send you papers."

Q. And in response did he make any comments to you about your involvement that day?

A. He just went on about how he did not want to hear it.

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Q. Okay.
A. That was the gist of it.
Q. All right. So you have known David for a long time prior to this. And then Mr. and Mrs. McGuire, Caroline and Bill, they are married, of course?
A. Yes, I believe so.
Q. How often would you encounter the McGuires?
A. In recent years I would actually encounter the McGuires more than I would David.
Q. How is it you would have more contact with them than David?
A. Caroline worked with me at Intermatic for ten years. Not side by side, but she worked there.
Q. Is it Intermatic did you say?
A. Yes.
Q. Different jobs?
A. Yes.
Q. Just worked for the same employer?
A. Yes.
Q. Did you guys have lunches together or anything like that?
A. No.
Q. So other than seeing her in passing, did you even

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really talk to her?
A. If I had some downtime and she was working near me, I would go over and say, "Hey, how's it going?"
Q. Just general pleasantries?
A. Yes.
Q. You did not see Caroline and Bill on a social basis?
A. No.
Q. And outside of your contact with her at Intermatic over the ten years leading up to this event, how often would you see either her or Bill?
A. Outside of work, couple of times a year at the grocery store or something. I mean, just say hi. In fact, I just ran into Bill two weeks ago.
Q. So would it be fair to characterize your contact with the McGuires during the -- and putting your contact with Caroline at Intermatic aside, but outside of work, your contact with the McGuires would just be happenstance, bumping into them?
A. Yes.
Q. There was no reason for you to go over there and visit with them?

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A. No.
Q. They didn't have you over to parties or anything?
A. I should correct that. I did go over there a couple of times just to see Caroline right after Intermatic did their big layoff. That was more about work.
Q. When did the big layoff occur?
A. It went on for a couple of years. They've phased down. It was between 2007 or '8 and 2010. I think they are still laying off. They are probably going to go out of business.
Q. The visit or two that you had at her home during the layoff would have been sometime during this period you were talking about, 2008 to 2010?
A. Yes, somewhere in there. When I heard that she lost her job, that is when I stopped over.
Q. Just to basically express your sympathy or what have you, empathy?
A. (Indicates affirmatively.)
Q. All right. Prior to June 28 of 2011 had you ever been to the McGuires' house to perform any type of function around their house; repair, maintenance, handyman work, anything?
A. Prior to it?

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Q. Yes.
A. Mostly it was years earlier, and it was body restoration in her garage with her son David. I don't think I ever repaired anything around there in the house or anything. I may have helped shovel the driveway once as a kid.
Q. All right. So we have got the -- you have mentioned that early on right after high school you would help David with the restoration of old cars?
A. Yes.
Q. That was done in the garage at the McGuires'?
A. Yes.
Q. Putting that activity -- and that was years ago, correct?
A. Yes.
Q. But we're talking like more than five or ten?
A. Oh, yes.
Q. And then you mentioned that you might have helped David shovel when you were kids?
A. Yes.
Q. All right. But let's get into like the last five to ten years. Did you ever go over to the McGuires' house to perform any type of

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maintenance function at their home, any repair function at the home?
A. No.
Q. Or any kind of handyman work of any kind?
A. The closest thing to that I think was she needed to go to Menards to get some wood, and I had a truck and a trailer, and I took her over there, her and her son, and got the wood and drove her back home. And that was it. I didn't actually perform any function.
Q. And when was that in relation to 2011?
A. Wait. Wait. I stand corrected. The month or two prior to this incident I took down a shed. It wasn't just me. And we didn't take it down. They just unbolted it from the bottom, and we all just carried it out to the front of the yard and put it on my trailer. They needed as many hands as they could get, and I happened to be free.
Q. Okay. So a month or two before this event there was a shed that was removed from the property?
A. Yes. I don't even know if it was a month. Maybe four weeks.
Q. Sometime before?
A. Just right before, yes.

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Q. It still would have been 2011?
A. (Indicates affirmatively.)
Q. Yes?
A. Yes.
Q. This shed, you say it was just unbolted from its foundation?
A. Yes. It was one of those flimsy steel sheds.
Q. Steel deal?
A. Real light.
Q. How big was it?
A. It was a big one.
Q. You're talking 10 feet by 9? I mean, how big? Do you recall?
A. I would guess -- and I don't know. They know what size it was. It was a bigger one. Probably 10 by 12.
Q. That is an estimate, right?
A. Yes.
Q. And then did you say a group of people picked it up whole and put it onto a trailer?
A. Yes.
Q. Was it placed on like a flatbed trailer or something?
A. Yes.

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Q. What happened to -- it was your trailer?
A. Yes.
Q. Where did it go?
A. It went around the block to my house, and then I took it over to the scrap place.
Q. Did you use it for a period of time?
A. It sat there. I threw some hoses in there when I got more stuff to go to the scrap guy. Took it all over.
Q. When did you dispose of it?
A. This year. No. 2012.
Q. So you had it through the winter of 2011-2012?
A. Yes.
Q. So you used it about a year and then got rid of it?
A. Yes. It was just sitting there. I didn't want to use it. It wasn't --
Q. (Interrupting) When you were there -- when you were there to have this thing put onto your trailer, who else was there besides you?
A. David, Bill and Carol.
Q. So did all four of you then lift this thing up?
A. You need one on each corner.
Q. Okay. Besides helping them get the shed off the

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property, do you recall any other work that you may have done or assistance you may have offered around the property prior to June 28 of 2011?
A. Recently. That's about it.
Q. Did Mr. or Mrs. McGuire -- I'm going to use them in combination. If one or the other did something, tell me. But did either of the McGuires ever train you on how to use a chain saw?
A. No.
Q. Did either of the McGuires ever demonstrate how to use a chain saw for you?
A. No.
Q. Did you ever help Bill or Caroline cut trees down prior to June 28, 2011?
A. Once.
Q. And when was that?
A. Again, it was a few weeks prior. About the same time we took the shed.
Q. Okay. So there was another occasion where you were out there tending to trees?
A. No. Her son David called me and asked me if he could borrow my chain saw.
Q. Okay.

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A. **And I brought it over.**
Q. So David called you for a chain saw?
A. **Yes.**
Q. And other than bringing it over, did you help David at all?
A. **I picked up some sticks on the ground. He did all of the cutting except for I did cut one thing, and it was -- when it was all done and cleaned up, they had a stump, and I tried to make it as close to the ground as possible, and that was it. That's the only cutting I did.**
Q. When you say you picked up some branches --
A. **(Interrupting) Yes.**
Q. When you say picked up branches, what are you talking about? Bundles? A couple twigs?
A. **It was an apple tree. So they were small, and David cut it. He cut the whole tree down, and Bill and I were standing there talking, and we were taking them over to where they were -- their garden area.**
Q. So on this occasion David cut down the entire apple tree?
A. **Yes.**
Q. With the exception of that stump that you tidied

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up?
A. **Right. About four inches of stump sticking up, yes.**
Q. And the assistance that you gave, you helped get that stump to a more presentable condition closer to the ground?
A. **Yes, I did.**
Q. And then you helped Bill move some of the branches to a different area on the property?
A. **They were already cut up, so yes.**
Q. Were they tied in bundles, or did you --
A. **(Interrupting) They were just loose.**
Q. Loose. Did you just pick them up and carry them?
A. **Yes.**
Q. Did you get paid by the McGuires?
A. **No.**
Q. Do you know if David was paid by the McGuires to take down that tree?
A. **Which tree?**
Q. The apple tree.
A. **I don't know.**
Q. Did you get any kind of remuneration or consideration or gifts of any kind for helping that day with your chain saw?

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A. **I got pop.**
Q. Pop. Were you expecting money?
A. **No. I wasn't there to do any work.**
Q. And you don't have any insight as to the connection between David -- strike that. You don't have any insight as to the arrangement between the McGuires and Mr. Gagnon on that day when he was taking down the apple tree?
A. **No.**
Q. For all you know it could have been a favor for his parents?
A. **Yes.**
Q. Or perhaps he was paid? We don't know? You don't know?
A. **Right.**
Q. When you said that David was the one that took the tree down by himself that time, the apple tree --
A. **(Interrupting) Yes.**
Q. -- do you happen to know, prior to David setting out to do the tree, whether Mr. McGuire or Mrs. McGuire gave him any instruction on how to use a chain saw?
A. **Not to my knowledge.**

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Q. Do you know if they were even out in the property -- out in the yard when he was doing that work?
A. **Yes, they were.**
Q. They were there as he was cutting or afterward?
A. **Both.**
Q. You saw the McGuires present when David was using the chain saw?
A. **Yes.**
MS. FREEMAN: Counsel, are we talking about the apple tree?
MR. BARCH: Yes, the apple tree.
Q. And while you were there -- I guess you were present, I take it, then, when the McGuires were on the property and David was using the chain saw to cut the apple tree apart?
A. **Yes.**
Q. Do you recall over hearing or seeing Mr. McGuire or Mrs. McGuire instructing David on how to use that chain saw while you were there?
A. **Not how to use the chain saw. Just what they wanted gone.**
Q. So they were telling him which parts of the tree they wanted gone?
A. **They wanted the whole tree gone.**

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Q. So anything beyond that, saying take the whole thing down?
A. The two of them were bickering back and forth about all different things. They were talking about all different trees they wanted -- I didn't keep up with --
Q. (Interrupting) The two of them meaning Mr. and Mrs. McGuire?
A. Yes. And her son. I didn't get into any of that. That is whatever they wanted to do.
Q. So there is some banter, bickering, whatever you want to call it, over which trees needed to come down?
A. Right.
Q. Besides identifying the trees that they wanted either trimmed or removed, do you recall Mr. McGuire or Mrs. McGuire telling David how to go about taking down the tree with the chain saw?
A. I think Bill and Dave talked about that a little bit, how they were going to do it.
Q. Okay.
A. I didn't have anything to do with it.
Q. What did you overhear David saying to Bill or Bill saying to David with respect to the apple

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tree?
A. Well, the only thing that I did anything about, I remember Bill was complaining that it was sticking up out of the ground, and I was putting the chain saw away in the case so I could take it home, and I took it back out of the case and said, "I'll take the four inches off for you," because David was already gone or he was in the house doing something, and I just wanted to get it done and head out of there. I didn't want to wait for him, so I did that. But as far as them instructing each other, they were mostly talking amongst each other.
Q. What I'm driving at is you recall hearing them discuss/bicker over --
A. (Interrupting) I do remember. I do remember.
Q. Hold on. You do recall hearing them bicker or discuss which trees needed to come down totally or which ones needed to be trimmed? That is something you recall them bickering about, correct?
A. Yes.
Q. And you recall Mr. McGuire being dissatisfied with the way the stump looked after David left?

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A. Right.
Q. You don't recall Mr. McGuire telling David how to use the chain saw, though? That didn't happen in your presence?
A. No.
Q. Correct?
A. Correct.
Q. And you don't recall Mr. McGuire demonstrating the chain saw for Mr. Gagnon that day either, correct?
A. No -- yes, that's correct.
Q. David was just using the chain saw in his presence? Is that how you recalled it?
A. Yes.
Q. Now, you were going to say you do recall something else that happened as we were asking questions about it.
A. You were asking about instruction, and Caroline was worried because part of the tree was over the house, and she was telling him to take it -- they were talking about the way to take the tree down without any of it touching the house at all; and they worked it out and did it, you know.
Q. All right. So that is something that sticks out

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in your mind? There was a tree -- part of the tree is over the house, and there was a concern about damaging the house?
A. I remember that, yes.
Q. And there was a discussion as to how to get the tree removed without hurting the house?
A. Yes.
Q. Was it successful? Did they do it?
A. Yes.
Q. Did anybody get hurt, as far as you know, that day with the chain saw?
A. No.
Q. And you had no connection to any of the cutting that day, correct?
A. Other than picking up the sticks and cutting the stump, that was it.
Q. That's right. I take it back. You did cut the stump closer to the ground?
A. Yes.
Q. But in terms of the work, David did the actual severing of the branches and cutting the limbs and things? You were not helping him do that?
A. I was just taking the cut branches over to the pile where they were going to burn it or whatever

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they wanted to do with it.
Q. Let's go to June 28, 2011 then. Did Mr. or Mrs. McGuire ask you to come over?
A. David did.
Q. So Mr. and Mrs. McGuire did not call you up and ask you to come over?
A. No.
Q. So your involvement started with a call from David?
A. Yes.
Q. What do you recall him saying when he called you?
A. He said he was taking down another tree for his mom. And I said, "Do you need the chain saw?" And he said, "No." And I was like "Oh." He said, "Do you want the wood?" "Well, I'll come over and see what you got." Because he was trying to explain to me which tree it was, but I wasn't sure. So I said, you know, "I can come over and take a look in the morning."
Q. I forgot to ask you. Did you take any of the wood that was cut down of the apple tree wood?
A. No.
Q. Okay. So you agreed to come over and take a look at the wood that was being -- I guess the tree

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wood that was -- strike that -- the remains of the tree that was being taken down on June 28?
A. Right.
Q. And heading over there was it your plan or did you anticipate helping him?
A. Not with -- he said he had a chain saw, and he does it all himself. So I anticipated just getting the wood, you know, if I wanted it.
Q. Okay. And prior to arriving at the property did you call the McGuires?
A. I don't think so, no -- you know what, I -- strike that. I don't remember if I called to make sure he was there before I left in the morning or not. I don't remember. I may have.
Q. So he called you not on the day of, but some other point to alert you he would be there on that day?
A. Yes.
Q. So you may have checked just to see if he was there?
A. Yes.
Q. Do you recall that being the case, or it's just a possibility?
A. It's a possibility.

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Q. And so when you went to the McGuires' that day, I take it you didn't bring anything with you?
A. Just my truck.
Q. Just your truck?
A. Yes. And my dog.
Q. Your dog did you say?
A. Yes.
Q. Did you have a pickup truck?
A. Tahoe.
Q. What were you going to do -- where were you going to put the wood if you did take some?
A. I was going to go back home and get a trailer.
Q. You weren't even sure you were taking wood at that point?
A. Yes, exactly.
Q. You went out there in your personal vehicle with your dog?
A. Yes.
Q. At that point you were not planning to assist him; just to check the wood to see if you wanted it?
A. Correct.
Q. On arrival who was there?
A. David, his mom Caroline, Bill. And at some point

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in there his sister showed up.
Q. Bill's sister?
A. No, David's sister Diane. She was there. I don't remember when she came and went. She was there.
Q. And on arrival are they all in the house, or is the cutting ongoing and they are all outside? What do you recall?
A. David was -- he came walking around the side of the house as I pulled up -- they must have seen me -- and said, "Hey, how's it going," you know, and I said, "Morning." He wanted to show me what he had.
Q. So you went around back and looked?
A. Yes.
Q. How much of the tree was down at this point?
A. None.
Q. What kind of tree was it?
A. Pine.
Q. We're talking like a Christmas tree type, or the big one with all the ugly branches?
A. They all have big ugly branches. It was the Christmas tree type.
Q. How tall was this thing?

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A. **We all guessed at that. I think around 60 feet.**
Q. And that's an estimate, correct?
A. **Yes.**
Q. None of it had been trimmed up at that point?
A. **Correct.**
Q. All right. And now you and David are back there looking at it, correct?
A. **Bill came out. Carol came out. They were all out there.**
Q. That is what I was going to ask next. Who else was back there with you when you were looking at it before the work started?
A. **Everybody.**
Q. Okay. And at some point the cutting began?
A. **Yes.**
Q. All right. Between the time you arrived and you went back with David to look at the tree -- and I think you said Bill and Carol were there, too?
A. **Uh-huh.**
Q. Yes?
A. **Yes.**
Q. Between that point in time and the time the tree cutting actually started what discussions do you recall about this project?

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A. **They showed me the new chain saw they bought.**
Q. Okay.
A. **After that I was joking around with Bill a little bit. He was telling me about his vacation. Did a lot of talking about his vacation. We talked about that all day.**
Q. Okay.
A. **I was playing with the dog. Carol loves my dog. Just simple pleasantries. Nothing -- it wasn't really about the work.**
Q. Do you recall any discussion about the work between the time you went behind the house to look at the tree and the time David started work on the tree?
A. **David was talking about the work that he was going to do, where he was going to drop it, how he was going to take it down. He was telling Bill and Carol how he was going to do this.**
Q. Do you recall during that process Caroline McGuire trying to override any decision that David had?
A. **Yes. But not about that tree. About other trees.**
Q. Okay. Well, what do you recall Caroline's --

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A. **(Interrupting) They bicker like cats and dogs.**
Q. You have used that phrase "bicker." When you say bicker --
A. **(Interrupting) Discuss.**
Q. Was she telling him she wanted certain trees down and he did not want to take those down or --
A. **(Interrupting) Yes.**
Q. -- he wanted some down that she did not want down?
A. **Both ways.**
Q. Okay. So other than identifying which additional trees had to be trimmed or cut down versus, you know, left alone, do you recall any other discussion between David and Caroline prior to him undertaking the effort to actually cut things?
A. **She was telling him about she -- the putting oil in the chain saw. And he was like "I know. I know, Mom," you know. Because it was brand-new. They had just bought it. It was all little things. And a lot of the discussion didn't have anything to do with the tree. We're talking about other things like other kids in the family and -- you know.**

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Q. When David explained his plan for taking down the tree, you heard part of that?
A. **Yes.**
Q. Okay. Do you recall Caroline disagreeing with him about how to go about taking down that tree?
A. **Not too much, no.**
Q. What about Bill?
A. **Bill just stood -- Bill wanted to make sure it wouldn't hit the pool or the garage. Same thing with Caroline. They did not want any damage to their property other than it falling on the grass.**
Q. That would seem to be any property owner's concern is that they didn't get other damage.
A. **Sure.**
Q. But in terms of how to go about doing that, other than alerting Mr. Gagnon that they did not want the house hurt or the pool damaged or anything like that, do you recall any comments from either Mr. McGuire or Mrs. McGuire as to how to go about doing that, or was that a decision that -- or a plan that Paul -- I'm sorry -- Mr. Gagnon came up with, from your vantage point?
A. **He came up with it. He said what he was going to**

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do, and he did.
Q. Okay. In terms of discussions then leading, I guess, from the time you got behind the house to the point in time where David started working on the tree – and specifically I'm talking about conversations you overheard with the McGuires and Mr. Gagnon – there was concern about not damaging the house or pool?
A. **Uh-huh.**
Q. And there was also discussion over which tree should be cut and which tree should not be cut –
A. **(Interrupting) Uh-huh.**
Q. – correct? And then you remember them talking about the chain saw being new and Mrs. McGuire concerned about making sure there is oil in it?
A. **Yes.**
Q. Anything else you can recall?
A. **That's about it. I'm sure there were other things.**
Q. Did David consult with you about how to get the tree down?
A. **Not much. He asked me how tall I thought it was. But he knew how to measure out pacing or something, some trigonometry thing. He figured**

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out how tall it was.
Q. So, I mean, did it appear to you that he looked like he knew what he was doing?
A. **Oh, yes.**
Q. You say you saw him actually measuring things?
A. **Yes.**
Q. Like just walking it off in feet, or did he have a tape measure out there?
A. **No. He paced it off. He was estimating the height of the tree from where it would fall.**
Q. Okay. Any other preparations that you observed him undertake before he actually began cutting?
A. **Preparations? Getting the chain saw ready. He ate breakfast in between. He's the kind of guy that would work for 10 minutes and then take a 20-minute break and work for 10, you know.**
Q. Okay. So at some point the chain saw gets fired up, I take it?
A. **Yes.**
Q. And are the McGuires still out in the yard?
A. **I believe so.**
Q. From the Interrogatory answers it looks to me like they were not present in the area when you actually got hurt?

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A. **No.**
Q. At what point between the time they started cutting to the point where you were hurt did they leave?
A. **Well, Bill was in and out of the house getting things to drink and whatnot and talking to Caroline. I don't know when he disappeared that last time. But Dave's sister was in the pool, and she disappeared, too. I think she went home. I don't know what happened to her. But, yes, it was – he was in and out, you know.**
Q. Okay. Why don't you tell me about the work you saw David do between the time he started it and the time you actually started helping him with any aspect of it.
A. **He was taking off the lower branches of the pine tree.**
Q. Okay. So you're just standing there watching this?
A. **Oh, yes.**
Q. And so the first task that you saw him undertake, he was using the chain saw to cut some of the lower branches off of this pine tree?
A. **Yes.**

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Q. And that was from the ground level?
A. **Pretty much the first lower branches, you know.**
Q. Okay.
A. **And then he worked his way up, you know.**
Q. Got you. How far along with the cutting process was he before you did anything to assist him?
A. **He was pretty high in the tree. Probably 25 – well, 20 feet. I'm getting – his chain saw died on him. He had a rope. And he lowered it down, and he asked for me or Bill to restart it for him, and I restarted it. And then he raised it back up in the tree and pulled it back up there and then just kept going.**
Q. Okay. And so how is he getting up the tree?
A. **He's climbing.**
Q. He's climbing the tree?
A. **Yes.**
Q. Does he have little spikes on his shoes?
A. **I didn't see spikes, no.**
Q. So is he cutting the branch and using the stump as a step?
A. **Yes. He had some sort of belt he had wrapped around the tree. I have never done anything like that, so I – that's not – I have – not that**

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skilled.
Q. You have never cut a tree down the size of this one?
A. No.
Q. And you have never used any straps or belts or harnesses to ascend the tree?
A. I wouldn't climb into a tree like that, no.
Q. Now, I mean, you're watching him do it?
A. It looks scary.
Q. You're watching him do this?
A. Yes.
Q. How many branches do you think he cut, I mean, up to this point where --
A. (Interrupting) There was a lot of branches. I mean, I was surprised how many branches are on a pine tree. So I can't guess the number, but there was a lot.
Q. And he's got some kind of a strap holding him to the tree, and he's using his feet as support?
A. Standing on the stumps that he had cut for it, yes.
Q. And and then the chain saw is attached to a rope of some sort?
A. Yes. He had tied a rope around the handle of the

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chain saw and had it up in the tree with him.
Q. And is Mr. McGuire out there for this?
A. Yes.
Q. Mrs. McGuire, too?
A. At times.
Q. Are they doing anything other than watching him?
A. Bill was talking to me. He really liked his vacation, and he was -- he had story after story.
Q. So he's really kind of a spectator more than anything, and he's having conversations with you?
A. Both of us were, yes.
Q. He's not directly assisting David up there in the tree?
A. Bill did -- yes, exactly.
Q. Did Bill ever climb the tree?
A. No.
Q. All right. So he's about 20 to 25 feet up when he -- did it run out of gas or something?
A. I think it just died.
Q. It died. He needed somebody else to start it?
A. (Indicates affirmatively.)
Q. He didn't try to start it himself up in the tree?
A. No. He said it was dangerous. He said, "I'm going to lower it down to the ground. Start it

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for me. I'll pull it back up."
Q. You believe it stalled, and he lowered it down to have somebody else start it?
A. Yes.
Q. Did you recall him saying, "It's too dangerous to start up here on my own"? Is it just something you assumed?
A. I assumed it. I would think it would be too dangerous.
Q. So you did restart it?
A. Yes.
Q. And so when it goes up on the rope, it's running, but the blade is not turning, obviously?
A. Correct.
Q. You have to use the trigger to get the chain to move?
A. Correct.
Q. And I presume the rope is not going through the trigger area?
A. No, it's not.
Q. There is a --
A. (Interrupting) It's tied around the bar.
Q. Got you. So it gets back up to him. Does he continue on with the cutting?

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A. Yes.
Q. And what is the next involvement of any sort that you had?
A. Bill wanted to get some of the sticks that he was cutting down off the ground and into a pile so he started doing that. And then my dog went and grabbed some sticks because he sees sticks, you know. So I went over, and I was helping Bill put the sticks into a pile next to the garden. They were just laying on the ground. We were standing there doing nothing.
Q. Okay. So you were basically just helping Bill move some of the debris over into a pile?
A. Yes.
Q. The smaller stuff?
A. Well, the long --
Q. (Interrupting) The limbs?
A. Yes.
Q. And what was the plan for those, if you know? Were they going to be chipped up?
A. Well, Bill wanted to burn then. In fact, he started a fire and was burning them.
Q. Okay.
A. And somewhere along the way David wanted to save

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them.
Q. All right. So all you're doing is taking the stuff that has fallen off the tree and dragging it into a separate area at this point?
A. Yes.
Q. All right. And did Bill ask you to help, or you were just there and you decided to help him?
A. I just decided to help him.
Q. Did you at that point discuss, you know, payment for doing this?
A. No.
Q. Did you consider yourself doing him a favor by just helping?
A. Yes.
Q. Was it your plan to maybe -- had you decided at that point to take any of the wood as firewood?
A. No. I told him I didn't want it.
Q. None of it?
A. None of it. It's pine.
Q. Even the trunk of it once it was done?
A. None of it is any good for burning in a fireplace.
Q. So once you got back there and saw it was going to be a pine tree coming down, you knew you

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weren't going to be taking advantage of any of the wood?
A. Correct.
Q. It wasn't your chain saw, correct?
A. Right.
Q. What purpose other than talking to Bill did you have for staying?
A. Well, Carol talked to me about -- it was just social. Carol was talking about old people that worked at Intermatic. Bill was telling me about his vacation. And it was just talk, you know. I didn't plan on staying that long at all, but they just keep talking. I didn't have anything else to do that day, so I just . . .
Q. What day of the week was it?
A. I don't recall offhand.
Q. Was it a weekend?
A. No, it was not a weekend.
Q. All right. So you decided you weren't going to take any wood, and it was really by -- you were kind of hanging out socializing with the McGuires, if I'm understanding what you're saying?
A. Yes.

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Q. For a good portion of time?
A. Yes.
Q. At some point Bill started dragging these branches to a different area, and you lent a hand?
A. Yes.
Q. You didn't do that anticipating any payment of any sort, correct?
A. Correct.
Q. And then how long does this go on where you're moving branches?
A. Well, some time. David, he took some good long breaks. So a few hours. At least a couple. I mean, we weren't moving branches for two hours. You move them for two minutes and you're done for 20 minutes, you know.
Q. Until there is some more down?
A. Yes.
Q. Because you're not standing under there as they are dropping down?
A. Right.
Q. So it's off and on for a couple of hours you're moving these branches?
A. Yes.

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Q. At some point does David get the whole -- the whole trunk, it's eliminated with -- all the smaller branches are gone?
A. He got it pretty far up. And when he came down, he looked pretty scared. I was like "I wouldn't want to do that. I have to give it to you because I wouldn't climb up like that."
Q. Did he get all the way to the top, very top of that, 50 or 60 feet high?
A. No, no.
Q. So at some point he comes down, and there is still some of the triangular part of the tree with the branches?
A. Yes. There was a good -- better than a third of it, maybe a little more, left.
Q. So roughly two-thirds of it is free of the limbs?
A. Between a half and two-thirds, yes. Somewhere in there.
Q. And then he comes down. Is that when he falls the tree?
A. No.
Q. Did he ever cut the tree and see it fall over?
A. No.
Q. Did you get injured before that happened?

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A. Yes.
Q. So he comes off of the tree having cut down half to two-thirds of the limbs?
A. Uh-huh.
Q. Right?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. All right. And then during that period of time while he was up there, that is when you and Bill were dragging some of these branches over to a different area?
A. Yes.
Q. And at what point is it that you're involved in any activity which resulted in your injury?
A. When David came down, he took a good long break. He was tired. He was climbing the tree. He was tired. I think he ate something for lunch. I was offered a pop. You know, I sat there and drank a pop, was playing with my dog. After lunch Dave went back over there to do some more work. He started trimming on the tree next to it. Wasn't even the same tree. Same thing, taking off the lower branches. And it was when

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he was doing that, when he was done with trimming that tree, that is when he asked me to come over and hold something for him.
Q. So after lunch he stopped working on the tree that you saw him work on all morning, correct?
A. Uh-huh.
Q. And started working on an adjacent tree?
A. Uh-huh.
Q. He was at ground level again just cutting off branches?
A. Uh-huh.
Q. That was the first time he directly asked you for help?
A. Yes – well, other than start the chain saw earlier.
Q. Yes. So up until that point in time I take it you had not offered David any thoughts about how to proceed with the tree trimming, whatever he was doing? You're just watching?
A. Yes.
Q. You didn't offer him any comments on how to do this, the way he was going about getting this stuff done?
A. I have never seen it done, that big of a tree

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like that, no.
MS. FREEMAN: Just answer the question.
A. No.
Q. All right. So now David needed some help with something. What was it, as you recall? What did he need help with?
A. He had accumulated a very large pile of, you know, the long pine branches. He asked if I could help him for a few minutes. I said sure. He says, "I need you to hold these while I cut off the things on them." And he showed me what he wanted, showed me where to stand. And I said, "Yeah, I can do that," you know. And – yes.
Q. All right. So I guess from what I envision, he's cut all of these limbs off of that pine tree. Now there is a big pile of them; one you guys weren't able to move, you and Bill?
A. He had another pile from the tree right next to it, yes.
Q. And what was he going to do? Trim some of the smaller branches off the limbs?
A. That's what he wanted to do. He wanted to save the center part for firewood or something like that for campfires or something. I don't know.

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Q. So by cleaning off the smaller branches, then there would be some logs that could be cut up that would be suitable for firewood?
A. Correct.
Q. Did you and he actually – did he tell you what his plan was or what he was going to do?
A. He told me exactly what to do. He knew what he was doing. You know, seemed that way to me.
Q. And he told you what he wanted you to do?
A. Yes.
Q. And what did he tell you to do?
A. Took the branch, pull it over here so it's away from the rest of them. Hold the one end up, and he would cut the smaller stuff off the other end. And when that was done, put it down, grab the next one, put it up and – you know, yes.
Q. So I'm understanding, you're taking a limb that had been cut off the tree, you're holding it upright?
A. No.
Q. No?
A. Can I do – I don't know how it translates.
Q. We'll explain it on record. But if that straw will help you orient us as to what you were

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doing --
A. (Interrupting) The branch would be like this (indicating) to the ground.
Q. All right. So the heavier -- the thicker part of the branch is laying on the ground?
A. Actually, the thinner part was. That is the way he wanted it.
Q. So you're holding the heavier part of the limb?
A. Yes.
Q. The long part of it?
A. Yes.
Q. And he's trimming off the smaller branches?
A. Yes.
Q. Off his limb?
A. Yes.
Q. Does he start at the end and work his way closer to you?
A. Yes.
Q. And how long are these limbs?
A. They're pretty long. I would only be able to guess. I would have to say 20 feet. Pretty big. Especially the lower ones off the pines, you know.
Q. Okay. So how many of these things do you think

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you were able to accomplish before you were injured?
A. We did quite a few.
Q. And are you able to quantify that in any way? More than one, obviously?
A. Yes. More than a few. Maybe a few dozen. Maybe a little more. We did it -- you know, we did that for about I would say a good -- you know, it was a while. I don't know exactly. I didn't have a watch.
Q. Are we talking a half hour or more?
A. Yes.
Q. All right.
A. It wasn't --
Q. (Interrupting) A dozen? At least a couple of dozen of these things you have gone through this process trimming all these branches off in the way he told you to do it, you hold the end and he's going to work his way up?
A. Right.
Q. Once all of those little branches are off there -- is it kind of a longer log?
A. Yes.
Q. Did he then cut that into smaller pieces?

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A. That's what he wanted those for is to cut it in smaller pieces.
Q. Did he do that task, too, each time you --
A. (Interrupting) I think he did the first few, and then we just started taking the other ones, the longer things off. He dictated what he wanted. Some of them he wanted -- you know, he wanted to see what he could get out of it first.
Q. All right. So the first couple you trimmed the branches up and then cut them into smaller logs immediately?
A. Yes.
Q. Did you hold the longer limb as he cut it into smaller sections?
A. No. He had set up a -- from the apple tree he set up two logs and was able to set it on there and just (indicating).
Q. So you didn't hold the log as he was trimming them into smaller pieces?
A. The middle part, no. I was there when he took off the little pieces.
Q. So the first couple of these he trimmed it down and then immediately made them into logs?
A. Yes.

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Q. And then after a while he decided he was going to trim all the branches off while you were there to help?
A. Yes.
Q. And you were doing it with a couple of dozen of these before you got hurt?
A. Yes.
Q. All right. So he told you how he wanted -- he basically told you he wanted you to hold the end --
A. (Interrupting) Yes.
Q. -- while he trimmed those up?
A. Yes.
Q. And did he tell you to do anything other than stand there and hold up the one end?
A. When they were done they had to be put over here and then grab a new one, you know, bring it over to this spot so he could start again.
Q. He would stay there, and you would drag the log to a pile and then drag a new branch over?
A. Yes.
Q. Prior to undertaking this trimming did he offer you any instructions beyond "Here, hold this"?
Did he say, "Keep your hands free. Stay away"?

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A. He said, "Stand here. Hold it here and don't move." He said don't allow it to move because it would roll, you know, so you had to hold it tight.
Q. So other than telling you where to stand and how to hold it and not let it spin, did he give you any warnings that were safety-oriented like "Keep your hands free. When I get close to you, keep your hands to you," anything --
A. (Interrupting) No.
Q. Anything about that -- obviously, to the point you got hurt, did anything about that task concern you from a safety standpoint?
A. He was far enough away from me it wasn't . . .
Q. So up until you were actually hurt he kept a certain amount of distance away from you?
A. Yes.
Q. How close was the nearest he got to you prior to when you got hurt?
A. Maybe three or four feet, maybe five feet, somewhere in there. There was a good chunk of those branches that were next to the trunk that didn't have anything on them, you know. They didn't have the growth. The growth was out in

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the ends.
Q. All right. And during this 20 or 24 more limbs that you guys trimmed up before you were hurt, was Mr. McGuire out there?
A. Yes -- wait a minute. I was working, so I wasn't paying attention at that point. I was helping hold the limb. You know, I was paying attention to what I was doing. I stopped paying attention to Bill and Carol, so I don't know where they were. You know, I know they were coming in and out of the house.
Q. Okay. So whether they were there or not during the trimming part you're not sure?
A. Yes.
Q. It could be? Maybe not?
A. Yes.
Q. That being the case, I take it you don't recall either one of the McGuires intervening, saying, "Hey, that doesn't look safe," or "Be careful," or anything like that during the trimming part?
A. No.
Q. And you recall Mr. Gagnon telling you where to stand and how to hold the branches. Did either of the McGuires give you any instructions during

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that phase of the job?
A. No.
Q. Did you at that point believe you were taking instruction from Mr. Gagnon?
A. Yes.
Q. You were doing what he told you to do?
A. Yes.
Q. Did you think you were taking instructions from the McGuires at that point?
A. They didn't say much.
Q. And the entire time you're trimming -- during this phase where the branches are being trimmed off the limbs, I take it Mr. McGuire wasn't there helping you holding these limbs?
A. No. We were -- it was getting into the afternoon after -- like after lunch, and I think he was getting tired. That is the way I feel. He was older.
Q. The particular phase of the project, the trimming of the limbs, that was you and Mr. Gagnon?
A. Yes. I remember Mr. McGuire saying that he wanted to burn the limbs, and David wanted to save them.
Q. And at no time that day did you run the chain

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saw?
A. I started it.
Q. But you didn't run it --
A. (Interrupting) No.
Q. -- and apply it to any limbs or logs?
A. No.
Q. All right. Why don't you get to -- we have got to the dozen or two dozen or so of these limbs before you were hurt. Tell me, as you can recall, what happened.
A. Do you mean the actual incident?
Q. Actual incident. You have done a couple of dozen of these without incident?
A. Right.
Q. And then what happened?
A. He walked towards me, and the chain saw came up, and it cut me. I tried to get out of the way, but . . .
Q. Were you guys actually working on trimming a limb at that point?
A. I was holding a limb up, yes.
Q. You were holding a limb?
A. Yes.
Q. With which hands?

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A. My right hand.
Q. So you're able to hold these with one hand up in the air?
A. They were only this (indicating) -- you're talking logs. I call them sticks.
Q. Okay. I didn't ask that question so I'm glad you clarified. The limbs that we're talking about, what was the diameter on average?
A. The side that I was holding?
Q. Yes.
A. Maybe -- I don't know what you consider that (indicating). Three inches. Your guess is as good as mine.
Q. Okay. Well, it's certainly not the full width of your fingers?
A. No. I can hold it with one hand.
Q. It's about the width of a pop can -- diameter width of a pop can?
A. Coffee cup there, yes.
Q. They were like three to four inches?
A. Yes.
Q. And that was how all the other ones were, too?
A. Yes.
Q. And then you were strong enough, and at least at

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that point you were healthy enough to hold it with which hand?
A. Right here (indicating).
Q. Right.
A. Right.
Q. And you're right hand dominant?
A. Yes.
Q. So you could hold those out?
A. Yes.
Q. And so you would hold it kind of horizontally, and the rest of it would stretch out towards Mr. --
A. (Interrupting) Yes. Go down along the ground there.
Q. And then you say Mr. -- you described it as Mr. Gagnon walking towards you with the chain saw and then you just got cut. Can you elaborate on that a little bit? He didn't just -- you were actually -- he was actually working on trimming a tree branch, correct?
A. Yes.
Q. And so I take it he was trimming, getting closer and closer to you?
A. Before it, yes.

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Q. Before you got hit with the saw?
A. Yes.
Q. And I take it unlike the other branches, there may have been a branch closer than the four to five feet?
A. No. He stopped cutting the limb, chain saw went down, went to idle. You know, he walked toward me, and I thought he was going to say something like next instruction, what to do, okay, and I don't know what he was thinking or what he was doing or what, but the chain saw started coming up, and the gas went on, and I tried getting the hell out of the way and -- yes.
Q. So it wasn't during a cutting process that you were hurt?
A. Yes, you're right.
Q. He disengaged from trimming the branch, if I'm understanding your testimony, and the chain went into an idle position?
A. The motor went to idle.
Q. And the chain is not even moving, and he's holding it down to his side?
A. Both hands.
Q. With both hands. But the chain is not moving?

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A. Yes.
Q. And he closes the gap between you and him in terms of space?
A. Right.
Q. And you were still holding the branch at this point?
A. Yes.
Q. And somehow the chain, it gets activated?
A. When I heard the chain saw, the motor speed up and I saw with my eyes it start to come up, I dropped the branch, tried to get the heck out of there because it's coming up between me and the branch. "What the fuck are you thinking?" I don't know how to say -- you know, I screamed. Whether he was going after something he thought he saw coming off the branch, I don't know.
Q. Okay.
MS. FREEMAN: Wait for a question.
Q. So you're holding the branch with your right hand just like you had done on the two dozen or more before. He's trimming branches off this thing and stops trimming, correct?
A. Yes. He was done.
Q. And then he --

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MS. FREEMAN: (Interrupting) Wait until he finishes.

Q. And he then walks toward you holding the chain saw in a position where he might be able to cut if the chain was moving?

A. It was pointed downward.

Q. Pointed downward?

A. Yes --

Q. (Interrupting) But the chain is not moving --

A. -- towards the ground.

Q. The chain is not moving?

A. Right.

Q. And he gets close enough to you to reach you, obviously?

A. (Indicates affirmatively.)

Q. Then you hear the chain saw, the rpms ramp up?

A. Oh, yes.

Q. And when you heard it ramp up, was it a concern of yours that the chain might be moving at that point?

A. It was an instant high alert on my part, yes.

Q. Did you see the chain saw blade with the chain moving at any point before it made contact with your arm?

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A. Oh, yes.

Q. So you heard it ramp up in terms of rpms and looked?

A. Oh, yes.

Q. Are you still holding the branch at this point?

A. I was letting go.

Q. And as you hear the thing fire up, you turn to look at it, correct?

A. I was looking at it while I was watching him. You know, I never turned away.

Q. And so it's pointed down, and then the rpms ramp up, and you see the blade coming toward you?

A. Uh-huh.

Q. And you let go of the tree?

A. Yes.

Q. But the blade, nonetheless, still makes contact with your arm?

A. Yes.

Q. Did it ever make contact with the tree branch?

A. No.

Q. From your vantage point was it -- well, strike that. Did Mr. Gagnon tell you what his plan was when he got near you and turned the saw on and had lifted the blade toward you?

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A. I had no idea, and I went into panic mode.

Q. All right. And so I think you said you had released the branch before the saw came in contact with your arm?

A. (Indicates affirmatively.)

Q. Is that right?

A. Yes.

Q. And did you turn your body?

A. Uh-huh.

Q. Describe for me this point in time where you see this blade coming up with the saw moving and all of a sudden -- and then at that point where your arm is hit. What did you do?

A. I let go of the branch, and I tried bringing my arm up and away from the saw blade and out and around to get away. It was coming right up, you know, and it was coming up. It was fast.

Q. All right. So you tried to get your arm out of the way. The blade is coming up, but you didn't get it away fast enough?

A. Obviously got it away enough to keep my hand and my arm. I'm lucky to have that.

Q. And then at this point where your arm is actually injured, do you believe that either one of the

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McGuires was present to see that?

A. No. I know they weren't. They said they weren't.

Q. All right. So if I'm understanding your testimony then, at the time the blade made contact with you, you were not actively assisting him by holding a branch? You had, in fact, released the branch?

A. Oh, yes.

Q. And there was no dialogue from Mr. Gagnon as he approached with the blade as to what his intention was at that point in time where the saw became I guess --

A. (Interrupting) Pointed downward.

Q. -- pointed downward and began moving upward?

A. Right.

Q. There was no statement out of him at all?

A. No. I was looking to see if he was going to say something to me because it looked like he was approaching me to say something; he wanted me to do something else, or, you know, I thought there was an instruction coming.

Q. But ultimately there was no additional comment made by him prior to the rpms on the chain saw

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ramping up and the blade coming up toward you?
A. Correct.
Q. And so this isn't a situation where the blade and the saw -- I'm sorry -- the blade and the chain made contact with the branch and kicked it toward you?
A. No.
Q. This isn't a situation where the blade was cutting through a branch and caught the very tip of the saw and fired back at you?
A. No, it's not.
Q. There was no cutting actually involved of a branch when you got struck with the blade?
A. Correct.
Q. After this happened did you ask Mr. Gagnon what he was trying to accomplish at that point in time?
A. After I screamed my head off, that was the first thing that came out of my mouth was -- excuse the expletive -- "What the fuck are you thinking?"
Q. Did he have a response for you?
A. He became immediately I think distraught would be the word, confused. "Oh, my God." Panic, yes.
Q. So he didn't make any comment to you about what

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he was trying -- the task he was trying to accomplish? It was more shock and stunned about this scene having happened?
A. Yes.
Q. Since that point in time where you got hit with the blade and now did he ever tell you in his words what he was specifically trying to do at the time this happened?
A. In the emergency room he used the word kickback, but I didn't understand what he meant or how, you know. And they are going in to sew me up and put the muscles back together, you know, as best they can. I don't know what happened there.
Q. All right. So you definitely recall him in the ER using the phrase kickback?
A. Yes.
Q. All right. But from your vantage point this idea of a kickback, it wouldn't have anything to do with a kickoff of a branch or a log or a limb that was being cut?
A. No. It had nothing to do with that.
Q. And you didn't see the saw come onto a tree branch, that tree branch you were dropping, and then kick toward you? You didn't see that?

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A. No.
Q. So he may have a different version of what kickback means, but the kickback definition or your impression of a kickback that you described earlier, that is not what you recall happening?
A. Correct.
Q. If I'm hearing what you're saying, he might have been trying to get toward that branch to cut it but he never got there? He got to your arm before he made any contact with the tree?
A. Well, I was holding the end of the branch. There was no branch beyond my hand.
Q. And that's what I'm getting at is from your recollection of what went down, regardless of what his intentions were, he lifted up the chain saw, the rpms ramped up, and the chain is moving. You tried to get out of the way of the blade, but you were not able to get out of the way in time?
A. Correct.
Q. That is what happened?
A. Correct.
Q. And other than him mentioning something about a kickback when you're in the emergency room, as we sit here today have you ever discussed the

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dynamics of what happened in a situation where he explained what he was trying to do?
A. Of course I asked him, and I don't remember at what point I asked him, and he could never explain it. He just (indicating). You know, I don't think he knows. I honestly don't think he knows.
Q. So as you sit here today, regardless of how many times you asked him -- and it's more than once, I take it, correct?
A. Oh, yes.
Q. In your mind, he's never articulated specifically what he was doing at the point in time where the blade made contact with your arm?
A. Correct.
Q. Other than referencing a kickback in the ER?
A. Yes.
Q. Okay. With respect to the McGuires, at what point in time was your first notice that Mr. McGuire or Mrs. McGuire were aware of you being potentially hurt?
A. Immediately. They heard me scream.
Q. Okay. Do you believe they came from inside the house?

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A. Yes.
Q. And when they came out, was there any discussion between you and Mr. Gagnon about what had happened?
A. No.
Q. Would it be fair to describe the post injury part on the premises as being more concern about how you were doing than what happened?
A. It was pretty important to me.
Q. Right.
A. Yes, it was very important. Carol was very concerned. She come out yelling. "I heard it. I knew my son cut you." She came out screaming, you know, and -- yes -- yes.
Q. Did either of the McGuires ever make any comments to you to suggest or pursuant to which you formed the impression that they saw what happened?
A. No. They said they didn't. She said she heard it. She heard the screams. She heard what was said right after. She heard all of that. She was right there in the kitchen.
Q. She heard the screams, and her thought was somebody was cut?
A. (Indicates affirmatively.)

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Q. How soon after this happening did you move on to the emergency room?
A. I don't know timewise. I was in shock. It seemed like it took forever. So I can't tell you whether it was five minutes or ten minutes. I am not capable of doing that for you. I can tell you that I started giving orders at that point. First time all day. And I needed a towel, I needed something to put on it, I needed to tie it off. We needed to go to the emergency room now, and there was no waiting.
Q. So once you got hurt, you became more focused about getting the care you needed?
A. Yes.
Q. Up until --
A. (Interrupting) I was quite vocal.
Q. Up until the point where you were cut with the chain saw had the situation ever turned from a volunteer situation like you described early on to an employment situation were you thought you were going to be compensated?
A. No.
Q. Did the McGuires ever promise to pay you anything?

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A. No.
Q. Did Mr. Gagnon ever tell you he was going to pay you anything?
A. No.
Q. Did he ever make any comment to you that he was being paid to get this done by his parents?
A. He did say he was getting something for it. I don't know what. I don't know the terms. I remember something in there he was referring to he had to do this because he owed his mom money or something. I don't know.
Q. And I take it Gagnon didn't promise to share payment he may have been receiving with you?
A. No.
Q. Did you consider yourself a volunteer out there?
A. Yes.
Q. But obviously you felt you were taking directions from Gagnon but you were volunteering?
A. Yes.
Q. You didn't expect to get anything out of this?
A. No.
Q. Certainly not an injured arm?
A. Definitely not this, no. Maybe a pop, you know.
Q. All right. So we have all of your medical

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records but I want to go through this a little bit. At the emergency room they evaluated your arm, correct?
A. Yes.
Q. They cleaned out the wound?
A. Yes.
Q. Did they do some X-rays at the ER?
A. Yes.
Q. Did they tell you that it didn't reach the point where it hit any of your bones?
A. No, it did not.
Q. Initially was it the impression, as you understood it, that it was a tear through the skin and into the muscle?
A. Yes.
Q. There was no belief there was nerve involvement initially?
A. You know, once they gave me the painkiller, I don't -- I was in la-la land.
Q. To the best of your understanding, did they do anything else in the emergency room other than clean it and then stitch it up?
A. Yes. They did the stitches and closed it up and, you know, X-rays. I don't remember what all.

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Q. In the emergency room did they have you use your hand and move it to see if you were still functioning?
A. Yes.
Q. And was it still functioning at that point?
A. Parts, yes. They didn't really check it. I did that. I wanted to know what would work, and I am moving my hand around to see what is going on. And once the pain medicine they gave me kicked in, you know, I was able to move a little bit but not a whole lot.
Q. Once the pain medicine kicked in, I take it the injury itself felt a little better?
A. Oh, I went (indicating). It was --
MS. FREEMAN: (Interrupting) Just answer the question.
Q. It did?
A. Yes.
Q. And then how long was it before -- well, strike that. Eventually did you have to go somewhere and have the stitches out?
A. Yes.
Q. And who did that?
A. Dr. Sek.

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Q. Where is Dr. Sek?
A. He's right here on Elm Street.
Q. He's still operating here?
A. I have known him since I was five years old.
MS. FREEMAN: Just answer the question.
Q. We have sent a records request for him several times and there has never been a response. He's still working here somewhere in McHenry?
A. Yes.
Q. He took the stitches out?
A. Yes.
Q. Over the first month or two or three did you do any physical therapy?
A. I was told by Dr. Sek give it some time, it's going to take time. He did not send me to physical therapy or anything else.
Q. And I know from the record that, as you have explained already, when you tried to use the computer, that you continued to have some symptoms with the right arm and hand even after I guess the laceration had healed?
A. Right.
Q. All right?
A. Right.

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Q. And even today you're still having problems?
A. Yes.
Q. Sometime I think later in 2011, maybe it was early 2012, you had an EMG study done on your right arm?
A. I think I had a few of those.
Q. Nerve conduction study?
A. Yes.
Q. And there was something done early on with the Shoulder to Hand Clinic, Dr. Talerico or something like that?
A. I remember Talerico. I did go see him.
Q. That doctor had evaluated the EMG study, and he evaluated you, didn't feel there was any nerve impairment. Do you recall that?
A. He said -- well, I left Dr. Talerico because I don't think he knew who he was talking to. He started yelling at me about asking for pain medication, and I never even got anything from that man ever in my life. And I left seeing him because I don't think he -- there was something wrong there. And I only saw him twice, and I was out of there.
Q. Do you recall him giving the opinion that he

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didn't think there was anything surgically he could do for you?
A. Not at that point. He did say time will tell.
Q. Okay. And then you left Dr. Talerico?
A. Yes.
Q. And did you go somewhere else?
A. Yes.
Q. Because my records stop at the very beginning of 2012.
A. Dr. Sagerman.
Q. Where is Dr. Sagerman?
A. I gave you his address earlier, or his place, Vernon Hills.
Q. Oh, that's right. And when did you start seeing Dr. Sagerman?
A. I don't remember the date. I'll be honest with you.
Q. He was after Dr. --
A. (Interrupting) Talerico.
Q. -- Talerico?
A. Yes, yes.
Q. All right. And then did Dr. Sagerman do anything for your right arm different than what Dr. Talerico did?

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A. **He continued the physical therapy.**
Q. All right. And anything beyond the physical therapy?
A. **He ordered up a new EMG.**
Q. And then what?
A. **More physical therapy. It was a lot of physical therapy.**
Q. Has anybody done any surgeries on your arm?
A. **Yes. He did.**
Q. When did he do that?
A. **July of this year.**
Q. As you understand it as the patient, what did Dr. Sagerman do to the right arm?
A. **Removed a ton of scar tissue, he said. And he said -- and what they call -- it's a neurosis or -- I don't know the words he used.**
Q. I don't know either. I don't have any of these records.
A. **Okay.**
Q. So there was some kind of a surgery. Which parts of your arm did he work on?
A. **Forearm and the elbow.**
Q. All right. And that was in July?
A. **Yes.**

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Q. Have you had any more surgeries since then?
A. **No.**
Q. Are there any planned?
A. **No.**
Q. Are you still doing physical therapy?
A. **Not for my right arm anymore but for my left.**
Q. How is the right arm now since this procedure done by Dr. Sagerman?
A. **It's better in the sense the pain level is down.**
Q. Okay. Same; the pinky, the ring finger and the thumb?
A. **Those are the most affected, yes.**
Q. What about the index and the middle fingers? Are those impacted as well?
A. **Yes.**
Q. Are the ones that are affected the worst the pinky, the ring finger and the thumb on your right hand?
A. **All of the fingers are affected in the sense of a grip. The ones that feel numb are the pinky and the ring finger.**
Q. So there is a weakened grip overall?
A. **Oh, yes.**
Q. And then the pinky and the ring finger are numb?

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A. **Yes.**
Q. Earlier on you described the pain that was with the tendinitis, the forearm and everything. Is the forearm implicated on the right?
A. **On the right?**
Q. Yes, in terms of pains or sensation?
A. **I get a pain right next to the bone. There is a big lump of scar tissue, you can feel it, and it hurts there when I try to grab too much stuff that is heavier or anything with weight.**
Q. So if you strain the right arm, you will realize some pain right where the laceration was?
A. **Yes, it will burn a little.**
Q. So then with respect to the right arm, you described the numbness in the pinky and the ring finger, a weakened grip and then occasional shooting pain where the laceration was with heavy strain. And what else do you notice about the arm today, the right arm?
A. **You play with the scar tissue ball that is forming in there, and it burns under the elbow. It's like a direct link. If you pinch it, it's (indicating).**
Q. And is there any further recommended treatment

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for the right arm or any of the symptoms that are lingering?
A. **Yes. I am on medication for it.**
Q. What do you take?
A. **Gabapentin.**
Q. Is that an anti-inflammatory or pain med?
A. **It's a type of pain medication, I believe.**
Q. Okay. Besides taking that, anything else?
A. **I take an anti-inflammatory.**
Q. Is that for the left arm or the right arm?
A. **It's all right. I take -- I'm trying to think now. Well, I have, in case I need it, and I try not to take them, but Tramadol and hydrocodone, but I try not to take those.**
Q. Okay. So that's the medicine that you're still taking. Is there anything -- and there is no physical therapy with respect to the right arm currently?
A. **No. We're pretty much done with that.**
Q. And then in terms of function, you have mentioned there is weakened grip?
A. **Yes.**
Q. And you have the numbness in the pinky and ring finger. What other limitations can you

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appreciate with respect to the right arm?
A. Pinky.
Q. What about it?
A. It wouldn't go in.
Q. So you can't --
A. (Interrupting) I can't (indicating).
Q. You can't move the pinky so it abuts the index finger?
A. Or the ring finger.
Q. The ring finger?
A. Correct.
Q. And anything else? Do you still have the full range of motion in your hand?
A. Yes. As long as I do it controlled and slow. If I start forgetting and -- you know, because I feel good and I start doing things fast, it's like all of a sudden I'll get -- it will burn here (indicating), burn under here (indicating), and it will like pang all the way down. It will start tingling real bad again.
Q. So in terms of the shoulder movement, fine?
A. Shoulder is fine.
Q. Elbow movement fine?
A. No. The elbow is a bit sore. I think it's

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because of the surgery he did in there. He had to do a nerve release or something. It was tight.
Q. And did the doctor tell you whether that nerve release in the elbow was somehow related to the injury to the mid forearm?
A. He said that it's natural. You know, the way he explained it to me, it tore through the middle. It's not a cut, it's a tear. Things got pulled from both ends, you know, and that's the next spot that will be affected from the pull. So that's the way it was kind of explained to me. He said it's natural with what happened, with this type of thing that happened.
Q. Okay. The elbow is sore when you're moving it. Is that all the time or just periodically?
A. It's sore pretty much all the time.
Q. And you can still move it in all directions, though?
A. Yes. As long as I'm careful.
Q. And then the hand, with respect to the movement of -- it is a weakened grip, but in terms of moving it, with the exception of the pinky, it still moves the same?

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A. Yes, yes. The pinky and the ring finger and the thumb is -- I have a problem with the thumb coming in here (indicating). Not like this (indicating), but this way (indicating). And my hand shakes.
Q. Has the doctor told you -- that would be Sagerman -- when you can expect any further improvement, or is this what you're going to have?
A. He said nerve damage takes a long time to heal especially as we get older. He wouldn't rule out a full healing. He wouldn't say I was going to be stuck like this forever. He just said time will tell.
Q. So we don't know yet, and he doesn't know for sure?
A. Right.
Q. I'm going to show you what I'm going to mark as 2.
A. He knows more about it than I do.
MS. FREEMAN: There is no question pending.
THE WITNESS: Got you.
Q. I think I know the answer to this, but this is medical expenses as of March 19, 2012, $7,333.04.

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There is more medical expenses we don't have?
A. Right.
Q. The surgery in July and the physical therapy and --
A. (Interrupting) Yes.
Q. I take it you're making a claim for the tennis elbow as well?
A. You know, they tell me it's a natural part of it because of the not using this arm (indicating) and using this thing (indicating) for everything from drinking to driving to everything that I do. And they -- yes.
Q. So there may be expenses associated with the left arm that we don't have?
A. It's a result of.
Q. You have had medical expenses for the treatments and care of the left arm?
A. Yes, minimal.
Q. We don't have those as part of this as well, correct?
A. Right.
Q. I just want to go through some photos here. This is a photo of your arm after the chain saw injury, obviously, correct? 2A?

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A. This is a long time after, yes.
MR. BARCH: Now I need to make that medical expense summary Exhibit No. 3. Sorry.
(Exhibit No. 3 marked for identification by Mr. Barch.)
MR. BARCH: I shouldn't have premarked the other ones.
Q. The other questions I was asking you when I was referring to Exhibit 2, it's now 3. The answers would be the same? We don't have all the medical expenses?
A. Right.
Q. 2A, that is your forearm after the chain saw injury?
A. Yes.
Q. Is that how it looks today?
A. No.
Q. What is that --
A. (Interrupting) No.
Q. What is going on now?
A. It's now got a scar that crosses it where they went in.
Q. Okay. So that is the second surgery, though?
A. Yes.

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Q. The second procedure. So these are all pre --
A. (Interrupting) Pre the July surgery, yes.
Q. The July, 2012. This is what it would have looked like, I take it then, had you not had the additional surgery?
A. Correct.
Q. Same thing with 2D and 2E?
A. Yes. These are all from pre.
Q. Now we go over to 2F. There is an additional photo with some more of I guess an incision that runs up and down your forearm?
A. Yes.
Q. And there is also one -- that's the July, 2012 stuff?
A. Yes.
Q. You have scars now on your arm from those as well?
A. Yes.
Q. 2F, G, H show the arm after that July, 2012 surgery?
A. Correct.
Q. What is I? This came from your counsel, too, 2I.
A. That's David.
Q. That's Mr. Gagnon?

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A. Yes.
Q. Where is this?
A. That's at his home.
Q. When did you take that?
A. That phone conversation you asked me I talked to him about, I went up there to get his address for his house for Hans, and he was outside.
Q. Oh, so when your attorney needed his address, you went up there to get it?
A. I knew where he lived. I didn't know the address, so I just drove past.
Q. And did you shoot this from the car or something?
A. As I drove by the house, yes.
Q. Did he know you were taking that?
A. Yes. I showed it to him.
Q. And then I guess 2J, this was just part of the records. Is this before the second -- before the July surgery or --
A. (Interrupting) This is the X-ray from the emergency room.
Q. Okay.
A. Kind of shows --
MS. FREEMAN: (Interrupting) There is no question pending.

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THE WITNESS: Sorry.
MR. BARCH: I think's all I have for now.
EXAMINATION BY MR. ACCARDO:
Q. For your left arm and left elbow, you had injured those before 2011; is that right?
A. Excuse me?
Q. You had injured your left arm and your left elbow before 2011?
A. Correct.
Q. And that was in a car accident?
A. Yes.
Q. And that took place when?
A. Ten years ago.
Q. What type of injury did you suffer in that car accident?
A. I suffered a broken neck, and I had to have an ulnar nerve transposition done.
Q. Okay. And where was that done?
A. That was done I think late -- what did they call that? That was a long time ago at the hospital, Lake Forest Hospital.
Q. Do you remember which doctor performed that?
A. The same doctor.
Q. The same doctor as what?

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A. **Sagerman.**
Q. Okay.
A. **That's why I knew him.**
MS. FREEMAN: Just answer the question.
Q. And after the surgery after the automobile accident about ten years ago did you still have trouble with the left arm?
A. **Still do today.**
Q. From the time of the car accident up until the time of the accident with the chain saw in June of 2011 did you have trouble with the left arm and the left elbow?
A. **Yes.**
Q. And has that changed since the accident in June of 2011?
A. **Yes.**
Q. How so?
A. **The other side of the elbow hurts.**
Q. Okay. Which side of the elbow hurt before?
A. **This side (indicating) was from the car accident. It's like the funny bone.**
Q. We're talking about more of the inside of your elbow?
A. **Yes.**

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Q. All right.
A. **Where this is out up here (indicating).**
Q. Okay. And by "out here" (indicating), you're talking about the outer part of the elbow?
A. **Yes.**
Q. You still have trouble with the inner part of the elbow?
A. **Yes. Cold days.**
Q. The time when you were working with David on the apple tree --
A. **(Interrupting) Yes.**
Q. -- was that the only time you had worked with him where there was a chain saw involved before June of 2011?
A. **With him with the chain saw, yes. There was a tree down in the front yard, but I don't know who did it. I assumed he did.**
Q. I'm just talking about you working with him with the chain saw before 2011.
A. **Yes.**
Q. Was it just the apple tree?
A. **That was it.**
Q. During the cutting of the apple tree did you have any criticism with the way that David used or employed the chain saw?

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A. **No.**
Q. And before the accident the day you were cutting down the pine tree did you have any criticism with the way David was using or employing the chain saw?
A. **No.**
Q. Was there any alcohol involved in the June, 2011 incident?
A. **Possibly on Bill's part, Bill McGuire, but neither of us.**
Q. Not on David's part?
A. **No.**
Q. Any reason to believe that David was under the influence of any type of drugs or alcohol at the time of the accident?
A. **No.**
Q. At any point before the actual accident took place when you were cutting down the pine tree did you express any displeasure or any concern over the process that David had set up for trimming the limbs?
A. **No.**
Q. You didn't see any problem with it?

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A. **He seemed like he knew what he was doing.**
Q. My question to you was did you see any problem with it, though?
A. **No. I wouldn't know.**
Q. Now, I just want to go back to right before you got cut and talk a little bit about the saw because I am a little confused. When David started walking towards you, was the chain still going or had it already been put into idle at that point?
A. **He was cutting, stopped, came up, took the finger off the trigger because the whole thing went down, you know -- I think it stopped. The chain pretty much stopped.**
Q. Okay. And then he starts walking toward you?
A. **Right.**
Q. And at any point did you see his finger hit the trigger?
A. **I didn't see his finger hit the trigger, no.**
Q. You just heard?
A. **Yes.**
Q. And then you saw the chain --
A. **(Interrupting) Yes.**
Q. -- start to speed up?

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A. Yes.
Q. Or you actually saw the chain engage?
A. Yes.
Q. Okay.
A. Start to move.
Q. About how much time elapsed from the time he put the saw into idle or took his finger off the trigger until you heard or saw the chain engage again? Was it just a matter of seconds?
A. Yes, it was seconds.
Q. And then about how much time elapsed from the time you saw or heard the chain engage until the time you were actually cut?
A. Split seconds. It came fast.
Q. After the chain or saw engaged right before you were cut, did you see David move in any particular way?
A. Say that again. I lost you in the middle.
Q. After you saw the chain and the saw engage before you were cut, did you see David's body move in any particular way? Did you see any type of jerking movement or anything like that?
A. No. He started walking towards me.
Q. But at some point I think you said you saw the

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saw coming up?
A. Yes.
Q. Okay. How high was the saw when it cut you?
A. It was my eye height. My eyes.
Q. And how was David holding it at that point?
A. (Indicating).
Q. Okay. You're showing me –
A. (Interrupting) Saw pointing up.
Q. Saw pointing up. One hand would have been on the bar?
A. Yes.
Q. The safety bar?
A. Yes.
Q. And then the other hand where?
A. Down on the trigger.
Q. Okay. And the actual saw was pointed straight up in the air?
A. No. It was maybe a 45 it went to.
Q. When you heard and saw the chain engage, where was the saw pointing?
A. Down toward the ground at about a 45.
Q. So from the time you heard or saw the chain engage up until the time you were cut, David moved it from about 45 degrees to the ground up

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pointing towards the sky about 45 degrees?
A. Yes.
Q. And how would you describe the manner in which he did that? Was that something that was –
A. (Interrupting) Just raise it.
Q. Was that something that was fast? Was it slow? Was it sudden?
A. It was very sudden and fast.
Q. Did it look like he had lost control of the saw, or did it look like he did it on purpose?
A. No, it looked like he was in control, but I don't know -- I have asked him. I don't know if he tripped over something –
Q. (Interrupting) I'm not -- I'm just asking you if –
A. -- or what. I don't know the answer to that.
Q. Okay. You said you were holding the branch with your right arm or your right hand, right?
A. Uh-huh.
Q. Okay. And you were facing with your body towards David?
A. Yes.
Q. Okay. And then when you heard and saw the chain engage, you dropped the branch?

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A. Yes.
Q. And then you I think motioned -- you said you turned your body it would have been to the right and up and away?
A. Yes. First I went up, and then I was trying to get up and out of the way because that saw blade came up to a 45, and I had to get the heck out of there.
Q. Where was your arm when it actually got cut, and in what position was it?
A. Can I stand up and show you so I can describe it?
Q. Yes.
A. It was -- I was turned like this (indicating), and it cut me right here (indicating).
Q. Okay.
MR. ACCARDO: So let the record reflect that Mr. Dulberg's right arm was basically parallel with his nose and eyes.
Q. Is that about right?
A. Yes, it was. Yes.
Q. And your body was turned about –
A. (Interrupting) I was in the middle of pivoting to get away.
Q. Okay. After the chain and the saw engaged did

David keep walking towards you, or was it just more of a movement with his hands and arms?
A. Say it again.
Q. After you saw the saw and the chain engaged did David keep walking towards you, or was it simply a motion with his hands and arms?
A. It was a motion up.
Q. So he had stopped walking or moving towards you?
A. I think that there were still forward momentum going on, yes, because it started and it came up -- yes, there had to be. I don't know. There had to be, though. My eyes were on the blade at that point.
Q. And now I know you said when you were in the emergency room that David said something about kickback?
A. I asked him -- the emergency room staff asked what the heck happened, and that was his response.
Q. Did you overhear what he told to the people at the emergency room?
A. Yes.
Q. What did he tell the people at the emergency room?

A. He said kickback or something. I just don't know. He took his hands, put them on the head and put them between his knees and just stayed there and did not say nothing.
Q. Did they ask him more than once what happened?
A. Yes, a couple of times, and I just looked at the emergency room staff, and I said, "I think it's an accident. Let's just get this done."
Q. When they asked him the second or the third time what happened, what was his response?
A. At that point he had his head between his knees, and he just goes "I don't know what happened. I just don't know."
Q. At any point did you have a conversation with David in the emergency room, outside of the presentation of the emergency room personnel, about what happened?
A. No.
Q. Now, I know that when you were asked before about some discussions or attempts at discussions about what has happened from the time of the accident up until today's date, I think you sort of just -- sort of made some noises and said David did not want to talk about it. I want you to tell

me, if you know, what specifically has David told you about what he thinks happened on the date of the accident?
A. He doesn't know.
Q. Has he offered any type of explanation as to what happened?
A. No. I think he's afraid to. I don't know.
MS. FREEMAN: There is no question pending.
Q. Why do you think he's afraid to?
A. Because I don't think he knows.
Q. As you sit here today do you think this is something he did on purpose or intentionally?
A. I think he screwed up and had a brain fart.
Q. So the answer to my question would be no?
A. Right.
Q. At any point while you were in the emergency room did you ever have a discussion with David where you indicated to him that you thought that both of you could make a lot of money off of this? Did that conversation ever happen?
A. No.
MR. ACCARDO: I don't have anything else.
MR. BARCH: Only question I have in

follow-up -- just one.
EXAMINATION BY MR. BARCH:
Q. You mentioned that you and Mr. Gagnon were not drinking that afternoon, correct?
A. Correct.
Q. And you said Bill. I guess you're referring to Bill McGuire may have been drinking?
A. He's been known to.
Q. Okay. As you sit here today do you believe that if he had consumed beer or something that day, that that played some role in what happened to you with the chain saw?
A. It played no role.
MR. BARCH: That's all.
MR. ACCARDO: Nothing else.
MS. FREEMAN: I think we will waive signature.
(The deposition of this witness came to a close at 3:33 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, Angela D. Oldenburg, a Certified Shorthand Reporter in and for the State of Illinois, do certify that, pursuant to the agreement hereto annexed, there came before me on the 24th day of January, 2013, at 12:17 p.m., the following-named person, to wit: Paul R. Dulberg, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge concerning the matters in controversy in this cause; that he was thereupon examined on his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness and that the reading and signing of the deposition by the said witness were expressly waived.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

Dated this 28th day of January, 2013.

Angela D. Oldenburg

Certified Shorthand Reporter
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FISHER COURT REPORTING
922 North Lyford Road Rockford, IL 61107

November 22, 2013

Law Office of Thomas Popovich
3415 West Elm Street
McHenry, IL 60050

Re: Dulberg vs. Gagnon, et al.

Dear Sir:

Enclosed please find Exhibits 1 through 3 which were marked during the course of Paul Dulberg's deposition. The exhibits should have been attached to the transcript when it was sent to your office but were inadvertently left behind. My apologies for any inconvenience this has caused.

Sincerely,

Deb Fisher

Deb Fisher

Enclosures

PHONE (815) 226-9755 FAX (815) 395-9510 E-mail fisherreporting@sbcglobal.net

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

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

PLAINTIFF'S ANSWERS TO INTERROGATORIES

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

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

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

ANSWER: Single

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

ANSWER: Plaintiff and Defendant Gagnon. McGuires were on the premises.

EXHIBIT
tabbies
1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: Yes. On right arm. Investigation continues.

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

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

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

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

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

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

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

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

15. State with particularity your basis for alleging that on or about June 28, 201 1, David Gagnon living and/or staying at the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois.

ANSWER: He was at his mother's residence.

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

ANSWER: Dave invited me.

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

ANSWER: Dave told me.

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

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

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

ANSWER: It was the McGuires chain saw.

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

ANSWER: Unknown

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

ANSWER: The McGuires saw me with Mr. Gagnon.

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

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

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

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

ANSWER: PLAINTIFF'S RESPONSE TO 213 INTERROGATORIES

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

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

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

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

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

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

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

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

accident based upon his/her expertise and experience and knowledge of the billing/charges for the same or similar treatment;

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

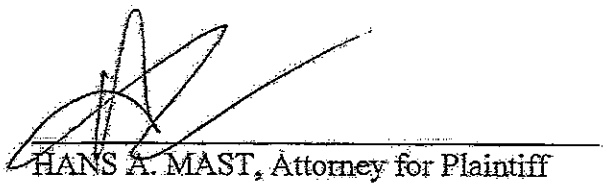
Plaintiff expressly reserves the right to withdraw and/or not to call any 213 witnesses heretofore disclosed (or fewer than those disclosed) depending on counsel's legal determination at the time of trial and his judgment on the necessity of such testimony given the issues and evidence to be presented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

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

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

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

appropriate at trial.



HANS A. MAST, Attorney for Plaintiff

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

Verification by Certification

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

Paul Dulberg

PAUL DULBERG

DATE: 7-20-12

MEDICAL EXPENSE REPORT

PAUL DULBERG

DATE OF ACCIDENT: JUNE 28, 2011

DATE OF REPORT: MARCH 19, 2012

MEDICAL EXPENSES

Paul Dulberg

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

Northern Illinois Medical Center
4201 Medical Center Drive
McHenry, IL 60050-8409
815-344-5000 - Acct. 11179-00323

06/28/11	$1,323.75	$1,323.75

Moraine Emergency Physicians
PO Box 8759
Philadelphia, PA 19101-8759
800-355-2470 - Acct. MNI711179003233

06/28/11	$1,346.00	$1,346.00

McHenry Radiologists Imaging Associates
PO Box 220
McHenry, IL 60051-0220
815-759-0800 - Acct. 235130-QMRIG

06/28/11	$50.00	$50.00

Associated Neurology SC
Attn: Dr. Levin
1900 Hollister Drive
Suite 250
Libertyville, IL 60048
847-549-0055 - Chart # 18062

07/28/11	$225.00	
08/10/11	930.00	
Total		$1,155.00

Open Advanced MRI of Round Lake
Medchex
PO Box 502
Katohah, NY 10536
866-959-1100 - Acct. 265065

02/03/12	$3,390.00	$3,390.00

Walgreens
3925 W. Elm Street

McHenry, IL 60050
815-363-0722

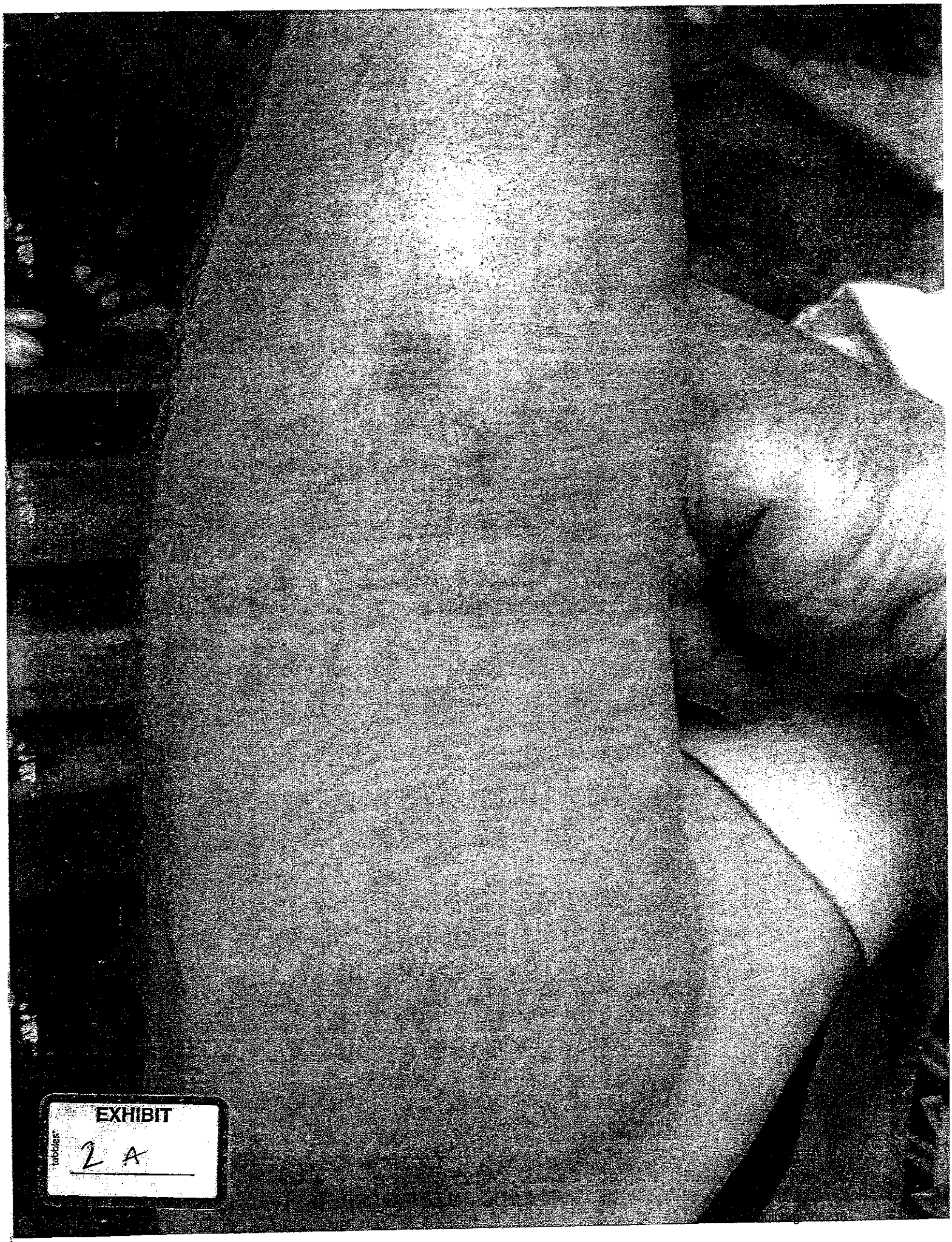
06/28/11	$48.68	$48.68

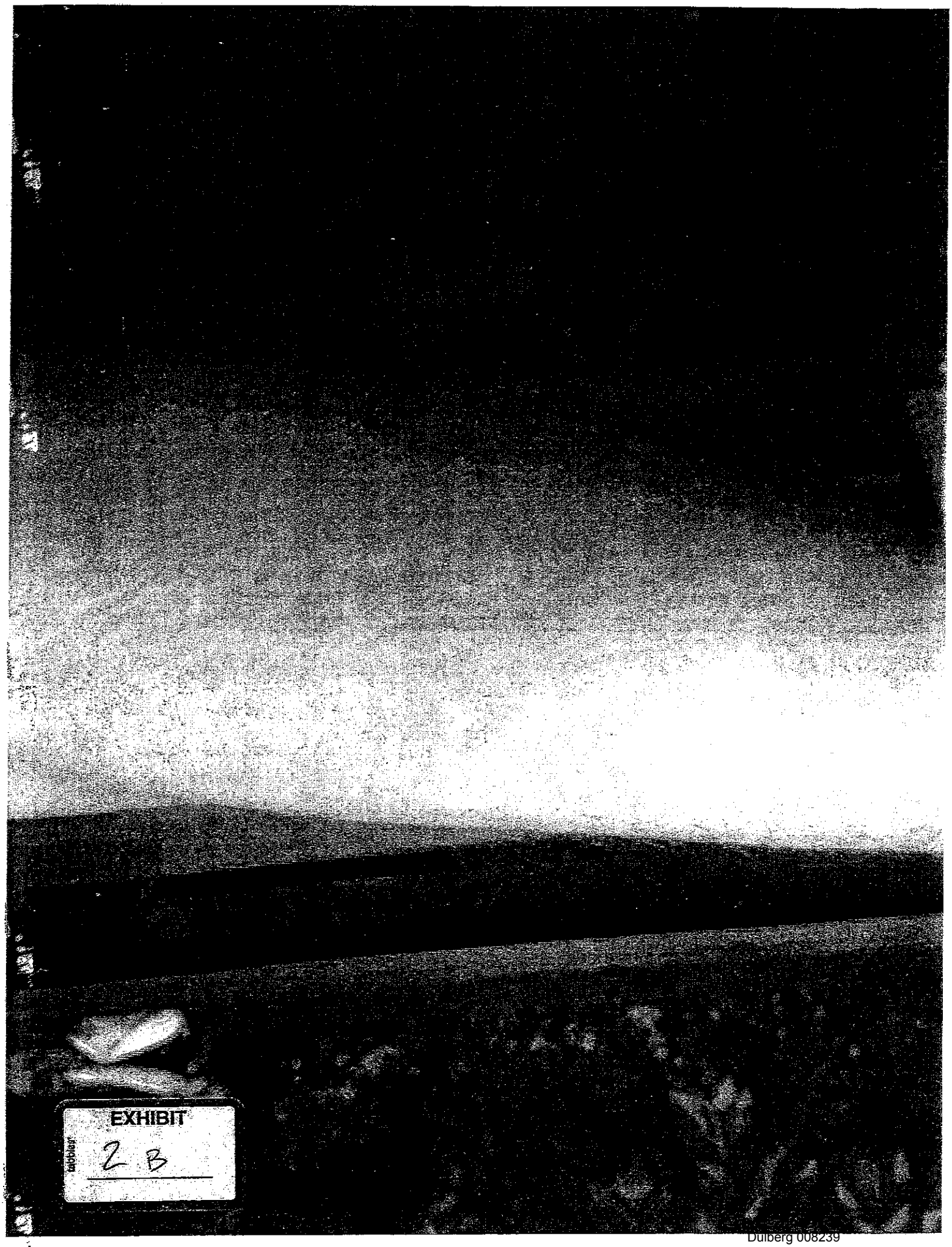
TOTAL EXPENSES: $7,313.43

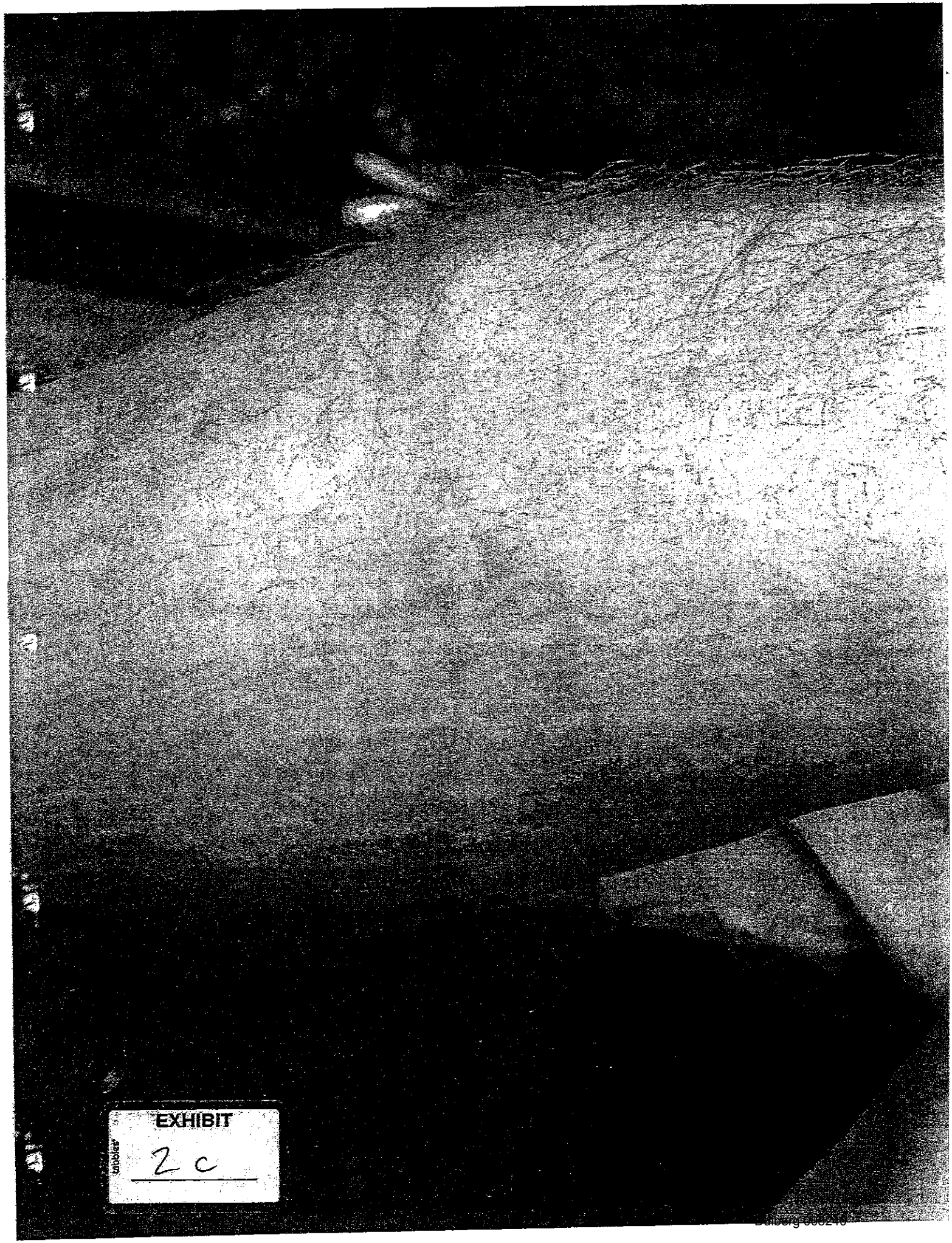
Misc Expenses

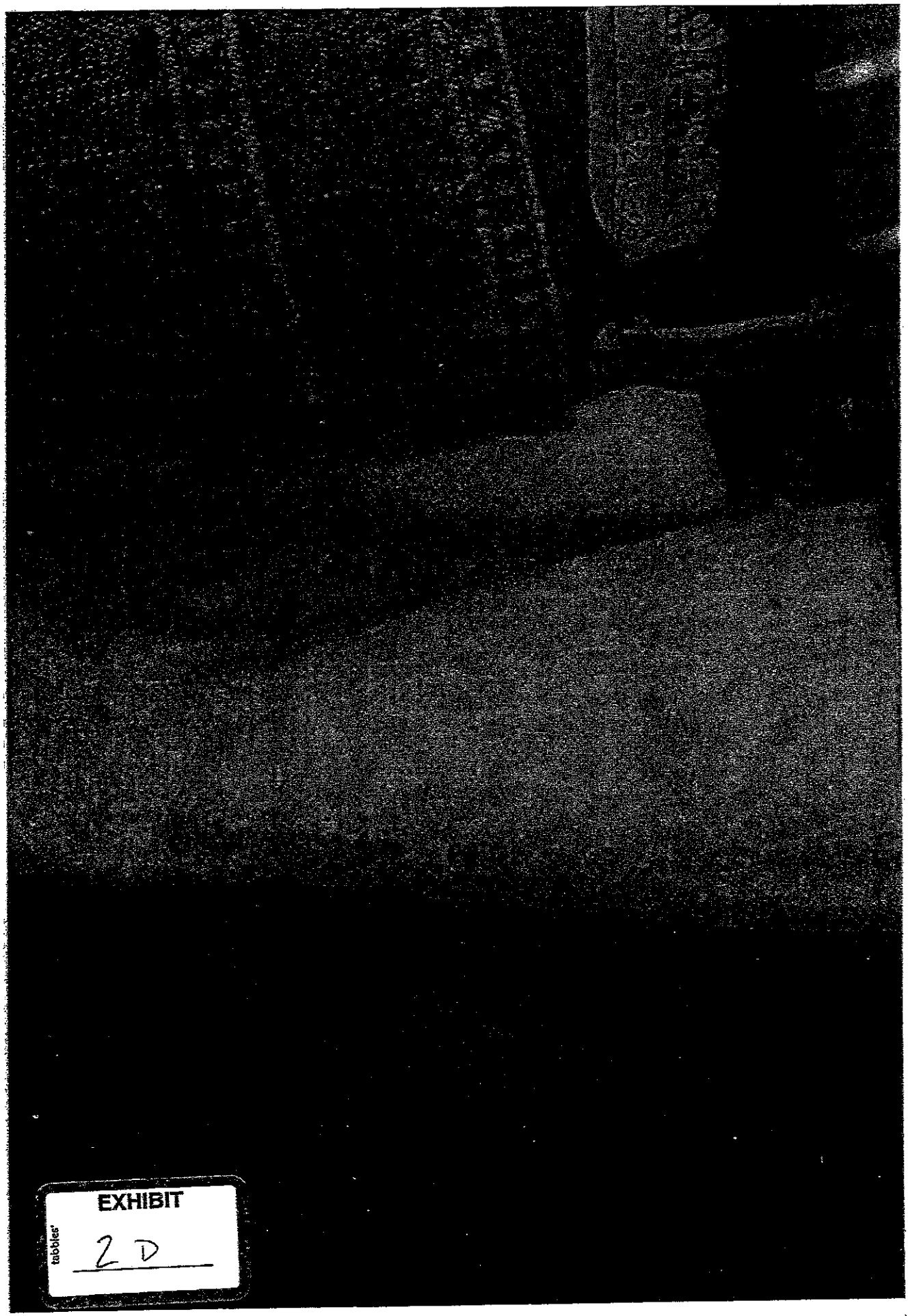
Medical Supplies	$19.61	
Total Misc. Expenses		$19.61

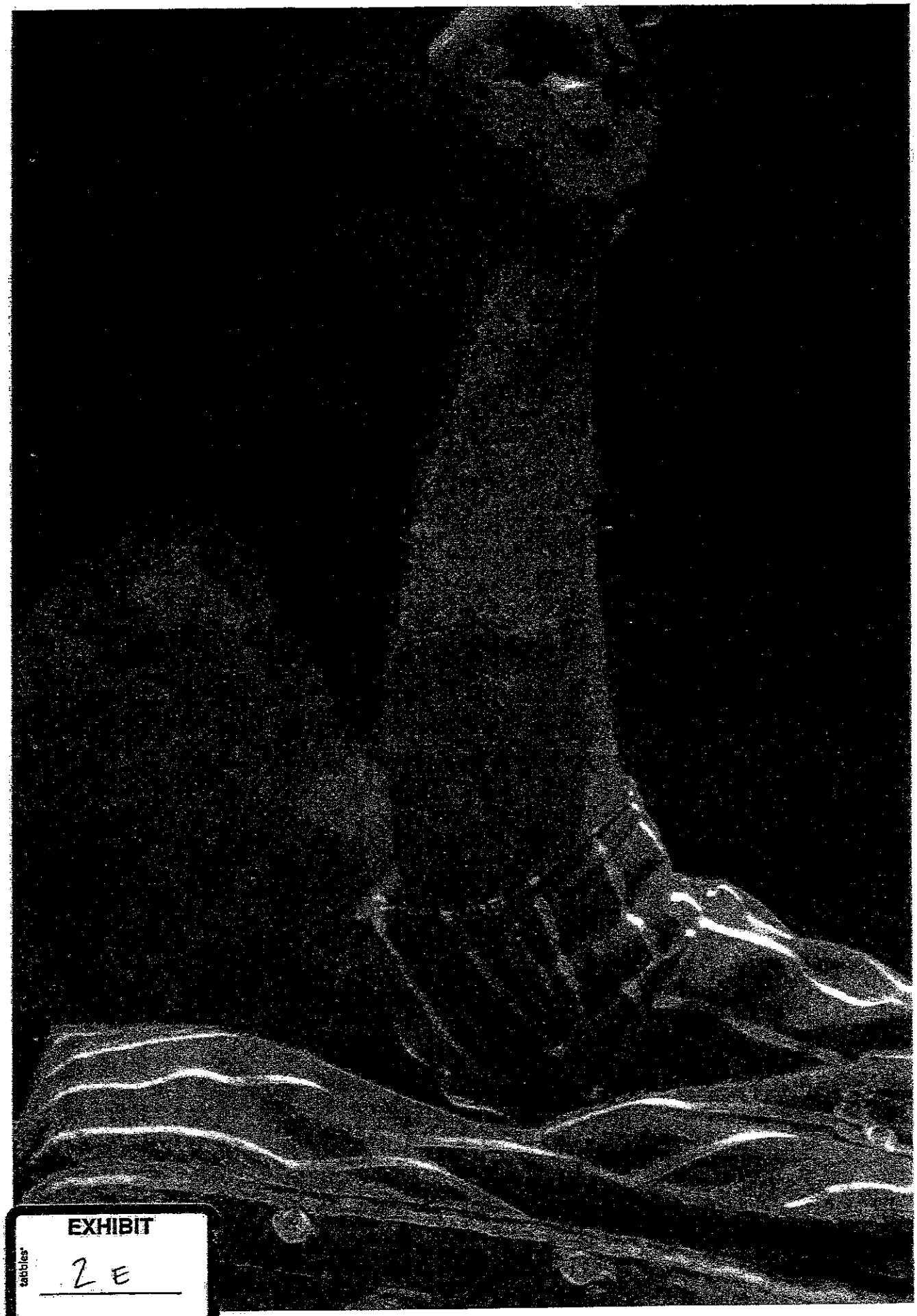
TOTAL ALL EXPENSES $7,333.04


EXHIBIT
2 A


EXHIBIT
2 B


EXHIBIT
2c

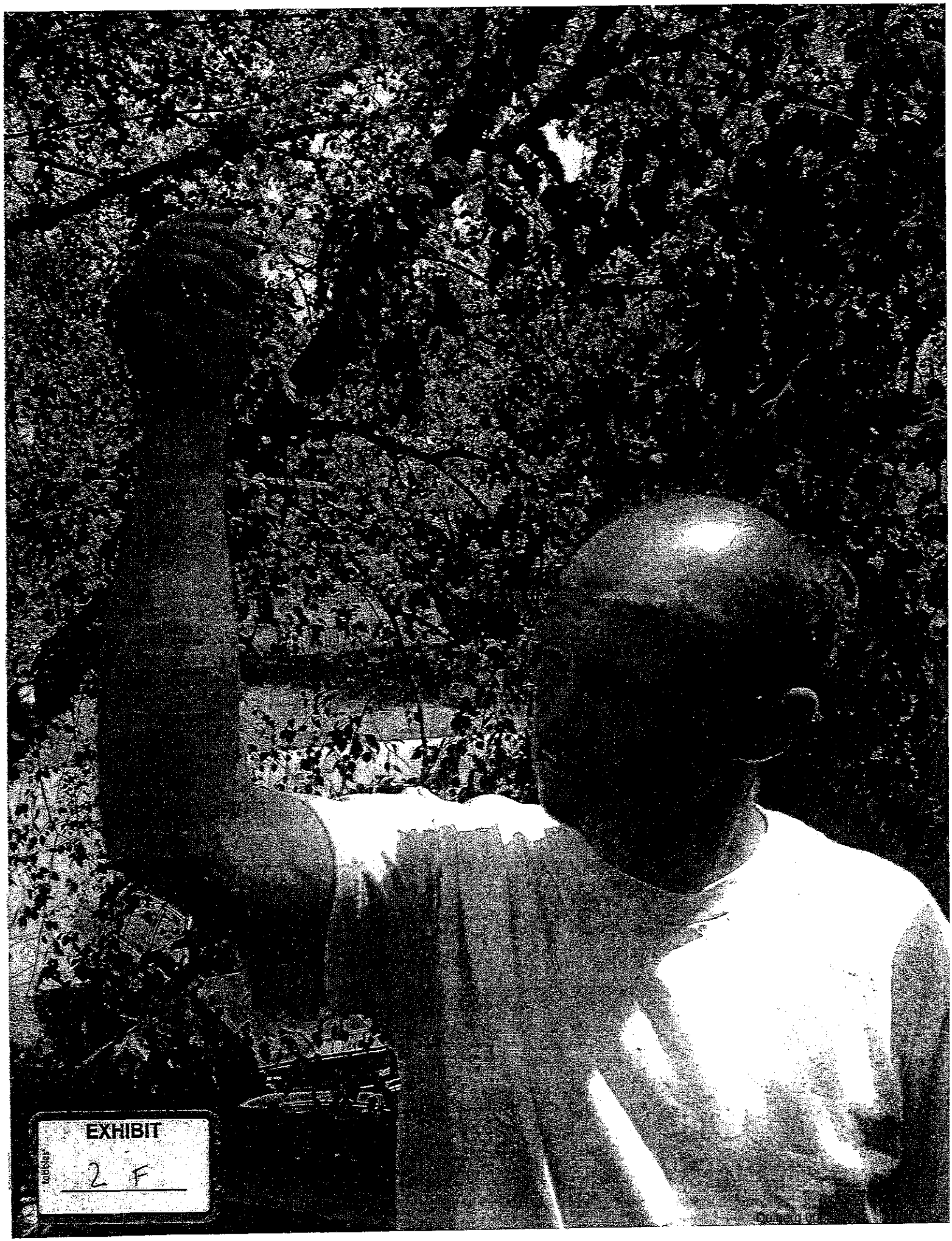

EXHIBIT
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2D

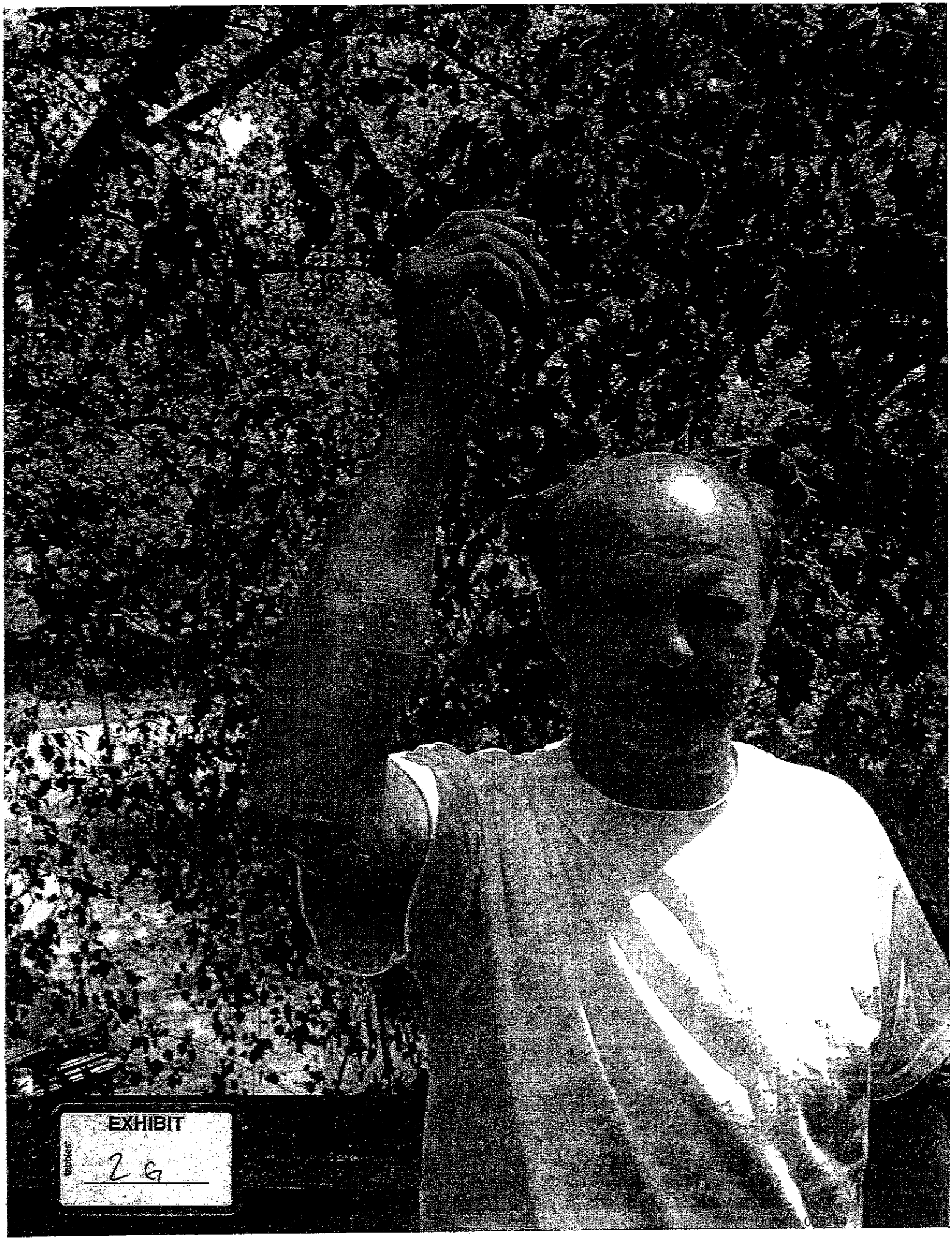


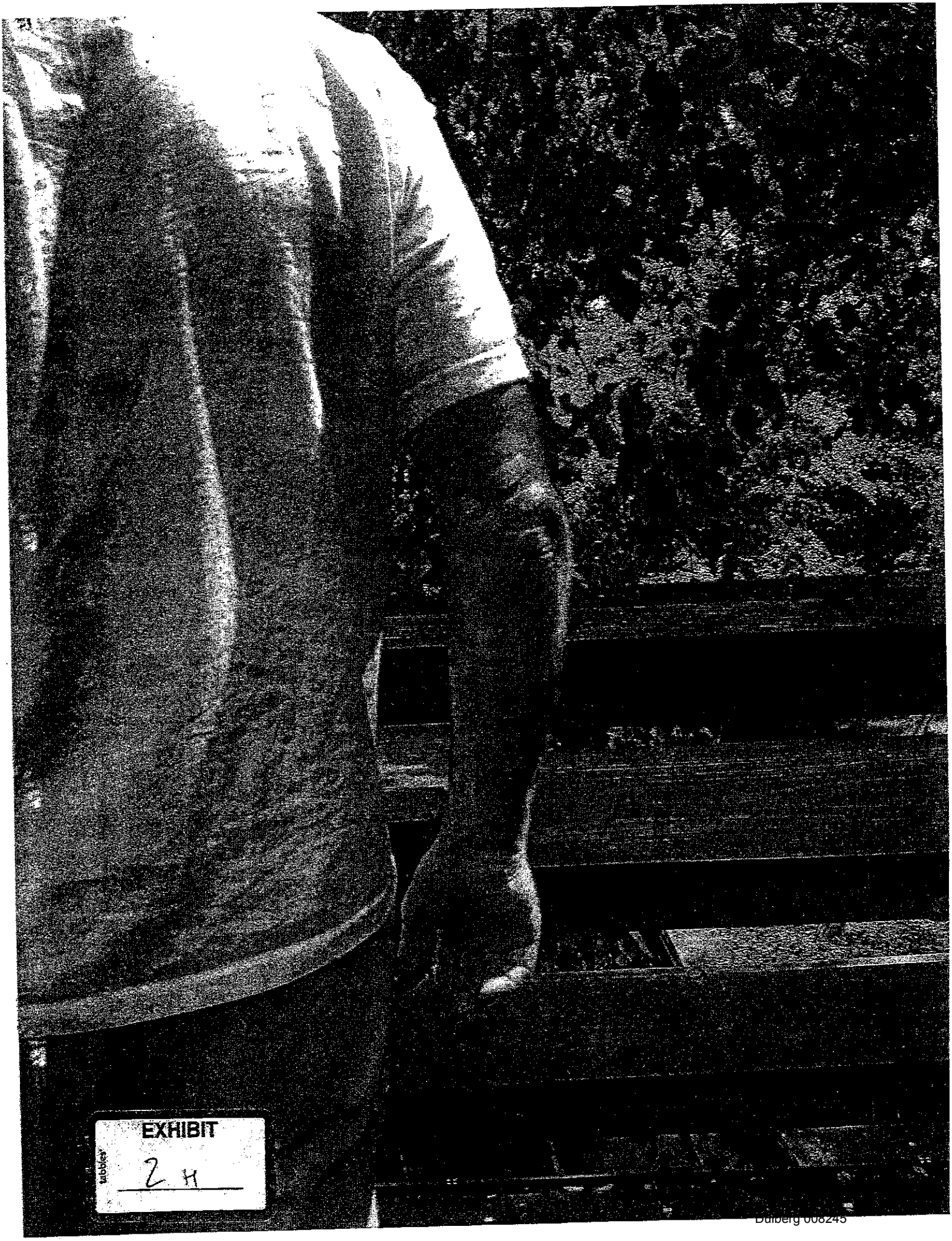
EXHIBIT

tabbies

2 E


EXHIBIT
2 F


EXHIBIT
2G


EXHIBIT
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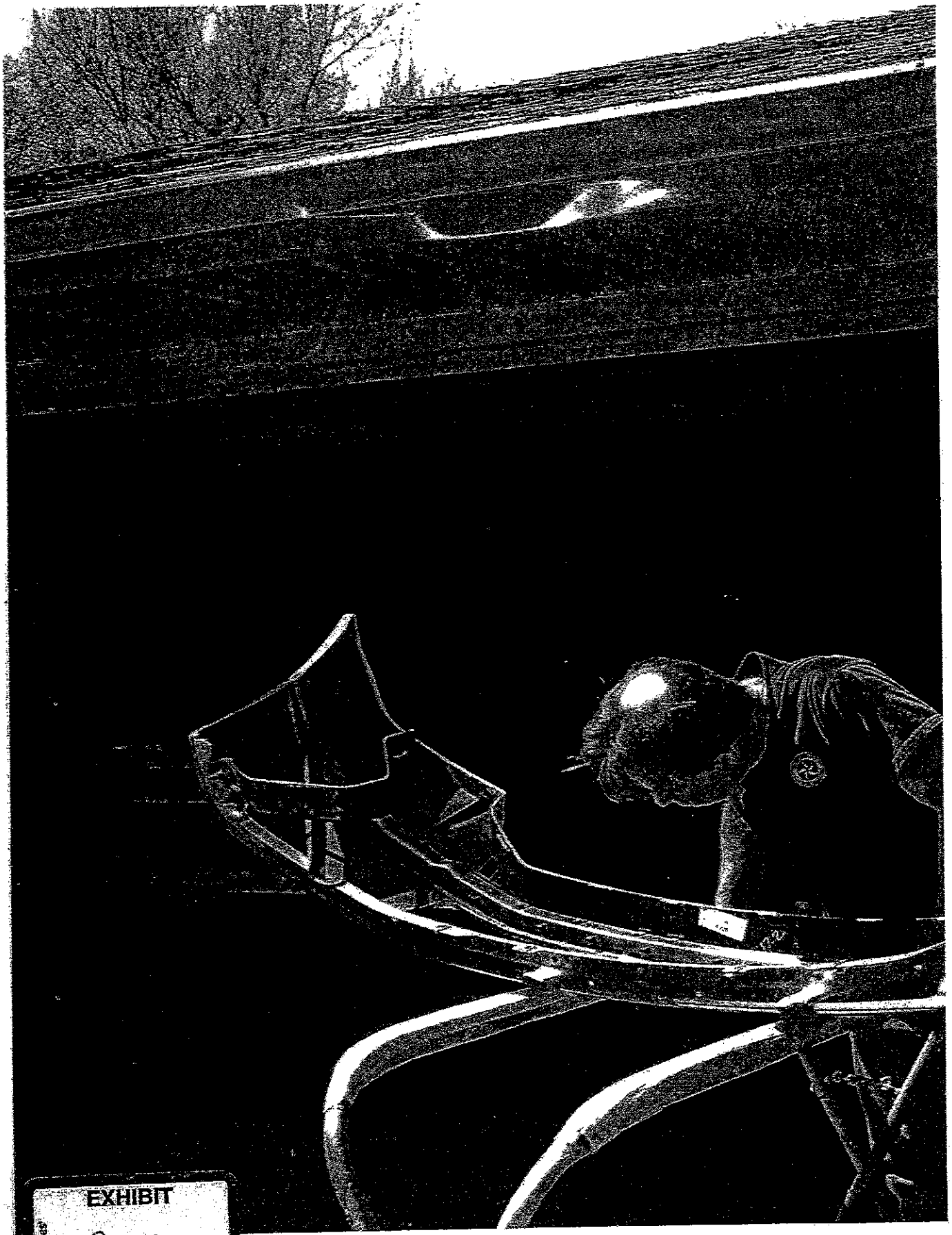


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MEDICAL EXPENSES

Paul Dulberg

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

Northern Illinois Medical Center
4201 Medical Center Drive
McHenry, IL 60050-8409
815-344-5000 - Acct. 11179-00323

06/28/11	$1,323.75	$1,323.75

Moraine Emergency Physicians
PO Box 8759
Philadelphia, PA 19101-8759
800-355-2470 - Acct. MNI711179003233

06/28/11	$1,346.00	$1,346.00

McHenry Radiologists Imaging Associates
PO Box 220
McHenry, IL 60051-0220
815-759-0800 - Acct. 235130-QMRIG

06/28/11	$50.00	$50.00

Associated Neurology SC
Attn: Dr. Levin
1900 Hollister Drive
Suite 250
Libertyville, IL 60048
847-549-0055 - Chart # 18062

07/28/11	$225.00	
08/10/11	930.00	
Total		$1,155.00

Open Advanced MRI of Round Lake
Medchex
PO Box 502
Katohah, NY 10536
866-959-1100 - Acct. 265065

02/03/12	$3,390.00	$3,390.00

Walgreens
3925 W. Elm Street

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

TOTAL EXPENSES: $7,313.43

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

TOTAL ALL EXPENSES $7,333.04

ORIGINAL

Discovery Deposition of **MICHAEL McARTOR**

Date: March 20, 2013

Case: Dulberg v. Gagnon

Mike gets confused AND TRIES TO Answer things He HAS No Knowledge of. Like who Pays Bills at house PRIOR To Accident. Also confused which arm is which...

Thanks TO HANS →

Also list himself as unemployed even though He owned & Operated T-Shirt Printing Company Paid through Dividends

Mike wasn't sure How to ANSWER.

Urbanski
Reporting Company

Phone: 312-977-1777

IN THE CIRCUIT COURT

FOR THE 22ND 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 MICHAEL McARTOR, taken in the above-entitled cause, before Paula Ann Erickson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, on March 20, 2013, at 3421 West Elm Street, McHenry, Illinois, at the approximate hour of 11:50 a.m.

REPORTED BY: PAULA A. ERICKSON

C.S.R. LICENSE NO. 084-003899

APPEARANCES:

MR. HANS MAST
LAW OFFICES OF THOMAS J. POPOVICH
3416 W. Elm Street
McHenry, Illinois 60050
(815) 344-3797

Appeared on behalf of the Plaintiff.

MR. RONALD A. BARCH
CICERO, FRANCE, BARCH & ALEXANDER, PC
6323 East Riverside Boulevard
Rockford, Illinois 61114
(815) 226-7700

Appeared on behalf of the Defendants, Carolyn and Bill McGuire.

MR. PERRY A. ACCARDO
LAW OFFICE OF M. GERARD GREGOIRE
200 North LaSalle Street
Suite 2650
Chicago, Illinois 60601
(312) 558-9821

Appeared on behalf of the Defendant, David Gagnon.

* * * *

I N D E X

WITNESS PAGE

MICHAEL McARTOR

BY MR. MAST..... 4

BY MR. BARCH.....41

E X H I B I T S

(NO EXHIBITS MARKED)

THE REPORTER: Sir, can you raise your right hand, please?

MICHAEL McARTOR,

after being first duly sworn, deposeth and saith as follows:

EXAMINATION

BY MR. MAST:

Q. All right. Would you please state your name?

A. Michael McArtor.

Q. How do you spell the last name?

A. M-C capital A-R-T-O-R.

Q. Okay. All right.

MR. MAST: This is the discovery deposition of Michael McArtor, taken pursuant to subpoena with notice. Mr. McArtor, I am going to ask you some questions regarding what you may or may not know about a chain saw incident that involved my client Paul Dulberg and the other parties in this case. Let's see if I have a date of accident I can reference. Anybody have the date of accident?

MR. BARCH: I think it's June 28th of 2011 was the date.

BY MR. MAST:

Q. Okay. Do you recall that date as being the

approximate time of Paul's accident?

A. Yes. Summer of '11.

MR. MAST: Okay. What I am going to do and maybe the other attorneys are going to ask you some questions regarding just some matters regarding Paul, my client, and just the incident and things that arose from the incident. Please let me finish the question and I will let you answer it. Let's try not to talk over each other and we will go from there, okay?

THE WITNESS: Okay.

BY MR. MAST:

Q. You have probably never given a deposition before I take it?

A. No.

Q. Okay.

A. Never been in a lawyer's office really.

Q. Well, that's actually good. So let's start with your address.

A. 4606 Hayden Court, McHenry, Illinois 60051.

Q. Hayden, H-A-Y-D-E-N?

A. Correct.

Q. All right. And who do you live with?

A. Paul and his mom.

Q. What's his mother's name?

A. Barb.

Q. And is this a single family residence?

A. Yes. There is two. It's like two floors. I live on the bottom.

Q. Do you like live in an apartment?

A. No. It's one house. We share a kitchen. Everything else I have is my own. You know, I have my own bathroom and everything.

Q. So it's kind of --

A. It's kind of like a duplex. → walk out Basement

Q. This is the problem we are going to have is when I start talking and when you start talking. You got to let me finish my question and then I will let you say whatever you want to say, okay? All right?

A. Yep.

Q. So although it's a single family house, you use it in kind of sections where you have a place that you use and then the second floor they use?

A. Yes.

Q. Okay. So does Paul live in the area where his mother lives?

A. Yes.

Q. And then you live alone in the area of the first floor? -- Basement

A. Yes.

Q. Okay. See, that's better. That makes it a little bit easier. All right. What's your date of birth?

A. 9/3/70.

Q. Okay. And what do you do for a living?

A. I am unemployed right now.

Q. How long have you been unemployed?

A. About five years. – owned & operated T-shirt Business

Q. Is that by choice or for some reason?

A. I was fired. – FROM DAY JOB IN 07-08?

Paid in Dividends from stocks invested in company

Q. Well, that was five years ago, though. Are you staying -- Hold on. Are you staying unemployed by choice or for some season?

A. Oh, no. Not by choice. It's just hard to find a job. → Mike Doesn't consider ~~that~~ owning a company as Employment.

Q. So you haven't been able to find a job?

A. Right. – 2nd Job.

Q. What is it that you do that you are looking to find work in?

A. I do printing. – HE WAS FIRED FROM undercoating cars. PRINTING ON T-Shirts WAS 2nd Job.

Q. Okay. How long have you lived at that address with Paul and his mother?

A. About seven years.

Q. How long have you known Paul and his mother?

A. My whole life. Since I was like three.

Q. So you grew up with Paul?

A. Yes.

Q. Did you go to school with him as well?

A. Yes.

Q. What -- Did you go to grade school with him?

A. Yes.

Q. What grade school?

A. All of them, Johnsburg, Ringwood.

Q. What high school did you go?

A. Johnsburg.

Q. Same with Paul?

A. Yes.

Q. So is it fair to say since maybe 3 or 4 years old you and Paul have been friends?

A. We have known each other.

Q. Okay. How long would you say you and Paul have been friends?

A. Probably since '80.

Q. Okay. What started that friendship?

A. Just we live two roads away from each other.

Q. Okay. How is it that you began to live with Paul?

A. We originally had a business together.

Q. What kind of business?

A. T-shirt business.

Q. A what?

A. T-shirt printing.

Q. How did that carry on to living together?

A. We pretty much needed somebody there all the time and he was working at Intermatic and I wasn't really working at the time.

Q. Is it out of the home?

A. Yes.

Q. Okay. Is that something you are still doing with Paul?

A. No. We are not doing that anymore.

Q. So do you do anything to earn any income right now?

A. No.

Q. Okay. When did the T-shirt business stop, end?

A. Roughly about 2011.

Q. Okay. And was it -- Was it run out of the home?

A. Yes.

Q. Do you pay rent?

A. No.

Q. Or do you do anything in exchange for living there?

A. I clean. I cook.

Q. Okay. For everyone?

A. Yes.

Q. Oh. Are you a good cook?

A. Yes.

Q. Good.

A. I think so.

Q. Do you have anything beyond high school? Any type of college?

A. No.

Q. Okay. How about David Gagnon, do you know him?

A. Yes.

Q. How long have you known Dave?

A. Since probably 1984.

Q. Has he been a friend since then?

A. He was an acquaintance at that time. Probably about 1986 we probably became friends.

Q. Okay. So almost as long as with Paul but not quite?

A. Yes. Right.

Q. Okay. What began your friendship with Dave?

A. Once again, we lived in the same neighborhood. We knew each other.

Q. Okay. And up until Paul's incident in 2011 with the chain saw -- You are familiar with that incident, right?

A. Yes.

Q. Up until then, were you -- from '86 until then, were you friends with Dave?

A. Yes.

Q. Okay. And friends can mean a lot of different things. Some friends are very close and they see each other every day and go out and socialize and stuff. Other people can be friends. They see each other once a year, so how would you describe before Paul's accident your friendship with Dave?

A. I'd say I saw him probably four times a week at least. — BACK IN the - 80's & early 90's NOT THIS often SINCE mid 90's

Q. Any type of social activities together?

A. No. We just go to his house and play like hacky sack. — 80's - 90's

Q. Did Dave live alone?

A. No. He lived with his mom and Bill.

Q. Mom and who?

A. Bill.

Q. Who is Bill?

A. McGuire.

Q. I'm sorry?

A. Carol and Bill.

Q. His parents you are saying?

A. It wasn't his parents at the time. Bill was not his dad. They weren't married at the time.

Q. So Bill is like his stepfather?

A. Bill would be his stepfather, yes.

Q. Does Dave still live with them?

A. No.

Q. Is he married now?

A. Yes.

Q. Does he have children?

A. No. — should Be yes! Mike Knows Dave has a kid.

Q. How long has Dave lived -- I imagine Dave lives with his wife now?

A. Correct.

Q. How long have they lived together, if you know?

A. Oh, probably it was at least probably six years. — ? Guess

Q. Okay. Up until then -- up until he got

married and started living with his now wife, he lived with his mother and Bill?

A. Yes.

Q. Okay. And is that the same address where she lives today?

A. Yes. – NO, Dave moved out of Parents

Q. What street is that?

A. Oakleaf I think. – ELDER Ave.

Q. Is that in McHenry?

A. They have a McHenry mailing address, yes.

Q. And so the time that you would see Dave four times a week at his mom's house on Oakleaf that would be before Dave got married and moved out obviously?

A. Correct. – TRUE

Q. Okay. So for six years -- for the past six years, have you had a friendship with Dave?

A. I would see him every now and then. I wouldn't see him as much, no. – once-Twice a year.

Q. And the reason you saw him it looks like significantly less is because he got married and moved in with his wife and moved?

A. They moved away. They moved to Wisconsin.

Q. Is that where they are living now?

A. Yes.

Q. So once Dave got married and moved up to Wisconsin to live with his wife, that's when your connection with him got a little bit less?

A. Yes.

Q. But you still had a friendship with him?

A. Yes.

Q. Okay. Okay. And then if you would, you described now your relationship friendship with Dave over the years. How about now with Paul? You have lived with him for the past six years. I am assuming you socialize with him from time to time?

A. Sure.

Q. Is that on a frequent everyday basis or what?

A. Yeah.

Q. Okay. So you still have a close relationship with Paul then?

A. Yes.

Q. All right. Are you -- Do you have a close relationship with his mother then as well?

A. Yes.

Q. What's his mother's name?

A. Barbara.

Q. Anybody else that lives in the house?

A. No.

Q. Do you know Dave's mother and stepfather?

A. Yes.

Q. Okay. Does he have a -- Is his natural father still living?

A. No.

Q. Okay. What's his mother's name?

A. Carol.

Q. Carol. Since Dave moved out of their house like six years ago, have you maintained any type of contact with Carol and Bill?

A. I have talked to them a couple times, not much. - TRUE

Q. Okay. With regard to Paul's accident, the chain saw that we are here about today, June, 2011, other than -- and we will get to your communications or what you have overheard with regard to Dave and Paul, but other than Dave and Paul, have you had communications with anyone else regarding that incident?

A. No. - Barb, Paul, Dave, Tom, Scott Mikes Mom & Dad.

Q. Okay. So all of the information you know about the chain saw accident with Paul has all come from either Paul or Dave?

A. Well, and Carol. Carol. Carol is the one

who called me the day it happened. – TRUE

Q. That's what I was trying to find out.

A. Yes.

Q. So it's just three people then you have learned about the chain saw accident, Carol, Dave and Paul?

A. Yes.

Q. Okay. You have never talked to Bill about it then?

A. No.

Q. Okay. Before the -- Before the accident occurred with Paul -- You know it happened over at the McGuire's house, right?

A. Yes.

Q. Before it happened, did you know what Paul was doing that day?

A. No. – Yes, Barb Told Mike where Paul went.

Q. Did you know he was going to be using a chain saw or working around a chain saw?

A. No. No. – TRUE

Q. Okay. Did you know what Dave was going to be doing that day?

– TRUE, Except What Barb ~~told~~ said about where Paul went That morning

A. I had no idea what any of them were doing.

Q. Okay. Okay. Obviously they don't have to

report to you what they decide to do, right?

A. Right.

Q. And you don't know every day what they're doing?

A. No.

Q. All right. So your first notification of what happened in Paul's chain saw accident was when Carol called you?

A. Yes. — TRUE

Q. Okay. Was it the day of the incident?

A. Yes. — TRUE

Q. What time did she call you? 3 hrs Not 5-6

A. Probably five, six hours after it happened.

Q. Okay. So Paul had already been to the hospital I am assuming? — 3 hrs

A. Yes. He was at the hospital when she called.

Q. Okay. All right. So let's start with that telephone call then. What did Carol say to the best you can paraphrase for us?

A. Carol called and told me why she didn't want to call earlier. She didn't want to talk to Barb because she was afraid what she would say because Dave cut Paul's arm with the chain saw.

Q. Were those her words?

A. Those were her words.

Q. She didn't want to call earlier because she didn't want to talk to Barb?

A. She didn't want to put Barb in stress until she found out what was going on.

Q. About the injury?

A. Yes.

Q. Okay. And she described it as Dave cut Paul's --

A. Paul with the chain saw.

Q. With the chain saw. Okay. All right. What else did Carol say?

A. Come get your dog.

Q. Why was your dog over there?

A. Paul had the dog over there.

Q. Okay. And what kind of dog was that?

A. A German Shepherd.

Q. So apparently when Paul was going over to the house to help Dave, he brought your dog with?

A. Well, it's both of our dog. – No, Paul's Dog!

Q. He brought the dog with?

A. Yes.

Q. And I guess that's something he does from time to time, right?

A. Yes.

Q. So not unusual?

A. No. - Paul's Dog goes everywhere Paul goes.

Q. Did she say anything else in the phone call?

A. No.

Q. So it was about a minute or two phone call?

A. Yes.

Q. What did you do -- So I imagine she said Paul was in the hospital?

A. Yes.

Q. Okay. Did she tell you what type of injury or how severe it was?

A. No. No. She just said it was a chain saw cut.

Q. On the arm?

A. Yes.

Q. Okay. So what did you do after hanging up with Carol?

A. Walked over to their house and got the dog.

Q. How far away did they live?

A. A couple blocks.

Q. And that is from the place where you are living today --

A. Yes.

Q. -- when you were living with Paul at the time?

A. Yes.

Q. And you went and got the dog, brought him home and what did you do next?

A. Waited to find out about Paul.

Q. So you were waiting for someone to call you?

A. Waiting to find out what was going on. You know, Dave was with him at the hospital.

Q. So you were assuming one of them was going to call you?

A. Well, I was assuming that he was going to show back up after he was done with the hospital.

Q. Right. So either they were going to call you or somehow show up at the house and then you were going to find out what happened?

A. Yes.

Q. Okay. So you weren't going to do anything yourself until somebody contacted you?

A. Yes.

Q. Okay. So you just waited at home?

A. Yep. – Did you tell Barb?

Q. Okay. What's the next thing that happened then?

A. A couple hours later Paul came home. – This puts the call at 1hr after incident

Q. Do you remember what time that was?

A. No.

Q. Can you give me an estimate, like after 7:00, before 7:00, something like that?

A. Oh, it was before that. 3hrs after

Q. Before 5:00, somewhere around there?

A. Maybe around there.

Q. So around 5:00 p.m.?

A. I suppose. I am not really sure on the time.

Q. Okay. It wasn't late evening, though?

A. No. It was not pitch dark out, no.

Q. Was it still light out?

A. Yes. It was still light out.

Q. And who -- So your first -- the next thing that happened then is Paul arrived home?

A. Yes.

Q. Did he arrive home with anyone?

A. Well, Dave brought him home.

Q. Okay. Did Dave just drop him off and drive away or did he come into the house?

A. Dave did not come into the house. – TRUE – Dave did not want to stay.

Q. Did you speak to Dave?

A. No. – TRUE

Q. Did you see Dave?

A. No. – TRUE

Q. Okay. You just know he got dropped off because somebody had to drop him off?

A. Well, because they took him to the hospital so they brought him home.

Q. Where was Paul's truck at the time then?

A. Dave drove Paul's truck to the hospital. – Mike confessed about time.

Q. Okay. And then Dave drove Paul home?

A. Yes.

Q. And then Dave took Paul's truck away to his house?

A. I don't think so.

Q. What -- How did Dave get home?

A. He could have walked. It's only two blocks away.

Q. I am just trying to find out.

A. I have no idea. – TRUE

Q. So as far as you know, Dave probably left Paul's truck there and just walked home? That's probably what happened?

A. Yeah.

Q. Okay. Okay. So Paul came in the house and did you have a conversation with him?

A. Well, no, not really. He was on pills. You really can't have much of a conversation at that point.

Q. What was his demeanor or how was he acting at the time?

A. Sore. ~ TRUE

Q. In his arm?

A. Yes.

Q. Okay. Was his arm bandaged?

A. Yes. — No, It Did Have stitches though

Q. Do you remember which arm?

A. It was the -- I believe it was the right arm. TRUE

Q. Okay.

A. Or left arm. — Confused over which arm? said Hans looked at him Funny as if his first answer was wrong.

Q. Left arm. No words exchanged or just hi, how are you doing? That type of thing and you went to bed?

A. Just, oh, my God. I can't believe that happened. — In Response To Paul telling him.

Q. All right. Did Paul at this point -- and, again, we are going to go step by step -- but did Paul describe to you what had happened? Mike Doesn't Remember

A. Not at the time, no. He was -- Like I said he was on pills, so there wasn't much talking. I mean, he pretty much wanted to sleep. ~ TRUE.

Paul told Mike what Dave Did & went to Bed.

Q. Okay. So after the hi and, oh, my God, what happened, then he just went to bed?

A. Yeah. -True

Q. Okay. Okay. Did you see Paul the next morning then?

A. I saw him the next day, yes.

Q. Did you have a conversation with him more now about the incident and what happened?

A. Yes. -True

Q. How did Paul describe what happened?

A. He said he was holding the branch for Dave and the next thing he knows Dave came up and -- too high and cut him in the arm. -True

Q. Those are his words?

A. Yeah.

Q. Okay. Did he say anything else? And, again, I know this has been some time but I need to go through everything and make sure you said everything you recall so did he say anything else regarding how it happened?

A. No. He was just there helping Dave hold some branches while he cut them.

Q. Okay. Anything else discussed that you recall the next morning?

A. No.

Q. Okay. Are you the kind of -- Again, I don't know. You guys live together. Did you know when Paul was receiving medical treatment and all that or did you not kind of stay up on that?

A. I try not to. I don't want to get into too much stuff with him so no. I didn't really pay much attention to it.

Q. He obviously had some issues with the arm later on, right?

A. Yes. I have to help him do a lot of things.

Q. I am not going to go and belabor it. If they want to, they can but what did you notice over the next we are going on two years so let's say over the next few months after the incident, what did you notice about -- if anything, about his injury and how that affected his day-to-day activities?

A. Well, he couldn't do a lot of things. He can't open a jar. He can't do lots of things. He can't, you know, type on a keyboard for more than maybe 20 minutes. He lost a lot of movement basically in his arm. The grip and everything.

Q. And when you notice from day to day it was causing him pain, so you would notice some visual

issues in his face that would show that he is having some problems or not?

A. Well, when you see him work with his hands, yes. You can see him -- stress in his face. -True

Q. Okay. And was that something that you would see on a day-to-day basis because you saw him every day or would it be more once a week, once a month? How often would you notice these things about him?

A. If he uses his hands, it happens all the time. -True

Q. So it depends on how active he is trying to be?

A. Yes.

Q. How about outside of the house? Were there things he was having difficulties doing because of his left hand/left arm issues?

A. Like mowing the lawn, things like that?

Q. Yes. Yes. Whatever he does outside.

A. Yes. Yes. -True

Q. Before this accident, was he kind of an outdoors guy or indoor guy?

A. Outdoors.

Q. What did he like to do outdoors?

A. Camping. We used to cut wood, gardening. Fishing, Boating, Canoeing, water Ski, Bicycles, motor-Cycles, 4 wheelers etc..

Q. Was he able to do any of that after the accident that you noticed?

A. No, not really. He would plant a few seeds in the garden but, you know, that's not really doing anything. - true

Q. Okay. Okay. All right. Have you -- I will just make this all kind of in one question and if they want to go into more particulars, they can but since the accident, have you noticed over now we are a year and a half to two years, have you noticed any improvement or him being able to be more active such as he is getting better over the years or has he gotten worse or has he pretty much stayed the same?

A. It definitely hasn't gotten better. - true

Q. Okay. His limitations if you compare them today versus in the months after the accident, are they about the same or have they improved or gotten worse?

A. Probably the same. - true

Q. Okay. So you haven't really noticed any significant changes since the months after the accident until today? It's about the same?

A. On the cut arm?

Q. On his arm, yes.

A. No. It's about the same. -True

Q. Have you noticed something on the other parts of his body?

A. Well, he had an accident on the other arm a few years before that and now he has to use that arm a little bit more and it's taken a toll on that arm. -True

Q. What was that accident?

A. A car accident. -True

Q. And he hurt his right arm? - Mike got mixed up on which arm is which.

A. Yes. - True

Q. Now that he has to use his right arm because he can't use his left arm, that's making difficulties using the right arm?

A. Yes. He had to have the ulnar nerve moved from --

Q. From his right arm?

A. Yes. - Left.

Q. Because of that auto accident?

A. Yes. - True

Q. Did he have any prior problems with the left arm where he had the saw accident?

A. No. - Right & Its True

Q. Okay. Since you see Paul frequently, I don't want to go into every time you see him, but this is

what I am trying to get at: Since the day after the accident when you had the conversation a little bit more particular about what happened, have you had additional conversations with Paul over the years about more specifically how it happened or has it always been him saying pretty much what you already told me?

A. On how it happen? That's pretty much what it's always been. -TRUE

Q. Yes. So although he said it a few times over the years, he has pretty much said the same thing?

A. Yes. -TRUE

Q. Had there been any other versions you heard from Paul other than what you described for us about how the incident occurred?

A. No. -TRUE

Q. Okay. All right. Have you told us then everything that Paul has told you since the accident and again over the years about how the accident occurred?

A. Yes. - NO, Paul & Talked many times about it with Both mike & Barb.

Q. Is there anything else about the accident that he has told you that you have not told us?

A. About him?

Q. About the accident. About how it happened.

A. No. That's how it happened.

Q. Okay. You were not -- obviously not a witness to the accident?

A. No. TRUE

Q. Okay. Other than Dave and Paul, are you aware of any other witnesses to the accident?

A. No.

Q. The chain saw accident.

A. No.

Q. Okay. Do you know if Carol or her husband were present at the time the incident occurred?

A. They told me they were inside.

Q. Okay. And when did they tell you they were inside?

A. When I went to pick up the dog.

Q. All right. And so I didn't talk to you about that conversation, so let's go back to that. That's with Carol?

A. Yes. Carol.

Q. Okay. So let's go back then because I want to cover as much as I can. When you went to pick up the dog after Carol called you the day of Paul's accident and said pick up the dog, you went to pick it

up. You walked over there?

A. Yes.

Q. And did you have to go inside?

A. No. It was outside. – Tied up OR Just outside?

Q. Okay. You picked up the dog. Did you talk to Carol?

A. Carol came out.

Q. Did you only talk to Carol?

A. Carol and Bill came out.

Q. Did you talk to Bill and Carol?

A. Yeah.

Q. All right. What was said between you?

A. Pretty much that what happened. Dave cut Paul with the chain saw and they were waiting to hear back.

Q. Okay. That was it then?

A. Yeah.

Q. Have you ever talked to Carol or her husband since that time up until today any more about this incident?

A. No.

Q. Okay. All right. All right. How about Dave? Now let's talk about Dave. After the accident, how long, how many days was it when you first spoke

with Dave or heard Dave talk about the incident?

A. Dave didn't really want to talk about the incident. – True

Q. Okay. Well, when is the first time -- how long after the accident was the first time you even were around him where you noticed he didn't want to talk about it?

A. When we went up to try to get his insurance policy number.

Q. How many days, though, later?

A. Oh, I don't know.

Q. Was it a week? Goofed It was many months after, months?

A. Maybe a month. – It was many months?

Q. Okay. I just need to get a timeframe so I know what we are talking about. So approximately one month after Paul's chain saw accident, you and Paul went over to Dave's house?

A. Yes. – No, Not 1 month.

Q. Okay. And, again, that's when he is with his wife up in Wisconsin?

A. Yes. In Powers Lake.

Q. Do you remember his wife's name? I don't know if I asked you.

A. Pam.

Q. Pam. Okay. And why did you go up with Paul?

A. Because he wanted me to drive him.

Q. Because he is not able to drive with his injury?

A. Well, he can drive. I mean, it's just too much turning, you know, and his hand gets sore. — arm True

Q. Okay. So the only reason you accompanied Paul up to Dave's house a month after his accident is because he needed you to help him drive? — Paul wanted Mike as a witness. was not sure how Dave would react.

A. I told him I would drive, yes.

Q. Okay. All right. And how long were you at Dave's house that day?

A. Half hour, maybe an hour. over 2 hours

Q. And was it a sit-down meeting or is it just kind of walking around talking a little bit?

A. Went into his garage, he showed us his cars, things he is working on. Walk & Talked

Q. What does Dave do for a living, do you recall?

A. Auto body. — True

Q. Okay. Does he do it out of his house?

A. Yeah.

Q. Okay. Do you know if he has any other work other than auto body out of his house?

A. That's all that I know of.

Q. In the entire time that you were at Dave's house the month after the accident was Paul and Dave and all three of you together?

A. Yes. We were in the garage. -TRUE

Q. Okay. So whatever was said all three of you would overhear presumably?

A. Yes. -TRUE

Q. It's not like Paul or Dave went off somewhere and talked to somebody else. You all three were there together for that half hour to an hour? - 2hrs+

A. Yes. -TRUE

Q. So let me just to your knowledge, if Paul or Dave said something during that half hour or hour visit, you would have heard what they had to say because you all three were together, right?

A. Yes. -TRUE

Q. Okay. There was never a time during that visit that Paul and Dave were alone without you around?

A. No. -TRUE

Q. Okay. Can you attempt to describe what was talked about during that half hour to an hour visit up at Dave's house one month after the accident with you

and Paul present? Dave?

A. Well, he first wanted to start to talk about the cars he is working on and Paul wanted to know about the insurance policy.

Q. How did Paul say it?

A. He asked if he can get his insurance policy number.

Q. His home insurance?

A. Yes. Homeowner's insurance.

Q. And what did Dave respond?

A. He didn't. -True

Q. He didn't even talk?

A. He didn't say yes or no.

Q. Okay. Did he say anything else in response?

A. About that, no. -True, Dave Avoided & Changed Conversation to anything But

Q. Okay. Anything else discussed about the incident?

A. Yes. He wanted to know what he was going to get out of it, Dave did.

Q. Okay. Was that brought up out of the blue or was that brought up in response to what Paul asked of him?

A. After Paul asked about the insurance policy, Dave wouldn't answer him and Dave wanted to know what

he was going to get out of it if he did. -TRUE But It TOOK a long time

Q. And, again, I know you don't have it recorded or know the exact words but can you give me kind of a paraphrasing of his response?

A. What am I going to get out of this? -TRUE.

Q. Okay. Did he define what he meant by that statement?

A. Not really. -No. Dave wanted money.

Q. All right. What did Paul say in response to that?

A. What's there to get out of this?

Q. And, again, give me the back and forth. What was said then?

A. Basically, he wanted to know -- you know, Paul wanted the insurance policy, Dave -- like I said Dave didn't give us an answer. He wanted to know what he was going to get out of it and Paul said there is nothing to get out of this. It's insurance. I want my arm fixed and Dave is like, well, if my insurance goes up a penny, the chain saw cut is going to be the least of your worries. You haven't seen me mad yet. Exact words. -TRUE

Q. Okay. Anything else discussed?

A. At that point I said let's go. -TRUE

Q. And you left?

A. Yes. -TRUE

Q. Okay. So, again, I got to say this then: Have you told me now, and if you have to add anything, now is the time to add it, have you told me now pretty much as you can remember it everything that was said during that half an hour to an hour meeting regarding the chain saw incident, the injuries, anything related to that incident?

A. Yeah. That was it.

Q. Okay. So you suggested, hey, Paul, let's go?

A. Yeah. I saw this was going nowhere.

Q. Okay. Was the whole trip -- What was the whole point of the trip up to Dave's house?

A. To get his homeowner's insurance policy number. -TRUE

Q. Why couldn't you have called him?

A. We tried. -TRUE

Q. Okay. I didn't know that. So Paul had tried?

A. Paul tried.

Q. Paul said I can't get ahold of him or I can't get the info so let's just drive up there? -TRUE

A. He wouldn't give it to him so we just drove

up there. - True

Q. Got you. Did Dave ever describe -- Let me strike that.

That was your first meeting with Dave since Paul's accident, right?

A. Yes. - True

Q. Did Dave ever talk about how the incident occurred?

A. No. - False - Dave wanted to Fabricate story.

Q. Okay. Have you been with Dave or overheard Dave in any way say anything else more about how the incident occurred or anything more about these -- the conversation we just heard from you?

A. No. No.

Q. Have you ever been around Dave since that first meeting?

A. I have seen him once since then.

Q. How long ago was that?

A. Probably six months after that last meeting there.

Q. And under what circumstances?

A. He stopped over at the house.

Q. At Paul's house?

A. Yes.

Q. Do you know why?

A. To visit I suppose.

Q. Okay. Was that -- and maybe you don't know this. Was that before this suit in this case was filed to your knowledge?

A. I have no idea.

Q. Okay. So it would approximately have been sometime at the end of 2011 or early 2012?

A. It was wintertime, so.

Q. So sometime in the winter of 2011, 2012?

A. Yes.

Q. Okay. And how long was Dave over?

A. 15 minutes. —TRUE-But LESS Time

Q. And, again, we are going to go through the same exercise. Can you tell me what was said during that conversation?

A. He came in and wanted to talk about him.

Q. What do you mean?

A. Just talk about what Dave is doing, you know.

Q. Oh, he wanted to tell you guys what he is doing?

A. Yeah. Nothing about this accident, no. It had nothing to do with the accident. As a matter of fact, Dave said he didn't want to hear anything about

stop THIS

They Don't Know

it; and he said this is done with. You are fine, there is no big deal and that was it. -TRUE Dave avoided it.

Q. Do you know what he meant by you are fine?

A. He said there is nothing wrong with you. -TRUE

Q. I see. Okay. To Paul?

A. Yes. -TRUE

Q. Okay. And obviously in your view and Paul's view that wasn't accurate?

A. I don't see how nothing is wrong with you when you get cut by a chain saw. -TRUE

Q. All right. Now, you have been seeing Paul, what, every day since the accident pretty much?

A. Yeah. I live with him, so.

Q. Have you ever heard Paul say anything about trying to get rich from this claim?

A. No. -TRUE

Q. Or that he may not have to work the rest of his life?

A. No. -TRUE

Q. Did you ever hear Paul suggest that either Dave or somebody else needs to testify to help him win big in this claim?

A. No. -TRUE

Q. Other than from Paul, have you heard anybody

else's version of how this incident occurred?

A. No. Besides what Carol told me about Dave cutting him with the chain saw on the phone, that was it.

Q. Very good. And you have only seen Dave twice since Paul's accident, right?

A. Yes. -

MR. MAST: Okay. That's all I have.

MR. ACCARDO: I don't have anything.

EXAMINATION

BY MR. BARCH:

Q. So just to backtrack a little bit, my name is Ron Barch. I am here for Carol and Bill McGuire. With respect to the living arrangements over at 4606 Hayden Court, you have been I guess a housemate with Barbara and Paul for six years?

A. Yes. Six or seven years, yes.

Q. And you have known them your whole life essentially?

A. Yes.

Q. Both of them?

A. Yes.

Q. And this is a sensitive question, please don't take offense, but are you and Paul, are you a

couple?

A. No. -TRUE

Q. Okay. You are just friends?

A. Yes. -TRUE

Q. And in terms of people that work in the house, Paul was not working when this accident happened, correct?

A. Well, he was doing part work -- consulting work for Intermatic. ← Juskie - Not Intermatic. ~~Stamp Printing~~

Q. Okay.

A. And at Juskie's Printing he was doing some work. -TRUE

Q. That was prior to the accident?

A. Yes. -TRUE

Q. And since the accident has he ever had another job since?

A. No. Just partially working for Juskie's trying to see if he can do things and obviously he couldn't too well. - TRUE + Mike Thomas.

Q. And Barb, is she retired or does she work?

A. She is retired. -TRUE

Q. She retired when Paul was injured?

A. No. She was retired. -TRUE

Q. She was already retired?

A. Yes.

Q. And your last job was years before this happened?

A. Yes.

Q. And how does everybody coexist there with nobody working?

A. Well, Barb pays the bills.

Q. Barb does?

A. Yes.

Q. And when you say you were in printing, what does that mean? What were you doing?

A. T-shirt screening. Printing T-shirts.

Q. Okay. There is a lot of different printing. In fact Paul testified he did a different type of printing, correct?

A. Yes. He did paper printing.

Q. Okay. But you were actually --

A. I did like this stuff, printing on T-shirts. (Indicating.)

Q. Silk screening?

A. Silk screening, yes.

Q. Got you. And have you tried to go get another job for someone else?

A. Have I?

Q. We got to stop talking over each other. Let me get the whole question out.

A. Sorry.

Q. In the last five years, have you gone anywhere else that does silk screening or printing on shirts and things?

A. Yes, I have tried. ← where when who – Mike was Doing the work FOR Sharp Printing But was NOT Employee He was Part Owner & Paid through Stock Dividends

Q. Nothing locally?

A. No. – mike Thomas?

Q. You mentioned that there is a dog of some sort that stays at the house with you?

A. Yes. – True

Q. Do you still have the dog?

A. Yes. – True

Q. And it's a -- what's the dog's name?

A. Duke.

Q. Duke. And that's co-owned by you and Paul?

A. Well, it's his -- Technically it's in his mom's name. + Pauls name

Q. Is that a dog -- Is it a pure breed or something?

A. Yes. – True

Q. So there is some papers associated with the dog?

A. We don't have papers.

Q. But it's actually if there was -- somebody was to look up the ownership of this dog, there is some paper declaring her the owner?

A. Yes. - TRUE

Q. But the three of you guys treat it as your own?

A. Yes. - TRUE

Q. Is there anything else that you guys consider joint or is that pretty much it?

A. That's pretty much it. ← Sharp Printing was Joint owned By us.

Q. All right. Now the conversation -- Strike that.

Going back to your first notice that something had happened to Paul, that was the phone call from Carol McGuire, correct?

A. Yes. -

Q. And what she described to you was that she was -- she wanted to call later and not speak to Barb?

A. Yes. -

Q. Did she explain why she didn't want to speak to Barb?

A. She didn't want to get Barb all worried until she found out what was wrong with Paul. - Why?

Carol never met Barb Till after accident. Paul told Carol to call his house & Tell Barb & mike. That's How Carol knew Barbs Name.

Q. And at that point she was unclear as far as she told you as to what the situation was with Paul?

A. As far as to what the extent of the injury was?

Q. Yes.

A. Yes.

Q. The only thing that she was able to report to you is that he was still at the hospital?

A. Yes.

Q. And that he had an injury with the chain saw?

A. That Dave cut him with the chain saw.

Q. She reported to you that he was injured by a chain saw?

A. She reported that Dave cut Paul with a chain saw.

Q. So you knew that he was injured or believed based on that that he was injured by a chain saw?

A. Yes.

Q. All right. So now with respect to what she said about how, the only thing you can recall right now is that Dave cut Paul with a chain saw?

A. Yes.

Q. Any other detail at all that you can remember?

A. That's all that she said.

Q. There was no discussion as to what they were doing, how they were doing, anything like that?

A. No.

Q. And then when you did go back to get the dog, you said you walked over there and got the dog?

A. Yes.

Q. When you did meet up with Bill and Carolyn to retrieve the dog, did -- was there any additional description offered to you as to how Paul was injured?

A. No.

Q. That same comment roughly?

A. Yes. That -- She didn't even make the comment at that point. I came to pick up the dog and that was about it. I mean, they were inside when it happened is what they told me.

Q. There was no further discussion about how Paul got injured or what happened to him when you got the dog?

A. No.

Q. There was a comment, though, that neither one of them claimed to have been outside when it happened?

A. They were inside, yes.

Q. Did they talk about anything else that had

happened on the premises that day leading up to when Paul was hurt?

A. No.

Q. It was a pretty short conversation then?

A. Yes. I was there to get the dog and leave.

Q. All right. And Paul had not returned at that point yet, correct?

A. No. – yes?

Q. Did you at any time over the last several weeks talk to Paul about his deposition in this case?

A. No. – TRUE

Q. No conversation at all?

A. None. – TRUE

Q. Did you even know he gave a deposition?

A. I thought it was a few months ago.

Q. Okay. However long it has been --

A. We did not discuss any of it. – TRUE other than Paul

Q. And you see him every day and didn't talk about it?

A. Yes. – False, Paul said He wanted to Hear Daves version FOR FIRST Time ever.

Q. And in terms of that description that Paul gave you the morning after, and I am paraphrasing what you said, but generally he was holding a branch and the next thing he knows is Dave came up with the saw

and cut him?

A. Yes. - TRUE

Q. All right. Does that capture what you recall telling us a few minutes ago?

A. Yes. -

Q. All right. Has Dave -- I'm sorry. Has Paul ever given you any more background on what they were -- the tasks they were doing and how long they had been, any detail around what happened?

A. They were just cutting a tree down.

Q. Okay. So as best you can recall in terms of the details of who was doing what, where they were positioned, how Paul was positioned when he was injured, no details on that from Paul?

A. No. All I know is he was holding a branch.

Q. Okay. Whether he was holding a branch with the stump on the ground, holding it straight up and down, whether he was holding the stump if the branch was horizontal to the ground, no discussion about that?

A. No. - Paul ↑ I told Mike the orientation many times over... Mike Didn't care about The Details, only that Dave Did it.

Q. And specifically how many branches they may have cut or how or what technique they were using to cut those branches, no detail?

A. Well, they were cutting for quite awhile. That's all I know.

Q. So it had been going on for awhile?

A. Yes.

Q. Did Paul ever share with you that he was concerned about the approach that David Gagnon was using to cut the branches up?

A. No.

Q. Did he share with you any concerns he had right up until the very point where he was cut?

A. No.

Q. Nothing. And when you -- And you and David have never talked about what happened?

A. No.

Q. You said prior to the injury Mr. Dulberg was an outdoors guy. He would do gardening. He would cut wood. He would also go camping.

A. Yeah. Canoeing. Pretty much any outdoor activity. — TRUE

Q. And since this accident June of 2011, has he gone out camping or canoeing?

A. We have gone camping.

Q. Okay. And how is he different now when he is out camping versus what he was like before?

A. He doesn't do anything. He sits in his chair and that's about it. He can't really go do anything. - TRUE

Q. So he still goes but his activities are more limited? - we went once.

A. Very. He basically just sits in the chair.

Q. Where do you guys typically camp?

A. Up in Wisconsin. Boulder Junction. - TRUE

Q. Now you said one of the things he used to do before this is cut wood. What do you mean by that?

A. We have a fireplace so we got to split wood.

Q. And when you cut wood and split wood, do you use a chain saw?

A. Log splitter. - TRUE

Q. A log splitter?

A. Yes.

Q. Have you ever used a chain saw?

A. We use a log splitter. Yes. He has used chain saws. - I DO NOT PAUL

Q. Have you seen him use chain saws?

A. I have seen him use a chain saw, yes.

Q. And this was before he was ever injured?

A. Yes.

Q. Do either you or Paul or Barbara own a chain saw?

A. Paul does, yes. -TRUE

Q. And did you ever observe Paul using a chain saw in a way where you were concerned about him possibly getting injured?

A. No.

Q. Had you ever helped Paul cut up the wood?

A. Yes. -TRUE

Q. Did you ever hold any branches for him while he was cutting?

A. We never cut branches. We cut the big stumps. The main tree, the main trunk.

Q. Where -- How would you get to the point of having I guess a log to split?

A. How do we get it?

Q. How did you get to the log before it was a branch I guess?

A. Well, you cut the tree down and let it fall down.

Q. So you and Paul I guess you guys would cut down an entire tree?

A. Yes. — Goofed again. We got trees FROM Jason Madaosco on a farm. JASON Fell the TREES with a Loader & gave them TO PAUL. Mike was there

Q. And then you would trim off the branches off the logs?

A. He would.

Q. He would?

A. I wouldn't.

Q. All right. And then those -- the logs would get cut into small sections where they could then be split?

A. Well, like I said for the most part we only wanted the main branch. -TRUNK

Q. What happened with all the little branches, though, I guess? -mine was There at Farm ONCE

A. They got left behind.

Q. You didn't even take them with you?

A. No. Too small to burn.

Q. Okay. Did you ever see Paul -- Well, sometimes the limbs can be big enough to burn as well.

A. Yes, but we were going -- we were going to like farm fields and taking -- we have a buddy that has farm fields and they remove trees so we go and take trees that they knock down or cut down. -Yes & mike was There, ONCE

Q. Did you ever see Paul removing branches off of a limb? mostly But Back at home.

A. Yes. -TRUE

Q. Okay. And then you would -- obviously you would see him. You seen it yourself where he cut up the trunk into logs where they could be split?

A. Yes. ~TRUE, at home

Q. And some of the larger pieces of limbs those would be cut then and split as well?

A. Yes.

Q. And in a situation where there was a limb, sometimes the limbs don't have branches for quite a ways. Sometimes there is branches throughout the limb; would you agree?

A. Yes.

Q. As a general proposition?

A. Sure.

Q. Did you ever see him working on a limb that was sizable that could be a log where he was cutting branches off those, off the limbs?

A. Yeah.

Q. Did you ever help him do that?

A. No. - mike watched.

Q. How did he go about -- When you did see him doing it, how did he go about getting all those branches off the limbs before he was able to chop the limb into some series of --

A. The tree would be on the ground and he would walk up and just hack at it. Just cut them right off right where the stump is and the branch.

Q. So the times where you saw Paul doing it he would do it while the limb was on the ground?

A. Yes.

Q. Did you ever see anybody help him by standing the limb upright or holding the limb off the ground so he could get at those?

Paul Put Branches over other logs at 90° to get them off the ground and then cut them smaller.

A. No. There is nobody there to help.

Q. You were just watching?

A. Yeah. I would move the logs once he cut them.

Q. All right. So when he did it --

A. I'd load them on the trailer. - True

Q. When you saw Paul doing this trimming branches off of a limb, he would do that solo?

A. Yes, because we were the only two there.

Q. So if I'm understanding your testimony, as you sit here today, there was never an occasion where you would hold the limb off the ground so that Paul could have an easier time cutting the branches off the limb?

A. I didn't, no. - TRUE

Q. Okay. Did you ever see anybody else help him in that position?

A. No, because we were the only ones that went. ← Jasons Farm?

Q. Okay. Did you and Paul ever do anything with the cut wood other than use it yourself? For instance, did you ever sell it?

A. No. We burned it in our fireplace. - True

Q. Okay. And then the source of the wood would be a friend of yours that has a farm?

A. Or we'd find people who chopped a tree down and it's laying down in the yard and we'd go and pick up the pieces that they had cut already. - True But only close to home.

Q. Who is the fellow that you know that has the farm and might let you take some --

A. His name is Jason.

Q. Jason, last name?

A. Madeus. - True

Q. How do you spell that, sir?

A. M-A-D-E-U-S I think. - Madause

Q. And where does he reside?

A. Out by Woodstock. I don't know the little town name. - Heartland

Q. Is he an acquaintance of yours?

A. He used to live across the street. We all lived in the same neighborhood.

Q. All right. Would he be somebody that you would have a cell phone number for him?

A. I don't have the number. He is not really my friend. He was one of Paul's friends.

Q. All right. Just in followup to some questions that Mr. Mast had, you never -- you did not go to the hospital with David and Paul, correct?

A. Correct.

Q. You didn't go up there anytime?

A. No.

Q. So the conversation -- You would not have direct personal knowledge of any conversations that occurred between Mr. Gagnon and Mr. Dulberg at the hospital or in the parking lot of the hospital?

A. No.

Q. And with respect to -- Strike that.

If someone was to claim that you were present for a conversation during which Mr. Dulberg said this could be the best thing that ever happened to me, I might not have to work again, you would deny hearing a comment like that?

A. Yes. That never happened. - TRUE

Q. And there was a conversation when you went to get the insurance information from Mr. Gagnon and if I heard your testimony correctly, Dave had asked what would be in it for him if he gave the insurance

information; is that how you recall it?

A. Yes. Yes. – why Double yes?

Q. So if Mr. Gagnon was claiming actually the reverse was the situation, that Mr. Dulberg posited to him that it could be to his advantage that if he helped him, that's not your recall as to that conversation?

A. No. What I recall is Dave saying what am I going to get out of this? I can go the easy way or the hard way. – TRUE

Q. So to answer the question then, your recall of that conversation you didn't take away from it that Mr. Dulberg was implying that he would -- that Mr. Gagnon could get money out of this, too?

A. No.

Q. Do you know anything about the training that Mr. Dulberg may have received as to how to use a chain saw?

A. I have no idea. – TRUE

Q. Had you ever seen David Gagnon using a chain saw at any time prior to this?

A. Have I? (No) – TRUE – camping? LOL

MR. BARCH: I think that's all I have.

MR. MAST: I don't have anything.

MR. ACCARDO: I don't have anything else.

MR. MAST: As a witness, you have a right to review the transcript if it's transcribed of this and review it and sign off on it or you can waive that right and just rely on the accuracy of the court reporter taking this down.

Most people just waive it and rely on the court reporter but you do have a right to see it if you want to see it.

THE WITNESS: She seems like a good typer.

MR. MAST: So you are going to waive?

THE WITNESS: I am good.

MR. MAST: Very good. You are done.

(FURTHER DEPONENT SAITH NOT.)

C E R T I F I C A T E

I, Paula Ann Erickson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, do hereby certify:

That the witness in the foregoing deposition named was present at the time and place therein specified;

That the said proceeding was taken before me as a Notary Public at the same time and place and was taken down in shorthand writing by me;

That this transcript is a true and accurate transcript of my shorthand notes so taken, to the best of my ability.

I further certify that I am neither counsel for nor related to or employed by any of the parties to this action and that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

Paula Ann Erickson
Certified Shorthand Reporter
Registered Professional Reporter
License No. 084-003899
Notary Public

Dated this 9th day

of April, 2013.

COPY

Discovery Deposition of **WILLIAM McGUIRE**

Date: March 20, 2013

Case: Dulberg v. Gagnon

Urbanski
Rèporting Company

Phone: 312-977-1777

IN THE CIRCUIT COURT

FOR THE 22ND 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 WILLIAM McGUIRE, taken in the above-entitled cause, before Paula Ann Erickson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, on March 20, 2013, at 3421 West Elm Street, McHenry, Illinois, at the approximate hour of 2:25 p.m.

REPORTED BY: PAULA A. ERICKSON

C.S.R. LICENSE NO. 084-003899

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Appeared on behalf of the Defendants, Carolyn and Bill McGuire.

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Appeared on behalf of the Defendant, David Gagnon.

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THE REPORTER: Sir, can you raise your right hand, please?

WILLIAM McGUIRE,

after being first duly sworn, deposeth and saith as follows:

EXAMINATION

BY MR. MAST:

Q. Please state your name, sir.

A. William McGuire.

MR. MAST: This is the discovery deposition of William McGuire, taken pursuant to notice, in accordance with the applicable rules.

BY MR. MAST:

Q. Mr. McGuire, what's your address?

A. 1016 West Elder Avenue, McHenry, Illinois 60051.

Q. Okay. And you live with Carolyn?

A. Yes.

Q. She is your wife?

A. Yes.

Q. How long have you been married?

A. I am not remembering very good. '91. Since '91.

Q. Okay. And you have always lived at that

address?

A. Let's see.

Q. I meant during your marriage.

A. I moved in in '89.

Q. At the Elder address?

A. Correct.

Q. Before you were married?

A. Yeah. Yes.

Q. Okay. Do you have any prior marriages?

A. No.

Q. Okay. Any children?

A. No.

Q. Okay. Okay. And Carolyn has three children, two daughters and a son, correct?

A. Yes.

Q. And the son is David Gagnon?

A. Yes.

Q. Okay. And have you known Dave -- Well, let me ask this: How long before you were married did you know --

A. I have known Dave since 1984.

Q. How did you meet Dave?

A. Through his mother.

Q. So you have known Carolyn since '84 as well?

A. Correct.

Q. Okay. Is that when you started kind of dating, that type of thing?

A. Yes.

Q. Where did you meet? Through what kind of --

A. Where did I meet Carolyn?

Q. How did you meet Carolyn? I'm sorry.

A. I met Carolyn at a marina.

Q. Okay. And are you retired?

A. Yes. — Disabled?

Q. What is your work -- Before you retired, what were you doing?

A. Carpenter.

Q. Okay. When did you retire? — Disabled?

A. '06.

Q. Is that because of the disability? — How did Hans know about Disability?

A. Yes.

Q. Okay. Are you -- What's your injury? What's your disability, back?

A. Correct.

Q. Okay. So you are not able to do heavy type work; is that correct?

A. No.

Q. Is that correct?

A. Yes.

Q. Okay. So you have some type of permanent chronic back problem?

A. Yes.

Q. All right. I am sure you have used a chain saw in your life, correct, or not?

A. No.

Q. So you never used a chain saw?

A. No.

Dave used elect. chainsaw per Bob Sedleck

Q. Okay. Although we have a chain saw here on the table that I am understanding you and Carolyn purchased --

A. Correct.

Q. -- the same year as Paul's accident at your house?

A. Yes. Same month

Q. Okay. And I might be wrong but I am taking this from what Carolyn said but Carolyn said that sometime early 2011 before Paul's June 2011 accident you two purchased this chain saw that's here on the desk today?

A. Yes.

Q. And it's a red bodied chain saw and it's a gas chain saw, correct?

A. Yes.

Q. From Efco, E-F-C-O, MT, 3500. That's what I am reading off of it; is that right?

A. Yes.

Q. Yes?

A. Yes.

Q. Okay. Who purchased it?

A. I did.

Q. Okay. Where did you purchase it from?

A. Menards.

Q. And since you have never used the chain saw before and I am assuming because of your injury you weren't planning on using this one, why did you purchase it?

A. Well, I was wondering if we had a storm come through and some trees come down I would learn how to use it. I am a carpenter.

Schedule any classes?

Q. Okay.

A. And I pick up things very quick but if I don't have to use it, I don't want to use it.

Q. Okay. So you got it in case?

A. Emergency, correct.

Q. Okay. And you got it for your use, not anybody else's?

A. Yes. – Then why lend it out?

Q. For yours, I mean, you physically?

A. Personally. Personally in case we have trees come down or any of that problems.

Q. But for you to use, correct? Not for you to have somebody else use. You got it for you to use; is that correct?

A. Basically I bought it if one of the kids wanted to borrow it, I would let them borrow it. } Changed REASON

Q. I understand the options there, but I am asking the reason you bought it is for you to use, not somebody else to use?

A. Yes. – Back to Personal use Again? FLIP/FLOP

Q. There is options, anybody can use it. I get that.

A. Yes.

Q. But you bought it for yourself to use, though, correct?

A. Yes.

Q. All right. How long have you known Paul Dulberg?

A. I probably met him in the '80s because David and him were probably friends and, you know, kids come over and come and go and that's probably when I ran

across him the first time. -TRUE

Q. All right. Before -- I think Paul's chain saw accident at your house was sometime June 2011; is that your understanding?

A. Yeah.

Q. Okay. Did you know Paul to ever use a chain saw before his injury at your house in 2011?

A. Yes. ↖NO? He was on the property and David used the chain saw.

Q. Are we talking the day of his accident?

A. This is prior.

Q. Okay. Go ahead.

A. Because you were asking if Paul -- I ever saw him operate a chain saw.

Q. You are right.

A. And he was at the house. David cut down an apple tree in the backyard and I saw Paul use the chain saw on an apple -- the stump, TRUE the apple stump, to try to get it closer to the ground. That's the only time I ever seen him use the chain saw. -TRUE

Q. Fair enough. Was that in the same year of his accident at your house?

A. That was prior.

Q. Same year, though?

A. You know, probably -- I believe it was. I believe it was.

Q. Carolyn seemed to think the apple tree cutting was sometime in May of that year.

A. You know, she was probably right. It was before the pine tree. -TRUE

Q. The evergreens or -- SPRUCE

A. Well, I call them evergreen, pine tree.

Q. Same thing. Right. Before Paul's accident?

A. Yes.

Q. Right. Okay. So according to you, sometime in May 2011 when the apple tree was being cut down by Dave, Paul was also there to help and he used it to cut the stump?

A. The stump, the tree stump.

Q. Down lower?

A. Yes.

Q. Okay. And that's the only time -- So the only time you ever saw Paul use a chain saw before his accident in June 2011 was the one time at your house when he cut the stump off that apple tree?

A. Yes. He got the stump lower to the ground.

Q. Is that true? What I just said, is that true? I will say it again because you interrupted me

by adding on. Let's just answer what my question is.

Okay. My question is: The only time you ever seen Paul use a chain saw before his accident at your house in June 2011 was when he cut the stump down a little bit lower from the apple tree that was at your house in May of 2011?

A. Yes. The one David Gagnon cut down and he got the stump down lower, yes. -TRUE - Contradicts Daves Testimony & Carolyns - Carolyn seems to think Paul cut up ELM TREE In FRONT of HOUSE.

Q. Is what I just said true?

A. Yes. Yes.

Q. All right. Because you keep adding. Just answer -- If you don't understand my question, I will reword it, but try to answer what I am asking instead of adding on to what my question is, all right?

A. Okay.

Q. Got me?

A. Yeah.

Q. Did you see Paul doing anything with the use of the chain saw that you thought dangerous or unsafe before his accident?

A. No. -TRUE

Q. Did you know that Paul -- and I'm not sure he was but I have to ask you. On the day of Paul's injury at your house in June 2011, you know, with Dave

there, do you know if Paul was ever even using the chain saw that day?

A. No.

Q. Do you know? You don't know?

B.S.

A. I don't know if he was using the chain saw.

Q. That's what I am asking. Okay. Let me ask you a couple questions and today -- Well, let me ask it this way: When is the last time you spoke or saw Paul?

TRUE

A. Probably three weeks ago in a grocery store.

Q. Did you speak to him or just see him?

A. Said hi.

Q. Did he say hi to you?

A. Yes.

Q. Was that it?

A. Correct.

Q. Did you see him carrying anything?

A. No.

Q. Okay. Did you see him do anything that would suggest he wasn't having problems with his arm that he cut in this chain saw accident at your house in 2011?

A. I did not see him doing anything but walking with his mother.

Q. Okay. Before Paul's accident in June 2011 at

your house, were -- did you consider him a friend, just a friend of your stepson's? How did you -- What was his status with you?

A. I considered him a friend of my stepson.

Q. Okay. So more of an acquaintance to you then? He wasn't somebody you'd socialize with outside of your son or something then?

A. Correct. If he wasn't around for my son, he didn't come around. -TRUE - Contradicts Daves Testimony ABOUT Paul stopping By a few Times a week.

Q. So he wasn't like your buddy or anything?

A. No. No. -TRUE

Q. Okay. So you were on good terms with him because he was obviously on good terms with your son before this accident occurred, right?

A. Yes.

Q. Did that change at all at least in your mind? Now Dave has spoken his peace so we don't even need to go into what Dave thinks, but in your mind has your feelings about Paul changed today versus before his injury at your house?

A. Yes.

Q. Okay. Good, bad, indifferent, what?

A. Well, I think he is a fibber. <why?

Q. Okay. Fair enough. You are just being

honest. Okay. Why do you think he is a fibber?

A. You know, it should be cut and dry. I mean, it was an accident.

yes, Paul's ARM was CUT. Depositions - is cut & DRY!

Q. Right. All right.

A. And that's all I know.

Q. Is it -- So I am reading into this, you can tell me if I am wrong, but is it because a lawsuit was filed; is that why?

A. Duh. Yes.

Q. Well, listen, I have to ask these questions, sir. Let me just go through this and make it easy for me, all right?

A. I'm sorry. Yes.

Q. You are making it hard. The fact that a lawsuit was filed and you are part of that lawsuit has that made you feel that he is a fibber?

A. Well --

Q. Or I am trying to find out.

A. Basically, since the lawsuit was filed and, you know, it wasn't cut and dry, I just probably don't want nothing to do with him now, so.

Q. Okay. So let me -- again, I have -- because some of the words you have used, I have to ask you about it. Do you feel he is a fibber or you just

don't like the fact that he filed a lawsuit against you?

A. I don't like the fact that he filed a lawsuit. – and How Does Bill Think cut&DRy works?

Q. Okay. So fibber meaning liar, you are not calling him a liar?

A. No. No. No. I'm sorry. Just because he filed a lawsuit. – Not a liar/fibber anymore?

Q. All right. So let me -- Again, I got to clear that up now. Do you believe in your mind that Paul is a fibber or a liar or don't you know?

A. I don't know. – FLIP/FLOP again?

Q. Okay. And I meant more about this lawsuit obviously. You don't know if he is lying or fibbing about the lawsuit because you don't know what happened, right?

A. Yes.

Q. Fair enough?

A. Yes.

Q. Okay. So you would not characterize him as a fibber for filing the lawsuit because you don't know if he is or not, true?

A. True. True. Yes. – FLIP/FLOP

Q. Before the accident occurred at your house in

June 2011, did you believe Paul was a credible, honest soul, person?

A. Yes.

Q. Okay. Did you have any reason to believe that he would fib prior to this accident?

A. No.

Q. Okay. All right. Have you heard -- Well, let me put Dave aside for a minute. Other than through Dave, have you heard that Paul was trying to make more out of this accident than was warranted other than -- I'm sorry. Let me --

MR. BARCH: Other than David or his attorney.

BY MR. MAST:

Q. Yeah. Other than through Dave or Dave's attorney or your attorney I guess, have you heard either from Paul or anybody else --

A. No. - John Choyinski?

Q. -- something to the effect that Paul was trying to make more out of this claim or accident than he should?

A. I have not heard nothing, no.

Q. Okay. Have you ever heard Paul suggest since his accident that he was trying to get people to say things to make this case worth more than it is?

A. No.

Q. Have you ever heard Paul since his accident or anybody -- Strike that.

Have you ever heard Paul since his accident ever suggest that he may never have to work again in his life or he is going to be able to be rich or anything like that, those issues, since this accident?

A. No.

Q. Okay. Have you heard those through Dave?

A. No.

Q. Dave has not even told you those things that Paul has said supposedly?

A. David has told me that he is not telling the truth.

Q. Okay.

A. That's what he told me.

Q. All right. So Dave told you Paul is not telling the truth about the accident. - Consider the source, Dave

A. Correct.

Q. But has Dave ever told you since the accident that Paul was trying to get him to lie or get him to say things so that they can retire?

A. Dave --

Q. Hold on. Let me finish the question -- so he can retire or make a lot of money out of this case? Has he said that?

A. No. Dave has never told me that.

Q. Okay. Okay. So I just want to make one other question on that just to make sure I covered everything.

Is it fair to say then other than maybe through your attorney you have never heard any allegation or suggestion whether by Paul or anybody else, Dave, Paul, anybody, that Paul was trying to make more out of this case than was justified and/or trying to get people to talk in favor of him in return for anything? Have you ever heard those things?

A. Other than David's comments or maybe my attorney a little bit, I haven't heard nobody else say a word.

Q. Okay. Including Paul, correct?

A. Oh, yeah.

Q. Okay. So what did Dave tell you in that regard?

A. Dave was saying that somehow the accident happened different than when the way Paul was describing it.

Q. Okay. And that's not quite what I asked so let me go back because we are going to get into that. Okay.

Let me -- My question was framed more to other than your attorney, have you heard from anyone including Paul, including Dave, anyone, that Paul was trying to get people to fabricate or lie to his favor in this case or to help him recover in this case?

A. No. Nobody told me that.

Q. Not Dave, not Paul, nobody, right?

A. The only thing I am saying is the question you are asking me is the same question I am saying is if it's got to pertain to the accident, David didn't agree with the way Paul stated the accident happened. Other than that --

Did Dave get to READ Paul's Dep. Before Testifying?

Q. And I understand there is two versions of the accident. I understand that.

A. Correct.

Q. My question was different, though. My question was: Have you ever heard, other than through your attorney, that either Paul or Dave suggested that Paul was wanting people to lie for him or to fabricate anything?

A. Other than Dave and my attorney, no. Nobody

has told me anything about --

Q. I am including Dave in that. What did Dave tell you about Paul wanting him to fabricate or lie? Did he say that?

A. As far as Paul telling David to change the story or fabricate?

Q. Yeah. Did he do that?

A. David never mentioned it to me like that, no.

Q. Okay. So all right. So let me say the question again then. Is it fair to say, and putting your attorney's comments to you aside, okay, I am not asking you about your attorneys, but with regard to anybody else, you have never heard anyone suggest that Paul was trying to get Dave to lie, fabricate about this case, fair enough?

A. Yeah.

Q. Okay. You never heard that?

A. No.

Q. All right. As I understand it, there are two evergreens in your backyard back in June 2011 that you guys wanted cut down so you could put a storage shed back there, right?

A. Yes.

Q. Okay. And as I understand it, I don't

remember if it was you or your wife, but one of you asked Dave to do that work -- help with that work, right?

A. Yeah. Knock some lower branches down.

Q. Right. Who asked him to do that?

A. You know, I don't remember.

Q. Okay. It was either you or your wife?

A. Correct.

Q. And I think your wife said she was going to pay Dave something for his gas or whatever, right?

A. Basically, she'd give him a pair of pants. I don't know. They are always mothering the son, you know.

Q. Right. So what their arrangement was as far as money or --

A. Some kind of gift.

Q. Listen, you are going to make this last twice as long as -- I'd like to get you in and out of here as quick as possible but because I have to keep repeating the question, it's going to make it difficult so I am just trying to tell you we can probably get out of here real quick but I am going to have to keep backing up. So let me try to move forward but let me finish my question, okay?

A. Uh-huh.

Q. All right. So whatever the arrangement was between Carolyn and Dave as far as what he would get in return for doing this work, you don't know; fair enough?

A. Yes.

Q. Okay. And what was Dave's experience, if you know, in use of a chain saw before this accident with Paul at your house?

A. Stuff I have heard, a project he worked on through the course of me living there and physically seeing him prune the trees on the property with a chain saw. ~ Who's, When

Q. Okay.

A. That's about the extent of it.

Q. With a chain saw?

A. Correct.

Q. With your chain saw?

A. No. We didn't have it then. ← Dens ELECTRIC Chainsaw?

Q. Okay. With his chain saw on his property?

A. No. Back when David lived at the house.

Q. With you?

A. On our property when David lived there --

Q. Right.

A. -- I don't know where he got the chain saw but he had a chain saw and he done some pruning on the property and that I have seen him do.

Q. Okay. Okay. And how often was that? Just the one time or was it repeatedly?

A. I would say a handful of times.

Q. Okay. Over the course of several years?

A. Yeah. Correct.

Q. And that was while he was living with you?

A. Yeah.

Q. And that's the only time you have known him to use a chain saw other than in 2011?

A. This goes back in, you know, in say in the mid '80s, in the '90s, you know, whenever he would go around the yard and prune stuff up with the chain saw.

Q. Did you have a chain saw at the house at that point?

who owned the ELECTRIC chain saw Carolyn claimed she had in the Basement?

A. Not mine. You know, he might have borrowed one from a friend or he might have had one. I don't know.

Q. Okay. In 2011 other than the two evergreen trees he was going to take some of the branches down off of, did he do -- did Dave do any other work with the chain saw on your property in that year?

A. Cut the apple tree down.

Q. Okay. Anything else?

A. No.

Q. Okay.

A. You know, he did a little chain saw work. No. That was about it. That was about it that I remember.

Q. Okay. So the apple tree and the two evergreens, those are the only chain saw work he was doing at your house in 2011, correct?

A. That I remember. You know, I'm trying to remember because I know Paul took some scrap from the front yard from a maple tree.

Q. Yeah. Your wife said just to --

A. And --

Q. Go ahead.

A. And I don't remember if he used the chain saw to cut them pieces up a little further but I don't remember that.

Q. What your wife said was a tree company took that tree down.

A. Yes, they did.

Q. Let me finish. And left some stumps or sections and Paul and Dave cut those sections up so

Paul could have firewood. That's what she said.

A. I --

Q. You don't know?

A. I know Paul took the wood, the bulk of the wood.

Q. Who cut it up, you don't know?

A. No. -TRUE - Bill Helped Roll Logs whole - No Chainsaw was USED.

Q. Okay. So the only time you know that Dave used a chain saw on your property in 2011 was the two evergreens that he was cutting branches off at the time Paul was hurt and the one apple tree?

A. Yes.

Q. Okay. I think Paul's accident was June 28, 2011. Do you know that to be true or not?

A. You know, it sounds -- but I don't know.

Q. Do you know what day of the week it was?

A. No.

Q. Okay. You were retired so you would have not been working. Would you have been home at the time?

A. Yes.

Q. What were you doing at the time of Paul's injury?

A. I was in the house.

Q. Doing what?

A. Watching TV.

Q. Okay. Was that -- Do you know about what time Paul's accident occurred that day?

A. I don't remember.

Q. If you were watching TV when his accident occurred, would that have been pretty much what you were doing for most of the day prior to leading up to his accident or were you doing other things in the house?

A. I was in the house. I am trying to remember -- I might have walked around a little bit, you know, and then I was in the house. Bill Burned Branches in the garden

Q. Did you ever go outside the house while Paul and Dave were in the backyard working?

A. No. LIE - Bill used Pool & Hauled & Burned Branches in garden.

Q. So would it be fair to say that day of Paul's accident before his injury, you don't know who was doing what type of work, where, when or how? - BEhind garage All DAY - Can't Hear chainsaw?

A. That's true.

Q. Okay. And you never viewed at any time prior to Paul's injury what they were doing back there in the backyard, correct?

A. That's correct.

Q. Do you know what -- I know that you said Dave

was going to cut down some limbs from the two evergreens, right?

A. Yes.

Q. And I think Carolyn then said ultimately once the limbs were down, you were going to have the tree company come out and cut the big base of the tree down, right?

A. Yes. Lie

Q. So Dave's task was really just to take the branches off the base of the tree, right?

A. Yeah.

Q. All the way up?

A. No. No. It was too high.

Q. So just up to a certain level?

A. Yes. Yes.

Q. Okay. How high, do you know? True

A. You know, I want to say, I don't know, 15, 20 some feet. You know, I don't know. It was tall trees. That's all I am saying.

Q. And the limbs at the bottom are bigger than the limbs at the top, right?

A. Yes. True

Q. How wide -- if you have an estimate, how wide are the limbs, the branches, coming off the evergreens

at the bottom of the trees?

A. Oh, they had to be -- in the base of it had to be, I don't know, four or five feet, something like that.

1-Lie

Q. How wide around?

How would Bill know this if He was INDOORS?

A. Oh, wide around, inch and a half in diameter.

Q. Okay. All right. And do you have any idea of how many total branches needed to be cut down by Dave?

A. No.

Q. Okay. Was it more than 20?

A. Oh, yeah. (Probably.)

Q. There was a lot of them?

A. Probably, yes.

Q. Do you know when he started this work in relationship to the day of the accident?

A. The day before.

Nothing was cut ON The TREE when I showed UP

Q. Okay. Do you know how many hours he worked the day before?

A. Maybe an hour and a half, a couple hours I think. I really don't remember.

Q. Okay. So after working the day before, there would have been branches already on the ground, right?

A. Correct. — FALSE

Q. And did you know Paul was coming over to help out?

A. No.

Q. Did you know who invited him over?

A. No. — DAVE?

Q. Okay. Did you even know he was on your property when --

A. Yes.

Q. Let me finish the question. Did you even know Paul was on your property by the time he got hurt?

A. Yes.

Q. How did you know he was on the property?

A. Because I seen him out in the yard. I petted his dog.

Q. You mean when he arrived?

A. Sometime through the course when he was there.

Q. Oh, because I asked you before if you ever saw them work during the process of their work and you said no, so.

A. I didn't see them working but I petted his dog.

Q. Oh, so you knew he was there because his dog

was there?

A. Yes. - How Does Bill Know Pauls Dog FROM ANY other Dog?

Q. You didn't know he was there by seeing him?

A. Yes. I seen him on the property.

Q. All right. When he got there or during the course of the day?

A. I don't know when the exact time he arrived but I looked out in the yard and there was him and his dog.

Q. Okay. And did you go outside when you saw him there?

A. Maybe I was outside or something. I don't remember coming in and out but --

Q. This is what I am trying to understand, you said you never saw what they were doing.

A. Right. - Lie

Q. Paul and Dave, so I am assuming what did the dog come inside and that's when you petted him or when did you pet the dog?

A. They were working behind the garage and I didn't go behind the garage where they were working but if you come up to the back -- the back of the house, before you go around the garage, that's where I saw David, Paul and the dog. I went outside, petted the

dog, said hi to Paul and I went back in the house.

Q. All right. So you were only outside a minute or two?

A. Yeah. Not long.

NOON — Then Bill went Inside, changed, used POOL then Back Inside.

Q. Okay. And you went out there specifically to pet the dog and say hi to them or for some other reason?

A. You know, I might have been taking out a bag of trash. I don't remember. — is memory the Reason Bill is Disabled?

Q. Okay. And where you saw Paul and Dave, were they engaged in the tree work at the time or had they taken a break? What were they doing?

A. No. No. Just chitchatting.

Q. Okay. So this is before they began work that day, during the midst of their work, do you know?

A. I couldn't tell you. — like

Q. Okay. What time was this, do you know?

A. No. I don't remember.

Q. Do you know how long Paul was at the property already by the time you went back to pet the dog and say hi to him?

A. No.

Q. Okay. Where you saw them was that in the area that they would have been working to cut the tree

down --

A. No.

Q. -- or was that somewhere else?

A. It was in -- It was like by the driveway and the work was in the back of the -- towards the back of the yard. They were in the -- by the -- say around the back door of the back porch.

Q. Of the house.

A. Correct.

Q. Why were they there in relationship to the work they were doing? Do you have any idea?

A. No. I don't know what they were doing. They were standing there talking and the dog was sitting there.

Q. All right. Your wife was inside?

A. Yes. – Like

Q. Did you know your wife ever to go outside while they were working that day?

A. She might have -- Go ahead.

Q. Did you know if your wife was ever outside that day of Paul's injury before his injury?

A. I don't keep track of her.

Q. So the answer is you don't know?

A. I don't know. – Like

Q. Okay. All right. So when you went outside, you met up with them kind of at the rear of the house?

A. Yes.

Q. But they were not engaged in the work at the time, right?

A. Right.

Q. And you pet the dog and went back inside?

A. Yes.

Q. Okay. And that's the extent of your time outside the house prior to Paul's injury to your knowledge?

A. Yeah.

Q. Okay. So you don't know who was doing what that day, when and how, fair enough?

A. Yes. I don't know.

Q. As far as Dave and Paul, you don't know who was doing what -- whose tasks were what tasks or what they were doing, fair enough?

A. I don't know. I don't know.

Q. Is that fair enough then?

A. That's -- I don't know. Correct.

Q. Okay. What is your first knowledge or notice of Paul's accident then?

A. I heard some commotion and I ran outside and

they were getting in the vehicle to go to the -- to get patched up.

Q. To go to the hospital?

A. Yeah.

Q. Okay. So was Paul's arm already wrapped?

A. You know, I am trying to remember if my wife was getting him a towel or something like that. I don't know but all I know is they were beelining it for the -- a vehicle. -TRUE

Q. Okay. So they were on their way from the house to the car?

A. Yeah. Yeah. So I might have caught a glimpse of them by the back door going to the -- I am trying to remember and then something about -- oh. Yeah. I did hear him say from the vehicle please watch my dog.

Q. Okay. Paul said that?

A. Yes. Yeah.

Q. It was Paul's dog?

A. Yes and I believe he was already in the vehicle when he yelled out the window that.

Q. Okay. So they were already basically gone --

A. Yeah.

Q. You didn't have a chance to talk to them,

right?

A. I did not talk to them.

Q. So by the time they were leaving for the hospital in the car that you saw, you didn't know what happened other than there must have been some injury?

A. Correct.

Q. Did you know who was injured?

A. Yes. Paul.

Q. How did you know that?

A. My wife said Paul is injured.

Q. Did she say how he got injured?

A. No.

Q. Okay. After he left, Paul left with Dave to the hospital, when did you next see Paul and Dave?

A. When they came back from the hospital.

Q. How many hours later?

A. It seemed like three, four. TRUE

Q. And did you speak to Paul and Dave?

A. Yeah.

Q. What did they say?

A. Well, they weren't talking too much. I asked Paul how he is feeling. He said I am a little sore and I asked David, you know, and Dave says not too good. You know, he says -- weren't in a very talkative mood.

Q. Not too good meaning Paul wasn't too good or what?

A. Well, Paul basically just came back and he -- I am trying to figure out how he got home. Maybe Mike --

Q. I am not evening asking that right now.

A. Okay.

Q. My question is: What did Paul and Dave say when they arrived home at the hospital? You said Paul said I am sore. Then David --

A. David really wasn't talking at all.

Q. Did either of them discuss how the accident occurred with the chain saw?

A. No. No.

Q. How long were they back at the house? Short -- Were they only there for a short period of time?

A. Yes. Yes. - True

Q. And did they both leave again?

A. I am trying to remember how he got home.

Q. I'm not asking how anybody got home. I am asking once they arrived home with Paul and Dave, they then left again or don't you know that?

A. You know, I don't remember if he came back to

our house or he came back to his house.

Q. Who is "he"? Who, Paul?

A. After the emergency room.

Q. Who?

A. Paul.

Q. Who is "he"? Okay.

A. I don't remember if he came back to our house or I don't remember if David drove him directly home to his house. I don't remember that. I am trying to remember that.

Q. Okay. All right. So when -- You would not have talked at least --

A. Wait a minute. I do remember now. He did come back to our house and I asked him how you doing and he says okay. And then --

Q. Who is "he"? I don't know who you are talking about.

A. Paul, the guy that got hurt.

Q. Paul said I am okay?

A. I asked him how are you doing? Paul said I am okay.

- I said I'm going to live. Not OK

Q. Okay. Did he say anything else?

A. No.

Q. And then what did Dave say?

A. Dave didn't really talk. — Dave was already Clamed up & Feeling Guilty.

Q. Okay. How long did they stay home?

A. A minute or something. He was collecting on the dog.

Q. Okay. Then what did they do?

A. Let's see. Mike McArtor picked the dog up. Maybe he took Paul, too. I don't remember.

Q. All right.

A. I don't remember.

Q. At least what Carolyn says is that Dave and Paul drove away to fill his prescription and then Dave came back alone.

A. You know, they could have. They could have.

Q. So you don't know that?

A. Right.

Q. Okay. All right. So by the time Dave returned home, whether Paul was with him or not, you don't know?

A. I don't know.

Q. Okay. Did Dave tell you -- now this is still the same day of the accident? Did Dave tell you how the accident occurred?

A. No. — why?

Q. Has Dave ever described for you how the

accident occurred?

A. Yeah.

Q. When? First time.

A. Probably a day or so later.

Q. What -- So a day or so after the accident, Dave had a conversation with you?

A. Yeah.

Q. What did he say?

A. He says -- How did it go? He stuck his arm --

Q. Who is "he"? I need names so I know who you are talking about.

A. Hang on. Hang on. He said that Paul stuck his arm --

Q. Wait. Stop. Dave said that Paul --

MR. BARCH: Try to use names when you are referring to the people. That's all he is asking.

THE WITNESS: Okay. David said that when working with Paul, somehow Paul did something wrong and got his arm cut.

Day or So Later David Formulated his way out of liability and started to ~~throw~~ Pitch Paul Did something wrong

BY MR. MAST:

Q. Did he explain what he did wrong?

A. No. He really didn't.

Q. Did he say that he got his arm cut on the

chain saw?

MR. BARCH: "He," David?

MR. MAST: You got me.

THE WITNESS: David said he got his arm -- Paul got his arm cut on a chain saw.

BY MR. MAST:

Q. But David didn't specify how or what he did to get cut?

A. No. No.

Q. Okay. Did Dave ever specify to you at any other conversations about what Paul did and why it caused him to get cut by the chain saw?

A. No.

Q. So other than that first conversation with Dave where he just described generally that Paul did something wrong to get cut --

A. Yeah.

Q. -- did you have any other conversations with Dave about how the incident occurred?

A. No.

Q. Was that the only time?

A. Basically, yeah.

Q. Okay. Dave never got more specific than that?

A. No. - seems odd

Q. All right. So any time you have talked to Dave it's always been, well, Paul did something wrong to get cut but he didn't specify anything more than that?

A. No.

Q. Is that correct? why?

A. Yes. He didn't want to talk about that, and he wasn't --

Q. Is that correct what I just said?

A. Correct.

Q. Okay. Did you ever talk to Paul about how the accident occurred?

A. No.

Q. Since the accident, have you ever talked to Paul?

A. Yes.

Q. How many times?

A. Maybe -- I am trying to think here. That may be once since the accident happened I have seen him in the grocery store. and Directly After Hospital?

Q. Is that the one you talked about earlier today?

A. Correct.

Q. Where you just said hi to him?

A. Correct.

Q. So since Paul's accident at your house with the chain saw, you have only spoken to him once and that was at the supermarket when you said hi to him and he said hi to you and that was it, right?

A. You know, I think he did come over. I don't remember. I think he did come over and I asked him, you know, how you doing or something like that and it was probably a week or so after.

Q. Okay. Let me go back then. My question was how many times have you spoken to Paul since the accident. Your answer is twice, right?

A. Probably twice.

Q. Okay. The first time is one week after the accident where Paul came over to the house, correct?

A. Yes. - False, Paul Didn't leave his house except to see DR. for a month.

Q. And who was present?

A. My wife.

Q. Okay. And Paul?

A. Yes.

Q. Okay. And what -- How long was Paul there?

A. A couple minutes with his dog.

Q. And what did Paul say to you or either of

you?

A. Well, you know, basically said I am going along. Everything is fine and, you know, my wife said how you doing and exchanged pleasantries and that was about it. – This Didn't Happen

Q. Okay. Now, this is kind of what I'm wanting to find out. Paul has obviously -- at least to me obviously, has had some follow-up treatment and has had some difficulties with his arm because of this accident. Okay. Are you aware of that or not?

A. I have heard that, yes. – From who?

Q. Okay. So when you say a week afterwards that he said I am doing fine, are you saying that everything is great? He is not having --

A. Well, he seemed to be --

Q. Let me finish the question. Are you saying that he related to you that everything is great, he is having no problems or was he just trying to exchange pleasantries and say yeah, everything is okay?

MR. BARCH: I just object to the form of the question but go ahead if you understand it.

THE WITNESS: When the guy said he is fine, I thought he was healing well and meant I am doing fine.

BY MR. MAST:

Q. Okay. Did he describe for you what he meant by fine other than use the word --

A. No. No. No.

Q. -- other than use the word fine in response to your inquiry?

A. No. He didn't describe fine.

Q. Okay. Did he say I am pain free?

A. No.

Q. Did he say I am back to normal or anything in that regard?

A. No.

Q. Okay. Did he ever describe for you, again Paul, how the specifics of his accident occurred?

A. No. - Yes, Same DAY AS Accident upon RETURN FROM the Hospital

Q. After that couple minutes at your house, he left and you only saw him one other time, that was at the supermarket where you exchanged hi's and that was it?

A. Yes. Yes. - TRUE

Q. And that was the one you described earlier on in this deposition when you met him at the grocery store?

A. Yes.

Q. Okay. And you never spoken or talked to Paul other than those two times since the accident, correct?

A. Yeah.

Q. All right. I think I am -- Oh, wait. I wanted to ask you since I got these photographs, I might as well get these marked. I will just mark one of them because they are all the same.

(Whereupon, Deposition Exhibits 1, 2 and 3 were marked and dated.)

BY MR. MAST:

Q. Okay. I just marked three exhibits. The first one is a photograph we took today of the chain saw that's on the table in front of you, correct?

A. Uh-huh.

Q. Yes. I need you to verbalize the answer yes.

A. Yes.

Q. Okay. Is that the chain saw you have talked about over the course of your deposition today? That's the chain saw that Dave was using at the time of Paul's accident?

A. Yes.

Q. And that's the chain saw that you purchased

earlier in the year new from Menards, correct?

A. Yes.

Q. Okay. And Exhibit 2, is that a true and accurate copy of the manual for that same chain saw you purchased?

A. I believe so.

Q. And Exhibit 3 I believe is some additional paperwork that came with it as well as the receipt on the top, correct?

A. I assume so, yes.

Q. Well, take a look. I need you to make sure. Is that what that is? Just take a look through all of those documents in Exhibit 3 just to make sure those were all documents that came with the purchase of the chain saw.

A. Yes. They came with the chain saw.

Q. So all of the materials, Exhibit 2 and 3, all those materials came with the purchase of the chain saw, correct?

A. Yes.

Q. Okay. And they are all accurate copies of those documents, correct?

A. Yeah.

MR. MAST: Okay. Thank you. That's all I have.

MR. ACCARDO: I do not have any questions.

EXAMINATION

BY MR. BARCH:

Q. Just earlier when Mr. Mast was asking you about what you knew about Dave's experience with a chain saw, you mentioned that he did some pruning of trees. You saw him do that around your home?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Then you also said you heard some stuff about him using chain saws?

A. Yes.

Q. And when you say you heard some stuff about him using chain saws, what were you referencing?

A. I was referencing to him through the course of the years when he was living there when I was living there when he was out helping friends and coming back home and saying something like I did some work for -- pruning some trees on some people's property or, you know, helping a friend out.

Q. Okay. So -- And to the extent David may have had some experience with a chain saw away from your home, you wouldn't know about that, you weren't there;

is that fair?

A. True.

Q. And at any time prior to Mr. Dulberg being injured on June 28, 2011, did you have any reason to be concerned about the manner or method that David was using the chain saw?

A. No. I had no concern.

Q. At any time that day or the day before, did you go out there and tell him how you wanted him to use the chain saw?

A. No.

Q. Did you tell him how you wanted him to go about tending to the trees, the pruning of the trees?

A. No.

- self admitted that he wanted the Bottom Branches Removed.

Q. Is it fair to say that you left all the cutting and the decisions on what to do and how to do it up to David?

A. Yes.

Q. And with respect to what David and Paul may have talked about, if anything, that day, how they were going to go about using the chain saw, what they were going to do with respect to those trees, you weren't part of any of that?

A. True. I was not part of any of it.

How did David Know what his Parents wanted Done?

MR. BARCH: That's all I have.

MR. ACCARDO: I don't have anything.

MR. MAST: All right.

MR. BARCH: We are going to -- We are just going to reserve. Carolyn is going to look at her transcript. I will give you a chance to read it, too, before it's final.

THE WITNESS: Okay.

(FURTHER DEPONENT SAITH NOT.)

Was Carolyn allowed to stay in Room with Bill During Deposition?

Is this Normal?

Explains some of His Answers.

IN THE CIRCUIT COURT
FOR THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

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

I, WILLIAM McGUIRE, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on March 20, 2013; that I have read the foregoing transcript of my deposition, and affix my signature to same.

_____
WILLIAM McGUIRE

Subscribed and sworn to before me this _____ day of _____, 2013

Notary Public

C E R T I F I C A T E

I, Paula Ann Erickson, Certified Professional Reporter, Registered Professional Reporter and Notary Public, do hereby certify:

That the witness in the foregoing deposition named was present at the time and place therein specified;

That the said proceeding was taken before me as a Notary Public at the same time and place and was taken down in shorthand writing by me;

That this transcript is a true and accurate transcript of my shorthand notes so taken, to the best of my ability.

I further certify that I am neither counsel for nor related to or employed by any of the parties to this action and that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

Paula Ann Erickson
Certified Shorthand Reporter
Registered Professional Reporter
License No. 084-003899
Notary Public

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16" 39CC CHAINSAW MT *	
2391612	TD
	199.00
TOTAL	199.00
TAX AT 7%	13.93
TOTAL SALE	212.93
CASH	220.00
CHANGE	7.07-

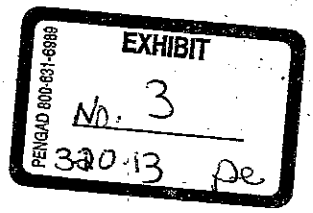
TOTAL SAVINGS 50.99

TOTAL NUMBER OF ITEMS = 1

TD = 30 day over the counter exchange products may be returned or exchanged within 30 days of purchase with a receipt. No returns, refunds, exchanges, or credits will be issued without a receipt. After 30 days, merchandise may be sent out for repair at the Guests expense, unless covered under warranty.

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Most Clean

Note: The lower the Air Index, the less pollution

This engine is certified to be emissions compliant for the following use:

[X] Moderate (50 hours)	[ ] Intermediate (125 hours)	[ ] Extend (300 hours)

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PARA EL CLIENTE

PURCHASER'S NAME AND ADDRESS – NOM DU CLIENT ET ADRESSE – NOMBRE COMPRADOR Y DIRECCION

William McGuire
1016 W. Elder Ave.
McHenry, IL. 60051

MODEL - MODELE - MODELO

MT 3500 (2.38 cu.in)

SERIAL NUMBER - NUMERO DE SERIE - MATRICULA

9840200296

PURCHASE DATE - DATE D'ACHAT - FECHA DE COMPRA

5-22-11

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UTILISATION PRINCIPAL: [ ] BUSINESS & COMMERCIAL - PROFESSIONELLE - PROFECIONAL
UTILIZATION PRINCIPAL: [ ] RENTAL - LOCATION - ALIQUIDADO

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COMPLETE IF PURCHASING A CHAINSAW – COMPLETER EN CAS D'ACHAT DE TRONÇONNEUSE
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EFCO CHAIN TYPE - TYPE DE CHAINE EFCO
TIPO DE CADENA EFCO

William McGuire

PURCHASER SIGNATURE - SIGNATURE DU CLIENT - FIRMA CLIENTE

IMPORTANT: I, the undersigned (Customer) confirm the following: The Operator's instruction book/Limited Warranty Certificate containing safety precautions was received with the purchase of the unit listed on this warranty registration card. I have also been shown the basic safe operation and controls of the unit purchased. I am aware of the causes and consequences of kickback and am aware that the chain brake can reduce injuries if properly maintained.
I have read and understand the above Important Statement. The failure to complete and return this card does not diminish the customers warranty rights.

IMPORTANT: Je, soussigné/e (Client/e), confirme que le **Manuel d'utilisation et d'entretien / Certificat de garantie** contenant les consignes de sécurité m'a été remis avec la machine indiquée sur ce coupon de garantie. Je déclare également avoir été instruit sur les précautions de sécurité de base et les principales commandes de la machine achetée. Je connais les causes et les conséquences du recul et je suis conscient que le frein de chaîne peut réduire les risques d'accidents s'il est correctement entretenu.
Je déclare avoir lu et compris la déclaration ci-dessus. Les conditions générales de garantie ne sont pas remises en cause si le client omet de compléter et de renvoyer ce coupon.

IMPORTANTE: El infrascrito (Cliente) confirma lo que sigue: ha recibido manual de instrucciones y la carta de registro de producto que contienen las medidas de seguridad con la compra de la maquina nominada en esta tarjeta de registro de garantía.También me han demostrado la operación segura y los controles básicos de la maquina. Estoy enterado de las causas y de las consecuencias del contragolpe y que el freno cadena puede reducir las lesiones se si mantiene correctamente.
He leído y entendido las declaraciones importantes antes dichas.
La falta de completamento y devolución de las tarjetas no disminuye sus derechos de garantía.

Legendary Italian Design and Performance

For California only:
EMAK USA Incorporated California Exhaust and Evaporative Emissions Control Warranty Statement

Your Warranty Rights and Obligations

The California Air Resources Board (CARB) and EMAK USA Incorporated are pleased to explain the emissions control system's warranty on your 2010 and later small off-road equipment engine.

In California, new equipment that uses small off-road-engines must be designed, built, and equipped to meet the State's stringent anti-smog standards. EMAK USA Incorporated must warrant the emissions control system on your small off-road engine for the period listed below provided there has been no abuse, neglect or improper maintenance of your small off-road engine.

Your emissions control system may include parts such as:

Air filter, Carburetor, Air Purge, Choke (Cold Start Enrichment System), Control Linkages, Intake Manifold, Magneto or Electronic Ignition System (Ignition module), Spark plug, Catalytic Converter (if applicable), Fuel Tank, Fuel Cap, Fuel line, Fuel Line Fittings, Clamps, Fasteners.

Where a warrantable condition exists, EMAK USA Incorporated will repair your small off-road equipment engine at no cost to you including diagnosis, parts and labor.

Manufacturer's Warranty Coverage:

This emissions control system is warranted for two years in California. If any emissions-related part on your equipment is defective, the part will be repaired or replaced by EMAK USA Incorporated free of charge.

Owner's Warranty Responsibilities:

As the small off-road equipment engine owner, you are responsible for performance of the required maintenance listed in your instruction manual. EMAK USA Incorporated recommends that you retain all receipts covering maintenance on your small off-road equipment engine, but EMAK USA Incorporated cannot deny warranty solely for the lack of receipts or your failure to ensure the performance of all scheduled maintenance.

As the small off-road equipment engine owner, you should however be aware that EMAK USA Incorporated may deny you warranty coverage if your small off-road equipment engine or a part has failed due to abuse, neglect, or improper maintenance or unapproved modifications.

You are responsible for presenting your small off-road equipment engine to an authorized Efco servicing dealer as soon as the problem exists. The warranty repairs should be completed in a reasonable amount of time, not to exceed 30 days. If you have any questions regarding your warranty rights and responsibilities, please contact an EMAK customer service representative at 1-800-800-4420 or you can write to

EMAK USA Inc., 770 Spruce Street,
Wooster, Ohio 44691

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en LIMITED WARRANTY CERTIFICATE

EMAK USA warrants this product from the time of purchase to be free from defects in material and workmanship under normal use and maintenance, subject to the periods, limitations and exclusions listed below.

WARRANTY PERIOD: **USAGE**

PRODUCT	RENTAL	PROFESSIONAL OR COMMERCIAL	PERSONAL AND CONSUMER
Chainsaws and polesaws	3 months	2 years	5 years
Line trimmers / Brushcutters	3 months	2 years	5 years
Blowers (handheld & backpack)	3 months	2 years	5 years
Hedge Trimmer	3 months	2 years	5 years
Cut-Off Saw	3 months	3 months	3 months
Earth Auger	3 months	2 years	5 years
Stick Edger	3 months	2 years	5 years

The cost of the drive shaft and electronic ignition module and the respective installation labor cost will be covered under the warranty time period as defined above for all Efco line trimmers / brushcutters, hedgetrimmer and chainsaws. The material cost only of the drive shaft (excluding models 8270TR, 8271TR, PT2500 and PTX2500) and electronic ignition modules will be for the life of the unit for the original purchaser except for rental use which is 3 months. The labor costs for the installation of the electronic ignition module and drive shaft after the warranty period defined above will be the responsibility of the original purchaser.

SEE ATTACHED EMAK SPA FORM

Personal Use: Personal, non-institutional, and non-income producing use.

Commercial Use: Business, commercial, institutional or income producing use.

Rental Use: Rental income producing use.

EXCLUSIONS:

THIS WARRANTY DOES NOT EXTEND TO PARTS AFFECTED OR DAMAGED BY ACCIDENT, NORMAL WEAR, FUEL CONTAMINATION OR DETERIORATION, USE IN AN APPLICATION FOR WHICH THE PRODUCT WAS NOT DESIGNED OR ANY OTHER MISUSE, NEGLECT, INCORPORATION OR USE OF UNSUITABLE ATTACHMENTS, PARTS OR FUELS/LUBRICANTS/FLUIDS, UNAUTHORIZED ALTERATION, IMPROPER MAINTENANCE/ SERVICE, IMPROPER OPERATION NOT IN ACCORDANCE WITH THE INSTRUCTION MANUAL, OR ANY CAUSES OTHER THAN DEFECTS IN MATERIAL OR WORKMANSHIP OF THE PRODUCT.

Additionally, this warranty does not apply to:

- parts and components not supplied by EMAK USA, and any trade accessory or engine which is separately warranted by another manufacturer and not manufactured by EMAK USA;
- items or service required when performing normal and regular maintenance (e.g., valve adjustments, spark plugs, filters, lubricants, starter cords, carburetor adjustments, engine tune-ups, sharpening, etc.);
- damage caused by pressure or steam cleaning the unit;
- repairs made necessary by dirt, abrasives, moisture, rust, corrosion, fuel deposits, carbon deposits, oil deposits, or other similar conditions.

DISCLAIMER OF CONSEQUENTIAL DAMAGE AND LIMITATION OF IMLIED WARRANTIES:

THIS WARRANTY IS IN LIEU OF ALL OTHER EXPRESS WARRANTIES. EMAK USA DISCLAIMS ANY RESPONSIBILITY FOR LOSS OF TIME OR USE OF THE PRODUCT, COMMERCIAL LOSS, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGE. ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE, APPLICABLE TO THIS PRODUCT, SHALL BE LIMITED IN DURATION TO THE DURATION OF THIS LIMITED WARRANTY. Some states do not allow limitations on how long an implied warranty lasts and/or do not allow the exclusion or limitation of incidental or consequential damages, so the above exclusions may not apply to you. This warranty gives you specific legal rights. You may also have other rights, which vary from state to state.

WHAT EMAK USA WILL REPAIR OR REPLACE UNDER WARRANTY:

The warranty period begins on the date of purchase. EMAK USA, acting through its authorized dealers, shall replace free of charge any parts proven defective in material or workmanship. All parts replaced under warranty will be considered as part of the original product and any warranty on those parts will expire coincident with the original product warranty..

TO OBTAIN WARRANTY SERVICE:

To make any claim under the warranty, proof of purchase of the product in the form of the invoice or receipt showing the date of purchase and product serial number must be presented to the authorized dealer for warranty service.

EMISSION CONTROL SYSTEMS WARRANTY COVERAGE:

California and Federal Emission Control Systems - Warranty

The U.S. Environmental Protection Agency (EPA), the California Air Resources Board (CARB), and EMAK USA are pleased to explain the Emission Control System Warranty on your model year 2006 or later nonroad or small off-road engine. In California, new small off-road engines must be designed, built and equipped to meet the state's stringent anti-smog standards. In other states, new 1997 and later model year nonroad engines must be designed, built and equipped, at the time of sale, to meet the U.S. EPA regulations for small nonroad engines. The nonroad engine must be free from defects in materials and workmanship which cause it to fail to conform with U.S. EPA standards **for the first two years** of engine use from the date of sale to the ultimate purchaser. EMAK USA must warrant the emission control system on your nonroad or small off-road engine for the period of time listed above provided there has been no abuse, neglect, improper maintenance, or unapproved modifications of your nonroad or small off-road engine.

Your emission control system may include parts such as the carburetor or fuel injection system, the ignition system, the catalytic converter. Also included may be hoses, belts, and connectors and other emission related assemblies.

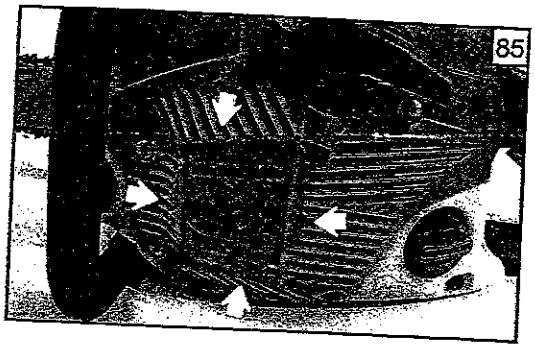
Where a warrantable condition exists, EMAK USA will repair your nonroad or small off-road engine at no cost to you, including diagnosis (if the diagnostic work is performed at an authorized dealer), parts, and labour.

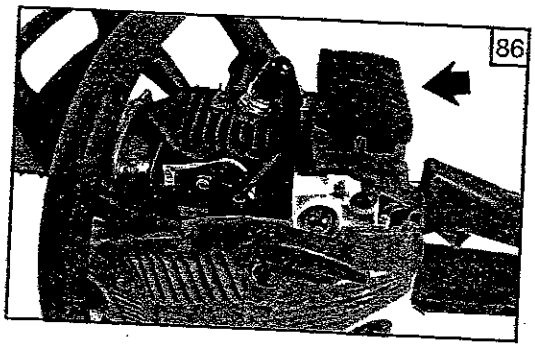
MANUFACTURER'S WARRANTY COVERAGE:

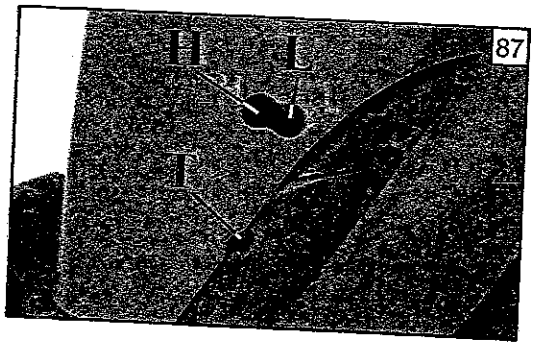
The 1995 and later small off road engines are warranted for two years in California. In other states, 1997 and later model year small off road engines are also warranted for two years. If any emission-related part on your engine is defective, the part will be repaired or replaced by Emak s.p.a. free of charge.

OWNER'S WARRANTY RESPONSIBILITIES:

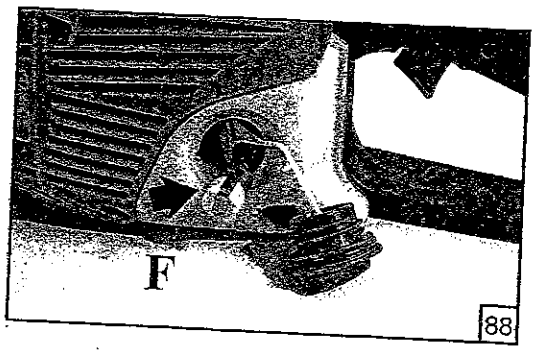
a) As the small off road engine owner, you are responsible for the performance of the **required maintenance listed in the owner's manual.** Emak USA recommends that you retain all receipts covering maintenance on you small off road engine, but Emak USA cannot deny warranty solely for the lack of receipts or for your failure to ensure the performance of all scheduled maintenance. Any replacement part or service that is equivalent in performance and durability may be used in non-warranty maintenance or repairs, and shall not reduce the warranty obligations of the engine manufacturer.


85

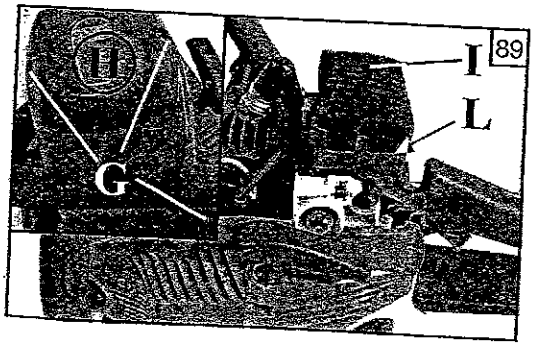

86



87



88



89

Carburetor Adjustment

Before adjusting the carburetor, clean the starter cover vents as shown in Illustration Fig. 85, and air filter as shown in Illustration Fig. 86, refer to Operation-Starting Unit and Maintenance-Air Filter Sections for details. Allow the engine to warm up prior to carburetor adjustment.

This engine is designed and manufactured in order to comply with EPA (Environmental Protection Agency) Phase 2 regulations.

The carburetor is factory set and should not require adjusting.

The carburetor will permit only limited adjustment of the **"L"** (Low Jet) and **"H"** (High Jet) needles (Fig. 87). Any adjustment should be done by a Servicing Dealer.

Under no circumstances should the **"L"** (Low Jet) and **"H"** (High Jet) needles be forced outside the range of adjustment.

WARNING: Serious damage can occur to the engine if improper adjustments are made to the "L" and "H" needles. Do not force the "L" and "H" needles outside the adjustment range in such case the engine will not run in compliance with emissions regulations.

Idle Speed Adjustment

- If the engine starts, runs, and accelerates but will not idle; turn the idle speed screw **"T"** clockwise to increase idle speed (Fig. 87).
- If the chain turns at idle, turn the idle speed screw **"T"** counterclockwise to reduce the idle RPM and stop the chain movement. If the saw chain still moves at idle speed, contact a Servicing Dealer for adjustment and discontinue use until the repair is made.

Fuel Filter

Check the fuel filter **(F, Fig. 88)** periodically. Replace it if contaminated or damaged.

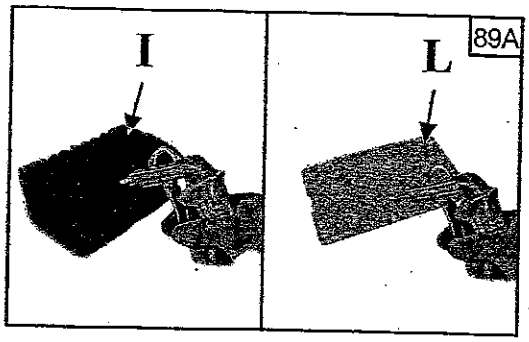
Air Filter

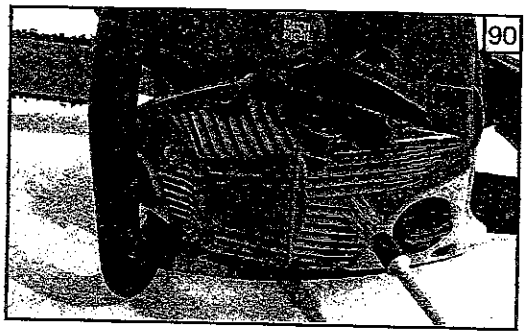
WARNING: Do not clean filter in gasoline or other flammable solvent to avoid creating a fire hazard or producing harmful evaporative emissions.

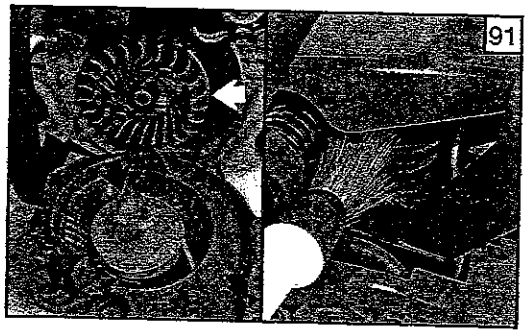
Unscrew the screws on the cover **(G, Fig. 89)**, remove air filter cover **(H)** and check the air filters **(I-L, Fig. 89A)** each day. Filter (L): snake it and clean it with a soft brush. Filter (I) clean with degreaser, wash with water and blow from a distance with compressed air. Reinstall the air filters. Place the air filter cover onto the chain saw. Tighten the air filter cover screws securely.

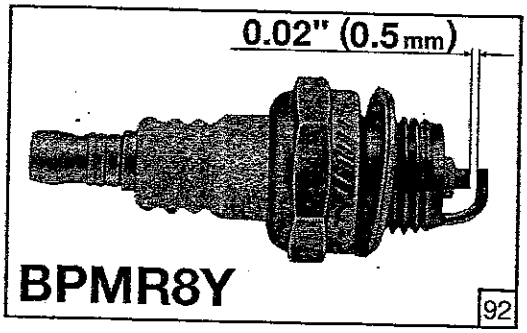
A used air filter can never be completely cleaned. It is advisable to replace your air filters with a new one after six month of operation.

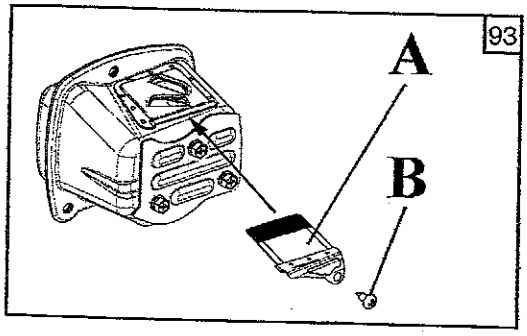
CAUTION: Never run the engine without the air filters, serious damage could result.
Make sure the air filters is correctly placed in the air filter cover before reassembly.
Always replace damaged filters.
Do not clean a filter with a brush.











Starter Unit

Use a brush to keep the cooling vents of the starter assembly free and clean of debris (Fig. 90).

WARNING: The coil spring is under tension and could fly apart causing serious injuries. Never try to disassembly or modify it.

Engine

Clean the cylinder & flywheel fins with compressed air or a brush periodically (Fig. 91). Dangerous overheating of engine may occur due to impurities on the cylinder.

WARNING: Never run the saw without all the parts, including the drivecase cover and starting housing, securely in place. Because parts can fracture and pose a danger of thrown objects, leave repairs to the flywheel and clutch to trained Servicing Dealers.

Spark Plug

This engine uses a NGK BPMR8Y with .02" (0.5 mm) electrode gap (Fig. 92). Use an exact replacement and replace every six months or more frequently, if necessary.

WARNING: Never test the ignition system with ignition wire connector removed from spark plug or with unseated spark plug, since uncontained sparking may cause a fire. A loose connection between spark plug terminal and ignition wire connector in the boot may create arcing that could ignite combustible fumes and cause a fire.

Use only resistor type spark plugs of the approved range.
Factors such as:
- too much oil in fuel mix;
- dirty air filter;
- unfavourable running conditions, e.g. operating at part load;

may result in rapid deterioration of the spark plug.

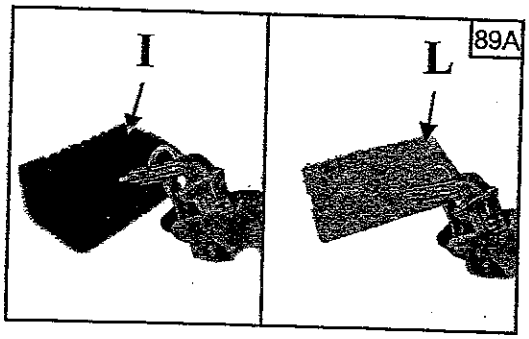
Spark Arresting Muffler

The chainsaw is provided with a Spark Arrester System p.n. 50240109 (Fig. 93) complying with the requirements of SAE J335 standard; you can check the p.n. of the Spark Arrester System on the muffler itself.

WARNING: A faulty or altered spark arrester system screen can create a fire hazard.

Through normal use the screen can become dirty and should be inspected weekly and cleaned as required.

To clean:
- Allow the muffler to cool.
- Remove the spark arrester screen screw **(B)**.
- Remove the spark arrester screen **(A)** p.n. 50240155.
- Clean and inspect the spark arrester screen. If the spark arrester screen is damaged, faulty or deteriorated, replace the screen.

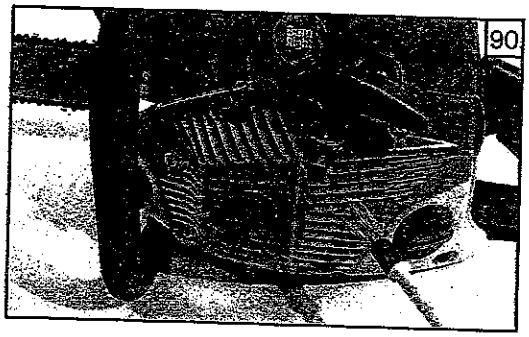


cubierta. Ponga la cubierta del filtro de aire en la motosierra. Apriete firmemente el mando de la cubierta.
Un filtro de aire utilizado nunca se puede limpiar por completo. Se recomienda sustituir los filtros de aire por otro nuevo tras seis meses de funcionamiento.

PRECAUCIÓN: No ponga nunca el motor en marcha sin los filtros de aire, ya que se pueden producir daños importantes.
Compruebe que los filtros de aire está correctamente colocado en su cubierta antes de volver a montarlo.
Sustituya siempre el filtro si está dañado.
No limpie el filtro con un cepillo.

Unidad de motor de arranque

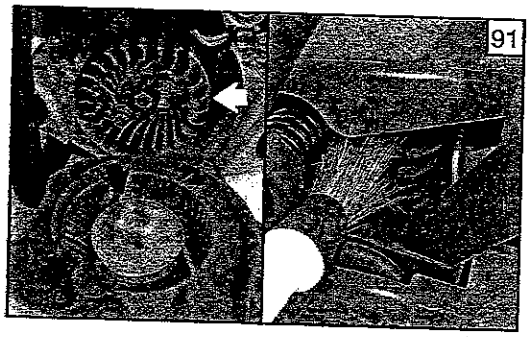
Utilice un cepillo para eliminar los residuos que haya en las salidas de refrigeración del conjunto de motor de arranque (Fig. 90).



ADVERTENCIA: El resorte de la bobina está bajo tensión y podría salir despedido provocando lesiones graves. No intente nunca desmontarlo ni modificarlo.

Motor

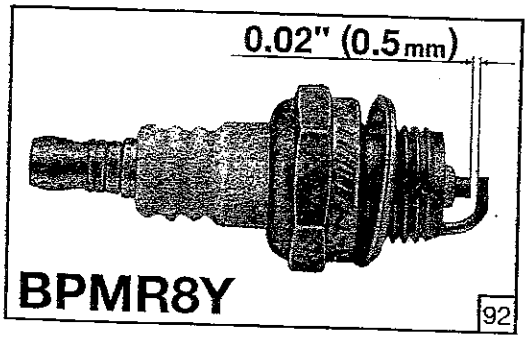
Limpie periódicamente las aletas del volante y del cilindro con aire comprimido o con un cepillo (Fig. 91). Si hay impurezas en el cilindro, es posible que el motor se sobrecaliente de forma peligrosa.



ADVERTENCIA: No ponga nunca la motosierra en marcha sin estar todas las piezas correctamente colocadas en su sitio, incluyendo la cubierta de la carcasa de transmisión y el alojamiento de arranque. Puesto que las piezas se pueden romper y salir despedidas, los trabajos de reparación del volante y el embrague los debe realizar personal de un concesionario de servicio con la formación adecuada.

Bujía

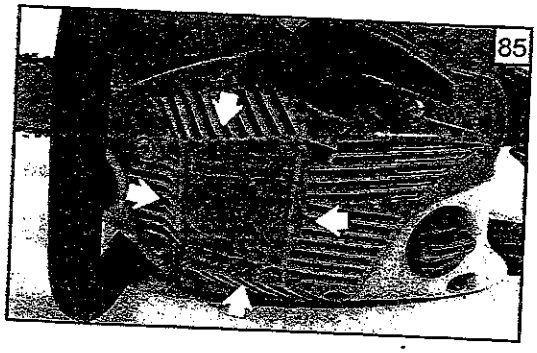
Este motor utiliza una bujía NGK BPMR8Y con una separación de las puntas del electrodo de .02" (0.5 mm) (Fig. 92). Utilice una bujía de repuesto exactamente igual a la original y sustitúyala cada seis meses o con mayor frecuencia, si es necesario.

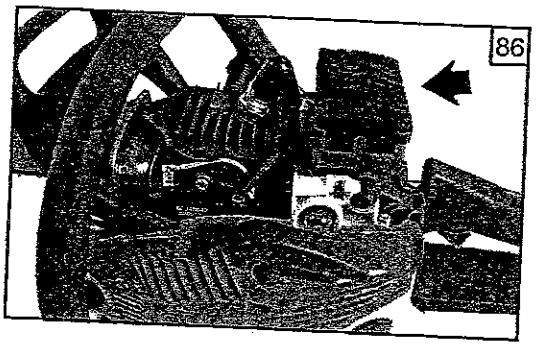


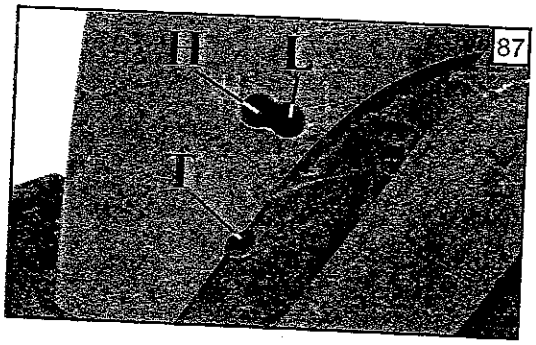
ADVERTENCIA: No someta nunca el sistema de encendido a pruebas con el conector del cable de encendido desconectado de la bujía o sin estar correctamente puesta la bujía, ya que las chispas no contenidas pueden provocar un incendio. Una conexión floja entre el terminal de la bujía y el conector del cable de encendido en la funda puede generar formación de arco, que puede inflamar los gases combustibles y provocar un incendio.

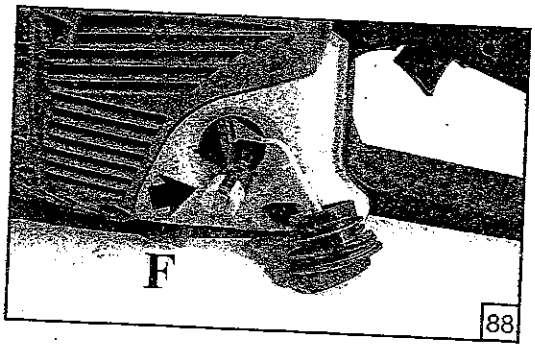
Utilice solamente bujías de tipo resistor de gama homologada.
Factores tales como:
- Demasiado aceite en la mezcla de combustible;
- Filtro de aire sucio;
- Condiciones de funcionamiento desfavorables (por ejemplo, funcionamiento con carga parcial);

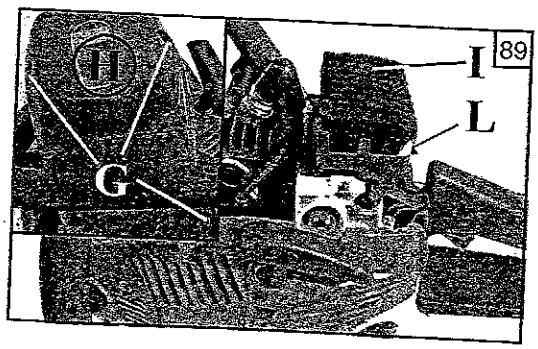
Pueden provocar que la bujía se deteriore rápidamente.











- Barra guía doblada.
- Raíles agrietados o rotos.
- Raíles abiertos.

Además, las barras guía que tengan una rueda dentada en la punta se deben lubricar periódicamente con una jeringa de engrase para aumentar su vida útil.
Gire la barra guía y compruebe que los orificios de lubricación **(T)** y la ranura de la cadena **(S)** no tienen impurezas.

Ajuste del carburador

Antes de ajustar el carburador, limpie las salidas de ventilación de la cubierta del motor de arranque como se muestra en la Fig. 85 y el filtro de aire como se indica en la Fig. 86. Para obtener más información, consulte las secciones de funcionamiento (unidad de arranque) y de mantenimiento (filtro de aire). Deje que el motor se caliente antes de ajustar el carburador.
Este motor está diseñado y fabricado para cumplir las regulaciones de Fase 2 de la EPA (Agencia de protección del medio ambiente de EE.UU.). El carburador se ha ajustado en fábrica y no debe requerir ningún ajuste. El carburador sólo permitirá realizar un ajuste limitado de las agujas **"L"** (chorro bajo) y **"H"** (chorro alto). Los ajustes se deberán realizar en un concesionario de servicio. Las agujas **"L"** (chorro bajo) y **"H"** (chorro alto) no se deberán forzar para fijarlas fuera del rango de ajuste bajo ninguna circunstancia.

ADVERTENCIA: El motor puede sufrir daños importantes si se realizan ajustes inadecuados en las agujas "L" y "H". No fuerce las agujas "L" y "H" para fijarlas fuera del rango de ajuste; en tal caso, el motor no funcionará en conformidad con las regulaciones sobre emisiones.

Ajuste de la velocidad de ralentí

- Si el motor arranca, se pone en marcha y acelera pero no se pone a ralentí, gire el tornillo de velocidad de ralentí **"T"** en el sentido de las agujas del reloj para aumentar la velocidad de ralentí (Fig. 87).
- Si la cadena gira al ralentí, gire el tornillo de velocidad de ralentí **"T"** en el sentido contrario a las agujas del reloj para reducir las RPM de ralentí y parar la cadena. Si la cadena sigue moviéndose a velocidad de ralentí, póngase en contacto con un concesionario de servicio para su ajuste, y no utilice la unidad hasta que se haya realizado la reparación.

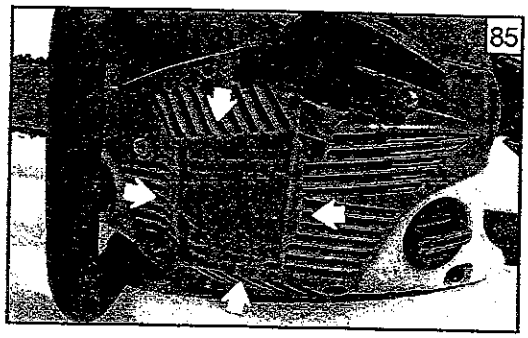
Filtro de combustible

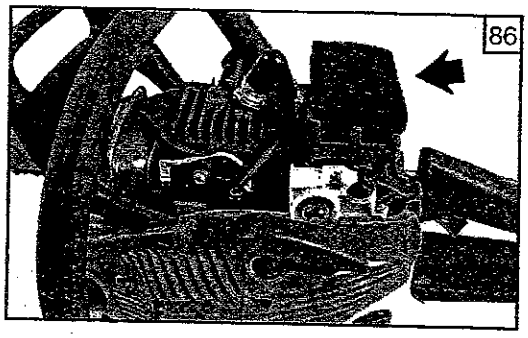
Compruebe periódicamente el filtro de combustible **(F, Fig. 88)**. Sustitúyalo si está contaminado o dañado.

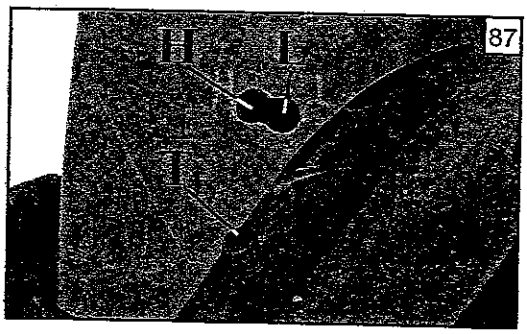
Filtro de aire

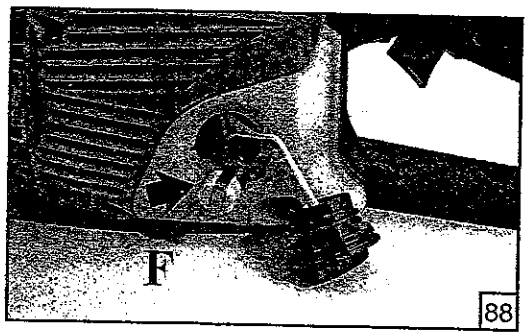
ADVERTENCIA: No limpie el filtro con gasolina u otros disolventes inflamables a fin de evitar que se cree el peligro de incendio o que se generen emisiones de evaporación perjudiciales.

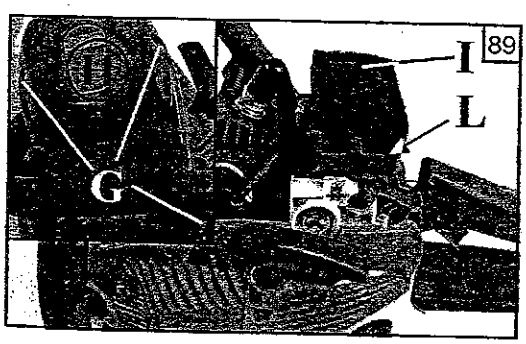
Desenroscar los tornillos de la cubierta **(G, Fig. 89)**, retire la cubierta **(H)** y compruebe los filtros de aire **(I-L, Fig. 89A)** cada día. Filtro (L): sacudirlo y limpiarlo con un pincel suave. Filtro (I): limpiar con desengrasante, lavar con agua y soplar a distancia con aire comprimido. Vuelva a instalar los filtros de aire en la











- Rails fendillés ou cassés.
- Rails étirés.

En outre, les guide-chaîne équipés d'un pignon en leur pointe doivent être lubrifiés périodiquement à l'aide d'une seringue à huile afin de rallonger leur durée de vie.
Retournez le guide-chaîne et vérifiez que les orifices de lubrification **(T)** et la gorge de chaîne **(S)** sont exempts d'impuretés.

Réglage du carburateur

Avant de procéder au réglage du carburateur, nettoyez les ouïes d'aération du couvercle de démarreur comme indiqué dans la Fig. 85, ainsi que le filtre à air comme indiqué dans la Fig. 86. Reportez-vous aux sections Fonctionnement-Démarrage de la machine et Entretien-Filtre à air pour de plus amples détails. Laissez chauffer le moteur avant de procéder au réglage du carburateur.
Ce moteur est conçu et fabriqué conformément aux réglementations de Phase 2 de l'EPA (Agence de protection de l'environnement). Le carburateur est réglé en usine et ne nécessite normalement aucun réglage. Ce modèle de carburateur ne permet que le réglage des aiguilles **"L"** (gicleur bas) et **"H"** (gicleur haut). Tout réglage doit être effectué par un service d'entretien agréé.
Ne forcez en aucun cas les aiguilles **"L"** (gicleur bas) et **"H"** (gicleur haut) hors de leur plage de réglage.

AVERTISSEMENT: Un réglage incorrect des aiguilles "L" et "H" peut entraîner de graves dégâts au niveau du moteur. Ne forcez pas les aiguilles "L" et "H" hors de leur plage de réglage sous peine de rendre le moteur non conforme à la réglementation relative aux émissions polluantes.

Réglage du ralenti

- Si le moteur démarre, tourne et accélère mais ne tient pas le ralenti, tournez la vis de réglage du ralenti **"T"** dans le sens des aiguilles d'une montre pour augmenter le ralenti (Fig. 87).
- Si la chaîne tourne au régime de ralenti, tournez la vis de réglage du ralenti **"T"** ans le sens inverse des aiguilles d'une montre pour réduire le régime de ralenti et stopper la rotation de la chaîne. Si la chaîne continuer à tourner au régime de ralenti, contactez un service d'entretien agréé pour procéder au réglage et n'utilisez pas la machine tant que la réparation n'a pas été effectuée.

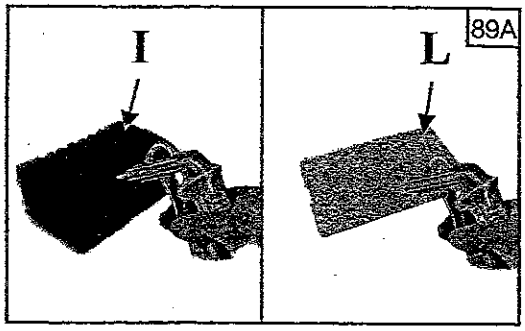
Filtre à carburant

Contrôlez le filtre à carburant **(F, Fig. 88)** périodiquement. Remplacez-le s'il est contaminé ou endommagé.

Filtre à air

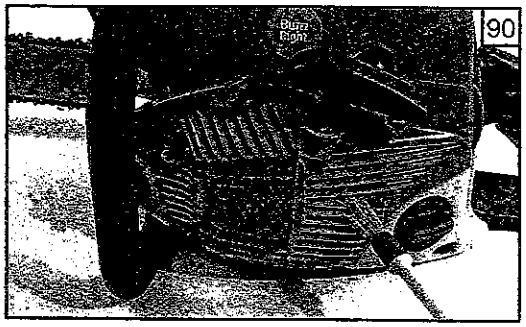
AVERTISSEMENT: Ne nettoyez pas le filtre à air à l'essence ou avec tout autre produit inflammable afin d'éviter tout risque d'incendie ou de générer des vapeurs nocives.

Dévissez les vis du couvercle **(G, Fig. 89)**, déposez le couvercle du filtre à air **(H)** et contrôlez les filtres à air **(I-L, Fig. 89A)** quotidiennement. Filtre (L): secouez-le et nettoyez-le avec un pinceau souple. Filtre (I): nettoyer à l'aide du dégraissant, laver à



l'eau et souffler de l'air comprimé à une certaine distance. Remontez les filtres à air dans le couvercle. Posez le couvercle de filtre à air sur la tronçonneuse. Resserrez fermement les vis du couvercle de filtre à air.
Un filtre à air usagé ne peut jamais être complètement nettoyé. Il est recommandé de remplacer le filtre à air après six mois d'utilisation.

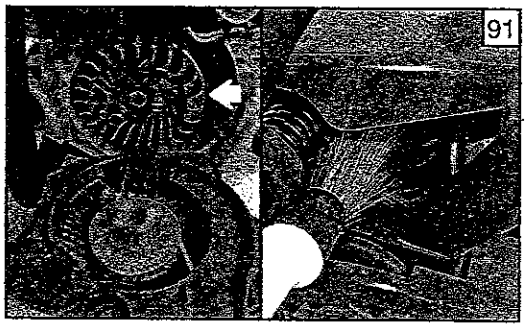
> **MISE EN GARDE: Ne faites jamais tourner le moteur sans les filtres à air au risque de l'endommager. Vérifiez que les filtres à air est correctement logé dans le couvercle de filtre à air avant procéder au remontage de l'ensemble. Remplacez toujours un filtre à air endommagé. Ne nettoyez pas le filtre à l'aide d'une brosse.**



Démarreur

Éliminez les débris accumulés au niveau des ouïes d'aération du démarreur à l'aide d'une brosse **(Fig. 90).**

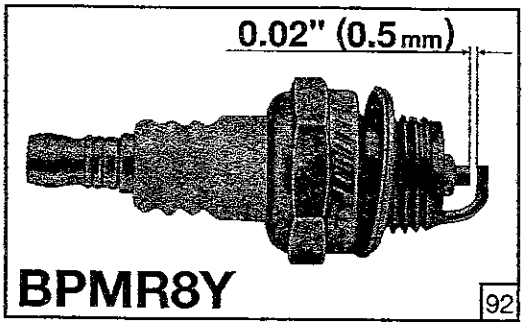
> **AVERTISSEMENT: Le ressort à enroulement est sous tension et peut "sauter" à tout moment, entraînant de graves blessures. Ne tentez jamais de le démonter ou de le modifier.**



Moteur

Nettoyez périodiquement les ailettes du moteur et du volant-moteur à l'air comprimé ou à l'aide d'une brosse **(Fig. 91).** Les impuretés incrustées sur le cylindre peuvent entraîner une surchauffe dangereuse du moteur.

> **AVERTISSEMENT: Ne faites jamais fonctionner la tronçonneuse si toutes les pièces ne sont pas correctement montées, notamment le couvercle du carter d'entraînement et le carter du démarreur. Dans la mesure où les pièces peuvent se casser et voler en éclat, faites réparer le volant-moteur et l'embrayage à un réparateur agréé.**



Bougie

Ce moteur utilise une bougie NGK BPMR8Y avec un espacement entre les électrodes de 0,5 mm (0,02 pouce) **(Fig. 92).** Remplacez-la par une bougie identique tous les six mois ou plus fréquemment si nécessaire.

> **AVERTISSEMENT: Ne testez jamais le système d'allumage alors que le connecteur du câble d'allumage est débranché de la bougie ou si la bougie n'est pas montée dans son logement, au risque de produire un jaillissement d'étincelles non contrôlé qui peut entraîner un risque d'incendie. Une mauvaise connexion entre la borne de la bougie et le connecteur du câble d'allumage au niveau de la coiffe peut générer un arc électrique susceptible d'enflammer les vapeurs de carburant à l'origine d'un incendie.**

Utilisez exclusivement des bougies antiparasites de la gamme préconisée.
Les facteurs tels que;
- un excès d'huile dans le mélange de carburant;

COPY 1

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

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

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

APPEARANCES:

ATTORNEY THERESA M. FREEMAN
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, Illinois
Appeared on behalf of the plaintiff.

ATTORNEY RONALD A. BARCH
Cicero, France, Barch & Alexander
6323 East Riverside Boulevard
Rockford, Illinois
Appeared on behalf of the defendants, Caroline McGuire and Bill McGuire.

ATTORNEY PERRY A. ACCARDO
Law Office of M. Gerard Gregoire
200 North LaSalle Street
Chicago, Illinois
Appeared on behalf of the defendant, David Gagnon.

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EXHIBITS

EXHIBIT		MARKED
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PAUL R. DULBERG,
being first duly sworn, was examined and testified as follows:
EXAMINATION BY MR. ACCARDO:
Q. Sir, would you please state and spell your name for the record?
A. **Paul Dulberg, D-u-l-b-e-r-g.**
MR. ACCARDO: Let the record reflect this is the discovery deposition of Paul Dulberg taken pursuant to notice and continued from time to time, taken in accordance with the Rules of Civil Procedure of McHenry County and the Rules of the Supreme Court of the State of Illinois and any other applicable local court rules.
Good afternoon, Mr. Dulberg. My name is Perry Accardo. I'm going to be asking you some questions today.
MR. BARCH: Is this your notice?
MR. ACCARDO: Did you issue the notice? I thought I did. If you want to do it, that's fine.
MR. BARCH: Well, I mean, if you issued one –

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MR. ACCARDO: (Interrupting) I'm not sure whose notice it is.
MR. BARCH: I thought it was mine.
MR. ACCARDO: I'm sorry, I assumed it was mine, but if you want to do it.
MR. BARCH: I mean, sooner or later we both need to ask the questions.
MR. ACCARDO: If you want to do it, that's fine.
MR. BARCH: Let's go forward.
MR. ACCARDO: All right.
MR. BARCH: We'll pick up where Mr. Accardo left off. We're taking this deposition pursuant to an agreement of the parties, a notice and in accordance with the Illinois Code of Civil Procedure.
We're going to do what is a called discovery deposition. I'm sure your attorney talked to you about it. It's a fancy word for a question-and-answer session. Hopefully we will ask questions that you hear and understand. And then if you do hear and understand the question, it's our expectation you answer truthfully. All right?

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THE WITNESS: Yes.
MR. BARCH: Couple of things to keep in mind as we go along. There is a lady over there to your left taking everything down that we're saying, so it will be important when we do have a conversation that we use words. Here in Midwest we use a lot of uh-huhs, uh-uhs and shoulder shrugs. During conversation it's easier to interpret face to face, but it doesn't translate well to a record. Okay?
THE WITNESS: (Indicates affirmatively.)
MR. BARCH: So if you happen to do that, one of us in the room may ask you to clarify what you mean. All right?
THE WITNESS: Okay.
MR. BARCH: And the other thing to do is some of the questions that come out may be easy to interpret or anticipate, and witnesses, for whatever reason, have a tendency to want to get the answers out and may start talking over the question. You may not do that, but if you happen to start talking or giving an answer before the whole

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question is out, I may ask you to stop, okay, so I can get the whole question out and then we'll give you a chance to get your whole answer out. All right?
THE WITNESS: (Indicates affirmatively.)
MR. BARCH: The same is true of me. If I start a question before you finish your answer, please tell me. I want to give you a chance to get your whole answer out. Fair enough?
THE WITNESS: Yes.
MR. BARCH: You might hear the word objection at some point. That would come from one of the attorneys not asking you questions. If you hear the word objection, you should stop your answer or don't even begin one and then look to your attorney for direction as to how to proceed. Okay?
THE WITNESS: Yes.
MR. BARCH: This is not an endurance test. If you need to use the restroom, get a drink of coffee, whatever you need to do, just let us know. Okay?
THE WITNESS: Yes.

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EXAMINATION BY MR. BARCH:
Q. Could you please state your full name for the record?
A. Paul Dulberg.
Q. Middle name?
A. Raymond.
Q. Where do you reside?
A. 4606 Hayden Court.
Q. Did you say Hayden?
A. Hayden.
Q. How do you spell it?
A. H-a-y-d-e-n.
Q. And that's in McHenry?
A. Yes.
Q. The incident we're here to talk about did not take place on your property; is that true?
A. True.
Q. Where is 4606 Hayden Court in relation to 1016 West Elder?
A. They are in the same neighborhood.
Q. Are they adjacent properties?
A. No.
Q. Are we talking like houses away? Blocks away? Miles?

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A. Less than a minute and a half by car.
Q. Can you see the 1016 West Elder property from your property?
A. No.
Q. Okay. And what is your date of birth?
A. 3-19-70.
Q. And the incident that we're here to talk about, do you recall it happening on June 28, 2011?
A. I believe that's the date.
Q. How old were you then?
A. 41.
Q. Are you married, sir?
A. No.
Q. Have you ever been married?
A. No.
Q. Back in June of 2011 did anybody reside with you at the Hayden Court property?
A. Yes.
Q. Who?
A. My mother and a friend, Mike McArtor.
Q. Mom's name?
A. Barbara Dulberg.
Q. And the friend that was living there?
A. Mike McArtor.

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Q. How do you spell McArtor?
A. M-c-A-r-t-o-r.
Q. Does Mike still reside with you and your mom?
A. Yes.
Q. Tell me a little bit about your educational background. Did you finish high school?
A. Yes.
Q. Where?
A. Johnsburg.
Q. When did you finish?
A. 1988.
Q. Did you move on to college?
A. Some college.
Q. Tell me a little bit about that.
A. I took a few years. I never finished.
Q. Where did you enroll?
A. MacMurray College.
Q. Was that a community college or a four-year?
A. Private college down in Springfield, Illinois.
Q. You say you took a few years. Could you be more specific if you can? One? Two? Three?
A. Two.
Q. Did you acquire an associate's degree?
A. No.

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Q. What was your major?
A. I believe it was political science.
Q. And any particular reason you left?
A. I had to go home.
Q. What was the reason you had to go home? To care for your mom?
A. Family.
Q. What was that?
A. It was family.
Q. And you never went back?
A. No.
Q. Was that immediately after high school?
A. No.
Q. When was it in relation to high school?
A. It was about three years after high school.
Q. So early '90s?
A. Yes. You made me think about that.
Q. Besides the course work that you participated in at MacMurray College, have you had any other college courses at any other school local?
A. I remember once I took a course over here at MCC.
Q. What course was that?
A. I believe it was college algebra.
Q. Was it before or after MacMurray?

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A. Before.
Q. Since leaving MacMurray have you taken any additional college level course work?
A. No.
Q. Have you had any vocational training of any kind?
A. Yes.
Q. What is the nature of that?
A. Heidelberg Academy.
Q. What is that Heidelberg Academy?
A. It's to learn how to run printing presses.
Q. Where is Heidelberg Academy located?
A. When I took it, it was in – I don't know. It was down in the city, a suburb.
Q. Suburbs of Chicago?
A. Yes.
Q. Tell me about that course. Is that just – is that pretty short? Long? Is it intensive? What is it?
A. It's intensive, but it's short.
Q. When you say short, is it a day? A month? A year?
A. However long you want to pay to go until you're comfortable running.
Q. How long did you go?

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A. Two weeks. It was more of a certificate for me.
Q. Did you take the vocational training in operating printing presses for a particular employer?
A. Yes.
Q. Who was that?
A. Intermatic, Incorporated.
Q. Okay. And did you say you received a certificate of some sort?
A. Yes.
Q. How would you describe the certificate that you received?
A. I'm trying to picture it in my head. It's a form that says that I completed the work. I haven't looked at it in years.
Q. The training for a particular printing press?
A. Yes.
Q. And what was the name of the printing press?
A. It was an SM 74.
Q. All right. Besides the training certificate for the SM 74 have you had any additional vocational training of any sort?
A. Yes.
Q. And why don't you tell me about that.
A. I had several courses in graphic design.

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Q. Rocket design?
A. Graphic design.
Q. Okay. Where did you take those?
A. Various locations throughout the suburbs.
Q. Are we talking like one-week seminar-type programs, or is this a –
A. (Interrupting) Some were seminars. Some were personal where a company hired a teacher to come in and teach us the new aspects of the program.
Q. If I'm hearing what you're saying, you were trained on how to operate graphic design software?
A. Yes.
Q. Was that for a specific employer of any kind?
A. Intermatic, Incorporated.
Q. So the graphic design software training and also the printing program. What else? Anything else that brings to mind?
A. That's it.
Q. When did you have the – I guess strike that question. When were you employed at Intermatic?
A. I believe it was 1998 through 2008, 2009, somewhere in there. I don't remember the exact.
Q. Are you employed today?

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A. No.
Q. When was the last time you were employed, starting from today and working backwards?
A. May of 2011.
Q. So if I'm hearing what you just said, you have not had a job since this incident on June 28, 2011?
A. Correct.
Q. And where were you working? What was the job you had that ended in May of 2011?
A. It was for Juskie Printing.
Q. Juskie Printing?
A. Yes.
Q. How do you spell that?
A. J-u-s-k-i-e Printing.
Q. And that ended in May of 2011?
A. Yes.
Q. When did you start at Juskie?
A. Years earlier.
Q. Was it a transition directly from Intermatic to Juskie?
A. Not directly, no.
Q. So it would have been sometime after 2008 and 2009 when you started at Juskie?

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A. Yes.
Q. Was there any other employer in between those two companies?
A. **I had my -- I did a side business.**
Q. Tell me about the side business.
A. **Its name was Sharp Printing, Incorporated.**
Q. Sharp?
A. **Printing, Incorporated, or Inc.**
Q. Okay. When were you running Sharp Printing?
A. **Yes. I started that in 1999, and I ended it the year this happened.**
Q. So you ended it in 2011?
A. **Yes.**
Q. Did you end it before or after the incident on June 28, 2011?
A. **I ended it just before.**
Q. So I take it then you're not blaming the demise or the dissolution of the Sharp Printing, Inc. company on this occurrence?
A. **Correct.**
Q. Okay. And then was there a period of time where the Sharp Printing, Inc. business overlapped with your work at Juskie Printing?
A. **Yes.**

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Q. And as you sit here today can you get any closer in terms of your period of employment at Juskie other than sometime after 2008 or '9 and then May of 2011?
A. **I had -- it was a 1099, and I had done work for Mark prior to me leaving Intermatic and after. It was an ongoing-type thing.**
Q. Okay. So you weren't actually employed then by Juskie? You're not on their payroll, I take it?
A. **I was 1099. So, no, I guess not.**
Q. When you say 1099, are you saying that you were an independent contractor?
A. **Yes.**
Q. So you would do work for them, and they would pay you, and you would report the income based upon the gross payment?
A. **Correct.**
Q. And did you record that income then and report it through Sharp Printing?
A. **No. That was a self-employment.**
Q. Okay. The position you had at Intermatic, was that the 1099 position, or were you actually employed?
A. **It was 1099. After I left Intermatic.**

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Q. So prior to 1998 to 2008/2009, whenever you actually left, you were an employee?
A. **Yes.**
Q. And after that you still did work for them on an independent contract basis?
A. **Yes.**
Q. Okay. Now, the work that you did at Intermatic, what was the nature of your business, your work?
A. **When I was running the printing presses or when I was doing the graphic design?**
Q. Whatever you want to tell me about first.
A. **When I was running the printing presses, it's exactly what it is. I ran a printing press.**
Q. How long over that period of 1998 to roughly 2008/2009 were you running the printing press?
A. **Until I think it was 2003 or 2004.**
Q. And did you stop working the printing press position to take on some other role?
A. **I was a -- yes, in the office.**
Q. And what was that role you took on?
A. **Graphic designer.**
Q. And that could encompass a lot of things for a layperson. When you say you were a graphics designer for Intermatic, what kind of work were

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you doing for them?
A. **I did catalog design, package design, collateral, signage, brochures. Everything from business -- everything their company needed.**
Q. For Intermatic?
A. **Yes.**
Q. So you were in-house -- you were doing in-house graphics design work for Intermatic?
A. **Correct.**
Q. You weren't in commercial graphic design or anything where your sole business was to do that for other companies?
A. **No.**
Q. And did you take -- did you hold -- did you have a name for that position?
A. **Graphic designer.**
Q. Did you hold that position then with Intermatic until you left?
A. **Yes.**
Q. And the graphic design work that you did, was it all computer-assisted?
A. **It was all computer graphics.**
Q. Is it all mouse entry, or is it keyboard entry --
A. **(Interrupting) Mouse and keyboard, yes.**

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Q. – or a combination? And is that the software training that you would get from time to time –
A. (Interrupting) Yes.
Q. – that you mentioned earlier?
A. Yes.
Q. If there was a new program that came on or new version of the program, you would go get trained on it?
A. Yes.
Q. I don't want to oversimplify this, but is that what you're talking about?
A. Yes.
Q. And then there was a period of time where you were doing 1099 work for Intermatic and also for Juskie Printing?
A. Yes.
Q. Doing the same type of stuff?
A. Yes.
Q. When you worked at Juskie, was that also work for Juskie itself, or was it for customers of Juskie?
A. Juskie is a print broker, so it was for its customers. I worked for him, but . . .
Q. All right. And since June 28 of 2011 I take it you have not done any graphic design work

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whatsoever?
A. I have tried.
Q. When you say you have tried, what did you try?
A. I tried using a keyboard and a mouse.
Q. And when in relation to June 28, 2011 did you attempt to use a keyboard or mouse to do graphics design work?
A. I would say probably two or three months after that incident.
Q. Was that for Juskie?
A. No. —
Q. Who did you try and do work for?
A. I'm trying to remember his name. New person. Mike Thomas.
Q. What kind of business does Mike Thomas have?
A. I can't recall the name of the business right now but I can tell you the type of business. He did scratch-off game pieces.
Q. For like a lottery company or something?
A. Yes. But it wasn't lottery. It was where companies wanted to give away a TV to their employees, and they'd give them all scratch cards and see who won, stuff like that. Promotions.
Q. When you say you tried to do some work for Mike

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Thomas, what did you attempt to do?
A. I tried to do the graphic design for the scratch cards.
Q. Okay. And if you could elaborate on that more, are you actually coming up with a concept or a picture that is going to be printed on the card?
A. Yes.
Q. And were you given parameters as to what they wanted it to look like, and you were trying to draw it, replicate it?
A. I would get the parameters, what size they wanted me to do it, and it was my job to come up with the concept and the design. They had input on what they thought they wanted it to be.
Q. And, again, I'm not trying to oversimplify what you were doing, but I get the impression as a layperson you're trying to come up with a picture that would be on the computer screen that would then be a concept you could flow past the customer to see if it would work for the scratch game?
A. Correct.
Q. And that's the program you used to do that which requires a series of key entries and mouse

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clicks?
A. Key entry and mouse, yes.
Q. What was it about – two or three months after this incident what was it that you were unable to do?
A. Type. I could finger peck. I couldn't type anymore. Grabbing a mouse isn't exactly working either.
Q. Okay. And so you were only able to finger peck after this? That was one impairment or impediment to the job, correct?
A. Yes.
Q. And then you said something about the mouse. What is it about the mouse that is the problem?
A. Grabbing it.
Q. All right. So you tried that two to three months after the incident, correct?
A. (Indicates affirmatively.)
Q. What is it exactly – which hand are you complaining about, by the way?
A. My right hand.
Q. Right hand. And what is it about the right hand that impedes your ability to type with it?
A. It doesn't work right. It hurts.

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Q. And you're saying it doesn't work right and it hurts. Is that the same problem that affects your ability to use a mouse?
A. Yes.
Q. Is your left hand problematic in any way?
A. It is, yes.
Q. What is wrong with your left hand?
A. They call it tennis elbow or something.
Q. Okay. What have you been told this tennis elbow is?
A. He said it's something about a tear in the muscle or ligament or something.
Q. And which part of your arm?
A. Elbow.
Q. And are you connecting that to the events of June 28, 2011?
A. They said that it is the natural -- what is the word he used -- the doctor used? He said it's perfectly natural that because of having to use my left arm for everything, that it's overused.
Q. When did you begin having problems with your left arm?
A. About two months ago. It got real acute about two months ago. I was having little issues

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building up to it, but then it got real acute.
Q. When you say "acute," it became real problematic?
A. Strong, yes.
Q. What kind of symptoms did you get with the left hand two months ago? What flared up exactly?
A. That side of my elbow (indicating), the outside (indicating).
Q. Just for the record, you held your left arm across your body and pointed to the outside part of your elbow?
A. Yes.
Q. Is that a fair description?
A. Yes.
Q. And was it painful?
A. Yes.
Q. Do you still have the range of motion? It's just painful?
A. It's the range of motion that hurts when you extend it out or pull it all the way in like you're going to eat.
Q. So it's painful as you're going through range of motion?
A. The center range is fine. It's the extensor all the way out and all the way in.

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Q. When you try to extend your arm straight out, it hurts?
A. Yes.
Q. And when you try and pull it in as far as it will go, it hurts?
A. Yes. In between it's pretty good.
Q. You have seen some doctors concerning your left elbow?
A. Yes.
Q. Who have you seen on the left elbow?
A. Dr. Sagerman.
Q. Where is Dr. Sagerman located?
A. He has two offices; one in Vernon Hills and the other in -- it's down near Northwest Community. I don't know the name of the town.
Q. What is Dr. Sagerman's first name?
A. Scott.
Q. And have you seen anybody else for the left elbow tennis elbow problem you have just explained to us?
A. No.
Q. What kind of treatment have you had on the left elbow?
A. I just started physical therapy.

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Q. All right. You have seen a doctor concerning the left elbow then. Have you ever heard the doctor use the word extension?
A. He uses words I don't understand all the time.
Q. Flexion? Have you ever heard the word flexion?
A. He may have.
Q. But that doesn't register for you, though, what those mean?
A. No. I showed him where it was. He knew right away. He just -- that's . . .
Q. So far you have talked about --
A. (Interrupting) He ran a couple of tests. He said, "This is what you have."
MS. FREEMAN: Wait for the question.
Q. You talked about you extending your arm and pulling it back toward you. That hurts at the extreme ends, correct?
A. Yes.
Q. What about turning the wrist palm up and palm down? Does that hurt in the elbow area?
A. In the extended, yes.
Q. And which position makes the elbow hurt? Is it palm up or palm down or both?
A. Palm down, fingers up.

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Q. Have you heard the phrase supination, pronation?
A. Those words I don't know.
Q. Okay. So other than with your arm straight out at full extension and palm down, that is when you describe it hurts, correct?
A. Fingers up (indicating).
Q. So you have to -- you're closing your hand?
A. Fingers up (indicating).
Q. So the wrist is pointed up as well?
A. Yes.
Q. All right. So you have got your arm out at full extension and your wrist tilted with your fingers reaching upward?
A. That hurts.
Q. That hurts?
A. Yes.
Q. And can you think of any other part of the range of motion of the elbow or I guess in combination with the hand that causes pain?
A. There are so many things that happen that I do that sets it off. Just from putting on your jacket to all sorts of -- I mean, grab a coffee cup and bend the wrist the wrong way when you turn it. I can't explain.

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Q. Okay. What are you wearing on your left wrist today?
A. They gave me a splint to wear.
Q. And is it something that it's hard plastic where you can't move your wrist, or is it a band of some sort?
A. It's got a metal plate in here. I think it's metal -- metal, plastic.
Q. The metal or plastic plate goes from the palm to the wrist?
A. Yes. It holds the wrist up at an angle.
Q. Does it prevent you from putting your wrist down?
A. Down or up.
Q. Or up. Has anybody talked to you about carpal tunnel syndrome?
A. They said that it's -- that this is like that. The tendons are torn or something. I don't know.
Q. Okay. And how soon after June 28, 2011 was it before you started noticing symptoms with your left arm? Because this is the first notice -- I haven't seen it in any of the records I have received.
A. It started bothering me this past fall, and I didn't really -- I didn't even think about it

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until -- I mean, it bothered me, but I said something to Dr. Sagerman two visits ago and/or -- sorry -- yes, I think it was two visits ago, and he ran me through range of motion tests and did some stuff, and he said this is perfectly natural. It can be treated. This is what, you know, it is.
Q. When you say last fall, we're talking about the fall of 2012?
A. Yes.
Q. Other than the physical therapy, have you had any injections in the elbow?
A. No.
Q. On the right arm you went and had an EMG study where they check the nerves that go through your arm?
A. Yes, they did some tests.
Q. Did they do the EMG test on the left arm as well?
A. No. -- Does Freeman + Hardy D.A.
Q. What test do you recall them doing on the left arm other than just taking it through range of motion and touching it and doing things of that nature?
A. That was it. It's new, so we're going to hope

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physical therapy does it, you know.
Q. And so based upon what he saw, this Dr. Sagerman then, so far he's put you on physical therapy?
A. Yes.
Q. Are you on any medications for the left elbow --
A. (Interrupting) No.
MS. FREEMAN: Paul, I just want to remind you to wait until he gets his question out, okay, and then just listen to the question. Okay?
Q. So that is where we're at now with respect to the left elbow? It's been diagnosed as tennis elbow, as far as you recall, and is being treated with physical therapy?
A. Yes.
Q. And has the doctor given you a prognosis in terms of when that may go away, if at all?
A. He said it takes time.
Q. That is all you can tell me right now is it takes time?
A. I think he is hoping to see the -- I can't say what he's hoping to see. I don't know.
Q. Okay. I want to go back to the attempts two to three months after the event when you tried to do

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some graphics design work. The left elbow wasn't a problem at that time --

A. (Interrupting) No.

Q. -- correct? So it was the right arm that would have been a problem?

A. Yes.

Q. And what was it about the right arm that you were unable to do the graphics design work?

A. What was it?

Q. Yes.

A. I think it was the fact that a chain saw went through the muscle group.

Q. Well, I'm not trying to be a smart aleck. I'm asking symptomwise what was it about your right arm that prevented you from doing graphics design work two to three months after the event?

A. It hurt.

Q. What part of your arm hurt, starting with your fingertip up to your shoulder?

A. These two fingers (indicating) through to the elbow.

Q. All right. For the record, you have pointed to -- we call it the pinky finger?

A. Yes.

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Q. And then what some people may refer to as a ring finger?

A. Yes.

Q. And the middle finger, index or the pointer, and the thumb were not painful?

A. The thumb hurts when I pull it in.

Q. Is this how it was back two to three months after the event? That is the period we're talking about now.

A. It was on fire back then.

Q. The pinky, the ring finger and the thumb?

A. Yes.

Q. Painful and on fire?

A. Yes.

Q. All right. Now, you also said that the pain went up your arm to your elbow?

A. Yes.

Q. And which part of your arm? Like the underside? The top? Which part?

A. Next to the bone on this side (indicating).

Q. Okay. So no question it was painful in those fingers, the two fingers you described, and the thumb, and also running down the forearm -- the underside of the forearm to the elbow?

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A. Yes.

Q. That was painful, correct?

A. Yes.

Q. And you say it was on fire. Is that the way you described the pain, or was there some other symptom?

A. It was a burning sensation. Along with tingles, along with cold.

Q. So cold bothered it?

A. Cold bothers it immensely.

Q. You had tingles and a burning sensation?

A. Yes.

Q. Anything else you can think of in the fingers you have talked about and the forearm?

A. The forearm I have -- it's not the same thing. It is not the same -- I don't know. The muscles hurt when I try to type or try to grab things.

Q. Okay. So with respect to the typing then, moving the fingers and thumb, did that enhance or increase the burning, tingling and pain?

A. Yes.

Q. In the fingers and thumb and the arm? Or just all those areas?

A. It was from here to here (indicating).

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Q. And then you say when you grab things, too?

A. Yes.

Q. You grab and try to pick things up?

A. Yes.

Q. That would also exacerbate these complaints you talked about; the burning, tingling and --

A. (Interrupting) Yes.

Q. Other activities -- any activity involving grabbing or using the fingers would create problems then?

A. Yes. I don't even know where to begin on that list.

Q. All right. And certainly using the keyboard or grabbing the mouse, those are two activities that you described are part and parcel of the graphics design work?

A. Yes.

Q. And those two activities would create, if I'm understanding your testimony, the pain?

A. Yes.

Q. What about if your right arm was just resting and your hand was resting? Was it painful at rest?

A. Yes.

Q. Was it tingling at rest?

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A. **Yes.**
Q. Was it burning at rest?
A. **At times.**
Q. All right. So that was two to three months after the event, correct, when you tried the graphics design work?
A. **Yes.**
Q. Yes?
A. **Yes.**
Q. Have you tried it again since then?
A. **I have a computer at home and once in a while I sit down and try to do some stuff. I can't get in more than ten minutes.**
Q. Okay. So if I'm hearing your testimony then, since this happened you have not been able to utilize your right arm and hand for computer work for more than ten minutes?
A. **Correct.**
Q. You have not been able to -- after ten minutes you're no longer able to bear the symptoms then that arise?
A. **It starts ramping up, and I have to quit.**
Q. Have you applied for disability?
A. **Yes.**

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Q. Did you get it?
A. **I am in the application process.**
Q. When did you first apply?
A. **I think it was January of last year, so about a year ago.**
Q. Where does the process stand? Did you apply and get rejected, or are you appealing?
A. **The first thing I was told, they rejected the first, and now I'm in -- they call it an appeal process I think.**
Q. What was the nature of the rejection, if you recall?
A. **They recognize that I was severely impaired but not disabled. That's what the letter said.**
Q. Okay. All right. Since then, June 28 of 2011, you have not -- I know there was a job that you referenced in your Interrogatory answers that you had applied for and received an offer of employment?
A. **I was working for Mike -- you're referring to Mike Thomas?**
Q. No. AMS Screw or something?
A. **I was due to start AMS Screw prior to the incident. I was due to start it the week after**

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the incident.
Q. What were you going to do there, as you recall?
A. **I was going to do material handling part-time.**
Q. What does material handling mean to you?
A. **Moving material.**
Q. What kind of material?
A. **Steel.**
Q. Were you going to use -- were you going to use your hands to lift it or operate a forklift? What?
A. **Well, from what I understood, the job was you take -- they make screws, so you take these little things of screws, you put them into bigger buckets. You take the bigger buckets, put it on a rack, and then roll the rack down to where they wash them or something.**
Q. You understood it then that the machine was going to be pouring all the screws into a bucket, the screws that are being made?
A. **It dumps them into this -- they showed it to me. It dumps it into a stringer thing.**
Q. So they were going to -- you were going to be at a machine that was dumping screws into a small holding device of some sort, and you were going

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to put that into a larger bin?
A. **Yes.**
Q. Which was on some kind of a movable cart?
A. **Then from there you had to put it on the movable cart.**
Q. So you were going to -- the screws were going to pour into some smaller container, you were going to pick that up, dump it into a larger one, fill that up and then put that onto a cart?
A. **Yes.**
Q. What was going to be the weight of those?
A. **I was told approximately 70 pounds.**
Q. 70 pounds for the bigger one that you would be moving to the cart?
A. **Yes.**
Q. What leads you to believe you actually had a position other than applying for it?
A. **They told me to start that following Monday.**
Q. Was this all oral?
A. **No -- well, yes. They already had me on the books. I had done work for them in the past.**
Q. When did you do that?
A. **The year earlier.**
Q. So that was something in addition to the 1099

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work you were doing?
A. That -- yes, yes.
Q. All right.
A. I forgot all about that.
Q. Tell me --
A. (Interrupting) Yes.
Q. -- when did you start doing this work, the material handling work for AMS Screw?
A. 2009 or 2010, somewhere in there. I'm not sure exactly when.
Q. Was it just a part-time deal?
A. It was. I was hoping it would lead to something more stable, yes.
Q. Was it on a temp basis directly through AMS Screw or through an agency of some sort?
A. It was directly through them.
Q. And how would you know when to come in and when not to come in when you were doing the temp work?
A. The supervisor would call me and say, "We have a spot for you. You want to come in?"
Q. And it was just -- those were temporary stints?
A. They were. And he was working with me to try to make it full-time, so I was doing all of these part-time hoping to get the full-time.

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Q. And the work you were doing, the part-time work while you were waiting for hopefully full-time work, was it the same job you were telling us about a minute ago?
A. Yes.
Q. The one where you'd take the screws, pour them into the bigger container and move them onto a cart?
A. Yes.
Q. And then you were going to start you say the following Monday after this happened?
A. I believe it was the following -- it was the following week. It was -- it was right before the Fourth, so I don't remember. I would have to look at a calendar.
Q. So relatively soon after this happened it was your expectation you were going to begin employment with AMS?
A. Yes.
Q. Was it going to be more than just one of these part-time stints that you were talking about?
A. It was scheduled to be either a week or two weeks. I don't remember. And Joe, the guy who runs it, said he is going to try to get me in

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there by fall full-time. But whether that ever flew or not, I -- it never happened.
Q. Okay. Prior to this happening you would get calls from your supervisor saying "Look, we have some part-time work for you"?
A. Well, what would happen -- I can kind of explain this. What would happen is I would call Joe. He's the guy that runs it.
Q. What is Joe's last name?
A. Groves.
Q. Groves?
A. Groves, G-r-o-v-e-s. And I would say, "I have a couple of weeks open. Do you have anything?"
Q. Okay.
A. And then he would keep that in mind and then get back to me when he did.
Q. So Joe Groves knew that you were available? If circumstances on his end warranted it, he would just call you?
A. I wasn't available all the time.
Q. Right. He would call you. If you were available, you would go in?
A. Yes.
Q. And that happened how often prior to June 28 of

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2011?
A. I think twice. I don't remember exactly. I think twice.
Q. Okay. And then the situation, whether it was going to be the next day or within a week after this occurrence, you were planning to go participate in one of these temporary stints after this event, correct?
A. Yes.
Q. Do you believe that the stint that was planned after the event was any more or was different in any way than the prior stints?
A. No.
Q. If you understand the question.
A. No.
Q. It was the same?
A. Yes.
Q. It was your hope that the more you did these temporary stints, the more likely you would have a chance to get full-time employment?
A. Yes.
Q. Would you agree that as of June 28, 2011, though, you had not had a promise of full-time employment?

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A. **I had no promise of full-time employment.**
Q. Have you tried to go back at any time since June 28 of 2011 to I guess fill one of these temporary stints that you have done in the past?
A. **No. They called.**
Q. When you say "they," Joe called?
A. **Yes.**
Q. So Joe Groves called when in relation to June 28, 2011?
A. **A few months after.**
Q. And what happened on that event where he called to see if you were interested?
A. **Yes.**
Q. What happened?
A. **He knew what had happened. He said, "Do you think you can do it?" And I said, "I don't think so."**
Q. Is that the only time there was an exchange over possibly taking another temporary stint?
A. **He actually came out to my home. He knewwhere I lived, and he came out to my home, and he knew right away I couldn't do what they were asking to be done.**
Q. So you have tried going back to the graphics

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design work?
A. **Yes.**
Q. And that's too painful to do because of the keyboard entry and the mouse function?
A. **Yes.**
Q. And then you kind of self -- you made a decision on your own, given your situation, it was unlikely that you could do the work for AMS Group; is that right?
A. **Oh, I knew I couldn't do it.**
Q. Right. You decided that?
A. **I don't think I decided it. I think my body decided it.**
Q. Okay. So your body was telling you that you couldn't do that job?
A. **I couldn't pick up those buckets, no.**
Q. Other than those two potential avenues of employment or income, have you undertaken any other effort to find a job?
A. **Yes. I went on several different interviews.**
Q. For what kind of jobs?
A. **Graphic design.**
Q. I thought you said you can't do that.
A. **When you got bills, you try.**

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Q. Okay. So you went for some interviews for a couple of graphics design positions?
A. **Yes.**
Q. To do similar things to what you were doing before?
A. **Yes.**
Q. And did you get either one of those jobs?
A. **No.**
Q. Why is it, if you know?
A. **I'm not sure.**
Q. Did they have you sit down at a computer terminal and try and generate any work?
A. **Yes.**
Q. And were you able to do it?
A. **They saw the shaking of the hands and whatnot. Basically said "We can't use you."**
Q. Where were these two companies that you sat for and attempted to do graphics design or at least illustrate your abilities?
A. **One of them was on the northwest side of the city. I only went in there once.**
Q. The name of it?
A. **I'm trying to remember. I can go back through my e-mails and find the name where they contacted me**

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through. I don't know it offhand. They were kind -- they told me that they found somebody more compatible.
Q. So there was one company, and you said it was on the northwest side of the city, meaning Chicago?
A. **It's the suburbs.**
Q. Okay. Northwest suburbs. And you would try, if we asked your attorney, to locate the name of that company?
A. **I can try if I still have the contact.**
Q. And you said there was a second one as well. Where was that?
A. **I'm pulling a blank.**
Q. There was one, but you're drawing a blank on it?
A. **Yes.**
Q. Is it possible that your computer database at home would have some information that might refresh your memory?
A. **It may. I haven't used that computer in so long anymore, I don't even know if it will boot up. But, yes, it may.**
Q. And at least one of these companies you went to you had to sit down and illustrate your graphic design abilities?

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A. **Yes.**
Q. Did you have to do that at both or just the one, if you recall?
A. **Just one.**
Q. All right. For the graphics design positions, you have at least tried to get two others since then, right?
A. **Yes.**
Q. Were you going to be doing 1099 work for them or actually be employed by those two companies?
A. **I was trying to be employed.**
Q. And then besides these two attempts at graphics design positions, any other attempts of employment since June 28, 2011?
A. **No.**
Q. Do you remember signing Interrogatory answers saying that you would be making a claim for lost earnings?
A. **I don't know what you mean by Interrogatory answer.**
Q. There is some written questions that we sent to your attorney to have you answer. And I don't want to get into what you and either your attorney here or Mr. Mast may have talked

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about --
A. **(Interrupting) I remember he asked me some stuff.**
Q. Take a look at the last page – nope, not the last page. It will be the fourth from the back. Is that your signature?
A. **Yes.**
Q. I should say for the record I tendered to you Exhibit No. 1. That is your signature on the fourth-to-the-last page?
A. **Yes.**
Q. Question No. 6 asked about whether you would be claiming any lost income as a result of the injuries, including wages and salaries, and then there is this listing of AMS Screw Products. Do you see that?
A. **Yes.**
Q. And Joe Groves, that's the guy you mentioned that would call you from time to time?
A. **Yes.**
Q. Is that the hourly rate you would get for your temporary work?
A. **Yes.**
Q. And then when we talk about being hired but not able to pursue employment due to the accident,

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you were unable to do that temporary stint that you had lined up?
A. **Right.**
Q. How many days or weeks was that planned for when you were working?
A. **I don't remember, but it was one or two. I know that.**
Q. One or two days or weeks?
A. **Weeks.**
Q. All right. So if it was a 40-hour week, it would be 40 times the $10 hourly rate?
A. **Yes.**
Q. And if it was the two weeks, it would be that 80 hours at ten bucks an hour?
A. **Yes.**
Q. Past that have you made any other calculations on your end I guess pursuant to what you believe you have lost in the form of income?
A. **The biggest loss I suffered was not being able to renew with Juskie later on.**
Q. Renew in what sense -- so, first of all, with respect to AMR, other than that one to two-week stint, from your vantage point are you claiming that you have lost more income that you could

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have received through AMS Screw?
A. **With Juskie Printing the contract that he had was up in May prior to this incident. That is why I was looking for other work to fill, pending Juskie getting a new contract with his customer, okay, which would have extended my work there as well.**
Q. Okay. So your hope at the time this happened was not to go full-time with AMS Screw? You were hoping that Juskie renewed their contract so you could continue 1099 work?
A. **I was hoping to get work anywhere I could get it.**
Q. Well, I know that turned out to be the case; but heading into this event on June 28, 2011, was it your hope that you would be able to do the 1099 work for Juskie or leave that --
A. **(Interrupting) It was my hope I could do both.**
Q. All right. So your hope was to continue to do 1099 work for Juskie, and also as needed, fill in at AMR, potentially get a full-time job?
A. **AMS.**
Q. AMS. Let me start the question over then. So heading into this event that happened on June 28, 2011, were you not actively doing work for Juskie

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because their contract had ended?
A. Yes.
Q. And you were doing temporary work periodically for AMS?
A. Yes.
Q. And that was on an as-needed basis when Joe Groves called?
A. Yes.
Q. That was your hope moving forward, that there would be a new contract for Juskie and that you could do some 1099 work, correct?
A. Yes.
Q. And then also as-needed fill in at AMS?
A. Yes.
Q. And hopefully get a full-time job at AMS if that ever arose?
A. Yes.
Q. And when you were doing 1099 work for Juskie, what did that mean to you in terms of gross receipts?
A. I can tell you what I made that year from him in five months. You can do the math from there.
Q. Okay. Well, what did you make?
A. It was 18,000.

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Q. The first five months of 2011 you made 18,000 as a 1099 worker for them?
A. Yes.
Q. And you would have to take all of your expenses out of that?
A. Yes.
Q. And then at AMS do you have a recall what you may have made at AMS during that first --
A. (Interrupting) Not much more than that, the $10 an hour. They didn't pay.
Q. And there was two or three stints where you worked for them, as you recall?
A. Yes.
Q. And those might have been a week or two each?
A. Right.
Q. All right. And do you know, did Juskie get that contract?
A. Yes, he did.
Q. Who was your contact person at Juskie?
A. Mark.
Q. What is his last name?
A. I know his last name, and I'm drawing a blank. I know his last name well.
Q. Maybe it will come to you later. Tell me if it

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does. How did you learn that Juskie actually got the contract that may have been able to provide you with more 1099 work?
A. He told me.
Q. Mark did?
A. Yes.
Q. Did he call afterwards and say, "Hey, we're ready for you"?
A. Yes.
Q. And you had to tell him you couldn't do the work?
A. I couldn't do anything at that point.
Q. Is that when you tried -- you said two to three months afterwards you tried to do the work and you couldn't?
A. Mark called not long after the incident, within a month, and I couldn't do anything at that point. You didn't see me come out of my house.
Q. So he called within a month of this thing happening and you told him there is no way you can do it?
A. Yes.
Q. Did he ever revisit the possibility of doing work for Juskie with you?
A. I have known Mark for a lot of years. We talk on

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and off about various things.
Q. Does that mean he did or he did not? I don't know.
A. Yes. He's probed. He knows it's done.
Q. So periodically he will inquire about it, and each time you have told him no, I take it?
A. (Indicates affirmatively.)
Q. Is that a yes?
A. Yes.
Q. Juskie -- what is the full name of that company?
A. Juskie Printing, Inc.
Q. Where is it located?
A. The last, it was down on Chicago Avenue out near -- I used to take -- I know how to get there. I don't know the town it's in. I used to take 355 down, get off in --
Q. (Interrupting) Do you have a phone number for Juskie?
A. I have it at home.
Q. Okay. So other sources of income that you had before the incident besides Juskie that we have talked about and then AMS? Were there any others that stick out in your mind?
A. That was it.

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Q. And you have not had any income from either of those two sources --
A. (Interrupting) The only other place I was getting income prior to that was Intermatic when they needed work, and that was -- that was less than Juskie.
Q. Did you get any work from Intermatic in the five to six months in 2011 that preceded this event?
A. (Indicates negatively.)
Q. I take it then you haven't done any projections of lost income?
A. No.
Q. Have you ever been in the union?
A. No.
Q. Ever been in the military?
A. Yes.
Q. Which branch?
A. Army National Guard.
Q. Were you active service Army or just National Guard? I'm not diminishing it, but I'm trying to distinguish those two.
A. Two weeks out of the year you're active service. The rest of the time you're National Guard.
Q. Okay. And so what period of time were you Army

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National Guard?
A. Oh, from the time I was 18 or 19 until the time I was 22 or 23. Somewhere in there.
Q. Did I ask you -- have you ever been married?
A. Yes, I think so.
Q. Have you?
A. No.
Q. All right. I'm going be -- I'm going to shift over to the event that is the subject of the lawsuit. Where did this happen?
A. At Caroline McGuire and Bill McGuire's house.
Q. That is listed in the Complaint as 1016 West Elder?
A. That sounds like it.
Q. Did you know the McGuires prior to this happening?
A. Yes.
Q. How is it that you knew the McGuires?
A. Grew up in that neighborhood.
Q. There is another fellow that is named in the lawsuit, Dave Gagnon?
A. Yes.
Q. Is he connected to the McGuires, if you know?
A. Yes.

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Q. What is the connection?
A. He is Caroline's son.
Q. Are you and David grade school buddies? Middle school buddies?
A. High school.
Q. At Johnsburg?
A. Yes.
Q. Were you and he like close socially in high school?
A. More right after high school.
Q. How was it that the two of you became connected more so after high school? You knew who he was in high school, I take it?
A. I think we knew all the same people.
Q. So there was a common group of acquaintances through high school?
A. Yes.
Q. And then describe the relationship as it evolved. I mean, did you see each other socially? Recreationally? I mean how?
A. It was we would do dumb things together, you know. Socially, recreationally.
Q. You ever work together?
A. On the job?

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Q. Anywhere.
A. Like as employment, no.
Q. Okay. What kind of social or recreational activities would you participate in from time to time with him? Bowling leagues? Golf leagues?
A. Did a bowling league together. He was into restoring cars, and he did it in his mom's garage, and everybody kind of kicked in a hand to help him.
Q. Okay. Is he married, if you know?
A. He is.
Q. Did you go to their wedding?
A. Yes, I did.
Q. Do you know if he has any children?
A. No children -- oh, wait. He might have -- I don't know. That's . . .
Q. Did he have any back in June of 2011, if you know?
A. He may have. I'm not sure.
Q. I take it you're not like a godfather or anything to his child?
A. No.
Q. I mean, I can keep asking more and more questions that come into my mind about how you might have

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-- or what your relationship with Gagnon may have been before this. I was hoping to hear from you how you describe it.

A. Well, it was just friends hanging out after years of high school.

Q. How often would you see him then I guess on a monthly basis?

A. Recently or --

Q. (Interrupting) Before this happened.

A. How long before this happened?

Q. Let's go with the first two years immediately preceding this incident. How often would you see him?

A. Oh, not that often. Once or twice a year maybe.

Q. Okay. Was there a higher frequency immediately after high school?

A. Oh, yes.

Q. Apparently it waned over time?

A. Yes.

Q. So in the two years or so before this happened, June 28, 2011, you would only see him once or twice a year?

A. Maybe three or four. A few times a year. I mean, I'm not sure of the exact number.

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Q. Okay. And this is an estimate, correct?

A. Yes.

Q. And would this just be in passing, or was it set plans to see him?

A. For -- well, for some reason or another he would want to see Mike, who was living with me, or another friend of ours, and he would say, "I'm going over here. I'll meet you there," you know, and we would run into each other, you know.

Q. So it would be the contact you had with him then in recent years prior to the event was more just happenstance, overlapping of friends and acquaintances?

A. Yeah. Well, if he needed help or I needed help, you know, I think that that was a given.

Q. Okay. I asked you if you ever worked together. You guys never worked for a company or an employer where you were both on payroll there together, correct?

A. Correct.

Q. Now, obviously there is this incident on June 28 of 2011 where you were with him, correct?

A. I was on the property, yes.

Q. And then you mentioned that you guys would help each other from time to time as needed?

A. Yes.

Q. Okay. What kind of stuff do you recall over the years helping David with or him helping you with?

A. I remember pulling his car out of the ditch when it snowed and he called me. I remember approximately ten years earlier him helping me fix my roof after a storm. Earlier than that I helped him numerous amounts of time with sanding body parts to a car when we were in our 20s.

Q. Okay. What about -- obviously we're going to need to talk about chain saw usage prior to June 28, 2011. Had you ever been anywhere with David Gagnon where a chain saw was involved?

A. Yes.

Q. Okay. Where was that?

A. It was on Carol's property.

Q. All right. Anywhere else besides Caroline McGuire's property?

A. I'm not sure. I don't think so.

Q. Put Mr. Gagnon aside. Have you ever used a chain saw --

A. (Interrupting) Yes.

Q. -- personally?

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A. Yes.

Q. Prior to this day, June 28, 2011?

A. Yes.

Q. How many times do you think you might have been on Caroline McGuire's property prior to June 28, 2011 where you were engaged in any activity involving a chain saw?

A. I vividly remember once.

Q. One other time?

A. Yes.

Q. And how and when in relation to June 28 of 2011 was that?

A. A few weeks prior.

Q. Okay. And other than that one that you actually recall and then June 28, 2011, that is the extent as you sit here today you can recall?

A. Yes.

Q. Did you ever work with a chain saw in combination with David Gagnon on any other person's property?

A. Not that I remember.

Q. Before June 28 of 2011 did you personally have an appreciation for any risks that might be presented by a chain saw?

A. Say that again.

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Q. Sure. I want to know if you had -- heading into June 28 of 2011 if you had any understanding as to any hazards that might be associated with chain saw use.
A. Yes. It's dangerous.
Q. What is dangerous? What was dangerous about it from your vantage point?
A. A chain saw is dangerous, period.
Q. Okay. I mean, if it's just sitting there not running, is it dangerous?
A. I'm not sure what you mean.
Q. Okay. You mentioned that you had used chain saws before?
A. Yes.
Q. And you have used them without David Gagnon being present?
A. Yes.
Q. Can you give me any estimate as to how many times you might have used a chain saw prior to June 28, 2011?
A. Myself?
Q. Yes.
A. Hundreds. Maybe not hundreds, but enough where I can't count.

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Q. All right. And during those periods where you were using a chain saw, you formed the view that chain saws can be dangerous?
A. Very.
Q. And what type of dangers did the chain saw present from your experience using it?
A. It cuts through things very rapidly.
Q. So the operator could be cut?
A. Yes.
Q. And you knew that before June 28 of 2011, correct?
A. Yes.
Q. Did you ever use a chain saw in tandem with anybody else helping you prior to June 28, 2011?
A. Yes.
Q. This fellow that lives with you and your mom, what is his name again?
A. Mike.
Q. Mike. What is his last name?
A. McArtor.
Q. Did Mr. McArtor ever assist you while using a chain saw?
A. Yes.
Q. I mean, is that multiple times in the past you

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and Mr. McArtor may have been involved in projects where a chain saw was used?
A. Yes.
Q. And in those situations would you be the operator, or would you be the helper?
A. I would be the helper. WRONG - M's understood I would be the operator
Q. Did you ever have a situation where he was helping you and you were operating a chain saw then?
A. Where Mike McArtor was helping me and I was operating it?
Q. Yes. Correct.
A. Yes.
Q. Are you able to count how many times that occurred?
A. I'm not sure, but it's more than a few.
Q. On those few -- well, were there other people from time to time that helped you as well while you were using a chain saw?
A. Yes.
Q. And on those occasions where it was somebody else or maybe it was Mr. McArtor, did you form any opinions about the potential hazards or risks to the people that were helping you that a chain saw

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might present?
A. Yes.
Q. What kinds of risks are those to the other people?
A. Keep them as far away from it as possible.
Q. And the risk to the helper is also --
A. (Interrupting) If they are too close, yes.
Q. -- being cut --
A. (Interrupting) Yes.
Q. And at any point in your lifetime prior to June 28 of 2011 had you ever been trained by somebody who was a skilled chain saw operator?
A. No.
Q. Had you ever had a job where your primary purpose was to use a chain saw?
A. No.
Q. All your experience with a chain saw, would you agree, would be just personal use and experience?
A. Just backyard trimming down limbs.
Q. Kind of on-the-job training?
A. Just my house.
Q. Do you recall ever sitting down any time prior to June 28, 2011 on those occasions where you were using a chain saw and reading an operator's

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manual?
A. Oh, yes.
Q. You have read an operator's manual for a chain saw?
A. When I was younger, yes.
Q. We're going back to like immediately after high school?
A. We're going back to eighth grade.
Q. Eighth grade?
A. Yes.
Q. So this was going back when you first started using a chain saw?
A. Yes.
Q. When you first started using a chain saw, did you take it upon yourself to read the manual and begin using, or did some adult help you with that process?
A. Somebody helped me.
Q. Who was it? Your dad?
A. Yes.
Q. Is he still alive?
A. No.
Q. And I know this is going back a ways. What do you recall your father telling you about chain

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saw operation when he first taught you how to do it?
A. Same thing he told me about all power tools.
Q. What was that?
A. Handle them with extreme care.
Q. So you should handle any power tool with extreme care?
A. Yes.
Q. Do you recall any specific instructions or admonitions about chain saw usage?
A. He taught me the maintenance. He taught me how to use it, how to -- what side of the blade to cut with, things like that, yes.
Q. So he demonstrated it for you?
A. Yes.
Q. Besides the risks, are you -- strike that question. Are you aware of any other known risks associated with a chain saw other than cutting from the chain?
A. No.
Q. And I'm not -- I'm not even saying there are any. I'm just asking you what other risks that you're aware of that might be associated with a chain saw other than the actual blade injuries to a

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user or helper.
A. Heat.
Q. Heat?
A. Yes.
Q. Anything else you can think of?
A. Fragments. The wood chips, you know.
Q. The saw dust and debris that might fly off --
A. (Interrupting) Yes.
Q. -- during cutting?
A. Yes.
Q. Okay. Anything else that brings to mind?
A. I'm trying to think back of -- way back when he taught me that.
Q. If something comes up, let me know. Have you heard the phrase of binding or blade bind?
A. I know what binding is, yes.
Q. What does it mean to you?
A. It means the blade bound. It froze up. It may have overheated, you know. Lack of lubrication, something along those lines. There are many things that could happen.
Q. Blade binding to you then is something where the blade just stops, the motion of the blade stops?
A. No.

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Q. Okay. You said it has something to do with overheating or lack of lube?
A. Well, you can bind anything, any power tool, when you're cutting something either by bending it. I would guess I have -- I had a blade bind once on me.
Q. A chain saw blade?
A. Yes.
Q. And what happened?
A. It bent the bar that the chain rides on.
Q. Okay. All right. So I need to get a little more detail about what you understand binding or blade bind might be. It can happen, you said, if the blade overheats?
A. Yes.
Q. If I understand, the chain just goes around on that blade, correct?
A. Yes.
Q. There is a long metal blade that comes out from the power portion of the chain saw, right?
A. Correct.
Q. And there is a groove where the chain goes around in a circular fashion?
A. Yes.

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Q. And the motor propels that blade? That's a simple description of it, but that is how it works?
A. Yes.
Q. And when we talk about binding, are you talking about the blade getting bent?
A. That is the way that I have had it bind.
Q. So if the blade that has the groove that the chain operates on, if that bends, the chain wouldn't move?
A. Correct.
Q. Or if part of it needs to be lubed, to get a good free flow of that chain, the chain needs some lubricant as it glides around on that blade, correct?
A. Yes.
Q. And if there is no lubricant, that can affect the ability of the blade to -- I'm sorry -- the chain to spin on that blade?
A. Yes.
Q. And if there is inadequate lubricant, then the blade can actually heat up?
A. Yes.
Q. And at that point can the motion of the chain

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just stop because it's overheated?
A. Yes.
Q. Have you ever heard the phrase binding or blade bind used in connection with an actual cutting operation?
A. Yes.
Q. As the cut is occurring, the pressure of the log or tree that is being cut can pinch against that blade?
A. I can see that happening, yes.
Q. Are you aware of that? Is that a risk that you know of or knew of before June 28, 2011?
A. Yes.
Q. Have you ever heard of a kickback?
A. Yes.
Q. What is a kickback, as you understand it?
A. It's usually when something other than what you're intending to cut is in the way, and like you actually hit a second log, okay, and it will kick back because you're trying to cut through two different items. That's my understanding of it. I may not be technically right, but . . .
Q. Okay. Are you aware -- maybe you have never heard this -- there is a kickback zone associated

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with part of that blade?
A. Yes.
Q. And what is the kickback zone, as you understand it?
A. I don't know what technically it would be, but I wouldn't want to be in the way of it.
Q. All right. So you don't have a specific understanding heading into June 28 of 2011 what the kickback zone may be, correct?
A. No.
Q. But you were aware that there is such a thing as a kickback?
A. Have I heard of that? Yes.
Q. And have you ever seen that happen prior to June 28 of 2011?
A. I've felt it happen when I have operated a chain saw when I was younger.
Q. And have you ever seen it happen to somebody else?
A. No. I'm usually the one that operates. It's very rare that I'm standing assisting.
Q. The kickback, that is the situation, in layperson's terms, where the blade actually comes back toward the operator?

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A. (Indicates affirmatively.)
Q. Yes?
A. Yes.
Q. And you said you experienced that once?
A. Yes.
Q. Where the blade actually kicked back toward you? Or were you holding it such that it wouldn't?
A. In my case the blade kicked forward. It pulled the saw. It didn't kick back. I was kind of reversed.
Q. You have never experienced where it actually came back toward the user?
A. I have never had the type of debris around that would cause that, I don't think.
Q. Have you ever read any manuals or been taught as to ways to avoid kickback?
A. Remove all the debris surrounding the area.
Q. Okay.
A. I was warned what kickback was when I was first taught it. You don't want anything in the way other than what you're cutting. My understanding of kickback, the way that I was taught, it usually requires hitting a second object.
MS. FREEMAN: Wait for the question.

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Okay?
THE WITNESS: All right.
Q. In terms of how to hold the chain saw, as you recall, what was the training you received in how to hold the chain saw?
A. Both hands.
Q. Okay. Where would your dominant hand be?
A. On the trigger.
Q. And then you would use the right hand on the trigger?
A. Yes.
Q. Left hand on the bar that is on the top of the chain saw?
A. Yes.
Q. Have you ever personally experienced a situation where you were cutting a branch or a limb of some sort that had pressure on it that was bending it?
A. Yes.
Q. Yes?
A. Yes.
Q. And were you taught or did you learn any risks that might be associated with doing that activity, cutting a branch that had downward pressure on one end of it?

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A. I was taught to attack the pressure from the other side so that you didn't get the bind in there.
Q. And to avoid binding, if you cut right into the pressure area, the pressure zone, what could potentially happen that you're trying to avoid?
A. The weight of the limb will pinch the chain and thus bending the bar.
Q. And if the blade of the chain saw gets pinched, I guess it gets in combination, the chain is also likely to be pinched?
A. Yes.
Q. Now, we talked about your connection to Mr. Gagnon before the June 28, 2011 incident, seeing him a few times a year during that last two years leading up to it, correct?
A. Yes.
Q. What about since this happened? How often do you see him?
A. Immediately after I saw him. He came over and wanted to see how I was doing. But since -- I want to say I don't know how long it's been now, but it's been at least six months, maybe a little longer that he hasn't talked to me at all.

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Q. Okay. So you haven't talked to him at all for the last six months?
A. No.
Q. And that takes us into the middle of 2012. There is still like a whole year in there between the accident and when the communication stopped. What was the frequency of contact over that year before all the communication stopped?
A. Right after the incident he was coming by every couple of weeks for about a month and a half, two months, three months maybe. And I even went up to his place once or twice.
Q. What happened a year out that stopped all the communication, if you know?
A. He got a letter from an attorney's office.
Q. Did he call you to talk about that letter?
A. Yes.
Q. Okay. What do you recall the substance of the conversation -- strike that. That's a bad question. Do you recall the conversation you had with him once he got that letter?
A. I recall, yes.
Q. Tell me what you recall talking to him about. Who called who?

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A. He wanted to know what it was.
Q. He called you?
A. Yes.
Q. Tell me about the conversation, what he said and what you said.
A. He said, "Why am I getting letters at my home when it happened at my mom's house?"
Q. Did you share with him any thoughts on that?
A. I said, "It's from my attorney."
Q. Did you talk about the day of the event when he called you?
A. Not so much. He was upset. And from what I gathered out of the whole thing, he may not have told his wife the entire truth about it, and she is the one who got the letter.
Q. Okay.
A. He was real upset.
Q. What is it that you believe he didn't tell his wife?
A. That there may be any aftermath.
Q. Did he share something with you that caused you to believe that, or is that just your supposition?
A. He kind of said -- well, he basically said, you

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know, his wife didn't know, and he didn't appreciate the letters coming to his house. He wanted my attorney to stop sending them.

Q. Okay. Other than him calling to ask why the letters were coming and you telling him that it was your attorney sending it and whatever discussion occurred that caused you to believe his wife didn't know about it, any other discussion or any other subjects that you recall being discussed during that phone call?

A. Yes.

Q. What?

A. May I confer with her for a minute? Can we have a break?

Q. Was your attorney there for that telephone call?

A. No. But he was e-mailed right thereafter the same day.

MR. BARCH: Well, I don't want to deprive you of a chance to talk to your attorney. Go ahead.

(At this time a short recess was taken.)

CONTINUED EXAMINATION BY MR. BARCH:

Q. Mr. Dulberg, I was asking you about the phone conversation you had with Mr. Gagnon, the one

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that precipitated the break-off of communications. Okay? And we have talked about him calling wanting to know why he was getting letters, your view that maybe his wife was upset with him. And I'm paraphrasing, of course.

A. Uh-huh.

Q. And you also mentioned that you did not really talk about what happened on June 28, 2011. And then I asked the question I thought about – I thought I asked whether or not there was anything else that you recall being discussed that day during that phone conversation. And then I thought that was the impetus to your request to meet with your counsel. Does that get us back to where we were?

A. Yes.

Q. Okay. And it may be difficult to talk about, you know, this breakdown in communication between you and Mr. Gagnon because you have known him for years, but it's important to me to know what you guys talked about. So to the extent it doesn't involve your attorney, I would like to know what you guys discussed.

MS. FREEMAN: No conversations between you

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and Hans or me. Your conversations with the defendant.

MR. BARCH: That's right.

A. Okay. He was just very upset that he was receiving all of this stuff at his house. Can you repeat where you were at?

Q. I'm just trying to figure out if there was anything else you and Mr. Gagnon discussed that last phone call you had together besides him being mad about getting letters, your belief his wife might not have known the whole story, and also him being upset about the whole thing.

A. Yes. He was very upset. I'm not going to tell you some of the profanity, but he was very upset.

Q. I take it then he was very upset that he was being sued?

A. He didn't understand why he was responsible at all if it happened on his mom's property. That was his big . . .

Q. Did you and he talk about the idea that he was running the chain saw?

A. I said, "Yeah, you are responsible," and I said, "It's time you have to tell people about this. You know, they are going to want to know." And

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he did not want to do -- he said he was tired of the whole thing. He had heard from his mom about it for months, and he did not want to hear it anymore, and he is sick of it, and he went on, and he was ranting.

Q. During this rant and your effort to explain to him why he was getting letters, did you and he ever discuss the subject of what happened?

A. I think we both know what happened.

Q. Did you actually discuss it that day during the call?

A. No. Not the details of what happened, no.

Q. No comments about "Well, you were running the saw," or "You were holding the limb"? Nothing along those lines? No details about what happened?

A. I said, "You're the one who was operating the chain saw. Of course the lawyers are going to want to talk to you. They are going to send you papers."

Q. And in response did he make any comments to you about your involvement that day?

A. He just went on about how he did not want to hear it.

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Q. Okay.
A. That was the gist of it.
Q. All right. So you have known David for a long time prior to this. And then Mr. and Mrs. McGuire, Caroline and Bill, they are married, of course?
A. Yes, I believe so.
Q. How often would you encounter the McGuires?
A. In recent years I would actually encounter the McGuires more than I would David.
Q. How is it you would have more contact with them than David?
A. Caroline worked with me at Intermatic for ten years. Not side by side, but she worked there.
Q. Is it Intermatic did you say?
A. Yes.
Q. Different jobs?
A. Yes.
Q. Just worked for the same employer?
A. Yes.
Q. Did you guys have lunches together or anything like that?
A. No.
Q. So other than seeing her in passing, did you even

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really talk to her?
A. If I had some downtime and she was working near me, I would go over and say, "Hey, how's it going?"
Q. Just general pleasantries?
A. Yes.
Q. You did not see Caroline and Bill on a social basis?
A. No.
Q. And outside of your contact with her at Intermatic over the ten years leading up to this event, how often would you see either her or Bill?
A. Outside of work, couple of times a year at the grocery store or something. I mean, just say hi. In fact, I just ran into Bill two weeks ago.
Q. So would it be fair to characterize your contact with the McGuires during the -- and putting your contact with Caroline at Intermatic aside, but outside of work, your contact with the McGuires would just be happenstance, bumping into them?
A. Yes.
Q. There was no reason for you to go over there and visit with them?

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A. No.
Q. They didn't have you over to parties or anything?
A. I should correct that. I did go over there a couple of times just to see Caroline right after Intermatic did their big layoff. That was more about work.
Q. When did the big layoff occur?
A. It went on for a couple of years. They've phased down. It was between 2007 or '8 and 2010. I think they are still laying off. They are probably going to go out of business.
Q. The visit or two that you had at her home during the layoff would have been sometime during this period you were talking about, 2008 to 2010?
A. Yes, somewhere in there. When I heard that she lost her job, that is when I stopped over.
Q. Just to basically express your sympathy or what have you, empathy?
A. (Indicates affirmatively.)
Q. All right. Prior to June 28 of 2011 had you ever been to the McGuires' house to perform any type of function around their house; repair, maintenance, handyman work, anything?
A. Prior to it?

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Q. Yes.
A. Mostly it was years earlier, and it was body restoration in her garage with her son David. I don't think I ever repaired anything around there in the house or anything. I may have helped shovel the driveway once as a kid.
Q. All right. So we have got the -- you have mentioned that early on right after high school you would help David with the restoration of old cars?
A. Yes.
Q. That was done in the garage at the McGuires'?
A. Yes.
Q. Putting that activity -- and that was years ago, correct?
A. Yes.
Q. But we're talking like more than five or ten?
A. Oh, yes.
Q. And then you mentioned that you might have helped David shovel when you were kids?
A. Yes.
Q. All right. But let's get into like the last five to ten years. Did you ever go over to the McGuires' house to perform any type of

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maintenance function at their home, any repair function at the home?
A. No.
Q. Or any kind of handyman work of any kind?
A. The closest thing to that I think was she needed to go to Menards to get some wood, and I had a truck and a trailer, and I took her over there, her and her son, and got the wood and drove her back home. And that was it. I didn't actually perform any function.
Q. And when was that in relation to 2011?
A. Wait. Wait. I stand corrected. The month or two prior to this incident I took down a shed. It wasn't just me. And we didn't take it down. They just unbolted it from the bottom, and we all just carried it out to the front of the yard and put it on my trailer. They needed as many hands as they could get, and I happened to be free.
Q. Okay. So a month or two before this event there was a shed that was removed from the property?
A. Yes. I don't even know if it was a month. Maybe four weeks.
Q. Sometime before?
A. Just right before, yes.

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Q. It still would have been 2011?
A. (Indicates affirmatively.)
Q. Yes?
A. Yes.
Q. This shed, you say it was just unbolted from its foundation?
A. Yes. It was one of those flimsy steel sheds.
Q. Steel deal?
A. Real light.
Q. How big was it?
A. It was a big one.
Q. You're talking 10 feet by 9? I mean, how big? Do you recall?
A. I would guess -- and I don't know. They know what size it was. It was a bigger one. Probably 10 by 12.
Q. That is an estimate, right?
A. Yes.
Q. And then did you say a group of people picked it up whole and put it onto a trailer?
A. Yes.
Q. Was it placed on like a flatbed trailer or something?
A. Yes.

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Q. What happened to -- it was your trailer?
A. Yes.
Q. Where did it go?
A. It went around the block to my house, and then I took it over to the scrap place.
Q. Did you use it for a period of time?
A. It sat there. I threw some hoses in there when I got more stuff to go to the scrap guy. Took it all over.
Q. When did you dispose of it?
A. This year. No. 2012.
Q. So you had it through the winter of 2011-2012?
A. Yes.
Q. So you used it about a year and then got rid of it?
A. Yes. It was just sitting there. I didn't want to use it. It wasn't --
Q. (Interrupting) When you were there -- when you were there to have this thing put onto your trailer, who else was there besides you?
A. David, Bill and Carol.
Q. So did all four of you then lift this thing up?
A. You need one on each corner.
Q. Okay. Besides helping them get the shed off the

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property, do you recall any other work that you may have done or assistance you may have offered around the property prior to June 28 of 2011?
A. Recently. That's about it.
Q. Did Mr. or Mrs. McGuire -- I'm going to use them in combination. If one or the other did something, tell me. But did either of the McGuires ever train you on how to use a chain saw?
A. No.
Q. Did either of the McGuires ever demonstrate how to use a chain saw for you?
A. No.
Q. Did you ever help Bill or Caroline cut trees down prior to June 28, 2011?
A. Once.
Q. And when was that?
A. Again, it was a few weeks prior. About the same time we took the shed.
Q. Okay. So there was another occasion where you were out there tending to trees?
A. No. Her son David called me and asked me if he could borrow my chain saw.
Q. Okay.

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A. **And I brought it over.**
Q. So David called you for a chain saw?
A. **Yes.**
Q. And other than bringing it over, did you help David at all?
A. **I picked up some sticks on the ground. He did all of the cutting except for I did cut one thing, and it was -- when it was all done and cleaned up, they had a stump, and I tried to make it as close to the ground as possible, and that was it. That's the only cutting I did.**
Q. When you say you picked up some branches --
A. **(Interrupting) Yes.**
Q. When you say picked up branches, what are you talking about? Bundles? A couple twigs?
A. **It was an apple tree. So they were small, and David cut it. He cut the whole tree down, and Bill and I were standing there talking, and we were taking them over to where they were -- their garden area.**
Q. So on this occasion David cut down the entire apple tree?
A. **Yes.**
Q. With the exception of that stump that you tidied

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up?
A. **Right. About four inches of stump sticking up, yes.**
Q. And the assistance that you gave, you helped get that stump to a more presentable condition closer to the ground?
A. **Yes, I did.**
Q. And then you helped Bill move some of the branches to a different area on the property?
A. **They were already cut up, so yes.**
Q. Were they tied in bundles, or did you --
A. **(Interrupting) They were just loose.**
Q. Loose. Did you just pick them up and carry them?
A. **Yes.**
Q. Did you get paid by the McGuires?
A. **No.**
Q. Do you know if David was paid by the McGuires to take down that tree?
A. **Which tree?**
Q. The apple tree.
A. **I don't know.**
Q. Did you get any kind of remuneration or consideration or gifts of any kind for helping that day with your chain saw?

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A. **I got pop.**
Q. Pop. Were you expecting money?
A. **No. I wasn't there to do any work.**
Q. And you don't have any insight as to the connection between David -- strike that. You don't have any insight as to the arrangement between the McGuires and Mr. Gagnon on that day when he was taking down the apple tree?
A. **No.**
Q. For all you know it could have been a favor for his parents?
A. **Yes.**
Q. Or perhaps he was paid? We don't know? You don't know?
A. **Right.**
Q. When you said that David was the one that took the tree down by himself that time, the apple tree --
A. **(Interrupting) Yes.**
Q. -- do you happen to know, prior to David setting out to do the tree, whether Mr. McGuire or Mrs. McGuire gave him any instruction on how to use a chain saw?
A. **Not to my knowledge.**

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Q. Do you know if they were even out in the property -- out in the yard when he was doing that work?
A. **Yes, they were.**
Q. They were there as he was cutting or afterward?
A. **Both.**
Q. You saw the McGuires present when David was using the chain saw?
A. **Yes.**
MS. FREEMAN: Counsel, are we talking about the apple tree?
MR. BARCH: Yes, the apple tree.
Q. And while you were there -- I guess you were present, I take it, then, when the McGuires were on the property and David was using the chain saw to cut the apple tree apart?
A. **Yes.**
Q. Do you recall over hearing or seeing Mr. McGuire or Mrs. McGuire instructing David on how to use that chain saw while you were there?
A. **Not how to use the chain saw. Just what they wanted gone.**
Q. So they were telling him which parts of the tree they wanted gone?
A. **They wanted the whole tree gone.**

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Q. So anything beyond that, saying take the whole thing down?
A. The two of them were bickering back and forth about all different things. They were talking about all different trees they wanted -- I didn't keep up with --
Q. (Interrupting) The two of them meaning Mr. and Mrs. McGuire?
A. Yes. And her son. I didn't get into any of that. That is whatever they wanted to do.
Q. So there is some banter, bickering, whatever you want to call it, over which trees needed to come down?
A. Right.
Q. Besides identifying the trees that they wanted either trimmed or removed, do you recall Mr. McGuire or Mrs. McGuire telling David how to go about taking down the tree with the chain saw?
A. I think Bill and Dave talked about that a little bit, how they were going to do it.
Q. Okay.
A. I didn't have anything to do with it.
Q. What did you overhear David saying to Bill or Bill saying to David with respect to the apple

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tree?
A. Well, the only thing that I did anything about, I remember Bill was complaining that it was sticking up out of the ground, and I was putting the chain saw away in the case so I could take it home, and I took it back out of the case and said, "I'll take the four inches off for you," because David was already gone or he was in the house doing something, and I just wanted to get it done and head out of there. I didn't want to wait for him, so I did that. But as far as them instructing each other, they were mostly talking amongst each other.
Q. What I'm driving at is you recall hearing them discuss/bicker over --
A. (Interrupting) I do remember. I do remember.
Q. Hold on. You do recall hearing them bicker or discuss which trees needed to come down totally or which ones needed to be trimmed? That is something you recall them bickering about, correct?
A. Yes.
Q. And you recall Mr. McGuire being dissatisfied with the way the stump looked after David left?

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A. Right.
Q. You don't recall Mr. McGuire telling David how to use the chain saw, though? That didn't happen in your presence?
A. No.
Q. Correct?
A. Correct.
Q. And you don't recall Mr. McGuire demonstrating the chain saw for Mr. Gagnon that day either, correct?
A. No -- yes, that's correct.
Q. David was just using the chain saw in his presence? Is that how you recalled it?
A. Yes.
Q. Now, you were going to say you do recall something else that happened as we were asking questions about it.
A. You were asking about instruction, and Caroline was worried because part of the tree was over the house, and she was telling him to take it -- they were talking about the way to take the tree down without any of it touching the house at all; and they worked it out and did it, you know.
Q. All right. So that is something that sticks out

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in your mind? There was a tree -- part of the tree is over the house, and there was a concern about damaging the house?
A. I remember that, yes.
Q. And there was a discussion as to how to get the tree removed without hurting the house?
A. Yes.
Q. Was it successful? Did they do it?
A. Yes.
Q. Did anybody get hurt, as far as you know, that day with the chain saw?
A. No.
Q. And you had no connection to any of the cutting that day, correct?
A. Other than picking up the sticks and cutting the stump, that was it.
Q. That's right. I take it back. You did cut the stump closer to the ground?
A. Yes.
Q. But in terms of the work, David did the actual severing of the branches and cutting the limbs and things? You were not helping him do that?
A. I was just taking the cut branches over to the pile where they were going to burn it or whatever

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they wanted to do with it.
Q. Let's go to June 28, 2011 then. Did Mr. or Mrs. McGuire ask you to come over?
A. David did.
Q. So Mr. and Mrs. McGuire did not call you up and ask you to come over?
A. No.
Q. So your involvement started with a call from David?
A. Yes.
Q. What do you recall him saying when he called you?
A. He said he was taking down another tree for his mom. And I said, "Do you need the chain saw?" And he said, "No." And I was like "Oh." He said, "Do you want the wood?" "Well, I'll come over and see what you got." Because he was trying to explain to me which tree it was, but I wasn't sure. So I said, you know, "I can come over and take a look in the morning."
Q. I forgot to ask you. Did you take any of the wood that was cut down of the apple tree wood?
A. No.
Q. Okay. So you agreed to come over and take a look at the wood that was being -- I guess the tree

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wood that was -- strike that -- the remains of the tree that was being taken down on June 28?
A. Right.
Q. And heading over there was it your plan or did you anticipate helping him?
A. Not with -- he said he had a chain saw, and he does it all himself. So I anticipated just getting the wood, you know, if I wanted it.
Q. Okay. And prior to arriving at the property did you call the McGuires?
A. I don't think so, no -- you know what, I -- strike that. I don't remember if I called to make sure he was there before I left in the morning or not. I don't remember. I may have.
Q. So he called you not on the day of, but some other point to alert you he would be there on that day?
A. Yes.
Q. So you may have checked just to see if he was there?
A. Yes.
Q. Do you recall that being the case, or it's just a possibility?
A. It's a possibility.

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Q. And so when you went to the McGuires' that day, I take it you didn't bring anything with you?
A. Just my truck.
Q. Just your truck?
A. Yes. And my dog.
Q. Your dog did you say?
A. Yes.
Q. Did you have a pickup truck?
A. Tahoe.
Q. What were you going to do -- where were you going to put the wood if you did take some?
A. I was going to go back home and get a trailer.
Q. You weren't even sure you were taking wood at that point?
A. Yes, exactly.
Q. You went out there in your personal vehicle with your dog?
A. Yes.
Q. At that point you were not planning to assist him; just to check the wood to see if you wanted it?
A. Correct.
Q. On arrival who was there?
A. David, his mom Caroline, Bill. And at some point

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in there his sister showed up.
Q. Bill's sister?
A. No, David's sister Diane. She was there. I don't remember when she came and went. She was there.
Q. And on arrival are they all in the house, or is the cutting ongoing and they are all outside? What do you recall?
A. David was -- he came walking around the side of the house as I pulled up -- they must have seen me -- and said, "Hey, how's it going," you know, and I said, "Morning." He wanted to show me what he had.
Q. So you went around back and looked?
A. Yes.
Q. How much of the tree was down at this point?
A. None.
Q. What kind of tree was it?
A. Pine.
Q. We're talking like a Christmas tree type, or the big one with all the ugly branches?
A. They all have big ugly branches. It was the Christmas tree type.
Q. How tall was this thing?

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A. **We all guessed at that. I think around 60 feet.**
Q. And that's an estimate, correct?
A. **Yes.**
Q. None of it had been trimmed up at that point?
A. **Correct.**
Q. All right. And now you and David are back there looking at it, correct?
A. **Bill came out. Carol came out. They were all out there.**
Q. That is what I was going to ask next. Who else was back there with you when you were looking at it before the work started?
A. **Everybody.**
Q. Okay. And at some point the cutting began?
A. **Yes.**
Q. All right. Between the time you arrived and you went back with David to look at the tree -- and I think you said Bill and Carol were there, too?
A. **Uh-huh.**
Q. Yes?
A. **Yes.**
Q. Between that point in time and the time the tree cutting actually started what discussions do you recall about this project?

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A. **They showed me the new chain saw they bought.**
Q. Okay.
A. **After that I was joking around with Bill a little bit. He was telling me about his vacation. Did a lot of talking about his vacation. We talked about that all day.**
Q. Okay.
A. **I was playing with the dog. Carol loves my dog. Just simple pleasantries. Nothing -- it wasn't really about the work.**
Q. Do you recall any discussion about the work between the time you went behind the house to look at the tree and the time David started work on the tree?
A. **David was talking about the work that he was going to do, where he was going to drop it, how he was going to take it down. He was telling Bill and Carol how he was going to do this.**
Q. Do you recall during that process Caroline McGuire trying to override any decision that David had?
A. **Yes. But not about that tree. About other trees.**
Q. Okay. Well, what do you recall Caroline's --

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A. **(Interrupting) They bicker like cats and dogs.**
Q. You have used that phrase "bicker." When you say bicker --
A. **(Interrupting) Discuss.**
Q. Was she telling him she wanted certain trees down and he did not want to take those down or --
A. **(Interrupting) Yes.**
Q. -- he wanted some down that she did not want down?
A. **Both ways.**
Q. Okay. So other than identifying which additional trees had to be trimmed or cut down versus, you know, left alone, do you recall any other discussion between David and Caroline prior to him undertaking the effort to actually cut things?
A. **She was telling him about she -- the putting oil in the chain saw. And he was like "I know. I know, Mom," you know. Because it was brand-new. They had just bought it. It was all little things. And a lot of the discussion didn't have anything to do with the tree. We're talking about other things like other kids in the family and -- you know.**

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Q. When David explained his plan for taking down the tree, you heard part of that?
A. **Yes.**
Q. Okay. Do you recall Caroline disagreeing with him about how to go about taking down that tree?
A. **Not too much, no.**
Q. What about Bill?
A. **Bill just stood -- Bill wanted to make sure it wouldn't hit the pool or the garage. Same thing with Caroline. They did not want any damage to their property other than it falling on the grass.**
Q. That would seem to be any property owner's concern is that they didn't get other damage.
A. **Sure.**
Q. But in terms of how to go about doing that, other than alerting Mr. Gagnon that they did not want the house hurt or the pool damaged or anything like that, do you recall any comments from either Mr. McGuire or Mrs. McGuire as to how to go about doing that, or was that a decision that -- or a plan that Paul -- I'm sorry -- Mr. Gagnon came up with, from your vantage point?
A. **He came up with it. He said what he was going to**

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do, and he did.
Q. Okay. In terms of discussions then leading, I guess, from the time you got behind the house to the point in time where David started working on the tree -- and specifically I'm talking about conversations you overheard with the McGuires and Mr. Gagnon -- there was concern about not damaging the house or pool?
A. **Uh-huh.**
Q. And there was also discussion over which tree should be cut and which tree should not be cut --
A. **(Interrupting) Uh-huh.**
Q. -- correct? And then you remember them talking about the chain saw being new and Mrs. McGuire concerned about making sure there is oil in it?
A. **Yes.**
Q. Anything else you can recall?
A. **That's about it. I'm sure there were other things.**
Q. Did David consult with you about how to get the tree down?
A. **Not much. He asked me how tall I thought it was. But he knew how to measure out pacing or something, some trigonometry thing. He figured**

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out how tall it was.
Q. So, I mean, did it appear to you that he looked like he knew what he was doing?
A. **Oh, yes.**
Q. You say you saw him actually measuring things?
A. **Yes.**
Q. Like just walking it off in feet, or did he have a tape measure out there?
A. **No. He paced it off. He was estimating the height of the tree from where it would fall.**
Q. Okay. Any other preparations that you observed him undertake before he actually began cutting?
A. **Preparations? Getting the chain saw ready. He ate breakfast in between. He's the kind of guy that would work for 10 minutes and then take a 20-minute break and work for 10, you know.**
Q. Okay. So at some point the chain saw gets fired up, I take it?
A. **Yes.**
Q. And are the McGuires still out in the yard?
A. **I believe so.**
Q. From the Interrogatory answers it looks to me like they were not present in the area when you actually got hurt?

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A. **No.**
Q. At what point between the time they started cutting to the point where you were hurt did they leave?
A. **Well, Bill was in and out of the house getting things to drink and whatnot and talking to Caroline. I don't know when he disappeared that last time. But Dave's sister was in the pool, and she disappeared, too. I think she went home. I don't know what happened to her. But, yes, it was -- he was in and out, you know.**
Q. Okay. Why don't you tell me about the work you saw David do between the time he started it and the time you actually started helping him with any aspect of it.
A. **He was taking off the lower branches of the pine tree.**
Q. Okay. So you're just standing there watching this?
A. **Oh, yes.**
Q. And so the first task that you saw him undertake, he was using the chain saw to cut some of the lower branches off of this pine tree?
A. **Yes.**

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Q. And that was from the ground level?
A. **Pretty much the first lower branches, you know.**
Q. Okay.
A. **And then he worked his way up, you know.**
Q. Got you. How far along with the cutting process was he before you did anything to assist him?
A. **He was pretty high in the tree. Probably 25 -- well, 20 feet. I'm getting -- his chain saw died on him. He had a rope. And he lowered it down, and he asked for me or Bill to restart it for him, and I restarted it. And then he raised it back up in the tree and pulled it back up there and then just kept going.**
Q. Okay. And so how is he getting up the tree?
A. **He's climbing.**
Q. He's climbing the tree?
A. **Yes.**
Q. Does he have little spikes on his shoes?
A. **I didn't see spikes, no.**
Q. So is he cutting the branch and using the stump as a step?
A. **Yes. He had some sort of belt he had wrapped around the tree. I have never done anything like that, so I -- that's not -- I have -- not that**

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skilled.
Q. You have never cut a tree down the size of this one?
A. No.
Q. And you have never used any straps or belts or harnesses to ascend the tree?
A. I wouldn't climb into a tree like that, no.
Q. Now, I mean, you're watching him do it?
A. It looks scary.
Q. You're watching him do this?
A. Yes.
Q. How many branches do you think he cut, I mean, up to this point where --
A. (Interrupting) There was a lot of branches. I mean, I was surprised how many branches are on a pine tree. So I can't guess the number, but there was a lot.
Q. And he's got some kind of a strap holding him to the tree, and he's using his feet as support?
A. Standing on the stumps that he had cut for it, yes.
Q. And and then the chain saw is attached to a rope of some sort?
A. Yes. He had tied a rope around the handle of the

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chain saw and had it up in the tree with him.
Q. And is Mr. McGuire out there for this?
A. Yes.
Q. Mrs. McGuire, too?
A. At times.
Q. Are they doing anything other than watching him?
A. Bill was talking to me. He really liked his vacation, and he was -- he had story after story.
Q. So he's really kind of a spectator more than anything, and he's having conversations with you?
A. Both of us were, yes.
Q. He's not directly assisting David up there in the tree?
A. Bill did -- yes, exactly.
Q. Did Bill ever climb the tree?
A. No.
Q. All right. So he's about 20 to 25 feet up when he -- did it run out of gas or something?
A. I think it just died.
Q. It died. He needed somebody else to start it?
A. (Indicates affirmatively.)
Q. He didn't try to start it himself up in the tree?
A. No. He said it was dangerous. He said, "I'm going to lower it down to the ground. Start it

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for me. I'll pull it back up."
Q. You believe it stalled, and he lowered it down to have somebody else start it?
A. Yes.
Q. Did you recall him saying, "It's too dangerous to start up here on my own"? Is it just something you assumed?
A. I assumed it. I would think it would be too dangerous.
Q. So you did restart it?
A. Yes.
Q. And so when it goes up on the rope, it's running, but the blade is not turning, obviously?
A. Correct.
Q. You have to use the trigger to get the chain to move?
A. Correct.
Q. And I presume the rope is not going through the trigger area?
A. No, it's not.
Q. There is a --
A. (Interrupting) It's tied around the bar.
Q. Got you. So it gets back up to him. Does he continue on with the cutting?

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A. Yes.
Q. And what is the next involvement of any sort that you had?
A. Bill wanted to get some of the sticks that he was cutting down off the ground and into a pile so he started doing that. And then my dog went and grabbed some sticks because he sees sticks, you know. So I went over, and I was helping Bill put the sticks into a pile next to the garden. They were just laying on the ground. We were standing there doing nothing.
Q. Okay. So you were basically just helping Bill move some of the debris over into a pile?
A. Yes.
Q. The smaller stuff?
A. Well, the long --
Q. (Interrupting) The limbs?
A. Yes.
Q. And what was the plan for those, if you know? Were they going to be chipped up?
A. Well, Bill wanted to burn then. In fact, he started a fire and was burning them.
Q. Okay.
A. And somewhere along the way David wanted to save

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them.
Q. All right. So all you're doing is taking the stuff that has fallen off the tree and dragging it into a separate area at this point?
A. Yes.
Q. All right. And did Bill ask you to help, or you were just there and you decided to help him?
A. I just decided to help him.
Q. Did you at that point discuss, you know, payment for doing this?
A. No.
Q. Did you consider yourself doing him a favor by just helping?
A. Yes.
Q. Was it your plan to maybe -- had you decided at that point to take any of the wood as firewood?
A. No. I told him I didn't want it.
Q. None of it?
A. None of it. It's pine.
Q. Even the trunk of it once it was done?
A. None of it is any good for burning in a fireplace.
Q. So once you got back there and saw it was going to be a pine tree coming down, you knew you

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weren't going to be taking advantage of any of the wood?
A. Correct.
Q. It wasn't your chain saw, correct?
A. Right.
Q. What purpose other than talking to Bill did you have for staying?
A. Well, Carol talked to me about -- it was just social. Carol was talking about old people that worked at Intermatic. Bill was telling me about his vacation. And it was just talk, you know. I didn't plan on staying that long at all, but they just keep talking. I didn't have anything else to do that day, so I just . . .
Q. What day of the week was it?
A. I don't recall offhand.
Q. Was it a weekend?
A. No, it was not a weekend.
Q. All right. So you decided you weren't going to take any wood, and it was really by -- you were kind of hanging out socializing with the McGuires, if I'm understanding what you're saying?
A. Yes.

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Q. For a good portion of time?
A. Yes.
Q. At some point Bill started dragging these branches to a different area, and you lent a hand?
A. Yes.
Q. You didn't do that anticipating any payment of any sort, correct?
A. Correct.
Q. And then how long does this go on where you're moving branches?
A. Well, some time. David, he took some good long breaks. So a few hours. At least a couple. I mean, we weren't moving branches for two hours. You move them for two minutes and you're done for 20 minutes, you know.
Q. Until there is some more down?
A. Yes.
Q. Because you're not standing under there as they are dropping down?
A. Right.
Q. So it's off and on for a couple of hours you're moving these branches?
A. Yes.

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Q. At some point does David get the whole -- the whole trunk, it's eliminated with -- all the smaller branches are gone?
A. He got it pretty far up. And when he came down, he looked pretty scared. I was like "I wouldn't want to do that. I have to give it to you because I wouldn't climb up like that."
Q. Did he get all the way to the top, very top of that, 50 or 60 feet high?
A. No, no.
Q. So at some point he comes down, and there is still some of the triangular part of the tree with the branches?
A. Yes. There was a good -- better than a third of it, maybe a little more, left.
Q. So roughly two-thirds of it is free of the limbs?
A. Between a half and two-thirds, yes. Somewhere in there.
Q. And then he comes down. Is that when he falls the tree?
A. No.
Q. Did he ever cut the tree and see it fall over?
A. No.
Q. Did you get injured before that happened?

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A. Yes.
Q. So he comes off of the tree having cut down half to two-thirds of the limbs?
A. Uh-huh.
Q. Right?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. All right. And then during that period of time while he was up there, that is when you and Bill were dragging some of these branches over to a different area?
A. Yes.
Q. And at what point is it that you're involved in any activity which resulted in your injury?
A. When David came down, he took a good long break. He was tired. He was climbing the tree. He was tired. I think he ate something for lunch. I was offered a pop. You know, I sat there and drank a pop, was playing with my dog. After lunch Dave went back over there to do some more work. He started trimming on the tree next to it. Wasn't even the same tree. Same thing, taking off the lower branches. And it was when

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he was doing that, when he was done with trimming that tree, that is when he asked me to come over and hold something for him.
Q. So after lunch he stopped working on the tree that you saw him work on all morning, correct?
A. Uh-huh.
Q. And started working on an adjacent tree?
A. Uh-huh.
Q. He was at ground level again just cutting off branches?
A. Uh-huh.
Q. That was the first time he directly asked you for help?
A. Yes -- well, other than start the chain saw earlier.
Q. Yes. So up until that point in time I take it you had not offered David any thoughts about how to proceed with the tree trimming, whatever he was doing? You're just watching?
A. Yes.
Q. You didn't offer him any comments on how to do this, the way he was going about getting this stuff done?
A. I have never seen it done, that big of a tree

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like that, no.
MS. FREEMAN: Just answer the question.
A. No.
Q. All right. So now David needed some help with something. What was it, as you recall? What did he need help with?
A. He had accumulated a very large pile of, you know, the long pine branches. He asked if I could help him for a few minutes. I said sure. He says, "I need you to hold these while I cut off the things on them." And he showed me what he wanted, showed me where to stand. And I said, "Yeah, I can do that," you know. And -- yes.
Q. All right. So I guess from what I envision, he's cut all of these limbs off of that pine tree. Now there is a big pile of them; one you guys weren't able to move, you and Bill?
A. He had another pile from the tree right next to it, yes.
Q. And what was he going to do? Trim some of the smaller branches off the limbs?
A. That's what he wanted to do. He wanted to save the center part for firewood or something like that for campfires or something. I don't know.

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Q. So by cleaning off the smaller branches, then there would be some logs that could be cut up that would be suitable for firewood?
A. Correct.
Q. Did you and he actually -- did he tell you what his plan was or what he was going to do?
A. He told me exactly what to do. He knew what he was doing. You know, seemed that way to me.
Q. And he told you what he wanted you to do?
A. Yes.
Q. And what did he tell you to do?
A. Took the branch, pull it over here so it's away from the rest of them. Hold the one end up, and he would cut the smaller stuff off the other end. And when that was done, put it down, grab the next one, put it up and -- you know, yes.
Q. So I'm understanding, you're taking a limb that had been cut off the tree, you're holding it upright?
A. No.
Q. No?
A. Can I do -- I don't know how it translates.
Q. We'll explain it on record. But if that straw will help you orient us as to what you were

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doing --
A. (Interrupting) The branch would be like this (indicating) to the ground.
Q. All right. So the heavier -- the thicker part of the branch is laying on the ground?
A. Actually, the thinner part was. That is the way he wanted it.
Q. So you're holding the heavier part of the limb?
A. Yes.
Q. The long part of it?
A. Yes.
Q. And he's trimming off the smaller branches?
A. Yes.
Q. Off his limb?
A. Yes.
Q. Does he start at the end and work his way closer to you?
A. Yes.
Q. And how long are these limbs?
A. They're pretty long. I would only be able to guess. I would have to say 20 feet. Pretty big. Especially the lower ones off the pines, you know.
Q. Okay. So how many of these things do you think

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you were able to accomplish before you were injured?
A. We did quite a few.
Q. And are you able to quantify that in any way? More than one, obviously?
A. Yes. More than a few. Maybe a few dozen. Maybe a little more. We did it -- you know, we did that for about I would say a good -- you know, it was a while. I don't know exactly. I didn't have a watch.
Q. Are we talking a half hour or more?
A. Yes.
Q. All right.
A. It wasn't --
Q. (Interrupting) A dozen? At least a couple of dozen of these things you have gone through this process trimming all these branches off in the way he told you to do it, you hold the end and he's going to work his way up?
A. Right.
Q. Once all of those little branches are off there -- is it kind of a longer log?
A. Yes.
Q. Did he then cut that into smaller pieces?

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A. That's what he wanted those for is to cut it in smaller pieces.
Q. Did he do that task, too, each time you --
A. (Interrupting) I think he did the first few, and then we just started taking the other ones, the longer things off. He dictated what he wanted. Some of them he wanted -- you know, he wanted to see what he could get out of it first.
Q. All right. So the first couple you trimmed the branches up and then cut them into smaller logs immediately?
A. Yes.
Q. Did you hold the longer limb as he cut it into smaller sections?
A. No. He had set up a -- from the apple tree he set up two logs and was able to set it on there and just (indicating).
Q. So you didn't hold the log as he was trimming them into smaller pieces?
A. The middle part, no. I was there when he took off the little pieces.
Q. So the first couple of these he trimmed it down and then immediately made them into logs?
A. Yes.

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Q. And then after a while he decided he was going to trim all the branches off while you were there to help?
A. Yes.
Q. And you were doing it with a couple of dozen of these before you got hurt?
A. Yes.
Q. All right. So he told you how he wanted -- he basically told you he wanted you to hold the end --
A. (Interrupting) Yes.
Q. -- while he trimmed those up?
A. Yes.
Q. And did he tell you to do anything other than stand there and hold up the one end?
A. When they were done they had to be put over here and then grab a new one, you know, bring it over to this spot so he could start again.
Q. He would stay there, and you would drag the log to a pile and then drag a new branch over?
A. Yes.
Q. Prior to undertaking this trimming did he offer you any instructions beyond "Here, hold this"? Did he say, "Keep your hands free. Stay away"?

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A. He said, "Stand here. Hold it here and don't move." He said don't allow it to move because it would roll, you know, so you had to hold it tight.
Q. So other than telling you where to stand and how to hold it and not let it spin, did he give you any warnings that were safety-oriented like "Keep your hands free. When I get close to you, keep your hands to you," anything --
A. (Interrupting) No.
Q. Anything about that -- obviously, to the point you got hurt, did anything about that task concern you from a safety standpoint?
A. He was far enough away from me it wasn't . .
Q. So up until you were actually hurt he kept a certain amount of distance away from you?
A. Yes.
Q. How close was the nearest he got to you prior to when you got hurt?
A. Maybe three or four feet, maybe five feet, somewhere in there. There was a good chunk of those branches that were next to the trunk that didn't have anything on them, you know. They didn't have the growth. The growth was out in

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the ends.
Q. All right. And during this 20 or 24 more limbs that you guys trimmed up before you were hurt, was Mr. McGuire out there?
A. Yes -- wait a minute. I was working, so I wasn't paying attention at that point. I was helping hold the limb. You know, I was paying attention to what I was doing. I stopped paying attention to Bill and Carol, so I don't know where they were. You know, I know they were coming in and out of the house.
Q. Okay. So whether they were there or not during the trimming part you're not sure?
A. Yes.
Q. It could be? Maybe not?
A. Yes.
Q. That being the case, I take it you don't recall either one of the McGuires intervening, saying, "Hey, that doesn't look safe," or "Be careful," or anything like that during the trimming part?
A. No.
Q. And you recall Mr. Gagnon telling you where to stand and how to hold the branches. Did either of the McGuires give you any instructions during

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that phase of the job?
A. No.
Q. Did you at that point believe you were taking instruction from Mr. Gagnon?
A. Yes.
Q. You were doing what he told you to do?
A. Yes.
Q. Did you think you were taking instructions from the McGuires at that point?
A. They didn't say much.
Q. And the entire time you're trimming -- during this phase where the branches are being trimmed off the limbs, I take it Mr. McGuire wasn't there helping you holding these limbs?
A. No. We were -- it was getting into the afternoon after -- like after lunch, and I think he was getting tired. That is the way I feel. He was older.
Q. The particular phase of the project, the trimming of the limbs, that was you and Mr. Gagnon?
A. Yes. I remember Mr. McGuire saying that he wanted to burn the limbs, and David wanted to save them.
Q. And at no time that day did you run the chain

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saw?
A. I started it.
Q. But you didn't run it --
A. (Interrupting) No.
Q. -- and apply it to any limbs or logs?
A. No.
Q. All right. Why don't you get to -- we have got to the dozen or two dozen or so of these limbs before you were hurt. Tell me, as you can recall, what happened.
A. Do you mean the actual incident?
Q. Actual incident. You have done a couple of dozen of these without incident?
A. Right.
Q. And then what happened?
A. He walked towards me, and the chain saw came up, and it cut me. I tried to get out of the way, but . . .
Q. Were you guys actually working on trimming a limb at that point?
A. I was holding a limb up, yes.
Q. You were holding a limb?
A. Yes.
Q. With which hands?

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A. My right hand.
Q. So you're able to hold these with one hand up in the air?
A. They were only this (indicating) -- you're talking logs. I call them sticks.
Q. Okay. I didn't ask that question so I'm glad you clarified. The limbs that we're talking about what was the diameter on average?
A. The side that I was holding?
Q. Yes.
A. Maybe -- I don't know what you consider that (indicating). Three inches. Your guess is as good as mine.
Q. Okay. Well, it's certainly not the full width of your fingers?
A. No. I can hold it with one hand.
Q. It's about the width of a pop can -- diameter width of a pop can?
A. Coffee cup there, yes.
Q. They were like three to four inches?
A. Yes.
Q. And that was how all the other ones were, too?
A. Yes.
Q. And then you were strong enough, and at least at

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that point you were healthy enough to hold it with which hand?
A. Right here (indicating).
Q. Right.
A. Right.
Q. And you're right hand dominant?
A. Yes.
Q. So you could hold those out?
A. Yes.
Q. And so you would hold it kind of horizontally and the rest of it would stretch out towards Mr. --
A. (Interrupting) Yes. Go down along the ground there.
Q. And then you say Mr. -- you described it as Mr. Gagnon walking towards you with the chain saw and then you just got cut. Can you elaborate on that a little bit? He didn't just -- you were actually -- he was actually working on trimming a tree branch, correct?
A. Yes.
Q. And so I take it he was trimming, getting closer and closer to you?
A. Before it, yes.

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Q. Before you got hit with the saw?
A. Yes.
Q. And I take it unlike the other branches, there may have been a branch closer than the four to five feet?
A. No. He stopped cutting the limb, chain saw went down, went to idle. You know, he walked toward me, and I thought he was going to say something like next instruction, what to do, okay, and I don't know what he was thinking or what he was doing or what, but the chain saw started coming up, and the gas went on, and I tried getting the hell out of the way and -- yes.
Q. So it wasn't during a cutting process that you were hurt?
A. Yes, you're right.
Q. He disengaged from trimming the branch, if I'm understanding your testimony, and the chain went into an idle position?
A. The motor went to idle.
Q. And the chain is not even moving, and he's holding it down to his side?
A. Both hands.
Q. With both hands. But the chain is not moving?

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A. Yes.
Q. And he closes the gap between you and him in terms of space?
A. Right.
Q. And you were still holding the branch at this point?
A. Yes.
Q. And somehow the chain, it gets activated?
A. When I heard the chain saw, the motor speed up and I saw with my eyes it start to come up, I dropped the branch, tried to get the heck out of there because it's coming up between me and the branch. "What the fuck are you thinking?" I don't know how to say -- you know, I screamed. Whether he was going after something he thought he saw coming off the branch, I don't know.
Q. Okay.
MS. FREEMAN: Wait for a question.
Q. So you're holding the branch with your right hand just like you had done on the two dozen or more before. He's trimming branches off this thing and stops trimming, correct?
A. Yes. He was done.
Q. And then he --

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MS. FREEMAN: (Interrupting) Wait until he finishes.

Q. And he then walks toward you holding the chain saw in a position where he might be able to cut if the chain was moving?

A. **It was pointed downward.**

Q. Pointed downward?

A. **Yes --**

Q. (Interrupting) But the chain is not moving --

A. **-- towards the ground.**

Q. The chain is not moving?

A. **Right.**

Q. And he gets close enough to you to reach you, obviously?

A. **(Indicates affirmatively.)**

Q. Then you hear the chain saw, the rpms ramp up?

A. **Oh, yes.**

Q. And when you heard it ramp up, was it a concern of yours that the chain might be moving at that point?

A. **It was an instant high alert on my part, yes.**

Q. Did you see the chain saw blade with the chain moving at any point before it made contact with your arm?

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A. **Oh, yes.**

Q. So you heard it ramp up in terms of rpms and looked?

A. **Oh, yes.**

Q. Are you still holding the branch at this point?

A. **I was letting go.**

Q. And as you hear the thing fire up, you turn to look at it, correct?

A. **I was looking at it while I was watching him. You know, I never turned away.**

Q. And so it's pointed down, and then the rpms ramp up, and you see the blade coming toward you?

A. **Uh-huh.**

Q. And you let go of the tree?

A. **Yes.**

Q. But the blade, nonetheless, still makes contact with your arm?

A. **Yes.**

Q. Did it ever make contact with the tree branch?

A. **No.**

Q. From your vantage point was it -- well, strike that. Did Mr. Gagnon tell you what his plan was when he got near you and turned the saw on and had lifted the blade toward you?

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A. **I had no idea, and I went into panic mode.**

Q. All right. And so I think you said you had released the branch before the saw came in contact with your arm?

A. **(Indicates affirmatively.)**

Q. Is that right?

A. **Yes.**

Q. And did you turn your body?

A. **Uh-huh.**

Q. Describe for me this point in time where you see this blade coming up with the saw moving and all of a sudden -- and then at that point where your arm is hit. What did you do?

A. **I let go of the branch, and I tried bringing my arm up and away from the saw blade and out and around to get away. It was coming right up, you know, and it was coming up. It was fast.**

Q. All right. So you tried to get your arm out of the way. The blade is coming up, but you didn't get it away fast enough?

A. **Obviously got it away enough to keep my hand and my arm. I'm lucky to have that.**

Q. And then at this point where your arm is actually injured, do you believe that either one of the

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McGuires was present to see that?

A. **No. I know they weren't. They said they weren't.**

Q. All right. So if I'm understanding your testimony then, at the time the blade made contact with you, you were not actively assisting him by holding a branch? You had, in fact, released the branch?

A. **Oh, yes.**

Q. And there was no dialogue from Mr. Gagnon as he approached with the blade as to what his intention was at that point in time where the saw became I guess --

A. **(Interrupting) Pointed downward.**

Q. -- pointed downward and began moving upward?

A. **Right.**

Q. There was no statement out of him at all?

A. **No. I was looking to see if he was going to say something to me because it looked like he was approaching me to say something; he wanted me to do something else, or, you know, I thought there was an instruction coming.**

Q. But ultimately there was no additional comment made by him prior to the rpms on the chain saw?

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ramping up and the blade coming up toward you?
A. Correct.
Q. And so this isn't a situation where the blade and the saw -- I'm sorry, -- the blade and the chain made contact with the branch and kicked it toward you?
A. No.
Q. This isn't a situation where the blade was cutting through a branch and caught the very tip of the saw and fired back at you?
A. No, it's not.
Q. There was no cutting actually involved of a branch when you got struck with the blade?
A. Correct.
Q. After this happened did you ask Mr. Gagnon what he was trying to accomplish at that point in time?
A. After I screamed my head off, that was the first thing that came out of my mouth was -- excuse the expletive -- "What the fuck are you thinking?"
Q. Did he have a response for you?
A. He became immediately I think distraught would be the word, confused. "Oh, my God." Panic, yes.
Q. So he didn't make any comment to you about what

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he was trying -- the task he was trying to accomplish? It was more shock and stunned about this scene having happened?
A. Yes.
Q. Since that point in time where you got hit with the blade and now did he ever tell you in his words what he was specifically trying to do at the time this happened?
A. In the emergency room he used the word kickback, but I didn't understand what he meant or how, you know. And they are going in to sew me up and put the muscles back together, you know, as best they can. I don't know what happened there.
Q. All right. So you definitely recall him in the ER using the phrase kickback?
A. Yes.
Q. All right. But from your vantage point this idea of a kickback, it wouldn't have anything to do with a kickoff of a branch or a log or a limb that was being cut?
A. No. It had nothing to do with that.
Q. And you didn't see the saw come onto a tree branch, that tree branch you were dropping, and then kick toward you? You didn't see that?

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A. No.
Q. So he may have a different version of what kickback means, but the kickback definition or your impression of a kickback that you described earlier, that is not what you recall happening?
A. Correct.
Q. If I'm hearing what you're saying, he might have been trying to get toward that branch to cut it but he never got there? He got to your arm before he made any contact with the tree?
A. Well, I was holding the end of the branch. There was no branch beyond my hand.
Q. And that's what I'm getting at is from your recollection of what went down, regardless of what his intentions were, he lifted up the chain saw, the rpms ramped up, and the chain is moving. You tried to get out of the way of the blade, but you were not able to get out of the way in time?
A. Correct.
Q. That is what happened?
A. Correct.
Q. And other than him mentioning something about a kickback when you're in the emergency room, as we sit here today have you ever discussed the

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dynamics of what happened in a situation where he explained what he was trying to do?
A. Of course I asked him, and I don't remember at what point I asked him, and he could never explain it. He just (indicating). You know, I don't think he knows. I honestly don't think he knows.
Q. So as you sit here today, regardless of how many times you asked him -- and it's more than once, I take it, correct?
A. Oh, yes.
Q. In your mind, he's never articulated specifically what he was doing at the point in time where the blade made contact with your arm?
A. Correct.
Q. Other than referencing a kickback in the ER?
A. Yes.
Q. Okay. With respect to the McGuires, at what point in time was your first notice that Mr. McGuire or Mrs. McGuire were aware of you being potentially hurt?
A. Immediately. They heard me scream.
Q. Okay. Do you believe they came from inside the house?

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A. Yes.
Q. And when they came out, was there any discussion between you and Mr. Gagnon about what had happened?
A. No.
Q. Would it be fair to describe the post injury part on the premises as being more concern about how you were doing than what happened?
A. It was pretty important to me.
Q. Right.
A. Yes, it was very important. Carol was very concerned. She come out yelling. "I heard it. I knew my son cut you." She came out screaming, you know, and -- yes -- yes.
Q. Did either of the McGuires ever make any comments to you to suggest or pursuant to which you formed the impression that they saw what happened?
A. No. They said they didn't. She said she heard it. She heard the screams. She heard what was said right after. She heard all of that. She was right there in the kitchen.
Q. She heard the screams, and her thought was somebody was cut?
A. (Indicates affirmatively.)

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Q. How soon after this happening did you move on to the emergency room?
A. I don't know timewise. I was in shock. It seemed like it took forever. So I can't tell you whether it was five minutes or ten minutes. I am not capable of doing that for you. I can tell you that I started giving orders at that point. First time all day. And I needed a towel, I needed something to put on it, I needed to tie it off. We needed to go to the emergency room now, and there was no waiting.
Q. So once you got hurt, you became more focused about getting the care you needed?
A. Yes.
Q. Up until --
A. (Interrupting) I was quite vocal.
Q. Up until the point where you were cut with the chain saw had the situation ever turned from a volunteer situation like you described early on to an employment situation were you thought you were going to be compensated?
A. No.
Q. Did the McGuires ever promise to pay you anything?

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A. No.
Q. Did Mr. Gagnon ever tell you he was going to pay you anything?
A. No.
Q. Did he ever make any comment to you that he was being paid to get this done by his parents?
A. He did say he was getting something for it. I don't know what. I don't know the terms. I remember something in there he was referring to he had to do this because he owed his mom money or something. I don't know.
Q. And I take it Gagnon didn't promise to share payment he may have been receiving with you?
A. No.
Q. Did you consider yourself a volunteer out there?
A. Yes.
Q. But obviously you felt you were taking directions from Gagnon but you were volunteering?
A. Yes.
Q. You didn't expect to get anything out of this?
A. No.
Q. Certainly not an injured arm?
A. Definitely not this, no. Maybe a pop, you know.
Q. All right. So we have all of your medical

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records but I want to go through this a little bit. At the emergency room they evaluated your arm, correct?
A. Yes.
Q. They cleaned out the wound?
A. Yes.
Q. Did they do some X-rays at the ER?
A. Yes.
Q. Did they tell you that it didn't reach the point where it hit any of your bones?
A. No, it did not.
Q. Initially was it the impression, as you understood it, that it was a tear through the skin and into the muscle?
A. Yes.
Q. There was no belief there was nerve involvement initially?
A. You know, once they gave me the painkiller, I don't -- I was in la-la land.
Q. To the best of your understanding, did they do anything else in the emergency room other than clean it and then stitch it up?
A. Yes. They did the stitches and closed it up and, you know, X-rays. I don't remember what all.

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Q. In the emergency room did they have you use your hand and move it to see if you were still functioning?
A. Yes.
Q. And was it still functioning at that point?
A. Parts, yes. They didn't really check it. I did that. I wanted to know what would work, and I am moving my hand around to see what is going on. And once the pain medicine they gave me kicked in, you know, I was able to move a little bit but not a whole lot.
Q. Once the pain medicine kicked in, I take it the injury itself felt a little better?
A. Oh, I went (indicating). It was --
MS. FREEMAN: (Interrupting) Just answer the question.
Q. It did?
A. Yes.
Q. And then how long was it before -- well, strike that. Eventually did you have to go somewhere and have the stitches out?
A. Yes.
Q. And who did that?
A. Dr. Sek.

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Q. Where is Dr. Sek?
A. He's right here on Elm Street.
Q. He's still operating here?
A. I have known him since I was five years old.
MS. FREEMAN: Just answer the question.
Q. We have sent a records request for him several times and there has never been a response. He's still working here somewhere in McHenry?
A. Yes.
Q. He took the stitches out?
A. Yes.
Q. Over the first month or two or three did you do any physical therapy?
A. I was told by Dr. Sek give it some time, it's going to take time. He did not send me to physical therapy or anything else.
Q. And I know from the record that, as you have explained already, when you tried to use the computer, that you continued to have some symptoms with the right arm and hand even after I guess the laceration had healed?
A. Right.
Q. All right?
A. Right.

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Q. And even today you're still having problems?
A. Yes.
Q. Sometime I think later in 2011, maybe it was early 2012, you had an EMG study done on your right arm?
A. I think I had a few of those.
Q. Nerve conduction study?
A. Yes.
Q. And there was something done early on with the Shoulder to Hand Clinic, Dr. Talerico or something like that?
A. I remember Talerico. I did go see him.
Q. That doctor had evaluated the EMG study, and he evaluated you, didn't feel there was any nerve impairment. Do you recall that?
A. He said -- well, I left Dr. Talerico because I don't think he knew who he was talking to. He started yelling at me about asking for pain medication, and I never even got anything from that man ever in my life. And I left seeing him because I don't think he -- there was something wrong there. And I only saw him twice, and I was out of there.
Q. Do you recall him giving the opinion that he

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didn't think there was anything surgically he could do for you?
A. Not at that point. He did say time will tell.
Q. Okay. And then you left Dr. Talerico?
A. Yes.
Q. And did you go somewhere else?
A. Yes.
Q. Because my records stop at the very beginning of 2012.
A. Dr. Sagerman.
Q. Where is Dr. Sagerman?
A. I gave you his address earlier, or his place, Vernon Hills.
Q. Oh, that's right. And when did you start seeing Dr. Sagerman?
A. I don't remember the date. I'll be honest with you.
Q. He was after Dr. --
A. (Interrupting) Talerico.
Q. -- Talerico?
A. Yes, yes.
Q. All right. And then did Dr. Sagerman do anything for your right arm different than what Dr. Talerico did?

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A. **He continued the physical therapy.**
Q. All right. And anything beyond the physical therapy?
A. **He ordered up a new EMG.**
Q. And then what?
A. **More physical therapy. It was a lot of physical therapy.**
Q. Has anybody done any surgeries on your arm?
A. **Yes. He did.**
Q. When did he do that?
A. **July of this year.**
Q. As you understand it as the patient, what did Dr. Sagerman do to the right arm?
A. **Removed a ton of scar tissue, he said. And he said -- and what they call -- it's a neurosis or -- I don't know the words he used.**
Q. I don't know either. I don't have any of these records.
A. **Okay.**
Q. So there was some kind of a surgery. Which parts of your arm did he work on?
A. **Forearm and the elbow.**
Q. All right. And that was in July?
A. **Yes.**

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Q. Have you had any more surgeries since then?
A. **No.**
Q. Are there any planned?
A. **No.**
Q. Are you still doing physical therapy?
A. **Not for my right arm anymore but for my left.**
Q. How is the right arm now since this procedure done by Dr. Sagerman?
A. **It's better in the sense the pain level is down.**
Q. Okay. Same; the pinky, the ring finger and the thumb?
A. **Those are the most affected, yes.**
Q. What about the index and the middle fingers? Are those impacted as well?
A. **Yes.**
Q. Are the ones that are affected the worst the pinky, the ring finger and the thumb on your right hand?
A. **All of the fingers are affected in the sense of a grip. The ones that feel numb are the pinky and the ring finger.**
Q. So there is a weakened grip overall?
A. **Oh, yes.**
Q. And then the pinky and the ring finger are numb?

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A. **Yes.**
Q. Earlier on you described the pain that was with the tendinitis, the forearm and everything. Is the forearm implicated on the right?
A. **On the right?**
Q. Yes, in terms of pains or sensation?
A. **I get a pain right next to the bone. There is a big lump of scar tissue, you can feel it, and it hurts there when I try to grab too much stuff that is heavier or anything with weight.**
Q. So if you strain the right arm, you will realize some pain right where the laceration was?
A. **Yes, it will burn a little.**
Q. So then with respect to the right arm, you described the numbness in the pinky and the ring finger, a weakened grip and then occasional shooting pain where the laceration was with heavy strain. And what else do you notice about the arm today, the right arm?
A. **You play with the scar tissue ball that is forming in there, and it burns under the elbow. It's like a direct link. If you pinch it, it's (indicating).**
Q. And is there any further recommended treatment

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for the right arm or any of the symptoms that are lingering?
A. **Yes. I am on medication for it.**
Q. What do you take?
A. **Gabapentin.**
Q. Is that an anti-inflammatory or pain med?
A. **It's a type of pain medication, I believe.**
Q. Okay. Besides taking that, anything else?
A. **I take an anti-inflammatory.**
Q. Is that for the left arm or the right arm?
A. **It's all right. I take -- I'm trying to think now. Well, I have, in case I need it, and I try not to take them, but Tramadol and hydrocodone, but I try not to take those.**
Q. Okay. So that's the medicine that you're still taking. Is there anything -- and there is no physical therapy with respect to the right arm currently?
A. **No. We're pretty much done with that.**
Q. And then in terms of function, you have mentioned there is weakened grip?
A. **Yes.**
Q. And you have the numbness in the pinky and ring finger. What other limitations can you

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appreciate with respect to the right arm?
A. Pinky.
Q. What about it?
A. It wouldn't go in.
Q. So you can't –
A. (Interrupting) I can't (indicating).
Q. You can't move the pinky so it abuts the index finger?
A. Or the ring finger.
Q. The ring finger?
A. Correct.
Q. And anything else? Do you still have the full range of motion in your hand?
A. Yes. As long as I do it controlled and slow. If I start forgetting and – you know, because I feel good and I start doing things fast, it's like all of a sudden I'll get – it will burn here (indicating), burn under here (indicating), and it will like pang all the way down. It will start tingling real bad again.
Q. So in terms of the shoulder movement, fine?
A. Shoulder is fine.
Q. Elbow movement fine?
A. No. The elbow is a bit sore. I think it's

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because of the surgery he did in there. He had to do a nerve release or something. It was tight.
Q. And did the doctor tell you whether that nerve release in the elbow was somehow related to the injury to the mid forearm?
A. He said that it's natural. You know, the way he explained it to me, it tore through the middle. It's not a cut, it's a tear. Things got pulled from both ends, you know, and that's the next spot that will be affected from the pull. So that's the way it was kind of explained to me. He said it's natural with what happened, with this type of thing that happened.
Q. Okay. The elbow is sore when you're moving it. Is that all the time or just periodically?
A. It's sore pretty much all the time.
Q. And you can still move it in all directions, though?
A. Yes. As long as I'm careful.
Q. And then the hand, with respect to the movement of – it is a weakened grip, but in terms of moving it, with the exception of the pinky, it still moves the same?

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A. Yes, yes. The pinky and the ring finger and the thumb is – I have a problem with the thumb coming in here (indicating). Not like this (indicating), but this way (indicating). And my hand shakes.
Q. Has the doctor told you – that would be Sagerman – when you can expect any further improvement, or is this what you're going to have?
A. He said nerve damage takes a long time to heal especially as we get older. He wouldn't rule out a full healing. He wouldn't say I was going to be stuck like this forever. He just said time will tell.
Q. So we don't know yet, and he doesn't know for sure?
A. Right.
Q. I'm going to show you what I'm going to mark as 2.
A. He knows more about it than I do.
MS. FREEMAN: There is no question pending.
THE WITNESS: Got you.
Q. I think I know the answer to this, but this is medical expenses as of March 19, 2012, $7,333.04.

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There is more medical expenses we don't have?
A. Right.
Q. The surgery in July and the physical therapy and –
A. (Interrupting) Yes.
Q. I take it you're making a claim for the tennis elbow as well?
A. You know, they tell me it's a natural part of it because of the not using this arm (indicating) and using this thing (indicating) for everything from drinking to driving to everything that I do. And they – yes.
Q. So there may be expenses associated with the left arm that we don't have?
A. It's a result of.
Q. You have had medical expenses for the treatments and care of the left arm?
A. Yes, minimal.
Q. We don't have those as part of this as well, correct?
A. Right.
Q. I just want to go through some photos here. This is a photo of your arm after the chain saw injury, obviously, correct? 2A?

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A. This is a long time after, yes.
MR. BARCH: Now I need to make that medical expense summary Exhibit No. 3. Sorry.
(Exhibit No. 3 marked for identification by Mr. Barch.)
MR. BARCH: I shouldn't have premarked the other ones.
Q. The other questions I was asking you when I was referring to Exhibit 2, it's now 3. The answers would be the same? We don't have all the medical expenses?
A. Right.
Q. 2A, that is your forearm after the chain saw injury?
A. Yes.
Q. Is that how it looks today?
A. No.
Q. What is that --
A. (Interrupting) No.
Q. What is going on now?
A. It's now got a scar that crosses it where they went in.
Q. Okay. So that is the second surgery, though?
A. Yes.

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Q. The second procedure. So these are all pre --
A. (Interrupting) Pre the July surgery, yes.
Q. The July, 2012. This is what it would have looked like, I take it then, had you not had the additional surgery?
A. Correct.
Q. Same thing with 2D and 2E?
A. Yes. These are all from pre.
Q. Now we go over to 2F. There is an additional photo with some more of I guess an incision that runs up and down your forearm?
A. Yes.
Q. And there is also one -- that's the July, 2012 stuff?
A. Yes.
Q. You have scars now on your arm from those as well?
A. Yes.
Q. 2F, G, H show the arm after that July, 2012 surgery?
A. Correct.
Q. What is I? This came from your counsel, too, 2I.
A. That's David.
Q. That's Mr. Gagnon?

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A. Yes.
Q. Where is this?
A. That's at his home.
Q. When did you take that?
A. That phone conversation you asked me I talked to him about, I went up there to get his address for his house for Hans, and he was outside.
Q. Oh, so when your attorney needed his address, you went up there to get it?
A. I knew where he lived. I didn't know the address, so I just drove past.
Q. And did you shoot this from the car or something?
A. As I drove by the house, yes.
Q. Did he know you were taking that?
A. Yes. I showed it to him.
Q. And then I guess 2J, this was just part of the records. Is this before the second -- before the July surgery or --
A. (Interrupting) This is the X-ray from the emergency room.
Q. Okay.
A. Kind of shows --
MS. FREEMAN: (Interrupting) There is no question pending.

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THE WITNESS: Sorry.
MR. BARCH: I think's all I have for now.
EXAMINATION BY MR. ACCARDO:
Q. For your left arm and left elbow, you had injured those before 2011; is that right?
A. Excuse me?
Q. You had injured your left arm and your left elbow before 2011?
A. Correct.
Q. And that was in a car accident?
A. Yes.
Q. And that took place when?
A. Ten years ago.
Q. What type of injury did you suffer in that car accident?
A. I suffered a broken neck, and I had to have an ulnar nerve transposition done.
Q. Okay. And where was that done?
A. That was done I think late -- what did they call that? That was a long time ago at the hospital, Lake Forest Hospital.
Q. Do you remember which doctor performed that?
A. The same doctor.
Q. The same doctor as what?

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A. **Sagerman.**
Q. Okay.
A. **That's why I knew him.**
MS. FREEMAN: Just answer the question.
Q. And after the surgery after the automobile accident about ten years ago did you still have trouble with the left arm?
A. **Still do today.**
Q. From the time of the car accident up until the time of the accident with the chain saw in June of 2011 did you have trouble with the left arm and the left elbow?
A. **Yes.**
Q. And has that changed since the accident in June of 2011?
A. **Yes.**
Q. How so?
A. **The other side of the elbow hurts.**
Q. Okay. Which side of the elbow hurt before?
A. **This side (indicating) was from the car accident. It's like the funny bone.**
Q. We're talking about more of the inside of your elbow?
A. **Yes.**

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Q. All right.
A. **Where this is out up here (indicating).**
Q. Okay. And by "out here" (indicating), you're talking about the outer part of the elbow?
A. **Yes.**
Q. You still have trouble with the inner part of the elbow?
A. **Yes. Cold days.**
Q. The time when you were working with David on the apple tree --
A. **(Interrupting) Yes.**
Q. -- was that the only time you had worked with him where there was a chain saw involved before June of 2011?
A. **With him with the chain saw, yes. There was a tree down in the front yard, but I don't know who did it. I assumed he did.**
Q. I'm just talking about you working with him with the chain saw before 2011.
A. **Yes.**
Q. Was it just the apple tree?
A. **That was it.**
Q. During the cutting of the apple tree did you have any criticism with the way that David used or

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employed the chain saw?
A. **No.**
Q. And before the accident the day you were cutting down the pine tree did you have any criticism with the way David was using or employing the chain saw?
A. **No.**
Q. Was there any alcohol involved in the June, 2011 incident?
A. **Possibly on Bill's part, Bill McGuire, but neither of us.**
Q. Not on David's part?
A. **No.**
Q. Any reason to believe that David was under the influence of any type of drugs or alcohol at the time of the accident?
A. **No.**
Q. At any point before the actual accident took place when you were cutting down the pine tree did you express any displeasure or any concern over the process that David had set up for trimming the limbs?
A. **No.**
Q. You didn't see any problem with it?

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A. **He seemed like he knew what he was doing.**
Q. My question to you was did you see any problem with it, though?
A. **No. I wouldn't know.**
Q. Now, I just want to go back to right before you got cut and talk a little bit about the saw because I am a little confused. When David started walking towards you, was the chain still going or had it already been put into idle at that point?
A. **He was cutting, stopped, came up, took the finger off the trigger because the whole thing went down, you know -- I think it stopped. The chain pretty much stopped.**
Q. Okay. And then he starts walking toward you?
A. **Right.**
Q. And at any point did you see his finger hit the trigger?
A. **I didn't see his finger hit the trigger, no.**
Q. You just heard?
A. **Yes.**
Q. And then you saw the chain --
A. **(Interrupting) Yes.**
Q. -- start to speed up?

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A. Yes.
Q. Or you actually saw the chain engage?
A. Yes.
Q. Okay.
A. Start to move.
Q. About how much time elapsed from the time he put the saw into idle or took his finger off the trigger until you heard or saw the chain engage again? Was it just a matter of seconds?
A. Yes, it was seconds.
Q. And then about how much time elapsed from the time you saw or heard the chain engage until the time you were actually cut?
A. Split seconds. It came fast.
Q. After the chain or saw engaged right before you were cut, did you see David move in any particular way?
A. Say that again. I lost you in the middle.
Q. After you saw the chain and the saw engage before you were cut, did you see David's body move in any particular way? Did you see any type of jerking movement or anything like that?
A. No. He started walking towards me.
Q. But at some point I think you said you saw the

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saw coming up?
A. Yes.
Q. Okay. How high was the saw when it cut you?
A. It was my eye height. My eyes.
Q. And how was David holding it at that point?
A. (Indicating).
Q. Okay. You're showing me --
A. (Interrupting) Saw pointing up.
Q. Saw pointing up? One hand would have been on the bar?
A. Yes.
Q. The safety bar?
A. Yes.
Q. And then the other hand where?
A. Down on the trigger.
Q. Okay. And the actual saw was pointed straight up in the air?
A. No. It was maybe a 45 it went to.
Q. When you heard and saw the chain engage, where was the saw pointing?
A. Down toward the ground at about a 45.
Q. So from the time you heard or saw the chain engage up until the time you were cut, David moved it from about 45 degrees to the ground up?

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pointing towards the sky about 45 degrees?
A. Yes.
Q. And how would you describe the manner in which he did that? Was that something that was --
A. (Interrupting) Just raise it.
Q. Was that something that was fast? Was it slow? Was it sudden?
A. It was very sudden and fast.
Q. Did it look like he had lost control of the saw, or did it look like he did it on purpose?
A. No, it looked like he was in control, but I don't know -- I have asked him. I don't know if he tripped over something.
Q. (Interrupting) I'm not -- I'm just asking you if --
A. -- or what. I don't know the answer to that.
Q. Okay. You said you were holding the branch with your right arm or your right hand, right?
A. Uh-huh.
Q. Okay. And you were facing with your body towards David?
A. Yes.
Q. Okay. And then when you heard and saw the chain engage, you dropped the branch?

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A. Yes.
Q. And then you I think motioned -- you said you turned your body it would have been to the right and up and away?
A. Yes. First I went up, and then I was trying to get up and out of the way because that saw blade came up to a 45, and I had to get the heck out of there.
Q. Where was your arm when it actually got cut, and in what position was it?
A. Can I stand up and show you so I can describe it?
Q. Yes.
A. It was -- I was turned like this (indicating) and it cut me right here (indicating).
Q. Okay.
MR. ACCARDO: So let the record reflect that Mr. Dulberg's right arm was basically parallel with his nose and eyes.
Q. Is that about right?
A. Yes, it was. Yes.
Q. And your body was turned about --
A. (Interrupting) I was in the middle of pivoting to get away.
Q. Okay. After the chain and the saw engaged did

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David keep walking towards you, or was it just more of a movement with his hands and arms?

A. Say it again.

Q. After you saw the saw and the chain engaged did David keep walking towards you, or was it simply a motion with his hands and arms?

A. It was a motion up.

Q. So he had stopped walking or moving towards you?

A. I think that there were still forward momentum going on, yes, because it started and it came up -- yes, there had to be. I don't know. There had to be, though. My eyes were on the blade at that point.

Q. And now I know you said when you were in the emergency room that David said something about kickback?

A. I asked him -- the emergency room staff asked, what the heck happened, and that was his response.

Q. Did you overhear what he told to the people at the emergency room?

A. Yes.

Q. What did he tell the people at the emergency room?

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A. He said kickback or something. I just don't know. He took his hands, put them on the head and put them between his knees and just stayed there and did not say nothing.

Q. Did they ask him more than once what happened?

A. Yes, a couple of times, and I just looked at the emergency room staff, and I said, "I think it's an accident. Let's just get this done."

Q. When they asked him the second or the third time what happened, what was his response?

A. At that point he had his head between his knees and he just goes "I don't know what happened. I just don't know."

Q. At any point did you have a conversation with David in the emergency room, outside of the presentation of the emergency room personnel, about what happened?

A. No.

Q. Now, I know that when you were asked before about some discussions or attempts at discussions about what has happened from the time of the accident up until today's date, I think you sort of just -- sort of made some noises and said David did not want to talk about it. I want you to tell

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me, if you know, what specifically has David told you about what he thinks happened on the date of the accident?

A. He doesn't know.

Q. Has he offered any type of explanation as to what happened?

A. No. I think he's afraid to. I don't know.

MS. FREEMAN: There is no question pending.

Q. Why do you think he's afraid to?

A. Because I don't think he knows.

Q. As you sit here today do you think this is something he did on purpose or intentionally?

A. I think he screwed up and had a brain fart.

Q. So the answer to my question would be no?

A. Right.

Q. At any point while you were in the emergency room did you ever have a discussion with David where you indicated to him that you thought that both of you could make a lot of money off of this? Did that conversation ever happen?

A. No.

MR. ACCARDO: I don't have anything else.

MR. BARCH: Only question I have in

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follow-up -- just one.

EXAMINATION BY MR. BARCH:

Q. You mentioned that you and Mr. Gagnon were not drinking that afternoon, correct?

A. Correct.

Q. And you said Bill. I guess you're referring to Bill McGuire may have been drinking?

A. He's been known to.

Q. Okay. As you sit here today do you believe that if he had consumed beer or something that day, that that played some role in what happened to you with the chain saw?

A. It played no role.

MR. BARCH: That's all.

MR. ACCARDO: Nothing else.

MS. FREEMAN: I think we will waive signature.

(The deposition of this witness came to a close at 3:33 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, Angela D. Oldenburg, a Certified Shorthand Reporter in and for the State of Illinois, do certify that, pursuant to the agreement hereto annexed, there came before me on the 24th day of January, 2013, at 12:17 p.m., the following-named person, to wit: Paul R. Dulberg, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge concerning the matters in controversy in this cause; that he was thereupon examined on his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness and that the reading and signing of the deposition by the said witness were expressly waived.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

Dated this 28th day of January, 2013.

Angela D. Oldenburg

Certified Shorthand Reporter
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FISHER COURT REPORTING
922 North Lyford Road Rockford, IL 61107

November 22, 2013

Law Office of Thomas Popovich
3415 West Elm Street
McHenry, IL 60050

Re: Dulberg vs. Gagnon, et al.

Dear Sir:

Enclosed please find Exhibits 1 through 3 which were marked during the course of Paul Dulberg's deposition. The exhibits should have been attached to the transcript when it was sent to your office but were inadvertently left behind. My apologies for any inconvenience this has caused.

Sincerely,

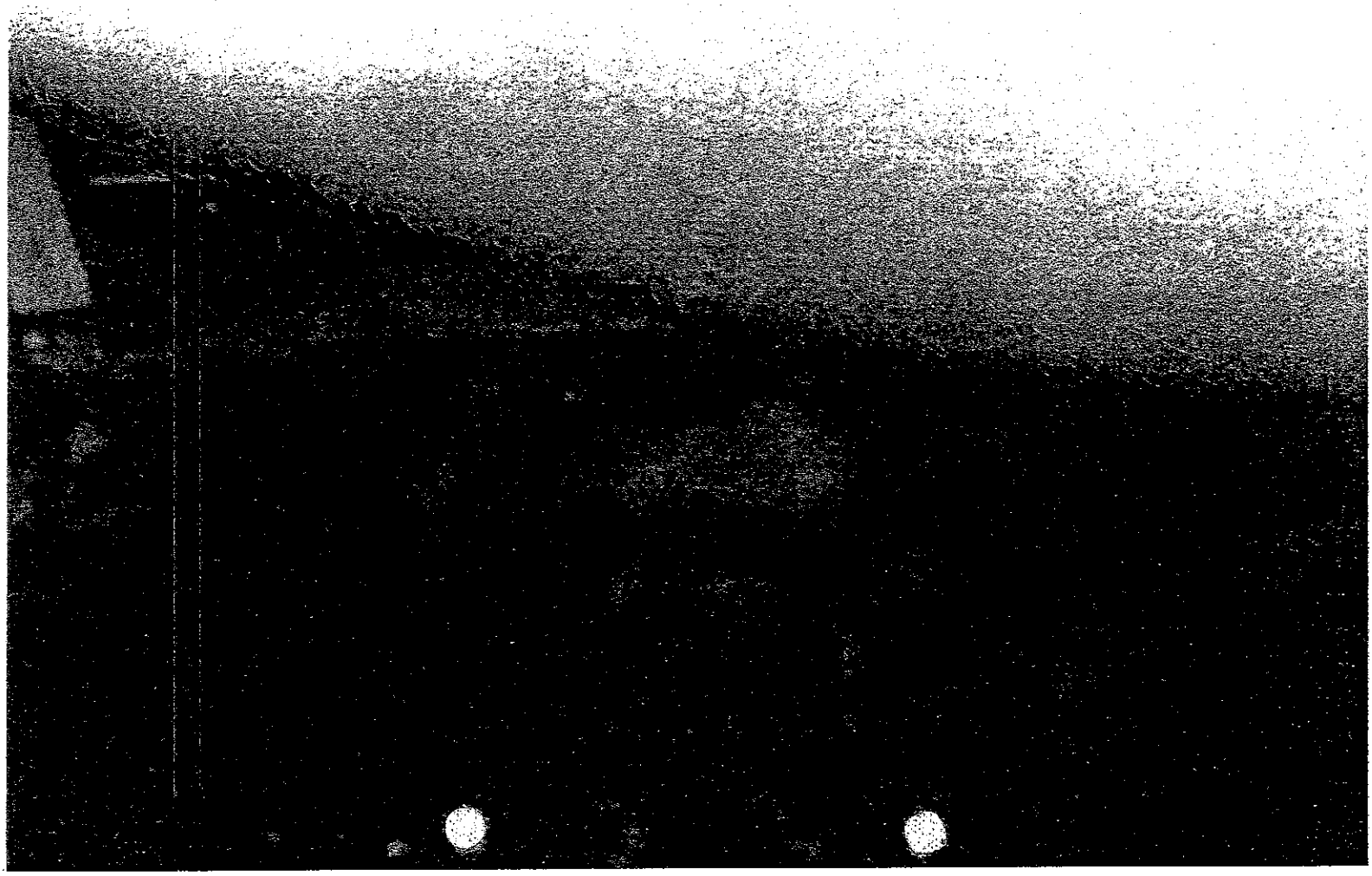
Deb Fisher

Deb Fisher

Enclosures

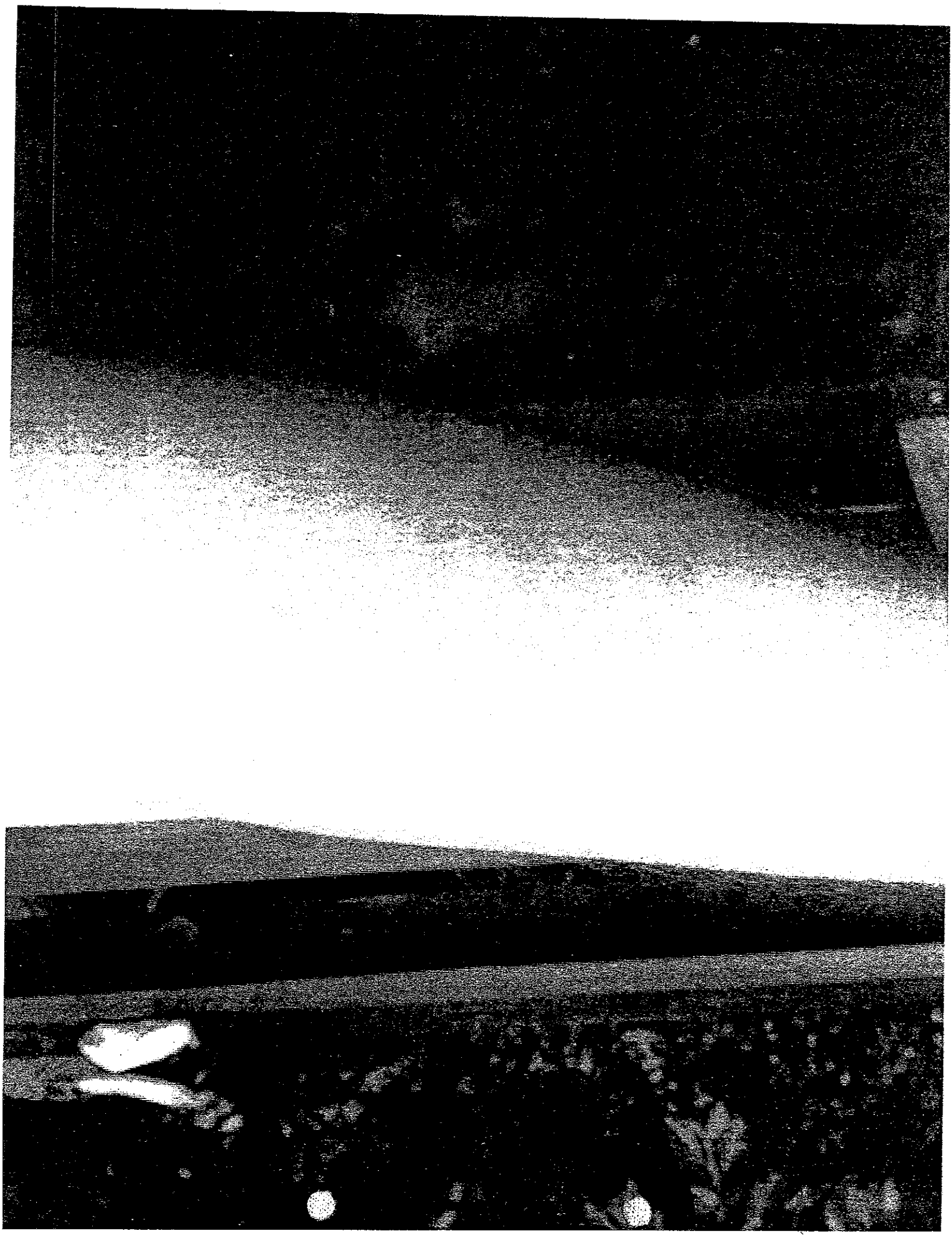
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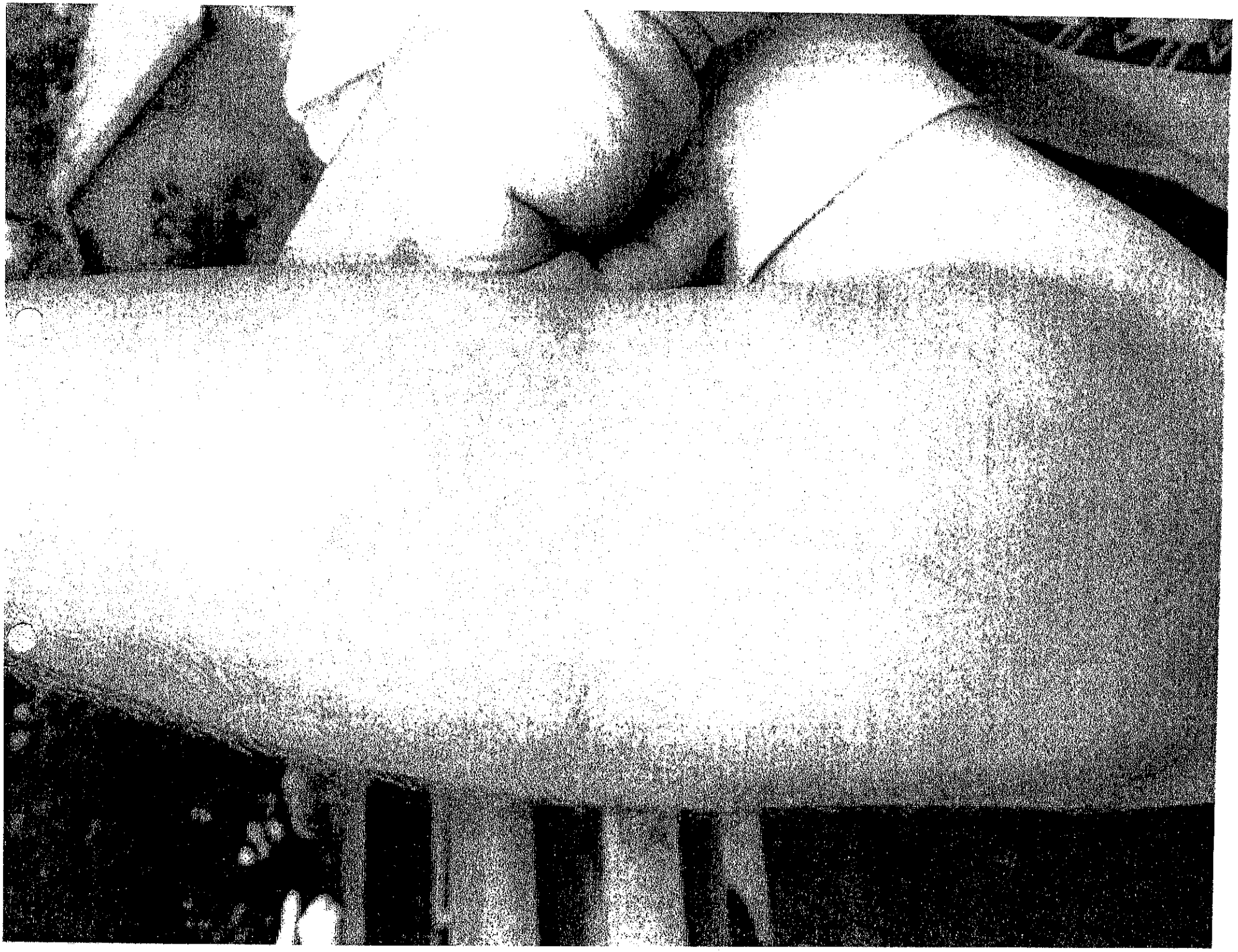


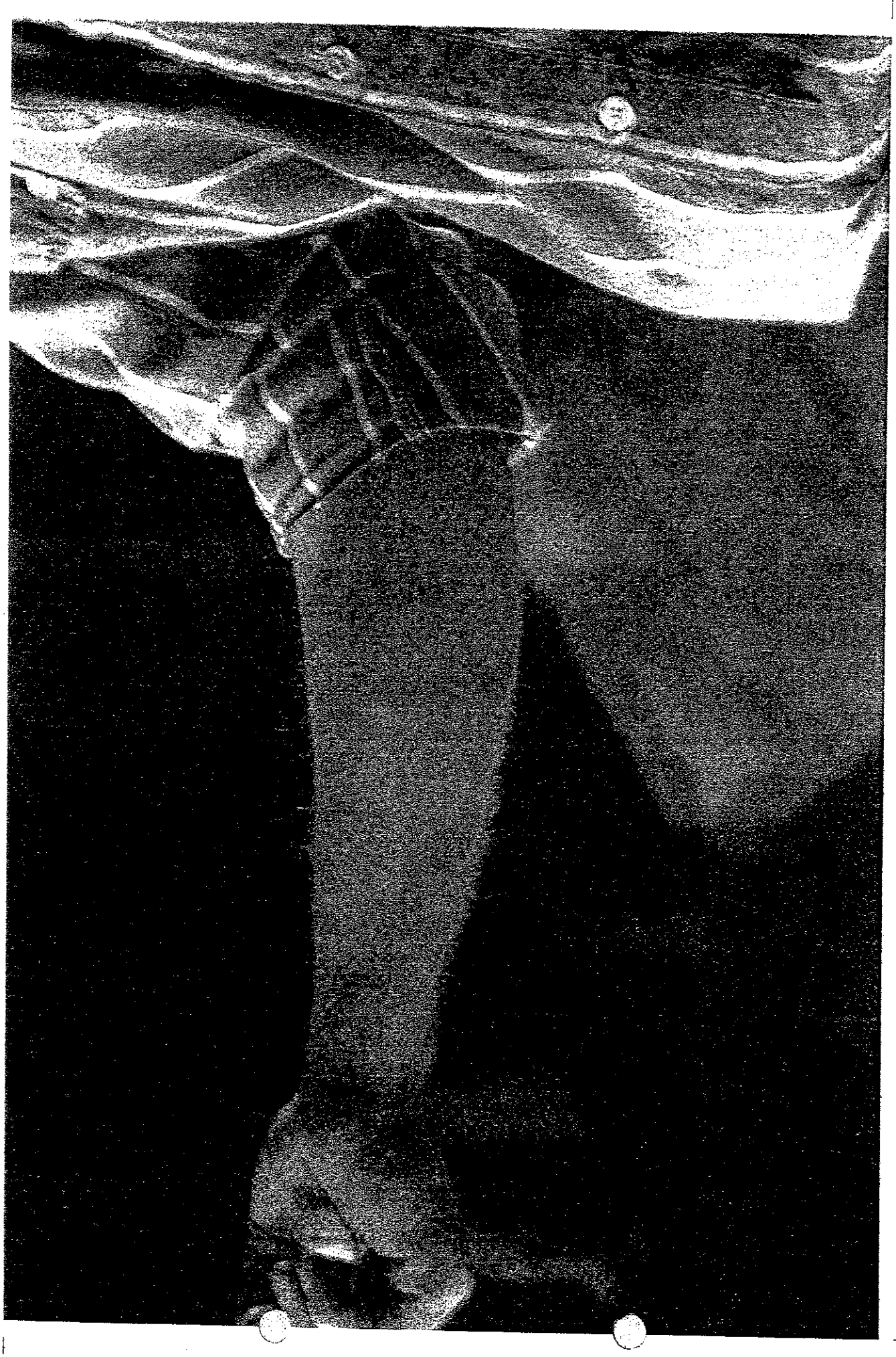


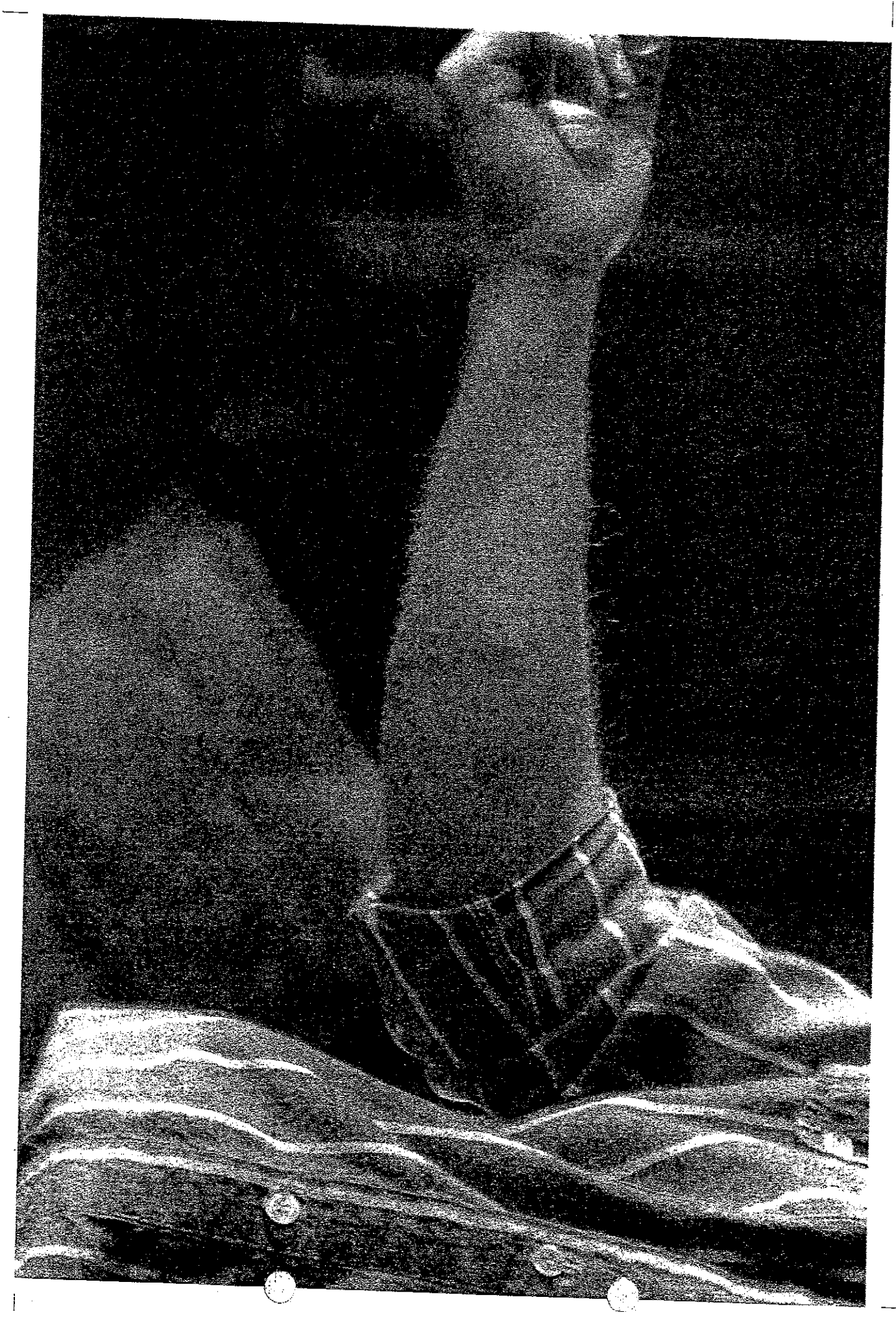






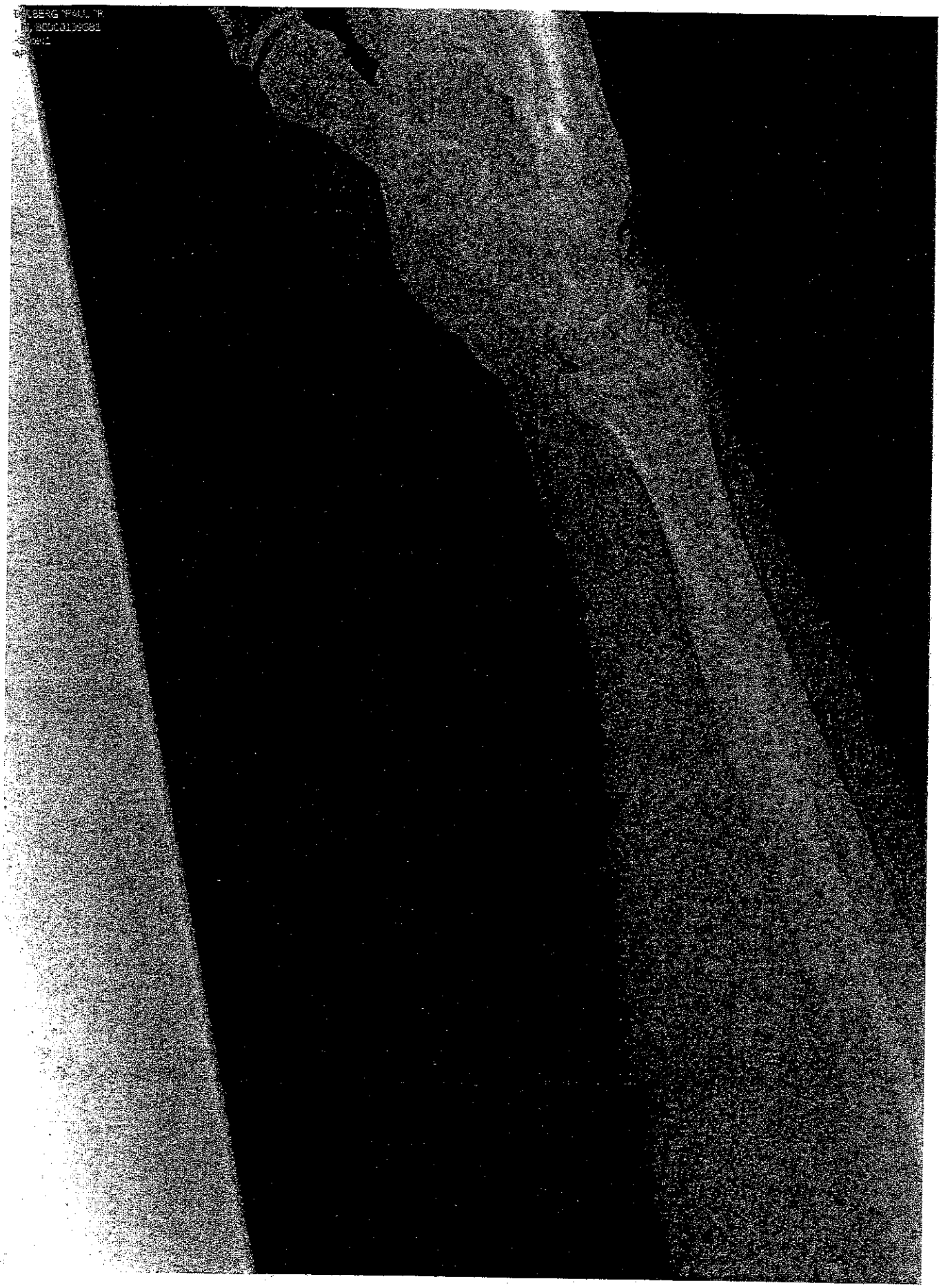








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Dulberg 008456



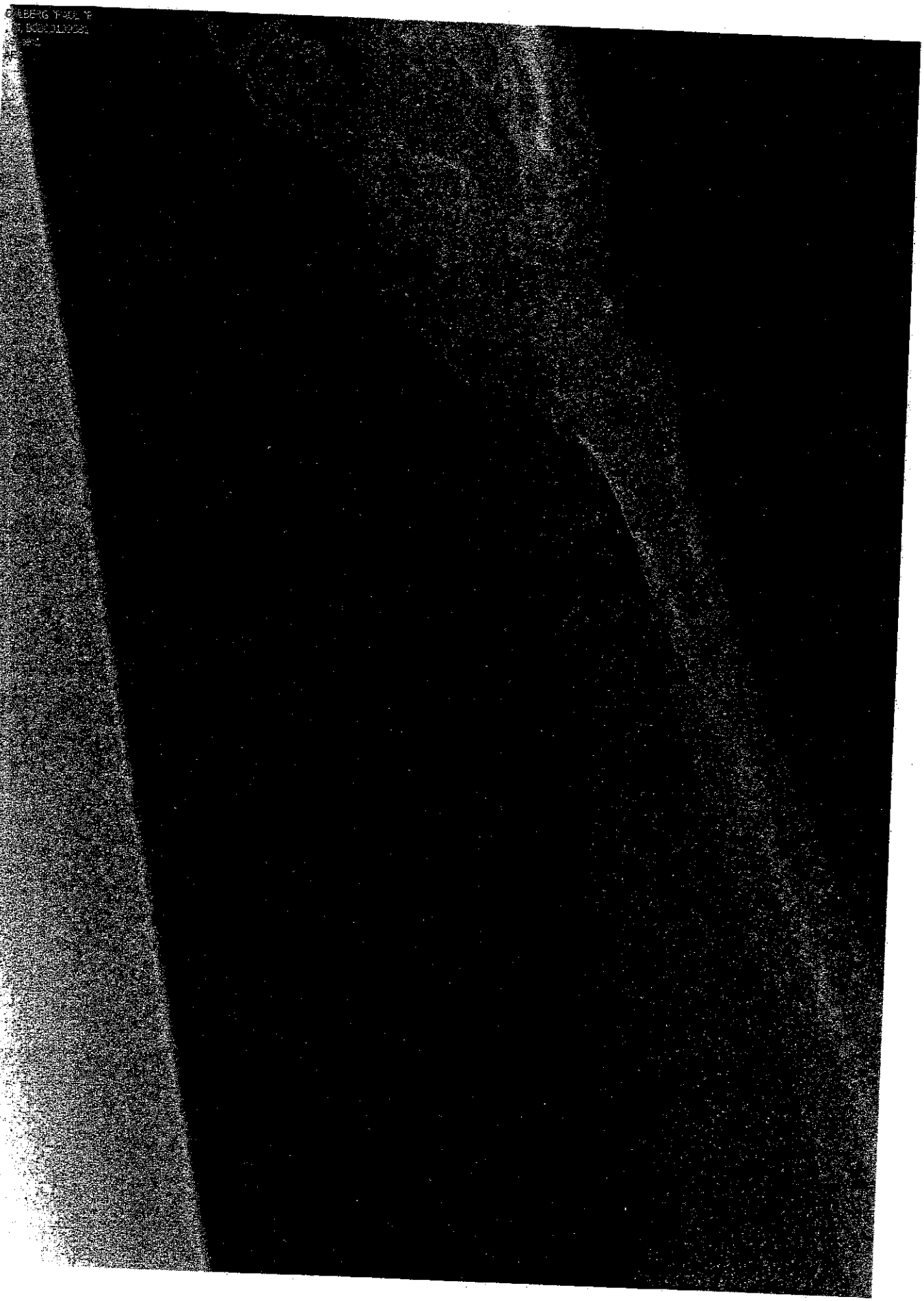



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COPY 1

STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

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

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

APPEARANCES:

ATTORNEY THERESA M. FREEMAN
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, Illinois
Appeared on behalf of the plaintiff.

ATTORNEY RONALD A. BARCH
Cicero, France, Barch & Alexander
6323 East Riverside Boulevard
Rockford, Illinois
Appeared on behalf of the defendants, Caroline McGuire and Bill McGuire.

ATTORNEY PERRY A. ACCARDO
Law Office of M. Gerard Gregoire
200 North LaSalle Street
Chicago, Illinois
Appeared on behalf of the defendant, David Gagnon.

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EXHIBITS

EXHIBIT		MARKED
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PAUL R. DULBERG,
being first duly sworn, was examined and testified as follows:
EXAMINATION BY MR. ACCARDO:
Q. Sir, would you please state and spell your name for the record?
A. **Paul Dulberg, D-u-l-b-e-r-g.**
MR. ACCARDO: Let the record reflect this is the discovery deposition of Paul Dulberg taken pursuant to notice and continued from time to time, taken in accordance with the Rules of Civil Procedure of McHenry County and the Rules of the Supreme Court of the State of Illinois and any other applicable local court rules.
Good afternoon, Mr. Dulberg. My name is Perry Accardo. I'm going to be asking you some questions today.
MR. BARCH: Is this your notice?
MR. ACCARDO: Did you issue the notice? I thought I did. If you want to do it, that's fine.
MR. BARCH: Well, I mean, if you issued one --

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MR. ACCARDO: (Interrupting) I'm not sure whose notice it is.
MR. BARCH: I thought it was mine.
MR. ACCARDO: I'm sorry, I assumed it was mine, but if you want to do it.
MR. BARCH: I mean, sooner or later we both need to ask the questions.
MR. ACCARDO: If you want to do it, that's fine.
MR. BARCH: Let's go forward.
MR. ACCARDO: All right.
MR. BARCH: We'll pick up where Mr. Accardo left off. We're taking this deposition pursuant to an agreement of the parties, a notice and in accordance with the Illinois Code of Civil Procedure.
We're going to do what is a called discovery deposition. I'm sure your attorney talked to you about it. It's a fancy word for a question-and-answer session. Hopefully we will ask questions that you hear and understand. And then if you do hear and understand the question, it's our expectation you answer truthfully. All right?

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THE WITNESS: Yes.
MR. BARCH: Couple of things to keep in mind as we go along. There is a lady over there to your left taking everything down that we're saying, so it will be important when we do have a conversation that we use words. Here in Midwest we use a lot of uh-huhs, uh-uhs and shoulder shrugs. During conversation it's easier to interpret face to face, but it doesn't translate well to a record. Okay?
THE WITNESS: (Indicates affirmatively.)
MR. BARCH: So if you happen to do that, one of us in the room may ask you to clarify what you mean. All right?
THE WITNESS: Okay.
MR. BARCH: And the other thing to do is some of the questions that come out may be easy to interpret or anticipate, and witnesses, for whatever reason, have a tendency to want to get the answers out and may start talking over the question. You may not do that, but if you happen to start talking or giving an answer before the whole

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question is out, I may ask you to stop, okay, so I can get the whole question out and then we'll give you a chance to get your whole answer out. All right?
THE WITNESS: (Indicates affirmatively.)
MR. BARCH: The same is true of me. If I start a question before you finish your answer, please tell me. I want to give you a chance to get your whole answer out. Fair enough?
THE WITNESS: Yes.
MR. BARCH: You might hear the word objection at some point. That would come from one of the attorneys not asking you questions. If you hear the word objection, you should stop your answer or don't even begin one and then look to your attorney for direction as to how to proceed. Okay?
THE WITNESS: Yes.
MR. BARCH: This is not an endurance test. If you need to use the restroom, get a drink of coffee, whatever you need to do, just let us know. Okay?
THE WITNESS: Yes.

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EXAMINATION BY MR. BARCH:
Q. Could you please state your full name for the record?
A. Paul Dulberg.
Q. Middle name?
A. Raymond.
Q. Where do you reside?
A. 4606 Hayden Court.
Q. Did you say Hayden?
A. Hayden.
Q. How do you spell it?
A. H-a-y-d-e-n.
Q. And that's in McHenry?
A. Yes.
Q. The incident we're here to talk about did not take place on your property; is that true?
A. True.
Q. Where is 4606 Hayden Court in relation to 1016 West Elder?
A. They are in the same neighborhood.
Q. Are they adjacent properties?
A. No.
Q. Are we talking like houses away? Blocks away? Miles?

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A. Less than a minute and a half by car.
Q. Can you see the 1016 West Elder property from your property?
A. No.
Q. Okay. And what is your date of birth?
A. 3-19-70.
Q. And the incident that we're here to talk about, do you recall it happening on June 28, 2011?
A. I believe that's the date.
Q. How old were you then?
A. 41.
Q. Are you married, sir?
A. No.
Q. Have you ever been married?
A. No.
Q. Back in June of 2011 did anybody reside with you at the Hayden Court property?
A. Yes.
Q. Who?
A. My mother and a friend, Mike McArtor.
Q. Mom's name?
A. Barbara Dulberg.
Q. And the friend that was living there?
A. Mike McArtor.

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Q. How do you spell McArtor?
A. M-c-A-r-t-o-r.
Q. Does Mike still reside with you and your mom?
A. Yes.
Q. Tell me a little bit about your educational background. Did you finish high school?
A. Yes.
Q. Where?
A. Johnsburg.
Q. When did you finish?
A. 1988.
Q. Did you move on to college?
A. Some college.
Q. Tell me a little bit about that.
A. I took a few years. I never finished.
Q. Where did you enroll?
A. MacMurray College.
Q. Was that a community college or a four-year?
A. Private college down in Springfield, Illinois.
Q. You say you took a few years. Could you be more specific if you can? One? Two? Three?
A. Two.
Q. Did you acquire an associate's degree?
A. No.

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Q. What was your major?
A. I believe it was political science.
Q. And any particular reason you left?
A. I had to go home.
Q. What was the reason you had to go home? To care for your mom?
A. Family.
Q. What was that?
A. It was family.
Q. And you never went back?
A. No.
Q. Was that immediately after high school?
A. No.
Q. When was it in relation to high school?
A. It was about three years after high school.
Q. So early '90s?
A. Yes. You made me think about that.
Q. Besides the course work that you participated in at MacMurray College, have you had any other college courses at any other school local?
A. I remember once I took a course over here at MCC.
Q. What course was that?
A. I believe it was college algebra.
Q. Was it before or after MacMurray?

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A. Before.
Q. Since leaving MacMurray have you taken any additional college level course work?
A. No.
Q. Have you had any vocational training of any kind?
A. Yes.
Q. What is the nature of that?
A. Heidelberg Academy.
Q. What is that Heidelberg Academy?
A. It's to learn how to run printing presses.
Q. Where is Heidelberg Academy located?
A. When I took it, it was in -- I don't know. It was down in the city, a suburb.
Q. Suburbs of Chicago?
A. Yes.
Q. Tell me about that course. Is that just – is that pretty short? Long? Is it intensive? What is it?
A. It's intensive, but it's short.
Q. When you say short, is it a day? A month? A year?
A. However long you want to pay to go until you're comfortable running.
Q. How long did you go?

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A. Two weeks. It was more of a certificate for me.
Q. Did you take the vocational training in operating printing presses for a particular employer?
A. Yes.
Q. Who was that?
A. Intermatic, Incorporated.
Q. Okay. And did you say you received a certificate of some sort?
A. Yes.
Q. How would you describe the certificate that you received?
A. I'm trying to picture it in my head. It's a form that says that I completed the work. I haven't looked at it in years.
Q. The training for a particular printing press?
A. Yes.
Q. And what was the name of the printing press?
A. It was an SM 74.
Q. All right. Besides the training certificate for the SM 74 have you had any additional vocational training of any sort?
A. Yes.
Q. And why don't you tell me about that.
A. I had several courses in graphic design.

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Q. Rocket design?
A. Graphic design.
Q. Okay. Where did you take those?
A. Various locations throughout the suburbs.
Q. Are we talking like one-week seminar-type programs, or is this a –
A. (Interrupting) Some were seminars. Some were personal where a company hired a teacher to come in and teach us the new aspects of the program.
Q. If I'm hearing what you're saying, you were trained on how to operate graphic design software?
A. Yes.
Q. Was that for a specific employer of any kind?
A. Intermatic, Incorporated.
Q. So the graphic design software training and also the printing program. What else? Anything else that brings to mind?
A. That's it.
Q. When did you have the – I guess strike that question. When were you employed at Intermatic?
A. I believe it was 1998 through 2008, 2009, somewhere in there. I don't remember the exact.
Q. Are you employed today?

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A. No.
Q. When was the last time you were employed, starting from today and working backwards?
A. May of 2011.
Q. So if I'm hearing what you just said, you have not had a job since this incident on June 28, 2011?
A. Correct.
Q. And where were you working? What was the job you had that ended in May of 2011?
A. It was for Juskie Printing.
Q. Juskie Printing?
A. Yes.
Q. How do you spell that?
A. J-u-s-k-i-e Printing.
Q. And that ended in May of 2011?
A. Yes.
Q. When did you start at Juskie?
A. Years earlier.
Q. Was it a transition directly from Intermatic to Juskie?
A. Not directly, no.
Q. So it would have been sometime after 2008 and 2009 when you started at Juskie?

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A. **Yes.**
Q. Was there any other employer in between those two companies?
A. **I had my -- I did a side business.**
Q. Tell me about the side business.
A. **Its name was Sharp Printing, Incorporated.**
Q. Sharp?
A. **Printing, Incorporated, or Inc.**
Q. Okay. When were you running Sharp Printing?
A. **Yes. I started that in 1999, and I ended it the year this happened.**
Q. So you ended it in 2011?
A. **Yes.**
Q. Did you end it before or after the incident on June 28, 2011?
A. **I ended it just before.**
Q. So I take it then you're not blaming the demise or the dissolution of the Sharp Printing, Inc. company on this occurrence?
A. **Correct.**
Q. Okay. And then was there a period of time where the Sharp Printing, Inc. business overlapped with your work at Juskie Printing?
A. **Yes.**

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Q. And as you sit here today can you get any closer in terms of your period of employment at Juskie other than sometime after 2008 or '9 and then May of 2011?
A. **I had -- it was a 1099, and I had done work for Mark prior to me leaving Intermatic and after. It was an ongoing-type thing.**
Q. Okay. So you weren't actually employed then by Juskie? You're not on their payroll, I take it?
A. **I was 1099. So, no, I guess not.**
Q. When you say 1099, are you saying that you were an independent contractor?
A. **Yes.**
Q. So you would do work for them, and they would pay you, and you would report the income based upon the gross payment?
A. **Correct.**
Q. And did you record that income then and report it through Sharp Printing?
A. **No. That was a self-employment.**
Q. Okay. The position you had at Intermatic, was that the 1099 position, or were you actually employed?
A. **It was 1099. After I left Intermatic.**

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Q. So prior to 1998 to 2008/2009, whenever you actually left, you were an employee?
A. **Yes.**
Q. And after that you still did work for them on an independent contract basis?
A. **Yes.**
Q. Okay. Now, the work that you did at Intermatic, what was the nature of your business, your work?
A. **When I was running the printing presses or when I was doing the graphic design?**
Q. Whatever you want to tell me about first.
A. **When I was running the printing presses, it's exactly what it is. I ran a printing press.**
Q. How long over that period of 1998 to roughly 2008/2009 were you running the printing press?
A. **Until I think it was 2003 or 2004.**
Q. And did you stop working the printing press position to take on some other role?
A. **I was a -- yes, in the office.**
Q. And what was that role you took on?
A. **Graphic designer.**
Q. And that could encompass a lot of things for a layperson. When you say you were a graphics designer for Intermatic, what kind of work were

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you doing for them?
A. **I did catalog design, package design, collateral, signage, brochures. Everything from business -- everything their company needed.**
Q. For Intermatic?
A. **Yes.**
Q. So you were in-house -- you were doing in-house graphics design work for Intermatic?
A. **Correct.**
Q. You weren't in commercial graphic design or anything where your sole business was to do that for other companies?
A. **No.**
Q. And did you take -- did you hold -- did you have a name for that position?
A. **Graphic designer.**
Q. Did you hold that position then with Intermatic until you left?
A. **Yes.**
Q. And the graphic design work that you did, was it all computer-assisted?
A. **It was all computer graphics.**
Q. Is it all mouse entry, or is it keyboard entry --
A. **(Interrupting) Mouse and keyboard, yes.**

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Q. – or a combination? And is that the software training that you would get from time to time –
A. **(Interrupting) Yes.**
Q. – that you mentioned earlier?
A. **Yes.**
Q. If there was a new program that came on or new version of the program, you would go get trained on it?
A. **Yes.**
Q. I don't want to oversimplify this, but is that what you're talking about?
A. **Yes.**
Q. And then there was a period of time where you were doing 1099 work for Intermatic and also for Juskie Printing?
A. **Yes.**
Q. Doing the same type of stuff?
A. **Yes.**
Q. When you worked at Juskie, was that also work for Juskie itself, or was it for customers of Juskie?
A. **Juskie is a print broker, so it was for its customers. I worked for him, but . . .**
Q. All right. And since June 28 of 2011 I take it you have not done any graphic design work

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whatsoever?
A. **I have tried.**
Q. When you say you have tried, what did you try?
A. **I tried using a keyboard and a mouse.**
Q. And when in relation to June 28, 2011 did you attempt to use a keyboard or mouse to do graphics design work?
A. **I would say probably two or three months after that incident.**
Q. Was that for Juskie?
A. **No.**
Q. Who did you try and do work for?
A. **I'm trying to remember his name. New person. Mike Thomas.**
Q. What kind of business does Mike Thomas have?
A. **I can't recall the name of the business right now but I can tell you the type of business. He did scratch-off game pieces.**
Q. For like a lottery company or something?
A. **Yes. But it wasn't lottery. It was where companies wanted to give away a TV to their employees, and they'd give them all scratch cards and see who won, stuff like that. Promotions.**
Q. When you say you tried to do some work for Mike

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Thomas, what did you attempt to do?
A. **I tried to do the graphic design for the scratch cards.**
Q. Okay. And if you could elaborate on that more, are you actually coming up with a concept or a picture that is going to be printed on the card?
A. **Yes.**
Q. And were you given parameters as to what they wanted it to look like, and you were trying to draw it, replicate it?
A. **I would get the parameters, what size they wanted me to do it, and it was my job to come up with the concept and the design. They had input on what they thought they wanted it to be.**
Q. And, again, I'm not trying to oversimplify what you were doing, but I get the impression as a layperson you're trying to come up with a picture that would be on the computer screen that would then be a concept you could flow past the customer to see if it would work for the scratch game?
A. **Correct.**
Q. And that's the program you used to do that which requires a series of key entries and mouse

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clicks?
A. **Key entry and mouse, yes.**
Q. What was it about – two or three months after this incident what was it that you were unable to do?
A. **Type. I could finger peck. I couldn't type anymore. Grabbing a mouse isn't exactly working either.**
Q. Okay. And so you were only able to finger peck after this? That was one impairment or impediment to the job, correct?
A. **Yes.**
Q. And then you said something about the mouse. What is it about the mouse that is the problem?
A. **Grabbing it.**
Q. All right. So you tried that two to three months after the incident, correct?
A. **(Indicates affirmatively.)**
Q. What is it exactly – which hand are you complaining about, by the way?
A. **My right hand.**
Q. Right hand. And what is it about the right hand that impedes your ability to type with it?
A. **It doesn't work right. It hurts.**

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Q. And you're saying it doesn't work right and it hurts. Is that the same problem that affects your ability to use a mouse?
A. Yes.
Q. Is your left hand problematic in any way?
A. It is, yes.
Q. What is wrong with your left hand?
A. They call it tennis elbow or something.
Q. Okay. What have you been told this tennis elbow is?
A. He said it's something about a tear in the muscle or ligament or something.
Q. And which part of your arm?
A. Elbow.
Q. And are you connecting that to the events of June 28, 2011?
A. They said that it is the natural -- what is the word he used -- the doctor used? He said it's perfectly natural that because of having to use my left arm for everything, that it's overused.
Q. When did you begin having problems with your left arm?
A. About two months ago. It got real acute about two months ago. I was having little issues

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building up to it, but then it got real acute.
Q. When you say "acute," it became real problematic?
A. Strong, yes.
Q. What kind of symptoms did you get with the left hand two months ago? What flared up exactly?
A. That side of my elbow (indicating), the outside (indicating).
Q. Just for the record, you held your left arm across your body and pointed to the outside part of your elbow?
A. Yes.
Q. Is that a fair description?
A. Yes.
Q. And was it painful?
A. Yes.
Q. Do you still have the range of motion? It's just painful?
A. It's the range of motion that hurts when you extend it out or pull it all the way in like you're going to eat.
Q. So it's painful as you're going through range of motion?
A. The center range is fine. It's the extensor all the way out and all the way in.

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Q. When you try to extend your arm straight out, it hurts?
A. Yes.
Q. And when you try and pull it in as far as it will go, it hurts?
A. Yes. In between it's pretty good.
Q. You have seen some doctors concerning your left elbow?
A. Yes.
Q. Who have you seen on the left elbow?
A. Dr. Sagerman.
Q. Where is Dr. Sagerman located?
A. He has two offices; one in Vernon Hills and the other in -- it's down near Northwest Community. I don't know the name of the town.
Q. What is Dr. Sagerman's first name?
A. Scott.
Q. And have you seen anybody else for the left elbow tennis elbow problem you have just explained to us?
A. No.
Q. What kind of treatment have you had on the left elbow?
A. I just started physical therapy.

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Q. All right. You have seen a doctor concerning the left elbow then. Have you ever heard the doctor use the word extension?
A. He uses words I don't understand all the time.
Q. Flexion? Have you ever heard the word flexion?
A. He may have.
Q. But that doesn't register for you, though, what those mean?
A. No. I showed him where it was. He knew right away. He just -- that's . . .
Q. So far you have talked about --
A. (Interrupting) He ran a couple of tests. He said, "This is what you have."
MS. FREEMAN: Wait for the question.
Q. You talked about you extending your arm and pulling it back toward you. That hurts at the extreme ends, correct?
A. Yes.
Q. What about turning the wrist palm up and palm down? Does that hurt in the elbow area?
A. In the extended, yes.
Q. And which position makes the elbow hurt? Is it palm up or palm down or both?
A. Palm down, fingers up.

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Q. Have you heard the phrase supination, pronation?
A. Those words I don't know.
Q. Okay. So other than with your arm straight out at full extension and palm down, that is when you describe it hurts, correct?
A. Fingers up (indicating).
Q. So you have to -- you're closing your hand?
A. Fingers up (indicating).
Q. So the wrist is pointed up as well?
A. Yes.
Q. All right. So you have got your arm out at full extension and your wrist tilted with your fingers reaching upward?
A. That hurts.
Q. That hurts?
A. Yes.
Q. And can you think of any other part of the range of motion of the elbow or I guess in combination with the hand that causes pain?
A. There are so many things that happen that I do that sets it off. Just from putting on your jacket to all sorts of -- I mean, grab a coffee cup and bend the wrist the wrong way when you turn it. I can't explain.

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Q. Okay. What are you wearing on your left wrist today?
A. They gave me a splint to wear.
Q. And is it something that it's hard plastic where you can't move your wrist, or is it a band of some sort?
A. It's got a metal plate in here. I think it's metal -- metal, plastic.
Q. The metal or plastic plate goes from the palm to the wrist?
A. Yes. It holds the wrist up at an angle.
Q. Does it prevent you from putting your wrist down?
A. Down or up.
Q. Or up. Has anybody talked to you about carpal tunnel syndrome?
A. They said that it's -- that this is like that. The tendons are torn or something. I don't know.
Q. Okay. And how soon after June 28, 2011 was it before you started noticing symptoms with your left arm? Because this is the first notice -- I haven't seen it in any of the records I have received.
A. It started bothering me this past fall, and I didn't really -- I didn't even think about it

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until -- I mean, it bothered me, but I said something to Dr. Sagerman two visits ago and/or -- sorry -- yes, I think it was two visits ago, and he ran me through range of motion tests and did some stuff, and he said this is perfectly natural. It can be treated. This is what, you know, it is.
Q. When you say last fall, we're talking about the fall of 2012?
A. Yes.
Q. Other than the physical therapy, have you had any injections in the elbow?
A. No.
Q. On the right arm you went and had an EMG study where they check the nerves that go through your arm?
A. Yes, they did some tests.
Q. Did they do the EMG test on the left arm as well?
A. No.
Q. What test do you recall them doing on the left arm other than just taking it through range of motion and touching it and doing things of that nature?
A. That was it. It's new, so we're going to hope

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physical therapy does it, you know.
Q. And so based upon what he saw, this Dr. Sagerman then, so far he's put you on physical therapy?
A. Yes.
Q. Are you on any medications for the left elbow --
A. (Interrupting) No.
MS. FREEMAN: Paul, I just want to remind you to wait until he gets his question out, okay, and then just listen to the question. Okay?
Q. So that is where we're at now with respect to the left elbow? It's been diagnosed as tennis elbow, as far as you recall, and is being treated with physical therapy?
A. Yes.
Q. And has the doctor given you a prognosis in terms of when that may go away, if at all?
A. He said it takes time.
Q. That is all you can tell me right now is it takes time?
A. I think he is hoping to see the -- I can't say what he's hoping to see. I don't know.
Q. Okay. I want to go back to the attempts two to three months after the event when you tried to do

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some graphics design work. The left elbow wasn't a problem at that time --

A. (Interrupting) No.

Q. -- correct? So it was the right arm that would have been a problem?

A. Yes.

Q. And what was it about the right arm that you were unable to do the graphics design work?

A. What was it?

Q. Yes.

A. I think it was the fact that a chain saw went through the muscle group.

Q. Well, I'm not trying to be a smart aleck. I'm asking symptomwise what was it about your right arm that prevented you from doing graphics design work two to three months after the event?

A. It hurt.

Q. What part of your arm hurt, starting with your fingertip up to your shoulder?

A. These two fingers (indicating) through to the elbow.

Q. All right. For the record, you have pointed to -- we call it the pinky finger?

A. Yes.

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Q. And then what some people may refer to as a ring finger?

A. Yes.

Q. And the middle finger, index or the pointer, and the thumb were not painful?

A. The thumb hurts when I pull it in.

Q. Is this how it was back two to three months after the event? That is the period we're talking about now.

A. It was on fire back then.

Q. The pinky, the ring finger and the thumb?

A. Yes.

Q. Painful and on fire?

A. Yes.

Q. All right. Now, you also said that the pain went up your arm to your elbow?

A. Yes.

Q. And which part of your arm? Like the underside? The top? Which part?

A. Next to the bone on this side (indicating).

Q. Okay. So no question it was painful in those fingers, the two fingers you described, and the thumb, and also running down the forearm -- the underside of the forearm to the elbow?

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A. Yes.

Q. That was painful, correct?

A. Yes.

Q. And you say it was on fire. Is that the way you described the pain, or was there some other symptom?

A. It was a burning sensation. Along with tingles, along with cold.

Q. So cold bothered it?

A. Cold bothers it immensely.

Q. You had tingles and a burning sensation?

A. Yes.

Q. Anything else you can think of in the fingers you have talked about and the forearm?

A. The forearm I have -- it's not the same thing. It is not the same -- I don't know. The muscles hurt when I try to type or try to grab things.

Q. Okay. So with respect to the typing then, moving the fingers and thumb, did that enhance or increase the burning, tingling and pain?

A. Yes.

Q. In the fingers and thumb and the arm? Or just all those areas?

A. It was from here to here (indicating).

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Q. And then you say when you grab things, too?

A. Yes.

Q. You grab and try to pick things up?

A. Yes.

Q. That would also exacerbate these complaints you talked about; the burning, tingling and --

A. (Interrupting) Yes.

Q. Other activities -- any activity involving grabbing or using the fingers would create problems then?

A. Yes. I don't even know where to begin on that list.

Q. All right. And certainly using the keyboard or grabbing the mouse, those are two activities that you described are part and parcel of the graphics design work?

A. Yes.

Q. And those two activities would create, if I'm understanding your testimony, the pain?

A. Yes.

Q. What about if your right arm was just resting and your hand was resting? Was it painful at rest?

A. Yes.

Q. Was it tingling at rest?

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A. **Yes.**
Q. Was it burning at rest?
A. **At times.**
Q. All right. So that was two to three months after the event, correct, when you tried the graphics design work?
A. **Yes.**
Q. Yes?
A. **Yes.**
Q. Have you tried it again since then?
A. **I have a computer at home and once in a while I sit down and try to do some stuff. I can't get in more than ten minutes.**
Q. Okay. So if I'm hearing your testimony then, since this happened you have not been able to utilize your right arm and hand for computer work for more than ten minutes?
A. **Correct.**
Q. You have not been able to -- after ten minutes you're no longer able to bear the symptoms then that arise?
A. **It starts ramping up, and I have to quit.**
Q. Have you applied for disability?
A. **Yes.**

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Q. Did you get it?
A. **I am in the application process.**
Q. When did you first apply?
A. **I think it was January of last year, so about a year ago.**
Q. Where does the process stand? Did you apply and get rejected, or are you appealing?
A. **The first thing I was told, they rejected the first, and now I'm in -- they call it an appeal process I think.**
Q. What was the nature of the rejection, if you recall?
A. **They recognize that I was severely impaired but not disabled. That's what the letter said.**
Q. Okay. All right. Since then, June 28 of 2011, you have not -- I know there was a job that you referenced in your Interrogatory answers that you had applied for and received an offer of employment?
A. **I was working for Mike -- you're referring to Mike Thomas?**
Q. No. AMS Screw or something?
A. **I was due to start AMS Screw prior to the incident. I was due to start it the week after**

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the incident.
Q. What were you going to do there, as you recall?
A. **I was going to do material handling part-time.**
Q. What does material handling mean to you?
A. **Moving material.**
Q. What kind of material?
A. **Steel.**
Q. Were you going to use -- were you going to use your hands to lift it or operate a forklift? What?
A. **Well, from what I understood, the job was you take -- they make screws, so you take these little things of screws, you put them into bigger buckets. You take the bigger buckets, put it on a rack, and then roll the rack down to where they wash them or something.**
Q. You understood it then that the machine was going to be pouring all the screws into a bucket, the screws that are being made?
A. **It dumps them into this -- they showed it to me. It dumps it into a stringer thing.**
Q. So they were going to -- you were going to be at a machine that was dumping screws into a small holding device of some sort, and you were going

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to put that into a larger bin?
A. **Yes.**
Q. Which was on some kind of a movable cart?
A. **Then from there you had to put it on the movable cart.**
Q. So you were going to -- the screws were going to pour into some smaller container, you were going to pick that up, dump it into a larger one, fill that up and then put that onto a cart?
A. **Yes.**
Q. What was going to be the weight of those?
A. **I was told approximately 70 pounds.**
Q. 70 pounds for the bigger one that you would be moving to the cart?
A. **Yes.**
Q. What leads you to believe you actually had a position other than applying for it?
A. **They told me to start that following Monday.**
Q. Was this all oral?
A. **No -- well, yes. They already had me on the books. I had done work for them in the past.**
Q. When did you do that?
A. **The year earlier.**
Q. So that was something in addition to the 1099

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work you were doing?
A. That – yes, yes.
Q. All right.
A. I forgot all about that.
Q. Tell me –
A. (Interrupting) Yes.
Q. – when did you start doing this work, the material handling work for AMS Screw?
A. 2009 or 2010, somewhere in there. I'm not sure exactly when.
Q. Was it just a part-time deal?
A. It was. I was hoping it would lead to something more stable, yes.
Q. Was it on a temp basis directly through AMS Screw or through an agency of some sort?
A. It was directly through them.
Q. And how would you know when to come in and when not to come in when you were doing the temp work?
A. The supervisor would call me and say, "We have a spot for you. You want to come in?"
Q. And it was just – those were temporary stints?
A. They were. And he was working with me to try to make it full-time, so I was doing all of these part-time hoping to get the full-time.

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Q. And the work you were doing, the part-time work while you were waiting for hopefully full-time work, was it the same job you were telling us about a minute ago?
A. Yes.
Q. The one where you'd take the screws, pour them into the bigger container and move them onto a cart?
A. Yes.
Q. And then you were going to start you say the following Monday after this happened?
A. I believe it was the following – it was the following week. It was – it was right before the Fourth, so I don't remember. I would have to look at a calendar.
Q. So relatively soon after this happened it was your expectation you were going to begin employment with AMS?
A. Yes.
Q. Was it going to be more than just one of these part-time stints that you were talking about?
A. It was scheduled to be either a week or two weeks. I don't remember. And Joe, the guy who runs it, said he is going to try to get me in

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there by fall full-time. But whether that ever flew or not, I – it never happened.
Q. Okay. Prior to this happening you would get calls from your supervisor saying "Look, we have some part-time work for you"?
A. Well, what would happen – I can kind of explain this. What would happen is I would call Joe. He's the guy that runs it.
Q. What is Joe's last name?
A. Groves.
Q. Groves?
A. Groves, G-r-o-v-e-s. And I would say, "I have a couple of weeks open. Do you have anything?"
Q. Okay.
A. And then he would keep that in mind and then get back to me when he did.
Q. So Joe Groves knew that you were available? If circumstances on his end warranted it, he would just call you?
A. I wasn't available all the time.
Q. Right. He would call you. If you were available, you would go in?
A. Yes.
Q. And that happened how often prior to June 28 of

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2011?
A. I think twice. I don't remember exactly. I think twice.
Q. Okay. And then the situation, whether it was going to be the next day or within a week after this occurrence, you were planning to go participate in one of these temporary stints after this event, correct?
A. Yes.
Q. Do you believe that the stint that was planned after the event was any more or was different in any way than the prior stints?
A. No.
Q. If you understand the question.
A. No.
Q. It was the same?
A. Yes.
Q. It was your hope that the more you did these temporary stints, the more likely you would have a chance to get full-time employment?
A. Yes.
Q. Would you agree that as of June 28, 2011, though, you had not had a promise of full-time employment?

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A. I had no promise of full-time employment.
Q. Have you tried to go back at any time since June 28 of 2011 to I guess fill one of these temporary stints that you have done in the past?
A. No. They called.
Q. When you say "they," Joe called?
A. Yes.
Q. So Joe Groves called when in relation to June 28, 2011?
A. A few months after.
Q. And what happened on that event where he called to see if you were interested?
A. Yes.
Q. What happened?
A. He knew what had happened. He said, "Do you think you can do it?" And I said, "I don't think so."
Q. Is that the only time there was an exchange over possibly taking another temporary stint?
A. He actually came out to my home. He knewwhere I lived, and he came out to my home, and he knew right away I couldn't do what they were asking to be done.
Q. So you have tried going back to the graphics

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design work?
A. Yes.
Q. And that's too painful to do because of the keyboard entry and the mouse function?
A. Yes.
Q. And then you kind of self -- you made a decision on your own, given your situation, it was unlikely that you could do the work for AMS Group; is that right?
A. Oh, I knew I couldn't do it.
Q. Right. You decided that?
A. I don't think I decided it. I think my body decided it.
Q. Okay. So your body was telling you that you couldn't do that job?
A. I couldn't pick up those buckets, no.
Q. Other than those two potential avenues of employment or income, have you undertaken any other effort to find a job?
A. Yes. I went on several different interviews.
Q. For what kind of jobs?
A. Graphic design.
Q. I thought you said you can't do that.
A. When you got bills, you try.

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Q. Okay. So you went for some interviews for a couple of graphics design positions?
A. Yes.
Q. To do similar things to what you were doing before?
A. Yes.
Q. And did you get either one of those jobs?
A. No.
Q. Why is it, if you know?
A. I'm not sure.
Q. Did they have you sit down at a computer terminal and try and generate any work?
A. Yes.
Q. And were you able to do it?
A. They saw the shaking of the hands and whatnot. Basically said "We can't use you."
Q. Where were these two companies that you sat for and attempted to do graphics design or at least illustrate your abilities?
A. One of them was on the northwest side of the city. I only went in there once.
Q. The name of it?
A. I'm trying to remember. I can go back through my e-mails and find the name where they contacted me

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through. I don't know it offhand. They were kind -- they told me that they found somebody more compatible.
Q. So there was one company, and you said it was on the northwest side of the city, meaning Chicago?
A. It's the suburbs.
Q. Okay. Northwest suburbs. And you would try, if we asked your attorney, to locate the name of that company?
A. I can try if I still have the contact.
Q. And you said there was a second one as well. Where was that?
A. I'm pulling a blank.
Q. There was one, but you're drawing a blank on it?
A. Yes.
Q. Is it possible that your computer database at home would have some information that might refresh your memory?
A. It may. I haven't used that computer in so long anymore, I don't even know if it will boot up. But, yes, it may.
Q. And at least one of these companies you went to you had to sit down and illustrate your graphic design abilities?

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A. **Yes.**
Q. Did you have to do that at both or just the one, if you recall?
A. **Just one.**
Q. All right. For the graphics design positions, you have at least tried to get two others since then, right?
A. **Yes.**
Q. Were you going to be doing 1099 work for them or actually be employed by those two companies?
A. **I was trying to be employed.**
Q. And then besides these two attempts at graphics design positions, any other attempts of employment since June 28, 2011?
A. **No.**
Q. Do you remember signing Interrogatory answers saying that you would be making a claim for lost earnings?
A. **I don't know what you mean by Interrogatory answer.**
Q. There is some written questions that we sent to your attorney to have you answer. And I don't want to get into what you and either your attorney here or Mr. Mast may have talked

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about –
A. **(Interrupting) I remember he asked me some stuff.**
Q. Take a look at the last page – nope, not the last page. It will be the fourth from the back. Is that your signature?
A. **Yes.**
Q. I should say for the record I tendered to you Exhibit No. 1. That is your signature on the fourth-to-the-last page?
A. **Yes.**
Q. Question No. 6 asked about whether you would be claiming any lost income as a result of the injuries, including wages and salaries, and then there is this listing of AMS Screw Products. Do you see that?
A. **Yes.**
Q. And Joe Groves, that's the guy you mentioned that would call you from time to time?
A. **Yes.**
Q. Is that the hourly rate you would get for your temporary work?
A. **Yes.**
Q. And then when we talk about being hired but not able to pursue employment due to the accident,

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you were unable to do that temporary stint that you had lined up?
A. **Right.**
Q. How many days or weeks was that planned for when you were working?
A. **I don't remember, but it was one or two. I know that.**
Q. One or two days or weeks?
A. **Weeks.**
Q. All right. So if it was a 40-hour week, it would be 40 times the $10 hourly rate?
A. **Yes.**
Q. And if it was the two weeks, it would be that 80 hours at ten bucks an hour?
A. **Yes.**
Q. Past that have you made any other calculations on your end I guess pursuant to what you believe you have lost in the form of income?
A. **The biggest loss I suffered was not being able to renew with Juskie later on.**
Q. Renew in what sense – so, first of all, with respect to AMR, other than that one to two-week stint, from your vantage point are you claiming that you have lost more income that you could

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have received through AMS Screw?
A. **With Juskie Printing the contract that he had was up in May prior to this incident. That is why I was looking for other work to fill, pending Juskie getting a new contract with his customer, okay, which would have extended my work there as well.**
Q. Okay. So your hope at the time this happened was not to go full-time with AMS Screw? You were hoping that Juskie renewed their contract so you could continue 1099 work?
A. **I was hoping to get work anywhere I could get it.**
Q. Well, I know that turned out to be the case; but heading into this event on June 28, 2011, was it your hope that you would be able to do the 1099 work for Juskie or leave that –
A. **(Interrupting) It was my hope I could do both.**
Q. All right. So your hope was to continue to do 1099 work for Juskie, and also as needed, fill in at AMR, potentially get a full-time job?
A. **AMS.**
Q. AMS. Let me start the question over then. So heading into this event that happened on June 28, 2011, were you not actively doing work for Juskie

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because their contract had ended?
A. Yes.
Q. And you were doing temporary work periodically for AMS?
A. Yes.
Q. And that was on an as-needed basis when Joe Groves called?
A. Yes.
Q. That was your hope moving forward, that there would be a new contract for Juskie and that you could do some 1099 work, correct?
A. Yes.
Q. And then also as-needed fill in at AMS?
A. Yes.
Q. And hopefully get a full-time job at AMS if that ever arose?
A. Yes.
Q. And when you were doing 1099 work for Juskie, what did that mean to you in terms of gross receipts?
A. I can tell you what I made that year from him in five months. You can do the math from there.
Q. Okay. Well, what did you make?
A. It was 18,000.

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Q. The first five months of 2011 you made 18,000 as a 1099 worker for them?
A. Yes.
Q. And you would have to take all of your expenses out of that?
A. Yes.
Q. And then at AMS do you have a recall what you may have made at AMS during that first --
A. (Interrupting) Not much more than that, the $10 an hour. They didn't pay.
Q. And there was two or three stints where you worked for them, as you recall?
A. Yes.
Q. And those might have been a week or two each?
A. Right.
Q. All right. And do you know, did Juskie get that contract?
A. Yes, he did.
Q. Who was your contact person at Juskie?
A. Mark.
Q. What is his last name?
A. I know his last name, and I'm drawing a blank. I know his last name well.
Q. Maybe it will come to you later. Tell me if it

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does. How did you learn that Juskie actually got the contract that may have been able to provide you with more 1099 work?
A. He told me.
Q. Mark did?
A. Yes.
Q. Did he call afterwards and say, "Hey, we're ready for you"?
A. Yes.
Q. And you had to tell him you couldn't do the work?
A. I couldn't do anything at that point.
Q. Is that when you tried -- you said two to three months afterwards you tried to do the work and you couldn't?
A. Mark called not long after the incident, within a month, and I couldn't do anything at that point. You didn't see me come out of my house.
Q. So he called within a month of this thing happening and you told him there is no way you can do it?
A. Yes.
Q. Did he ever revisit the possibility of doing work for Juskie with you?
A. I have known Mark for a lot of years. We talk on

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and off about various things.
Q. Does that mean he did or he did not? I don't know.
A. Yes. He's probed. He knows it's done.
Q. So periodically he will inquire about it, and each time you have told him no, I take it?
A. (Indicates affirmatively.)
Q. Is that a yes?
A. Yes.
Q. Juskie -- what is the full name of that company?
A. Juskie Printing, Inc.
Q. Where is it located?
A. The last, it was down on Chicago Avenue out near -- I used to take -- I know how to get there. I don't know the town it's in. I used to take 355 down, get off in --
Q. (Interrupting) Do you have a phone number for Juskie?
A. I have it at home.
Q. Okay. So other sources of income that you had before the incident besides Juskie that we have talked about and then AMS? Were there any others that stick out in your mind?
A. That was it.

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Q. And you have not had any income from either of those two sources --
A. (Interrupting) The only other place I was getting income prior to that was Intermatic when they needed work, and that was -- that was less than Juskie.
Q. Did you get any work from Intermatic in the five to six months in 2011 that preceded this event?
A. (Indicates negatively.)
Q. I take it then you haven't done any projections of lost income?
A. No.
Q. Have you ever been in the union?
A. No.
Q. Ever been in the military?
A. Yes.
Q. Which branch?
A. Army National Guard.
Q. Were you active service Army or just National Guard? I'm not diminishing it, but I'm trying to distinguish those two.
A. Two weeks out of the year you're active service. The rest of the time you're National Guard.
Q. Okay. And so what period of time were you Army

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National Guard?
A. Oh, from the time I was 18 or 19 until the time I was 22 or 23. Somewhere in there.
Q. Did I ask you -- have you ever been married?
A. Yes, I think so.
Q. Have you?
A. No.
Q. All right. I'm going be -- I'm going to shift over to the event that is the subject of the lawsuit. Where did this happen?
A. At Caroline McGuire and Bill McGuire's house.
Q. That is listed in the Complaint as 1016 West Elder?
A. That sounds like it.
Q. Did you know the McGuires prior to this happening?
A. Yes.
Q. How is it that you knew the McGuires?
A. Grew up in that neighborhood.
Q. There is another fellow that is named in the lawsuit, Dave Gagnon?
A. Yes.
Q. Is he connected to the McGuires, if you know?
A. Yes.

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Q. What is the connection?
A. He is Caroline's son.
Q. Are you and David grade school buddies? Middle school buddies?
A. High school.
Q. At Johnsburg?
A. Yes.
Q. Were you and he like close socially in high school?
A. More right after high school.
Q. How was it that the two of you became connected more so after high school? You knew who he was in high school, I take it?
A. I think we knew all the same people.
Q. So there was a common group of acquaintances through high school?
A. Yes.
Q. And then describe the relationship as it evolved. I mean, did you see each other socially? Recreationally? I mean how?
A. It was we would do dumb things together, you know. Socially, recreationally.
Q. You ever work together?
A. On the job?

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Q. Anywhere.
A. Like as employment, no.
Q. Okay. What kind of social or recreational activities would you participate in from time to time with him? Bowling leagues? Golf leagues?
A. Did a bowling league together. He was into restoring cars, and he did it in his mom's garage, and everybody kind of kicked in a hand to help him.
Q. Okay. Is he married, if you know?
A. He is.
Q. Did you go to their wedding?
A. Yes, I did.
Q. Do you know if he has any children?
A. No children -- oh, wait. He might have -- I don't know. That's . . .
Q. Did he have any back in June of 2011, if you know?
A. He may have. I'm not sure.
Q. I take it you're not like a godfather or anything to his child?
A. No.
Q. I mean, I can keep asking more and more questions that come into my mind about how you might have

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-- or what your relationship with Gagnon may have been before this. I was hoping to hear from you how you describe it.

A. Well, it was just friends hanging out after years of high school.

Q. How often would you see him then I guess on a monthly basis?

A. Recently or --

Q. (Interrupting) Before this happened.

A. How long before this happened?

Q. Let's go with the first two years immediately preceding this incident. How often would you see him?

A. Oh, not that often. Once or twice a year maybe.

Q. Okay. Was there a higher frequency immediately after high school?

A. Oh, yes.

Q. Apparently it waned over time?

A. Yes.

Q. So in the two years or so before this happened, June 28, 2011, you would only see him once or twice a year?

A. Maybe three or four. A few times a year. I mean, I'm not sure of the exact number.

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Q. Okay. And this is an estimate, correct?

A. Yes.

Q. And would this just be in passing, or was it set plans to see him?

A. For -- well, for some reason or another he would want to see Mike, who was living with me, or another friend of ours, and he would say, "I'm going over here. I'll meet you there," you know, and we would run into each other, you know.

Q. So it would be the contact you had with him then in recent years prior to the event was more just happenstance, overlapping of friends and acquaintances?

A. Yeah. Well, if he needed help or I needed help, you know, I think that that was a given.

Q. Okay. I asked you if you ever worked together. You guys never worked for a company or an employer where you were both on payroll there together, correct?

A. Correct.

Q. Now, obviously there is this incident on June 28 of 2011 where you were with him, correct?

A. I was on the property, yes.

Q. And then you mentioned that you guys would help each other from time to time as needed?

A. Yes.

Q. Okay. What kind of stuff do you recall over the years helping David with or him helping you with?

A. I remember pulling his car out of the ditch when it snowed and he called me. I remember approximately ten years earlier him helping me fix my roof after a storm. Earlier than that I helped him numerous amounts of time with sanding body parts to a car when we were in our 20s.

Q. Okay. What about -- obviously we're going to need to talk about chain saw usage prior to June 28, 2011. Had you ever been anywhere with David Gagnon where a chain saw was involved?

A. Yes.

Q. Okay. Where was that?

A. It was on Carol's property.

Q. All right. Anywhere else besides Caroline McGuire's property?

A. I'm not sure. I don't think so.

Q. Put Mr. Gagnon aside. Have you ever used a chain saw --

A. (Interrupting) Yes.

Q. -- personally?

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A. Yes.

Q. Prior to this day, June 28, 2011?

A. Yes.

Q. How many times do you think you might have been on Caroline McGuire's property prior to June 28, 2011 where you were engaged in any activity involving a chain saw?

A. I vividly remember once.

Q. One other time?

A. Yes.

Q. And how and when in relation to June 28 of 2011 was that?

A. A few weeks prior.

Q. Okay. And other than that one that you actually recall and then June 28, 2011, that is the extent as you sit here today you can recall?

A. Yes.

Q. Did you ever work with a chain saw in combination with David Gagnon on any other person's property?

A. Not that I remember.

Q. Before June 28 of 2011 did you personally have an appreciation for any risks that might be presented by a chain saw?

A. Say that again.

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Q. Sure. I want to know if you had -- heading into June 28 of 2011 if you had any understanding as to any hazards that might be associated with chain saw use.
A. Yes. It's dangerous.
Q. What is dangerous? What was dangerous about it from your vantage point?
A. A chain saw is dangerous, period.
Q. Okay. I mean, if it's just sitting there not running, is it dangerous?
A. I'm not sure what you mean.
Q. Okay. You mentioned that you had used chain saws before?
A. Yes.
Q. And you have used them without David Gagnon being present?
A. Yes.
Q. Can you give me any estimate as to how many times you might have used a chain saw prior to June 28, 2011?
A. Myself?
Q. Yes.
A. Hundreds. Maybe not hundreds, but enough where I can't count.

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Q. All right. And during those periods where you were using a chain saw, you formed the view that chain saws can be dangerous?
A. Very.
Q. And what type of dangers did the chain saw present from your experience using it?
A. It cuts through things very rapidly.
Q. So the operator could be cut?
A. Yes.
Q. And you knew that before June 28 of 2011, correct?
A. Yes.
Q. Did you ever use a chain saw in tandem with anybody else helping you prior to June 28, 2011?
A. Yes.
Q. This fellow that lives with you and your mom, what is his name again?
A. Mike.
Q. Mike. What is his last name?
A. McArtor.
Q. Did Mr. McArtor ever assist you while using a chain saw?
A. Yes.
Q. I mean, is that multiple times in the past you

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and Mr. McArtor may have been involved in projects where a chain saw was used?
A. Yes.
Q. And in those situations would you be the operator, or would you be the helper?
A. I would be the helper.
Q. Did you ever have a situation where he was helping you and you were operating a chain saw then?
A. Where Mike McArtor was helping me and I was operating it?
Q. Yes. Correct.
A. Yes.
Q. Are you able to count how many times that occurred?
A. I'm not sure, but it's more than a few.
Q. On those few -- well, were there other people from time to time that helped you as well while you were using a chain saw?
A. Yes.
Q. And on those occasions where it was somebody else or maybe it was Mr. McArtor, did you form any opinions about the potential hazards or risks to the people that were helping you that a chain saw

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might present?
A. Yes.
Q. What kinds of risks are those to the other people?
A. Keep them as far away from it as possible.
Q. And the risk to the helper is also --
A. (Interrupting) If they are too close, yes.
Q. -- being cut --
A. (Interrupting) Yes.
Q. And at any point in your lifetime prior to June 28 of 2011 had you ever been trained by somebody who was a skilled chain saw operator?
A. No.
Q. Had you ever had a job where your primary purpose was to use a chain saw?
A. No.
Q. All your experience with a chain saw, would you agree, would be just personal use and experience?
A. Just backyard trimming down limbs.
Q. Kind of on-the-job training?
A. Just my house.
Q. Do you recall ever sitting down any time prior to June 28, 2011 on those occasions where you were using a chain saw and reading an operator's

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manual?
A. Oh, yes.
Q. You have read an operator's manual for a chain saw?
A. When I was younger, yes.
Q. We're going back to like immediately after high school?
A. We're going back to eighth grade.
Q. Eighth grade?
A. Yes.
Q. So this was going back when you first started using a chain saw?
A. Yes.
Q. When you first started using a chain saw, did you take it upon yourself to read the manual and begin using, or did some adult help you with that process?
A. Somebody helped me.
Q. Who was it? Your dad?
A. Yes.
Q. Is he still alive?
A. No.
Q. And I know this is going back a ways. What do you recall your father telling you about chain

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saw operation when he first taught you how to do it?
A. Same thing he told me about all power tools.
Q. What was that?
A. Handle them with extreme care.
Q. So you should handle any power tool with extreme care?
A. Yes.
Q. Do you recall any specific instructions or admonitions about chain saw usage?
A. He taught me the maintenance. He taught me how to use it, how to -- what side of the blade to cut with, things like that, yes.
Q. So he demonstrated it for you?
A. Yes.
Q. Besides the risks, are you -- strike that question. Are you aware of any other known risks associated with a chain saw other than cutting from the chain?
A. No.
Q. And I'm not -- I'm not even saying there are any. I'm just asking you what other risks that you're aware of that might be associated with a chain saw other than the actual blade injuries to a

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user or helper.
A. Heat.
Q. Heat?
A. Yes.
Q. Anything else you can think of?
A. Fragments. The wood chips, you know.
Q. The saw dust and debris that might fly off --
A. (Interrupting) Yes.
Q. -- during cutting?
A. Yes.
Q. Okay. Anything else that brings to mind?
A. I'm trying to think back of -- way back when he taught me that.
Q. If something comes up, let me know. Have you heard the phrase of binding or blade bind?
A. I know what binding is, yes.
Q. What does it mean to you?
A. It means the blade bound. It froze up. It may have overheated, you know. Lack of lubrication, something along those lines. There are many things that could happen.
Q. Blade binding to you then is something where the blade just stops, the motion of the blade stops?
A. No.

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Q. Okay. You said it has something to do with overheating or lack of lube?
A. Well, you can bind anything, any power tool, when you're cutting something either by bending it. I would guess I have -- I had a blade bind once on me.
Q. A chain saw blade?
A. Yes.
Q. And what happened?
A. It bent the bar that the chain rides on.
Q. Okay. All right. So I need to get a little more detail about what you understand binding or blade bind might be. It can happen, you said, if the blade overheats?
A. Yes.
Q. If I understand, the chain just goes around on that blade, correct?
A. Yes.
Q. There is a long metal blade that comes out from the power portion of the chain saw, right?
A. Correct.
Q. And there is a groove where the chain goes around in a circular fashion?
A. Yes.

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Q. And the motor propels that blade? That's a simple description of it, but that is how it works?
A. Yes.
Q. And when we talk about binding, are you talking about the blade getting bent?
A. That is the way that I have had it bind.
Q. So if the blade that has the groove that the chain operates on, if that bends, the chain wouldn't move?
A. Correct.
Q. Or if part of it needs to be lubed, to get a good free flow of that chain, the chain needs some lubricant as it glides around on that blade, correct?
A. Yes.
Q. And if there is no lubricant, that can affect the ability of the blade to -- I'm sorry -- the chain to spin on that blade?
A. Yes.
Q. And if there is inadequate lubricant, then the blade can actually heat up?
A. Yes.
Q. And at that point can the motion of the chain

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just stop because it's overheated?
A. Yes.
Q. Have you ever heard the phrase binding or blade bind used in connection with an actual cutting operation?
A. Yes.
Q. As the cut is occurring, the pressure of the log or tree that is being cut can pinch against that blade?
A. I can see that happening, yes.
Q. Are you aware of that? Is that a risk that you know of or knew of before June 28, 2011?
A. Yes.
Q. Have you ever heard of a kickback?
A. Yes.
Q. What is a kickback, as you understand it?
A. It's usually when something other than what you're intending to cut is in the way, and like you actually hit a second log, okay, and it will kick back because you're trying to cut through two different items. That's my understanding of it. I may not be technically right, but . . .
Q. Okay. Are you aware -- maybe you have never heard this -- there is a kickback zone associated

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with part of that blade?
A. Yes.
Q. And what is the kickback zone, as you understand it?
A. I don't know what technically it would be, but I wouldn't want to be in the way of it.
Q. All right. So you don't have a specific understanding heading into June 28 of 2011 what the kickback zone may be, correct?
A. No.
Q. But you were aware that there is such a thing as a kickback?
A. Have I heard of that? Yes.
Q. And have you ever seen that happen prior to June 28 of 2011?
A. I've felt it happen when I have operated a chain saw when I was younger.
Q. And have you ever seen it happen to somebody else?
A. No. I'm usually the one that operates. It's very rare that I'm standing assisting.
Q. The kickback, that is the situation, in layperson's terms, where the blade actually comes back toward the operator?

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A. (Indicates affirmatively.)
Q. Yes?
A. Yes.
Q. And you said you experienced that once?
A. Yes.
Q. Where the blade actually kicked back toward you? Or were you holding it such that it wouldn't?
A. In my case the blade kicked forward. It pulled the saw. It didn't kick back. I was kind of reversed.
Q. You have never experienced where it actually came back toward the user?
A. I have never had the type of debris around that would cause that, I don't think.
Q. Have you ever read any manuals or been taught as to ways to avoid kickback?
A. Remove all the debris surrounding the area.
Q. Okay.
A. I was warned what kickback was when I was first taught it. You don't want anything in the way other than what you're cutting. My understanding of kickback, the way that I was taught, it usually requires hitting a second object.
MS. FREEMAN: Wait for the question.

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Okay?
THE WITNESS: All right.
Q. In terms of how to hold the chain saw, as you recall, what was the training you received in how to hold the chain saw?
A. Both hands.
Q. Okay. Where would your dominant hand be?
A. On the trigger.
Q. And then you would use the right hand on the trigger?
A. Yes.
Q. Left hand on the bar that is on the top of the chain saw?
A. Yes.
Q. Have you ever personally experienced a situation where you were cutting a branch or a limb of some sort that had pressure on it that was bending it?
A. Yes.
Q. Yes?
A. Yes.
Q. And were you taught or did you learn any risks that might be associated with doing that activity, cutting a branch that had downward pressure on one end of it?

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A. I was taught to attack the pressure from the other side so that you didn't get the bind in there.
Q. And to avoid binding, if you cut right into the pressure area, the pressure zone, what could potentially happen that you're trying to avoid?
A. The weight of the limb will pinch the chain and thus bending the bar.
Q. And if the blade of the chain saw gets pinched, I guess it gets in combination, the chain is also likely to be pinched?
A. Yes.
Q. Now, we talked about your connection to Mr. Gagnon before the June 28, 2011 incident, seeing him a few times a year during that last two years leading up to it, correct?
A. Yes.
Q. What about since this happened? How often do you see him?
A. Immediately after I saw him. He came over and wanted to see how I was doing. But since -- I want to say I don't know how long it's been now, but it's been at least six months, maybe a little longer that he hasn't talked to me at all.

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Q. Okay. So you haven't talked to him at all for the last six months?
A. No.
Q. And that takes us into the middle of 2012. There is still like a whole year in there between the accident and when the communication stopped. What was the frequency of contact over that year before all the communication stopped?
A. Right after the incident he was coming by every couple of weeks for about a month and a half, two months, three months maybe. And I even went up to his place once or twice.
Q. What happened a year out that stopped all the communication, if you know?
A. He got a letter from an attorney's office.
Q. Did he call you to talk about that letter?
A. Yes.
Q. Okay. What do you recall the substance of the conversation -- strike that. That's a bad question. Do you recall the conversation you had with him once he got that letter?
A. I recall, yes.
Q. Tell me what you recall talking to him about. Who called who?

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A. He wanted to know what it was.
Q. He called you?
A. Yes.
Q. Tell me about the conversation, what he said and what you said.
A. He said, "Why am I getting letters at my home when it happened at my mom's house?"
Q. Did you share with him any thoughts on that?
A. I said, "It's from my attorney."
Q. Did you talk about the day of the event when he called you?
A. Not so much. He was upset. And from what I gathered out of the whole thing, he may not have told his wife the entire truth about it, and she is the one who got the letter.
Q. Okay.
A. He was real upset.
Q. What is it that you believe he didn't tell his wife?
A. That there may be any aftermath.
Q. Did he share something with you that caused you to believe that, or is that just your supposition?
A. He kind of said -- well, he basically said, you

know, his wife didn't know, and he didn't appreciate the letters coming to his house. He wanted my attorney to stop sending them.

Q. Okay. Other than him calling to ask why the letters were coming and you telling him that it was your attorney sending it and whatever discussion occurred that caused you to believe his wife didn't know about it, any other discussion or any other subjects that you recall being discussed during that phone call?

A. Yes.

Q. What?

A. May I confer with her for a minute? Can we have a break?

Q. Was your attorney there for that telephone call?

A. No. But he was e-mailed right thereafter the same day.

MR. BARCH: Well, I don't want to deprive you of a chance to talk to your attorney. Go ahead.

(At this time a short recess was taken.)

CONTINUED EXAMINATION BY MR. BARCH:

Q. Mr. Dulberg, I was asking you about the phone conversation you had with Mr. Gagnon, the one

that precipitated the break-off of communications. Okay? And we have talked about him calling wanting to know why he was getting letters, your view that maybe his wife was upset with him. And I'm paraphrasing, of course.

A. Uh-huh.

Q. And you also mentioned that you did not really talk about what happened on June 28, 2011. And then I asked the question I thought about -- I thought I asked whether or not there was anything else that you recall being discussed that day during that phone conversation. And then I thought that was the impetus to your request to meet with your counsel. Does that get us back to where we were?

A. Yes.

Q. Okay. And it may be difficult to talk about, you know, this breakdown in communication between you and Mr. Gagnon because you have known him for years, but it's important to me to know what you guys talked about. So to the extent it doesn't involve your attorney, I would like to know what you guys discussed.

MS. FREEMAN: No conversations between you

and Hans or me. Your conversations with the defendant.

MR. BARCH: That's right.

A. Okay. He was just very upset that he was receiving all of this stuff at his house. Can you repeat where you were at?

Q. I'm just trying to figure out if there was anything else you and Mr. Gagnon discussed that last phone call you had together besides him being mad about getting letters, your belief his wife might not have known the whole story, and also him being upset about the whole thing.

A. Yes. He was very upset. I'm not going to tell you some of the profanity, but he was very upset.

Q. I take it then he was very upset that he was being sued?

A. He didn't understand why he was responsible at all if it happened on his mom's property. That was his big . . .

Q. Did you and he talk about the idea that he was running the chain saw?

A. I said, "Yeah, you are responsible," and I said, "It's time you have to tell people about this. You know, they are going to want to know." And

he did not want to do -- he said he was tired of the whole thing. He had heard from his mom about it for months, and he did not want to hear it anymore, and he is sick of it, and he went on, and he was ranting.

Q. During this rant and your effort to explain to him why he was getting letters, did you and he ever discuss the subject of what happened?

A. I think we both know what happened.

Q. Did you actually discuss it that day during the call?

A. No. Not the details of what happened, no.

Q. No comments about "Well, you were running the saw," or "You were holding the limb"? Nothing along those lines? No details about what happened?

A. I said, "You're the one who was operating the chain saw. Of course the lawyers are going to want to talk to you. They are going to send you papers."

Q. And in response did he make any comments to you about your involvement that day?

A. He just went on about how he did not want to hear it.

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Q. Okay.
A. That was the gist of it.
Q. All right. So you have known David for a long time prior to this. And then Mr. and Mrs. McGuire, Caroline and Bill, they are married, of course?
A. Yes, I believe so.
Q. How often would you encounter the McGuires?
A. In recent years I would actually encounter the McGuires more than I would David.
Q. How is it you would have more contact with them than David?
A. Caroline worked with me at Intermatic for ten years. Not side by side, but she worked there.
Q. Is it Intermatic did you say?
A. Yes.
Q. Different jobs?
A. Yes.
Q. Just worked for the same employer?
A. Yes.
Q. Did you guys have lunches together or anything like that?
A. No.
Q. So other than seeing her in passing, did you even

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really talk to her?
A. If I had some downtime and she was working near me, I would go over and say, "Hey, how's it going?"
Q. Just general pleasantries?
A. Yes.
Q. You did not see Caroline and Bill on a social basis?
A. No.
Q. And outside of your contact with her at Intermatic over the ten years leading up to this event, how often would you see either her or Bill?
A. Outside of work, couple of times a year at the grocery store or something. I mean, just say hi. In fact, I just ran into Bill two weeks ago.
Q. So would it be fair to characterize your contact with the McGuires during the -- and putting your contact with Caroline at Intermatic aside, but outside of work, your contact with the McGuires would just be happenstance, bumping into them?
A. Yes.
Q. There was no reason for you to go over there and visit with them?

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A. No.
Q. They didn't have you over to parties or anything?
A. I should correct that. I did go over there a couple of times just to see Caroline right after Intermatic did their big layoff. That was more about work.
Q. When did the big layoff occur?
A. It went on for a couple of years. They've phased down. It was between 2007 or '8 and 2010. I think they are still laying off. They are probably going to go out of business.
Q. The visit or two that you had at her home during the layoff would have been sometime during this period you were talking about, 2008 to 2010?
A. Yes, somewhere in there. When I heard that she lost her job, that is when I stopped over.
Q. Just to basically express your sympathy or what have you, empathy?
A. (Indicates affirmatively.)
Q. All right. Prior to June 28 of 2011 had you ever been to the McGuires' house to perform any type of function around their house; repair, maintenance, handyman work, anything?
A. Prior to it?

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Q. Yes.
A. Mostly it was years earlier, and it was body restoration in her garage with her son David. I don't think I ever repaired anything around there in the house or anything. I may have helped shovel the driveway once as a kid.
Q. All right. So we have got the -- you have mentioned that early on right after high school you would help David with the restoration of old cars?
A. Yes.
Q. That was done in the garage at the McGuires'?
A. Yes.
Q. Putting that activity -- and that was years ago, correct?
A. Yes.
Q. But we're talking like more than five or ten?
A. Oh, yes.
Q. And then you mentioned that you might have helped David shovel when you were kids?
A. Yes.
Q. All right. But let's get into like the last five to ten years. Did you ever go over to the McGuires' house to perform any type of

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maintenance function at their home, any repair function at the home?
A. No.
Q. Or any kind of handyman work of any kind?
A. The closest thing to that I think was she needed to go to Menards to get some wood, and I had a truck and a trailer, and I took her over there, her and her son, and got the wood and drove her back home. And that was it. I didn't actually perform any function.
Q. And when was that in relation to 2011?
A. Wait. Wait. I stand corrected. The month or two prior to this incident I took down a shed. It wasn't just me. And we didn't take it down. They just unbolted it from the bottom, and we all just carried it out to the front of the yard and put it on my trailer. They needed as many hands as they could get, and I happened to be free.
Q. Okay. So a month or two before this event there was a shed that was removed from the property?
A. Yes. I don't even know if it was a month. Maybe four weeks.
Q. Sometime before?
A. Just right before, yes.

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Q. It still would have been 2011?
A. (Indicates affirmatively.)
Q. Yes?
A. Yes.
Q. This shed, you say it was just unbolted from its foundation?
A. Yes. It was one of those flimsy steel sheds.
Q. Steel deal?
A. Real light.
Q. How big was it?
A. It was a big one.
Q. You're talking 10 feet by 9? I mean, how big? Do you recall?
A. I would guess -- and I don't know. They know what size it was. It was a bigger one. Probably 10 by 12.
Q. That is an estimate, right?
A. Yes.
Q. And then did you say a group of people picked it up whole and put it onto a trailer?
A. Yes.
Q. Was it placed on like a flatbed trailer or something?
A. Yes.

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Q. What happened to -- it was your trailer?
A. Yes.
Q. Where did it go?
A. It went around the block to my house, and then I took it over to the scrap place.
Q. Did you use it for a period of time?
A. It sat there. I threw some hoses in there when I got more stuff to go to the scrap guy. Took it all over.
Q. When did you dispose of it?
A. This year. No. 2012.
Q. So you had it through the winter of 2011-2012?
A. Yes.
Q. So you used it about a year and then got rid of it?
A. Yes. It was just sitting there. I didn't want to use it. It wasn't --
Q. (Interrupting) When you were there -- when you were there to have this thing put onto your trailer, who else was there besides you?
A. David, Bill and Carol.
Q. So did all four of you then lift this thing up?
A. You need one on each corner.
Q. Okay. Besides helping them get the shed off the

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property, do you recall any other work that you may have done or assistance you may have offered around the property prior to June 28 of 2011?
A. Recently. That's about it.
Q. Did Mr. or Mrs. McGuire -- I'm going to use them in combination. If one or the other did something, tell me. But did either of the McGuires ever train you on how to use a chain saw?
A. No.
Q. Did either of the McGuires ever demonstrate how to use a chain saw for you?
A. No.
Q. Did you ever help Bill or Caroline cut trees down prior to June 28, 2011?
A. Once.
Q. And when was that?
A. Again, it was a few weeks prior. About the same time we took the shed.
Q. Okay. So there was another occasion where you were out there tending to trees?
A. No. Her son David called me and asked me if he could borrow my chain saw.
Q. Okay.

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A. And I brought it over.
Q. So David called you for a chain saw?
A. Yes.
Q. And other than bringing it over, did you help David at all?
A. I picked up some sticks on the ground. He did all of the cutting except for I did cut one thing, and it was -- when it was all done and cleaned up, they had a stump, and I tried to make it as close to the ground as possible, and that was it. That's the only cutting I did.
Q. When you say you picked up some branches --
A. (Interrupting) Yes.
Q. When you say picked up branches, what are you talking about? Bundles? A couple twigs?
A. It was an apple tree. So they were small, and David cut it. He cut the whole tree down, and Bill and I were standing there talking, and we were taking them over to where they were -- their garden area.
Q. So on this occasion David cut down the entire apple tree?
A. Yes.
Q. With the exception of that stump that you tidied

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up?
A. Right. About four inches of stump sticking up, yes.
Q. And the assistance that you gave, you helped get that stump to a more presentable condition closer to the ground?
A. Yes, I did.
Q. And then you helped Bill move some of the branches to a different area on the property?
A. They were already cut up, so yes.
Q. Were they tied in bundles, or did you --
A. (Interrupting) They were just loose.
Q. Loose. Did you just pick them up and carry them?
A. Yes.
Q. Did you get paid by the McGuires?
A. No.
Q. Do you know if David was paid by the McGuires to take down that tree?
A. Which tree?
Q. The apple tree.
A. I don't know.
Q. Did you get any kind of remuneration or consideration or gifts of any kind for helping that day with your chain saw?

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A. I got pop.
Q. Pop. Were you expecting money?
A. No. I wasn't there to do any work.
Q. And you don't have any insight as to the connection between David -- strike that. You don't have any insight as to the arrangement between the McGuires and Mr. Gagnon on that day when he was taking down the apple tree?
A. No.
Q. For all you know it could have been a favor for his parents?
A. Yes.
Q. Or perhaps he was paid? We don't know? You don't know?
A. Right.
Q. When you said that David was the one that took the tree down by himself that time, the apple tree --
A. (Interrupting) Yes.
Q. -- do you happen to know, prior to David setting out to do the tree, whether Mr. McGuire or Mrs. McGuire gave him any instruction on how to use a chain saw?
A. Not to my knowledge.

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Q. Do you know if they were even out in the property -- out in the yard when he was doing that work?
A. Yes, they were.
Q. They were there as he was cutting or afterward?
A. Both.
Q. You saw the McGuires present when David was using the chain saw?
A. Yes.
MS. FREEMAN: Counsel, are we talking about the apple tree?
MR. BARCH: Yes, the apple tree.
Q. And while you were there -- I guess you were present, I take it, then, when the McGuires were on the property and David was using the chain saw to cut the apple tree apart?
A. Yes.
Q. Do you recall over hearing or seeing Mr. McGuire or Mrs. McGuire instructing David on how to use that chain saw while you were there?
A. Not how to use the chain saw. Just what they wanted gone.
Q. So they were telling him which parts of the tree they wanted gone?
A. They wanted the whole tree gone.

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Q. So anything beyond that, saying take the whole thing down?
A. The two of them were bickering back and forth about all different things. They were talking about all different trees they wanted -- I didn't keep up with --
Q. (Interrupting) The two of them meaning Mr. and Mrs. McGuire?
A. Yes. And her son. I didn't get into any of that. That is whatever they wanted to do.
Q. So there is some banter, bickering, whatever you want to call it, over which trees needed to come down?
A. Right.
Q. Besides identifying the trees that they wanted either trimmed or removed, do you recall Mr. McGuire or Mrs. McGuire telling David how to go about taking down the tree with the chain saw?
A. I think Bill and Dave talked about that a little bit, how they were going to do it.
Q. Okay.
A. I didn't have anything to do with it.
Q. What did you overhear David saying to Bill or Bill saying to David with respect to the apple

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tree?
A. Well, the only thing that I did anything about, I remember Bill was complaining that it was sticking up out of the ground, and I was putting the chain saw away in the case so I could take it home, and I took it back out of the case and said, "I'll take the four inches off for you," because David was already gone or he was in the house doing something, and I just wanted to get it done and head out of there. I didn't want to wait for him, so I did that. But as far as them instructing each other, they were mostly talking amongst each other.
Q. What I'm driving at is you recall hearing them discuss/bicker over --
A. (Interrupting) I do remember. I do remember.
Q. Hold on. You do recall hearing them bicker or discuss which trees needed to come down totally or which ones needed to be trimmed? That is something you recall them bickering about, correct?
A. Yes.
Q. And you recall Mr. McGuire being dissatisfied with the way the stump looked after David left?

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A. Right.
Q. You don't recall Mr. McGuire telling David how to use the chain saw, though? That didn't happen in your presence?
A. No.
Q. Correct?
A. Correct.
Q. And you don't recall Mr. McGuire demonstrating the chain saw for Mr. Gagnon that day either, correct?
A. No -- yes, that's correct.
Q. David was just using the chain saw in his presence? Is that how you recalled it?
A. Yes.
Q. Now, you were going to say you do recall something else that happened as we were asking questions about it.
A. You were asking about instruction, and Caroline was worried because part of the tree was over the house, and she was telling him to take it -- they were talking about the way to take the tree down without any of it touching the house at all; and they worked it out and did it, you know.
Q. All right. So that is something that sticks out

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in your mind? There was a tree -- part of the tree is over the house, and there was a concern about damaging the house?
A. I remember that, yes.
Q. And there was a discussion as to how to get the tree removed without hurting the house?
A. Yes.
Q. Was it successful? Did they do it?
A. Yes.
Q. Did anybody get hurt, as far as you know, that day with the chain saw?
A. No.
Q. And you had no connection to any of the cutting that day, correct?
A. Other than picking up the sticks and cutting the stump, that was it.
Q. That's right. I take it back. You did cut the stump closer to the ground?
A. Yes.
Q. But in terms of the work, David did the actual severing of the branches and cutting the limbs and things? You were not helping him do that?
A. I was just taking the cut branches over to the pile where they were going to burn it or whatever

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they wanted to do with it.
Q. Let's go to June 28, 2011 then. Did Mr. or Mrs. McGuire ask you to come over?
A. David did.
Q. So Mr. and Mrs. McGuire did not call you up and ask you to come over?
A. No.
Q. So your involvement started with a call from David?
A. Yes.
Q. What do you recall him saying when he called you?
A. He said he was taking down another tree for his mom. And I said, "Do you need the chain saw?" And he said, "No." And I was like "Oh." He said, "Do you want the wood?" "Well, I'll come over and see what you got." Because he was trying to explain to me which tree it was, but I wasn't sure. So I said, you know, "I can come over and take a look in the morning."
Q. I forgot to ask you. Did you take any of the wood that was cut down of the apple tree wood?
A. No.
Q. Okay. So you agreed to come over and take a look at the wood that was being -- I guess the tree

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wood that was -- strike that -- the remains of the tree that was being taken down on June 28?
A. Right.
Q. And heading over there was it your plan or did you anticipate helping him?
A. Not with -- he said he had a chain saw, and he does it all himself. So I anticipated just getting the wood, you know, if I wanted it.
Q. Okay. And prior to arriving at the property did you call the McGuires?
A. I don't think so, no -- you know what, I -- strike that. I don't remember if I called to make sure he was there before I left in the morning or not. I don't remember. I may have.
Q. So he called you not on the day of, but some other point to alert you he would be there on that day?
A. Yes.
Q. So you may have checked just to see if he was there?
A. Yes.
Q. Do you recall that being the case, or it's just a possibility?
A. It's a possibility.

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Q. And so when you went to the McGuires' that day, I take it you didn't bring anything with you?
A. Just my truck.
Q. Just your truck?
A. Yes. And my dog.
Q. Your dog did you say?
A. Yes.
Q. Did you have a pickup truck?
A. Tahoe.
Q. What were you going to do -- where were you going to put the wood if you did take some?
A. I was going to go back home and get a trailer.
Q. You weren't even sure you were taking wood at that point?
A. Yes, exactly.
Q. You went out there in your personal vehicle with your dog?
A. Yes.
Q. At that point you were not planning to assist him; just to check the wood to see if you wanted it?
A. Correct.
Q. On arrival who was there?
A. David, his mom Caroline, Bill. And at some point

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in there his sister showed up.
Q. Bill's sister?
A. No, David's sister Diane. She was there. I don't remember when she came and went. She was there.
Q. And on arrival are they all in the house, or is the cutting ongoing and they are all outside? What do you recall?
A. David was -- he came walking around the side of the house as I pulled up -- they must have seen me -- and said, "Hey, how's it going," you know, and I said, "Morning." He wanted to show me what he had.
Q. So you went around back and looked?
A. Yes.
Q. How much of the tree was down at this point?
A. None.
Q. What kind of tree was it?
A. Pine.
Q. We're talking like a Christmas tree type, or the big one with all the ugly branches?
A. They all have big ugly branches. It was the Christmas tree type.
Q. How tall was this thing?

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A. **We all guessed at that. I think around 60 feet.**
Q. And that's an estimate, correct?
A. **Yes.**
Q. None of it had been trimmed up at that point?
A. **Correct.**
Q. All right. And now you and David are back there looking at it, correct?
A. **Bill came out. Carol came out. They were all out there.**
Q. That is what I was going to ask next. Who else was back there with you when you were looking at it before the work started?
A. **Everybody.**
Q. Okay. And at some point the cutting began?
A. **Yes.**
Q. All right. Between the time you arrived and you went back with David to look at the tree -- and I think you said Bill and Carol were there, too?
A. **Uh-huh.**
Q. Yes?
A. **Yes.**
Q. Between that point in time and the time the tree cutting actually started what discussions do you recall about this project?

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A. **They showed me the new chain saw they bought.**
Q. Okay.
A. **After that I was joking around with Bill a little bit. He was telling me about his vacation. Did a lot of talking about his vacation. We talked about that all day.**
Q. Okay.
A. **I was playing with the dog. Carol loves my dog. Just simple pleasantries. Nothing -- it wasn't really about the work.**
Q. Do you recall any discussion about the work between the time you went behind the house to look at the tree and the time David started work on the tree?
A. **David was talking about the work that he was going to do, where he was going to drop it, how he was going to take it down. He was telling Bill and Carol how he was going to do this.**
Q. Do you recall during that process Caroline McGuire trying to override any decision that David had?
A. **Yes. But not about that tree. About other trees.**
Q. Okay. Well, what do you recall Caroline's --

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A. **(Interrupting) They bicker like cats and dogs.**
Q. You have used that phrase "bicker." When you say bicker --
A. **(Interrupting) Discuss.**
Q. Was she telling him she wanted certain trees down and he did not want to take those down or --
A. **(Interrupting) Yes.**
Q. -- he wanted some down that she did not want down?
A. **Both ways.**
Q. Okay. So other than identifying which additional trees had to be trimmed or cut down versus, you know, left alone, do you recall any other discussion between David and Caroline prior to him undertaking the effort to actually cut things?
A. **She was telling him about she -- the putting oil in the chain saw. And he was like "I know. I know, Mom," you know. Because it was brand-new. They had just bought it. It was all little things. And a lot of the discussion didn't have anything to do with the tree. We're talking about other things like other kids in the family and -- you know.**

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Q. When David explained his plan for taking down the tree, you heard part of that?
A. **Yes.**
Q. Okay. Do you recall Caroline disagreeing with him about how to go about taking down that tree?
A. **Not too much, no.**
Q. What about Bill?
A. **Bill just stood -- Bill wanted to make sure it wouldn't hit the pool or the garage. Same thing with Caroline. They did not want any damage to their property other than it falling on the grass.**
Q. That would seem to be any property owner's concern is that they didn't get other damage.
A. **Sure.**
Q. But in terms of how to go about doing that, other than alerting Mr. Gagnon that they did not want the house hurt or the pool damaged or anything like that, do you recall any comments from either Mr. McGuire or Mrs. McGuire as to how to go about doing that, or was that a decision that -- or a plan that Paul -- I'm sorry -- Mr. Gagnon came up with, from your vantage point?
A. **He came up with it. He said what he was going to**

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do, and he did.
Q. Okay. In terms of discussions then leading, I guess, from the time you got behind the house to the point in time where David started working on the tree – and specifically I'm talking about conversations you overheard with the McGuires and Mr. Gagnon – there was concern about not damaging the house or pool?
A. Uh-huh.
Q. And there was also discussion over which tree should be cut and which tree should not be cut –
A. (Interrupting) Uh-huh.
Q. – correct? And then you remember them talking about the chain saw being new and Mrs. McGuire concerned about making sure there is oil in it?
A. Yes.
Q. Anything else you can recall?
A. That's about it. I'm sure there were other things.
Q. Did David consult with you about how to get the tree down?
A. Not much. He asked me how tall I thought it was. But he knew how to measure out pacing or something, some trigonometry thing. He figured

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out how tall it was.
Q. So, I mean, did it appear to you that he looked like he knew what he was doing?
A. Oh, yes.
Q. You say you saw him actually measuring things?
A. Yes.
Q. Like just walking it off in feet, or did he have a tape measure out there?
A. No. He paced it off. He was estimating the height of the tree from where it would fall.
Q. Okay. Any other preparations that you observed him undertake before he actually began cutting?
A. Preparations? Getting the chain saw ready. He ate breakfast in between. He's the kind of guy that would work for 10 minutes and then take a 20-minute break and work for 10, you know.
Q. Okay. So at some point the chain saw gets fired up, I take it?
A. Yes.
Q. And are the McGuires still out in the yard?
A. I believe so.
Q. From the Interrogatory answers it looks to me like they were not present in the area when you actually got hurt?

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A. No.
Q. At what point between the time they started cutting to the point where you were hurt did they leave?
A. Well, Bill was in and out of the house getting things to drink and whatnot and talking to Caroline. I don't know when he disappeared that last time. But Dave's sister was in the pool, and she disappeared, too. I think she went home. I don't know what happened to her. But, yes, it was – he was in and out, you know.
Q. Okay. Why don't you tell me about the work you saw David do between the time he started it and the time you actually started helping him with any aspect of it.
A. He was taking off the lower branches of the pine tree.
Q. Okay. So you're just standing there watching this?
A. Oh, yes.
Q. And so the first task that you saw him undertake, he was using the chain saw to cut some of the lower branches off of this pine tree?
A. Yes.

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Q. And that was from the ground level?
A. Pretty much the first lower branches, you know.
Q. Okay.
A. And then he worked his way up, you know.
Q. Got you. How far along with the cutting process was he before you did anything to assist him?
A. He was pretty high in the tree. Probably 25 – well, 20 feet. I'm getting – his chain saw died on him. He had a rope. And he lowered it down, and he asked for me or Bill to restart it for him, and I restarted it. And then he raised it back up in the tree and pulled it back up there and then just kept going.
Q. Okay. And so how is he getting up the tree?
A. He's climbing.
Q. He's climbing the tree?
A. Yes.
Q. Does he have little spikes on his shoes?
A. I didn't see spikes, no.
Q. So is he cutting the branch and using the stump as a step?
A. Yes. He had some sort of belt he had wrapped around the tree. I have never done anything like that, so I – that's not – I have – not that

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skilled.
Q. You have never cut a tree down the size of this one?
A. No.
Q. And you have never used any straps or belts or harnesses to ascend the tree?
A. I wouldn't climb into a tree like that, no.
Q. Now, I mean, you're watching him do it?
A. It looks scary.
Q. You're watching him do this?
A. Yes.
Q. How many branches do you think he cut, I mean, up to this point where --
A. (Interrupting) There was a lot of branches. I mean, I was surprised how many branches are on a pine tree. So I can't guess the number, but there was a lot.
Q. And he's got some kind of a strap holding him to the tree, and he's using his feet as support?
A. Standing on the stumps that he had cut for it, yes.
Q. And and then the chain saw is attached to a rope of some sort?
A. Yes. He had tied a rope around the handle of the

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chain saw and had it up in the tree with him.
Q. And is Mr. McGuire out there for this?
A. Yes.
Q. Mrs. McGuire, too?
A. At times.
Q. Are they doing anything other than watching him?
A. Bill was talking to me. He really liked his vacation, and he was -- he had story after story.
Q. So he's really kind of a spectator more than anything, and he's having conversations with you?
A. Both of us were, yes.
Q. He's not directly assisting David up there in the tree?
A. Bill did -- yes, exactly.
Q. Did Bill ever climb the tree?
A. No.
Q. All right. So he's about 20 to 25 feet up when he -- did it run out of gas or something?
A. I think it just died.
Q. It died. He needed somebody else to start it?
A. (Indicates affirmatively.)
Q. He didn't try to start it himself up in the tree?
A. No. He said it was dangerous. He said, "I'm going to lower it down to the ground. Start it

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for me. I'll pull it back up."
Q. You believe it stalled, and he lowered it down to have somebody else start it?
A. Yes.
Q. Did you recall him saying, "It's too dangerous to start up here on my own"? Is it just something you assumed?
A. I assumed it. I would think it would be too dangerous.
Q. So you did restart it?
A. Yes.
Q. And so when it goes up on the rope, it's running, but the blade is not turning, obviously?
A. Correct.
Q. You have to use the trigger to get the chain to move?
A. Correct.
Q. And I presume the rope is not going through the trigger area?
A. No, it's not.
Q. There is a --
A. (Interrupting) It's tied around the bar.
Q. Got you. So it gets back up to him. Does he continue on with the cutting?

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A. Yes.
Q. And what is the next involvement of any sort that you had?
A. Bill wanted to get some of the sticks that he was cutting down off the ground and into a pile so he started doing that. And then my dog went and grabbed some sticks because he sees sticks, you know. So I went over, and I was helping Bill put the sticks into a pile next to the garden. They were just laying on the ground. We were standing there doing nothing.
Q. Okay. So you were basically just helping Bill move some of the debris over into a pile?
A. Yes.
Q. The smaller stuff?
A. Well, the long --
Q. (Interrupting) The limbs?
A. Yes.
Q. And what was the plan for those, if you know? Were they going to be chipped up?
A. Well, Bill wanted to burn then. In fact, he started a fire and was burning them.
Q. Okay.
A. And somewhere along the way David wanted to save

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them.
Q. All right. So all you're doing is taking the stuff that has fallen off the tree and dragging it into a separate area at this point?
A. Yes.
Q. All right. And did Bill ask you to help, or you were just there and you decided to help him?
A. I just decided to help him.
Q. Did you at that point discuss, you know, payment for doing this?
A. No.
Q. Did you consider yourself doing him a favor by just helping?
A. Yes.
Q. Was it your plan to maybe -- had you decided at that point to take any of the wood as firewood?
A. No. I told him I didn't want it.
Q. None of it?
A. None of it. It's pine.
Q. Even the trunk of it once it was done?
A. None of it is any good for burning in a fireplace.
Q. So once you got back there and saw it was going to be a pine tree coming down, you knew you

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weren't going to be taking advantage of any of the wood?
A. Correct.
Q. It wasn't your chain saw, correct?
A. Right.
Q. What purpose other than talking to Bill did you have for staying?
A. Well, Carol talked to me about -- it was just social. Carol was talking about old people that worked at Intermatic. Bill was telling me about his vacation. And it was just talk, you know. I didn't plan on staying that long at all, but they just keep talking. I didn't have anything else to do that day, so I just . . .
Q. What day of the week was it?
A. I don't recall offhand.
Q. Was it a weekend?
A. No, it was not a weekend.
Q. All right. So you decided you weren't going to take any wood, and it was really by -- you were kind of hanging out socializing with the McGuires, if I'm understanding what you're saying?
A. Yes.

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Q. For a good portion of time?
A. Yes.
Q. At some point Bill started dragging these branches to a different area, and you lent a hand?
A. Yes.
Q. You didn't do that anticipating any payment of any sort, correct?
A. Correct.
Q. And then how long does this go on where you're moving branches?
A. Well, some time. David, he took some good long breaks. So a few hours. At least a couple. I mean, we weren't moving branches for two hours. You move them for two minutes and you're done for 20 minutes, you know.
Q. Until there is some more down?
A. Yes.
Q. Because you're not standing under there as they are dropping down?
A. Right.
Q. So it's off and on for a couple of hours you're moving these branches?
A. Yes.

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Q. At some point does David get the whole -- the whole trunk, it's eliminated with -- all the smaller branches are gone?
A. He got it pretty far up. And when he came down, he looked pretty scared. I was like "I wouldn't want to do that. I have to give it to you because I wouldn't climb up like that."
Q. Did he get all the way to the top, very top of that, 50 or 60 feet high?
A. No, no.
Q. So at some point he comes down, and there is still some of the triangular part of the tree with the branches?
A. Yes. There was a good -- better than a third of it, maybe a little more, left.
Q. So roughly two-thirds of it is free of the limbs?
A. Between a half and two-thirds, yes. Somewhere in there.
Q. And then he comes down. Is that when he falls the tree?
A. No.
Q. Did he ever cut the tree and see it fall over?
A. No.
Q. Did you get injured before that happened?

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A. Yes.
Q. So he comes off of the tree having cut down half to two-thirds of the limbs?
A. Uh-huh.
Q. Right?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. All right. And then during that period of time while he was up there, that is when you and Bill were dragging some of these branches over to a different area?
A. Yes.
Q. And at what point is it that you're involved in any activity which resulted in your injury?
A. When David came down, he took a good long break. He was tired. He was climbing the tree. He was tired. I think he ate something for lunch. I was offered a pop. You know, I sat there and drank a pop, was playing with my dog. After lunch Dave went back over there to do some more work. He started trimming on the tree next to it. Wasn't even the same tree. Same thing, taking off the lower branches. And it was when

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he was doing that, when he was done with trimming that tree, that is when he asked me to come over and hold something for him.
Q. So after lunch he stopped working on the tree that you saw him work on all morning, correct?
A. Uh-huh.
Q. And started working on an adjacent tree?
A. Uh-huh.
Q. He was at ground level again just cutting off branches?
A. Uh-huh.
Q. That was the first time he directly asked you for help?
A. Yes -- well, other than start the chain saw earlier.
Q. Yes. So up until that point in time I take it you had not offered David any thoughts about how to proceed with the tree trimming, whatever he was doing? You're just watching?
A. Yes.
Q. You didn't offer him any comments on how to do this, the way he was going about getting this stuff done?
A. I have never seen it done, that big of a tree

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like that, no.
MS. FREEMAN: Just answer the question.
A. No.
Q. All right. So now David needed some help with something. What was it, as you recall? What did he need help with?
A. He had accumulated a very large pile of, you know, the long pine branches. He asked if I could help him for a few minutes. I said sure. He says, "I need you to hold these while I cut off the things on them." And he showed me what he wanted, showed me where to stand. And I said, "Yeah, I can do that," you know. And -- yes.
Q. All right. So I guess from what I envision, he's cut all of these limbs off of that pine tree. Now there is a big pile of them; one you guys weren't able to move, you and Bill?
A. He had another pile from the tree right next to it, yes.
Q. And what was he going to do? Trim some of the smaller branches off the limbs?
A. That's what he wanted to do. He wanted to save the center part for firewood or something like that for campfires or something. I don't know.

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Q. So by cleaning off the smaller branches, then there would be some logs that could be cut up that would be suitable for firewood?
A. Correct.
Q. Did you and he actually -- did he tell you what his plan was or what he was going to do?
A. He told me exactly what to do. He knew what he was doing. You know, seemed that way to me.
Q. And he told you what he wanted you to do?
A. Yes.
Q. And what did he tell you to do?
A. Took the branch, pull it over here so it's away from the rest of them. Hold the one end up, and he would cut the smaller stuff off the other end. And when that was done, put it down, grab the next one, put it up and -- you know, yes.
Q. So I'm understanding, you're taking a limb that had been cut off the tree, you're holding it upright?
A. No.
Q. No?
A. Can I do -- I don't know how it translates.
Q. We'll explain it on record. But if that straw will help you orient us as to what you were

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doing --
A. (Interrupting) The branch would be like this (indicating) to the ground.
Q. All right. So the heavier -- the thicker part of the branch is laying on the ground?
A. Actually, the thinner part was. That is the way he wanted it.
Q. So you're holding the heavier part of the limb?
A. Yes.
Q. The long part of it?
A. Yes.
Q. And he's trimming off the smaller branches?
A. Yes.
Q. Off his limb?
A. Yes.
Q. Does he start at the end and work his way closer to you?
A. Yes.
Q. And how long are these limbs?
A. They're pretty long. I would only be able to guess. I would have to say 20 feet. Pretty big. Especially the lower ones off the pines, you know.
Q. Okay. So how many of these things do you think

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you were able to accomplish before you were injured?
A. We did quite a few.
Q. And are you able to quantify that in any way? More than one, obviously?
A. Yes. More than a few. Maybe a few dozen. Maybe a little more. We did it -- you know, we did that for about I would say a good -- you know, it was a while. I don't know exactly. I didn't have a watch.
Q. Are we talking a half hour or more?
A. Yes.
Q. All right.
A. It wasn't --
Q. (Interrupting) A dozen? At least a couple of dozen of these things you have gone through this process trimming all these branches off in the way he told you to do it, you hold the end and he's going to work his way up?
A. Right.
Q. Once all of those little branches are off there -- is it kind of a longer log?
A. Yes.
Q. Did he then cut that into smaller pieces?

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A. That's what he wanted those for is to cut it in smaller pieces.
Q. Did he do that task, too, each time you --
A. (Interrupting) I think he did the first few, and then we just started taking the other ones, the longer things off. He dictated what he wanted. Some of them he wanted -- you know, he wanted to see what he could get out of it first.
Q. All right. So the first couple you trimmed the branches up and then cut them into smaller logs immediately?
A. Yes.
Q. Did you hold the longer limb as he cut it into smaller sections?
A. No. He had set up a -- from the apple tree he set up two logs and was able to set it on there and just (indicating).
Q. So you didn't hold the log as he was trimming them into smaller pieces?
A. The middle part, no. I was there when he took off the little pieces.
Q. So the first couple of these he trimmed it down and then immediately made them into logs?
A. Yes.

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Q. And then after a while he decided he was going to trim all the branches off while you were there to help?
A. Yes.
Q. And you were doing it with a couple of dozen of these before you got hurt?
A. Yes.
Q. All right. So he told you how he wanted -- he basically told you he wanted you to hold the end --
A. (Interrupting) Yes.
Q. -- while he trimmed those up?
A. Yes.
Q. And did he tell you to do anything other than stand there and hold up the one end?
A. When they were done they had to be put over here and then grab a new one, you know, bring it over to this spot so he could start again.
Q. He would stay there, and you would drag the log to a pile and then drag a new branch over?
A. Yes.
Q. Prior to undertaking this trimming did he offer you any instructions beyond "Here, hold this"?
Did he say, "Keep your hands free. Stay away"?

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A. **He said, "Stand here. Hold it here and don't move." He said don't allow it to move because it would roll, you know, so you had to hold it tight.**
Q. So other than telling you where to stand and how to hold it and not let it spin, did he give you any warnings that were safety-oriented like "Keep your hands free. When I get close to you, keep your hands to you," anything --
A. **(Interrupting) No.**
Q. Anything about that -- obviously, to the point you got hurt, did anything about that task concern you from a safety standpoint?
A. **He was far enough away from me it wasn't . . .**
Q. So up until you were actually hurt he kept a certain amount of distance away from you?
A. **Yes.**
Q. How close was the nearest he got to you prior to when you got hurt?
A. **Maybe three or four feet, maybe five feet, somewhere in there. There was a good chunk of those branches that were next to the trunk that didn't have anything on them, you know. They didn't have the growth. The growth was out in**

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the ends.
Q. All right. And during this 20 or 24 more limbs that you guys trimmed up before you were hurt, was Mr. McGuire out there?
A. **Yes -- wait a minute. I was working, so I wasn't paying attention at that point. I was helping hold the limb. You know, I was paying attention to what I was doing. I stopped paying attention to Bill and Carol, so I don't know where they were. You know, I know they were coming in and out of the house.**
Q. Okay. So whether they were there or not during the trimming part you're not sure?
A. **Yes.**
Q. It could be? Maybe not?
A. **Yes.**
Q. That being the case, I take it you don't recall either one of the McGuires intervening, saying, "Hey, that doesn't look safe," or "Be careful," or anything like that during the trimming part?
A. **No.**
Q. And you recall Mr. Gagnon telling you where to stand and how to hold the branches. Did either of the McGuires give you any instructions during

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that phase of the job?
A. **No.**
Q. Did you at that point believe you were taking instruction from Mr. Gagnon?
A. **Yes.**
Q. You were doing what he told you to do?
A. **Yes.**
Q. Did you think you were taking instructions from the McGuires at that point?
A. **They didn't say much.**
Q. And the entire time you're trimming -- during this phase where the branches are being trimmed off the limbs, I take it Mr. McGuire wasn't there helping you holding these limbs?
A. **No. We were -- it was getting into the afternoon after -- like after lunch, and I think he was getting tired. That is the way I feel. He was older.**
Q. The particular phase of the project, the trimming of the limbs, that was you and Mr. Gagnon?
A. **Yes. I remember Mr. McGuire saying that he wanted to burn the limbs, and David wanted to save them.**
Q. And at no time that day did you run the chain

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saw?
A. **I started it.**
Q. But you didn't run it --
A. **(Interrupting) No.**
Q. -- and apply it to any limbs or logs?
A. **No.**
Q. All right. Why don't you get to -- we have got to the dozen or two dozen or so of these limbs before you were hurt. Tell me, as you can recall, what happened.
A. **Do you mean the actual incident?**
Q. Actual incident. You have done a couple of dozen of these without incident?
A. **Right.**
Q. And then what happened?
A. **He walked towards me, and the chain saw came up, and it cut me. I tried to get out of the way, but . . .**
Q. Were you guys actually working on trimming a limb at that point?
A. **I was holding a limb up, yes.**
Q. You were holding a limb?
A. **Yes.**
Q. With which hands?

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A. **My right hand.**
Q. So you're able to hold these with one hand up in the air?
A. **They were only this (indicating) -- you're talking logs. I call them sticks.**
Q. Okay. I didn't ask that question so I'm glad you clarified. The limbs that we're talking about, what was the diameter on average?
A. **The side that I was holding?**
Q. Yes.
A. **Maybe -- I don't know what you consider that (indicating). Three inches. Your guess is as good as mine.**
Q. Okay. Well, it's certainly not the full width of your fingers?
A. **No. I can hold it with one hand.**
Q. It's about the width of a pop can -- diameter width of a pop can?
A. **Coffee cup there, yes.**
Q. They were like three to four inches?
A. **Yes.**
Q. And that was how all the other ones were, too?
A. **Yes.**
Q. And then you were strong enough, and at least at

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that point you were healthy enough to hold it with which hand?
A. **Right here (indicating).**
Q. Right.
A. **Right.**
Q. And you're right hand dominant?
A. **Yes.**
Q. So you could hold those out?
A. **Yes.**
Q. And so you would hold it kind of horizontally, and the rest of it would stretch out towards Mr. --
A. **(Interrupting) Yes. Go down along the ground there.**
Q. And then you say Mr. -- you described it as Mr. Gagnon walking towards you with the chain saw and then you just got cut. Can you elaborate on that a little bit? He didn't just -- you were actually -- he was actually working on trimming a tree branch, correct?
A. **Yes.**
Q. And so I take it he was trimming, getting closer and closer to you?
A. **Before it, yes.**

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Q. Before you got hit with the saw?
A. **Yes.**
Q. And I take it unlike the other branches, there may have been a branch closer than the four to five feet?
A. **No. He stopped cutting the limb, chain saw went down, went to idle. You know, he walked toward me, and I thought he was going to say something like next instruction, what to do, okay, and I don't know what he was thinking or what he was doing or what, but the chain saw started coming up, and the gas went on, and I tried getting the hell out of the way and -- yes.**
Q. So it wasn't during a cutting process that you were hurt?
A. **Yes, you're right.**
Q. He disengaged from trimming the branch, if I'm understanding your testimony, and the chain went into an idle position?
A. **The motor went to idle.**
Q. And the chain is not even moving, and he's holding it down to his side?
A. **Both hands.**
Q. With both hands. But the chain is not moving?

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A. **Yes.**
Q. And he closes the gap between you and him in terms of space?
A. **Right.**
Q. And you were still holding the branch at this point?
A. **Yes.**
Q. And somehow the chain, it gets activated?
A. **When I heard the chain saw, the motor speed up and I saw with my eyes it start to come up, I dropped the branch, tried to get the heck out of there because it's coming up between me and the branch. "What the fuck are you thinking?" I don't know how to say -- you know, I screamed. Whether he was going after something he thought he saw coming off the branch, I don't know.**
Q. Okay.
MS. FREEMAN: Wait for a question.
Q. So you're holding the branch with your right hand just like you had done on the two dozen or more before. He's trimming branches off this thing and stops trimming, correct?
A. **Yes. He was done.**
Q. And then he --

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MS. FREEMAN: (Interrupting) Wait until he finishes.

Q. And he then walks toward you holding the chain saw in a position where he might be able to cut if the chain was moving?

A. It was pointed downward.

Q. Pointed downward?

A. Yes --

Q. (Interrupting) But the chain is not moving --

A. -- towards the ground.

Q. The chain is not moving?

A. Right.

Q. And he gets close enough to you to reach you, obviously?

A. (Indicates affirmatively.)

Q. Then you hear the chain saw, the rpms ramp up?

A. Oh, yes.

Q. And when you heard it ramp up, was it a concern of yours that the chain might be moving at that point?

A. It was an instant high alert on my part, yes.

Q. Did you see the chain saw blade with the chain moving at any point before it made contact with your arm?

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A. Oh, yes.

Q. So you heard it ramp up in terms of rpms and looked?

A. Oh, yes.

Q. Are you still holding the branch at this point?

A. I was letting go.

Q. And as you hear the thing fire up, you turn to look at it, correct?

A. I was looking at it while I was watching him. You know, I never turned away.

Q. And so it's pointed down, and then the rpms ramp up, and you see the blade coming toward you?

A. Uh-huh.

Q. And you let go of the tree?

A. Yes.

Q. But the blade, nonetheless, still makes contact with your arm?

A. Yes.

Q. Did it ever make contact with the tree branch?

A. No.

Q. From your vantage point was it -- well, strike that. Did Mr. Gagnon tell you what his plan was when he got near you and turned the saw on and had lifted the blade toward you?

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A. I had no idea, and I went into panic mode.

Q. All right. And so I think you said you had released the branch before the saw came in contact with your arm?

A. (Indicates affirmatively.)

Q. Is that right?

A. Yes.

Q. And did you turn your body?

A. Uh-huh.

Q. Describe for me this point in time where you see this blade coming up with the saw moving and all of a sudden -- and then at that point where your arm is hit. What did you do?

A. I let go of the branch, and I tried bringing my arm up and away from the saw blade and out and around to get away. It was coming right up, you know, and it was coming up. It was fast.

Q. All right. So you tried to get your arm out of the way. The blade is coming up, but you didn't get it away fast enough?

A. Obviously got it away enough to keep my hand and my arm. I'm lucky to have that.

Q. And then at this point where your arm is actually injured, do you believe that either one of the

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McGuires was present to see that?

A. No. I know they weren't. They said they weren't.

Q. All right. So if I'm understanding your testimony then, at the time the blade made contact with you, you were not actively assisting him by holding a branch? You had, in fact, released the branch?

A. Oh, yes.

Q. And there was no dialogue from Mr. Gagnon as he approached with the blade as to what his intention was at that point in time where the saw became I guess --

A. (Interrupting) Pointed downward.

Q. -- pointed downward and began moving upward?

A. Right.

Q. There was no statement out of him at all?

A. No. I was looking to see if he was going to say something to me because it looked like he was approaching me to say something; he wanted me to do something else, or, you know, I thought there was an instruction coming.

Q. But ultimately there was no additional comment made by him prior to the rpms on the chain saw

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ramping up and the blade coming up toward you?
A. Correct.
Q. And so this isn't a situation where the blade and the saw -- I'm sorry -- the blade and the chain made contact with the branch and kicked it toward you?
A. No.
Q. This isn't a situation where the blade was cutting through a branch and caught the very tip of the saw and fired back at you?
A. No, it's not.
Q. There was no cutting actually involved of a branch when you got struck with the blade?
A. Correct.
Q. After this happened did you ask Mr. Gagnon what he was trying to accomplish at that point in time?
A. After I screamed my head off, that was the first thing that came out of my mouth was -- excuse the expletive -- "What the fuck are you thinking?"
Q. Did he have a response for you?
A. He became immediately I think distraught would be the word, confused. "Oh, my God." Panic, yes.
Q. So he didn't make any comment to you about what

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he was trying -- the task he was trying to accomplish? It was more shock and stunned about this scene having happened?
A. Yes.
Q. Since that point in time where you got hit with the blade and now did he ever tell you in his words what he was specifically trying to do at the time this happened?
A. In the emergency room he used the word kickback, but I didn't understand what he meant or how, you know. And they are going in to sew me up and put the muscles back together, you know, as best they can. I don't know what happened there.
Q. All right. So you definitely recall him in the ER using the phrase kickback?
A. Yes.
Q. All right. But from your vantage point this idea of a kickback, it wouldn't have anything to do with a kickoff of a branch or a log or a limb that was being cut?
A. No. It had nothing to do with that.
Q. And you didn't see the saw come onto a tree branch, that tree branch you were dropping, and then kick toward you? You didn't see that?

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A. No.
Q. So he may have a different version of what kickback means, but the kickback definition or your impression of a kickback that you described earlier, that is not what you recall happening?
A. Correct.
Q. If I'm hearing what you're saying, he might have been trying to get toward that branch to cut it but he never got there? He got to your arm before he made any contact with the tree?
A. Well, I was holding the end of the branch. There was no branch beyond my hand.
Q. And that's what I'm getting at is from your recollection of what went down, regardless of what his intentions were, he lifted up the chain saw, the rpms ramped up, and the chain is moving. You tried to get out of the way of the blade, but you were not able to get out of the way in time?
A. Correct.
Q. That is what happened?
A. Correct.
Q. And other than him mentioning something about a kickback when you're in the emergency room, as we sit here today have you ever discussed the

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dynamics of what happened in a situation where he explained what he was trying to do?
A. Of course I asked him, and I don't remember at what point I asked him, and he could never explain it. He just (indicating). You know, I don't think he knows. I honestly don't think he knows.
Q. So as you sit here today, regardless of how many times you asked him -- and it's more than once, I take it, correct?
A. Oh, yes.
Q. In your mind, he's never articulated specifically what he was doing at the point in time where the blade made contact with your arm?
A. Correct.
Q. Other than referencing a kickback in the ER?
A. Yes.
Q. Okay. With respect to the McGuires, at what point in time was your first notice that Mr. McGuire or Mrs. McGuire were aware of you being potentially hurt?
A. Immediately. They heard me scream.
Q. Okay. Do you believe they came from inside the house?

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A. Yes.
Q. And when they came out, was there any discussion between you and Mr. Gagnon about what had happened?
A. No.
Q. Would it be fair to describe the post injury part on the premises as being more concern about how you were doing than what happened?
A. It was pretty important to me.
Q. Right.
A. Yes, it was very important. Carol was very concerned. She come out yelling. "I heard it. I knew my son cut you." She came out screaming, you know, and -- yes -- yes.
Q. Did either of the McGuires ever make any comments to you to suggest or pursuant to which you formed the impression that they saw what happened?
A. No. They said they didn't. She said she heard it. She heard the screams. She heard what was said right after. She heard all of that. She was right there in the kitchen.
Q. She heard the screams, and her thought was somebody was cut?
A. (Indicates affirmatively.)

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Q. How soon after this happening did you move on to the emergency room?
A. I don't know timewise. I was in shock. It seemed like it took forever. So I can't tell you whether it was five minutes or ten minutes. I am not capable of doing that for you. I can tell you that I started giving orders at that point. First time all day. And I needed a towel, I needed something to put on it, I needed to tie it off. We needed to go to the emergency room now, and there was no waiting.
Q. So once you got hurt, you became more focused about getting the care you needed?
A. Yes.
Q. Up until --
A. (Interrupting) I was quite vocal.
Q. Up until the point where you were cut with the chain saw had the situation ever turned from a volunteer situation like you described early on to an employment situation were you thought you were going to be compensated?
A. No.
Q. Did the McGuires ever promise to pay you anything?

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A. No.
Q. Did Mr. Gagnon ever tell you he was going to pay you anything?
A. No.
Q. Did he ever make any comment to you that he was being paid to get this done by his parents?
A. He did say he was getting something for it. I don't know what. I don't know the terms. I remember something in there he was referring to he had to do this because he owed his mom money or something. I don't know.
Q. And I take it Gagnon didn't promise to share payment he may have been receiving with you?
A. No.
Q. Did you consider yourself a volunteer out there?
A. Yes.
Q. But obviously you felt you were taking directions from Gagnon but you were volunteering?
A. Yes.
Q. You didn't expect to get anything out of this?
A. No.
Q. Certainly not an injured arm?
A. Definitely not this, no. Maybe a pop, you know.
Q. All right. So we have all of your medical

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records but I want to go through this a little bit. At the emergency room they evaluated your arm, correct?
A. Yes.
Q. They cleaned out the wound?
A. Yes.
Q. Did they do some X-rays at the ER?
A. Yes.
Q. Did they tell you that it didn't reach the point where it hit any of your bones?
A. No, it did not.
Q. Initially was it the impression, as you understood it, that it was a tear through the skin and into the muscle?
A. Yes.
Q. There was no belief there was nerve involvement initially?
A. You know, once they gave me the painkiller, I don't -- I was in la-la land.
Q. To the best of your understanding, did they do anything else in the emergency room other than clean it and then stitch it up?
A. Yes. They did the stitches and closed it up and, you know, X-rays. I don't remember what all.

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Q. In the emergency room did they have you use your hand and move it to see if you were still functioning?
A. Yes.
Q. And was it still functioning at that point?
A. Parts, yes. They didn't really check it. I did that. I wanted to know what would work, and I am moving my hand around to see what is going on. And once the pain medicine they gave me kicked in, you know, I was able to move a little bit but not a whole lot.
Q. Once the pain medicine kicked in, I take it the injury itself felt a little better?
A. Oh, I went (indicating). It was --
MS. FREEMAN: (Interrupting) Just answer the question.
Q. It did?
A. Yes.
Q. And then how long was it before -- well, strike that. Eventually did you have to go somewhere and have the stitches out?
A. Yes.
Q. And who did that?
A. Dr. Sek.

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Q. Where is Dr. Sek?
A. He's right here on Elm Street.
Q. He's still operating here?
A. I have known him since I was five years old.
MS. FREEMAN: Just answer the question.
Q. We have sent a records request for him several times and there has never been a response. He's still working here somewhere in McHenry?
A. Yes.
Q. He took the stitches out?
A. Yes.
Q. Over the first month or two or three did you do any physical therapy?
A. I was told by Dr. Sek give it some time, it's going to take time. He did not send me to physical therapy or anything else.
Q. And I know from the record that, as you have explained already, when you tried to use the computer, that you continued to have some symptoms with the right arm and hand even after I guess the laceration had healed?
A. Right.
Q. All right?
A. Right.

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Q. And even today you're still having problems?
A. Yes.
Q. Sometime I think later in 2011, maybe it was early 2012, you had an EMG study done on your right arm?
A. I think I had a few of those.
Q. Nerve conduction study?
A. Yes.
Q. And there was something done early on with the Shoulder to Hand Clinic, Dr. Talerico or something like that?
A. I remember Talerico. I did go see him.
Q. That doctor had evaluated the EMG study, and he evaluated you, didn't feel there was any nerve impairment. Do you recall that?
A. He said -- well, I left Dr. Talerico because I don't think he knew who he was talking to. He started yelling at me about asking for pain medication, and I never even got anything from that man ever in my life. And I left seeing him because I don't think he -- there was something wrong there. And I only saw him twice, and I was out of there.
Q. Do you recall him giving the opinion that he

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didn't think there was anything surgically he could do for you?
A. Not at that point. He did say time will tell.
Q. Okay. And then you left Dr. Talerico?
A. Yes.
Q. And did you go somewhere else?
A. Yes.
Q. Because my records stop at the very beginning of 2012.
A. Dr. Sagerman.
Q. Where is Dr. Sagerman?
A. I gave you his address earlier, or his place, Vernon Hills.
Q. Oh, that's right. And when did you start seeing Dr. Sagerman?
A. I don't remember the date. I'll be honest with you.
Q. He was after Dr. --
A. (Interrupting) Talerico.
Q. -- Talerico?
A. Yes, yes.
Q. All right. And then did Dr. Sagerman do anything for your right arm different than what Dr. Talerico did?

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A. **He continued the physical therapy.**
Q. All right. And anything beyond the physical therapy?
A. **He ordered up a new EMG.**
Q. And then what?
A. **More physical therapy. It was a lot of physical therapy.**
Q. Has anybody done any surgeries on your arm?
A. **Yes. He did.**
Q. When did he do that?
A. **July of this year.**
Q. As you understand it as the patient, what did Dr. Sagerman do to the right arm?
A. **Removed a ton of scar tissue, he said. And he said -- and what they call -- it's a neurosis or -- I don't know the words he used.**
Q. I don't know either. I don't have any of these records.
A. **Okay.**
Q. So there was some kind of a surgery. Which parts of your arm did he work on?
A. **Forearm and the elbow.**
Q. All right. And that was in July?
A. **Yes.**

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Q. Have you had any more surgeries since then?
A. **No.**
Q. Are there any planned?
A. **No.**
Q. Are you still doing physical therapy?
A. **Not for my right arm anymore but for my left.**
Q. How is the right arm now since this procedure done by Dr. Sagerman?
A. **It's better in the sense the pain level is down.**
Q. Okay. Same; the pinky, the ring finger and the thumb?
A. **Those are the most affected, yes.**
Q. What about the index and the middle fingers? Are those impacted as well?
A. **Yes.**
Q. Are the ones that are affected the worst the pinky, the ring finger and the thumb on your right hand?
A. **All of the fingers are affected in the sense of a grip. The ones that feel numb are the pinky and the ring finger.**
Q. So there is a weakened grip overall?
A. **Oh, yes.**
Q. And then the pinky and the ring finger are numb?

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A. **Yes.**
Q. Earlier on you described the pain that was with the tendinitis, the forearm and everything. Is the forearm implicated on the right?
A. **On the right?**
Q. Yes, in terms of pains or sensation?
A. **I get a pain right next to the bone. There is a big lump of scar tissue, you can feel it, and it hurts there when I try to grab too much stuff that is heavier or anything with weight.**
Q. So if you strain the right arm, you will realize some pain right where the laceration was?
A. **Yes, it will burn a little.**
Q. So then with respect to the right arm, you described the numbness in the pinky and the ring finger, a weakened grip and then occasional shooting pain where the laceration was with heavy strain. And what else do you notice about the arm today, the right arm?
A. **You play with the scar tissue ball that is forming in there, and it burns under the elbow. It's like a direct link. If you pinch it, it's (indicating).**
Q. And is there any further recommended treatment

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for the right arm or any of the symptoms that are lingering?
A. **Yes. I am on medication for it.**
Q. What do you take?
A. **Gabapentin.**
Q. Is that an anti-inflammatory or pain med?
A. **It's a type of pain medication, I believe.**
Q. Okay. Besides taking that, anything else?
A. **I take an anti-inflammatory.**
Q. Is that for the left arm or the right arm?
A. **It's all right. I take -- I'm trying to think now. Well, I have, in case I need it, and I try not to take them, but Tramadol and hydrocodone, but I try not to take those.**
Q. Okay. So that's the medicine that you're still taking. Is there anything -- and there is no physical therapy with respect to the right arm currently?
A. **No. We're pretty much done with that.**
Q. And then in terms of function, you have mentioned there is weakened grip?
A. **Yes.**
Q. And you have the numbness in the pinky and ring finger. What other limitations can you

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appreciate with respect to the right arm?
A. Pinky.
Q. What about it?
A. It wouldn't go in.
Q. So you can't --
A. (Interrupting) I can't (indicating).
Q. You can't move the pinky so it abuts the index finger?
A. Or the ring finger.
Q. The ring finger?
A. Correct.
Q. And anything else? Do you still have the full range of motion in your hand?
A. Yes. As long as I do it controlled and slow. If I start forgetting and -- you know, because I feel good and I start doing things fast, it's like all of a sudden I'll get -- it will burn here (indicating), burn under here (indicating), and it will like pang all the way down. It will start tingling real bad again.
Q. So in terms of the shoulder movement, fine?
A. Shoulder is fine.
Q. Elbow movement fine?
A. No. The elbow is a bit sore. I think it's

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because of the surgery he did in there. He had to do a nerve release or something. It was tight.
Q. And did the doctor tell you whether that nerve release in the elbow was somehow related to the injury to the mid forearm?
A. He said that it's natural. You know, the way he explained it to me, it tore through the middle. It's not a cut, it's a tear. Things got pulled from both ends, you know, and that's the next spot that will be affected from the pull. So that's the way it was kind of explained to me. He said it's natural with what happened, with this type of thing that happened.
Q. Okay. The elbow is sore when you're moving it. Is that all the time or just periodically?
A. It's sore pretty much all the time.
Q. And you can still move it in all directions, though?
A. Yes. As long as I'm careful.
Q. And then the hand, with respect to the movement of -- it is a weakened grip, but in terms of moving it, with the exception of the pinky, it still moves the same?

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A. Yes, yes. The pinky and the ring finger and the thumb is -- I have a problem with the thumb coming in here (indicating). Not like this (indicating), but this way (indicating). And my hand shakes.
Q. Has the doctor told you -- that would be Sagerman -- when you can expect any further improvement, or is this what you're going to have?
A. He said nerve damage takes a long time to heal especially as we get older. He wouldn't rule out a full healing. He wouldn't say I was going to be stuck like this forever. He just said time will tell.
Q. So we don't know yet, and he doesn't know for sure?
A. Right.
Q. I'm going to show you what I'm going to mark as 2.
A. He knows more about it than I do.
MS. FREEMAN: There is no question pending.
THE WITNESS: Got you.
Q. I think I know the answer to this, but this is medical expenses as of March 19, 2012, $7,333.04.

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There is more medical expenses we don't have?
A. Right.
Q. The surgery in July and the physical therapy and --
A. (Interrupting) Yes.
Q. I take it you're making a claim for the tennis elbow as well?
A. You know, they tell me it's a natural part of it because of the not using this arm (indicating) and using this thing (indicating) for everything from drinking to driving to everything that I do. And they -- yes.
Q. So there may be expenses associated with the left arm that we don't have?
A. It's a result of.
Q. You have had medical expenses for the treatments and care of the left arm?
A. Yes, minimal.
Q. We don't have those as part of this as well, correct?
A. Right.
Q. I just want to go through some photos here. This is a photo of your arm after the chain saw injury, obviously, correct? 2A?

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A. This is a long time after, yes.
MR. BARCH: Now I need to make that medical expense summary Exhibit No. 3. Sorry.
(Exhibit No. 3 marked for identification by Mr. Barch.)
MR. BARCH: I shouldn't have premarked the other ones.
Q. The other questions I was asking you when I was referring to Exhibit 2, it's now 3. The answers would be the same? We don't have all the medical expenses?
A. Right.
Q. 2A, that is your forearm after the chain saw injury?
A. Yes.
Q. Is that how it looks today?
A. No.
Q. What is that --
A. (Interrupting) No.
Q. What is going on now?
A. It's now got a scar that crosses it where they went in.
Q. Okay. So that is the second surgery, though?
A. Yes.

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Q. The second procedure. So these are all pre --
A. (Interrupting) Pre the July surgery, yes.
Q. The July, 2012. This is what it would have looked like, I take it then, had you not had the additional surgery?
A. Correct.
Q. Same thing with 2D and 2E?
A. Yes. These are all from pre.
Q. Now we go over to 2F. There is an additional photo with some more of I guess an incision that runs up and down your forearm?
A. Yes.
Q. And there is also one -- that's the July, 2012 stuff?
A. Yes.
Q. You have scars now on your arm from those as well?
A. Yes.
Q. 2F, G, H show the arm after that July, 2012 surgery?
A. Correct.
Q. What is I? This came from your counsel, too, 2I.
A. That's David.
Q. That's Mr. Gagnon?

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A. Yes.
Q. Where is this?
A. That's at his home.
Q. When did you take that?
A. That phone conversation you asked me I talked to him about, I went up there to get his address for his house for Hans, and he was outside.
Q. Oh, so when your attorney needed his address, you went up there to get it?
A. I knew where he lived. I didn't know the address, so I just drove past.
Q. And did you shoot this from the car or something?
A. As I drove by the house, yes.
Q. Did he know you were taking that?
A. Yes. I showed it to him.
Q. And then I guess 2J, this was just part of the records. Is this before the second -- before the July surgery or --
A. (Interrupting) This is the X-ray from the emergency room.
Q. Okay.
A. Kind of shows --
MS. FREEMAN: (Interrupting) There is no question pending.

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THE WITNESS: Sorry.
MR. BARCH: I think's all I have for now.
EXAMINATION BY MR. ACCARDO:
Q. For your left arm and left elbow, you had injured those before 2011; is that right?
A. Excuse me?
Q. You had injured your left arm and your left elbow before 2011?
A. Correct.
Q. And that was in a car accident?
A. Yes.
Q. And that took place when?
A. Ten years ago.
Q. What type of injury did you suffer in that car accident?
A. I suffered a broken neck, and I had to have an ulnar nerve transposition done.
Q. Okay. And where was that done?
A. That was done I think late -- what did they call that? That was a long time ago at the hospital, Lake Forest Hospital.
Q. Do you remember which doctor performed that?
A. The same doctor.
Q. The same doctor as what?

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A. Sagerman.
Q. Okay.
A. That's why I knew him.
MS. FREEMAN: Just answer the question.
Q. And after the surgery after the automobile accident about ten years ago did you still have trouble with the left arm?
A. Still do today.
Q. From the time of the car accident up until the time of the accident with the chain saw in June of 2011 did you have trouble with the left arm and the left elbow?
A. Yes.
Q. And has that changed since the accident in June of 2011?
A. Yes.
Q. How so?
A. The other side of the elbow hurts.
Q. Okay. Which side of the elbow hurt before?
A. This side (indicating) was from the car accident. It's like the funny bone.
Q. We're talking about more of the inside of your elbow?
A. Yes.

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Q. All right.
A. Where this is out up here (indicating).
Q. Okay. And by "out here" (indicating), you're talking about the outer part of the elbow?
A. Yes.
Q. You still have trouble with the inner part of the elbow?
A. Yes. Cold days.
Q. The time when you were working with David on the apple tree --
A. (Interrupting) Yes.
Q. -- was that the only time you had worked with him where there was a chain saw involved before June of 2011?
A. With him with the chain saw, yes. There was a tree down in the front yard, but I don't know who did it. I assumed he did.
Q. I'm just talking about you working with him with the chain saw before 2011.
A. Yes.
Q. Was it just the apple tree?
A. That was it.
Q. During the cutting of the apple tree did you have any criticism with the way that David used or employed the chain saw?

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A. No.
Q. And before the accident the day you were cutting down the pine tree did you have any criticism with the way David was using or employing the chain saw?
A. No.
Q. Was there any alcohol involved in the June, 2011 incident?
A. Possibly on Bill's part, Bill McGuire, but neither of us.
Q. Not on David's part?
A. No.
Q. Any reason to believe that David was under the influence of any type of drugs or alcohol at the time of the accident?
A. No.
Q. At any point before the actual accident took place when you were cutting down the pine tree did you express any displeasure or any concern over the process that David had set up for trimming the limbs?
A. No.
Q. You didn't see any problem with it?

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A. He seemed like he knew what he was doing.
Q. My question to you was did you see any problem with it, though?
A. No. I wouldn't know.
Q. Now, I just want to go back to right before you got cut and talk a little bit about the saw because I am a little confused. When David started walking towards you, was the chain still going or had it already been put into idle at that point?
A. He was cutting, stopped, came up, took the finger off the trigger because the whole thing went down, you know -- I think it stopped. The chain pretty much stopped.
Q. Okay. And then he starts walking toward you?
A. Right.
Q. And at any point did you see his finger hit the trigger?
A. I didn't see his finger hit the trigger, no.
Q. You just heard?
A. Yes.
Q. And then you saw the chain --
A. (Interrupting) Yes.
Q. -- start to speed up?

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A. Yes.
Q. Or you actually saw the chain engage?
A. Yes.
Q. Okay.
A. Start to move.
Q. About how much time elapsed from the time he put the saw into idle or took his finger off the trigger until you heard or saw the chain engage again? Was it just a matter of seconds?
A. Yes, it was seconds.
Q. And then about how much time elapsed from the time you saw or heard the chain engage until the time you were actually cut?
A. Split seconds. It came fast.
Q. After the chain or saw engaged right before you were cut, did you see David move in any particular way?
A. Say that again. I lost you in the middle.
Q. After you saw the chain and the saw engage before you were cut, did you see David's body move in any particular way? Did you see any type of jerking movement or anything like that?
A. No. He started walking towards me.
Q. But at some point I think you said you saw the

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saw coming up?
A. Yes.
Q. Okay. How high was the saw when it cut you?
A. It was my eye height. My eyes.
Q. And how was David holding it at that point?
A. (Indicating).
Q. Okay. You're showing me –
A. (Interrupting) Saw pointing up.
Q. Saw pointing up. One hand would have been on the bar?
A. Yes.
Q. The safety bar?
A. Yes.
Q. And then the other hand where?
A. Down on the trigger.
Q. Okay. And the actual saw was pointed straight up in the air?
A. No. It was maybe a 45 it went to.
Q. When you heard and saw the chain engage, where was the saw pointing?
A. Down toward the ground at about a 45.
Q. So from the time you heard or saw the chain engage up until the time you were cut, David moved it from about 45 degrees to the ground up

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pointing towards the sky about 45 degrees?
A. Yes.
Q. And how would you describe the manner in which he did that? Was that something that was –
A. (Interrupting) Just raise it.
Q. Was that something that was fast? Was it slow? Was it sudden?
A. It was very sudden and fast.
Q. Did it look like he had lost control of the saw, or did it look like he did it on purpose?
A. No, it looked like he was in control, but I don't know -- I have asked him. I don't know if he tripped over something –
Q. (Interrupting) I'm not – I'm just asking you if –
A. -- or what. I don't know the answer to that.
Q. Okay. You said you were holding the branch with your right arm or your right hand, right?
A. Uh-huh.
Q. Okay. And you were facing with your body towards David?
A. Yes.
Q. Okay. And then when you heard and saw the chain engage, you dropped the branch?

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A. Yes.
Q. And then you I think motioned -- you said you turned your body it would have been to the right and up and away?
A. Yes. First I went up, and then I was trying to get up and out of the way because that saw blade came up to a 45, and I had to get the heck out of there.
Q. Where was your arm when it actually got cut, and in what position was it?
A. Can I stand up and show you so I can describe it?
Q. Yes.
A. It was -- I was turned like this (indicating), and it cut me right here (indicating).
Q. Okay.
MR. ACCARDO: So let the record reflect that Mr. Dulberg's right arm was basically parallel with his nose and eyes.
Q. Is that about right?
A. Yes, it was. Yes.
Q. And your body was turned about –
A. (Interrupting) I was in the middle of pivoting to get away.
Q. Okay. After the chain and the saw engaged did

David keep walking towards you, or was it just more of a movement with his hands and arms?
A. Say it again.
Q. After you saw the saw and the chain engaged did David keep walking towards you, or was it simply a motion with his hands and arms?
A. It was a motion up.
Q. So he had stopped walking or moving towards you?
A. I think that there were still forward momentum going on, yes, because it started and it came up -- yes, there had to be. I don't know. There had to be, though. My eyes were on the blade at that point.
Q. And now I know you said when you were in the emergency room that David said something about kickback?
A. I asked him -- the emergency room staff asked what the heck happened, and that was his response.
Q. Did you overhear what he told to the people at the emergency room?
A. Yes.
Q. What did he tell the people at the emergency room?

A. He said kickback or something. I just don't know. He took his hands, put them on the head and put them between his knees and just stayed there and did not say nothing.
Q. Did they ask him more than once what happened?
A. Yes, a couple of times, and I just looked at the emergency room staff, and I said, "I think it's an accident. Let's just get this done."
Q. When they asked him the second or the third time what happened, what was his response?
A. At that point he had his head between his knees, and he just goes "I don't know what happened. I just don't know."
Q. At any point did you have a conversation with David in the emergency room, outside of the presentation of the emergency room personnel, about what happened?
A. No.
Q. Now, I know that when you were asked before about some discussions or attempts at discussions about what has happened from the time of the accident up until today's date, I think you sort of just -- sort of made some noises and said David did not want to talk about it. I want you to tell

me, if you know, what specifically has David told you about what he thinks happened on the date of the accident?
A. He doesn't know.
Q. Has he offered any type of explanation as to what happened?
A. No. I think he's afraid to. I don't know.
MS. FREEMAN: There is no question pending.
Q. Why do you think he's afraid to?
A. Because I don't think he knows.
Q. As you sit here today do you think this is something he did on purpose or intentionally?
A. I think he screwed up and had a brain fart.
Q. So the answer to my question would be no?
A. Right.
Q. At any point while you were in the emergency room did you ever have a discussion with David where you indicated to him that you thought that both of you could make a lot of money off of this? Did that conversation ever happen?
A. No.
MR. ACCARDO: I don't have anything else.
MR. BARCH: Only question I have in

follow-up -- just one.
EXAMINATION BY MR. BARCH:
Q. You mentioned that you and Mr. Gagnon were not drinking that afternoon, correct?
A. Correct.
Q. And you said Bill. I guess you're referring to Bill McGuire may have been drinking?
A. He's been known to.
Q. Okay. As you sit here today do you believe that if he had consumed beer or something that day, that that played some role in what happened to you with the chain saw?
A. It played no role.
MR. BARCH: That's all.
MR. ACCARDO: Nothing else.
MS. FREEMAN: I think we will waive signature.
(The deposition of this witness came to a close at 3:33 p.m.)

CERTIFICATE OF SHORTHAND REPORTER

I, Angela D. Oldenburg, a Certified Shorthand Reporter in and for the State of Illinois, do certify that, pursuant to the agreement hereto annexed, there came before me on the 24th day of January, 2013, at 12:17 p.m., the following-named person, to wit: Paul R. Dulberg, who was by me duly sworn to testify to the truth and nothing but the truth of his knowledge concerning the matters in controversy in this cause; that he was thereupon examined on his oath and his examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness and that the reading and signing of the deposition by the said witness were expressly waived.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this deposition is taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

Dated this 28th day of January, 2013.

Angela D. Oldenburg

Certified Shorthand Reporter
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FISHER COURT REPORTING
922 North Lyford Road Rockford, IL 61107

November 22, 2013

Law Office of Thomas Popovich
3415 West Elm Street
McHenry, IL 60050

Re: Dulberg vs. Gagnon, et al.

Dear Sir:

Enclosed please find Exhibits 1 through 3 which were marked during the course of Paul Dulberg's deposition. The exhibits should have been attached to the transcript when it was sent to your office but were inadvertently left behind. My apologies for any inconvenience this has caused.

Sincerely,

Deb Fisher

Deb Fisher

Enclosures

PHONE (815) 226-9755 FAX (815) 395-9510 E-mail fisherreporting@sbcglobal.net

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

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

PLAINTIFF'S ANSWERS TO INTERROGATORIES

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

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

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

ANSWER: Single

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

ANSWER: Plaintiff and Defendant Gagnon. McGuires were on the premises.

EXHIBIT
tabbies
1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ANSWER: Yes. On right arm. Investigation continues.

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

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

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

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

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

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

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

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

15. State with particularity your basis for alleging that on or about June 28, 201 1, David Gagnon living and/or staying at the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois.

ANSWER: He was at his mother's residence.

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

ANSWER: Dave invited me.

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

ANSWER: Dave told me.

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

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

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

ANSWER: It was the McGuires chain saw.

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

ANSWER: Unknown

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

ANSWER: The McGuires saw me with Mr. Gagnon.

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

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

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

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

ANSWER: PLAINTIFF'S RESPONSE TO 213 INTERROGATORIES

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

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

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

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

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

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

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

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

accident based upon his/her expertise and experience and knowledge of the billing/charges for the same or similar treatment;

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

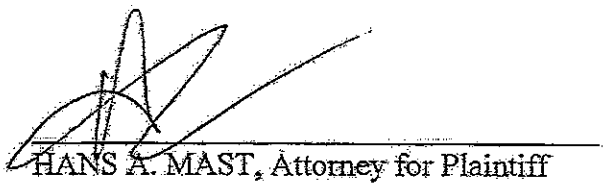
Plaintiff expressly reserves the right to withdraw and/or not to call any 213 witnesses heretofore disclosed (or fewer than those disclosed) depending on counsel's legal determination at the time of trial and his judgment on the necessity of such testimony given the issues and evidence to be presented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

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

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

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

appropriate at trial.



HANS A. MAST, Attorney for Plaintiff

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

Verification by Certification

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

Paul Dulberg

PAUL DULBERG

DATE: 7-20-12

MEDICAL EXPENSE REPORT

PAUL DULBERG

DATE OF ACCIDENT: JUNE 28, 2011

DATE OF REPORT: MARCH 19, 2012

MEDICAL EXPENSES

Paul Dulberg

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

Northern Illinois Medical Center
4201 Medical Center Drive
McHenry, IL 60050-8409
815-344-5000 - Acct. 11179-00323

06/28/11	$1,323.75	$1,323.75

Moraine Emergency Physicians
PO Box 8759
Philadelphia, PA 19101-8759
800-355-2470 - Acct. MNI711179003233

06/28/11	$1,346.00	$1,346.00

McHenry Radiologists Imaging Associates
PO Box 220
McHenry, IL 60051-0220
815-759-0800 - Acct. 235130-QMRIG

06/28/11	$50.00	$50.00

Associated Neurology SC
Attn: Dr. Levin
1900 Hollister Drive
Suite 250
Libertyville, IL 60048
847-549-0055 - Chart # 18062

07/28/11	$225.00	
08/10/11	930.00	
Total		$1,155.00

Open Advanced MRI of Round Lake
Medchex
PO Box 502
Katohah, NY 10536
866-959-1100 - Acct. 265065

02/03/12	$3,390.00	$3,390.00

Walgreens
3925 W. Elm Street

McHenry, IL 60050
815-363-0722

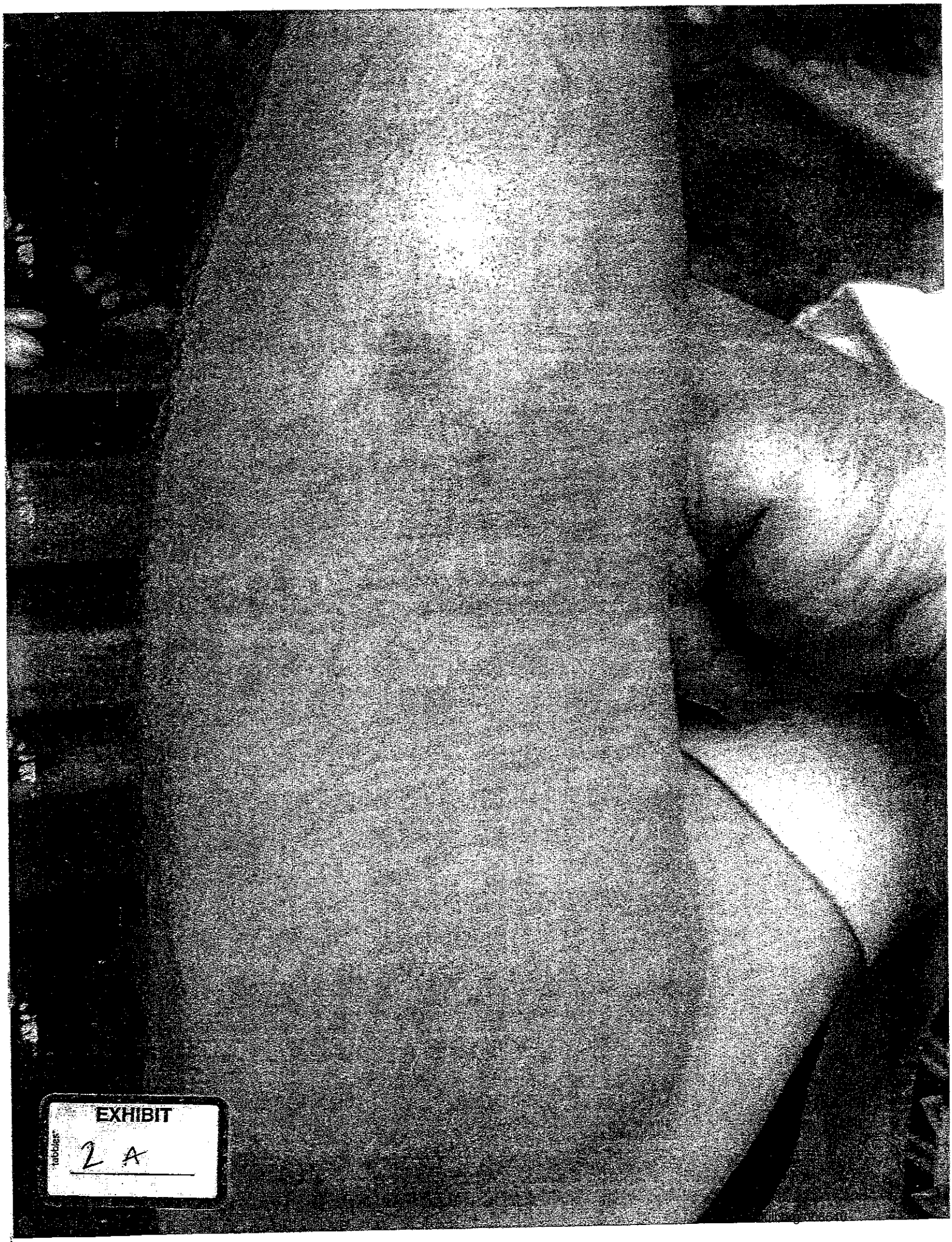
06/28/11	$48.68	$48.68

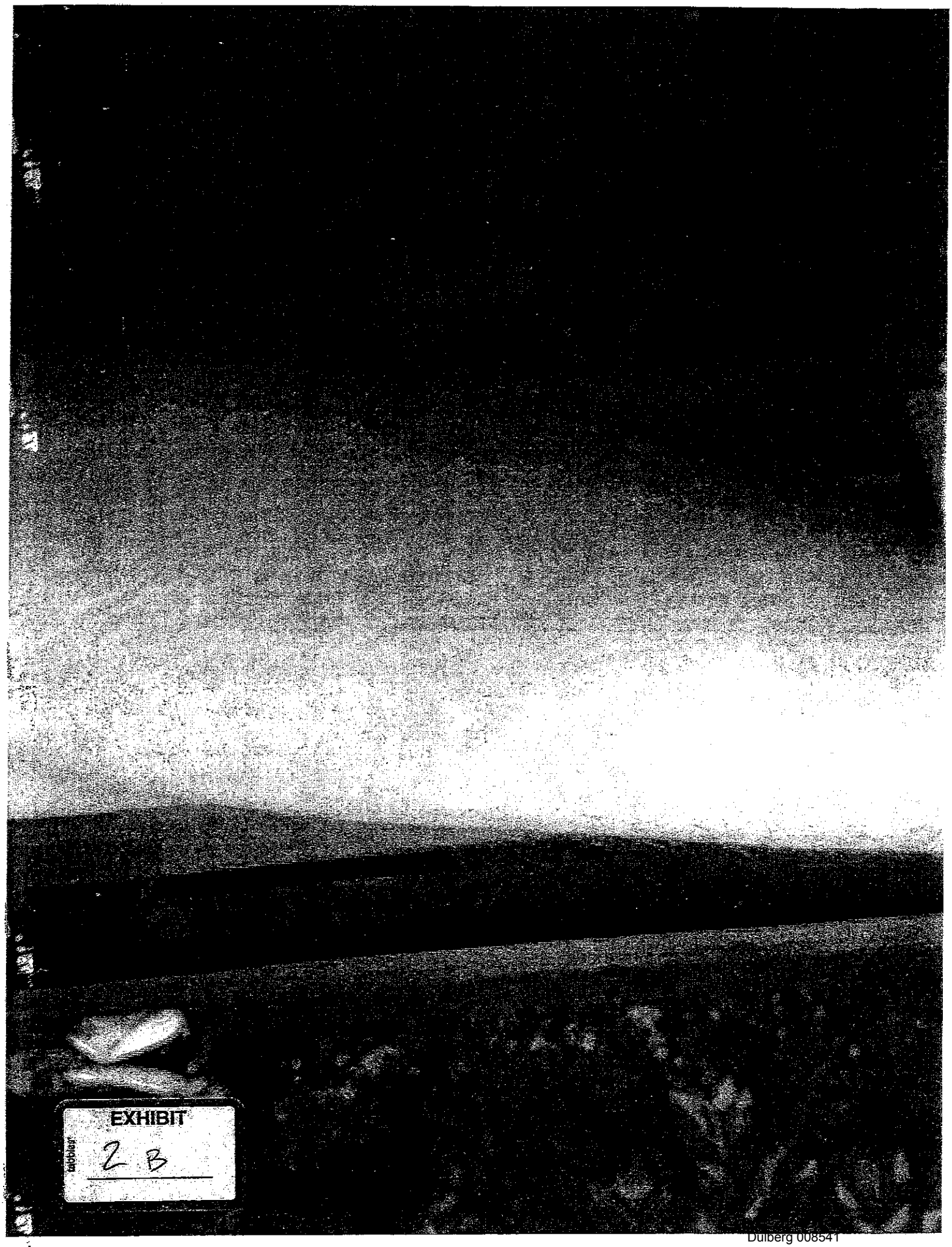
TOTAL EXPENSES: $7,313.43

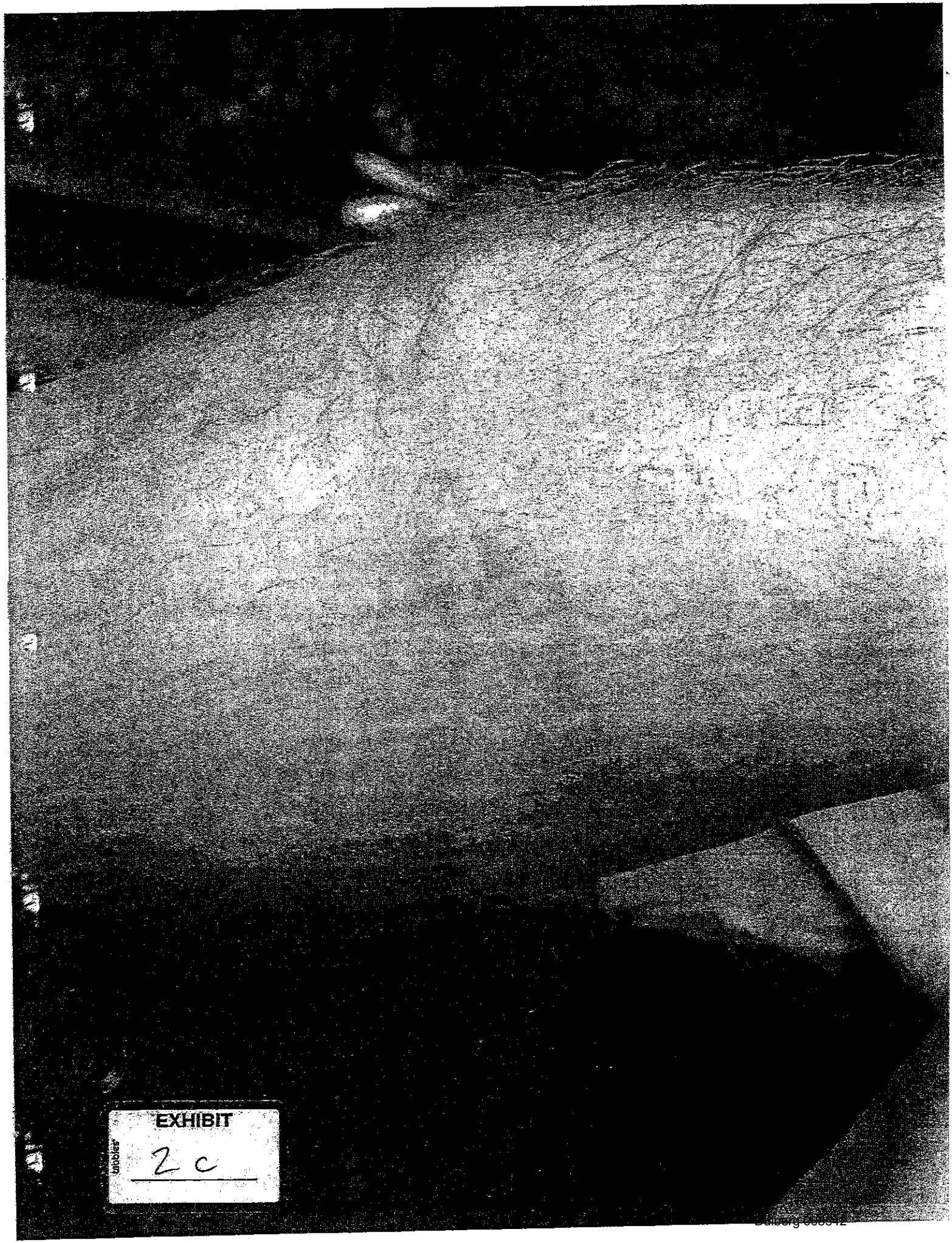
Misc Expenses

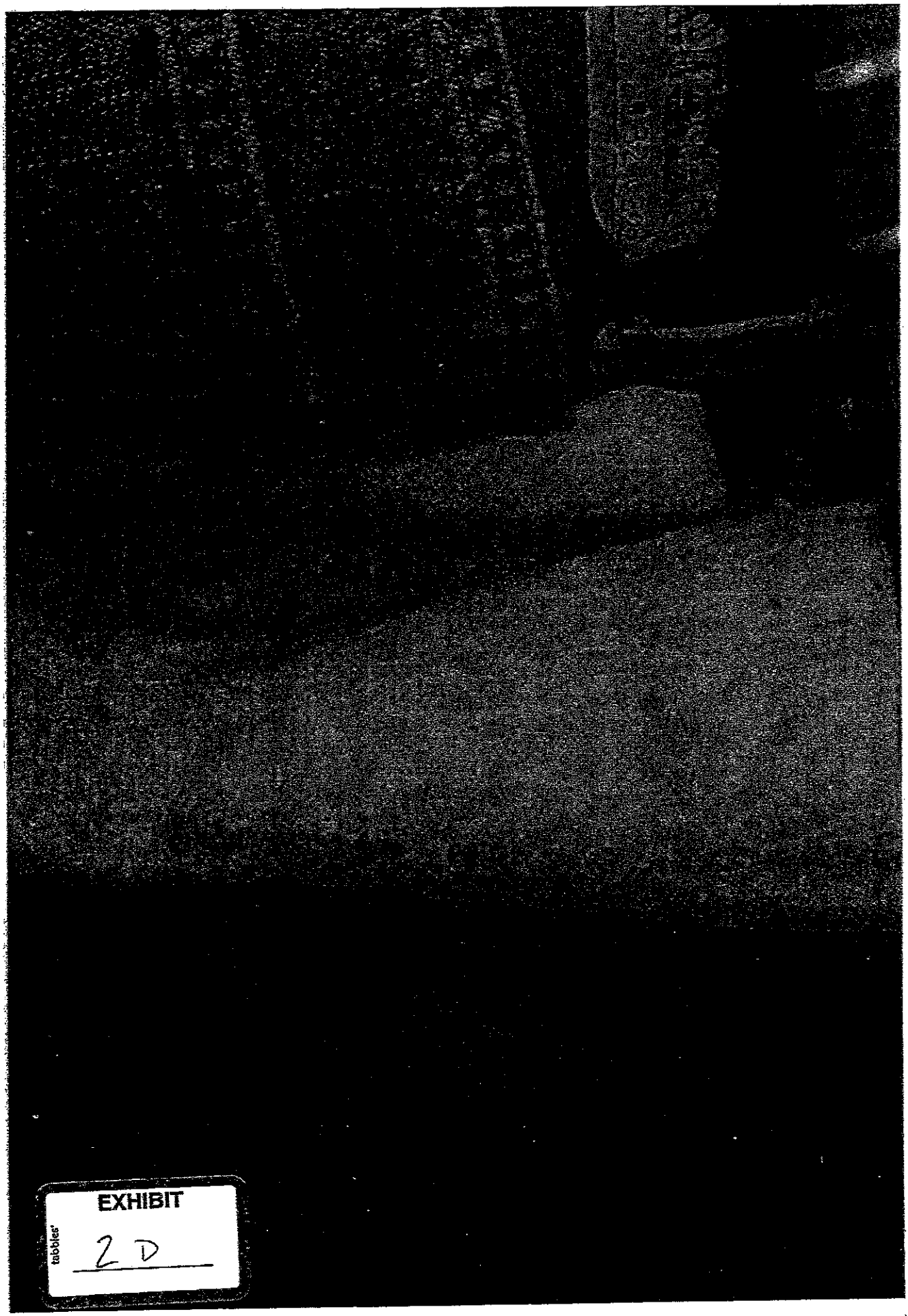
Medical Supplies	$19.61	
Total Misc. Expenses		$19.61

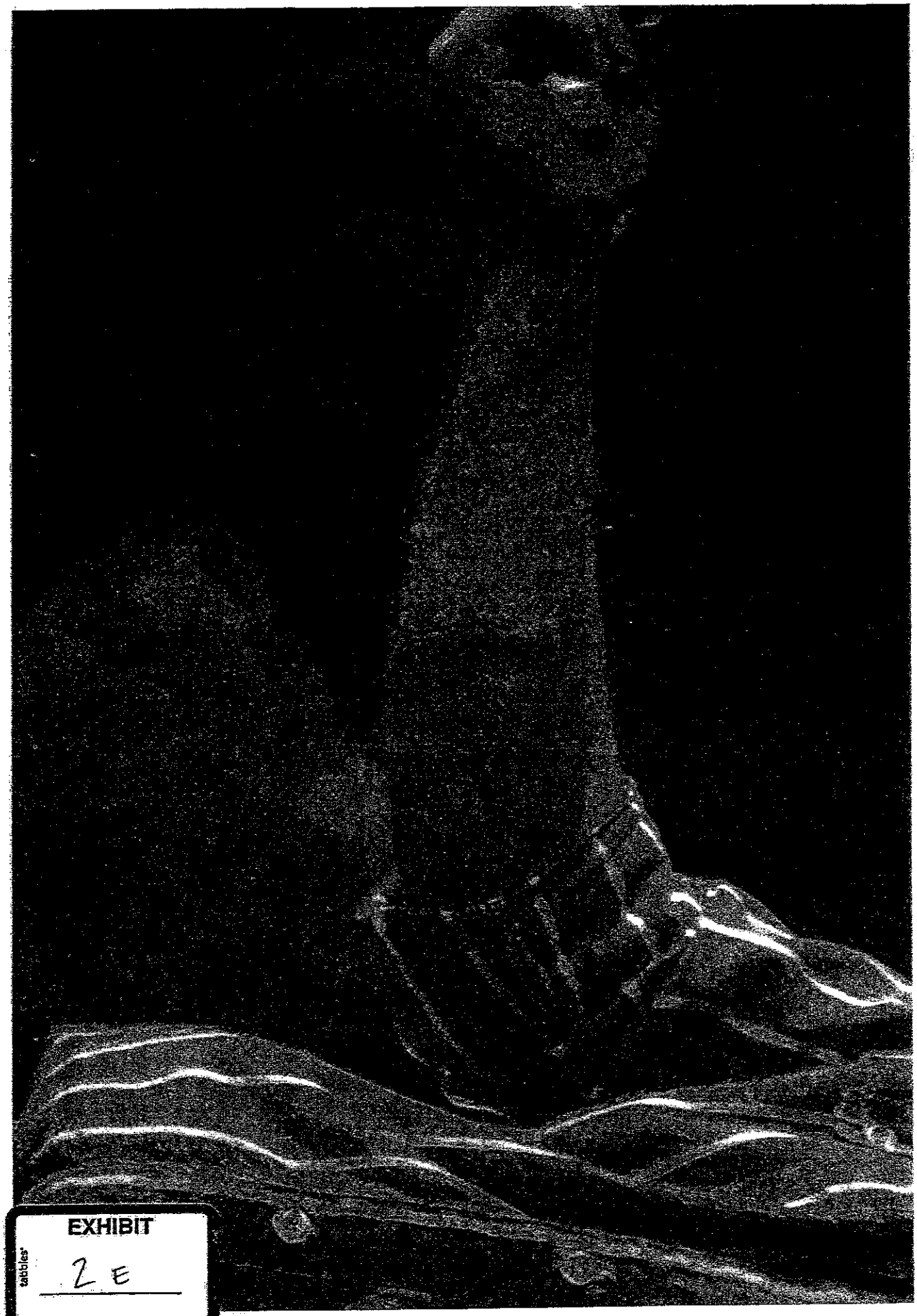
TOTAL ALL EXPENSES $7,333.04


EXHIBIT
2 A


EXHIBIT
2 B


EXHIBIT
tabbies
2c

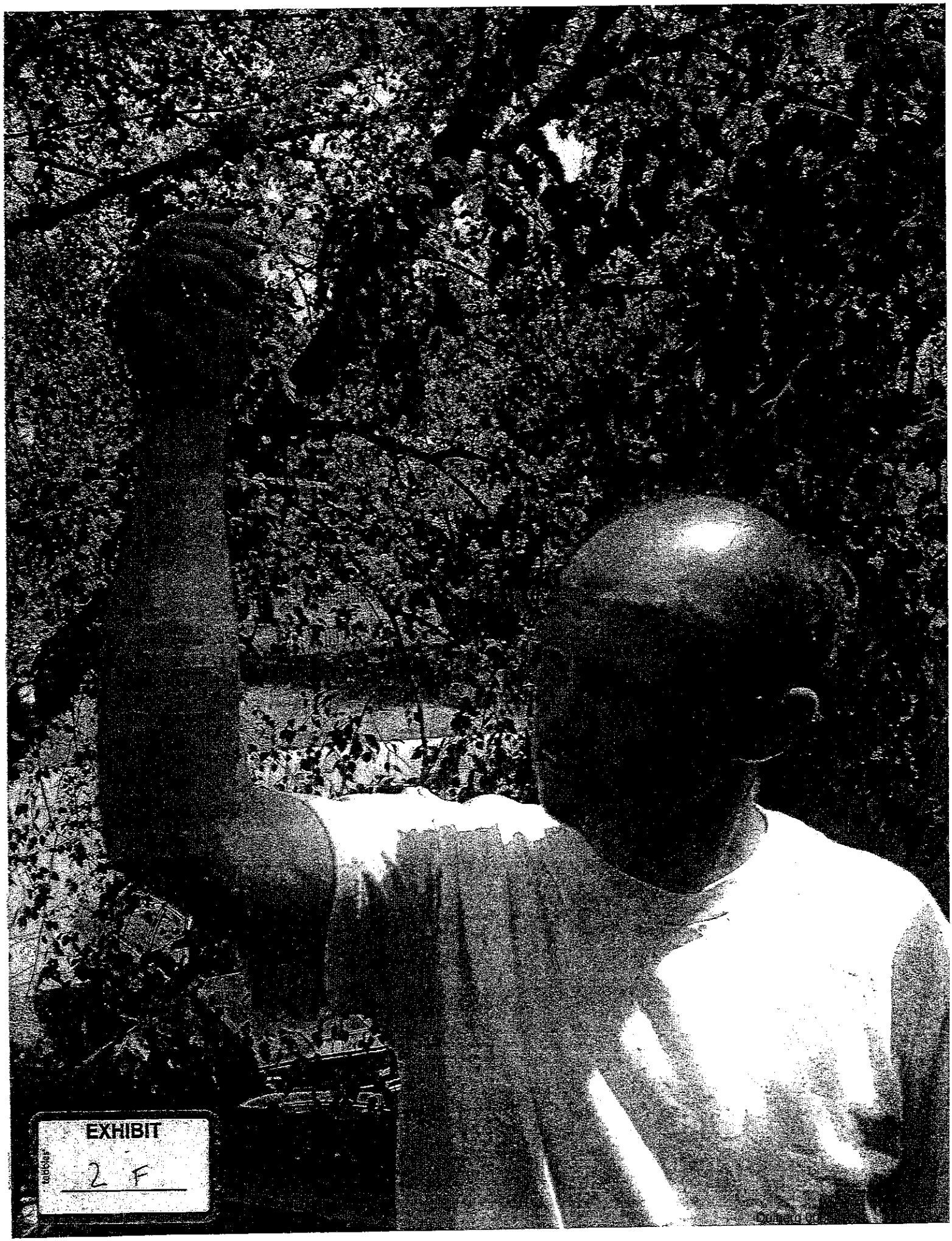

EXHIBIT
tabbies
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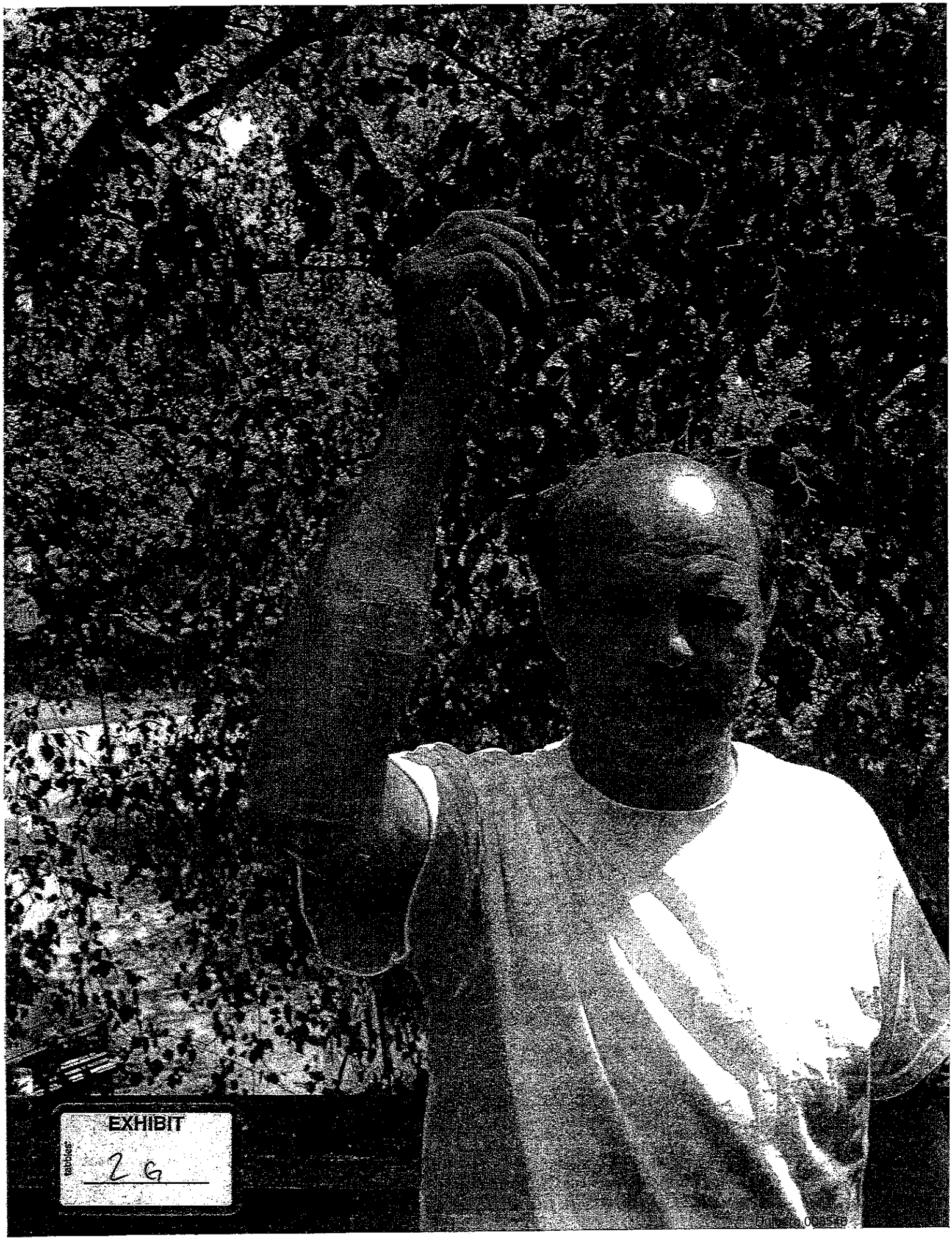


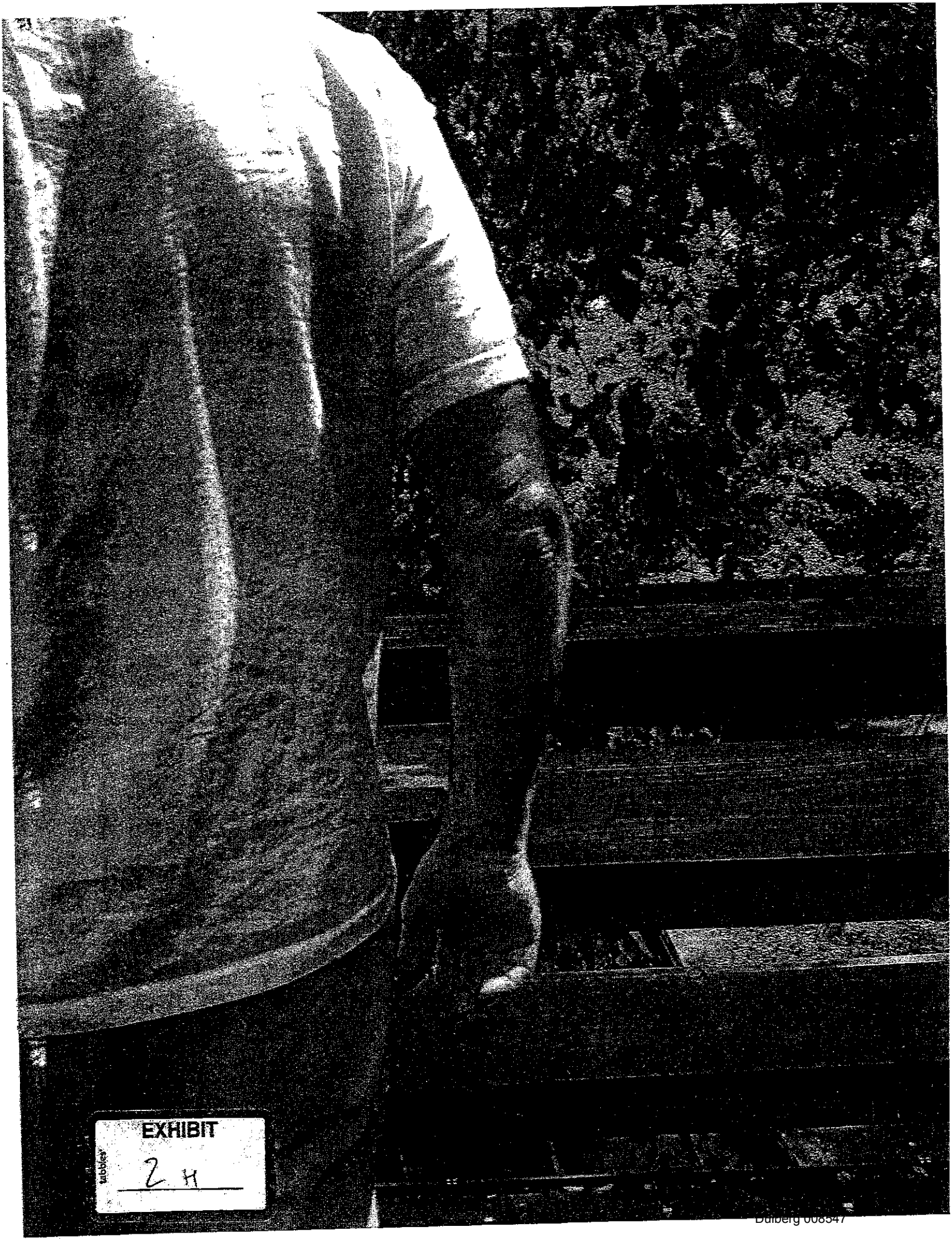
EXHIBIT

tabbies

2 E


EXHIBIT
2 F


EXHIBIT
tabbies
2G


EXHIBIT
tabbies
2 H

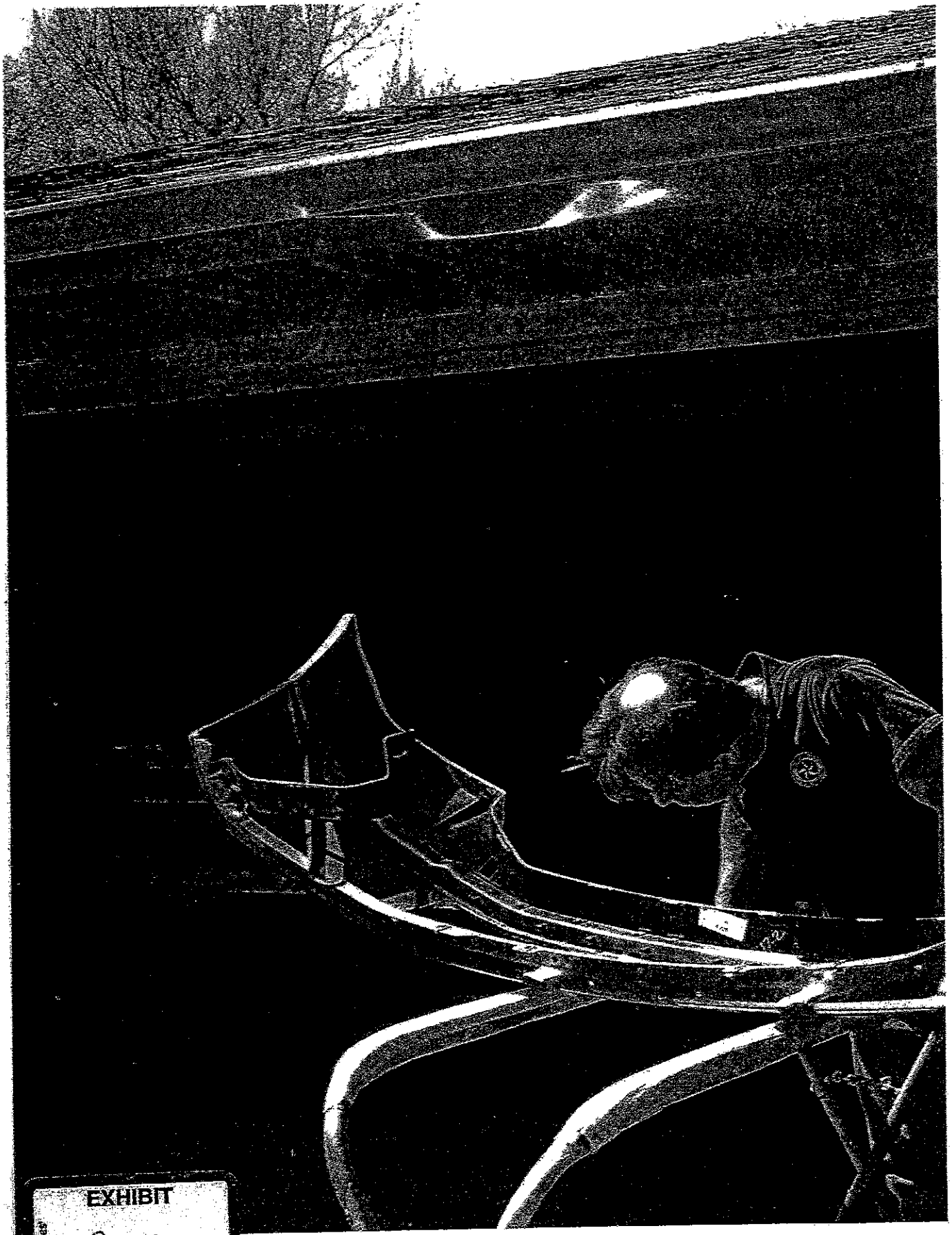


EXHIBIT
2 I



EXHIBIT
25

MEDICAL EXPENSES

Paul Dulberg

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

Northern Illinois Medical Center
4201 Medical Center Drive
McHenry, IL 60050-8409
815-344-5000 - Acct. 11179-00323

06/28/11	$1,323.75	$1,323.75

Moraine Emergency Physicians
PO Box 8759
Philadelphia, PA 19101-8759
800-355-2470 - Acct. MNI711179003233

06/28/11	$1,346.00	$1,346.00

McHenry Radiologists Imaging Associates
PO Box 220
McHenry, IL 60051-0220
815-759-0800 - Acct. 235130-QMRIG

06/28/11	$50.00	$50.00

Associated Neurology SC
Attn: Dr. Levin
1900 Hollister Drive
Suite 250
Libertyville, IL 60048
847-549-0055 - Chart # 18062

07/28/11	$225.00	
08/10/11	930.00	
Total		$1,155.00

Open Advanced MRI of Round Lake
Medchex
PO Box 502
Katohah, NY 10536
866-959-1100 - Acct. 265065

02/03/12	$3,390.00	$3,390.00

Walgreens
3925 W. Elm Street

EXHIBIT
tabbies
3

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

TOTAL EXPENSES: $7,313.43

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

TOTAL ALL EXPENSES $7,333.04