

Paul Dulberg
1/24/2013

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

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

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

Paul Dulberg
1/24/2013

1 APPEARANCES: ATTORNEY THERESA M. FREEMAN
2 Law Offices of Thomas J. Popovich
3 3416 West Elm Street
4 McHenry, Illinois
5 Appeared on behalf of the plaintiff.

6 ATTORNEY RONALD A. BARCH
7 Cicero, France, Barch & Alexander
8 6323 East Riverside Boulevard
9 Rockford, Illinois
10 Appeared on behalf of the
11 defendants, Caroline McGuire and
12 Bill McGuire.

13 ATTORNEY PERRY A. ACCARDO
14 Law Office of M. Gerard Gregoire
15 200 North LaSalle Street
16 Chicago, Illinois
17 Appeared on behalf of the defendant,
18 David Gagnon.
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24

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

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

<p style="text-align: right;">12</p> <p>1 A. Before.</p> <p>2 Q. Since leaving MacMurray have you taken any</p> <p>3 additional college level course work?</p> <p>4 A. No.</p> <p>5 Q. Have you had any vocational training of any kind?</p> <p>6 A. Yes.</p> <p>7 Q. What is the nature of that?</p> <p>8 A. Heidelberg Academy.</p> <p>9 Q. What is that Heidelberg Academy?</p> <p>10 A. It's to learn how to run printing presses.</p> <p>11 Q. Where is Heidelberg Academy located?</p> <p>12 A. When I took it, it was in -- I don't know. It</p> <p>13 was down in the city, a suburb.</p> <p>14 Q. Suburbs of Chicago?</p> <p>15 A. Yes.</p> <p>16 Q. Tell me about that course. Is that just -- is</p> <p>17 that pretty short? Long? Is it intensive? What</p> <p>18 is it?</p> <p>19 A. It's intensive, but it's short.</p> <p>20 Q. When you say short, is it a day? A month? A</p> <p>21 year?</p> <p>22 A. However long you want to pay to go until you're</p> <p>23 comfortable running.</p> <p>24 Q. How long did you go?</p>	<p style="text-align: right;">14</p> <p>1 Q. Rocket design?</p> <p>2 A. Graphic design.</p> <p>3 Q. Okay. Where did you take those?</p> <p>4 A. Various locations throughout the suburbs.</p> <p>5 Q. Are we talking like one-week seminar-type</p> <p>6 programs, or is this a --</p> <p>7 A. (Interrupting) Some were seminars. Some were</p> <p>8 personal where a company hired a teacher to come</p> <p>9 in and teach us the new aspects of the program.</p> <p>10 Q. If I'm hearing what you're saying, you were</p> <p>11 trained on how to operate graphic design</p> <p>12 software?</p> <p>13 A. Yes.</p> <p>14 Q. Was that for a specific employer of any kind?</p> <p>15 A. Intermatic, Incorporated.</p> <p>16 Q. So the graphic design software training and also</p> <p>17 the printing program. What else? Anything else</p> <p>18 that brings to mind?</p> <p>19 A. That's it.</p> <p>20 Q. When did you have the -- I guess strike that</p> <p>21 question. When were you employed at Intermatic?</p> <p>22 A. I believe it was 1998 through 2008, 2009,</p> <p>23 somewhere in there. I don't remember the exact.</p> <p>24 Q. Are you employed today?</p>
<p style="text-align: right;">13</p> <p>1 A. Two weeks. It was more of a certificate for me.</p> <p>2 Q. Did you take the vocational training in operating</p> <p>3 printing presses for a particular employer?</p> <p>4 A. Yes.</p> <p>5 Q. Who was that?</p> <p>6 A. Intermatic, Incorporated.</p> <p>7 Q. Okay. And did you say you received a certificate</p> <p>8 of some sort?</p> <p>9 A. Yes.</p> <p>10 Q. How would you describe the certificate that you</p> <p>11 received?</p> <p>12 A. I'm trying to picture it in my head. It's a form</p> <p>13 that says that I completed the work. I haven't</p> <p>14 looked at it in years.</p> <p>15 Q. The training for a particular printing press?</p> <p>16 A. Yes.</p> <p>17 Q. And what was the name of the printing press?</p> <p>18 A. It was an SM 74.</p> <p>19 Q. All right. Besides the training certificate for</p> <p>20 the SM 74 have you had any additional vocational</p> <p>21 training of any sort?</p> <p>22 A. Yes.</p> <p>23 Q. And why don't you tell me about that.</p> <p>24 A. I had several courses in graphic design.</p>	<p style="text-align: right;">15</p> <p>1 A. No.</p> <p>2 Q. When was the last time you were employed,</p> <p>3 starting from today and working backwards?</p> <p>4 A. May of 2011.</p> <p>5 Q. So if I'm hearing what you just said, you have</p> <p>6 not had a job since this incident on June 28,</p> <p>7 2011?</p> <p>8 A. Correct.</p> <p>9 Q. And where were you working? What was the job you</p> <p>10 had that ended in May of 2011?</p> <p>11 A. It was for Juskie Printing.</p> <p>12 Q. Juskie Printing?</p> <p>13 A. Yes.</p> <p>14 Q. How do you spell that?</p> <p>15 A. J-u-s-k-i-e Printing.</p> <p>16 Q. And that ended in May of 2011?</p> <p>17 A. Yes.</p> <p>18 Q. When did you start at Juskie?</p> <p>19 A. Years earlier.</p> <p>20 Q. Was it a transition directly from Intermatic to</p> <p>21 Juskie?</p> <p>22 A. Not directly, no.</p> <p>23 Q. So it would have been sometime after 2008 and</p> <p>24 2009 when you started at Juskie?</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

<p style="text-align: right;">68</p> <p>1 manual?</p> <p>2 A. Oh, yes.</p> <p>3 Q. You have read an operator's manual for a chain</p> <p>4 saw?</p> <p>5 A. When I was younger, yes.</p> <p>6 Q. We're going back to like immediately after high</p> <p>7 school?</p> <p>8 A. We're going back to eighth grade.</p> <p>9 Q. Eighth grade?</p> <p>10 A. Yes.</p> <p>11 Q. So this was going back when you first started</p> <p>12 using a chain saw?</p> <p>13 A. Yes.</p> <p>14 Q. When you first started using a chain saw, did you</p> <p>15 take it upon yourself to read the manual and</p> <p>16 begin using, or did some adult help you with that</p> <p>17 process?</p> <p>18 A. Somebody helped me.</p> <p>19 Q. Who was it? Your dad?</p> <p>20 A. Yes.</p> <p>21 Q. Is he still alive?</p> <p>22 A. No.</p> <p>23 Q. And I know this is going back a ways. What do</p> <p>24 you recall your father telling you about chain</p>	<p style="text-align: right;">70</p> <p>1 user or helper.</p> <p>2 A. Heat.</p> <p>3 Q. Heat?</p> <p>4 A. Yes.</p> <p>5 Q. Anything else you can think of?</p> <p>6 A. Fragments. The wood chips, you know.</p> <p>7 Q. The saw dust and debris that might fly off --</p> <p>8 A. (Interrupting) Yes.</p> <p>9 Q. -- during cutting?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Anything else that brings to mind?</p> <p>12 A. I'm trying to think back of -- way back when he</p> <p>13 taught me that.</p> <p>14 Q. If something comes up, let me know. Have you</p> <p>15 heard the phrase of binding or blade bind?</p> <p>16 A. I know what binding is, yes.</p> <p>17 Q. What does it mean to you?</p> <p>18 A. It means the blade bound. It froze up. It may</p> <p>19 have overheated, you know. Lack of lubrication,</p> <p>20 something along those lines. There are many</p> <p>21 things that could happen.</p> <p>22 Q. Blade binding to you then is something where the</p> <p>23 blade just stops, the motion of the blade stops?</p> <p>24 A. No.</p>
<p style="text-align: right;">69</p> <p>1 saw operation when he first taught you how to do</p> <p>2 it?</p> <p>3 A. Same thing he told me about all power tools.</p> <p>4 Q. What was that?</p> <p>5 A. Handle them with extreme care.</p> <p>6 Q. So you should handle any power tool with extreme</p> <p>7 care?</p> <p>8 A. Yes.</p> <p>9 Q. Do you recall any specific instructions or</p> <p>10 admonitions about chain saw usage?</p> <p>11 A. He taught me the maintenance. He taught me how</p> <p>12 to use it, how to -- what side of the blade to</p> <p>13 cut with, things like that, yes.</p> <p>14 Q. So he demonstrated it for you?</p> <p>15 A. Yes.</p> <p>16 Q. Besides the risks, are you -- strike that</p> <p>17 question. Are you aware of any other known risks</p> <p>18 associated with a chain saw other than cutting</p> <p>19 from the chain?</p> <p>20 A. No.</p> <p>21 Q. And I'm not -- I'm not even saying there are any.</p> <p>22 I'm just asking you what other risks that you're</p> <p>23 aware of that might be associated with a chain</p> <p>24 saw other than the actual blade injuries to a</p>	<p style="text-align: right;">71</p> <p>1 Q. Okay. You said it has something to do with</p> <p>2 overheating or lack of lube?</p> <p>3 A. Well, you can bind anything, any power tool, when</p> <p>4 you're cutting something either by bending it. I</p> <p>5 would guess I have -- I had a blade bind once on</p> <p>6 me.</p> <p>7 Q. A chain saw blade?</p> <p>8 A. Yes.</p> <p>9 Q. And what happened?</p> <p>10 A. It bent the bar that the chain rides on.</p> <p>11 Q. Okay. All right. So I need to get a little more</p> <p>12 detail about what you understand binding or blade</p> <p>13 bind might be. It can happen, you said, if the</p> <p>14 blade overheats?</p> <p>15 A. Yes.</p> <p>16 Q. If I understand, the chain just goes around on</p> <p>17 that blade, correct?</p> <p>18 A. Yes.</p> <p>19 Q. There is a long metal blade that comes out from</p> <p>20 the power portion of the chain saw, right?</p> <p>21 A. Correct.</p> <p>22 Q. And there is a groove where the chain goes around</p> <p>23 in a circular fashion?</p> <p>24 A. Yes.</p>

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

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

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

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

<p style="text-align: right;">88</p> <p>1 maintenance function at their home, any repair 2 function at the home? 3 A. No. 4 Q. Or any kind of handyman work of any kind? 5 A. The closest thing to that I think was she needed 6 to go to Menards to get some wood, and I had a 7 truck and a trailer, and I took her over there, 8 her and her son, and got the wood and drove her 9 back home. And that was it. I didn't actually 10 perform any function. 11 Q. And when was that in relation to 2011? 12 A. Wait. Wait. I stand corrected. The month or 13 two prior to this incident I took down a shed. 14 It wasn't just me. And we didn't take it down. 15 They just unbolted it from the bottom, and we all 16 just carried it out to the front of the yard and 17 put it on my trailer. They needed as many hands 18 as they could get, and I happened to be free. 19 Q. Okay. So a month or two before this event there 20 was a shed that was removed from the property? 21 A. Yes. I don't even know if it was a month. Maybe 22 four weeks. 23 Q. Sometime before? 24 A. Just right before, yes.</p>	<p style="text-align: right;">90</p> <p>1 Q. What happened to -- it was your trailer? 2 A. Yes. 3 Q. Where did it go? 4 A. It went around the block to my house, and then I 5 took it over to the scrap place. 6 Q. Did you use it for a period of time? 7 A. It sat there. I threw some hoses in there when I 8 got more stuff to go to the scrap guy. Took it 9 all over. 10 Q. When did you dispose of it? 11 A. This year. No. 2012. 12 Q. So you had it through the winter of 2011-2012? 13 A. Yes. 14 Q. So you used it about a year and then got rid of 15 it? 16 A. Yes. It was just sitting there. I didn't want 17 to use it. It wasn't -- 18 Q. (Interrupting) When you were there -- when you 19 were there to have this thing put onto your 20 trailer, who else was there besides you? 21 A. David, Bill and Carol. 22 Q. So did all four of you then lift this thing up? 23 A. You need one on each corner. 24 Q. Okay. Besides helping them get the shed off the</p>
<p style="text-align: right;">89</p> <p>1 Q. It still would have been 2011? 2 A. (Indicates affirmatively.) 3 Q. Yes? 4 A. Yes. 5 Q. This shed, you say it was just unbolted from its 6 foundation? 7 A. Yes. It was one of those flimsy steel sheds. 8 Q. Steel deal? 9 A. Real light. 10 Q. How big was it? 11 A. It was a big one. 12 Q. You're talking 10 feet by 9? I mean, how big? 13 Do you recall? 14 A. I would guess -- and I don't know. They know 15 what size it was. It was a bigger one. Probably 16 10 by 12. 17 Q. That is an estimate, right? 18 A. Yes. 19 Q. And then did you say a group of people picked it 20 up whole and put it onto a trailer? 21 A. Yes. 22 Q. Was it placed on like a flatbed trailer or 23 something? 24 A. Yes.</p>	<p style="text-align: right;">91</p> <p>1 property, do you recall any other work that you 2 may have done or assistance you may have offered 3 around the property prior to June 28 of 2011? 4 A. Recently. That's about it. 5 Q. Did Mr. or Mrs. McGuire -- I'm going to use them 6 in combination. If one or the other did 7 something, tell me. But did either of the 8 McGuires ever train you on how to use a chain 9 saw? 10 A. No. 11 Q. Did either of the McGuires ever demonstrate how 12 to use a chain saw for you? 13 A. No. 14 Q. Did you ever help Bill or Caroline cut trees down 15 prior to June 28, 2011? 16 A. Once. 17 Q. And when was that? 18 A. Again, it was a few weeks prior. About the same 19 time we took the shed. 20 Q. Okay. So there was another occasion where you 21 were out there tending to trees? 22 A. No. Her son David called me and asked me if he 23 could borrow my chain saw. 24 Q. Okay.</p>

<p style="text-align: right;">92</p> <p>1 A. And I brought it over. 2 Q. So David called you for a chain saw? 3 A. Yes. 4 Q. And other than bringing it over, did you help 5 David at all? 6 A. I picked up some sticks on the ground. He did 7 all of the cutting except for I did cut one 8 thing, and it was -- when it was all done and 9 cleaned up, they had a stump, and I tried to make 10 it as close to the ground as possible, and that 11 was it. That's the only cutting I did. 12 Q. When you say you picked up some branches -- 13 A. (Interrupting) Yes. 14 Q. When you say picked up branches, what are you 15 talking about? Bundles? A couple twigs? 16 A. It was an apple tree. So they were small, and 17 David cut it. He cut the whole tree down, and 18 Bill and I were standing there talking, and we 19 were taking them over to where they were -- their 20 garden area. 21 Q. So on this occasion David cut down the entire 22 apple tree? 23 A. Yes. 24 Q. With the exception of that stump that you tidied</p>	<p style="text-align: right;">94</p> <p>1 A. I got pop. 2 Q. Pop. Were you expecting money? 3 A. No. I wasn't there to do any work. 4 Q. And you don't have any insight as to the 5 connection between David -- strike that. You 6 don't have any insight as to the arrangement 7 between the McGuires and Mr. Gagnon on that day 8 when he was taking down the apple tree? 9 A. No. 10 Q. For all you know it could have been a favor for 11 his parents? 12 A. Yes. 13 Q. Or perhaps he was paid? We don't know? You 14 don't know? 15 A. Right. 16 Q. When you said that David was the one that took 17 the tree down by himself that time, the apple 18 tree -- 19 A. (Interrupting) Yes. 20 Q. -- do you happen to know, prior to David setting 21 out to do the tree, whether Mr. McGuire or 22 Mrs. McGuire gave him any instruction on how to 23 use a chain saw? 24 A. Not to my knowledge.</p>
<p style="text-align: right;">93</p> <p>1 up? 2 A. Right. About four inches of stump sticking up, 3 yes. 4 Q. And the assistance that you gave, you helped get 5 that stump to a more presentable condition closer 6 to the ground? 7 A. Yes, I did. 8 Q. And then you helped Bill move some of the 9 branches to a different area on the property? 10 A. They were already cut up, so yes. 11 Q. Were they tied in bundles, or did you -- 12 A. (Interrupting) They were just loose. 13 Q. Loose. Did you just pick them up and carry them? 14 A. Yes. 15 Q. Did you get paid by the McGuires? 16 A. No. 17 Q. Do you know if David was paid by the McGuires to 18 take down that tree? 19 A. Which tree? 20 Q. The apple tree. 21 A. I don't know. 22 Q. Did you get any kind of remuneration or 23 consideration or gifts of any kind for helping 24 that day with your chain saw?</p>	<p style="text-align: right;">95</p> <p>1 Q. Do you know if they were even out in the property 2 -- out in the yard when he was doing that work? 3 A. Yes, they were. 4 Q. They were there as he was cutting or afterward? 5 A. Both. 6 Q. You saw the McGuires present when David was using 7 the chain saw? 8 A. Yes. 9 MS. FREEMAN: Counsel, are we talking 10 about the apple tree? 11 MR. BARCH: Yes, the apple tree. 12 Q. And while you were there -- I guess you were 13 present, I take it, then, when the McGuires were 14 on the property and David was using the chain saw 15 to cut the apple tree apart? 16 A. Yes. 17 Q. Do you recall over hearing or seeing Mr. McGuire 18 or Mrs. McGuire instructing David on how to use 19 that chain saw while you were there? 20 A. Not how to use the chain saw. Just what they 21 wanted gone. 22 Q. So they were telling him which parts of the tree 23 they wanted gone? 24 A. They wanted the whole tree gone.</p>

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

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

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

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

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

<p style="text-align: right;">116</p> <p>1 them.</p> <p>2 Q. All right. So all you're doing is taking the</p> <p>3 stuff that has fallen off the tree and dragging</p> <p>4 it into a separate area at this point?</p> <p>5 A. Yes.</p> <p>6 Q. All right. And did Bill ask you to help, or you</p> <p>7 were just there and you decided to help him?</p> <p>8 A. I just decided to help him.</p> <p>9 Q. Did you at that point discuss, you know, payment</p> <p>10 for doing this?</p> <p>11 A. No.</p> <p>12 Q. Did you consider yourself doing him a favor by</p> <p>13 just helping?</p> <p>14 A. Yes.</p> <p>15 Q. Was it your plan to maybe -- had you decided at</p> <p>16 that point to take any of the wood as firewood?</p> <p>17 A. No. I told him I didn't want it.</p> <p>18 Q. None of it?</p> <p>19 A. None of it. It's pine.</p> <p>20 Q. Even the trunk of it once it was done?</p> <p>21 A. None of it is any good for burning in a</p> <p>22 fireplace.</p> <p>23 Q. So once you got back there and saw it was going</p> <p>24 to be a pine tree coming down, you knew you</p>	<p style="text-align: right;">118</p> <p>1 Q. For a good portion of time?</p> <p>2 A. Yes.</p> <p>3 Q. At some point Bill started dragging these</p> <p>4 branches to a different area, and you lent a</p> <p>5 hand?</p> <p>6 A. Yes.</p> <p>7 Q. You didn't do that anticipating any payment of</p> <p>8 any sort, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And then how long does this go on where you're</p> <p>11 moving branches?</p> <p>12 A. Well, some time. David, he took some good long</p> <p>13 breaks. So a few hours. At least a couple. I</p> <p>14 mean, we weren't moving branches for two hours.</p> <p>15 You move them for two minutes and you're done for</p> <p>16 20 minutes, you know.</p> <p>17 Q. Until there is some more down?</p> <p>18 A. Yes.</p> <p>19 Q. Because you're not standing under there as they</p> <p>20 are dropping down?</p> <p>21 A. Right.</p> <p>22 Q. So it's off and on for a couple of hours you're</p> <p>23 moving these branches?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">117</p> <p>1 weren't going to be taking advantage of any of</p> <p>2 the wood?</p> <p>3 A. Correct.</p> <p>4 Q. It wasn't your chain saw, correct?</p> <p>5 A. Right.</p> <p>6 Q. What purpose other than talking to Bill did you</p> <p>7 have for staying?</p> <p>8 A. Well, Carol talked to me about -- it was just</p> <p>9 social. Carol was talking about old people that</p> <p>10 worked at Intermatic. Bill was telling me about</p> <p>11 his vacation. And it was just talk, you know. I</p> <p>12 didn't plan on staying that long at all, but they</p> <p>13 just keep talking. I didn't have anything else</p> <p>14 to do that day, so I just . . .</p> <p>15 Q. What day of the week was it?</p> <p>16 A. I don't recall offhand.</p> <p>17 Q. Was it a weekend?</p> <p>18 A. No, it was not a weekend.</p> <p>19 Q. All right. So you decided you weren't going to</p> <p>20 take any wood, and it was really by -- you were</p> <p>21 kind of hanging out socializing with the</p> <p>22 McGuire's, if I'm understanding what you're</p> <p>23 saying?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">119</p> <p>1 Q. At some point does David get the whole -- the</p> <p>2 whole trunk, it's eliminated with -- all the</p> <p>3 smaller branches are gone?</p> <p>4 A. He got it pretty far up. And when he came down,</p> <p>5 he looked pretty scared. I was like "I wouldn't</p> <p>6 want to do that. I have to give it to you</p> <p>7 because I wouldn't climb up like that."</p> <p>8 Q. Did he get all the way to the top, very top of</p> <p>9 that, 50 or 60 feet high?</p> <p>10 A. No, no.</p> <p>11 Q. So at some point he comes down, and there is</p> <p>12 still some of the triangular part of the tree</p> <p>13 with the branches?</p> <p>14 A. Yes. There was a good -- better than a third of</p> <p>15 it, maybe a little more, left.</p> <p>16 Q. So roughly two-thirds of it is free of the limbs?</p> <p>17 A. Between a half and two-thirds, yes. Somewhere in</p> <p>18 there.</p> <p>19 Q. And then he comes down. Is that when he falls</p> <p>20 the tree?</p> <p>21 A. No.</p> <p>22 Q. Did he ever cut the tree and see it fall over?</p> <p>23 A. No.</p> <p>24 Q. Did you get injured before that happened?</p>

<p style="text-align: right;">120</p> <p>1 A. Yes.</p> <p>2 Q. So he comes off of the tree having cut down half</p> <p>3 to two-thirds of the limbs?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Right?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Is that a yes?</p> <p>8 A. Yes.</p> <p>9 Q. All right. And then during that period of time</p> <p>10 while he was up there, that is when you and Bill</p> <p>11 were dragging some of these branches over to a</p> <p>12 different area?</p> <p>13 A. Yes.</p> <p>14 Q. And at what point is it that you're involved in</p> <p>15 any activity which resulted in your injury?</p> <p>16 A. When David came down, he took a good long break.</p> <p>17 He was tired. He was climbing the tree. He was</p> <p>18 tired. I think he ate something for lunch. I</p> <p>19 was offered a pop. You know, I sat there and</p> <p>20 drank a pop, was playing with my dog. After</p> <p>21 lunch Dave went back over there to do some more</p> <p>22 work. He started trimming on the tree next to</p> <p>23 it. Wasn't even the same tree. Same thing,</p> <p>24 taking off the lower branches. And it was when</p>	<p style="text-align: right;">122</p> <p>1 like that, no.</p> <p>2 MS. FREEMAN: Just answer the question.</p> <p>3 A. No.</p> <p>4 Q. All right. So now David needed some help with</p> <p>5 something. What was it, as you recall? What did</p> <p>6 he need help with?</p> <p>7 A. He had accumulated a very large pile of, you</p> <p>8 know, the long pine branches. He asked if I</p> <p>9 could help him for a few minutes. I said sure.</p> <p>10 He says, "I need you to hold these while I cut</p> <p>11 off the things on them." And he showed me what</p> <p>12 he wanted, showed me where to stand. And I said,</p> <p>13 "Yeah, I can do that," you know. And -- yes.</p> <p>14 Q. All right. So I guess from what I envision,</p> <p>15 he's cut all of these limbs off of that pine</p> <p>16 tree. Now there is a big pile of them; one you</p> <p>17 guys weren't able to move, you and Bill?</p> <p>18 A. He had another pile from the tree right next to</p> <p>19 it, yes.</p> <p>20 Q. And what was he going to do? Trim some of the</p> <p>21 smaller branches off the limbs?</p> <p>22 A. That's what he wanted to do. He wanted to save</p> <p>23 the center part for firewood or something like</p> <p>24 that for campfires or something. I don't know.</p>
<p style="text-align: right;">121</p> <p>1 he was doing that, when he was done with trimming</p> <p>2 that tree, that is when he asked me to come over</p> <p>3 and hold something for him.</p> <p>4 Q. So after lunch he stopped working on the tree</p> <p>5 that you saw him work on all morning, correct?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And started working on an adjacent tree?</p> <p>8 A. Uh-huh.</p> <p>9 Q. He was at ground level again just cutting off</p> <p>10 branches?</p> <p>11 A. Uh-huh.</p> <p>12 Q. That was the first time he directly asked you for</p> <p>13 help?</p> <p>14 A. Yes -- well, other than start the chain saw</p> <p>15 earlier.</p> <p>16 Q. Yes. So up until that point in time I take it</p> <p>17 you had not offered David any thoughts about how</p> <p>18 to proceed with the tree trimming, whatever he</p> <p>19 was doing? You're just watching?</p> <p>20 A. Yes.</p> <p>21 Q. You didn't offer him any comments on how to do</p> <p>22 this, the way he was going about getting this</p> <p>23 stuff done?</p> <p>24 A. I have never seen it done, that big of a tree</p>	<p style="text-align: right;">123</p> <p>1 Q. So by cleaning off the smaller branches, then</p> <p>2 there would be some logs that could be cut up</p> <p>3 that would be suitable for firewood?</p> <p>4 A. Correct.</p> <p>5 Q. Did you and he actually -- did he tell you what</p> <p>6 his plan was or what he was going to do?</p> <p>7 A. He told me exactly what to do. He knew what he</p> <p>8 was doing. You know, seemed that way to me.</p> <p>9 Q. And he told you what he wanted you to do?</p> <p>10 A. Yes.</p> <p>11 Q. And what did he tell you to do?</p> <p>12 A. Took the branch, pull it over here so it's away</p> <p>13 from the rest of them. Hold the one end up, and</p> <p>14 he would cut the smaller stuff off the other end.</p> <p>15 And when that was done, put it down, grab the</p> <p>16 next one, put it up and -- you know, yes.</p> <p>17 Q. So I'm understanding, you're taking a limb that</p> <p>18 had been cut off the tree, you're holding it</p> <p>19 upright?</p> <p>20 A. No.</p> <p>21 Q. No?</p> <p>22 A. Can I do -- I don't know how it translates.</p> <p>23 Q. We'll explain it on record. But if that straw</p> <p>24 will help you orient us as to what you were</p>

<p>124</p> <p>1 doing --</p> <p>2 A. (Interrupting) The branch would be like this</p> <p>3 (indicating) to the ground.</p> <p>4 Q. All right. So the heavier -- the thicker part of</p> <p>5 the branch is laying on the ground?</p> <p>6 A. Actually, the thinner part was. That is the way</p> <p>7 he wanted it.</p> <p>8 Q. So you're holding the heavier part of the limb?</p> <p>9 A. Yes.</p> <p>10 Q. The long part of it?</p> <p>11 A. Yes.</p> <p>12 Q. And he's trimming off the smaller branches?</p> <p>13 A. Yes.</p> <p>14 Q. Off his limb?</p> <p>15 A. Yes.</p> <p>16 Q. Does he start at the end and work his way closer</p> <p>17 to you?</p> <p>18 A. Yes.</p> <p>19 Q. And how long are these limbs?</p> <p>20 A. They're pretty long. I would only be able to</p> <p>21 guess. I would have to say 20 feet. Pretty big.</p> <p>22 Especially the lower ones off the pines, you</p> <p>23 know.</p> <p>24 Q. Okay. So how many of these things do you think</p>	<p>126</p> <p>1 A. That's what he wanted those for is to cut it in</p> <p>2 smaller pieces.</p> <p>3 Q. Did he do that task, too, each time you --</p> <p>4 A. (Interrupting) I think he did the first few, and</p> <p>5 then we just started taking the other ones, the</p> <p>6 longer things off. He dictated what he wanted.</p> <p>7 Some of them he wanted -- you know, he wanted to</p> <p>8 see what he could get out of it first.</p> <p>9 Q. All right. So the first couple you trimmed the</p> <p>10 branches up and then cut them into smaller logs</p> <p>11 immediately?</p> <p>12 A. Yes.</p> <p>13 Q. Did you hold the longer limb as he cut it into</p> <p>14 smaller sections?</p> <p>15 A. No. He had set up a -- from the apple tree he</p> <p>16 set up two logs and was able to set it on there</p> <p>17 and just (indicating).</p> <p>18 Q. So you didn't hold the log as he was trimming</p> <p>19 them into smaller pieces?</p> <p>20 A. The middle part, no. I was there when he took</p> <p>21 off the little pieces.</p> <p>22 Q. So the first couple of these he trimmed it down</p> <p>23 and then immediately made them into logs?</p> <p>24 A. Yes.</p>
<p>125</p> <p>1 you were able to accomplish before you were</p> <p>2 injured?</p> <p>3 A. We did quite a few.</p> <p>4 Q. And are you able to quantify that in any way?</p> <p>5 More than one, obviously?</p> <p>6 A. Yes. More than a few. Maybe a few dozen. Maybe</p> <p>7 a little more. We did it -- you know, we did</p> <p>8 that for about I would say a good -- you know, it</p> <p>9 was a while. I don't know exactly. I didn't</p> <p>10 have a watch.</p> <p>11 Q. Are we talking a half hour or more?</p> <p>12 A. Yes.</p> <p>13 Q. All right.</p> <p>14 A. It wasn't --</p> <p>15 Q. (Interrupting) A dozen? At least a couple of</p> <p>16 dozen of these things you have gone through this</p> <p>17 process trimming all these branches off in the</p> <p>18 way he told you to do it, you hold the end and</p> <p>19 he's going to work his way up?</p> <p>20 A. Right.</p> <p>21 Q. Once all of those little branches are off</p> <p>22 there -- is it kind of a longer log?</p> <p>23 A. Yes.</p> <p>24 Q. Did he then cut that into smaller pieces?</p>	<p>127</p> <p>1 Q. And then after a while he decided he was going to</p> <p>2 trim all the branches off while you were there to</p> <p>3 help?</p> <p>4 A. Yes.</p> <p>5 Q. And you were doing it with a couple of dozen of</p> <p>6 these before you got hurt?</p> <p>7 A. Yes.</p> <p>8 Q. All right. So he told you how he wanted -- he</p> <p>9 basically told you he wanted you to hold the</p> <p>10 end --</p> <p>11 A. (Interrupting) Yes.</p> <p>12 Q. -- while he trimmed those up?</p> <p>13 A. Yes.</p> <p>14 Q. And did he tell you to do anything other than</p> <p>15 stand there and hold up the one end?</p> <p>16 A. When they were done they had to be put over here</p> <p>17 and then grab a new one, you know, bring it over</p> <p>18 to this spot so he could start again.</p> <p>19 Q. He would stay there, and you would drag the log</p> <p>20 to a pile and then drag a new branch over?</p> <p>21 A. Yes.</p> <p>22 Q. Prior to undertaking this trimming did he offer</p> <p>23 you any instructions beyond "Here, hold this"?</p> <p>24 Did he say, "Keep your hands free. Stay away"?</p>

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

<p style="text-align: right;">132</p> <p>1 A. My right hand.</p> <p>2 Q. So you're able to hold these with one hand up in</p> <p>3 the air?</p> <p>4 A. They were only this (indicating) -- you're</p> <p>5 talking logs. I call them sticks.</p> <p>6 Q. Okay. I didn't ask that question so I'm glad you</p> <p>7 clarified. The limbs that we're talking about,</p> <p>8 what was the diameter on average?</p> <p>9 A. The side that I was holding?</p> <p>10 Q. Yes.</p> <p>11 A. Maybe -- I don't know what you consider that</p> <p>12 (indicating). Three inches. Your guess is as</p> <p>13 good as mine.</p> <p>14 Q. Okay. Well, it's certainly not the full width of</p> <p>15 your fingers?</p> <p>16 A. No. I can hold it with one hand.</p> <p>17 Q. It's about the width of a pop can -- diameter</p> <p>18 width of a pop can?</p> <p>19 A. Coffee cup there, yes.</p> <p>20 Q. They were like three to four inches?</p> <p>21 A. Yes.</p> <p>22 Q. And that was how all the other ones were, too?</p> <p>23 A. Yes.</p> <p>24 Q. And then you were strong enough, and at least at</p>	<p style="text-align: right;">134</p> <p>1 Q. Before you got hit with the saw?</p> <p>2 A. Yes.</p> <p>3 Q. And I take it unlike the other branches, there</p> <p>4 may have been a branch closer than the four to</p> <p>5 five feet?</p> <p>6 A. No. He stopped cutting the limb, chain saw went</p> <p>7 down, went to idle. You know, he walked toward</p> <p>8 me, and I thought he was going to say something</p> <p>9 like next instruction, what to do, okay, and I</p> <p>10 don't know what he was thinking or what he was</p> <p>11 doing or what, but the chain saw started coming</p> <p>12 up, and the gas went on, and I tried getting the</p> <p>13 hell out of the way and -- yes.</p> <p>14 Q. So it wasn't during a cutting process that you</p> <p>15 were hurt?</p> <p>16 A. Yes, you're right.</p> <p>17 Q. He disengaged from trimming the branch, if I'm</p> <p>18 understanding your testimony, and the chain went</p> <p>19 into an idle position?</p> <p>20 A. The motor went to idle.</p> <p>21 Q. And the chain is not even moving, and he's</p> <p>22 holding it down to his side?</p> <p>23 A. Both hands.</p> <p>24 Q. With both hands. But the chain is not moving?</p>
<p style="text-align: right;">133</p> <p>1 that point you were healthy enough to hold it</p> <p>2 with which hand?</p> <p>3 A. Right here (indicating).</p> <p>4 Q. Right.</p> <p>5 A. Right.</p> <p>6 Q. And you're right hand dominant?</p> <p>7 A. Yes.</p> <p>8 Q. So you could hold those out?</p> <p>9 A. Yes.</p> <p>10 Q. And so you would hold it kind of horizontally,</p> <p>11 and the rest of it would stretch out towards</p> <p>12 Mr. --</p> <p>13 A. (Interrupting) Yes. Go down along the ground</p> <p>14 there.</p> <p>15 Q. And then you say Mr. -- you described it as</p> <p>16 Mr. Gagnon walking towards you with the chain saw</p> <p>17 and then you just got cut. Can you elaborate on</p> <p>18 that a little bit? He didn't just -- you were</p> <p>19 actually -- he was actually working on trimming a</p> <p>20 tree branch, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And so I take it he was trimming, getting closer</p> <p>23 and closer to you?</p> <p>24 A. Before it, yes.</p>	<p style="text-align: right;">135</p> <p>1 A. Yes.</p> <p>2 Q. And he closes the gap between you and him in</p> <p>3 terms of space?</p> <p>4 A. Right.</p> <p>5 Q. And you were still holding the branch at this</p> <p>6 point?</p> <p>7 A. Yes.</p> <p>8 Q. And somehow the chain, it gets activated?</p> <p>9 A. When I heard the chain saw, the motor speed up</p> <p>10 and I saw with my eyes it start to come up, I</p> <p>11 dropped the branch, tried to get the heck out of</p> <p>12 there because it's coming up between me and the</p> <p>13 branch. "What the fuck are you thinking?" I</p> <p>14 don't know how to say -- you know, I screamed.</p> <p>15 Whether he was going after something he thought</p> <p>16 he saw coming off the branch, I don't know.</p> <p>17 Q. Okay.</p> <p>18 MS. FREEMAN: Wait for a question.</p> <p>19 Q. So you're holding the branch with your right hand</p> <p>20 just like you had done on the two dozen or more</p> <p>21 before. He's trimming branches off this thing</p> <p>22 and stops trimming, correct?</p> <p>23 A. Yes. He was done.</p> <p>24 Q. And then he --</p>

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

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

<p>144</p> <p>1 A. Yes.</p> <p>2 Q. And when they came out, was there any discussion</p> <p>3 between you and Mr. Gagnon about what had</p> <p>4 happened?</p> <p>5 A. No.</p> <p>6 Q. Would it be fair to describe the post injury part</p> <p>7 on the premises as being more concern about how</p> <p>8 you were doing than what happened?</p> <p>9 A. It was pretty important to me.</p> <p>10 Q. Right.</p> <p>11 A. Yes, it was very important. Carol was very</p> <p>12 concerned. She come out yelling. "I heard it.</p> <p>13 I knew my son cut you." She came out screaming,</p> <p>14 you know, and -- yes -- yes.</p> <p>15 Q. Did either of the McGuires ever make any comments</p> <p>16 to you to suggest or pursuant to which you formed</p> <p>17 the impression that they saw what happened?</p> <p>18 A. No. They said they didn't. She said she heard</p> <p>19 it. She heard the screams. She heard what was</p> <p>20 said right after. She heard all of that. She</p> <p>21 was right there in the kitchen.</p> <p>22 Q. She heard the screams, and her thought was</p> <p>23 somebody was cut?</p> <p>24 A. (Indicates affirmatively.)</p>	<p>146</p> <p>1 A. No.</p> <p>2 Q. Did Mr. Gagnon ever tell you he was going to pay</p> <p>3 you anything?</p> <p>4 A. No.</p> <p>5 Q. Did he ever make any comment to you that he was</p> <p>6 being paid to get this done by his parents?</p> <p>7 A. He did say he was getting something for it. I</p> <p>8 don't know what. I don't know the terms. I</p> <p>9 remember something in there he was referring to</p> <p>10 he had to do this because he owed his mom money</p> <p>11 or something. I don't know.</p> <p>12 Q. And I take it Gagnon didn't promise to share</p> <p>13 payment he may have been receiving with you?</p> <p>14 A. No.</p> <p>15 Q. Did you consider yourself a volunteer out there?</p> <p>16 A. Yes.</p> <p>17 Q. But obviously you felt you were taking directions</p> <p>18 from Gagnon but you were volunteering?</p> <p>19 A. Yes.</p> <p>20 Q. You didn't expect to get anything out of this?</p> <p>21 A. No.</p> <p>22 Q. Certainly not an injured arm?</p> <p>23 A. Definitely not this, no. Maybe a pop, you know.</p> <p>24 Q. All right. So we have all of your medical</p>
<p>145</p> <p>1 Q. How soon after this happening did you move on to</p> <p>2 the emergency room?</p> <p>3 A. I don't know timewise. I was in shock. It</p> <p>4 seemed like it took forever. So I can't tell you</p> <p>5 whether it was five minutes or ten minutes. I am</p> <p>6 not capable of doing that for you. I can tell</p> <p>7 you that I started giving orders at that point.</p> <p>8 First time all day. And I needed a towel, I</p> <p>9 needed something to put on it, I needed to tie it</p> <p>10 off. We needed to go to the emergency room now,</p> <p>11 and there was no waiting.</p> <p>12 Q. So once you got hurt, you became more focused</p> <p>13 about getting the care you needed?</p> <p>14 A. Yes.</p> <p>15 Q. Up until --</p> <p>16 A. (Interrupting) I was quite vocal.</p> <p>17 Q. Up until the point where you were cut with the</p> <p>18 chain saw had the situation ever turned from a</p> <p>19 volunteer situation like you described early on</p> <p>20 to an employment situation were you thought you</p> <p>21 were going to be compensated?</p> <p>22 A. No.</p> <p>23 Q. Did the McGuires ever promise to pay you</p> <p>24 anything?</p>	<p>147</p> <p>1 records but I want to go through this a little</p> <p>2 bit. At the emergency room they evaluated your</p> <p>3 arm, correct?</p> <p>4 A. Yes.</p> <p>5 Q. They cleaned out the wound?</p> <p>6 A. Yes.</p> <p>7 Q. Did they do some X-rays at the ER?</p> <p>8 A. Yes.</p> <p>9 Q. Did they tell you that it didn't reach the point</p> <p>10 where it hit any of your bones?</p> <p>11 A. No, it did not.</p> <p>12 Q. Initially was it the impression, as you</p> <p>13 understood it, that it was a tear through the</p> <p>14 skin and into the muscle?</p> <p>15 A. Yes.</p> <p>16 Q. There was no belief there was nerve involvement</p> <p>17 initially?</p> <p>18 A. You know, once they gave me the painkiller, I</p> <p>19 don't -- I was in la-la land.</p> <p>20 Q. To the best of your understanding, did they do</p> <p>21 anything else in the emergency room other than</p> <p>22 clean it and then stitch it up?</p> <p>23 A. Yes. They did the stitches and closed it up and,</p> <p>24 you know, X-rays. I don't remember what all.</p>

<p style="text-align: right;">148</p> <p>1 Q. In the emergency room did they have you use your 2 hand and move it to see if you were still 3 functioning? 4 A. Yes. 5 Q. And was it still functioning at that point? 6 A. Parts, yes. They didn't really check it. I did 7 that. I wanted to know what would work, and I am 8 moving my hand around to see what is going on. 9 And once the pain medicine they gave me kicked 10 in, you know, I was able to move a little bit but 11 not a whole lot. 12 Q. Once the pain medicine kicked in, I take it the 13 injury itself felt a little better? 14 A. Oh, I went (indicating). It was -- 15 MS. FREEMAN: (Interrupting) Just answer 16 the question. 17 Q. It did? 18 A. Yes. 19 Q. And then how long was it before -- well, strike 20 that. Eventually did you have to go somewhere 21 and have the stitches out? 22 A. Yes. 23 Q. And who did that? 24 A. Dr. Sek.</p>	<p style="text-align: right;">150</p> <p>1 Q. And even today you're still having problems? 2 A. Yes. 3 Q. Sometime I think later in 2011, maybe it was 4 early 2012, you had an EMG study done on your 5 right arm? 6 A. I think I had a few of those. 7 Q. Nerve conduction study? 8 A. Yes. 9 Q. And there was something done early on with the 10 Shoulder to Hand Clinic, Dr. Talerico or 11 something like that? 12 A. I remember Talerico. I did go see him. 13 Q. That doctor had evaluated the EMG study, and he 14 evaluated you, didn't feel there was any nerve 15 impairment. Do you recall that? 16 A. He said -- well, I left Dr. Talerico because I 17 don't think he knew who he was talking to. He 18 started yelling at me about asking for pain 19 medication, and I never even got anything from 20 that man ever in my life. And I left seeing him 21 because I don't think he -- there was something 22 wrong there. And I only saw him twice, and I was 23 out of there. 24 Q. Do you recall him giving the opinion that he</p>
<p style="text-align: right;">149</p> <p>1 Q. Where is Dr. Sek? 2 A. He's right here on Elm Street. 3 Q. He's still operating here? 4 A. I have known him since I was five years old. 5 MS. FREEMAN: Just answer the question. 6 Q. We have sent a records request for him several 7 times and there has never been a response. He's 8 still working here somewhere in McHenry? 9 A. Yes. 10 Q. He took the stitches out? 11 A. Yes. 12 Q. Over the first month or two or three did you do 13 any physical therapy? 14 A. I was told by Dr. Sek give it some time, it's 15 going to take time. He did not send me to 16 physical therapy or anything else. 17 Q. And I know from the record that, as you have 18 explained already, when you tried to use the 19 computer, that you continued to have some 20 symptoms with the right arm and hand even after 21 I guess the laceration had healed? 22 A. Right. 23 Q. All right? 24 A. Right.</p>	<p style="text-align: right;">151</p> <p>1 didn't think there was anything surgically he 2 could do for you? 3 A. Not at that point. He did say time will tell. 4 Q. Okay. And then you left Dr. Talerico? 5 A. Yes. 6 Q. And did you go somewhere else? 7 A. Yes. 8 Q. Because my records stop at the very beginning of 9 2012. 10 A. Dr. Sagerman. 11 Q. Where is Dr. Sagerman? 12 A. I gave you his address earlier, or his place, 13 Vernon Hills. 14 Q. Oh, that's right. And when did you start seeing 15 Dr. Sagerman? 16 A. I don't remember the date. I'll be honest with 17 you. 18 Q. He was after Dr. -- 19 A. (Interrupting) Talerico. 20 Q. -- Talerico? 21 A. Yes, yes. 22 Q. All right. And then did Dr. Sagerman do anything 23 for your right arm different than what 24 Dr. Talerico did?</p>

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

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

<p style="text-align: right;">160</p> <p>1 A. This is a long time after, yes.</p> <p>2 MR. BARCH: Now I need to make that medical</p> <p>3 expense summary Exhibit No. 3. Sorry.</p> <p>4 (Exhibit No. 3 marked for</p> <p>5 identification by Mr. Barch.)</p> <p>6 MR. BARCH: I shouldn't have premarked</p> <p>7 the other ones.</p> <p>8 Q. The other questions I was asking you when I was</p> <p>9 referring to Exhibit 2, it's now 3. The answers</p> <p>10 would be the same? We don't have all the medical</p> <p>11 expenses?</p> <p>12 A. Right.</p> <p>13 Q. 2A, that is your forearm after the chain saw</p> <p>14 injury?</p> <p>15 A. Yes.</p> <p>16 Q. Is that how it looks today?</p> <p>17 A. No.</p> <p>18 Q. What is that --</p> <p>19 A. (Interrupting) No.</p> <p>20 Q. What is going on now?</p> <p>21 A. It's now got a scar that crosses it where they</p> <p>22 went in.</p> <p>23 Q. Okay. So that is the second surgery, though?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">162</p> <p>1 A. Yes.</p> <p>2 Q. Where is this?</p> <p>3 A. That's at his home.</p> <p>4 Q. When did you take that?</p> <p>5 A. That phone conversation you asked me I talked to</p> <p>6 him about, I went up there to get his address for</p> <p>7 his house for Hans, and he was outside.</p> <p>8 Q. Oh, so when your attorney needed his address, you</p> <p>9 went up there to get it?</p> <p>10 A. I knew where he lived. I didn't know the</p> <p>11 address, so I just drove past.</p> <p>12 Q. And did you shoot this from the car or something?</p> <p>13 A. As I drove by the house, yes.</p> <p>14 Q. Did he know you were taking that?</p> <p>15 A. Yes. I showed it to him.</p> <p>16 Q. And then I guess 2J, this was just part of the</p> <p>17 records. Is this before the second -- before the</p> <p>18 July surgery or --</p> <p>19 A. (Interrupting) This is the X-ray from the</p> <p>20 emergency room.</p> <p>21 Q. Okay.</p> <p>22 A. Kind of shows --</p> <p>23 MS. FREEMAN: (Interrupting) There is no</p> <p>24 question pending.</p>
<p style="text-align: right;">161</p> <p>1 Q. The second procedure. So these are all pre --</p> <p>2 A. (Interrupting) Pre the July surgery, yes.</p> <p>3 Q. The July, 2012. This is what it would have</p> <p>4 looked like, I take it then, had you not had the</p> <p>5 additional surgery?</p> <p>6 A. Correct.</p> <p>7 Q. Same thing with 2D and 2E?</p> <p>8 A. Yes. These are all from pre.</p> <p>9 Q. Now we go over to 2F. There is an additional</p> <p>10 photo with some more of I guess an incision that</p> <p>11 runs up and down your forearm?</p> <p>12 A. Yes.</p> <p>13 Q. And there is also one -- that's the July, 2012</p> <p>14 stuff?</p> <p>15 A. Yes.</p> <p>16 Q. You have scars now on your arm from those as</p> <p>17 well?</p> <p>18 A. Yes.</p> <p>19 Q. 2F, G, H show the arm after that July, 2012</p> <p>20 surgery?</p> <p>21 A. Correct.</p> <p>22 Q. What is I? This came from your counsel, too, 2I.</p> <p>23 A. That's David.</p> <p>24 Q. That's Mr. Gagnon?</p>	<p style="text-align: right;">163</p> <p>1 THE WITNESS: Sorry.</p> <p>2 MR. BARCH: I think's all I have for now.</p> <p>3 EXAMINATION BY MR. ACCARDO:</p> <p>4 Q. For your left arm and left elbow, you had injured</p> <p>5 those before 2011; is that right?</p> <p>6 A. Excuse me?</p> <p>7 Q. You had injured your left arm and your left elbow</p> <p>8 before 2011?</p> <p>9 A. Correct.</p> <p>10 Q. And that was in a car accident?</p> <p>11 A. Yes.</p> <p>12 Q. And that took place when?</p> <p>13 A. Ten years ago.</p> <p>14 Q. What type of injury did you suffer in that car</p> <p>15 accident?</p> <p>16 A. I suffered a broken neck, and I had to have an</p> <p>17 ulnar nerve transposition done.</p> <p>18 Q. Okay. And where was that done?</p> <p>19 A. That was done I think late -- what did they call</p> <p>20 that? That was a long time ago at the hospital,</p> <p>21 Lake Forest Hospital.</p> <p>22 Q. Do you remember which doctor performed that?</p> <p>23 A. The same doctor.</p> <p>24 Q. The same doctor as what?</p>

<p>164</p> <p>1 A. Sagerman. 2 Q. Okay. 3 A. That's why I knew him. 4 MS. FREEMAN: Just answer the question. 5 Q. And after the surgery after the automobile 6 accident about ten years ago did you still have 7 trouble with the left arm? 8 A. Still do today. 9 Q. From the time of the car accident up until the 10 time of the accident with the chain saw in June 11 of 2011 did you have trouble with the left arm 12 and the left elbow? 13 A. Yes. 14 Q. And has that changed since the accident in June 15 of 2011? 16 A. Yes. 17 Q. How so? 18 A. The other side of the elbow hurts. 19 Q. Okay. Which side of the elbow hurt before? 20 A. This side (indicating) was from the car accident. 21 It's like the funny bone. 22 Q. We're talking about more of the inside of your 23 elbow? 24 A. Yes.</p>	<p>166</p> <p>1 employed the chain saw? 2 A. No. 3 Q. And before the accident the day you were cutting 4 down the pine tree did you have any criticism 5 with the way David was using or employing the 6 chain saw? 7 A. No. 8 Q. Was there any alcohol involved in the June, 2011 9 incident? 10 A. Possibly on Bill's part, Bill McGuire, but 11 neither of us. 12 Q. Not on David's part? 13 A. No. 14 Q. Any reason to believe that David was under the 15 influence of any type of drugs or alcohol at the 16 time of the accident? 17 A. No. 18 Q. At any point before the actual accident took 19 place when you were cutting down the pine tree 20 did you express any displeasure or any concern 21 over the process that David had set up for 22 trimming the limbs? 23 A. No. 24 Q. You didn't see any problem with it?</p>
<p>165</p> <p>1 Q. All right. 2 A. Where this is out up here (indicating). 3 Q. Okay. And by "out here" (indicating), you're 4 talking about the outer part of the elbow? 5 A. Yes. 6 Q. You still have trouble with the inner part of the 7 elbow? 8 A. Yes. Cold days. 9 Q. The time when you were working with David on the 10 apple tree -- 11 A. (Interrupting) Yes. 12 Q. -- was that the only time you had worked with him 13 where there was a chain saw involved before June 14 of 2011? 15 A. With him with the chain saw, yes. There was a 16 tree down in the front yard, but I don't know who 17 did it. I assumed he did. 18 Q. I'm just talking about you working with him with 19 the chain saw before 2011. 20 A. Yes. 21 Q. Was it just the apple tree? 22 A. That was it. 23 Q. During the cutting of the apple tree did you have 24 any criticism with the way that David used or</p>	<p>167</p> <p>1 A. He seemed like he knew what he was doing. 2 Q. My question to you was did you see any problem 3 with it, though? 4 A. No. I wouldn't know. 5 Q. Now, I just want to go back to right before you 6 got cut and talk a little bit about the saw 7 because I am a little confused. When David 8 started walking towards you, was the chain still 9 going or had it already been put into idle at 10 that point? 11 A. He was cutting, stopped, came up, took the finger 12 off the trigger because the whole thing went 13 down, you know -- I think it stopped. The chain 14 pretty much stopped. 15 Q. Okay. And then he starts walking toward you? 16 A. Right. 17 Q. And at any point did you see his finger hit the 18 trigger? 19 A. I didn't see his finger hit the trigger, no. 20 Q. You just heard? 21 A. Yes. 22 Q. And then you saw the chain -- 23 A. (Interrupting) Yes. 24 Q. -- start to speed up?</p>

<p style="text-align: right;">168</p> <p>1 A. Yes.</p> <p>2 Q. Or you actually saw the chain engage?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 A. Start to move.</p> <p>6 Q. About how much time elapsed from the time he put</p> <p>7 the saw into idle or took his finger off the</p> <p>8 trigger until you heard or saw the chain engage</p> <p>9 again? Was it just a matter of seconds?</p> <p>10 A. Yes, it was seconds.</p> <p>11 Q. And then about how much time elapsed from the</p> <p>12 time you saw or heard the chain engage until the</p> <p>13 time you were actually cut?</p> <p>14 A. Split seconds. It came fast.</p> <p>15 Q. After the chain or saw engaged right before you</p> <p>16 were cut, did you see David move in any</p> <p>17 particular way?</p> <p>18 A. Say that again. I lost you in the middle.</p> <p>19 Q. After you saw the chain and the saw engage before</p> <p>20 you were cut, did you see David's body move in</p> <p>21 any particular way? Did you see any type of</p> <p>22 jerking movement or anything like that?</p> <p>23 A. No. He started walking towards me.</p> <p>24 Q. But at some point I think you said you saw the</p>	<p style="text-align: right;">170</p> <p>1 pointing towards the sky about 45 degrees?</p> <p>2 A. Yes.</p> <p>3 Q. And how would you describe the manner in which he</p> <p>4 did that? Was that something that was --</p> <p>5 A. (Interrupting) Just raise it.</p> <p>6 Q. Was that something that was fast? Was it slow?</p> <p>7 Was it sudden?</p> <p>8 A. It was very sudden and fast.</p> <p>9 Q. Did it look like he had lost control of the saw,</p> <p>10 or did it look like he did it on purpose?</p> <p>11 A. No, it looked like he was in control, but I don't</p> <p>12 know -- I have asked him. I don't know if he</p> <p>13 tripped over something --</p> <p>14 Q. (Interrupting) I'm not -- I'm just asking you</p> <p>15 if --</p> <p>16 A. -- or what. I don't know the answer to that.</p> <p>17 Q. Okay. You said you were holding the branch with</p> <p>18 your right arm or your right hand, right?</p> <p>19 A. Uh-huh.</p> <p>20 Q. Okay. And you were facing with your body towards</p> <p>21 David?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And then when you heard and saw the chain</p> <p>24 engage, you dropped the branch?</p>
<p style="text-align: right;">169</p> <p>1 saw coming up?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. How high was the saw when it cut you?</p> <p>4 A. It was my eye height. My eyes.</p> <p>5 Q. And how was David holding it at that point?</p> <p>6 A. (Indicating).</p> <p>7 Q. Okay. You're showing me --</p> <p>8 A. (Interrupting) Saw pointing up.</p> <p>9 Q. Saw pointing up. One hand would have been on the</p> <p>10 bar?</p> <p>11 A. Yes.</p> <p>12 Q. The safety bar?</p> <p>13 A. Yes.</p> <p>14 Q. And then the other hand where?</p> <p>15 A. Down on the trigger.</p> <p>16 Q. Okay. And the actual saw was pointed straight up</p> <p>17 in the air?</p> <p>18 A. No. It was maybe a 45 it went to.</p> <p>19 Q. When you heard and saw the chain engage, where</p> <p>20 was the saw pointing?</p> <p>21 A. Down toward the ground at about a 45.</p> <p>22 Q. So from the time you heard or saw the chain</p> <p>23 engage up until the time you were cut, David</p> <p>24 moved it from about 45 degrees to the ground up</p>	<p style="text-align: right;">171</p> <p>1 A. Yes.</p> <p>2 Q. And then you I think motioned -- you said you</p> <p>3 turned your body it would have been to the right</p> <p>4 and up and away?</p> <p>5 A. Yes. First I went up, and then I was trying to</p> <p>6 get up and out of the way because that saw blade</p> <p>7 came up to a 45, and I had to get the heck out of</p> <p>8 there.</p> <p>9 Q. Where was your arm when it actually got cut, and</p> <p>10 in what position was it?</p> <p>11 A. Can I stand up and show you so I can describe it?</p> <p>12 Q. Yes.</p> <p>13 A. It was -- I was turned like this (indicating),</p> <p>14 and it cut me right here (indicating).</p> <p>15 Q. Okay.</p> <p>16 MR. ACCARDO: So let the record reflect</p> <p>17 that Mr. Dulberg's right arm was basically</p> <p>18 parallel with his nose and eyes.</p> <p>19 Q. Is that about right?</p> <p>20 A. Yes, it was. Yes.</p> <p>21 Q. And your body was turned about --</p> <p>22 A. (Interrupting) I was in the middle of pivoting to</p> <p>23 get away.</p> <p>24 Q. Okay. After the chain and the saw engaged did</p>

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

Paul Dulberg
1/24/2013

1 CERTIFICATE OF SHORTHAND REPORTER

2
3 I, Angela D. Oldenburg, a Certified
4 Shorthand Reporter in and for the State of Illinois,
5 do certify that, pursuant to the agreement hereto
6 annexed, there came before me on the 24th day of
7 January, 2013, at 12:17 p.m., the following-named
8 person, to wit: Paul R. Dulberg, who was by me duly
9 sworn to testify to the truth and nothing but the
10 truth of his knowledge concerning the matters in
11 controversy in this cause; that he was thereupon
12 examined on his oath and his examination reduced to
13 writing under my supervision; that the deposition is
14 a true record of the testimony given by the witness
15 and that the reading and signing of the deposition by
16 the said witness were expressly waived.

17
18 I further certify that I am neither
19 attorney or counsel for, nor related to or employed
20 by any of the parties to the action in which this
21 deposition is taken, and further that I am not a
22 relative or employee of any attorney or counsel
23 employed by the parties hereto or financially
24 interested in the action.

Dated this 28th day of January, 2013.

19 Certified Shorthand Reporter
20 922 North Lyford Road
21 Rockford, Illinois
22 (815)226-9755
23
24

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