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1 STATE OF ILLINOIS
2 IN THE CIRCUIT COURT OF THE 22nd JUDICIAL CIRCUIT
3 MCHENRY COUNTY, ILLINOIS
4

5 PAUL DULBERG,)
6 Plaintiff,) No. 12 LA 178
7 vs.) DISCOVERY
8 DAVID GAGNON, Individually,) DEPOSITION OF
9 and as Agent of CAROLINE) PAUL R. DULBERG
10 and BILL MCGUIRE,) 1-24-13
11 and CAROLINE MCGUIRE and)
12 BILL MCGUIRE, Individually,)
13 Defendants.)
14
15
16

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

1 APPEARANCES:

2 ATTORNEY THERESA M. FREEMAN
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4 3416 West Elm Street
5 McHenry, Illinois
6 Appeared on behalf of the plaintiff.

7
8 ATTORNEY RONALD A. BARCH
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10 6323 East Riverside Boulevard
11 Rockford, Illinois
12 Appeared on behalf of the
13 defendants, Caroline McGuire and
14 Bill McGuire.

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

22
23
24

1	INDEX	
2	WITNESS	
3	Paul R. Dulberg.....(Mr. Accardo).....	4
4	(Mr. Barch).....	8
5	(Mr. Accardo).....	163
6	(Mr. Barch).....	175
7		
8		
9	EXHIBITS	
10	EXHIBIT	MARKED
11	Exhibit No. 1.....(previously marked).....	
12	Exhibit No. 2.....(previously marked).....	
13	Exhibit No. 3.....	160
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24	Certificate of Shorthand Reporter.....	176

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

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

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

16		18	
1	A. Yes.	1	Q. So prior to 1998 to 2008/2009, whenever you actually left, you were an employee?
2	Q. Was there any other employer in between those two companies?	2	A. Yes.
3	A. I had my -- I did a side business.	3	Q. And after that you still did work for them on an independent contract basis?
4	Q. Tell me about the side business.	4	A. Yes.
5	A. Its name was Sharp Printing, Incorporated.	5	Q. Okay. Now, the work that you did at Intermatic, what was the nature of your business, your work?
6	Q. Sharp?	6	A. When I was running the printing presses or when I was doing the graphic design?
7	A. Printing, Incorporated, or Inc.	7	Q. Whatever you want to tell me about first.
8	Q. Okay. When were you running Sharp Printing?	8	A. When I was running the printing presses, it's exactly what it is. I ran a printing press.
9	Q. Yes. I started that in 1999, and I ended it the year this happened.	9	Q. How long over that period of 1998 to roughly 2008/2009 were you running the printing press?
10	Q. So you ended it in 2011?	10	A. Until I think it was 2003 or 2004.
11	A. Yes.	11	Q. And did you stop working the printing press position to take on some other role?
12	Q. Did you end it before or after the incident on June 28, 2011?	12	A. I was a -- yes, in the office.
13	A. I ended it just before.	13	Q. And what was that role you took on?
14	Q. So I take it then you're not blaming the demise or the dissolution of the Sharp Printing, Inc. company on this occurrence?	14	A. Graphic designer.
15	A. Correct.	15	Q. And that could encompass a lot of things for a layperson. When you say you were a graphics designer for Intermatic, what kind of work were
16	Q. Okay. And then was there a period of time where the Sharp Printing, Inc. business overlapped with your work at Juskie Printing?	16	A. Yes.
17	A. Yes.	17	Q. you doing for them?
18	Q. And as you sit here today can you get any closer in terms of your period of employment at Juskie other than sometime after 2008 or '9 and then May of 2011?	18	A. I did catalog design, package design, collateral, signage, brochures. Everything from business -- everything their company needed.
19	A. I had -- it was a 1099, and I had done work for Mark prior to me leaving Intermatic and after. It was an ongoing-type thing.	19	Q. For Intermatic?
20	Q. Okay. So you weren't actually employed then by Juskie? You're not on their payroll, I take it?	20	A. Yes.
21	A. I was 1099. So, no, I guess not.	21	Q. So you were in-house -- you were doing in-house graphics design work for Intermatic?
22	Q. When you say 1099, are you saying that you were an independent contractor?	22	A. Correct.
23	A. Yes.	23	Q. You weren't in commercial graphic design or anything where your sole business was to do that for other companies?
24	Q. So you would do work for them, and they would pay you, and you would report the income based upon the gross payment?	24	A. No. Yes -- I was a self-employed.
25	A. Correct.	25	Q. And did you take -- did you hold -- did you have a name for that position?
26	Q. And did you record that income then and report it through Sharp Printing?	26	A. Graphic designer.
27	A. No. That was a self-employment.	27	Q. Did you hold that position then with Intermatic until you left?
28	Q. Okay. The position you had at Intermatic, was that the 1099 position, or were you actually employed?	28	A. Yes.
29	A. It was 1099. After I left Intermatic.	29	Q. And the graphic design work that you did, was it all computer-assisted?
30		30	A. It was all computer graphics.
31		31	Q. Is it all mouse entry, or is it keyboard entry --
32		32	A. (Interrupting) Mouse and keyboard, yes.

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

24

1 Q. And you're saying it doesn't work right and it hurts. Is that the same problem that affects your ability to use a mouse?

2

3 A. Yes.

4

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 is?

10

11 A. He said it's something about a tear in the muscle or ligament or something.

12

13 Q. And which part of your arm?

14 A. Elbow.

15 Q. And are you connecting that to the events of June 28, 2011?

16

17 A. They said that it is the natural -- what is the word he used -- the doctor used? He said it's perfectly natural that because of having to use my left arm for everything, that it's overused.

18

19

20

21 Q. When did you begin having problems with your left arm?

22

23 A. About two months ago. It got real acute about two months ago. I was having little issues

24

25

1 building up to it, but then it got real acute.

2 Q. When you say "acute," it became real problematic?

3 A. Strong, yes.

4 Q. What kind of symptoms did you get with the left hand two months ago? What flared up exactly?

5

6 A. That side of my elbow (indicating), the outside (indicating).

7

8 Q. Just for the record, you held your left arm across your body and pointed to the outside part of your elbow?

9

10

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 painful?

17

18 A. It's the range of motion that hurts when you extend it out or pull it all the way in like you're going to eat.

19

20

21 Q. So it's painful as you're going through range of motion?

22

23 A. The center range is fine. It's the extensor all the way out and all the way in.

24

26

1 Q. When you try to extend your arm straight out, it hurts?

2

3 A. Yes.

4 Q. And when you try and pull it in as far as it will go, it hurts?

5

6 A. Yes. In between it's pretty good.

7 Q. You have seen some doctors concerning your left elbow?

8

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 other in -- it's down near Northwest Community. I don't know the name of the town.

14

15

16 Q. What is Dr. Sagerman's first name?

17 A. Scott.

18 Q. And have you seen anybody else for the left elbow tennis elbow problem you have just explained to us?

19

20

21 A. No.

22 Q. What kind of treatment have you had on the left elbow?

23

24 A. I just started physical therapy.

27

1 Q. All right. You have seen a doctor concerning the left elbow then. Have you ever heard the doctor use the word extension?

2

3

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 those mean?

8

9 A. No. I showed him where it was. He knew right away. He just -- that's ...

10

11 Q. So far you have talked about --

12 A. (Interrupting) He ran a couple of tests. He said, "This is what you have."

13

14 MS. FREEMAN: Wait for the question.

15 Q. You talked about you extending your arm and pulling it back toward you. That hurts at the extreme ends, correct?

16

17

18 A. Yes.

19 Q. What about turning the wrist palm up and palm down? Does that hurt in the elbow area?

20

21 A. In the extended, yes.

22 Q. And which position makes the elbow hurt? Is it palm up or palm down or both?

23

24 A. Palm down, fingers up.

28

- 1 Q. Have you heard the phrase supination, pronation?
 2 A. Those words I don't know.
 3 Q. Okay. So other than with your arm straight out
 4 at full extension and palm down, that is when you
 5 describe it hurts, correct?
 6 A. Fingers up (indicating).
 7 Q. So you have to -- you're closing your hand?
 8 A. Fingers up (indicating).
 9 Q. So the wrist is pointed up as well?
 10 A. Yes.
 11 Q. All right. So you have got your arm out at full
 12 extension and your wrist tilted with your fingers
 13 reaching upward?
 14 A. That hurts.
 15 Q. That hurts?
 16 A. Yes.
 17 Q. And can you think of any other part of the range
 18 of motion of the elbow or I guess in combination
 19 with the hand that causes pain?
 20 A. There are so many things that happen that I do
 21 that sets it off. Just from putting on your
 22 jacket to all sorts of -- I mean, grab a coffee
 23 cup and bend the wrist the wrong way when you
 24 turn it. I can't explain.

30

- 1 until -- I mean, it bothered me, but I said
 2 something to Dr. Sagerman two visits ago and/or
 3 -- sorry -- yes, I think it was two visits ago,
 4 and he ran me through range of motion tests and
 5 did some stuff, and he said this is perfectly
 6 natural. It can be treated. This is what, you
 7 know, it is.
 8 Q. When you say last fall, we're talking about the
 9 fall of 2012?
 10 A. Yes.
 11 Q. Other than the physical therapy, have you had any
 12 injections in the elbow?
 13 A. No.
 14 Q. On the right arm you went and had an EMG study
 15 where they check the nerves that go through your
 16 arm?
 17 A. Yes, they did some tests.
 18 Q. Did they do the EMG test on the left arm as well?
 19 A. No. -- *Does he know they did*
 20 What test do you recall them doing on the left
 21 arm other than just taking it through range of
 22 motion and touching it and doing things of that
 23 nature?
 24 A. That was it. It's new, so we're going to hope

29

- 1 Q. Okay. What are you wearing on your left wrist
 2 today?
 3 A. They gave me a splint to wear.
 4 Q. And is it something that it's hard plastic where
 5 you can't move your wrist, or is it a band of
 6 some sort?
 7 A. It's got a metal plate in here. I think it's
 8 metal -- metal, plastic.
 9 Q. The metal or plastic plate goes from the palm to
 10 the wrist?
 11 A. Yes. It holds the wrist up at an angle.
 12 Q. Does it prevent you from putting your wrist down?
 13 A. Down or up.
 14 Q. Or up. Has anybody talked to you about carpal
 15 tunnel syndrome?
 16 A. They said that it's -- that this is like that.
 17 The tendons are torn or something. I don't know.
 18 Q. Okay. And how soon after June 28, 2011 was it
 19 before you started noticing symptoms with your
 20 left arm? Because this is the first notice -- I
 21 haven't seen it in any of the records I have
 22 received.
 23 A. It started bothering me this past fall, and I
 24 didn't really -- I didn't even think about it

31

- 1 physical therapy does it, you know.
 2 Q. And so based upon what he saw, this Dr. Sagerman
 3 then, so far he's put you on physical therapy?
 4 A. Yes.
 5 Q. Are you on any medications for the left elbow --
 6 (Interrupting) No.
 7 MS. FREEMAN: Paul, I just want to
 8 remind you to wait until he gets his question
 9 out, okay, and then just listen to the
 10 question. Okay?
 11 Q. So that is where we're at now with respect to the
 12 left elbow? It's been diagnosed as tennis elbow,
 13 as far as you recall, and is being treated with
 14 physical therapy?
 15 A. Yes.
 16 Q. And has the doctor given you a prognosis in terms
 17 of when that may go away, if at all?
 18 A. He said it takes time.
 19 Q. That is all you can tell me right now is it takes
 20 time?
 21 A. I think he is hoping to see the -- I can't say
 22 what he's hoping to see. I don't know.
 23 Q. Okay. I want to go back to the attempts two to
 24 three months after the event when you tried to do

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

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

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

44		46	
1	A. I had no promise of full-time employment.	1	Q. Okay. So you went for some interviews for a couple of graphics design positions?
2	Q. Have you tried to go back at any time since June 28 of 2011 to I guess fill one of these temporary stints that you have done in the past?	2	A. Yes.
3	A. No. They called.	3	Q. To do similar things to what you were doing before?
4	Q. When you say "they," Joe called?	4	A. Yes.
5	A. Yes.	5	Q. And did you get either one of those jobs?
6	Q. So Joe Groves called when in relation to June 28, 2011?	6	A. No.
7	A. A few months after.	7	Q. Why is it, if you know?
8	Q. And what happened on that event where he called to see if you were interested?	8	A. I'm not sure.
9	A. Yes.	9	Q. Did they have you sit down at a computer terminal and try and generate any work?
10	Q. What happened?	10	A. Yes.
11	A. He knew what had happened. He said, "Do you think you can do it?" And I said, "I don't think so."	11	Q. And were you able to do it?
12	Q. Is that the only time there was an exchange over possibly taking another temporary stint?	12	A. They saw the shaking of the hands and whatnot. Basically said "We can't use you."
13	A. He actually came out to my home. He knew where I lived, and he came out to my home, and he knew right away I couldn't do what they were asking to be done.	13	Q. Where were these two companies that you sat for and attempted to do graphics design or at least illustrate your abilities?
14	Q. So you have tried going back to the graphics design work?	14	A. One of them was on the northwest side of the city. I only went in there once.
15	A. Yes.	15	Q. The name of it?
16	Q. And that's too painful to do because of the keyboard entry and the mouse function?	16	A. I'm trying to remember. I can go back through my e-mails and find the name where they contacted me
17	A. Yes.	17	through. I don't know it offhand. They were kind -- they told me that they found somebody more compatible.
18	Q. And then you kind of self -- you made a decision on your own, given your situation, it was unlikely that you could do the work for AMS Group; is that right?	18	Q. So there was one company, and you said it was on the northwest side of the city, meaning Chicago?
19	A. Oh, I knew I couldn't do it.	19	A. It's the suburbs.
20	Q. Right. You decided that?	20	Q. Okay. Northwest suburbs. And you would try, if we asked your attorney, to locate the name of that company?
21	A. I don't think I decided it. I think my body decided it.	21	A. I can try if I still have the contact.
22	Q. Okay. So your body was telling you that you couldn't do that job?	22	Q. And you said there was a second one as well. Where was that?
23	A. I couldn't pick up those buckets, no.	23	A. I'm pulling a blank.
24	Q. Other than those two potential avenues of employment or income, have you undertaken any other effort to find a job?	24	Q. There was one, but you're drawing a blank on it? Yes.
25	A. Yes. I went on several different interviews.	25	Q. Is it possible that your computer database at home would have some information that might refresh your memory?
26	Q. For what kind of jobs?	26	A. It may. I haven't used that computer in so long anymore, I don't even know if it will boot up.
27	A. Graphic design.	27	But, yes, it may.
28	Q. I thought you said you can't do that.	28	Q. And at least one of these companies you went to you had to sit down and illustrate your graphic design abilities?
29	A. When you got bills, you try.	29	
45		47	
1	design work?	1	through. I don't know it offhand. They were kind -- they told me that they found somebody more compatible.
2	A. Yes.	2	Q. So there was one company, and you said it was on the northwest side of the city, meaning Chicago?
3	Q. And that's too painful to do because of the keyboard entry and the mouse function?	3	A. It's the suburbs.
4	A. Yes.	4	Q. Okay. Northwest suburbs. And you would try, if we asked your attorney, to locate the name of that company?
5	Q. And then you kind of self -- you made a decision on your own, given your situation, it was unlikely that you could do the work for AMS Group; is that right?	5	A. I can try if I still have the contact.
6	A. Oh, I knew I couldn't do it.	6	Q. And you said there was a second one as well. Where was that?
7	Q. Right. You decided that?	7	A. I'm pulling a blank.
8	A. I don't think I decided it. I think my body decided it.	8	Q. There was one, but you're drawing a blank on it? Yes.
9	Q. Okay. So your body was telling you that you couldn't do that job?	9	Q. Is it possible that your computer database at home would have some information that might refresh your memory?
10	A. I couldn't pick up those buckets, no.	10	A. It may. I haven't used that computer in so long anymore, I don't even know if it will boot up.
11	Q. Other than those two potential avenues of employment or income, have you undertaken any other effort to find a job?	11	But, yes, it may.
12	A. Yes. I went on several different interviews.	12	Q. And at least one of these companies you went to you had to sit down and illustrate your graphic design abilities?
13	Q. For what kind of jobs?	13	
14	A. Graphic design.	14	
15	Q. I thought you said you can't do that.	15	
16	A. When you got bills, you try.	16	

48

1 A. Yes.
 2 Q. Did you have to do that at both or just the one,
 3 if you recall?
 4 A. Just one.
 5 Q. All right. For the graphics design positions,
 6 you have at least tried to get two others since
 7 then, right?
 8 A. Yes.
 9 Q. Were you going to be doing 1099 work for them or
 10 actually be employed by those two companies?
 11 A. I was trying to be employed.
 12 Q. And then besides these two attempts at graphics
 13 design positions, any other attempts of
 14 employment since June 28, 2011?
 15 A. No.
 16 Q. Do you remember signing Interrogatory answers
 17 saying that you would be making a claim for lost
 18 earnings?
 19 A. I don't know what you mean by Interrogatory
 20 answer.
 21 Q. There is some written questions that we sent to
 22 your attorney to have you answer. And I don't
 23 want to get into what you and either your
 24 attorney here or Mr. Mast may have talked

49

1 about --
 2 A. (Interrupting) I remember he asked me some stuff.
 3 Q. Take a look at the last page -- nope, not the
 4 last page. It will be the fourth from the back.
 5 Is that your signature?
 6 A. Yes.
 7 Q. I should say for the record I tendered to you
 8 Exhibit No. 1. That is your signature on the
 9 fourth-to-the-last page?
 10 A. Yes.
 11 Q. Question No. 6 asked about whether you would be
 12 claiming any lost income as a result of the
 13 injuries, including wages and salaries, and then
 14 there is this listing of AMS Screw Products.
 15 Do you see that?
 16 A. Yes.
 17 Q. And Joe Groves, that's the guy you mentioned that
 18 would call you from time to time?
 19 A. Yes.
 20 Q. Is that the hourly rate you would get for your
 21 temporary work?
 22 A. Yes.
 23 Q. And then when we talk about being hired but not
 24 able to pursue employment due to the accident,

50

1 you were unable to do that temporary stint that
 2 you had lined up?
 3 A. Right.
 4 Q. How many days or weeks was that planned for when
 5 you were working?
 6 A. I don't remember, but it was one or two. I know
 7 that.
 8 Q. One or two days or weeks?
 9 A. Weeks.
 10 Q. All right. So if it was a 40-hour week, it would
 11 be 40 times the \$10 hourly rate?
 12 A. Yes.
 13 Q. And if it was the two weeks, it would be that
 14 80 hours at ten bucks an hour?
 15 A. Yes.
 16 Q. Past that have you made any other calculations on
 17 your end I guess pursuant to what you believe you
 18 have lost in the form of income?
 19 A. The biggest loss I suffered was not being able to
 20 renew with Juskie later on.
 21 Q. Renew in what sense -- so, first of all, with
 22 respect to AMR, other than that one to two-week
 23 stint, from your vantage point are you claiming
 24 that you have lost more income that you could

51

1 have received through AMS Screw?
 2 A. With Juskie Printing the contract that he had was
 3 up in May prior to this incident. That is why I
 4 was looking for other work to fill, pending
 5 Juskie getting a new contract with his customer,
 6 okay, which would have extended my work there as
 7 well.
 8 Q. Okay. So your hope at the time this happened was
 9 not to go full-time with AMS Screw? You were
 10 hoping that Juskie renewed their contract so you
 11 could continue 1099 work?
 12 A. I was hoping to get work anywhere I could get it.
 13 Q. Well, I know that turned out to be the case; but
 14 heading into this event on June 28, 2011, was it
 15 your hope that you would be able to do the 1099
 16 work for Juskie or leave that --
 17 A. (Interrupting) It was my hope I could do both.
 18 Q. All right. So your hope was to continue to do
 19 1099 work for Juskie, and also as needed, fill in
 20 at AMR, potentially get a full-time job?
 21 A. AMS.
 22 Q. AMS. Let me start the question over then. So
 23 heading into this event that happened on June 28,
 24 2011, were you not actively doing work for Juskie

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

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

60

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 How often would you see him then I guess on a
 7 monthly basis?
 8 **A. Recently or --**
 9 **(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.**

61

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**

62

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?**

63

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.**

64

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.

66

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. *understand that it would be the operator*
 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

65

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

67

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

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

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

76

1 Okay?

2 THE WITNESS: All right.

3 Q. In terms of how to hold the chain saw, as you

4 recall, what was the training you received in how

5 to hold the chain saw?

6 A. Both hands.

7 Q. Okay. Where would your dominant hand be?

8 A. On the trigger.

9 Q. And then you would use the right hand on the

10 trigger?

11 A. Yes.

12 Q. Left hand on the bar that is on the top of the

13 chain saw?

14 A. Yes.

15 Q. Have you ever personally experienced a situation

16 where you were cutting a branch or a limb of some

17 sort that had pressure on it that was bending it?

18 A. Yes.

19 Q. Yes?

20 A. Yes.

21 Q. And were you taught or did you learn any risks

22 that might be associated with doing that

23 activity, cutting a branch that had downward

24 pressure on one end of it?

78

1 Q. Okay. So you haven't talked to him at all for

2 the last six months?

3 A. No.

4 Q. And that takes us into the middle of 2012. There

5 is still like a whole year in there between the

6 accident and when the communication stopped.

7 What was the frequency of contact over that year

8 before all the communication stopped?

9 A. Right after the incident he was coming by every

10 couple of weeks for about a month and a half, two

11 months, three months maybe. And I even went up

12 to his place once or twice.

13 Q. What happened a year out that stopped all the

14 communication, if you know?

15 A. He got a letter from an attorney's office.

16 Q. Did he call you to talk about that letter?

17 A. Yes.

18 Q. Okay. What do you recall the substance of the

19 conversation -- strike that. That's a bad

20 question. Do you recall the conversation you had

21 with him once he got that letter?

22 A. I recall, yes.

23 Q. Tell me what you recall talking to him about.

24 Who called who?

77

1 A. I was taught to attack the pressure from the

2 other side so that you didn't get the bind in

3 there.

4 Q. And to avoid binding, if you cut right into the

5 pressure area, the pressure zone, what could

6 potentially happen that you're trying to avoid?

7 A. The weight of the limb will pinch the chain and

8 thus bending the bar.

9 Q. And if the blade of the chain saw gets pinched,

10 I guess it gets in combination, the chain is also

11 likely to be pinched?

12 A. Yes.

13 Q. Now, we talked about your connection to

14 Mr. Gagnon before the June 28, 2011 incident,

15 seeing him a few times a year during that last

16 two years leading up to it, correct?

17 A. Yes.

18 Q. What about since this happened? How often do you

19 see him?

20 A. Immediately after I saw him. He came over and

21 wanted to see how I was doing. But since -- I

22 want to say I don't know how long it's been now,

23 but it's been at least six months, maybe a little

24 longer that he hasn't talked to me at all.

79

1 A. He wanted to know what it was.

2 Q. He called you?

3 A. Yes.

4 Q. Tell me about the conversation, what he said and

5 what you said.

6 A. He said, "Why am I getting letters at my home

7 when it happened at my mom's house?"

8 Q. Did you share with him any thoughts on that?

9 A. I said, "It's from my attorney."

10 Q. Did you talk about the day of the event when he

11 called you?

12 A. Not so much. He was upset. And from what I

13 gathered out of the whole thing, he may not have

14 told his wife the entire truth about it, and she

15 is the one who got the letter.

16 Q. Okay.

17 A. He was real upset.

18 Q. What is it that you believe he didn't tell his

19 wife?

20 A. That there may be any aftermath.

21 Q. Did he share something with you that caused you

22 to believe that, or is that just your

23 supposition?

24 A. He kind of said -- well, he basically said, you

80 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	82 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 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
81 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	83 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.

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

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

92

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

93

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?

94

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.

95

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.

96

1 Q. So anything beyond that, saying take the whole thing down?

2

3 A. The two of them were bickering back and forth about all different things. They were talking about all different trees they wanted -- I didn't keep up with --

4

5

6 (Interrupting) The two of them meaning Mr. and Mrs. McGuire?

7

8 A. Yes. And her son. I didn't get into any of that. That is whatever they wanted to do.

9

10 Q. So there is some banter, bickering, whatever you want to call it, over which trees needed to come down?

11

12 A. Right.

13

14 Q. Besides identifying the trees that they wanted either trimmed or removed, do you recall Mr. McGuire or Mrs. McGuire telling David how to go about taking down the tree with the chain saw?

15

16 A. I think Bill and Dave talked about that a little bit, how they were going to do it.

17

18 Q. Okay.

19

20 A. I didn't have anything to do with it.

21

22 Q. What did you overhear David saying to Bill or Bill saying to David with respect to the apple tree?

23

24

98

1 A. Right.

2 Q. You don't recall Mr. McGuire telling David how to use the chain saw, though? That didn't happen in your presence?

3

4 A. No.

5

6 Q. Correct?

7

8 A. Correct.

9

10 Q. And you don't recall Mr. McGuire demonstrating the chain saw for Mr. Gagnon that day either, correct?

11

12 A. No -- yes, that's correct.

13

14 Q. David was just using the chain saw in his presence? Is that how you recalled it?

15

16 A. Yes.

17

18 Q. Now, you were going to say you do recall something else that happened as we were asking questions about it.

19

20 A. You were asking about instruction, and Caroline was worried because part of the tree was over the house, and she was telling him to take it -- they were talking about the way to take the tree down without any of it touching the house at all; and they worked it out and did it, you know.

21

22 Q. All right. So that is something that sticks out

23

24

97

1 tree?

2

3 A. Well, the only thing that I did anything about, I remember Bill was complaining that it was sticking up out of the ground, and I was putting the chain saw away in the case so I could take it home, and I took it back out of the case and said, "I'll take the four inches off for you," because David was already gone or he was in the house doing something, and I just wanted to get it done and head out of there. I didn't want to wait for him, so I did that. But as far as them instructing each other, they were mostly talking amongst each other.

4

5

6 Q. What I'm driving at is you recall hearing them discuss/bicker over --

7

8 A. (interrupting) I do remember. I do remember.

9

10 Q. Hold on. You do recall hearing them bicker or discuss which trees needed to come down totally or which ones needed to be trimmed? That is something you recall them bickering about, correct?

11

12 A. Yes.

13

14 Q. And you recall Mr. McGuire being dissatisfied with the way the stump looked after David left?

15

16

17

18

19

20

21

22

23

24

99

1 in your mind? There was a tree -- part of the tree is over the house, and there was a concern about damaging the house?

2

3 A. I remember that, yes.

4

5 Q. And there was a discussion as to how to get the tree removed without hurting the house?

6

7 A. Yes.

8

9 Q. Was it successful? Did they do it?

10

11 A. Yes.

12

13 Q. Did anybody get hurt, as far as you know, that day with the chain saw?

14

15 A. No.

16

17 Q. And you had no connection to any of the cutting that day, correct?

18

19 A. Other than picking up the sticks and cutting the stump, that was it.

20

21 Q. That's right. I take it back. You did cut the stump closer to the ground?

22

23 A. Yes.

24

25 Q. But in terms of the work, David did the actual severing of the branches and cutting the limbs and things? You were not helping him do that?

26

27 A. I was just taking the cut branches over to the pile where they were going to burn it or whatever

28

29

30

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

104 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 looking at it, correct? 7 A. Bill came out. Carol came out. They were all out there. 8 Q. That is what I was going to ask next. Who else was back there with you when you were looking at it before the work started? 9 A. Everybody. 10 Q. Okay. And at some point the cutting began? 11 A. Yes. 12 Q. All right. Between the time you arrived and you went back with David to look at the tree -- and I think you said Bill and Carol were there, too? 13 A. Uh-huh. 14 Q. Yes? 15 A. Yes. 16 Q. Between that point in time and the time the tree cutting actually started what discussions do you recall about this project?	106 1 A. (Interrupting) They bicker like cats and dogs. You have used that phrase "bicker." When you say bicker -- 2 Q. (Interrupting) Discuss. 3 A. Was she telling him she wanted certain trees down and he did not want to take those down or -- 4 Q. (Interrupting) Yes. 5 A. -- he wanted some down that she did not want down? 6 Q. Both ways. 7 A. Okay. So other than identifying which additional trees had to be trimmed or cut down versus, you know, left alone, do you recall any other discussion between David and Caroline prior to him undertaking the effort to actually cut things? 8 A. She was telling him about she -- the putting oil in the chain saw. And he was like "I know. I know, Mom," you know. Because it was brand-new. They had just bought it. It was all little things. And a lot of the discussion didn't have anything to do with the tree. We're talking about other things like other kids in the family and -- you know.
105 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 bit. He was telling me about his vacation. Did a lot of talking about his vacation. We talked about that all day. 4 Q. Okay. 5 A. I was playing with the dog. Carol loves my dog. Just simple pleasantries. Nothing -- it wasn't really about the work. 6 Q. Do you recall any discussion about the work between the time you went behind the house to look at the tree and the time David started work on the tree? 7 A. David was talking about the work that he was going to do, where he was going to drop it, how he was going to take it down. He was telling Bill and Carol how he was going to do this. 8 Q. Do you recall during that process Caroline McGuire trying to override any decision that David had? 9 A. Yes. But not about that tree. About other trees. 10 Q. Okay. Well, what do you recall Caroline's --	107 1 Q. When David explained his plan for taking down the tree, you heard part of that? 2 A. Yes. 3 Q. Okay. Do you recall Caroline disagreeing with him about how to go about taking down that tree? 4 A. Not too much, no. 5 Q. What about Bill? 6 A. Bill just stood -- Bill wanted to make sure it wouldn't hit the pool or the garage. Same thing with Caroline. They did not want any damage to their property other than it falling on the grass. 7 Q. That would seem to be any property owner's concern is that they didn't get other damage. 8 A. Sure. 9 Q. But in terms of how to go about doing that, other than alerting Mr. Gagnon that they did not want the house hurt or the pool damaged or anything like that, do you recall any comments from either Mr. McGuire or Mrs. McGuire as to how to go about doing that, or was that a decision that -- or a plan that Paul -- I'm sorry -- Mr. Gagnon came up with, from your vantage point? 10 A. He came up with it. He said what he was going to

108

1 do, and he did.
 2 Q. Okay. In terms of discussions then leading, I
 3 guess, from the time you got behind the house to
 4 the point in time where David started working on
 5 the tree -- and specifically I'm talking about
 6 conversations you overheard with the McGuires and
 7 Mr. Gagnon -- there was concern about not
 8 damaging the house or pool?
 9 A. Uh-huh.
 10 Q. And there was also discussion over which tree
 11 should be cut and which tree should not be cut --
 12 (interrupting) Uh-huh.
 13 Q. -- correct? And then you remember them talking
 14 about the chain saw being new and Mrs. McGuire
 15 concerned about making sure there is oil in it?
 16 A. Yes.
 17 Q. Anything else you can recall?
 18 A. That's about it. I'm sure there were other
 19 things.
 20 Q. Did David consult with you about how to get the
 21 tree down?
 22 A. Not much. He asked me how tall I thought it was.
 23 But he knew how to measure out pacing or
 24 something, some trigonometry thing. He figured

1 A. No.

2 Q. At what point between the time they started
 3 cutting to the point where you were hurt did they
 4 leave?
 5 A. Well, Bill was in and out of the house getting
 6 things to drink and whatnot and talking to
 7 Caroline. I don't know when he disappeared that
 8 last time. But Dave's sister was in the pool,
 9 and she disappeared, too. I think she went home.
 10 I don't know what happened to her. But, yes, it
 11 was -- he was in and out, you know.
 12 Q. Okay. Why don't you tell me about the work you
 13 saw David do between the time he started it and
 14 the time you actually started helping him with
 15 any aspect of it.
 16 A. He was taking off the lower branches of the pine
 17 tree.
 18 Q. Okay. So you're just standing there watching
 19 this?
 20 A. Oh, yes.
 21 Q. And so the first task that you saw him undertake,
 22 he was using the chain saw to cut some of the
 23 lower branches off of this pine tree?
 24 A. Yes.

110

109

1 out how tall it was.
 2 Q. So, I mean, did it appear to you that he looked
 3 like he knew what he was doing?
 4 A. Oh, yes.
 5 Q. You say you saw him actually measuring things?
 6 A. Yes.
 7 Q. Like just walking it off in feet, or did he have
 8 a tape measure out there?
 9 A. No. He paced it off. He was estimating the
 10 height of the tree from where it would fall.
 11 Q. Okay. Any other preparations that you observed
 12 him undertake before he actually began cutting?
 13 A. Preparations? Getting the chain saw ready. He
 14 ate breakfast in between. He's the kind of guy
 15 that would work for 10 minutes and then take a
 16 20-minute break and work for 10, you know.
 17 Q. Okay. So at some point the chain saw gets fired
 18 up, I take it?
 19 A. Yes.
 20 Q. And are the McGuires still out in the yard?
 21 A. I believe so.
 22 Q. From the interrogatory answers it looks to me
 23 like they were not present in the area when you
 24 actually got hurt?

111

1 Q. And that was from the ground level?
 2 A. Pretty much the first lower branches, you know.
 3 Q. Okay.
 4 A. And then he worked his way up, you know.
 5 Q. Got you. How far along with the cutting process
 6 was he before you did anything to assist him?
 7 A. He was pretty high in the tree. Probably 25 --
 8 well, 20 feet. I'm getting -- his chain saw died
 9 on him. He had a rope. And he lowered it down,
 10 and he asked for me or Bill to restart it for
 11 him, and I restarted it. And then he raised it
 12 back up in the tree and pulled it back up there
 13 and then just kept going.
 14 Q. Okay. And so how is he getting up the tree?
 15 A. He's climbing.
 16 Q. He's climbing the tree?
 17 A. Yes.
 18 Q. Does he have little spikes on his shoes?
 19 A. I didn't see spikes, no.
 20 Q. So is he cutting the branch and using the stump
 21 as a step?
 22 A. Yes. He had some sort of belt he had wrapped
 23 around the tree. I have never done anything like
 24 that, so I -- that's not -- I have -- not that

112

1 skilled.
2 Q. You have never cut a tree down the size of this
3 one?
4 A. No.
5 Q. And you have never used any straps or belts or
6 harnesses to ascend the tree?
7 A. I wouldn't climb into a tree like that, no.
8 Q. Now, I mean, you're watching him do it?
9 A. It looks scary.
10 Q. You're watching him do this?
11 A. Yes.
12 Q. How many branches do you think he cut, I mean, up
13 to this point where --
14 A. (Interrupting) There was a lot of branches. I
15 mean, I was surprised how many branches are on a
16 pine tree. So I can't guess the number, but
17 there was a lot.
18 Q. And he's got some kind of a strap holding him to
19 the tree, and he's using his feet as support?
20 A. Standing on the stumps that he had cut for it,
21 yes.
22 Q. And and then the chain saw is attached to a rope
23 of some sort?
24 A. Yes. He had tied a rope around the handle of the

113

1 chain saw and had it up in the tree with him.
2 Q. And is Mr. McGuire out there for this?
3 A. Yes.
4 Q. Mrs. McGuire, too?
5 A. At times.
6 Q. Are they doing anything other than watching him?
7 A. Bill was talking to me. He really liked his
8 vacation, and he was -- he had story after story.
9 Q. So he's really kind of a spectator more than
10 anything, and he's having conversations with you?
11 A. Both of us were, yes.
12 Q. He's not directly assisting David up there in the
13 tree?
14 A. Bill did -- yes, exactly.
15 Q. Did Bill ever climb the tree?
16 A. No.
17 Q. All right. So he's about 20 to 25 feet up when
18 he -- did it run out of gas or something?
19 A. I think it just died.
20 Q. It died. He needed somebody else to start it?
21 A. (Indicates affirmatively.)
22 Q. He didn't try to start it himself up in the tree?
23 A. No. He said it was dangerous. He said, "I'm
24 going to lower it down to the ground. Start it

114

1 for me. I'll pull it back up."
2 Q. You believe it stalled, and he lowered it down to
3 have somebody else start it?
4 A. Yes.
5 Q. Did you recall him saying, "It's too dangerous to
6 start up here on my own"? Is it just something
7 you assumed?
8 A. I assumed it. I would think it would be too
9 dangerous.
10 Q. So you did restart it?
11 A. Yes.
12 Q. And so when it goes up on the rope, it's running,
13 but the blade is not turning, obviously?
14 A. Correct.
15 Q. You have to use the trigger to get the chain to
16 move?
17 A. Correct.
18 Q. And I presume the rope is not going through the
19 trigger area?
20 A. No, it's not.
21 Q. There is a --
22 A. (Interrupting) It's tied around the bar.
23 Q. Got you. So it gets back up to him. Does he
24 continue on with the cutting?

115

1 A. Yes.
2 Q. And what is the next involvement of any sort that
3 you had?
4 A. Bill wanted to get some of the sticks that he was
5 cutting down off the ground and into a pile so he
6 started doing that. And then my dog went and
7 grabbed some sticks because he sees sticks, you
8 know. So I went over, and I was helping Bill put
9 the sticks into a pile next to the garden. They
10 were just laying on the ground. We were standing
11 there doing nothing.
12 Q. Okay. So you were basically just helping Bill
13 move some of the debris over into a pile?
14 A. Yes.
15 Q. The smaller stuff?
16 A. Well, the long --
17 Q. (Interrupting) The limbs?
18 A. Yes.
19 Q. And what was the plan for those, if you know?
20 Were they going to be chipped up?
21 A. Well, Bill wanted to burn them. In fact, he
22 started a fire and was burning them.
23 Q. Okay.
24 A. And somewhere along the way David wanted to save

116

1 them.
 2 Q. All right. So all you're doing is taking the
 3 stuff that has fallen off the tree and dragging
 4 it into a separate area at this point?
 5 A. Yes.
 6 Q. All right. And did Bill ask you to help, or you
 7 were just there and you decided to help him?
 8 A. I just decided to help him.
 9 Q. Did you at that point discuss, you know, payment
 10 for doing this?
 11 A. No.
 12 Q. Did you consider yourself doing him a favor by
 13 just helping?
 14 A. Yes.
 15 Q. Was it your plan to maybe -- had you decided at
 16 that point to take any of the wood as firewood?
 17 A. No. I told him I didn't want it.
 18 Q. None of it?
 19 A. None of it. It's pine.
 20 Q. Even the trunk of it once it was done?
 21 A. None of it is any good for burning in a
 22 fireplace.
 23 Q. So once you got back there and saw it was going
 24 to be a pine tree coming down, you knew you

118

1 Q. For a good portion of time?
 2 A. Yes.
 3 Q. At some point Bill started dragging these
 4 branches to a different area, and you lent a
 5 hand?
 6 A. Yes.
 7 Q. You didn't do that anticipating any payment of
 8 any sort, correct?
 9 A. Correct.
 10 Q. And then how long does this go on where you're
 11 moving branches?
 12 A. Well, some time. David, he took some good long
 13 breaks. So a few hours. At least a couple. I
 14 mean, we weren't moving branches for two hours.
 15 You move them for two minutes and you're done for
 16 20 minutes, you know.
 17 Q. Until there is some more down?
 18 A. Yes.
 19 Q. Because you're not standing under there as they
 20 are dropping down?
 21 A. Right.
 22 Q. So it's off and on for a couple of hours you're
 23 moving these branches?
 24 A. Yes.

117

1 weren't going to be taking advantage of any of
 2 the wood?
 3 A. Correct.
 4 Q. It wasn't your chain saw, correct?
 5 A. Right.
 6 Q. What purpose other than talking to Bill did you
 7 have for staying?
 8 A. Well, Carol talked to me about -- it was just
 9 social. Carol was talking about old people that
 10 worked at Internatic. Bill was telling me about
 11 his vacation. And it was just talk, you know. I
 12 didn't plan on staying that long at all, but they
 13 just keep talking. I didn't have anything else
 14 to do that day, so I just...
 15 Q. What day of the week was it?
 16 A. I don't recall offhand.
 17 Q. Was it a weekend?
 18 A. No, it was not a weekend.
 19 Q. All right. So you decided you weren't going to
 20 take any wood, and it was really by -- you were
 21 kind of hanging out socializing with the
 22 McGuires, if I'm understanding what you're
 23 saying?
 24 A. Yes.

119

1 Q. At some point does David get the whole -- the
 2 whole trunk, it's eliminated with -- all the
 3 smaller branches are gone?
 4 A. He got it pretty far up. And when he came down,
 5 he looked pretty scared. I was like "I wouldn't
 6 want to do that. I have to give it to you
 7 because I wouldn't climb up like that."
 8 Q. Did he get all the way to the top, very top of
 9 that, 50 or 60 feet high?
 10 A. No, no.
 11 Q. So at some point he comes down, and there is
 12 still some of the triangular part of the tree
 13 with the branches?
 14 A. Yes. There was a good -- better than a third of
 15 it, maybe a little more, left.
 16 Q. So roughly two-thirds of it is free of the limbs?
 17 A. Between a half and two-thirds, yes. Somewhere in
 18 there.
 19 Q. And then he comes down. Is that when he falls
 20 the tree?
 21 A. No.
 22 Q. Did he ever cut the tree and see it fall over?
 23 A. No.
 24 Q. Did you get injured before that happened?

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

124

1 doing --
 2 A. (Interrupting) The branch would be like this
 3 (indicating) to the ground.
 4 Q. All right. So the heavier -- the thicker part of
 5 the branch is laying on the ground?
 6 A. Actually, the thinner part was. That is the way
 7 he wanted it.
 8 Q. So you're holding the heavier part of the limb?
 9 A. Yes.
 10 Q. The long part of it?
 11 A. Yes.
 12 Q. And he's trimming off the smaller branches?
 13 A. Yes.
 14 Q. Off his limb?
 15 A. Yes.
 16 Q. Does he start at the end and work his way closer
 17 to you?
 18 A. Yes.
 19 Q. And how long are these limbs?
 20 A. They're pretty long. I would only be able to
 21 guess. I would have to say 20 feet. Pretty big.
 22 Especially the lower ones off the pines, you
 23 know.
 24 Q. Okay. So how many of these things do you think

125

1 you were able to accomplish before you were
 2 injured?
 3 A. We did quite a few.
 4 Q. And are you able to quantify that in any way?
 5 More than one, obviously?
 6 A. Yes. More than a few. Maybe a few dozen. Maybe
 7 a little more. We did it -- you know, we did
 8 that for about I would say a good -- you know, it
 9 was a while. I don't know exactly. I didn't
 10 have a watch. - 2 1/4 hrs.
 11 Q. Are we talking a half hour or more?
 12 A. Yes.
 13 Q. All right.
 14 A. It wasn't --
 15 Q. (Interrupting) A dozen? At least a couple of
 16 dozen of these things you have gone through this
 17 process trimming all these branches off in the
 18 way he told you to do it, you hold the end and
 19 he's going to work his way up?
 20 A. Right.
 21 Q. Once all of those little branches are off
 22 there -- is it kind of a longer log?
 23 A. Yes.
 24 Q. Did he then cut that into smaller pieces?

126

1 A. That's what he wanted those for is to cut it in
 2 smaller pieces.
 3 Q. Did he do that task, too, each time you --
 4 A. (Interrupting) I think he did the first few, and
 5 then we just started taking the other ones, the
 6 longer things off. He dictated what he wanted.
 7 Some of them he wanted -- you know, he wanted to
 8 see what he could get out of it first.
 9 A. All right. So the first couple you trimmed the
 10 branches up and then cut them into smaller logs
 11 immediately?
 12 A. Yes.
 13 Q. Did you hold the longer limb as he cut it into
 14 smaller sections?
 15 A. No. He had set up a -- from the apple tree he
 16 set up two logs and was able to set it on there
 17 and just (indicating).
 18 Q. So you didn't hold the log as he was trimming
 19 them into smaller pieces?
 20 A. The middle part, no. I was there when he took
 21 off the little pieces.
 22 Q. So the first couple of these he trimmed it down
 23 and then immediately made them into logs?
 24 A. Yes.

127

1 Q. And then after a while he decided he was going to
 2 trim all the branches off while you were there to
 3 help?
 4 A. Yes.
 5 Q. And you were doing it with a couple of dozen of
 6 these before you got hurt?
 7 A. Yes.
 8 Q. All right. So he told you how he wanted -- he
 9 basically told you he wanted you to hold the
 10 end --
 11 A. (Interrupting) Yes.
 12 Q. -- while he trimmed those up?
 13 A. Yes.
 14 Q. And did he tell you to do anything other than
 15 stand there and hold up the one end?
 16 A. When they were done they had to be put over here
 17 and then grab a new one, you know, bring it over
 18 to this spot so he could start again.
 19 Q. He would stay there, and you would drag the log
 20 to a pile and then drag a new branch over?
 21 A. Yes.
 22 Q. Prior to undertaking this trimming did he offer
 23 you any instructions beyond "Here, hold this"?
 24 Did he say, "Keep your hands free. Stay away?"

128

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 (Interrupting) No.
11 A. 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 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

129

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

130

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

131

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?

132

1 A. My right hand.
 2 Q. So you're able to hold these with one hand up in
 3 the air?
 4 A. They were only this (indicating) -- you're
 5 talking logs. I call them sticks.
 6 Q. Okay. I didn't ask that question so I'm glad you
 7 clarified. The limbs that we're talking about
 8 what was the diameter on average?
 9 A. The side that I was holding?
 10 Q. Yes.
 11 A. Maybe -- I don't know what you consider that
 12 (indicating). Three inches. Your guess is as
 13 good as mine.
 14 Q. Okay. Well, it's certainly not the full width of
 15 your fingers?
 16 A. No. I can hold it with one hand.
 17 Q. It's about the width of a pop can -- diameter
 18 width of a pop can?
 19 A. Coffee cup there, yes.
 20 Q. They were like three to four inches?
 21 A. Yes.
 22 Q. And that was how all the other ones were, too?
 23 A. Yes.
 24 Q. And then you were strong enough, and at least at

133

1 that point you were healthy enough to hold it
 2 with which hand?
 3 A. Right here (indicating).
 4 Q. Right.
 5 A. Right.
 6 Q. And you're right hand dominant?
 7 A. Yes.
 8 Q. So you could hold those out?
 9 A. Yes.
 10 Q. And so you would hold it kind of horizontally
 11 and the rest of it would stretch out towards
 12 Mr. --
 13 A. (Interrupting) Yes. Go down along the ground
 14 there.
 15 Q. And then you say Mr. -- you described it as
 16 Mr. Gagnon walking towards you with the chain saw
 17 and then you just got cut. Can you elaborate on
 18 that a little bit? He didn't just -- you were
 19 actually -- he was actually working on trimming a
 20 tree branch, correct?
 21 A. Yes.
 22 Q. And so I take it he was trimming, getting closer
 23 and closer to you?
 24 A. Before it, yes.

134

1 Q. Before you got hit with the saw?
 2 A. Yes.
 3 Q. And I take it unlike the other branches, there
 4 may have been a branch closer than the four to
 5 five feet?
 6 A. No. He stopped cutting the limb, chain saw went
 7 down, went to idle. You know, he walked toward
 8 me, and I thought he was going to say something
 9 like next instruction, what to do, okay, and I
 10 don't know what he was thinking or what he was
 11 doing or what, but the chain saw started coming
 12 up, and the gas went on, and I tried getting the
 13 hell out of the way and -- yes.
 14 Q. So it wasn't during a cutting process that you
 15 were hurt?
 16 A. Yes, you're right.
 17 Q. He disengaged from trimming the branch, if I'm
 18 understanding your testimony, and the chain went
 19 into an idle position?
 20 A. The motor went to idle.
 21 Q. And the chain is not even moving, and he's
 22 holding it down to his side?
 23 A. Both hands.
 24 Q. With both hands. But the chain is not moving?

135

1 A. Yes.
 2 Q. And he closes the gap between you and him in
 3 terms of space?
 4 A. Right.
 5 Q. And you were still holding the branch at this
 6 point?
 7 A. Yes.
 8 Q. And somehow the chain, it gets activated?
 9 A. When I heard the chain saw, the motor speed up
 10 and I saw with my eyes it start to come up. I
 11 dropped the branch, tried to get the heck out of
 12 there because it's coming up between me and the
 13 branch. What the fuck are you thinking?
 14 don't know how to say -- you know, I screamed.
 15 Whether he was going after something he thought
 16 he saw coming off the branch, I don't know.
 17 Q. Okay.
 18 MS. FREEMAN: Wait for a question.
 19 Q. So you're holding the branch with your right hand
 20 just like you had done on the two dozen or more
 21 before. He's trimming branches off this thing
 22 and stops trimming, correct?
 23 A. Yes. He was done.
 24 Q. And then he --

136

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 -- 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?

137

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?

138

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 or 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

139

1 McGuire's 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?

140

1 ramping up and the blade coming up toward you?
 2 Correct.
 3 A. Q. And so this isn't a situation where the blade and
 4 the saw -- I'm sorry -- the blade and the chain
 5 made contact with the branch and kicked it toward
 6 you?
 7 A. No.
 8 Q. This isn't a situation where the blade was
 9 cutting through a branch and caught the very tip
 10 of the saw and fired back at you?
 11 A. No, it's not.
 12 Q. There was no cutting actually involved of a
 13 branch when you got struck with the blade?
 14 A. Correct.
 15 Q. After this happened did you ask Mr. Gagnon what
 16 he was trying to accomplish at that point in
 17 time?
 18 A. After I screamed my head off, that was the first
 19 thing that came out of my mouth was -- excuse the
 20 expletive -- "What the fuck are you thinking?"
 21 Q. Did he have a response for you?
 22 A. He became immediately I think distraught would be
 23 the word, confused. "Oh, my God." Panic, yes.
 24 Q. So he didn't make any comment to you about what

141

1 he was trying -- the task he was trying to
 2 accomplish? It was more shock and stunned about
 3 this scene having happened?
 4 A. Yes.
 5 Q. Since that point in time where you got hit with
 6 the blade and now did he ever tell you in his
 7 words what he was specifically trying to do at
 8 the time this happened?
 9 A. In the emergency room he used the word kickback,
 10 but I didn't understand what he meant or how, you
 11 know. And they are going in to sew me up and put
 12 the muscles back together, you know, as best they
 13 can. I don't know what happened there.
 14 Q. All right. So you definitely recall him in the
 15 ER using the phrase kickback?
 16 A. Yes.
 17 Q. All right. But from your vantage point this idea
 18 of a kickback, it wouldn't have anything to do
 19 with a kickoff of a branch or a log or a limb
 20 that was being cut?
 21 A. No. It had nothing to do with that.
 22 Q. And you didn't see the saw come onto a tree
 23 branch, that tree branch you were dropping, and
 24 then kick toward you? You didn't see that?

142

1 A. No.
 2 Q. So he may have a different version of what
 3 kickback means, but the kickback definition or
 4 your impression of a kickback that you described
 5 earlier, that is not what you recall happening?
 6 A. Correct.
 7 Q. If I'm hearing what you're saying, he might have
 8 been trying to get toward that branch to cut it
 9 but he never got there? He got to your arm
 10 before he made any contact with the tree?
 11 A. Well, I was holding the end of the branch. There
 12 was no branch beyond my hand.
 13 Q. And that's what I'm getting at is from your
 14 recollection of what went down, regardless of
 15 what his intentions were, he lifted up the chain
 16 saw, the rpm's ramped up, and the chain is moving.
 17 You tried to get out of the way of the blade, but
 18 you were not able to get out of the way in time?
 19 A. Correct.
 20 Q. That is what happened?
 21 A. Correct.
 22 Q. And other than him mentioning something about a
 23 kickback when you're in the emergency room, as we
 24 sit here today have you ever discussed the

143

1 dynamics of what happened in a situation where he
 2 explained what he was trying to do?
 3 A. Of course I asked him, and I don't remember at
 4 what point I asked him, and he could never
 5 explain it. He just (indicating). You know, I
 6 don't think he knows. I honestly don't think he
 7 knows.
 8 Q. So as you sit here today, regardless of how many
 9 times you asked him -- and it's more than once, I
 10 take it, correct?
 11 A. Oh, yes.
 12 Q. In your mind, he's never articulated specifically
 13 what he was doing at the point in time where the
 14 blade made contact with your arm?
 15 A. Correct.
 16 Q. Other than referencing a kickback in the ER?
 17 A. Yes.
 18 Q. Okay. With respect to the McGuires, at what
 19 point in time was your first notice that
 20 Mr. McGuire or Mrs. McGuire were aware of you
 21 being potentially hurt?
 22 A. Immediately. They heard me scream.
 23 Q. Okay. Do you believe they came from inside the
 24 house?

144

1 A. Yes.
 2 Q. And when they came out, was there any discussion
 3 between you and Mr. Gagnon about what had
 4 happened?
 5 A. No.
 6 Q. Would it be fair to describe the post injury part
 7 on the premises as being more concern about how
 8 you were doing than what happened?
 9 A. It was pretty important to me.
 10 Q. Right.
 11 A. Yes, it was very important. Carol was very
 12 concerned. She came out yelling. "I heard it.
 13 I knew my son cut you." She came out screaming,
 14 you know, and -- yes -- yes.
 15 Q. Did either of the McGuires ever make any comments
 16 to you to suggest or pursuant to which you formed
 17 the impression that they saw what happened?
 18 A. No. They said they didn't. She said she heard
 19 it. She heard the screams. She heard what was
 20 said right after. She heard all of that. She
 21 was right there in the kitchen.
 22 Q. She heard the screams, and her thought was
 23 somebody was cut?
 24 A. (Indicates affirmatively.)

144

1 A. No.
 2 Q. Did Mr. Gagnon ever tell you he was going to pay
 3 you anything?
 4 A. No.
 5 Q. Did he ever make any comment to you that he was
 6 being paid to get this done by his parents?
 7 A. He did say he was getting something for it. I
 8 don't know what. I don't know the terms. I
 9 remember something in there he was referring to
 10 he had to do this because he owed his mom money
 11 or something. I don't know.
 12 Q. And I take it Gagnon didn't promise to share
 13 payment he may have been receiving with you?
 14 A. No.
 15 Q. Did you consider yourself a volunteer out there?
 16 A. Yes.
 17 Q. But obviously you felt you were taking directions
 18 from Gagnon but you were volunteering?
 19 A. Yes.
 20 Q. You didn't expect to get anything out of this?
 21 A. No.
 22 Q. Certainly not an injured arm?
 23 A. Definitely not this, no. Maybe a pop, you know.
 24 Q. All right. So we have all of your medical

146

145

1 Q. How soon after this happening did you move on to
 2 the emergency room?
 3 A. I don't know timewise. I was in shock. It
 4 seemed like it took forever. So I can't tell you
 5 whether it was five minutes or ten minutes. I am
 6 not capable of doing that for you. I can tell
 7 you that I started giving orders at that point.
 8 First time all day. And I needed a towel, I
 9 needed something to put on it, I needed to tie it
 10 off. We needed to go to the emergency room now,
 11 and there was no waiting.
 12 Q. So once you got hurt, you became more focused
 13 about getting the care you needed?
 14 A. Yes.
 15 Q. Up until --
 16 A. (Interrupting) I was quite vocal.
 17 Q. Up until the point where you were cut with the
 18 chain saw had the situation ever turned from a
 19 volunteer situation like you described early on
 20 to an employment situation were you thought you
 21 were going to be compensated?
 22 A. No.
 23 Q. Did the McGuires ever promise to pay you
 24 anything?

147

1 records but I want to go through this a little
 2 bit. At the emergency room they evaluated your
 3 arm, correct?
 4 A. Yes.
 5 Q. They cleaned out the wound?
 6 A. Yes.
 7 Q. Did they do some X-rays at the ER?
 8 A. Yes.
 9 Q. Did they tell you that it didn't reach the point
 10 where it hit any of your bones?
 11 A. No, it did not.
 12 Q. Initially was it the impression, as you
 13 understood it, that it was a tear through the
 14 skin and into the muscle?
 15 A. Yes.
 16 Q. There was no belief there was nerve involvement
 17 initially?
 18 A. You know, once they gave me the painkiller, I
 19 don't -- I was in la-la land.
 20 Q. To the best of your understanding, did they do
 21 anything else in the emergency room other than
 22 clean it and then stitch it up?
 23 A. Yes. They did the stitches and closed it up and,
 24 you know, X-rays. I don't remember what all.

148

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.

150

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

149

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.

151

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?

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

156 1 appreciate with respect to the right arm? 2 A. Pinky. 3 Q. What about it? 4 A. It wouldn't go in. 5 Q. So you can't — 6 A. (Interrupting) I can't (indicating). 7 Q. You can't move the pinky so it abuts the index 8 finger? 9 A. Or the ring finger. 10 Q. The ring finger? 11 A. Correct. 12 Q. And anything else? Do you still have the full 13 range of motion in your hand? 14 A. Yes. As long as I do it controlled and slow. If 15 I start forgetting and — you know, because I 16 feel good and I start doing things fast, it's 17 like all of a sudden I'll get — it will burn 18 here (indicating), burn under here (indicating), 19 and it will like pang all the way down. It will 20 start tingling real bad again. 21 Q. So in terms of the shoulder movement, fine? 22 A. Shoulder is fine. 23 Q. Elbow movement fine? 24 A. No. The elbow is a bit sore. I think it's	158 1 A. Yes, yes. The pinky and the ring finger and the 2 thumb is — I have a problem with the thumb 3 coming in here (indicating). Not like this 4 (indicating), but this way (indicating). And my 5 hand shakes. 6 Q. Has the doctor told you — that would be Sagerman 7 — when you can expect any further improvement, 8 or is this what you're going to have? 9 A. He said nerve damage takes a long time to heal 10 especially as we get older. He wouldn't rule out 11 a full healing. He wouldn't say I was going to 12 be stuck like this forever. He just said time 13 will tell. 14 Q. So we don't know yet, and he doesn't know for 15 sure? 16 A. Right. 17 Q. I'm going to show you what I'm going to mark as 18 2. 19 A. He knows more about it than I do. 20 MS. FREEMAN: There is no question 21 pending. 22 THE WITNESS: Got you. 23 Q. I think I know the answer to this, but this is 24 medical expenses as of March 19, 2012, \$7,333.04.
157 1 because of the surgery he did in there. He had 2 to do a nerve release or something. It was 3 tight. — <i>Correct 0550A</i> 4 Q. And did the doctor tell you whether that nerve 5 release in the elbow was somehow related to the 6 injury to the mid forearm? 7 A. He said that it's natural. You know, the way he 8 explained it to me, it tore through the middle. 9 It's not a cut, it's a tear. Things got pulled 10 from both ends, you know, and that's the next 11 spot that will be affected from the pull. So 12 that's the way it was kind of explained to me. 13 He said it's natural with what happened, with 14 this type of thing that happened. 15 Q. Okay. The elbow is sore when you're moving it. 16 Is that all the time or just periodically? 17 A. It's sore pretty much all the time. 18 Q. And you can still move it in all directions, 19 though? 20 A. Yes. As long as I'm careful. 21 Q. And then the hand, with respect to the movement 22 of — it is a weakened grip, but in terms of 23 moving it, with the exception of the pinky, it 24 still moves the same?	159 1 There is more medical expenses we don't have? 2 A. Right. 3 Q. The surgery in July and the physical therapy 4 and — 5 A. (Interrupting) Yes. 6 Q. I take it you're making a claim for the tennis 7 elbow as well? 8 A. You know, they tell me it's a natural part of it 9 because of the not using this arm (indicating) 10 and using this thing (indicating) for everything 11 from drinking to driving to everything that I do. 12 And they — yes. — 13 Q. So there may be expenses associated with the left 14 arm that we don't have? 15 A. It's a result of. — 16 Q. You have had medical expenses for the treatments 17 and care of the left arm? 18 A. Yes, minimal. 19 Q. We don't have those as part of this as well, 20 correct? 21 A. Right. 22 Q. I just want to go through some photos here. This 23 is a photo of your arm after the chain saw 24 injury, obviously, correct? 2A?

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

164

1 A. Sageman.
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.

166

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?

165

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

167

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 out 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 (Interrupting) Yes
24 -- start to speed up?

168

1 A. Yes.
 2 Q. Or you actually saw the chain engage?
 3 A. Yes.
 4 Q. Okay.
 5 A. Start to move.
 6 Q. About how much time elapsed from the time he put
 7 the saw into idle or took his finger off the
 8 trigger until you heard or saw the chain engage
 9 again? Was it just a matter of seconds?
 10 A. Yes, it was seconds.
 11 Q. And then about how much time elapsed from the
 12 time you saw or heard the chain engage until the
 13 time you were actually cut?
 14 A. Split seconds. It came fast.
 15 Q. After the chain or saw engaged right before you
 16 were cut, did you see David move in any
 17 particular way?
 18 A. Say that again. I lost you in the middle.
 19 Q. After you saw the chain and the saw engage before
 20 you were cut, did you see David's body move in
 21 any particular way? Did you see any type of
 22 jerking movement or anything like that?
 23 A. No. He started walking towards me.
 24 Q. But at some point I think you said you saw the

169

1 saw coming up?
 2 A. Yes.
 3 Q. Okay. How high was the saw when it cut you?
 4 A. It was my eye height. My eyes.
 5 Q. And how was David holding it at that point?
 6 A. (Indicating).
 7 Q. Okay. You're showing me --
 8 (Interrupting) Saw pointing up.
 9 Q. Saw pointing up? One hand would have been on the
 10 bar?
 11 A. Yes.
 12 Q. The safety bar?
 13 A. Yes.
 14 Q. And then the other hand where?
 15 A. Down on the trigger.
 16 Q. Okay. And the actual saw was pointed straight up
 17 in the air?
 18 A. No. It was maybe a 45 it went to.
 19 Q. When you heard and saw the chain engage, where
 20 was the saw pointing?
 21 A. Down toward the ground at about a 45.
 22 Q. So from the time you heard or saw the chain
 23 engage up until the time you were cut, David
 24 moved it from about 45 degrees to the ground up?

170

1 pointing towards the sky about 45 degrees?
 2 A. Yes.
 3 Q. And how would you describe the manner in which he
 4 did that? Was that something that was --
 5 (Interrupting) Just raise it.
 6 Q. Was that something that was fast? Was it slow?
 7 Was it sudden?
 8 A. It was very sudden and fast.
 9 Q. Did it look like he had lost control of the saw,
 10 or did it look like he did it on purpose?
 11 A. No, it looked like he was in control, but I don't
 12 know -- I have asked him. I don't know if he
 13 tripped over something.
 14 Q. (Interrupting) I'm not -- I'm just asking you
 15 if --
 16 A. -- or what. I don't know the answer to that.
 17 Q. Okay. You said you were holding the branch with
 18 your right arm or your right hand, right?
 19 A. Uh-huh.
 20 Q. Okay. And you were facing with your body towards,
 21 David?
 22 A. Yes.
 23 Q. Okay. And then when you heard and saw the chain
 24 engage, you dropped the branch?

171

1 A. Yes.
 2 Q. And then you I think motioned -- you said you
 3 turned your body it would have been to the right
 4 and up and away?
 5 A. Yes. First I went up, and then I was trying to
 6 get up and out of the way because that saw blade
 7 came up to a 45, and I had to get the heck out of
 8 there.
 9 Q. Where was your arm when it actually got cut, and
 10 in what position was it?
 11 A. Can I stand up and show you so I can describe it?
 12 Q. Yes.
 13 A. It was -- I was turned like this (indicating)
 14 and it cut me right here (indicating).
 15 Q. Okay.
 16 MR. ACCARDO: So let the record reflect
 17 that Mr. Dulberg's right arm was basically
 18 parallel with his nose and eyes.
 19 Q. Is that about right?
 20 A. Yes, it was. Yes.
 21 Q. And your body was turned about --
 22 (Interrupting) I was in the middle of pivoting to
 23 get away.
 24 Q. Okay. After the chain and the saw engaged did

172

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?

173

1 A. He said kickback or something. I just don't
 2 know. He took his hands, put them on the head
 3 and put them between his knees and just stayed
 4 there 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

174

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

175

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.)

176
CERTIFICATE OF SHORTHAND REPORTER

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

11 I further certify that I am neither
12 attorney or counsel for, nor related to or employed
13 by any of the parties to the action in which this
14 deposition is taken, and further that I am not a
15 relative or employee of any attorney or counsel
16 employed by the parties hereto or financially
17 interested in the action.

18 Dated this 28th day of January, 2013.

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

\$	86:14 2011 [67] - 9:8, 9:16, 15:4, 15:7, 15:10, 15:16, 16:12, 16:15, 17:4, 20:23, 21:5, 24:16, 29:18, 37:15, 43:1, 43:22, 44:3, 44:9, 48:14, 51:14, 51:24, 53:1, 56:8, 59:17, 60:21, 61:22, 62:13, 63:2, 63:6, 63:11, 63:15, 63:21, 64:2, 64:20, 65:10, 65:14, 67:11, 67:23, 73:12, 74:8, 74:15, 77:14, 81:8, 86:20, 88:11, 89:1, 91:3, 91:15, 100:2, 150:3, 163:5, 163:8, 164:11, 164:15, 165:14, 165:19, 166:8 2011-2012 [1] - 90:12 2012 [9] - 30:9, 78:4, 90:11, 150:4, 151:9, 158:24, 161:3, 161:13, 161:19 2013 [3] - 1:21, 176:5, 176:14 20s [1] - 62:10 22 [1] - 57:3 22nd [1] - 1:2 23 [1] - 57:3 24 [1] - 129:2 24th [2] - 1:20, 176:4 25 [2] - 111:7, 113:17 28 [39] - 9:8, 15:6, 16:15, 20:23, 21:5, 24:16, 29:18, 37:15, 42:24, 43:22, 44:3, 44:8, 48:14, 51:14, 51:23, 60:21, 61:21, 62:13, 63:2, 63:5, 63:11, 63:15, 63:21, 64:2, 64:19, 65:10, 65:14, 67:11, 67:23, 73:12, 74:8, 74:15, 77:14, 81:8, 86:20, 91:3, 91:15, 100:2, 101:2 28th [1] - 176:14 2A [2] - 159:24, 160:13 2D [1] - 161:7 2E [1] - 161:7 2F [2] - 161:9, 161:19 2I [1] - 161:22 2J [1] - 162:16 3 [3] - 160:3, 160:4,	160:9 3-19-70 [1] - 9:6 3..... [1] - 3:13 3416 [2] - 1:19, 2:2 355 [1] - 55:15 3:33 [1] - 175:19 4 4 [1] - 3:3 40 [1] - 50:11 40-hour [1] - 50:10 41 [1] - 9:11 45 [5] - 169:18, 169:21, 169:24, 170:1, 171:7 4606 [2] - 8:8, 8:18 5 50 [1] - 119:9 6 6 [1] - 49:11 60 [2] - 104:1, 119:9 6323 [1] - 2:5 7 70 [2] - 39:12, 39:13 74 [2] - 13:18, 13:20 8 8 [2] - 3:4, 86:9 80 [1] - 50:14 815/226-9755 [1] - 176:20 9 9 [2] - 17:3, 89:12 922 [1] - 176:19 A abilities [2] - 46:19, 47:24 ability [3] - 23:23, 24:3, 72:18 able [19] - 23:9, 36:15, 36:19, 36:20, 46:14, 49:24, 50:19, 51:15, 54:2, 66:14, 122:17, 124:20, 125:1, 125:4, 126:16, 132:2, 136:4, 142:18, 148:10 above-entitled [1] - 1:18	abuts [1] - 156:7 Academy [3] - 12:8, 12:9, 12:11 ACCARDO [12] - 2:8, 4:4, 4:8, 4:20, 5:1, 5:4, 5:8, 5:11, 163:3, 171:16, 174:22, 175:15 Accardo [2] - 4:17, 5:13 Accardo)..... [2] - 3:3, 3:5 accident [15] - 49:24, 78:6, 163:10, 163:15, 164:6, 164:9, 164:10, 164:14, 164:20, 166:3, 166:16, 166:18, 173:8, 173:21, 174:3 accomplish [3] - 125:1, 140:16, 141:2 accordance [2] - 4:11, 5:15 accumulated [1] - 122:7 acquaintances [2] - 58:15, 61:13 acquire [1] - 10:23 action [3] - 1:18, 176:11, 176:13 activated [1] - 135:8 active [2] - 56:19, 56:22 actively [2] - 51:24, 139:6 activities [4] - 35:8, 35:14, 35:18, 59:4 activity [5] - 35:8, 63:6, 76:23, 87:14, 120:15 actual [7] - 69:24, 73:4, 99:20, 131:11, 131:12, 166:18, 169:16 acute [3] - 24:23, 25:1, 25:2 addition [1] - 39:24 additional [1] - 12:3, 13:20, 106:11, 139:23, 161:5, 161:9 address [4] - 151:12, 162:6, 162:8, 162:11 adjacent [2] - 8:21, 121:7 admonitions [1] - 69:10 adult [1] - 68:16 advantage [1] - 117:1 affect [1] - 72:17 affected [4] - 153:12,	153:16, 153:19, 157:11 affects [1] - 24:2 affirmatively [11] - 6:12, 7:5, 23:18, 55:7, 75:1, 86:19, 89:2, 113:21, 136:15, 138:5, 144:24 afraid [2] - 174:7, 174:9 aftermath [1] - 79:20 afternoon [3] - 4:16, 130:15, 175:4 afterwards [2] - 54:7, 54:13 agency [1] - 40:15 Agent [1] - 1:8 ago [12] - 24:23, 24:24, 25:5, 30:2, 30:3, 37:5, 41:4, 85:16, 87:14, 163:13, 163:20, 164:6 agree [2] - 43:22, 67:18 agreed [1] - 100:23 agreement [2] - 5:14, 176:4 ahead [1] - 80:20 air [2] - 132:3, 169:17 alcohol [2] - 166:8, 166:15 aleck [1] - 32:13 alert [2] - 101:16, 136:21 alerting [1] - 107:17 Alexander [1] - 2:4 algebra [1] - 11:23 alive [1] - 68:21 allow [1] - 128:2 alone [1] - 106:13 amount [1] - 128:16 amounts [1] - 62:9 AMR [2] - 50:22, 51:20 AMS [17] - 37:22, 37:23, 40:8, 40:14, 41:18, 45:8, 49:14, 51:1, 51:9, 51:21, 51:22, 52:4, 52:13, 52:15, 53:7, 53:8, 55:22 Angela [2] - 1:22, 176:3 angle [1] - 29:11 annexed [1] - 176:4 answer [16] - 5:20, 5:24, 6:24, 7:4, 7:8, 7:9, 7:16, 48:20, 48:22, 122:2,
----	---	--	--	---

148:15, 149:5, 158:23, 164:4, 170:16, 174:14 answers [5] - 6:21, 37:17, 48:16, 109:22, 160:9 anti [2] - 155:6, 155:9 anti-inflammatory [2] - 155:6, 155:9 anticipate [2] - 6:19, 101:5 anticipated [1] - 101:7 anticipating [1] - 118:7 apart [1] - 95:15 appeal [1] - 37:9 appealing [1] - 37:7 appear [1] - 109:2 APPEARANCES [1] - 2:1 Appeared [3] - 2:3, 2:6, 2:10 apple [4] - 92:16, 92:22, 93:20, 94:8, 94:17, 95:10, 95:11, 95:15, 96:24, 100:21, 126:15, 165:10, 165:21, 165:23 applicable [1] - 4:15 application [1] - 37:2 applied [2] - 36:23, 37:18 apply [3] - 37:3, 37:6, 131:5 applying [1] - 39:17 appreciate [2] - 80:2, 156:1 appreciation [1] - 63:22 approached [1] - 139:11 approaching [1] - 139:20 area [10] - 27:20, 75:17, 77:5, 92:20, 93:9, 109:23, 114:19, 116:4, 118:4, 120:12 areas [1] - 34:23 arise [1] - 36:21 arm [54] - 24:13, 24:20, 24:22, 25:8, 26:1, 27:15, 28:3, 28:11, 29:20, 30:14, 30:16, 30:18, 30:21, 32:4, 32:7, 32:15, 32:18, 33:16, 33:18, 34:22, 35:21, 36:16, 136:24, 137:17, 138:4, 138:13, 138:15, 138:18, 142:9, 143:14, 146:22, 147:3, 149:20, 150:5, 151:23, 152:8, 152:13, 152:21, 153:6, 153:7, 154:11, 154:14, 154:19, 155:1, 155:10, 155:17, 156:1, 159:9, 159:14, 159:17, 159:23, 161:16, 161:19, 163:4, 163:7, 164:7, 164:11, 170:18, 171:9, 171:17 arms [2] - 172:2, 172:6 Army [3] - 56:18, 56:19, 56:24 arose [1] - 52:16 arrangement [1] - 94:6 arrival [2] - 102:23, 103:6 arrived [1] - 104:16 arriving [1] - 101:9 articulated [1] - 143:12 as-needed [2] - 52:6, 52:13 ascend [1] - 112:6 aside [2] - 62:21, 85:19 aspect [1] - 110:15 aspects [1] - 14:9 assist [3] - 65:21, 102:19, 111:6 assistance [2] - 91:2, 93:4 assisted [1] - 19:21 assisting [3] - 74:21, 113:12, 139:6 associate's [1] - 10:23 associated [3] - 64:3, 69:18, 69:23, 73:24, 76:22, 159:13 assumed [4] - 5:4, 114:7, 114:8, 165:17 ate [2] - 109:14, 120:18 attached [1] - 112:22 attack [1] - 77:1 attempt [2] - 21:6, 22:1 attempted [1] - 46:18 attempts [4] - 31:23, 48:12, 48:13, 173:20 attention [3] - 129:6, 129:7, 129:8	ATTORNEY [3] - 2:1, 2:4, 2:8 attorney [4] - 5:18, 7:17, 47:8, 48:22, 48:24, 79:9, 80:3, 80:6, 80:15, 80:19, 81:22, 162:8, 176:11, 176:12 Attorney [1] - 1:19 attorney's [1] - 78:15 attorneys [1] - 7:14 automobile [1] - 164:5 available [3] - 42:17, 42:20, 42:22 Avenue [1] - 55:13 avenues [1] - 45:17 average [1] - 132:8 avoid [3] - 75:16, 77:4, 77:6 aware [3] - 69:17, 69:23, 73:11, 73:23, 74:11, 143:20 B background [1] - 10:6 backwards [1] - 15:3 backyard [1] - 67:19 bad [2] - 78:19, 156:20 ball [1] - 154:20 band [1] - 29:5 banter [1] - 96:11 bar [6] - 71:10, 76:12, 77:8, 114:22, 169:10, 169:12 Barbara [1] - 9:22 BARCH [24] - 2:4, 4:19, 4:23, 5:3, 5:6, 5:10, 5:12, 6:2, 6:13, 6:17, 7:6, 7:12, 7:20, 8:1, 80:18, 80:22, 82:3, 95:11, 160:2, 160:6, 163:2, 174:24, 175:2, 175:14 Barch [2] - 2:4, 160:5 Barch).....[2] - 3:4, 3:6 based [2] - 17:15, 31:2 basis [5] - 18:5, 40:14, 52:6, 60:7, 85:8 bear [1] - 36:20 became [5] - 25:2, 58:11, 139:13, 140:22, 145:12 beer [1] - 175:10 began [3] - 104:14, 109:12, 139:15 begin [5] - 7:17, 24:21, 35:11, 41:17, 68:16	beginning [1] - 151:8 behalf [4] - 1:17, 2:3, 2:6, 2:10 behind [2] - 105:12, 108:3 belief [2] - 82:10, 147:16 belt [1] - 111:22 belts [1] - 112:5 bend [1] - 28:23 bending [3] - 71:4, 76:17, 77:8 bends [1] - 72:9 bent [2] - 71:10, 72:6 best [2] - 141:12, 147:20 better [3] - 119:14, 148:13, 153:9 between [2] - 16:2, 26:6, 78:5, 81:18, 81:24, 86:9, 94:5, 94:7, 104:16, 104:22, 105:12, 106:14, 109:14, 110:2, 110:13, 119:17, 135:2, 135:12, 144:3, 173:3, 173:11 beyond [4] - 96:1, 127:23, 142:12, 152:2 bicker [4] - 97:17, 106:1, 106:2, 106:3 bickering [3] - 96:3, 96:11, 97:20 big [12] - 82:19, 86:5, 86:7, 89:10, 89:11, 89:12, 103:21, 103:22, 121:24, 122:16, 124:21, 154:8 bigger [5] - 38:13, 38:14, 39:13, 41:7, 89:15 biggest [1] - 50:19 BILL [2] - 1:9, 1:10 bill [2] - 107:8, 115:4 Bill [40] - 1:18, 2:7, 57:11, 84:5, 85:7, 85:13, 85:16, 90:21, 91:14, 92:18, 93:8, 96:19, 96:23, 96:24, 97:3, 102:24, 104:8, 104:18, 105:3, 105:18, 107:7, 107:8, 110:5, 111:10, 113:7, 113:14, 113:15, 115:8, 115:12, 115:21, 116:6, 117:6, 117:10, 118:3, 120:10, 122:17, 129:9, 166:10, 175:6, 175:7 bill's [1] - 103:2 Bill's [1] - 166:10 bills [1] - 45:24 bin [1] - 39:1 bind [1] - 70:15, 71:3, 71:5, 71:13, 72:7, 73:4, 77:2 binding [1] - 70:15, 70:16, 70:22, 71:12, 72:5, 73:3, 77:4 birth [1] - 9:5 bit [9] - 10:5, 10:14, 96:20, 105:4, 133:18, 147:2, 148:10, 156:24, 167:6 blade [47] - 69:12, 69:24, 70:15, 70:18, 70:22, 70:23, 71:5, 71:7, 71:12, 71:14, 71:17, 71:19, 72:1, 72:6, 72:8, 72:14, 72:18, 72:19, 72:22, 73:3, 73:9, 74:1, 74:23, 75:6, 75:8, 77:9, 114:13, 136:22, 137:12, 137:16, 137:24, 138:11, 138:15, 138:19, 139:5, 139:11, 140:1, 140:3, 140:4, 140:8, 140:13, 141:6, 142:17, 143:14, 171:6, 172:12 blaming [1] - 16:17 blank [3] - 47:13, 47:14, 53:22 block [1] - 90:4 blocks [1] - 8:23 body [10] - 25:9, 45:12, 45:14, 62:10, 87:2, 138:8, 168:20, 170:20, 171:3, 171:21 bone [3] - 33:20, 154:7, 164:21 bones [1] - 147:10 books [1] - 39:21 boot [1] - 47:20 borrow [1] - 91:23 bothered [2] - 30:1, 34:9 bothering [1] - 29:23 bothers [1] - 34:10 bottom [1] - 88:15 bought [2] - 105:1, 106:20
--	--	--

Boulevard [i] - 2:5	bucks [i] - 50:14	cart [s] - 39:3, 39:5, 39:9, 39:14, 41:8	136:5, 136:9, 136:11, 136:16, 136:19, 136:22, 139:24, 140:4,
bound [i] - 70:18	buddies [z] - 58:3, 58:4	case [i] - 51:13, 75:8, 97:5, 97:6, 101:22, 129:17, 155:12	close [i] - 58:8, 67:7, 92:10, 128:8, 128:18, 136:13, 175:19
bowling [z] - 59:5, 59:6	building [i] - 25:1	catalog [i] - 19:2	closed [i] - 147:23
brain [i] - 174:13	bumping [i] - 85:21	cats [i] - 106:1	closer [i] - 17:1, 93:5, 99:18, 124:16, 133:22, 133:23, 134:4
branch [s] - 56:17, 76:16, 76:23, 111:20, 123:12, 124:2, 124:5, 127:20, 133:20, 134:4, 134:17, 135:5, 135:11, 135:13, 135:16, 135:19, 137:5, 137:18, 138:3, 138:14, 139:7, 139:8, 140:5, 140:9, 140:13, 141:19, 141:23, 142:8, 142:11, 142:12, 170:17, 170:24	burn [s] - 99:24, 115:21, 130:22, 154:13, 156:17, 156:18	caught [i] - 140:9	closes [i] - 135:2
branches [s] - 92:12, 92:14, 93:9, 99:21, 99:23, 103:21, 103:22, 110:16, 110:23, 111:2, 112:12, 112:14, 112:15, 118:4, 118:11, 118:14, 118:23, 119:3, 119:13, 120:11, 120:24, 121:10, 122:8, 122:21, 123:1, 124:12, 125:17, 125:21, 126:10, 127:2, 128:22, 129:23, 130:12, 134:3, 135:21	burning [i] - 34:7, 34:11, 34:20, 35:6, 36:2, 115:22, 116:21	caused [z] - 79:21, 80:7	closing [i] - 28:7
brand [i] - 106:19	burns [i] - 154:21	causes [i] - 28:19	Code [i] - 5:16
brand-new [i] - 106:19	business [i] - 16:4, 16:5, 16:22, 18:8, 19:3, 19:11, 21:15, 21:16, 21:17, 86:11	center [z] - 25:23, 122:23	coffee [s] - 7:22, 28:22, 132:19
brand-new [i] - 106:19	BY [s] - 4:4, 8:1, 80:22, 163:3, 175:2	certain [z] - 106:5, 128:16	cold [s] - 34:8, 34:9, 34:10, 165:8
break [s] - 80:14, 81:1, 109:16, 120:16	calculations [i] - 50:16	certainly [s] - 35:13, 132:14, 146:22	collateral [i] - 19:2
break-off [i] - 81:1	calendar [i] - 41:15	Certificate [i] - 3:24	college [i] - 10:12, 10:13, 10:18, 10:19, 11:20, 11:23, 12:3
breakdown [i] - 81:18	campfires [i] - 122:24	certificate [s] - 13:1, 13:7, 13:10, 13:19	College [z] - 10:17, 11:19
breakfast [i] - 109:14	capable [i] - 145:6	CERTIFICATE [i] - 176:1	combination [s] - 20:1, 28:18, 63:18, 77:10, 91:6
breaks [i] - 118:13	card [i] - 22:6	Certified [s] - 1:23, 176:3, 176:19	comfortable [i] - 12:23
bring [z] - 102:2, 127:17	cards [z] - 21:22, 22:3	certify [z] - 176:4, 176:10	coming [i] - 22:5, 78:9, 80:2, 80:5, 116:24, 129:10, 134:11, 135:12, 135:16, 137:12, 138:11, 138:16, 138:17, 138:19, 139:22, 140:1, 158:3, 169:1
bringing [z] - 92:4, 138:14	care [s] - 11:5, 69:5, 69:7, 145:13, 159:17	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	commencing [i] - 1:21
brings [z] - 14:18, 70:11	careful [z] - 129:19, 157:20	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	comment [z] - 139:23, 140:24, 146:5
brochures [i] - 19:3	Carol [s] - 90:21, 104:8, 104:18, 105:8, 105:18, 117:8, 117:9, 129:9, 144:11	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	comment [z] - 139:23, 140:24, 146:5
broken [i] - 163:16	Caroline [i] - 1:17, 2:6, 57:11, 62:18, 63:5, 84:5, 84:13, 85:7, 85:19, 86:4, 91:14, 98:18, 102:24, 105:19, 106:14, 107:4, 107:10, 110:7	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	comments [s] - 83:13, 83:21, 107:19, 121:21, 144:15
broker [i] - 20:21	Caroline's [z] - 58:2, 105:24	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	commercial [i] - 19:10
brought [i] - 92:1	carpal [i] - 29:14	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	common [i] - 58:15
bucket [i] - 38:18	carried [i] - 88:16	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	communication [s] - 78:6, 78:8, 78:14, 81:18
buckets [s] - 38:14, 45:16	carry [i] - 93:13	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	communications [i] - 81:2
	cars [z] - 59:7, 87:10	chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	community [i] - 10:18
		chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	Community [i] - 26:14
		chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	companies [s] - 16:3, 19:12, 21:21, 46:17, 47:22, 48:10
		chain [i] - 32:11, 62:12, 62:14, 62:21, 63:7, 63:18, 63:23, 64:4, 64:8, 64:12, 64:19, 65:2, 65:3, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15, 67:17, 67:24, 68:3, 68:12, 68:14, 68:24, 69:10, 69:18, 69:19, 69:23, 71:7, 71:10, 71:16, 71:20, 71:22, 72:9, 72:13, 72:18, 72:24, 74:16, 76:3, 76:5, 76:13, 77:7, 77:9, 77:10, 82:21, 83:18, 91:8, 91:12, 91:23, 92:2, 93:24, 94:23, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:13, 109:17, 110:22, 111:8, 112:22, 113:1, 114:15, 117:4, 121:14, 130:24, 131:16, 133:16, 134:6, 134:11, 134:18, 134:21, 134:24, 135:8, 135:9, 136:3,	company [s] - 14:8, 16:19, 19:4, 21:19, 47:4, 47:9, 55:10,

61:17 compatible [i] - 47:3 compensated [i] - 145:21 complaining [2] - 23:20, 97:3 Complaint [i] - 57:12 complaints [i] - 35:5 completed [i] - 13:13 computer [2] - 19:21, 19:22, 22:18, 36:11, 36:16, 46:11, 47:16, 47:19, 149:19 computer-assisted [i] - 19:21 concept [2] - 22:5, 22:13, 22:19 concern [i] - 99:2, 107:14, 108:7, 128:13, 136:18, 144:7, 166:20 concerned [2] - 108:15, 144:12 concerning [2] - 26:7, 27:1, 176:6 condition [i] - 93:5 conduction [i] - 150:7 confer [i] - 80:13 confused [2] - 140:23, 167:7 connected [2] - 57:23, 58:11 connecting [i] - 24:15 connection [2] - 58:1, 73:4, 77:13, 94:5, 99:13 consider [2] - 116:12, 132:11, 146:15 consideration [i] - 93:23 consult [i] - 108:20 consumed [i] - 175:10 contact [i] - 47:10, 53:19, 61:10, 78:7, 84:11, 85:10, 85:17, 85:19, 85:20, 136:23, 137:16, 137:19, 138:4, 139:6, 140:5, 142:10, 143:14 contacted [i] - 46:24 container [2] - 39:7, 41:7 continue [2] - 51:11, 51:18, 114:24 continued [2] - 4:10, 149:19, 152:1 CONTINUED [i] - 80:22	contract [2] - 18:5, 51:2, 51:5, 51:10, 52:1, 52:10, 53:17, 54:2 contractor [i] - 17:12 control [2] - 170:9, 170:11 controlled [i] - 156:14 controversy [i] - 176:7 conversation [i] - 6:6, 6:9, 78:19, 78:20, 79:4, 80:24, 81:12, 162:5, 173:14, 174:20 conversations [4] - 81:24, 82:1, 108:6, 113:10 corner [i] - 90:23 correct [2] - 15:8, 16:20, 17:17, 19:9, 22:22, 23:11, 23:17, 27:17, 28:5, 32:4, 34:2, 36:5, 36:18, 43:8, 52:11, 61:1, 61:19, 61:20, 61:22, 65:11, 66:12, 71:17, 71:21, 72:11, 72:15, 74:9, 77:16, 86:3, 87:15, 97:21, 98:6, 98:7, 98:10, 98:11, 99:14, 102:22, 104:2, 104:5, 104:7, 108:13, 114:14, 114:17, 117:3, 117:4, 118:8, 118:9, 121:5, 123:4, 133:20, 135:22, 137:8, 140:2, 140:14, 142:6, 142:19, 142:21, 143:10, 143:15, 147:3, 156:11, 159:20, 159:24, 161:6, 161:21, 163:9, 175:4, 175:5 corrected [i] - 88:12 counsel [2] - 81:14, 95:9, 161:22, 176:11, 176:12 count [2] - 64:24, 66:14 COUNTY [i] - 1:3 County [i] - 4:13 couple [i] - 6:2, 27:12, 42:13, 46:2, 78:10, 85:14, 86:4, 86:8, 92:15, 118:13, 118:22, 125:15, 126:9, 126:22, 127:5, 131:12, 173:6	course [2] - 11:18, 11:21, 11:22, 12:3, 12:16, 81:5, 83:18, 84:6, 143:3 courses [2] - 11:20, 13:24 COURT [i] - 1:2 Court [4] - 4:13, 8:8, 8:18, 9:17 court [i] - 4:15 create [2] - 35:9, 35:18 criticism [2] - 165:24, 166:4 crosses [i] - 160:21 cup [2] - 28:23, 132:19 customer [2] - 22:20, 51:5 customers [2] - 20:20, 20:22 cut [2] - 65:8, 67:8, 69:13, 73:7, 73:8, 73:18, 73:20, 77:4, 91:14, 92:7, 92:17, 92:21, 93:10, 95:15, 99:17, 99:23, 100:21, 106:12, 106:15, 108:11, 110:22, 112:2, 112:12, 112:20, 119:22, 120:2, 122:10, 122:15, 123:2, 123:14, 123:18, 125:24, 126:1, 126:10, 126:13, 131:17, 133:17, 136:4, 141:20, 142:8, 144:13, 144:23, 145:17, 157:9, 167:6, 168:13, 168:16, 168:20, 169:3, 169:23, 171:9, 171:14 cuts [i] - 65:7 cutting [2] - 69:18, 70:9, 71:4, 73:4, 75:21, 76:16, 76:23, 92:7, 92:11, 95:4, 99:13, 99:15, 99:21, 103:7, 104:14, 104:23, 109:12, 110:3, 111:5, 111:20, 114:24, 115:5, 121:9, 134:6, 134:14, 140:9, 140:12, 165:23, 166:3, 166:19, 167:11	D D-u-l-b-e-r-g [i] - 4:7 dad [i] - 68:19 damage [2] - 107:10, 107:14, 158:9 damaged [i] - 107:18 damaging [2] - 99:3, 108:8 dangerous [2] - 64:5, 64:6, 64:8, 64:10, 65:3, 113:23, 114:5, 114:9 dangers [i] - 65:5 database [i] - 47:16 date [2] - 9:5, 9:9, 151:16, 173:22, 174:2 Dated [i] - 176:14 Dave [2] - 57:21, 96:19, 120:21 Dave's [i] - 110:8 DAVID [i] - 1:8 David [2] - 2:10, 58:3, 62:4, 62:14, 63:19, 64:15, 84:3, 84:10, 84:12, 87:3, 87:9, 87:20, 90:21, 91:22, 92:2, 92:5, 92:17, 92:21, 93:17, 94:5, 94:16, 94:20, 95:6, 95:14, 95:18, 96:17, 96:23, 96:24, 97:8, 97:24, 98:2, 98:12, 99:20, 100:4, 100:9, 102:24, 103:9, 104:6, 104:17, 105:13, 105:15, 105:21, 106:14, 107:1, 108:4, 108:20, 110:13, 113:12, 115:24, 118:12, 119:1, 120:16, 121:17, 122:4, 130:22, 161:23, 165:9, 165:24, 166:5, 166:14, 166:21, 167:7, 168:16, 169:5, 169:23, 170:21, 172:1, 172:5, 172:15, 173:15, 173:23, 174:1, 174:17 David's [2] - 103:3, 166:12, 168:20 days [2] - 50:4, 50:8, 165:8 deal [2] - 40:11, 89:8 debris [4] - 70:7, 75:13, 75:17, 115:13	decided [2] - 45:11, 45:12, 45:13, 116:7, 116:8, 116:15, 117:19, 127:1 decision [2] - 45:6, 105:20, 107:21 defendant [2] - 2:10, 82:2 Defendants [i] - 1:11 defendants [2] - 1:17, 2:6 definitely [2] - 141:14, 146:23 definition [i] - 142:3 degree [i] - 10:23 degrees [2] - 169:24, 170:1 demise [i] - 16:17 demonstrate [i] - 91:11 demonstrated [i] - 69:14 demonstrating [i] - 98:8 DEPOSITION [i] - 1:7 deposition [2] - 1:16, 4:9, 5:14, 5:18, 175:18, 176:8, 176:9, 176:12 deprive [i] - 80:18 describe [2] - 13:10, 28:5, 58:18, 60:3, 138:10, 144:6, 170:3, 171:11 described [2] - 33:22, 34:5, 35:15, 133:15, 142:4, 145:19, 154:2, 154:15 description [2] - 25:12, 72:2 design [2] - 13:24, 14:1, 14:2, 14:11, 14:16, 18:10, 19:2, 19:8, 19:10, 19:20, 20:24, 21:7, 22:2, 22:13, 32:1, 32:8, 32:15, 35:16, 36:6, 45:1, 45:22, 46:2, 46:18, 47:24, 48:5, 48:13 designer [2] - 18:21, 18:24, 19:16 detail [i] - 71:12 details [2] - 83:12, 83:15 device [i] - 38:24 diagnosed [i] - 31:12 dialogue [i] - 139:10 diameter [2] - 132:8, 132:17 Diane [i] - 103:3
---	--	--	--	---

dictated [1] - 126:6 died [3] - 111:8, 113:19, 113:20 different [11] - 43:11, 45:20, 73:21, 84:17, 93:9, 96:4, 96:5, 118:4, 120:12, 142:2, 151:23 difficult [1] - 81:17 diminishing [1] - 56:20 direct [1] - 154:22 direction [1] - 7:18 directions [2] - 146:17, 157:18 directly [3] - 15:20, 15:22, 40:14, 40:16, 113:12, 121:12 disability [1] - 36:23 disabled [1] - 37:14 disagreeing [1] - 107:4 disappeared [2] - 110:7, 110:9 discovery [2] - 4:9, 5:18 DISCOVERY [1] - 1:6 Discovery [1] - 1:16 discuss [3] - 83:8, 83:10, 97:18, 106:4, 116:9 discuss/bicker [1] - 97:15 discussed [3] - 80:10, 81:11, 81:23, 82:8, 142:24 discussion [3] - 80:7, 80:9, 99:5, 105:11, 106:14, 106:21, 108:10, 144:2, 174:17 discussions [4] - 104:23, 108:2, 173:20 disengaged [1] - 134:17 displeasure [1] - 166:20 dispose [1] - 90:10 dissatisfied [1] - 97:23 dissolution [1] - 16:18 distance [1] - 128:16 distinguish [1] - 56:21 distracted [1] - 140:22 ditch [1] - 62:5 doctor [10] - 24:18, 27:1, 27:2, 31:16, 150:13, 157:4, 158:6, 163:22, 163:23, 163:24 doctors [1] - 26:7 dog [1] - 102:5, 102:6, 102:17, 105:8, 115:6, 120:20 dogs [1] - 106:1 dominant [2] - 76:7, 133:6 done [32] - 17:5, 20:24, 39:21, 44:4, 44:23, 55:4, 56:10, 87:12, 91:2, 92:8, 97:10, 111:23, 116:20, 118:15, 121:1, 121:23, 121:24, 123:15, 127:16, 131:12, 135:20, 135:23, 146:6, 150:4, 150:9, 152:8, 153:8, 155:19, 163:17, 163:18, 163:19, 173:8 down [75] - 6:4, 10:19, 12:13, 26:14, 27:20, 27:23, 27:24, 28:4, 29:12, 29:13, 33:23, 36:12, 38:15, 46:11, 47:23, 55:13, 55:16, 67:19, 67:22, 86:9, 88:13, 88:14, 91:14, 92:17, 92:21, 93:18, 94:8, 94:17, 96:2, 96:13, 96:18, 97:18, 98:21, 100:12, 100:21, 101:2, 103:16, 105:17, 106:5, 106:6, 106:8, 106:9, 106:12, 107:1, 107:5, 108:21, 111:9, 112:2, 113:24, 114:2, 115:5, 116:24, 118:17, 118:20, 119:4, 119:11, 119:19, 120:2, 120:16, 123:15, 126:22, 133:13, 134:7, 134:22, 137:11, 142:14, 153:9, 156:19, 161:11, 165:16, 166:4, 166:19, 167:13, 169:15, 169:21 downtime [1] - 85:2 downward [5] - 76:23, 136:6, 136:7, 139:14, 139:15 dozen [3] - 125:6,	125:15, 125:16, 127:5, 131:8, 131:12, 135:20 Dr [3] - 26:11, 26:12, 26:16, 30:2, 31:2, 148:24, 149:1, 149:14, 150:10, 150:16, 151:4, 151:10, 151:11, 151:15, 151:18, 151:22, 151:24, 152:13, 153:8 drag [2] - 127:19, 127:20 dragging [3] - 116:3, 118:3, 120:11 drank [1] - 120:20 draw [1] - 22:10 drawing [2] - 47:14, 53:22 drink [2] - 7:22, 110:6 drinking [3] - 159:11, 175:4, 175:7 driveway [1] - 87:6 driving [2] - 97:14, 159:11 drop [1] - 105:16 dropped [2] - 135:11, 170:24 dropping [2] - 118:20, 141:23 drove [3] - 88:8, 162:11, 162:13 drugs [1] - 166:15 due [3] - 37:23, 37:24, 49:24 DULBERG [4] - 1:5, 1:7, 1:16, 4:1 Dulberg [7] - 4:7, 4:10, 4:16, 8:4, 9:22, 80:23, 176:5 dulberg's [1] - 171:17 Dulberg.....[Mr [1] - 3:3 duly [2] - 4:2, 176:5 dumb [1] - 58:21 dump [1] - 39:8 dumping [1] - 38:23 dumps [2] - 38:20, 38:21 during [2] - 6:8, 53:8, 65:1, 70:9, 77:15, 80:10, 81:12, 83:6, 83:10, 85:18, 86:12, 86:13, 105:19, 120:9, 129:2, 129:12, 129:20, 129:24, 130:11, 134:14, 165:23 dust [1] - 70:7 dynamics [1] - 143:1	E e-mailed [1] - 80:16 e-mails [1] - 46:24 early [5] - 11:16, 87:8, 145:19, 150:4, 150:9 earnings [1] - 48:18 easier [1] - 6:9 East [1] - 2:5 easy [1] - 6:19 eat [1] - 25:20 educational [1] - 10:5 effort [3] - 45:19, 83:6, 106:15 eighth [2] - 68:8, 68:9 either [17] - 23:8, 41:22, 46:7, 48:23, 56:1, 71:4, 85:12, 91:7, 91:11, 96:16, 98:9, 107:19, 129:18, 129:23, 138:24, 144:15, 152:17 elaborate [2] - 22:4, 133:17 elapsed [2] - 168:6, 168:11 elbow [37] - 24:8, 24:9, 24:14, 25:6, 25:10, 26:8, 26:10, 26:18, 26:19, 26:23, 27:2, 27:20, 27:22, 28:18, 30:12, 31:5, 31:12, 32:1, 32:21, 33:16, 33:24, 152:22, 154:21, 156:23, 156:24, 157:5, 157:15, 159:7, 163:4, 163:7, 164:12, 164:18, 164:19, 164:23, 165:4, 165:7 Elder [3] - 8:19, 9:2, 57:13 eliminated [1] - 119:2 Elim [3] - 1:19, 2:2, 149:2 emergency [16] - 141:9, 142:23, 145:2, 145:10, 147:2, 147:21, 148:1, 162:20, 172:15, 172:17, 172:21, 172:23, 173:7, 173:15, 173:16, 174:16 EMG [5] - 30:14, 30:18, 150:4, 150:13, 152:4 empathy [1] - 86:18 employed [10] - 14:21,	14:24, 15:2, 17:8, 17:23, 48:10, 48:11, 166:1, 176:11, 176:13 employee [2] - 18:2, 176:12 employees [1] - 21:22 employer [3] - 13:3, 14:14, 16:2, 61:18, 84:19 employing [1] - 166:5 employment [12] - 17:2, 17:20, 37:19, 41:18, 43:20, 43:24, 44:1, 45:18, 48:14, 49:24, 59:2, 145:20 encompass [1] - 18:22 encounter [2] - 84:8, 84:9 end [11] - 16:14, 42:18, 50:17, 76:24, 123:13, 123:14, 124:16, 125:18, 127:10, 127:15, 142:11 ended [3] - 15:10, 15:16, 16:10, 16:12, 16:16, 52:1 ends [3] - 27:17, 129:1, 157:10 endurance [1] - 7:20 engage [7] - 168:2, 168:8, 168:12, 168:19, 169:19, 169:23, 170:24 engaged [4] - 63:6, 168:15, 171:24, 172:4 enhance [1] - 34:19 enroll [1] - 10:16 entire [3] - 79:14, 92:21, 130:11 entitled [1] - 1:18 entries [1] - 22:24 entry [4] - 19:23, 23:2, 45:4 envision [1] - 122:14 ER [3] - 141:15, 143:16, 147:7 especially [2] - 124:22, 158:10 estimate [4] - 61:1, 64:18, 89:17, 104:2 estimating [1] - 109:9 evaluated [3] - 147:2, 150:13, 150:14 event [15] - 31:24, 32:16, 33:8, 36:5, 43:8, 43:11, 44:11, 51:14, 51:23, 56:8,
---	---	---	--

57:9, 61:11, 79:10, 85:12, 88:19 events [1] - 24:15 eventually [1] - 148:20 evolved [1] - 58:18 exacerbate [1] - 35:5 exact [2] - 14:23, 60:24 exactly [10] - 18:13, 23:7, 23:19, 25:5, 40:10, 43:2, 102:15, 113:14, 123:7, 125:9 examination [1] - 176:7 EXAMINATION [0] - 3:2, 4:4, 8:1, 80:22, 163:3, 175:2 examined [2] - 4:2, 176:7 except [1] - 92:7 exception [2] - 92:24, 157:23 exchange [1] - 44:18 excuse [2] - 140:19, 163:6 EXHIBIT [1] - 3:10 Exhibit [7] - 3:11, 3:12, 3:13, 49:8, 160:3, 160:4, 160:9 EXHIBITS [1] - 3:9 expect [2] - 146:20, 158:7 expectation [2] - 5:23, 41:17 expecting [1] - 94:2 expense [1] - 160:3 expenses [0] - 53:4, 158:24, 159:1, 159:13, 159:16, 160:11 experience [3] - 65:6, 67:17, 67:18 experienced [0] - 75:4, 75:11, 76:15 explain [0] - 26:24, 42:6, 83:6, 100:17, 123:23, 143:5 explained [0] - 26:19, 107:1, 143:2, 149:18, 157:8, 157:12 explanation [1] - 174:5 explicative [1] - 140:20 express [2] - 86:17, 166:20 expressly [1] - 176:9 extend [2] - 25:19, 26:1 extended [2] - 27:21,	51:6 extending [1] - 27:15 extension [3] - 27:3, 28:4, 28:12 extensor [1] - 25:23 extent [2] - 63:15, 81:21 extreme [3] - 27:17, 69:5, 69:6 eye [1] - 169:4 eyes [4] - 135:10, 169:4, 171:18, 172:12 F face [2] - 6:9, 6:10 facing [1] - 170:20 fact [4] - 32:11, 85:16, 115:21, 139:7 fair [4] - 7:9, 25:12, 85:17, 144:6 fall [0] - 29:23, 30:8, 30:9, 42:1, 109:10, 119:22 fallen [1] - 116:3 falling [1] - 107:11 falls [1] - 119:19 family [3] - 11:7, 11:9, 106:23 fancy [1] - 5:19 far [10] - 26:4, 27:11, 31:3, 31:13, 67:5, 97:11, 99:10, 111:5, 119:4, 128:14 fart [1] - 174:13 fashion [1] - 71:23 fast [0] - 138:17, 138:20, 156:16, 168:14, 170:6, 170:8 father [1] - 68:24 favor [2] - 94:10, 116:12 feet [11] - 89:12, 104:1, 109:7, 111:8, 112:19, 113:17, 119:9, 124:21, 128:20, 134:5 fellow [2] - 57:20, 65:16 felt [3] - 74:16, 146:17, 148:13 few [16] - 10:15, 10:20, 44:10, 60:23, 63:13, 66:16, 66:17, 77:15, 91:18, 118:13, 122:9, 125:3, 125:6, 126:4, 150:6 figure [1] - 82:7 figured [1] - 108:24 fill [0] - 39:8, 44:3,	51:4, 51:19, 52:13 financially [1] - 176:13 fine [0] - 4:22, 5:9, 25:23, 156:21, 156:22, 156:23 finger [20] - 23:6, 23:9, 32:23, 33:2, 33:4, 33:11, 153:10, 153:17, 153:21, 153:24, 154:16, 155:24, 156:8, 156:9, 156:10, 158:1, 167:11, 167:17, 167:19, 168:7 fingers [14] - 27:24, 28:6, 28:8, 28:12, 32:20, 33:22, 34:13, 34:19, 34:22, 35:9, 132:15, 153:13, 153:19 fingertip [1] - 32:19 finish [3] - 7:7, 10:6, 10:10 finished [1] - 10:15 finishes [1] - 136:2 fire [5] - 33:10, 33:13, 34:4, 115:22, 137:7 fired [2] - 109:17, 140:10 fireplace [1] - 116:22 firewood [3] - 116:16, 122:23, 123:3 first [27] - 4:2, 18:11, 26:16, 29:20, 37:3, 37:8, 37:9, 50:21, 53:1, 53:8, 60:11, 68:11, 68:14, 69:1, 75:19, 110:21, 111:2, 121:12, 126:4, 126:8, 126:9, 126:22, 140:18, 143:19, 145:8, 149:12, 171:5 five [0] - 52:22, 53:1, 56:7, 87:17, 87:22, 128:20, 134:5, 145:5, 149:4 fix [1] - 62:8 flared [1] - 25:5 flashed [1] - 89:22 flew [1] - 42:2 flexion [2] - 27:5 flimsy [1] - 89:7 flow [2] - 22:19, 72:13 fly [1] - 70:7 focused [1] - 145:12 follow [1] - 175:1 follow-up [1] - 175:1 following [0] - 39:18,	41:11, 41:12, 41:13, 176:5 following-named [1] - 176:5 follows [1] - 4:3 forearm [10] - 33:23, 33:24, 34:14, 34:15, 152:22, 154:3, 154:4, 157:6, 160:13, 161:11 Forest [1] - 163:21 forever [2] - 145:4, 158:12 forgetting [1] - 156:15 forgot [2] - 40:4, 100:20 forklift [1] - 38:9 form [3] - 13:12, 50:18, 56:22 formed [2] - 65:2, 144:16 forming [1] - 154:21 forth [1] - 96:3 forward [4] - 5:10, 52:9, 75:8, 172:9 foundation [1] - 89:6 four [0] - 10:18, 60:23, 88:22, 90:22, 93:2, 97:7, 128:20, 132:20, 134:4 four-year [1] - 10:18 Fourth [1] - 41:14 fourth [2] - 49:4, 49:9 fourth-to-the-last [1] - 49:9 fragments [1] - 70:6 France [1] - 2:4 free [0] - 72:13, 88:18, 119:16, 127:24, 128:8 FREEMAN [10] - 2:1, 27:14, 31:7, 75:24, 81:24, 95:9, 122:2, 135:18, 136:1, 148:15, 149:5, 158:20, 162:23, 164:4, 174:8, 175:16 frequency [2] - 60:15, 78:7 friend [3] - 9:20, 9:23, 61:7 friends [2] - 60:4, 61:12 front [2] - 88:16, 165:16 froze [1] - 70:18 fuck [2] - 135:13, 140:20 full [17] - 8:2, 28:4, 28:11, 40:23, 40:24,	41:2, 42:1, 43:20, 43:23, 44:1, 51:9, 51:20, 52:15, 55:10, 132:14, 156:12, 158:11 full-time [10] - 40:23, 40:24, 41:2, 42:1, 43:20, 43:23, 44:1, 51:9, 51:20, 52:15 function [0] - 45:4, 86:22, 88:1, 88:2, 88:10, 155:20 functioning [2] - 148:3, 148:5 funny [1] - 164:21 G G-r-o-v-e-s [1] - 42:12 gabapentin [1] - 155:5 gagnon [1] - 107:17 GAGNON [1] - 1:8 Gagnon [20] - 2:10, 57:21, 60:1, 62:14, 62:21, 63:19, 64:15, 77:14, 80:24, 81:19, 82:8, 94:7, 98:9, 107:22, 108:7, 129:22, 130:4, 130:20, 133:16, 137:22, 139:10, 140:15, 144:3, 146:2, 146:12, 146:16, 161:24, 175:3 game [2] - 21:18, 22:21 gap [1] - 135:2 garage [4] - 59:8, 87:3, 87:12, 107:9 garden [2] - 92:20, 115:9 gas [2] - 113:18, 134:12 gathered [1] - 79:13 general [1] - 85:5 generate [1] - 46:12 Gerard [1] - 2:8 gifts [1] - 93:23 gist [1] - 84:2 given [5] - 22:8, 31:16, 45:7, 61:15, 176:8 glad [1] - 132:6 glides [1] - 72:14 God [1] - 140:23 godfather [1] - 59:20 golf [1] - 59:5 grab [1] - 28:22, 34:17, 35:1, 35:3, 123:15, 127:17, 154:9
---	---	--	---	---

H				
grabbed [1] - 115:7 grabbing [4] - 23:7, 23:15, 35:9, 35:14 grade [3] - 58:3, 68:8, 68:9 graphic [3] - 13:24, 14:2, 14:11, 14:16, 18:10, 18:21, 19:10, 19:16, 19:20, 20:24, 22:2, 45:22, 47:23 graphics [4] - 18:23, 19:8, 19:22, 21:6, 32:1, 32:8, 32:15, 35:15, 36:5, 44:24, 46:2, 46:18, 48:5, 48:12 grass [1] - 107:12 Gregoire [1] - 2:8 grew [1] - 57:19 grip [5] - 153:20, 153:22, 154:16, 155:21, 157:22 grocery [1] - 85:15 groove [2] - 71:22, 72:8 gross [2] - 17:16, 52:19 ground [16] - 92:6, 92:10, 93:6, 97:4, 99:18, 111:1, 113:24, 115:5, 115:10, 121:9, 124:3, 124:5, 133:13, 136:10, 169:21, 169:24 group [3] - 32:12, 58:15, 89:19 Group [1] - 45:9 Groves [7] - 42:10, 42:11, 42:12, 42:17, 44:8, 49:17, 52:7 growth [2] - 128:24 Guard [4] - 56:18, 56:20, 56:23, 57:1 guess [21] - 14:20, 17:10, 28:18, 44:3, 50:17, 60:6, 71:5, 77:10, 89:14, 95:12, 100:24, 108:3, 112:16, 122:14, 124:21, 132:12, 139:13, 149:21, 161:10, 162:16, 175:6 guessed [1] - 104:1 guy [5] - 41:23, 42:8, 49:17, 90:8, 109:14 guys [3] - 61:17, 61:24, 81:21, 81:23, 84:21, 122:17, 129:3, 131:19	Hayden [5] - 8:12 half [5] - 9:1, 78:10, 119:17, 120:2, 125:11 Hand [1] - 150:10 hand [34] - 23:19, 23:21, 23:22, 24:5, 24:7, 25:5, 28:7, 28:19, 35:22, 36:16, 59:8, 76:7, 76:9, 76:12, 118:5, 132:1, 132:2, 132:16, 133:2, 133:6, 135:19, 138:21, 142:12, 148:2, 148:8, 149:20, 153:18, 156:13, 157:21, 158:5, 169:9, 169:14, 170:18 handle [3] - 69:5, 69:6, 112:24 handling [3] - 38:3, 38:4, 40:8 hands [13] - 38:9, 46:15, 76:6, 88:17, 127:24, 128:8, 128:9, 131:24, 134:23, 134:24, 172:2, 172:6, 173:2 handyman [2] - 86:23, 88:4 hanging [2] - 60:4, 117:21 Hans [2] - 82:1, 162:7 happenance [2] - 61:12, 85:21 hard [1] - 29:4 harnesses [1] - 112:6 Hayden [5] - 8:8, 8:9, 8:10, 8:18, 9:17 hazards [2] - 64:3, 66:23 head [5] - 13:12, 97:10, 140:18, 173:2, 173:11 heading [5] - 51:14, 51:23, 64:1, 74:8, 101:4 heal [1] - 158:9 healed [1] - 149:21 healing [1] - 158:11 healthy [1] - 133:1 hear [3] - 5:21, 5:22, 7:12, 7:15, 60:2, 83:3, 83:23, 136:16, 137:7 heard [27] - 27:2, 27:5, 28:1, 70:15, 73:3,	73:14, 73:24, 74:13, 83:2, 86:15, 107:2, 135:9, 136:18, 137:2, 143:22, 144:12, 144:18, 144:19, 144:20, 144:22, 167:20, 168:8, 168:12, 169:19, 169:22, 170:23 hearing [7] - 14:10, 15:5, 36:14, 95:17, 97:14, 97:17, 142:7 heat [3] - 70:2, 70:3, 72:22 heavier [3] - 124:4, 124:8, 154:10 heavy [1] - 154:17 heck [3] - 135:11, 171:7, 172:18 Heidelberg [3] - 12:8, 12:9, 12:11 height [2] - 109:10, 169:4 held [1] - 25:8 held [1] - 134:13 help [17] - 59:9, 61:14, 61:24, 68:16, 87:9, 91:14, 92:4, 116:6, 116:7, 116:8, 121:13, 122:4, 122:6, 122:9, 123:24, 127:3 helped [7] - 62:9, 66:18, 68:18, 87:5, 87:19, 93:4, 93:8, 97:6, 70:1 helping [17] - 62:4, 62:7, 65:14, 66:8, 66:10, 66:24, 90:24, 93:23, 99:22, 101:5, 110:14, 115:8, 115:12, 116:13, 129:6, 130:14 hereto [2] - 176:4, 176:13 hi [1] - 85:15 high [13] - 10:6, 11:12, 11:14, 11:15, 58:5, 58:8, 58:10, 58:12, 58:13, 58:16, 60:5, 60:16, 68:6, 87:8, 111:7, 119:9, 136:21, 169:3 higher [1] - 60:15 Hills [2] - 26:13, 151:13 himself [3] - 94:17, 101:7, 113:22 hired [2] - 14:8, 49:23	hit [3] - 73:19, 107:9, 134:1, 138:13, 141:5, 147:10, 167:17, 167:19 hitting [1] - 75:23 hold [24] - 19:14, 19:17, 76:3, 76:5, 97:17, 121:3, 122:10, 123:13, 125:18, 126:13, 126:18, 127:9, 127:15, 127:23, 128:1, 128:3, 128:6, 129:7, 129:23, 132:2, 132:16, 133:1, 133:8, 133:10 holding [19] - 38:24, 75:7, 83:14, 112:18, 123:18, 124:8, 130:14, 131:21, 131:22, 132:9, 134:22, 135:5, 135:19, 136:3, 137:5, 139:7, 142:11, 169:5, 170:17 holds [1] - 29:11 home [16] - 11:4, 11:5, 36:11, 44:20, 44:21, 47:17, 55:19, 79:6, 86:12, 88:1, 88:2, 88:9, 97:6, 102:12, 110:9, 162:3 honest [1] - 151:16 honestly [1] - 143:6 hope [7] - 30:24, 43:18, 51:8, 51:15, 51:17, 51:18, 52:9 Hopefully [1] - 5:20 hopefully [2] - 41:2, 52:15 hoping [7] - 31:21, 31:22, 40:12, 40:24, 51:10, 51:12, 60:2 horizontally [1] - 133:10 hoses [1] - 90:7 hospital [1] - 163:20 Hospital [1] - 163:21 hour [3] - 50:14, 53:10, 125:11 hourly [2] - 49:20, 50:11 hours [4] - 50:14, 118:13, 118:14, 118:22 house [30] - 19:7, 54:17, 57:11, 67:21, 79:7, 80:2, 82:5, 86:21, 86:22, 87:5, 87:24, 90:4, 97:9,	98:20, 98:22, 99:2, 99:3, 99:6, 103:6, 103:10, 105:12, 107:18, 108:3, 108:8, 110:5, 129:11, 143:24, 162:7, 162:13 houses [1] - 8:23 hulls [1] - 6:8 hundreds [2] - 64:23 hurt [10] - 27:20, 27:22, 32:17, 32:18, 34:17, 99:10, 107:18, 109:24, 110:3, 127:6, 128:12, 128:15, 128:19, 129:3, 131:9, 134:15, 143:21, 145:12, 164:19 hurting [1] - 99:6 hurts [2] - 23:24, 24:2, 25:18, 26:2, 26:5, 27:16, 28:5, 28:14, 28:15, 33:6, 154:9, 164:18 hydrocodone [1] - 155:13 I idea [3] - 82:20, 138:1, 141:17 identification [1] - 160:5 identifying [2] - 96:15, 106:11 idle [5] - 134:7, 134:19, 134:20, 167:9, 168:7 ILLINOIS [2] - 1:1, 1:3 Illinois [10] - 1:20, 1:24, 2:2, 2:5, 2:9, 4:14, 5:16, 10:19, 176:3, 176:20 illustrate [2] - 46:19, 47:23 Immediately [1] - 143:22 Immediately [3] - 11:12, 60:11, 60:15, 68:6, 77:20, 126:11, 126:23, 140:22 immensely [1] - 34:10 impacted [1] - 153:14 impaired [1] - 37:13 impairment [2] - 23:10, 150:15 impedes [1] - 23:23 impediment [1] - 23:11

impetus [1] - 81:13 implicated [1] - 154:4 important [4] - 6:5, 81:20, 144:9, 144:11 impression [4] - 22:16, 142:4, 144:17, 147:12 improvement [1] - 158:7 IN [1] - 1:2 in-house [2] - 19:7 inadequate [1] - 72:21 Inc [4] - 16:8, 16:18, 16:22, 55:11 inches [4] - 93:2, 97:7, 132:12, 132:20 incident [21] - 8:15, 9:7, 15:6, 16:14, 21:9, 23:4, 23:17, 37:24, 38:1, 51:3, 54:15, 55:21, 60:12, 61:21, 77:14, 78:9, 88:13, 131:11, 131:12, 131:13, 166:9 incision [1] - 161:10 including [1] - 49:13 income [10] - 17:15, 17:18, 45:18, 49:12, 50:18, 50:24, 55:20, 56:1, 56:4, 56:11 incorporated [4] - 13:6, 14:15, 16:6, 16:8 increase [1] - 34:20 independent [2] - 17:12, 18:5 INDEX [1] - 3:1 INDEX [3] - 33:4, 153:13, 156:7 indicated [1] - 174:18 Indicates [2] - 6:12, 7:5, 23:18, 55:7, 56:9, 75:1, 86:19, 89:2, 113:21, 136:15, 138:5, 144:24 indicating [12] - 25:6, 32:20, 124:3, 132:4, 156:18, 158:4, 159:9, 159:10, 164:20, 165:3, 171:13 indicating [17] - 25:7, 28:6, 28:8, 33:20, 34:24, 126:17, 132:12, 133:3, 143:5, 148:14, 154:23, 156:6, 158:3, 158:4, 165:2, 169:6, 171:14	Individually [2] - 1:8, 1:10 Inflammatory [2] - 155:6, 155:9 influence [1] - 166:15 information [1] - 47:17 injections [1] - 30:12 Injured [8] - 119:24, 125:2, 138:24, 146:22, 163:4, 163:7 injuries [2] - 49:13, 69:24 injury [7] - 120:15, 144:6, 148:13, 157:6, 159:24, 160:14, 163:14 inner [1] - 165:6 input [1] - 22:13 Inquire [1] - 55:5 inside [2] - 143:23, 164:22 insight [2] - 94:4, 94:6 Instant [1] - 136:21 Instructing [2] - 95:18, 97:12 instruction [5] - 94:22, 98:18, 130:4, 134:9, 139:22 instructions [4] - 69:9, 127:23, 129:24, 130:8 Intending [1] - 73:18 Intensive [2] - 12:17, 12:19 intention [1] - 139:12 intentionally [1] - 174:12 intentions [1] - 142:15 Interested [2] - 44:12, 176:13 Intermatic [21] - 13:6, 14:15, 14:21, 15:20, 17:6, 17:21, 17:24, 18:7, 18:24, 19:5, 19:8, 19:17, 20:14, 56:4, 56:7, 84:13, 84:15, 85:11, 85:19, 86:5, 117:10 interpret [2] - 6:9, 6:19 Interrogatory [4] - 37:17, 48:16, 48:19, 109:22 Interrupting [57] - 5:1, 14:7, 19:24, 20:3, 27:12, 31:6, 32:3, 35:7, 40:6, 49:2, 51:17, 53:9, 55:17, 56:3, 60:9, 62:23, 67:7, 67:9, 70:8,	90:18, 92:13, 93:12, 94:19, 96:7, 97:16, 106:1, 106:4, 106:7, 108:12, 112:14, 114:22, 115:17, 124:2, 125:15, 126:4, 127:11, 128:10, 131:4, 133:13, 136:1, 136:9, 139:14, 145:16, 148:15, 151:19, 156:6, 159:5, 160:19, 161:2, 162:19, 162:23, 165:11, 167:23, 169:8, 170:5, 170:14, 171:22 intervening [1] - 129:18 Interviews [2] - 45:20, 46:1 involve [1] - 81:22 Involved [8] - 62:14, 66:1, 120:14, 140:12, 165:13, 166:8 involvement [4] - 83:22, 100:8, 115:2, 147:16 involving [2] - 35:8, 63:7 Issue [1] - 4:20 issued [1] - 4:23 Issues [1] - 24:24 Items [1] - 73:21 itself [2] - 20:20, 148:13	July [8] - 152:11, 152:23, 159:3, 161:2, 161:3, 161:13, 161:19, 162:18 June [45] - 9:8, 9:16, 15:6, 16:15, 20:23, 21:5, 24:16, 29:18, 37:15, 42:24, 43:22, 44:3, 44:8, 48:14, 51:14, 51:23, 59:17, 60:21, 61:21, 62:13, 63:2, 63:5, 63:11, 63:15, 63:21, 64:2, 64:19, 65:10, 65:14, 67:11, 67:23, 73:12, 74:8, 74:15, 77:14, 81:8, 86:20, 91:3, 91:15, 100:2, 101:2, 164:10, 164:14, 165:13, 166:8 juskie [1] - 55:10 Juskie [81] - 15:11, 15:12, 15:18, 15:21, 15:24, 16:23, 17:2, 17:9, 20:15, 20:19, 20:20, 20:21, 21:10, 50:20, 51:2, 51:5, 51:10, 51:16, 51:19, 51:24, 52:10, 52:18, 53:16, 53:19, 54:1, 54:23, 55:11, 55:18, 55:21, 56:6 JUSKIE [1] - 15:15	75:8, 140:5, 148:9, 148:12 kickoff [1] - 141:19 kid [1] - 87:6 kids [2] - 87:20, 106:23 kind [32] - 12:5, 14:14, 18:24, 21:15, 25:4, 26:22, 38:6, 39:3, 42:6, 45:6, 45:21, 47:2, 59:3, 59:8, 62:3, 67:20, 75:9, 79:24, 88:4, 93:22, 93:23, 103:18, 109:14, 112:18, 113:9, 117:21, 125:22, 133:10, 152:20, 157:12, 162:22 kinds [1] - 67:3 kitchen [1] - 144:21 knees [2] - 173:3, 173:11 knowledge [2] - 94:24, 176:6 known [1] - 54:24, 69:17, 81:19, 82:11, 84:3, 149:4, 175:8 knows [8] - 55:4, 143:6, 143:7, 158:19, 174:10	LA [1] - 1:5 la-la [1] - 147:19 laceration [3] - 149:21, 154:12, 154:17 lack [2] - 70:19, 71:2 lady [1] - 6:3 lake [1] - 163:21 land [1] - 147:19 large [1] - 122:7 larger [2] - 39:1, 39:8 LaSalle [1] - 2:9 last [17] - 15:2, 30:8, 37:4, 42:9, 49:3, 49:4, 49:9, 53:21, 53:22, 53:23, 55:13, 65:19, 77:15, 78:2, 82:9, 87:22, 110:8 late [1] - 163:19 Law [2] - 2:1, 2:8 lawsuit [2] - 57:10, 57:21 lawyers [1] - 83:18 laying [8] - 86:10, 115:10, 124:5 layoff [3] - 86:5, 86:7, 86:13
					L
					LA [1] - 1:5 la-la [1] - 147:19 laceration [3] - 149:21, 154:12, 154:17 lack [2] - 70:19, 71:2 lady [1] - 6:3 lake [1] - 163:21 land [1] - 147:19 large [1] - 122:7 larger [2] - 39:1, 39:8 LaSalle [1] - 2:9 last [17] - 15:2, 30:8, 37:4, 42:9, 49:3, 49:4, 49:9, 53:21, 53:22, 53:23, 55:13, 65:19, 77:15, 78:2, 82:9, 87:22, 110:8 late [1] - 163:19 Law [2] - 2:1, 2:8 lawsuit [2] - 57:10, 57:21 lawyers [1] - 83:18 laying [8] - 86:10, 115:10, 124:5 layoff [3] - 86:5, 86:7, 86:13
					K
					Keep [2] - 127:24, 128:7 keep [10] - 6:2, 42:15, 59:23, 67:5, 96:6, 117:13, 128:8, 138:21, 172:1, 172:5 kept [2] - 111:13, 128:15 key [2] - 22:24, 23:2 keyboard [8] - 19:23, 19:24, 21:4, 21:6, 35:13, 45:4 kick [3] - 73:20, 75:9, 141:24 kickback [20] - 73:14, 73:16, 73:24, 74:3, 74:9, 74:12, 74:22, 75:16, 75:19, 75:22, 141:9, 141:15, 141:18, 142:3, 142:4, 142:23, 143:16, 172:16, 173:1 kicked [8] - 59:8, 75:6,
					J
					Jacket [1] - 28:22 January [4] - 1:21, 37:4, 176:5, 176:14 jerk [1] - 168:22 job [16] - 15:6, 15:9, 22:12, 23:11, 37:16, 38:11, 41:3, 45:15, 45:19, 51:20, 52:15, 58:24, 67:14, 67:20, 86:16, 130:1 jobs [3] - 45:21, 46:7, 84:17 Joe [7] - 41:23, 42:7, 42:17, 44:6, 44:8, 49:17, 52:6 Joe's [1] - 42:9 Johnsburg [2] - 10:9, 58:6 joking [1] - 105:3 JUDICIAL [1] - 1:2

layperson [ɪ] - 18:23, 22:17 layperson's [ɪ] - 74:23 lead [ɪ] - 40:12 leading [ɪ] - 77:16, 85:11, 108:2 leads [ɪ] - 39:16 league [ɪ] - 59:6 leagues [ɪ] - 59:5 learn [ɪ] - 12:10, 54:1, 76:21 least [ɪ] - 46:18, 47:22, 48:6, 77:23, 118:13, 125:15, 132:24 leave [ɪ] - 51:16, 110:4 leaving [ɪ] - 12:2, 17:6 left [ɪ] - 5:13, 6:4, 11:3, 17:24, 16:2, 19:18, 24:5, 24:7, 24:20, 24:21, 25:4, 25:8, 26:7, 26:10, 26:18, 26:22, 27:2, 29:1, 29:20, 30:18, 30:20, 31:5, 31:12, 32:1, 76:12, 97:24, 101:13, 106:13, 119:15, 150:16, 150:20, 151:4, 153:6, 155:10, 159:13, 159:17, 163:4, 163:7, 164:7, 164:11, 164:12 lent [ɪ] - 118:4 less [ɪ] - 9:1, 56:5 letter [ɪ] - 37:14, 78:15, 78:16, 78:21, 79:15 letters [ɪ] - 79:6, 80:2, 80:5, 81:4, 82:10, 83:7 letting [ɪ] - 137:6 level [ɪ] - 12:3, 111:1, 121:9, 153:9 life [ɪ] - 150:20 lifetime [ɪ] - 67:10 lift [ɪ] - 38:9, 90:22 lifted [ɪ] - 137:24, 142:15 ligament [ɪ] - 24:12 light [ɪ] - 89:9 likely [ɪ] - 43:19, 77:11 limb [ɪ] - 76:16, 77:7, 83:14, 123:17, 124:8, 124:14, 126:13, 129:7, 131:19, 131:21, 131:22, 134:6,	141:19 limbs [ɪ] - 67:19, 99:21, 115:17, 119:16, 120:3, 122:15, 122:21, 124:19, 129:2, 130:13, 130:14, 130:20, 130:22, 131:5, 131:8, 132:7, 166:22 limitations [ɪ] - 155:24 lined [ɪ] - 50:2 lines [ɪ] - 70:20, 83:15 lingering [ɪ] - 155:2 link [ɪ] - 154:22 list [ɪ] - 35:12 listed [ɪ] - 57:12 listen [ɪ] - 31:9 listing [ɪ] - 49:14 lived [ɪ] - 44:21, 162:10 lives [ɪ] - 65:16 living [ɪ] - 9:23, 61:6 local [ɪ] - 4:15, 11:20 locate [ɪ] - 47:8 located [ɪ] - 12:11, 26:12, 55:12 locations [ɪ] - 14:4 log [ɪ] - 73:7, 73:19, 125:22, 126:18, 127:19, 141:19 logs [ɪ] - 123:2, 126:10, 126:16, 126:23, 131:5, 132:5 look [ɪ] - 7:17, 22:9, 41:15, 49:3, 100:19, 100:23, 104:17, 105:13, 129:19, 137:8, 170:9, 170:10 Look [ɪ] - 42:4 looked [ɪ] - 13:14, 97:24, 103:14, 109:2, 119:5, 137:3, 139:19, 161:4, 170:11, 173:6 looking [ɪ] - 51:4, 104:7, 104:11, 137:9, 139:18 looks [ɪ] - 109:22, 112:9, 160:16 loose [ɪ] - 93:12, 93:13 loss [ɪ] - 50:19 lost [ɪ] - 48:17, 49:12, 50:18, 50:24, 56:11, 86:16, 168:18, 170:9 lottery [ɪ] - 21:19, 21:20 loves [ɪ] - 105:8	lower [ɪ] - 110:16, 110:23, 111:2, 113:24, 120:24, 124:22 lowered [ɪ] - 111:9, 114:2 lube [ɪ] - 71:2 lubed [ɪ] - 72:12 lubricant [ɪ] - 72:14, 72:17, 72:21 lubrication [ɪ] - 70:19 lucky [ɪ] - 138:22 lump [ɪ] - 154:8 lunch [ɪ] - 120:18, 120:21, 121:4, 130:16 lunches [ɪ] - 84:21 Lyford [ɪ] - 176:19	M M-c-A-r-t-o-r [ɪ] - 10:2 machine [ɪ] - 38:17, 38:23 MacMurray [ɪ] - 10:17, 11:19, 11:24, 12:2 mad [ɪ] - 82:10 mailed [ɪ] - 80:16 mails [ɪ] - 46:24 maintenance [ɪ] - 69:11, 86:23, 88:1 major [ɪ] - 11:1 man [ɪ] - 150:20 manner [ɪ] - 170:3 manual [ɪ] - 68:1, 68:3, 68:15 manuals [ɪ] - 75:15 March [ɪ] - 158:24 Mark [ɪ] - 17:6, 54:24 mark [ɪ] - 53:20, 54:5, 54:15, 158:17 marked [ɪ] - 160:4 MARKED [ɪ] - 3:10 marked [ɪ] - 3:11, 3:12 married [ɪ] - 9:12, 9:14, 57:4, 59:10, 84:6 Mast [ɪ] - 48:24 material [ɪ] - 38:3, 38:4, 38:5, 38:6, 40:8 math [ɪ] - 52:22 matter [ɪ] - 168:9 matters [ɪ] - 176:6 McArthur [ɪ] - 9:20, 9:24, 10:1, 65:20, 65:21, 66:1, 66:10, 66:22 MCC [ɪ] - 11:21	lowered [ɪ] - 111:9, 114:2 lube [ɪ] - 71:2 lubed [ɪ] - 72:12 lubricant [ɪ] - 72:14, 72:17, 72:21 lubrication [ɪ] - 70:19 lucky [ɪ] - 138:22 lump [ɪ] - 154:8 lunch [ɪ] - 120:18, 120:21, 121:4, 130:16 lunches [ɪ] - 84:21 Lyford [ɪ] - 176:19	lowered [ɪ] - 111:9, 114:2 lube [ɪ] - 71:2 lubed [ɪ] - 72:12 lubricant [ɪ] - 72:14, 72:17, 72:21 lubrication [ɪ] - 70:19 lucky [ɪ] - 138:22 lump [ɪ] - 154:8 lunch [ɪ] - 120:18, 120:21, 121:4, 130:16 lunches [ɪ] - 84:21 Lyford [ɪ] - 176:19	lowered [ɪ] - 111:9, 114:2 lube [ɪ] - 71:2 lubed [ɪ] - 72:12 lubricant [ɪ] - 72:14, 72:17, 72:21 lubrication [ɪ] - 70:19 lucky [ɪ] - 138:22 lump [ɪ] - 154:8 lunch [ɪ] - 120:18, 120:21, 121:4, 130:16 lunches [ɪ] - 84:21 Lyford [ɪ] - 176:19	lowered [ɪ] - 111:9, 114:2 lube [ɪ] - 71:2 lubed [ɪ] - 72:12 lubricant [ɪ] - 72:14, 72:17, 72:21 lubrication [ɪ] - 70:19 lucky [ɪ] - 138:22 lump [ɪ] - 154:8 lunch [ɪ] - 120:18, 120:21, 121:4, 130:16 lunches [ɪ] - 84:21 Lyford [ɪ] - 176:19	lowered [ɪ] - 111:9, 114:2 lube [ɪ] - 71:2 lubed [ɪ] -
---	--	---	---	--	--	--	--	--

32:16, 33:7, 36:4, 44:10, 52:22, 53:1, 54:13, 56:8, 77:23, 78:2, 78:11, 83:3 morning [ə] - 100:19, 101:14, 121:5 Morning [ɪ] - 103:12 most [ɪ] - 153:12 mostly [z] - 87:2, 97:12 mother [u] - 9:20 motion [ɪ] - 25:16, 25:18, 25:22, 28:18, 30:4, 30:22, 70:23, 72:24, 156:13, 172:6, 172:7 motioned [ɪ] - 171:2 motor [ə] - 72:1, 134:20, 135:9 mouse [aɪ] - 19:23, 19:24, 21:4, 21:6, 22:24, 23:2, 23:7, 23:13, 23:14, 24:3, 35:14, 45:4 mouth [u] - 140:19 movable [z] - 39:3, 39:4 move [və] - 10:12, 29:5, 41:7, 72:10, 93:8, 114:16, 115:13, 118:15, 122:17, 128:2, 145:1, 148:2, 148:10, 156:7, 157:18, 168:5, 168:16, 168:20 moved [ɪ] - 169:24 movement [ə] - 156:21, 156:23, 157:21, 168:22, 172:2 moves [ɪ] - 157:24 moving [ɪ] - 34:18, 38:5, 39:14, 52:9, 118:11, 118:14, 118:23, 134:21, 134:24, 136:5, 136:9, 136:11, 136:19, 136:23, 138:11, 139:15, 142:16, 148:8, 157:15, 157:23, 172:8 MR [ə] - 4:4, 4:8, 4:19, 4:20, 4:23, 5:1, 5:3, 5:4, 5:6, 5:8, 5:10, 5:11, 5:12, 6:2, 6:13, 6:17, 7:6, 7:12, 7:20, 8:1, 80:18, 80:22, 82:3, 95:11, 160:2, 160:6, 163:2,	163:3, 171:16, 174:22, 174:24, 175:2, 175:14, 175:15 MS [ə] - 27:14, 31:7, 75:24, 81:24, 95:9, 122:2, 135:18, 136:1, 148:15, 149:5, 158:20, 162:23, 164:4, 174:8, 175:16 multiple [ɪ] - 65:24 muscle [l] - 24:11, 32:12, 147:14 muscles [l] - 34:16, 141:12 must [ɪ] - 103:10	N	name [z] - 4:5, 4:16, 8:2, 8:5, 9:21, 13:17, 16:6, 19:15, 21:13, 21:16, 26:15, 26:16, 42:9, 46:22, 46:24, 47:8, 53:21, 53:22, 53:23, 55:10, 65:17, 65:19 named [z] - 57:20, 176:5 National [ə] - 56:18, 56:19, 56:23, 57:1 natural [ə] - 24:17, 24:19, 30:6, 157:7, 157:13, 159:8 nature [ə] - 12:7, 18:8, 30:23, 37:11 near [ə] - 26:14, 55:13, 85:2, 137:23 nearest [ɪ] - 128:18 neck [ɪ] - 163:16 need [ɪ] - 5:7, 7:21, 7:22, 62:12, 71:11, 90:23, 100:13, 122:6, 122:10, 155:12, 160:2 needed [z] - 19:4, 51:19, 52:6, 52:13, 56:5, 61:14, 62:1, 88:5, 88:17, 96:12, 97:18, 97:19, 113:20, 122:4, 145:8, 145:9, 145:10, 145:13, 162:8 needs [z] - 72:12, 72:13 negatively [ɪ] - 56:9 neighborhood [z] - 8:20, 57:19 nerve [ɪ] - 147:16,	150:7, 150:14, 157:2, 157:4, 158:9, 163:17 nerves [ɪ] - 30:15 neurosis [ɪ] - 152:15 never [v] - 10:15, 11:10, 42:2, 61:17, 73:23, 75:11, 75:13, 111:23, 112:2, 112:5, 121:24, 137:10, 142:9, 143:4, 143:12, 149:7, 150:19 new [ɪ] - 14:9, 20:6, 21:13, 30:24, 51:5, 52:10, 105:1, 106:19, 108:14, 127:17, 127:20, 152:4 next [z] - 33:20, 43:5, 104:10, 115:2, 115:9, 120:22, 122:18, 123:16, 128:22, 134:9, 154:7, 157:10 noises [ɪ] - 173:23 none [ə] - 103:17, 104:4, 116:18, 116:19, 116:21 nonetheless [ɪ] - 137:16 North [z] - 2:9, 176:19 Northwest [ɪ] - 26:14 northwest [ə] - 46:20, 47:5, 47:7 nose [ɪ] - 171:18 nothing [ɪ] - 83:14, 105:9, 115:11, 141:21, 173:4, 175:15, 176:6 notice [ə] - 4:10, 4:19, 4:20, 5:2, 5:15, 29:20, 143:19, 154:18 noticing [ɪ] - 29:19 numb [z] - 153:20, 153:24 number [ə] - 55:17, 60:24, 112:16 numbness [z] - 154:15, 155:23 numerous [ɪ] - 62:9	O	oath [ɪ] - 176:7 object [ɪ] - 75:23 objection [z] - 7:13, 7:15 observed [ɪ] - 109:11 obviously [ə] - 61:21,	62:11, 114:13, 125:5, 128:11, 136:14, 138:21, 146:17, 159:24 occasion [z] - 91:20, 92:21 occasional [ɪ] - 154:16 occasions [z] - 66:21, 67:23 occur [ɪ] - 86:7 occurred [z] - 66:15, 80:7 occurrence [z] - 16:19, 43:6 occurring [ɪ] - 73:7 OF [ə] - 1:1, 1:2, 1:7, 176:1 offer [ə] - 37:18, 121:21, 127:22 offered [ə] - 91:2, 120:19, 121:17, 174:5 offhand [z] - 47:1, 117:16 Office [ɪ] - 2:8 office [z] - 18:19, 78:15 offices [z] - 1:19, 26:13 Offices [ɪ] - 2:1 often [ɪ] - 42:24, 60:6, 60:12, 60:14, 77:18, 84:8, 85:12 oil [z] - 106:17, 108:15 old [ə] - 9:10, 87:9, 117:9, 149:4 Oldenburg [z] - 1:22, 176:3 older [z] - 130:18, 158:10 on-the-job [ɪ] - 67:20 once [z] - 11:21, 36:11, 46:21, 60:14, 60:21, 63:8, 71:5, 75:4, 78:12, 78:21, 87:6, 91:16, 116:20, 116:23, 125:21, 143:9, 145:12, 147:18, 148:9, 148:12, 173:5 one [ə] - 4:24, 6:14, 7:14, 7:17, 10:21, 14:5, 23:10, 26:13, 39:8, 39:13, 41:6, 41:20, 43:7, 44:3, 46:7, 46:20, 47:4, 47:11, 47:14, 47:22, 48:2, 48:4, 50:6, 50:8, 50:22, 63:9, 63:14, 74:20, 76:24,	79:15, 80:24, 83:17, 89:7, 89:11, 89:15, 90:23, 91:6, 92:7, 94:16, 103:21, 112:3, 122:16, 123:13, 123:16, 125:5, 127:15, 127:17, 129:18, 132:2, 132:16, 138:24, 161:13, 169:9, 175:1 one-week [ɪ] - 14:5 ones [ɪ] - 97:19, 124:22, 126:5, 132:22, 153:16, 153:20, 160:7 ongoing [z] - 17:7, 103:7 ongoing-type [ɪ] - 17:7 open [ɪ] - 42:13
--	---	----------	---	---	----------	--	---	--

20:10, 22:15 overused [1] - 24:20 owed [1] - 146:10 own [2] - 45:7, 114:6 owner's [1] - 107:13	part-time [8] - 38:3, 40:11, 40:24, 41:1, 41:21, 42:5 participate [2] - 43:7, 59:4 participated [1] - 11:18 particular [8] - 11:3, 13:3, 13:15, 130:19, 168:17, 168:21 parties [4] - 5:15, 86:2, 176:11, 176:13 parts [4] - 62:10, 95:22, 148:6, 152:20 passing [2] - 61:3, 84:24 past [1] - 22:19, 29:23, 39:21, 44:4, 50:16, 65:24, 162:11 patient [1] - 152:12 Paul [1] - 3:3, 4:7, 4:9, 8:4, 31:7, 107:22, 176:5 pAUL [1] - 1:5 PAUL [8] - 1:7, 1:16, 4:1 pay [8] - 12:22, 17:14, 53:10, 145:23, 146:2 paying [8] - 129:6, 129:7, 129:8 payment [4] - 17:16, 116:9, 118:7, 146:13 payroll [2] - 17:9, 61:18 peck [2] - 23:6, 23:9 pending [4] - 51:4, 158:21, 162:24, 174:8 people [10] - 33:1, 58:14, 66:17, 66:24, 67:4, 82:23, 89:19, 117:9, 172:20, 172:23 perfectly [2] - 24:19, 30:5 perform [3] - 86:21, 87:24, 88:10 performed [1] - 163:22 perhaps [1] - 94:13 period [10] - 16:21, 17:2, 18:14, 20:13, 33:8, 56:24, 64:8, 86:14, 90:6, 120:9 periodically [8] - 52:3, 55:5, 157:16 periods [1] - 65:1 Perry [1] - 4:17 PERRY [1] - 2:8 person [8] - 21:13,	53:19, 176:5 person's [1] - 63:19 personal [8] - 14:8, 67:18, 102:16 personally [8] - 62:24, 63:21, 76:15 personnel [1] - 173:16 phase [8] - 130:1, 130:12, 130:19 phased [1] - 86:8 phone [8] - 55:17, 80:10, 80:23, 81:12, 82:9, 162:5 photo [2] - 159:23, 161:10 photos [1] - 159:22 phrase [8] - 28:1, 70:15, 73:3, 106:2, 141:15 physical [4] - 26:24, 30:11, 31:1, 31:3, 31:14, 149:13, 149:16, 152:1, 152:2, 152:6, 153:5, 155:17, 159:3 pick [8] - 5:12, 35:3, 39:8, 45:16, 93:13 picked [4] - 89:19, 92:6, 92:12, 92:14 picking [1] - 99:15 pickup [1] - 102:8 picture [8] - 13:12, 22:6, 22:17 pieces [8] - 21:18, 125:24, 126:2, 126:19, 126:21 pile [8] - 99:24, 115:5, 115:9, 115:13, 122:7, 122:16, 122:18, 127:20 pinch [8] - 73:8, 77:7, 154:22 pinched [2] - 77:9, 77:11 pine [10] - 103:19, 110:16, 110:23, 112:16, 116:19, 116:24, 122:8, 122:15, 166:4, 166:19 pines [1] - 124:22 pinky [2] - 32:23, 33:11, 153:10, 153:17, 153:20, 153:24, 154:15, 155:23, 156:2, 156:7, 157:23, 158:1 pivoting [1] - 171:22 place [7] - 8:16, 56:3, 78:12, 90:5, 151:12, 163:12, 166:19	placed [1] - 89:22 Plaintiff [1] - 1:6 plaintiff [1] - 2:3 plan [8] - 101:4, 107:1, 107:22, 115:19, 116:15, 117:12, 123:6, 137:22 planned [8] - 43:10, 50:4, 153:3 planning [2] - 43:6, 102:19 plans [1] - 61:4 plastic [8] - 29:4, 29:8, 29:9 plate [2] - 29:7, 29:9 play [1] - 154:20 played [2] - 175:11, 175:13 playing [2] - 105:8, 120:20 pleasantries [2] - 85:5, 105:9 point [8] - 7:13, 50:23, 54:11, 54:16, 64:7, 67:10, 72:24, 101:16, 102:14, 103:16, 104:4, 104:14, 104:22, 107:23, 108:4, 109:17, 110:2, 110:3, 112:13, 116:4, 116:9, 116:16, 118:3, 119:1, 119:11, 120:14, 121:16, 128:11, 129:6, 130:3, 130:9, 131:20, 133:1, 135:6, 136:20, 136:23, 137:5, 137:21, 138:10, 138:12, 138:23, 139:12, 140:16, 141:5, 141:17, 143:4, 143:13, 143:19, 145:7, 145:17, 147:9, 148:5, 151:3, 166:18, 167:10, 167:17, 168:24, 169:5, 172:13, 173:11, 173:14, 174:16 pointed [8] - 25:9, 28:9, 32:22, 136:6, 136:7, 137:11, 139:14, 139:15, 169:16 pointer [1] - 33:4 pointing [4] - 169:8,	169:9, 169:20, 170:1 political [1] - 11:2 pool [4] - 107:9, 107:18, 108:8, 110:8 pop [1] - 94:1, 94:2, 120:19, 120:20, 132:17, 132:18, 146:23 Popovich [2] - 1:19, 2:1 portion [2] - 71:20, 118:1 position [10] - 17:21, 17:22, 18:18, 19:15, 19:17, 27:22, 39:17, 134:19, 136:4, 171:10 positions [9] - 46:2, 48:5, 48:13 possibility [8] - 54:22, 101:23, 101:24 possible [8] - 47:16, 67:5, 92:10 possibly [2] - 44:19, 166:10 post [1] - 144:6 potential [2] - 45:17, 66:23 potentially [8] - 51:20, 77:6, 143:21 pounds [2] - 39:12, 39:13 pour [2] - 39:7, 41:6 pouring [1] - 38:18 power [4] - 69:3, 69:6, 71:3, 71:20 pre [8] - 161:1, 161:2, 161:8 preceded [1] - 56:8 preceding [1] - 60:12 precipitated [1] - 81:1 premarked [1] - 160:6 premises [1] - 144:7 preparations [2] - 109:11, 109:13 presence [2] - 98:4, 98:13 present [7] - 64:16, 65:6, 67:1, 95:6, 95:13, 109:23, 139:1 presentable [1] - 93:5 presentation [1] - 173:16 presented [1] - 63:23 press [8] - 13:15, 13:17, 18:13, 18:15, 18:17 presses [4] - 12:10, 13:3, 18:9, 18:12 pressure [8] - 73:7,
--	---	---	---	---

76:17, 76:24, 77:1, 77:5 presume [1] - 114:18 prefly [12] - 12:17, 26:6, 111:2, 111:7, 119:4, 119:5, 124:20, 124:21, 144:9, 155:19, 157:17, 167:14 prevent [1] - 29:12 prevented [1] - 32:15 primary [1] - 67:14 print [1] - 20:21 printed [1] - 22:6 Printing [12] - 15:11, 15:12, 15:15, 16:6, 16:9, 16:18, 16:22, 16:23, 17:19, 20:15, 51:2, 55:11 printing [1] - 12:10, 13:3, 13:15, 13:17, 14:17, 16:8, 18:9, 18:12, 18:13, 18:15, 18:17 private [1] - 10:19 probed [1] - 55:4 problem [1] - 23:14, 24:2, 26:19, 32:2, 32:5, 158:2, 166:24, 167:2 problematic [12] - 24:5, 25:2 problems [1] - 24:21, 35:10, 150:1 Procedure [12] - 4:12, 5:16 procedure [12] - 153:7, 161:1 proceed [12] - 7:18, 121:18 process [1] - 37:2, 37:6, 37:10, 68:17, 105:19, 111:5, 125:17, 134:14, 166:21 Products [1] - 49:14 profanity [1] - 82:14 prognosis [1] - 31:16 program [1] - 14:9, 14:17, 20:6, 20:7, 22:23 programs [1] - 14:6 project [12] - 104:24, 130:19 projections [1] - 56:10 projects [1] - 66:2 promise [1] - 43:23, 44:1, 145:23, 146:12 promotions [1] - 21:23	pronation [1] - 28:1 propels [1] - 72:1 properties [1] - 8:21 property [19] - 8:16, 9:2, 9:3, 9:17, 61:23, 62:17, 62:19, 63:5, 63:19, 82:18, 88:20, 91:1, 91:3, 93:9, 95:1, 95:14, 101:9, 107:11, 107:13 provide [1] - 54:2 pull [1] - 25:19, 26:4, 33:6, 114:1, 123:12, 157:11 pulled [1] - 75:8, 103:10, 111:12, 157:9 pulling [1] - 27:16, 47:13, 62:5 purpose [1] - 67:14, 117:6, 170:10, 174:12 pursuant [1] - 4:10, 5:14, 50:17, 144:16, 176:4 pursue [1] - 49:24 put [12] - 31:3, 38:13, 38:14, 39:1, 39:4, 39:9, 62:21, 88:17, 89:20, 90:19, 102:11, 115:8, 123:15, 123:16, 127:16, 141:11, 145:9, 167:9, 168:6, 173:2, 173:3 putting [1] - 28:21, 29:12, 85:18, 87:14, 97:4, 106:17	ramping [12] - 36:22, 140:1 ran [1] - 18:13, 27:12, 30:4, 85:16 range [1] - 25:16, 25:18, 25:21, 25:23, 28:17, 30:4, 30:21, 156:13 rant [1] - 83:6 ranting [1] - 83:5 rapidly [1] - 65:7 rare [1] - 74:21 rate [12] - 49:20, 50:11 ray [1] - 162:19 Raymond [1] - 8:6 rays [1] - 147:7, 147:24 reach [1] - 136:13, 147:9 reaching [1] - 28:13 read [1] - 68:3, 68:15, 75:15 reading [12] - 67:24, 176:9 ready [1] - 54:7, 109:13 real [1] - 24:23, 25:1, 25:2, 79:17, 89:9, 156:20 realize [1] - 154:11 really [1] - 29:24, 81:7, 85:1, 105:10, 113:7, 113:9, 117:20, 148:6 reason [1] - 6:20, 11:3, 11:5, 61:5, 85:23, 166:14 recalled [1] - 98:13 receipts [1] - 52:20 received [1] - 13:7, 13:11, 29:22, 37:18, 51:1, 76:4 receiving [12] - 82:5, 146:13 recent [12] - 61:11, 84:9 recently [12] - 60:8, 91:4 recess [1] - 80:21 recognize [1] - 37:13 recollection [1] - 142:14 recommended [1] - 154:24 record [12] - 4:6, 4:8, 6:11, 8:3, 17:18, 25:8, 32:22, 49:7, 123:23, 149:17, 171:16, 176:8 records [1] - 29:21, 147:1, 149:6, 151:8,	152:18, 162:17 recreational [1] - 59:3 recreationally [12] - 58:20, 58:22 reduced [1] - 176:7 refer [1] - 33:1 referenced [1] - 37:17 referencing [1] - 143:16 referring [1] - 37:20, 146:9, 160:9, 175:6 reflect [12] - 4:8, 171:16 refresh [1] - 47:18 regardless [1] - 142:14, 143:8 register [1] - 27:7 rejected [12] - 37:7, 37:8 rejection [1] - 37:11 related [12] - 157:5, 176:11 relation [1] - 8:18, 11:14, 21:5, 44:8, 63:11, 88:11 relationship [12] - 58:18, 60:1 relative [1] - 176:12 relatively [1] - 41:16 release [12] - 157:2, 157:5 released [12] - 138:3, 139:8 remains [1] - 101:1 remember [12] - 11:21, 14:23, 21:13, 41:14, 41:23, 43:2, 46:23, 48:16, 49:2, 50:6, 62:5, 62:6, 63:8, 63:20, 97:3, 97:16, 99:4, 101:12, 101:14, 103:4, 108:13, 130:21, 143:3, 146:9, 147:24, 150:12, 151:16, 163:22 remind [1] - 31:8 remove [1] - 75:17 removed [1] - 88:20, 96:16, 99:6, 152:14 remuneration [1] - 93:22 renew [1] - 50:20 Renew [1] - 50:21 renewed [1] - 51:10 repair [12] - 86:22, 88:1 repaired [1] - 87:4 repeat [1] - 82:6 replicate [1] - 22:10 report [12] - 17:15,	17:18 reported [1] - 1:22 REPORTER [1] - 176:1 Reporter [1] - 1:23, 176:3, 176:19 Reporter..... [1] - 3:24 request [12] - 81:13, 149:6 requires [12] - 22:24, 75:23 reside [1] - 8:7, 9:16, 10:3 respect [1] - 31:11, 34:18, 50:22, 96:24, 143:18, 154:14, 155:17, 156:1, 157:21 response [1] - 83:21, 140:21, 149:7, 172:19, 173:10 responsible [12] - 82:17, 82:22 rest [1] - 35:22, 35:24, 36:2, 56:23, 123:13, 133:11 restart [12] - 111:10, 114:10 restarted [1] - 111:11 resting [12] - 35:21, 35:22 restoration [12] - 87:3, 87:9 restoring [1] - 59:7 restroom [1] - 7:21 result [12] - 49:12, 159:15 resulted [1] - 120:15 reversed [1] - 75:10 revisit [1] - 54:22 rid [1] - 90:14 rides [1] - 71:10 ring [1] - 33:1, 33:11, 153:10, 153:17, 153:21, 153:24, 154:15, 155:23, 156:9, 156:10, 158:1 risk [12] - 67:6, 73:11 risks [1] - 63:22, 66:23, 67:3, 69:16, 69:17, 69:22, 76:21 Riverside [1] - 2:5 Road [1] - 176:19 rocket [1] - 14:1 Rockford [12] - 2:5, 176:20 role [1] - 18:18, 18:20, 175:11, 175:13 roll [12] - 38:15, 128:3 RONALD [1] - 2:4
--	--	--	---	---

roof [r] - 62:8 room [r] - 6:14, 141:9, 142:23, 145:2, 145:10, 147:2, 147:21, 148:1, 162:20, 172:15, 172:17, 172:21, 172:24, 173:7, 173:15, 173:16, 174:16 rope [r] - 111:9, 112:22, 112:24, 114:12, 114:18 roughly [z] - 18:14, 119:16 rpm's [r] - 136:16, 137:2, 137:11, 139:24, 142:16 rule [r] - 158:10 Rules [z] - 4:12, 4:13 rules [r] - 4:15 run [s] - 12:10, 61:9, 113:18, 130:24, 131:3 running [r] - 12:23, 16:9, 18:9, 18:12, 18:15, 33:23, 64:10, 82:21, 83:13, 114:12 runs [z] - 41:24, 42:8, 161:11	67:17, 67:24, 68:4, 68:12, 68:14, 69:1, 69:10, 69:18, 69:24, 70:7, 71:7, 71:20, 74:17, 75:9, 76:3, 76:5, 76:13, 77:9, 77:20, 82:21, 83:14, 83:18, 91:9, 91:12, 91:23, 92:2, 93:24, 94:23, 95:6, 95:7, 95:14, 95:19, 95:20, 96:18, 97:5, 98:3, 98:9, 98:12, 99:11, 100:13, 101:6, 105:1, 106:18, 108:14, 109:5, 109:13, 109:17, 110:13, 110:21, 110:22, 111:8, 112:22, 113:1, 116:23, 117:4, 121:5, 121:14, 131:1, 131:16, 133:16, 134:1, 134:6, 134:11, 135:9, 135:10, 135:16, 136:4, 136:16, 136:22, 137:23, 138:3, 138:11, 138:15, 139:12, 139:24, 140:4, 140:10, 141:22, 142:16, 144:17, 145:18, 150:22, 159:23, 160:13, 164:10, 165:13, 165:15, 165:19, 166:1, 166:6, 167:6, 167:22, 168:2, 168:7, 168:8, 168:12, 168:15, 168:19, 168:24, 169:1, 169:3, 169:8, 169:9, 169:16, 169:19, 169:20, 169:22, 170:9, 170:23, 171:6, 171:24, 172:4, 175:12 saws [z] - 64:12, 65:3 scar [s] - 152:14, 154:8, 154:20, 160:21 scared [r] - 119:5 scars [r] - 161:16 scary [r] - 112:9 scene [r] - 141:3 scheduled [r] - 41:22 school [r] - 10:6, 11:12, 11:14, 11:15,	11:20, 58:3, 58:4, 58:5, 58:9, 58:10, 58:12, 58:13, 58:16, 60:5, 60:16, 68:7, 87:8 science [r] - 11:2 Scott [r] - 26:17 scrap [z] - 90:5, 90:8 scratch [s] - 21:18, 21:22, 22:2, 22:20 scratch-off [r] - 21:18 scream [r] - 143:22 screamed [z] - 135:14, 140:18 screaming [r] - 144:13 screams [z] - 144:19, 144:22 screen [r] - 22:18 Screw [r] - 37:22, 37:23, 40:8, 40:14, 49:14, 51:1, 51:9 screwed [r] - 174:13 screws [r] - 38:12, 38:13, 38:18, 38:19, 38:23, 39:6, 41:6 second [r] - 47:11, 73:19, 75:23, 160:23, 161:1, 162:17, 173:9 seconds [z] - 168:9, 168:10, 168:14 sections [r] - 126:14 see [s] - 9:2, 21:23, 22:20, 31:21, 31:22, 44:12, 49:15, 54:17, 58:19, 60:6, 60:12, 60:21, 61:4, 61:6, 73:10, 77:19, 77:21, 85:7, 85:12, 86:4, 100:16, 101:19, 102:20, 111:19, 119:22, 126:8, 136:22, 137:12, 138:10, 139:1, 139:18, 141:22, 141:24, 148:2, 148:8, 150:12, 166:24, 167:2, 167:17, 167:19, 168:16, 168:20, 168:21 seeing [z] - 77:15, 84:24, 95:17, 150:20, 151:14 seem [r] - 107:13 sees [r] - 115:7 Sek [z] - 148:24, 149:1, 149:14 self [z] - 17:20, 45:6 self-employment [r] -	17:20 seminar [r] - 14:5 seminar-type [r] - 14:5 seminars [r] - 14:7 send [z] - 83:19, 149:15 sending [z] - 80:3, 80:6 sensation [z] - 34:7, 34:11, 154:6 sense [z] - 50:21, 153:9, 153:19 sent [z] - 48:21, 149:6 separate [r] - 116:4 series [r] - 22:24 service [z] - 56:19, 56:22 session [r] - 5:20 set [s] - 61:3, 126:15, 126:16, 166:21 sets [r] - 28:21 setting [r] - 94:20 several [z] - 13:24, 45:20, 149:6 severely [r] - 37:13 severing [r] - 99:21 sew [r] - 141:11 shakes [r] - 158:5 shaking [r] - 46:15 share [z] - 79:8, 79:21, 146:12 Sharp [s] - 16:6, 16:9, 16:18, 16:22, 17:19 sharp [r] - 16:7 shed [s] - 88:13, 88:20, 89:5, 90:24, 91:19 sheds [r] - 89:7 shift [r] - 57:8 shock [z] - 141:2, 145:3 shoes [r] - 111:18 shoot [r] - 162:12 shooting [r] - 154:17 short [s] - 12:17, 12:19, 12:20, 80:21 Shorthand [s] - 1:23, 3:24, 176:3, 176:19 SHORTHAND [r] - 176:1 Shoulder [r] - 150:10 shoulder [s] - 6:8, 32:19, 156:21, 156:22 shovel [z] - 87:6, 87:20 show [s] - 103:12, 158:17, 161:19, 171:11	showed [r] - 27:9, 38:20, 103:1, 105:1, 122:11, 122:12, 162:15 showing [r] - 169:7 shows [r] - 162:22 shrugs [r] - 6:8 sick [r] - 83:4 side [r] - 16:4, 16:5, 25:6, 33:20, 46:20, 47:5, 69:12, 77:2, 84:14, 103:9, 132:9, 134:22, 164:18, 164:19, 164:20 signage [r] - 19:3 signature [z] - 49:5, 49:8, 175:17 signing [z] - 48:16, 176:9 similar [r] - 46:4 simple [z] - 72:2, 105:9 simply [r] - 172:5 sister [s] - 103:1, 103:2, 103:3, 110:8 sit [s] - 17:1, 36:12, 46:11, 47:23, 63:16, 142:24, 143:8, 174:11, 175:9 sitting [z] - 64:9, 67:22, 90:16 situation [r] - 43:4, 45:7, 66:7, 74:22, 76:15, 140:3, 140:8, 143:1, 145:18, 145:19, 145:20 situations [r] - 66:4 six [z] - 56:8, 77:23, 78:2 size [z] - 22:11, 89:15, 112:2 skilled [z] - 67:12, 112:1 skin [r] - 147:14 sky [r] - 170:1 slow [z] - 156:14, 170:6 SM [z] - 13:18, 13:20 small [z] - 38:23, 92:16 smaller [z] - 39:7, 115:15, 119:3, 122:21, 123:1, 123:14, 124:12, 125:24, 126:2, 126:10, 126:14, 126:19 smart [r] - 32:13 snowed [r] - 62:6 social [z] - 59:3, 85:7,
safe [r] - 129:19 safety [z] - 128:7, 128:13, 169:12 safety-oriented [r] - 128:7 sagerman [r] - 151:10 Sagerman [r] - 26:11, 26:12, 30:2, 31:2, 151:11, 151:15, 151:22, 152:13, 153:8, 158:6, 164:1 Sagerman's [r] - 26:16 salaries [r] - 49:13 sanding [r] - 62:9 sat [z] - 46:17, 90:7, 120:19 save [z] - 115:24, 122:22, 130:23 saw [r] - 31:2, 32:11, 46:15, 62:12, 62:14, 62:22, 63:7, 63:18, 63:23, 64:4, 64:8, 64:19, 65:2, 65:5, 65:13, 65:22, 66:2, 66:8, 66:19, 66:24, 67:12, 67:15,				
S				

117:9 socializing [i] - 117:21 socially [3] - 58:8, 58:19, 58:22 software [3] - 14:12, 14:16, 20:1 sole [i] - 19:11 sometime [3] - 15:23, 17:3, 86:13, 88:23, 150:3 somewhere [0] - 14:23, 40:9, 57:3, 86:15, 115:24, 119:17, 128:21, 148:20, 149:8, 151:6 son [0] - 58:2, 87:3, 88:8, 91:22, 96:9, 144:13 soon [3] - 29:18, 41:16, 145:1 sooner [i] - 5:6 sore [3] - 156:24, 157:15, 157:17 sorry [7] - 5:4, 30:3, 72:18, 107:22, 140:4, 160:3, 163:1 sort [2] - 13:8, 13:21, 29:6, 38:24, 40:15, 76:17, 111:22, 112:23, 115:2, 118:8, 173:22, 173:23 sorts [i] - 28:22 sounds [i] - 57:14 sources [2] - 55:20, 56:2 space [i] - 135:3 specific [4] - 10:21, 14:14, 69:9, 74:7 specifically [4] - 108:5, 141:7, 143:12, 174:1 spectator [i] - 113:9 speed [2] - 135:9, 167:24 spell [4] - 4:5, 8:11, 10:1, 15:14 spikes [2] - 111:18, 111:19 spin [2] - 72:19, 128:6 splint [i] - 29:3 split [i] - 168:14 spot [3] - 40:20, 127:18, 157:11 Springfield [i] - 10:19 stable [i] - 40:13 staff [2] - 172:17, 173:7 stalled [i] - 114:2	stand [7] - 37:6, 88:12, 122:12, 127:15, 128:5, 129:23, 171:11 Stand [i] - 128:1 standing [3] - 74:21, 92:18, 110:18, 112:20, 115:10, 118:19 standpoint [i] - 128:13 start [25] - 6:22, 6:23, 7:7, 15:18, 37:23, 37:24, 39:18, 40:7, 41:10, 51:22, 113:20, 113:22, 113:24, 114:3, 114:6, 121:14, 124:16, 127:18, 135:10, 151:14, 156:15, 156:16, 156:20, 167:24, 168:5 started [28] - 15:24, 16:10, 26:24, 29:19, 29:23, 68:11, 68:14, 100:8, 104:12, 104:23, 105:13, 108:4, 110:2, 110:13, 110:14, 115:6, 115:22, 118:3, 120:22, 121:7, 126:5, 131:2, 134:11, 145:7, 150:18, 167:8, 168:23, 172:10 starting [2] - 15:3, 32:18 starts [2] - 36:22, 167:15 state [2] - 4:5, 8:2 STATE [i] - 1:1 State [3] - 1:23, 4:14, 176:3 statement [i] - 139:17 stay [2] - 127:19, 127:24 stayed [i] - 173:3 staying [2] - 117:7, 117:12 steel [3] - 38:7, 89:7, 89:8 step [i] - 111:21 stick [i] - 55:23 sticking [2] - 93:2, 97:4 sticks [3] - 92:6, 98:24, 99:15, 115:4, 115:7, 115:9, 132:5 still [28] - 10:3, 18:4, 25:16, 47:10, 68:21,	78:5, 86:10, 89:1, 109:20, 119:12, 135:5, 137:5, 137:16, 148:2, 148:5, 149:3, 149:8, 150:1, 153:5, 155:15, 156:12, 157:18, 157:24, 164:6, 164:8, 165:6, 167:8, 172:9 stint [4] - 43:10, 44:19, 50:1, 50:23 stints [7] - 40:21, 41:21, 43:7, 43:12, 43:19, 44:4, 53:11 stitch [i] - 147:22 stitches [3] - 147:23, 148:21, 149:10 stood [i] - 107:8 stop [3] - 7:1, 7:16, 18:17, 73:1, 80:3, 151:8 stopped [i] - 78:6, 78:8, 78:13, 86:16, 121:4, 129:8, 134:6, 167:11, 167:13, 167:14, 172:8 stops [3] - 70:23, 135:22 store [i] - 85:15 storm [i] - 62:8 story [3] - 82:11, 113:8 straight [3] - 26:1, 28:3, 169:16 strain [2] - 154:11, 154:18 strap [i] - 112:18 straps [i] - 112:5 straw [i] - 123:23 Street [4] - 120, 2:2, 2:9, 149:2 stretch [i] - 133:11 strike [3] - 14:20, 69:16, 78:19, 94:5, 101:1, 101:12, 137:21, 148:19 stringer [i] - 38:21 strong [2] - 25:3, 132:24 struck [i] - 140:13 stuck [i] - 158:12 study [4] - 30:14, 150:4, 150:7, 150:13 stuff [i] - 20:17, 21:23, 30:5, 36:12, 49:2, 62:3, 82:5, 90:8, 115:15, 116:3, 121:23, 123:14, 154:9, 161:14 stump [3] - 92:9,	92:24, 93:2, 93:5, 97:24, 99:16, 99:18, 111:20 stumps [i] - 112:20 stunned [i] - 141:2 subject [2] - 57:9, 83:8 subjects [i] - 80:9 substance [i] - 78:18 suburb [i] - 12:13 suburbs [4] - 12:14, 14:4, 47:6, 47:7 successful [i] - 99:8 sudden [4] - 138:12, 156:17, 170:7, 170:8 sued [i] - 82:16 suffer [i] - 163:14 suffered [2] - 50:19, 163:16 suggest [i] - 144:16 suitable [i] - 123:3 summary [i] - 160:3 supervision [i] - 176:8 supervisor [2] - 40:19, 42:4 supination [i] - 28:1 support [i] - 112:19 supposition [i] - 79:23 Supreme [i] - 4:13 surgeries [2] - 152:8, 153:1 surgery [3] - 152:20, 157:1, 159:3, 160:23, 161:2, 161:5, 161:20, 162:18, 164:5 surgically [i] - 151:1 surprised [i] - 112:15 surrounding [i] - 75:17 sworn [2] - 4:2, 176:6 sympathy [i] - 86:17 symptom [i] - 34:6 symptoms [3] - 25:4, 29:19, 36:20, 149:20, 155:1 symptomwise [i] - 32:14 syndrome [i] - 29:15	tandem [i] - 65:13 tape [i] - 109:8 task [4] - 110:21, 126:3, 128:12, 141:1 taught [3] - 69:1, 69:11, 70:13, 75:15, 75:20, 75:22, 76:21, 77:1 teach [i] - 14:9 teacher [i] - 14:8 tear [3] - 24:11, 147:13, 157:9 technically [2] - 73:22, 74:5 telephone [i] - 80:15 temp [2] - 40:14, 40:18 temporary [3] - 40:21, 43:7, 43:19, 44:4, 44:19, 49:21, 50:1, 52:3 Ten [i] - 163:13 ten [i] - 36:13, 36:17, 36:19, 50:14, 62:7, 84:13, 85:11, 87:17, 87:23, 145:5, 164:6 tendency [i] - 6:21 tendered [i] - 49:7 tending [i] - 91:21 tendinitis [i] - 154:3 tendons [i] - 29:17 tennis [3] - 24:8, 24:9, 26:19, 31:12, 159:6 terminal [i] - 46:11 terms [3] - 17:2, 31:16, 52:19, 74:23, 76:3, 99:20, 107:16, 108:2, 135:3, 137:2, 146:8, 154:6, 155:20, 156:21, 157:22 test [3] - 7:21, 30:18, 30:20 testified [i] - 4:2 testify [i] - 176:6 testimony [3] - 35:19, 36:14, 134:18, 139:5, 176:8 tests [3] - 27:12, 30:4, 30:17 THE [2] - 1:2, 6:1, 6:12, 6:16, 7:5, 7:11, 7:19, 7:24, 76:2, 158:22, 163:1 therapy [i] - 26:24, 30:11, 31:1, 31:3, 31:14, 149:13, 149:16, 152:1, 152:3, 152:6, 152:7, 153:5, 155:17, 159:3
				T
				Tahoe [i] - 102:9 Talerico [7] - 150:10, 150:12, 150:16, 151:4, 151:19, 151:20, 151:24 tall [3] - 103:24, 108:22, 109:1

thereafter [ɪ] - 80:16 THERESA [ɪ] - 2:1 thereupon [ɪ] - 176:7 they've [ɪ] - 86:8 thicker [ɪ] - 124:4 think's [ɪ] - 163:2 thinking [ɪ] - 134:10, 135:13, 140:20 thinks [ɪ] - 174:2 thinner [ɪ] - 124:6 third [ɪ] - 119:14, 173:9 thirds [ɪ] - 119:16, 119:17, 120:3 Thomas [θ] - 1:19, 2:1, 21:14, 21:15, 22:1, 37:21 thoughts [θ] - 79:8, 121:17 three [θ] - 10:21, 11:15, 21:8, 23:3, 23:16, 31:24, 32:16, 33:7, 36:4, 53:11, 54:12, 60:23, 78:11, 128:20, 132:12, 132:20, 149:12 threw [θ] - 90:7 throughout [θ] - 14:4 thumb [θ] - 33:5, 33:6, 33:11, 33:23, 34:19, 34:22, 153:11, 153:17, 158:2 tidied [ɪ] - 92:24 tie [ɪ] - 145:9 tied [ɪ] - 93:11, 112:24, 114:22 tight [ɪ] - 128:4, 157:3 tilted [ɪ] - 28:12 timewise [ɪ] - 145:3 tingles [ɪ] - 34:7, 34:11 tingling [ɪ] - 34:20, 35:6, 35:24, 156:20 tip [ɪ] - 140:9 tired [ɪ] - 83:1, 120:17, 120:18, 130:17 tissue [ɪ] - 152:14, 154:8, 154:20 today [ɪ] - 4:18, 14:24, 15:3, 17:1, 29:2, 63:16, 142:24, 143:8, 150:1, 154:19, 160:16, 164:8, 174:11, 175:9 today's [ɪ] - 173:22 together [θ] - 58:21, 58:23, 59:6, 61:16, 61:19, 82:9, 84:21, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8, 167:15, 169:21 towards [tɔːrwərdz] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8 towel [tuːl] - 145:8 town [taʊn] - 26:15, 55:15 trailer [tɹeɪlɪər] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12 train [treɪn] - 91:8 trained [tɹeɪnd] - 14:11, 20:7, 67:11 training [tɹeɪnɪŋ] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4 Tramadol [tɹəˈmædɒl] - 155:13 transcribed [tɹənskɪbɪd] - 1:22 transition [tɹənzɪʃən] - 15:20 translate [tɹənzleɪt] - 6:10 translates [tɹənzleɪts] - 123:22 transposition [tɹənzˈpəʊzɪʃən] - 163:17 treated [tɹiːtɪd] - 30:6, 31:13 treatment [tɹiːtmənt] - 26:22, 154:24 treatments [tɹiːtmənts] - 159:16 tree [triː] - 73:8, 92:16, 92:17, 92:22, 93:18, 141:12 ton [ɪ] - 152:14 took [tʊk] - 10:15, 10:20, 11:21, 12:12, 18:20, 88:7, 88:13, 90:5, 90:8, 91:19, 94:16, 97:6, 118:12, 120:16, 123:12, 126:20, 145:4, 149:10, 163:12, 166:18, 167:11, 168:7, 173:2 tool [tuːl] - 69:6, 71:3 tools [tuːls] - 69:3 top [tɒp] - 33:19, 76:12, 119:8 tore [tɔːr] - 157:8 torn [tɔːn] - 29:17 totally [tɒtəl] - 97:18 touching [tʌtʃɪŋ] - 30:22, 98:22 toward [tɔːrwəd] - 27:16, 74:24, 75:6, 75:12, 134:7, 136:3, 137:12, 137:24, 140:1, 140:5, 141:24, 142:8,<

unlike [i] - 134:3 unlikely [i] - 45:8 up [133] - 5:12, 22:5, 22:12, 22:17, 25:1, 25:5, 27:19, 27:23, 27:24, 28:6, 28:8, 28:9, 29:11, 29:13, 29:14, 32:19, 33:16, 35:3, 36:22, 39:8, 39:9, 45:16, 47:20, 50:2, 51:3, 57:19, 70:14, 70:18, 72:22, 77:16, 78:11, 85:11, 89:20, 90:22, 92:6, 92:9, 92:12, 92:14, 93:1, 93:2, 93:10, 93:13, 96:6, 97:4, 99:15, 100:5, 103:1, 103:10, 104:4, 107:22, 107:24, 109:18, 111:4, 111:12, 111:14, 112:12, 113:1, 113:12, 113:17, 113:22, 114:1, 114:6, 114:12, 114:23, 115:20, 119:4, 119:7, 120:10, 121:16, 123:2, 123:13, 123:16, 125:19, 126:10, 126:15, 126:16, 127:12, 127:15, 128:15, 129:3, 131:16, 131:21, 132:2, 134:12, 135:9, 135:10, 135:12, 136:16, 136:18, 137:2, 137:7, 137:12, 138:11, 138:15, 138:16, 138:17, 138:19, 140:1, 141:11, 142:15, 142:16, 145:15, 145:17, 147:22, 147:23, 152:4, 161:11, 162:6, 162:9, 164:9, 165:2, 166:21, 167:11, 167:24, 169:1, 169:8, 169:9, 169:16, 169:23, 169:24, 171:4, 171:5, 171:6, 171:7, 171:11, 172:7, 172:10, 173:22, 174:13, 175:1 upright [i] - 123:19 upset [8] - 79:12, 79:17, 81:4, 82:4,	82:12, 82:13, 82:14, 82:15 upward [2] - 28:13, 139:15 usage [2] - 62:12, 69:10 user [2] - 70:1, 75:12 uses [i] - 27:4 utilize [i] - 36:16	V vacation [4] - 105:4, 105:5, 113:8, 117:11 vantage [5] - 50:23, 64:7, 107:23, 137:21, 141:17 various [2] - 14:4, 55:1 vehicle [i] - 102:16 Vernon [2] - 26:13, 151:13 version [2] - 20:7, 142:2 versus [i] - 106:12 view [2] - 65:2, 81:4 visit [2] - 85:24, 86:12 visits [2] - 30:2, 30:3 vividly [i] - 63:8 vocal [i] - 145:16 vocational [3] - 12:5, 13:2, 13:20 volunteer [2] - 145:19, 146:15 volunteering [i] - 146:18 vs [i] - 1:7	wash [i] - 38:16 watch [i] - 125:10 watching [8] - 110:18, 112:8, 112:10, 113:6, 121:19, 137:9 ways [3] - 68:23, 75:16, 106:10 weakened [4] - 153:22, 154:16, 155:21, 157:22 wear [i] - 29:3 wearing [i] - 29:1 wedding [i] - 59:12 week [8] - 14:5, 37:24, 41:13, 41:22, 43:5, 50:10, 50:22, 53:14, 117:15 weekend [2] - 117:17, 117:18 weeks [i] - 13:1, 41:23, 42:13, 50:4, 50:8, 50:9, 50:13, 56:22, 63:13, 78:10, 85:16, 88:22, 91:18 weight [3] - 39:11, 77:7, 154:10 West [5] - 1:19, 2:2, 8:19, 9:2, 57:12 whatnot [2] - 46:15, 110:6 whatsoever [i] - 21:1 whole [i] - 6:24, 7:2, 7:3, 7:9, 78:5, 79:13, 82:11, 82:12, 83:2, 89:20, 92:17, 95:24, 96:1, 119:1, 119:2, 148:11, 167:12 width [3] - 132:14, 132:17, 132:18 wife [6] - 79:14, 79:19, 80:1, 80:8, 81:4, 82:11 winter [i] - 90:12 wit [i] - 176:5 witness [3] - 175:18, 176:8, 176:9 WITNESS [i] - 3:2, 6:1, 6:12, 6:16, 7:5, 7:11, 7:19, 7:24, 76:2, 158:22, 163:1 witnesses [i] - 6:20 won [i] - 21:23 wood [15] - 70:6, 88:6, 88:8, 100:15, 100:21, 100:24, 101:1, 101:8, 102:11, 102:13, 102:20, 116:16, 117:2, 117:20 word [8] - 5:19, 7:12, 7:15, 24:18, 27:3,	27:5, 140:23, 141:9 words [5] - 6:7, 27:4, 28:2, 141:7, 152:16 worker [i] - 53:2 works [i] - 72:3 worried [i] - 98:19 worst [i] - 153:16 wound [i] - 147:5 wrapped [i] - 111:22 wrist [8] - 27:19, 28:9, 28:12, 28:23, 29:1, 29:5, 29:10, 29:11, 29:12 writing [i] - 176:8 written [i] - 48:21
		X X-ray [i] - 162:19 X-rays [2] - 147:7, 147:24	Y yard [4] - 88:16, 95:2, 109:20, 165:16 year [19] - 10:18, 12:21, 16:11, 37:4, 37:5, 39:23, 52:21, 56:22, 60:14, 60:22, 60:23, 77:15, 78:5, 78:7, 78:13, 85:14, 90:11, 90:14, 152:11 years [24] - 10:15, 10:20, 11:15, 13:14, 15:19, 54:24, 60:4, 60:11, 60:20, 61:11, 62:4, 62:7, 77:16, 81:20, 84:9, 84:14, 85:11, 86:8, 87:2, 87:14, 87:23, 149:4, 163:13, 164:6 yelling [2] - 144:12, 150:18 younger [2] - 68:5, 74:17 yourself [3] - 68:15, 116:12, 146:15	Z zone [4] - 73:24, 74:3, 74:9, 77:5