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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 McGUIRE and BILL McGUIRE,) 1-24-13
11 and CAROLINE McGUIRE and)
12 BILL McGUIRE, Individually,)
13 Defendants.)

14
15
16 Discovery deposition of PAUL R. DULBERG,
17 taken on behalf of the defendants, Caroline McGuire
18 and Bill McGuire, in the above-entitled action in the
19 offices of Attorney Thomas J. Popovich, 3416 West Elm
20 Street, in the City of McHenry, Illinois, on the 24th
21 day of January, 2013, commencing at 12:17 p.m., as
22 reported and transcribed by Angela D. Oldenburg,
23 Certified Shorthand Reporter in and for the State of
24 Illinois.

1 **APPEARANCES:** **ATTORNEY THERESA M. FREEMAN**
2 Law Offices of Thomas J. Popovich
3 3416 West Elm Street
4 McHenry, Illinois
5 Appeared on behalf of the plaintiff.
6
7 **ATTORNEY RONALD A. BARCH**
8 Cicero, France, Barch & Alexander
9 6323 East Riverside Boulevard
10 Rockford, Illinois
11 Appeared on behalf of the
12 defendants, Caroline McGuire and
13 Bill McGuire.
14
15 **ATTORNEY PERRY A. ACCARDO**
16 Law Office of M. Gerard Gregoire
17 200 North LaSalle Street
18 Chicago, Illinois
19 Appeared on behalf of the defendant,
20 David Gagnon.
21
22
23
24

1

INDEX

2

WITNESS

EXAMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

88

1 maintenance function at their home, any repair
 2 function at the home?
 3 **A. No.**
 4 **Q.** Or any kind of handyman work of any kind?
 5 **A.** The closest thing to that I think was she needed
 6 to go to Menards to get some wood, and I had a
 7 truck and a trailer, and I took her over there,
 8 her and her son, and got the wood and drove her
 9 back home. And that was it. I didn't actually
 10 perform any function.
 11 **Q.** And when was that in relation to 2011?
 12 **A.** Wait. Wait. I stand corrected. The month or
 13 two prior to this incident I took down a shed.
 14 It wasn't just me. And we didn't take it down.
 15 They just unbolted it from the bottom, and we all
 16 just carried it out to the front of the yard and
 17 put it on my trailer. They needed as many hands
 18 as they could get, and I happened to be free.
 19 **Q.** Okay. So a month or two before this event there
 20 was a shed that was removed from the property?
 21 **A.** Yes. I don't even know if it was a month. Maybe
 22 four weeks.
 23 **Q.** Sometime before?
 24 **A.** Just right before, yes.

89

1 **Q.** It still would have been 2011?
 2 **A.** (Indicates affirmatively.)
 3 **Q.** Yes?
 4 **A.** Yes.
 5 **Q.** This shed, you say it was just unbolted from its
 6 foundation?
 7 **A.** Yes. It was one of those flimsy steel sheds.
 8 **Q.** Steel deal?
 9 **A.** Real light.
 10 **Q.** How big was it?
 11 **A.** It was a big one.
 12 **Q.** You're talking 10 feet by 9? I mean, how big?
 13 Do you recall?
 14 **A.** I would guess -- and I don't know. They know
 15 what size it was. It was a bigger one. Probably
 16 10 by 12.
 17 **Q.** That is an estimate, right?
 18 **A.** Yes.
 19 **Q.** And then did you say a group of people picked it
 20 up whole and put it onto a trailer?
 21 **A.** Yes.
 22 **Q.** Was it placed on like a flatbed trailer or
 23 something?
 24 **A.** Yes.

90

1 **Q.** What happened to -- it was your trailer?
 2 **A.** Yes.
 3 **Q.** Where did it go?
 4 **A.** It went around the block to my house, and then I
 5 took it over to the scrap place.
 6 **Q.** Did you use it for a period of time?
 7 **A.** It sat there. I threw some hoses in there when I
 8 got more stuff to go to the scrap guy. Took it
 9 all over.
 10 **Q.** When did you dispose of it?
 11 **A.** This year. No. 2012.
 12 **Q.** So you had it through the winter of 2011-2012?
 13 **A.** Yes.
 14 **Q.** So you used it about a year and then got rid of
 15 it?
 16 **A.** Yes. It was just sitting there. I didn't want
 17 to use it. It wasn't --
 18 **Q.** (Interrupting) When you were there -- when you
 19 were there to have this thing put onto your
 20 trailer, who else was there besides you?
 21 **A.** David, Bill and Carol.
 22 **Q.** So did all four of you then lift this thing up?
 23 **A.** You need one on each corner.
 24 **Q.** Okay. Besides helping them get the shed off the

91

1 property, do you recall any other work that you
 2 may have done or assistance you may have offered
 3 around the property prior to June 28 of 2011?
 4 **A.** Recently. That's about it.
 5 **Q.** Did Mr. or Mrs. McGuire -- I'm going to use them
 6 in combination. If one or the other did
 7 something, tell me. But did either of the
 8 McGuires ever train you on how to use a chain
 9 saw?
 10 **A.** No.
 11 **Q.** Did either of the McGuires ever demonstrate how
 12 to use a chain saw for you?
 13 **A.** No.
 14 **Q.** Did you ever help Bill or Caroline cut trees down
 15 prior to June 28, 2011?
 16 **A.** Once.
 17 **Q.** And when was that?
 18 **A.** Again, it was a few weeks prior. About the same
 19 time we took the shed.
 20 **Q.** Okay. So there was another occasion where you
 21 were out there tending to trees?
 22 **A.** No. Her son David called me and asked me if he
 23 could borrow my chain saw.
 24 **Q.** Okay.

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 tied

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
2 thing down?
- 3 A. **The two of them were bickering back and forth
4 about all different things. They were talking
5 about all different trees they wanted -- I didn't
6 keep up with --**
- 7 Q. (Interrupting) The two of them meaning Mr. and
8 Mrs. McGuire?
- 9 A. **Yes. And her son. I didn't get into any of
10 that. That is whatever they wanted to do.**
- 11 Q. So there is some banter, bickering, whatever you
12 want to call it, over which trees needed to come
13 down?
- 14 A. **Right.**
- 15 Q. Besides identifying the trees that they wanted
16 either trimmed or removed, do you recall
17 Mr. McGuire or Mrs. McGuire telling David how to
18 go about taking down the tree with the chain saw?
- 19 A. **I think Bill and Dave talked about that a little
20 bit, how they were going to do it.**
- 21 Q. Okay.
- 22 A. **I didn't have anything to do with it.**
- 23 Q. What did you overhear David saying to Bill or
24 Bill saying to David with respect to the apple

97

- 1 tree?
- 2 A. **Well, the only thing that I did anything about, I
3 remember Bill was complaining that it was
4 sticking up out of the ground, and I was putting
5 the chain saw away in the case so I could take it
6 home, and I took it back out of the case and
7 said, "I'll take the four inches off for you,"
8 because David was already gone or he was in the
9 house doing something, and I just wanted to get
10 it done and head out of there. I didn't want to
11 wait for him, so I did that. But as far as them
12 instructing each other, they were mostly talking
13 amongst each other.**
- 14 Q. What I'm driving at is you recall hearing them
15 discuss/bicker over --
- 16 A. (Interrupting) **I do remember. I do remember.**
- 17 Q. Hold on. You do recall hearing them bicker or
18 discuss which trees needed to come down totally
19 or which ones needed to be trimmed? That is
20 something you recall them bickering about,
21 correct?
- 22 A. **Yes.**
- 23 Q. And you recall Mr. McGuire being dissatisfied
24 with the way the stump looked after David left?

98

- 1 A. **Right.**
- 2 Q. You don't recall Mr. McGuire telling David how to
3 use the chain saw, though? That didn't happen in
4 your presence?
- 5 A. **No.**
- 6 Q. Correct?
- 7 A. **Correct.**
- 8 Q. And you don't recall Mr. McGuire demonstrating
9 the chain saw for Mr. Gagnon that day either,
10 correct?
- 11 A. **No -- yes, that's correct.**
- 12 Q. David was just using the chain saw in his
13 presence? Is that how you recalled it?
- 14 A. **Yes.**
- 15 Q. Now, you were going to say you do recall
16 something else that happened as we were asking
17 questions about it.
- 18 A. **You were asking about instruction, and Caroline
19 was worried because part of the tree was over the
20 house, and she was telling him to take it -- they
21 were talking about the way to take the tree down
22 without any of it touching the house at all; and
23 they worked it out and did it, you know.**
- 24 Q. All right. So that is something that sticks out

99

- 1 in your mind? There was a tree -- part of the
2 tree is over the house, and there was a concern
3 about damaging the house?
- 4 A. **I remember that, yes.**
- 5 Q. And there was a discussion as to how to get the
6 tree removed without hurting the house?
- 7 A. **Yes.**
- 8 Q. Was it successful? Did they do it?
- 9 A. **Yes.**
- 10 Q. Did anybody get hurt, as far as you know, that
11 day with the chain saw?
- 12 A. **No.**
- 13 Q. And you had no connection to any of the cutting
14 that day, correct?
- 15 A. **Other than picking up the sticks and cutting the
16 stump, that was it.**
- 17 Q. That's right. I take it back. You did cut the
18 stump closer to the ground?
- 19 A. **Yes.**
- 20 Q. But in terms of the work, David did the actual
21 severing of the branches and cutting the limbs
22 and things? You were not helping him do that?
- 23 A. **I was just taking the cut branches over to the
24 pile where they were going to burn it or whatever**

100

- 1 they wanted to do with it.
- 2 Q. Let's go to June 28, 2011 then. Did Mr. or
- 3 Mrs. McGuire ask you to come over?
- 4 A. David did.
- 5 Q. So Mr. and Mrs. McGuire did not call you up and
- 6 ask you to come over?
- 7 A. No.
- 8 Q. So your involvement started with a call from
- 9 David?
- 10 A. Yes.
- 11 Q. What do you recall him saying when he called you?
- 12 A. He said he was taking down another tree for his
- 13 mom. And I said, "Do you need the chain saw?"
- 14 And he said, "No." And I was like "Oh." He
- 15 said, "Do you want the wood?" "Well, I'll come
- 16 over and see what you got." Because he was
- 17 trying to explain to me which tree it was, but I
- 18 wasn't sure. So I said, you know, "I can come
- 19 over and take a look in the morning"
- 20 Q. I forgot to ask you. Did you take any of the
- 21 wood that was cut down of the apple tree wood?
- 22 A. No.
- 23 Q. Okay. So you agreed to come over and take a look
- 24 at the wood that was being -- I guess the tree

101

- 1 wood that was -- strike that -- the remains of
- 2 the tree that was being taken down on June 28?
- 3 A. Right.
- 4 Q. And heading over there was it your plan or did
- 5 you anticipate helping him?
- 6 A. Not with -- he said he had a chain saw, and he
- 7 does it all himself. So I anticipated just
- 8 getting the wood, you know, if I wanted it.
- 9 Q. Okay. And prior to arriving at the property did
- 10 you call the McGuires?
- 11 A. I don't think so, no -- you know what, I --
- 12 strike that. I don't remember if I called to
- 13 make sure he was there before I left in the
- 14 morning or not. I don't remember. I may have.
- 15 Q. So he called you not on the day of, but some
- 16 other point to alert you he would be there on
- 17 that day?
- 18 A. Yes.
- 19 Q. So you may have checked just to see if he was
- 20 there?
- 21 A. Yes.
- 22 Q. Do you recall that being the case, or it's just a
- 23 possibility?
- 24 A. It's a possibility.

102

- 1 Q. And so when you went to the McGuires' that day, I
- 2 take it you didn't bring anything with you?
- 3 A. Just my truck.
- 4 Q. Just your truck?
- 5 A. Yes. And my dog.
- 6 Q. Your dog did you say?
- 7 A. Yes.
- 8 Q. Did you have a pickup truck?
- 9 A. Tahoe.
- 10 Q. What were you going to do -- where were you going
- 11 to put the wood if you did take some?
- 12 A. I was going to go back home and get a trailer.
- 13 Q. You weren't even sure you were taking wood at
- 14 that point?
- 15 A. Yes, exactly.
- 16 Q. You went out there in your personal vehicle with
- 17 your dog?
- 18 A. Yes.
- 19 Q. At that point you were not planning to assist
- 20 him; just to check the wood to see if you wanted
- 21 it?
- 22 A. Correct.
- 23 Q. On arrival who was there?
- 24 A. David, his mom Caroline, Bill. And at some point

103

- 1 in there his sister showed up.
- 2 Q. Bill's sister?
- 3 A. No, David's sister Diane. She was there. I
- 4 don't remember when she came and went. She was
- 5 there.
- 6 Q. And on arrival are they all in the house, or is
- 7 the cutting ongoing and they are all outside?
- 8 What do you recall?
- 9 A. David was -- he came walking around the side of
- 10 the house as I pulled up -- they must have seen
- 11 me -- and said, "Hey, how's it going," you know,
- 12 and I said, "Morning." He wanted to show me what
- 13 he had.
- 14 Q. So you went around back and looked?
- 15 A. Yes.
- 16 Q. How much of the tree was down at this point?
- 17 A. None.
- 18 Q. What kind of tree was it?
- 19 A. Pine.
- 20 Q. We're talking like a Christmas tree type, or the
- 21 big one with all the ugly branches?
- 22 A. They all have big ugly branches. It was the
- 23 Christmas tree type.
- 24 Q. How tall was this thing?

<p style="text-align: right;">104</p> <p>1 A. We all guessed at that. I think around 60 feet.</p> <p>2 Q. And that's an estimate, correct?</p> <p>3 A. Yes.</p> <p>4 Q. None of it had been trimmed up at that point?</p> <p>5 A. Correct.</p> <p>6 Q. All right. And now you and David are back there looking at it, correct?</p> <p>7 A. Bill came out. Carol came out. They were all out there.</p> <p>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?</p> <p>9 A. Everybody.</p> <p>10 Q. Okay. And at some point the cutting began?</p> <p>11 A. Yes.</p> <p>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?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Yes?</p> <p>15 A. Yes.</p> <p>16 Q. Between that point in time and the time the tree cutting actually started what discussions do you recall about this project?</p>	<p style="text-align: right;">106</p> <p>1 A. (Interrupting) They bicker like cats and dogs.</p> <p>2 Q. You have used that phrase "bicker." When you say bicker –</p> <p>3 A. (Interrupting) Discuss.</p> <p>4 Q. Was she telling him she wanted certain trees down and he did not want to take those down or –</p> <p>5 A. (Interrupting) Yes.</p> <p>6 Q. – he wanted some down that she did not want down?</p> <p>7 A. Both ways.</p> <p>8 Q. Okay. So other than identifying which additional trees had to be trimmed or cut down versus, you know, left alone, do you recall any other discussion between David and Caroline prior to him undertaking the effort to actually cut things?</p> <p>9 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.</p>
<p style="text-align: right;">105</p> <p>1 A. They showed me the new chain saw they bought</p> <p>2 Q. Okay.</p> <p>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.</p> <p>4 Q. Okay.</p> <p>5 A. I was playing with the dog. Carol loves my dog. Just simple pleasantries. Nothing – it wasn't really about the work.</p> <p>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?</p> <p>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.</p> <p>8 Q. Do you recall during that process Caroline McGuire trying to override any decision that David had?</p> <p>9 A. Yes. But not about that tree. About other trees.</p> <p>10 Q. Okay. Well, what do you recall Caroline's –</p>	<p style="text-align: right;">107</p> <p>1 Q. When David explained his plan for taking down the tree, you heard part of that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you recall Caroline disagreeing with him about how to go about taking down that tree?</p> <p>4 A. Not too much, no.</p> <p>5 Q. What about Bill?</p> <p>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.</p> <p>7 Q. That would seem to be any property owner's concern is that they didn't get other damage.</p> <p>8 A. Sure.</p> <p>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?</p> <p>10 A. He came up with it. He said what he was going to</p>

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 A. (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

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?

110

- 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.

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

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.**

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.**

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

- 1 A. Yes.
- 2 Q. So he comes off of the tree having cut down half
3 to two-thirds of the limbs?
- 4 A. Uh-huh.
- 5 Q. Right?
- 6 A. Uh-huh.
- 7 Q. Is that a yes?
- 8 A. Yes.
- 9 Q. All right. And then during that period of time
10 while he was up there, that is when you and Bill
11 were dragging some of these branches over to a
12 different area?
- 13 A. Yes.
- 14 Q. And at what point is it that you're involved in
15 any activity which resulted in your injury?
- 16 A. When David came down, he took a good long break.
17 He was tired. He was climbing the tree. He was
18 tired. I think he ate something for lunch. I
19 was offered a pop. You know, I sat there and
20 drank a pop, was playing with my dog. After
21 lunch Dave went back over there to do somemore
22 work. He started trimming on the tree next to
23 it. Wasn't even the same tree. Same thing,
24 taking off the lower branches. And it was when

121

- 1 he was doing that, when he was done with trimming
2 that tree, that is when he asked me to come over
3 and hold something for him.
- 4 Q. So after lunch he stopped working on the tree
5 that you saw him work on all morning, correct?
- 6 A. Uh-huh.
- 7 Q. And started working on an adjacent tree?
- 8 A. Uh-huh.
- 9 Q. He was at ground level again just cutting off
10 branches?
- 11 A. Uh-huh.
- 12 Q. That was the first time he directly asked you for
13 help?
- 14 A. Yes -- well, other than start the chain saw
15 earlier.
- 16 Q. Yes. So up until that point in time I take it
17 you had not offered David any thoughts about how
18 to proceed with the tree trimming, whatever he
19 was doing? You're just watching?
- 20 A. Yes.
- 21 Q. You didn't offer him any comments on how to do
22 this, the way he was going about getting this
23 stuff done?
- 24 A. I have never seen it done, that big of a tree

122

- 1 like that, no.
- 2 MS. FREEMAN: Just answer the question.
- 3 A. No.
- 4 Q. All right. So now David needed some help with
5 something. What was it, as you recall? What did
6 he need help with?
- 7 A. He had accumulated a very large pile of, you
8 know, the long pine branches. He asked if I
9 could help him for a few minutes. I said sure.
10 He says, "I need you to hold these while I cut
11 off the things on them." And he showed me what
12 he wanted, showed me where to stand. And I said,
13 "Yeah, I can do that," you know. And -- yes.
- 14 Q. All right. So I guess from what I envision,
15 he's cut all of these limbs off of that pine
16 tree. Now there is a big pile of them; one you
17 guys weren't able to move, you and Bill?
- 18 A. He had another pile from the tree right next to
19 it, yes.
- 20 Q. And what was he going to do? Trim some of the
21 smaller branches off the limbs?
- 22 A. That's what he wanted to do. He wanted to save
23 the center part for firewood or something like
24 that for campfires or something. I don't know.

123

- 1 Q. So by cleaning off the smaller branches, then
2 there would be some logs that could be cut up
3 that would be suitable for firewood?
- 4 A. Correct.
- 5 Q. Did you and he actually -- did he tell you what
6 his plan was or what he was going to do?
- 7 A. He told me exactly what to do. He knew what he
8 was doing. You know, seemed that way to me.
- 9 Q. And he told you what he wanted you to do?
- 10 A. Yes.
- 11 Q. And what did he tell you to do?
- 12 A. Took the branch, pull it over here so it's away
13 from the rest of them. Hold the one end up, and
14 he would cut the smaller stuff off the other end.
15 And when that was done, put it down, grab the
16 next one, put it up and -- you know, yes?
- 17 Q. So I'm understanding, you're taking a limb that
18 had been cut off the tree, you're holding it
19 upright?
- 20 A. No.
- 21 Q. No?
- 22 A. Can I do -- I don't know how it translates.
- 23 Q. We'll explain it on record. But if that straw
24 will help you orient us as to what you were

124

- 1 doing --
- 2 A. (Interrupting) The branch would be like this
(indicating) to the ground.
- 3 Q. All right. So the heavier -- the thicker part of
4 the branch is laying on the ground?
- 5 A. Actually, the thinner part was. That is the way
6 he wanted it.
- 7 Q. So you're holding the heavier part of the limb?
- 8 A. Yes.
- 9 Q. The long part of it?
- 10 A. Yes.
- 11 Q. And he's trimming off the smaller branches?
- 12 A. Yes.
- 13 Q. Off his limb?
- 14 A. Yes.
- 15 Q. Does he start at the end and work his way closer
16 to you?
- 17 A. Yes.
- 18 Q. And how long are these limbs?
- 19 A. They're pretty long. I would only be able to
20 guess. I would have to say 20 feet. Pretty big.
21 Especially the lower ones off the pines, you
22 know.
- 23 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. - 3/4 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 Q. 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 A. (Interrupting) No.
11 Q. Anything about that – obviously, to the point
12 you got hurt, did anything about that task
13 concern you from a safety standpoint?
14 A. He was far enough away from me it wasn't...
15 Q. So up until you were actually hurt he kept a
16 certain amount of distance away from you?
17 A. Yes.
18 Q. How close was the nearest he got to you prior to
19 when you got hurt?
20 A. Maybe three or four feet, maybe five feet,
21 somewhere in there. There was a good chunk of
22 those branches that were next to the trunk that
23 didn't have anything on them, you know. They
24 didn't have the growth. The growth was out in

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 the air?
- 3
- 4 A. They were only this (indicating) -- you're talking logs. I call them sticks.
- 5
- 6 Q. Okay. I didn't ask that question so I'm glad you clarified. The limbs that we're talking about what was the diameter on average?
- 7
- 8
- 9 A. The side that I was holding?
- 10 Q. Yes.
- 11 A. Maybe -- I don't know what you consider that (indicating). Three inches. Your guess is as good as mine.
- 12
- 13
- 14 Q. Okay. Well, it's certainly not the full width of your fingers?
- 15
- 16 A. No. I can hold it with one hand.
- 17 Q. It's about the width of a pop can -- diameter width of a pop can?
- 18
- 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 with which hand?
- 2
- 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 and the rest of it would stretch out towards Mr. --
- 11
- 12
- 13 A. (Interrupting) Yes. Go down along the ground there.
- 14
- 15 Q. And then you say Mr. -- you described it as Mr. Gagnon walking towards you with the chain saw and then you just got cut. Can you elaborate on that a little bit? He didn't just -- you were actually -- he was actually working on trimming a tree branch, correct?
- 16
- 17
- 18
- 19
- 20
- 21 A. Yes.
- 22 Q. And so I take it he was trimming, getting closer and closer to you?
- 23
- 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 may have been a branch closer than the four to five feet?
- 4
- 5
- 6 A. No. He stopped cutting the limb, chain-saw went down, went to idle. You know, he walked toward me, and I thought he was going to say something like next instruction, what to do, okay, and I don't know what he was thinking or what he was doing or what, but the chain saw started coming up, and the gas went on, and I tried getting the hell out of the way and -- yes.
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14 Q. So it wasn't during a cutting process that you were hurt?
- 15
- 16 A. Yes, you're right.
- 17 Q. He disengaged from trimming the branch, if I'm understanding your testimony, and the chain went into an idle position?
- 18
- 19
- 20 A. The motor went to idle.
- 21 Q. And the chain is not even moving, and he's holding it down to his side?
- 22
- 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 terms of space?
- 3
- 4 A. Right.
- 5 Q. And you were still holding the branch at this point?
- 6
- 7 A. Yes.
- 8 Q. And somehow the chain, it gets activated?
- 9 A. When I heard the chain saw, the motor speed up and I saw with my eyes it start to come up, I dropped the branch, tried to get the heck out of there because it's coming up between me and the branch. What the fuck are you thinking? I don't know how to say -- you know, I screamed. Whether he was going after something he thought he saw coming off the branch, I don't know.
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17 Q. Okay.
- 18 MS. FREEMAN: Wait for a question.
- 19 Q. So you're holding the branch with your right hand just like you had done on the two dozen or more before. He's trimming branches off this thing and stops trimming, correct?
- 20
- 21
- 22
- 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 A. -- towards the ground.
11 Q. The chain is not moving?
12 A. Right.
13 Q. And he gets close enough to you to reach you
14 obviously?
15 A. (Indicates affirmatively.)
16 Q. Then you hear the chain saw, the rpms ramp up?
17 A. Oh, yes.
18 Q. And when you heard it ramp up, was it a concern
19 of yours that the chain might be moving at that
20 point?
21 A. It was an instant high alert on my part, yes.
22 Q. Did you see the chain saw blade with the chain
23 moving at any point before it made contact with
24 your arm?

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 of a sudden -- and then at that point where your
13 arm is hit. What did you do?
14 A. I let go of the branch, and I tried bringing my
15 arm up and away from the saw blade and out and
16 around to get away. It was coming right up, you
17 know, and it was coming up. It was fast.
18 Q. All right. So you tried to get your arm out of
19 the way. The blade is coming up, but you didn't
20 get it away fast enough?
21 A. Obviously got it away enough to keep my hand and
22 my arm. I'm lucky to have that.
23 Q. And then at this point where your arm is actually
24 injured, do you believe that either one of the

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 A. Correct.
- 3 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 rpms 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?

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

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

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

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

157

- 1 because of the surgery he did in there. He had
- 2 to do a nerve release or something. It was
- 3 tight. — *compressed*
- 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?

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.

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? — *Right*
- 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. — *Right*
- 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?

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

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

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 A. (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 A. (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 A. (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.)
 20
 21
 22
 23
 24

1 CERTIFICATE OF SHORTHAND REPORTER

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

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

Dated this 28th day of January, 2013.

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

\$	86:14 2011 [57] - 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	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 [6] - 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,
1 1 [1] - 49:8 1-24-13 [1] - 1:8 1....[previously [1] - 3:11 10 [4] - 89:12, 89:16, 109:15, 109:16 1016 [3] - 8:19, 9:2, 57:12 1099 [15] - 17:5, 17:10, 17:11, 17:22, 17:24, 20:14, 39:24, 48:9, 51:11, 51:15, 51:19, 52:11, 52:18, 53:2, 54:3 12 [2] - 1:5, 89:16 12:17 [2] - 1:21, 176:5 160 [1] - 3:13 163 [1] - 3:5 175 [1] - 3:6 176 [1] - 3:24 178 [1] - 1:5 18 [1] - 57:2 18,000 [2] - 52:24, 53:2 19 [2] - 57:2, 158:24 1988 [1] - 10:11 1998 [3] - 14:22, 18:1, 18:14 1999 [1] - 16:10	2 2 [2] - 158:18, 160:9 2....[previously [1] - 3:12 20 [5] - 111:8, 113:17, 118:16, 124:21, 129:2 20-minute [1] - 109:16 200 [1] - 2:9 2003 [1] - 18:16 2004 [1] - 18:16 2007 [1] - 86:9 2008 [4] - 14:22, 15:23, 17:3, 86:14 2008/2009 [2] - 18:1, 18:15 2009 [3] - 14:22, 15:24, 40:9 2010 [3] - 40:9, 86:9,	3 3 [3] - 160:3, 160:4,									

<p>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 [14] - 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 [64] - 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,</p>	<p>138:15, 138:18, 138:22, 138:23, 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 [6] - 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</p>	<p>ATTORNEY [3] - 2:1, 2:4, 2:8 attorney [14] - 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 [6] - 69:17, 69:23, 73:11, 73:23, 74:11, 143:20</p>	<p>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 [21] - 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,</p>	<p>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 [7] - 70:15, 71:3, 71:5, 71:13, 72:7, 73:4, 77:2 binding [7] - 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</p>
---	--	--	---	--

Boulevard [1] - 2:5 bound [1] - 70:18 bowling [2] - 59:5, 59:6 brain [1] - 174:13 branch [33] - 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, 137:19, 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 branches [35] - 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 brand [1] - 106:19 brand-new [1] - 106:19 break [4] - 80:14, 81:1, 109:16, 120:16 break-off [1] - 81:1 breakdown [1] - 81:18 breakfast [1] - 109:14 breaks [1] - 118:13 bring [2] - 102:2, 127:17 bringing [2] - 92:4, 138:14 brings [2] - 14:18, 70:11 brochures [1] - 19:3 broken [1] - 163:16 broker [1] - 20:21 brought [1] - 92:1 bucket [1] - 38:18 buckets [3] - 38:14, 45:16	bucks [1] - 50:14 buddies [2] - 58:3, 58:4 building [1] - 25:1 bumping [1] - 85:21 bundles [2] - 92:15, 93:11 burn [5] - 99:24, 115:21, 130:22, 154:13, 156:17, 156:18 burning [7] - 34:7, 34:11, 34:20, 35:6, 36:2, 115:22, 116:21 burns [1] - 154:21 business [10] - 16:4, 16:5, 16:22, 18:8, 19:3, 19:11, 21:15, 21:16, 21:17, 86:11 BY [5] - 4:4, 8:1, 80:22, 163:3, 175:2	cart [5] - 39:3, 39:5, 39:9, 39:14, 41:8 case [7] - 51:13, 75:8, 97:5, 97:6, 101:22, 129:17, 155:12 catalog [1] - 19:2 cats [1] - 106:1 caught [1] - 140:9 caused [2] - 79:21, 80:7 causes [1] - 28:19 center [2] - 25:23, 122:23 certain [2] - 106:5, 128:16 certainly [3] - 35:13, 132:14, 146:22 Certificate [1] - 3:24 certificate [4] - 13:1, 13:7, 13:10, 13:19 CERTIFICATE [1] - 176:1 Certified [3] - 1:23, 176:3, 176:19 certify [2] - 176:4, 176:10 chain [127] - 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,	136:5, 136:9, 136:11, 136:16, 136:19, 136:22, 139:24, 140:4, 142:15, 142:16, 145:18, 159:23, 160:13, 164:10, 165:13, 165:15, 165:19, 166:1, 166:6, 167:8, 167:13, 167:22, 168:2, 168:8, 168:12, 168:15, 168:19, 169:19, 169:22, 170:23, 171:24, 172:4, 175:12 chance [4] - 7:3, 7:9, 43:20, 80:19 changed [1] - 164:14 characterize [1] - 85:17 check [3] - 30:15, 102:20, 148:6 checked [1] - 101:19 Chicago [4] - 2:9, 12:14, 47:5, 55:13 child [1] - 59:21 children [2] - 59:14, 59:15 chipped [1] - 115:20 chips [1] - 70:6 Christmas [2] - 103:20, 103:23 chunk [1] - 128:21 Cicero [1] - 2:4 CIRCUIT [2] - 1:2 circular [1] - 71:23 circumstances [1] - 42:18 city [3] - 12:13, 46:21, 47:5 City [1] - 1:20 Civil [2] - 4:12, 5:16 claim [2] - 48:17, 159:6 claiming [2] - 49:12, 50:23 clarified [1] - 132:7 clarify [1] - 6:14 clean [1] - 147:22 cleaned [2] - 92:9, 147:5 cleaning [1] - 123:1 clicks [1] - 23:1 climb [3] - 112:7, 113:15, 119:7 climbing [3] - 111:15, 111:16, 120:17 Clinic [1] - 150:10	close [7] - 58:8, 67:7, 92:10, 128:8, 128:18, 136:13, 175:19 closed [1] - 147:23 closer [7] - 17:1, 93:5, 99:18, 124:16, 133:22, 133:23, 134:4 closes [1] - 135:2 closest [1] - 88:5 closing [1] - 28:7 Code [1] - 5:16 coffee [3] - 7:22, 28:22, 132:19 cold [4] - 34:8, 34:9, 34:10, 165:8 collateral [1] - 19:2 college [7] - 10:12, 10:13, 10:18, 10:19, 11:20, 11:23, 12:3 College [2] - 10:17, 11:19 combination [5] - 20:1, 28:18, 63:18, 77:10, 91:6 comfortable [1] - 12:23 coming [18] - 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 commencing [1] - 1:21 comment [3] - 139:23, 140:24, 146:5 comments [5] - 83:13, 83:21, 107:19, 121:21, 144:15 commercial [1] - 19:10 common [1] - 58:15 communication [4] - 78:6, 78:8, 78:14, 81:18 communications [1] - 81:2 community [1] - 10:18 Community [1] - 26:14 companies [6] - 16:3, 19:12, 21:21, 46:17, 47:22, 48:10 company [8] - 14:8, 16:19, 19:4, 21:19, 47:4, 47:9, 55:10,
--	---	--	---	---

C

calculations [1] - 50:16
calendar [1] - 41:15
campfires [1] - 122:24
capable [1] - 145:6
car [8] - 9:1, 62:5, 62:10, 162:12, 163:10, 163:14, 164:9, 164:20
card [1] - 22:6
cards [2] - 21:22, 22:3
care [5] - 11:5, 69:5, 69:7, 145:13, 159:17
careful [2] - 129:19, 157:20
Carol [9] - 90:21, 104:8, 104:18, 105:8, 105:18, 117:8, 117:9, 129:9, 144:11
Carol's [1] - 62:17
CAROLINE [2] - 1:8, 1:9
Caroline [18] - 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
Caroline's [2] - 58:2, 105:24
carpal [1] - 29:14
carried [1] - 88:16
carry [1] - 93:13
cars [2] - 59:7, 87:10

61:17 compatible [1] - 47:3 compensated [1] - 145:21 complaining [2] - 23:20, 97:3 Complaint [1] - 57:12 complaints [1] - 35:5 completed [1] - 13:13 computer [3] - 19:21, 19:22, 22:18, 36:11, 36:16, 46:11, 47:16, 47:19, 149:19 computer-assisted [1] - 19:21 concept [3] - 22:5, 22:13, 22:19 concern [7] - 99:2, 107:14, 108:7, 128:13, 136:18, 144:7, 166:20 concerned [2] - 108:15, 144:12 concerning [3] - 26:7, 27:1, 176:6 condition [1] - 93:5 conduction [1] - 150:7 confer [1] - 80:13 confused [2] - 140:23, 167:7 connected [2] - 57:23, 58:11 connecting [1] - 24:15 connection [5] - 58:1, 73:4, 77:13, 94:5, 99:13 consider [3] - 116:12, 132:11, 146:15 consideration [1] - 93:23 consult [1] - 108:20 consumed [1] - 175:10 contact [17] - 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 [1] - 46:24 container [2] - 39:7, 41:7 continue [3] - 51:11, 51:18, 114:24 continued [3] - 4:10, 149:19, 152:1 CONTINUED [1] - 80:22	contract [8] - 18:5, 51:2, 51:5, 51:10, 52:1, 52:10, 53:17, 54:2 contractor [1] - 17:12 control [2] - 170:9, 170:11 controlled [1] - 156:14 controversy [1] - 176:7 conversation [10] - 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 [1] - 90:23 correct [87] - 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 [1] - 88:12 counsel [5] - 81:14, 95:9, 161:22, 176:11, 176:12 count [2] - 64:24, 66:14 COUNTY [1] - 1:3 County [1] - 4:13 couple [17] - 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 [9] - 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 [1] - 1:2 Court [4] - 4:13, 8:8, 8:18, 9:17 court [1] - 4:15 create [2] - 35:9, 35:18 criticism [2] - 165:24, 166:4 crosses [1] - 160:21 cup [2] - 28:23, 132:19 customer [2] - 22:20, 51:5 customers [2] - 20:20, 20:22 cut [54] - 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 [1] - 65:7 cutting [31] - 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 [1] - 4:7 dad [1] - 68:19 damage [3] - 107:10, 107:14, 158:9 damaged [1] - 107:18 damaging [2] - 99:3, 108:8 dangerous [3] - 64:5, 64:6, 64:8, 64:10, 65:3, 113:23, 114:5, 114:9 dangers [1] - 65:5 database [1] - 47:16 date [5] - 9:5, 9:9, 151:16, 173:22, 174:2 Dated [1] - 176:14 Dave [3] - 57:21, 96:19, 120:21 Dave's [1] - 110:8 DAVID [1] - 1:8 David [73] - 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 [3] - 103:3, 166:12, 168:20 days [3] - 50:4, 50:8, 165:8 deal [2] - 40:11, 89:8 debris [4] - 70:7, 75:13, 75:17, 115:13	decided [3] - 45:11, 45:12, 45:13, 116:7, 116:8, 116:15, 117:19, 127:1 decision [3] - 45:6, 105:20, 107:21 defendant [2] - 2:10, 82:2 Defendants [1] - 1:11 defendants [2] - 1:17, 2:6 definitely [2] - 141:14, 146:23 definition [1] - 142:3 degree [1] - 10:23 degrees [2] - 169:24, 170:1 demise [1] - 16:17 demonstrate [1] - 91:11 demonstrated [1] - 69:14 demonstrating [1] - 98:8 DEPOSITION [1] - 1:7 deposition [3] - 1:16, 4:9, 5:14, 5:18, 175:18, 176:8, 176:9, 176:12 deprive [1] - 80:18 describe [3] - 13:10, 28:5, 58:18, 60:3, 138:10, 144:6, 170:3, 171:11 described [3] - 33:22, 34:5, 35:15, 133:15, 142:4, 145:19, 154:2, 154:15 description [2] - 25:12, 72:2 design [27] - 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 [3] - 18:21, 18:24, 19:16 detail [1] - 71:12 details [2] - 83:12, 83:15 device [1] - 38:24 diagnosed [1] - 31:12 dialogue [1] - 139:10 diameter [2] - 132:8, 132:17 Diane [1] - 103:3
---	--	--	--	---

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

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 [8] - 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 [6] - 53:4, 158:24, 159:1, 159:13, 159:16, 160:11 experience [3] - 65:6, 67:17, 67:18 experienced [3] - 75:4, 75:11, 76:15 explain [8] - 28:24, 42:6, 83:6, 100:17, 123:23, 143:5 explained [6] - 26:19, 107:1, 143:2, 149:18, 157:8, 157:12 explanation [1] - 174:5 expletive [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 [6] - 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 [5] - 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 [5] - 39:8, 44:3,	51:4, 51:19, 52:13 financially [1] - 176:13 fine [8] - 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 finger tip [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 [9] - 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 flatbed [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 [5] - 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, 66:22 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 [9] - 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 [5] - 72:13, 88:18, 119:16, 127:24, 128:8 FREEMAN [16] - 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 [8] - 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 [28] - 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, 146:18, 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 [7] - 28:22, 34:17, 35:1, 35:3, 123:15, 127:17, 154:9
--	---	---	---	--

<p>grabbed [1] - 115:7 grabbing [4] - 23:7, 23:15, 35:9, 35:14 grade [3] - 58:3, 68:8, 68:9 graphic [13] - 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 [14] - 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 [8] - 61:17, 61:24, 81:21, 81:23, 84:21, 122:17, 129:3, 131:19</p>	<p style="text-align: center;">H</p> <p>H-a-y-d-e-n [1] - 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 happenstance [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 [9] - 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,</p>	<p>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 hell [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 helper [4] - 66:5, 66:6, 67:6, 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 [18] - 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</p>	<p>hit [8] - 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,</p>	<p>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 huhs [1] - 6:8 hundreds [2] - 64:23 hurt [19] - 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 [12] - 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</p> <p style="text-align: center;">I</p> <p>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 [8] - 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</p>
---	---	--	---	---

<p>impetus [1] - 81:13</p> <p>implicated [1] - 154:4</p> <p>important [4] - 6:5, 81:20, 144:9, 144:11</p> <p>impression [4] - 22:16, 142:4, 144:17, 147:12</p> <p>improvement [1] - 158:7</p> <p>IN [1] - 1:2</p> <p>in-house [2] - 19:7</p> <p>inadequate [1] - 72:21</p> <p>Inc [4] - 16:8, 16:18, 16:22, 55:11</p> <p>inches [4] - 93:2, 97:7, 132:12, 132:20</p> <p>incident [24] - 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</p> <p>incision [1] - 161:10</p> <p>including [1] - 49:13</p> <p>income [10] - 17:15, 17:18, 45:18, 49:12, 50:18, 50:24, 55:20, 56:1, 56:4, 56:11</p> <p>incorporated [4] - 13:6, 14:15, 16:6, 16:8</p> <p>increase [1] - 34:20</p> <p>independent [2] - 17:12, 18:5</p> <p>INDEX [1] - 3:1</p> <p>index [3] - 33:4, 153:13, 156:7</p> <p>indicated [1] - 174:18</p> <p>Indicates [12] - 6:12, 7:5, 23:18, 55:7, 56:9, 75:1, 86:19, 89:2, 113:21, 136:15, 138:5, 144:24</p> <p>indicating [12] - 25:6, 32:20, 124:3, 132:4, 156:18, 158:4, 159:9, 159:10, 164:20, 165:3, 171:13</p> <p>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</p>	<p>Individually [2] - 1:8, 1:10</p> <p>inflammatory [2] - 155:6, 155:9</p> <p>influence [1] - 166:15</p> <p>information [1] - 47:17</p> <p>injections [1] - 30:12</p> <p>injured [3] - 119:24, 125:2, 138:24, 146:22, 163:4, 163:7</p> <p>injuries [2] - 49:13, 69:24</p> <p>injury [7] - 120:15, 144:6, 148:13, 157:6, 159:24, 160:14, 163:14</p> <p>inner [1] - 165:6</p> <p>input [1] - 22:13</p> <p>inquire [1] - 55:5</p> <p>inside [2] - 143:23, 164:22</p> <p>insight [2] - 94:4, 94:6</p> <p>instant [1] - 136:21</p> <p>instructing [2] - 95:18, 97:12</p> <p>instruction [5] - 94:22, 98:18, 130:4, 134:9, 139:22</p> <p>instructions [4] - 69:9, 127:23, 129:24, 130:8</p> <p>intending [1] - 73:18</p> <p>intensive [2] - 12:17, 12:19</p> <p>intention [1] - 139:12</p> <p>intentionally [1] - 174:12</p> <p>intentions [1] - 142:15</p> <p>Interested [2] - 44:12, 176:13</p> <p>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</p> <p>interpret [2] - 6:9, 6:19</p> <p>Interrogatory [4] - 37:17, 48:16, 48:19, 109:22</p> <p>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,</p>	<p>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</p> <p>intervening [1] - 129:18</p> <p>Interviews [2] - 45:20, 46:1</p> <p>involve [1] - 81:22</p> <p>involved [5] - 62:14, 66:1, 120:14, 140:12, 165:13, 166:8</p> <p>involvement [4] - 83:22, 100:8, 115:2, 147:16</p> <p>involving [2] - 35:8, 63:7</p> <p>issue [1] - 4:20</p> <p>issued [1] - 4:23</p> <p>issues [1] - 24:24</p> <p>items [1] - 73:21</p> <p>itself [2] - 20:20, 148:13</p>	<p>July [8] - 152:11, 152:23, 159:3, 161:2, 161:3, 161:13, 161:19, 162:18</p> <p>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</p> <p>juskie [1] - 55:10</p> <p>Juskie [31] - 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</p> <p>JUSKIE [1] - 15:15</p>	<p>75:8, 140:5, 148:9, 148:12</p> <p>kickoff [1] - 141:19</p> <p>Kid [1] - 87:6</p> <p>Kids [2] - 87:20, 106:23</p> <p>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</p> <p>kinds [1] - 67:3</p> <p>Kitchen [1] - 144:21</p> <p>knees [2] - 173:3, 173:11</p> <p>knowledge [2] - 94:24, 176:6</p> <p>known [7] - 54:24, 69:17, 81:19, 82:11, 84:3, 149:4, 175:8</p> <p>knows [5] - 55:4, 143:6, 143:7, 158:19, 174:10</p>
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 [3] - 86:10, 115:10, 124:5				
layoff [3] - 86:5, 86:7, 86:13				

<p>layperson [2] - 18:23, 22:17</p> <p>layperson's [1] - 74:23</p> <p>lead [1] - 40:12</p> <p>leading [3] - 77:16, 85:11, 108:2</p> <p>leads [1] - 39:16</p> <p>league [1] - 59:6</p> <p>leagues [2] - 59:5</p> <p>learn [3] - 12:10, 54:1, 76:21</p> <p>least [7] - 46:18, 47:22, 48:6, 77:23, 118:13, 125:15, 132:24</p> <p>leave [2] - 51:16, 110:4</p> <p>leaving [2] - 12:2, 17:6</p> <p>left [43] - 5:13, 6:4, 11:3, 17:24, 18:2, 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</p> <p>lent [1] - 118:4</p> <p>less [2] - 9:1, 56:5</p> <p>letter [5] - 37:14, 78:15, 78:16, 78:21, 79:15</p> <p>letters [6] - 79:6, 80:2, 80:5, 81:4, 82:10, 83:7</p> <p>letting [1] - 137:6</p> <p>level [4] - 12:3, 111:1, 121:9, 153:9</p> <p>life [1] - 150:20</p> <p>lifetime [1] - 67:10</p> <p>lift [2] - 38:9, 90:22</p> <p>lifted [2] - 137:24, 142:15</p> <p>ligament [1] - 24:12</p> <p>light [1] - 89:9</p> <p>likely [2] - 43:19, 77:11</p> <p>limb [13] - 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</p> <p>limbs [17] - 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</p> <p>limitations [1] - 155:24</p> <p>lined [1] - 50:2</p> <p>lines [2] - 70:20, 83:15</p> <p>lingering [1] - 155:2</p> <p>link [1] - 154:22</p> <p>list [1] - 35:12</p> <p>listed [1] - 57:12</p> <p>listen [1] - 31:9</p> <p>listing [1] - 49:14</p> <p>lived [2] - 44:21, 162:10</p> <p>lives [1] - 65:16</p> <p>living [2] - 9:23, 61:6</p> <p>local [2] - 4:15, 11:20</p> <p>locate [1] - 47:8</p> <p>located [3] - 12:11, 26:12, 55:12</p> <p>locations [1] - 14:4</p> <p>log [6] - 73:7, 73:19, 125:22, 126:18, 127:19, 141:19</p> <p>logs [6] - 123:2, 126:10, 126:16, 126:23, 131:5, 132:5</p> <p>look [12] - 7:17, 22:9, 41:15, 49:3, 100:19, 100:23, 104:17, 105:13, 129:19, 137:8, 170:9, 170:10</p> <p>Look [1] - 42:4</p> <p>looked [10] - 13:14, 97:24, 103:14, 109:2, 119:5, 137:3, 139:19, 161:4, 170:11, 173:6</p> <p>looking [5] - 51:4, 104:7, 104:11, 137:9, 139:18</p> <p>looks [3] - 109:22, 112:9, 160:16</p> <p>loose [2] - 93:12, 93:13</p> <p>loss [1] - 50:19</p> <p>lost [8] - 48:17, 49:12, 50:18, 50:24, 56:11, 86:16, 168:18, 170:9</p> <p>lottery [2] - 21:19, 21:20</p> <p>loves [1] - 105:8</p>	<p>lower [6] - 110:16, 110:23, 111:2, 113:24, 120:24, 124:22</p> <p>lowered [2] - 111:9, 114:2</p> <p>lube [1] - 71:2</p> <p>lubed [1] - 72:12</p> <p>lubricant [3] - 72:14, 72:17, 72:21</p> <p>lubrication [1] - 70:19</p> <p>lucky [1] - 138:22</p> <p>lump [1] - 154:8</p> <p>lunch [4] - 120:18, 120:21, 121:4, 130:16</p> <p>lunches [1] - 84:21</p> <p>Lyford [1] - 176:19</p>	<p>McGuire [36] - 1:9, 1:9, 1:10, 1:17, 1:18, 2:6, 2:7, 57:11, 84:5, 91:5, 94:21, 94:22, 95:17, 95:18, 96:8, 96:17, 97:23, 98:2, 98:8, 100:3, 100:5, 105:20, 107:20, 108:14, 113:2, 113:4, 129:4, 130:13, 130:21, 143:20, 166:10, 175:7</p> <p>McGuire's [3] - 57:11, 62:19, 63:5</p> <p>McGuire's [25] - 57:15, 57:18, 57:23, 84:8, 84:10, 85:18, 85:20, 91:8, 91:11, 93:15, 93:17, 94:7, 95:6, 95:13, 101:10, 108:6, 109:20, 117:22, 129:18, 129:24, 130:9, 139:1, 143:18, 144:15, 145:23</p> <p>McGuire's' [4] - 86:21, 87:12, 87:24, 102:1</p> <p>McHenry [5] - 1:3, 1:20, 2:2, 4:12, 8:13, 149:8</p> <p>mean [26] - 4:23, 5:6, 6:15, 27:8, 28:22, 30:1, 38:4, 48:19, 52:19, 55:2, 58:19, 58:20, 59:23, 60:24, 64:9, 64:11, 65:24, 70:17, 85:15, 89:12, 109:2, 112:8, 112:12, 112:15, 118:14, 131:11</p> <p>meaning [2] - 47:5, 96:7</p> <p>means [2] - 70:18, 142:3</p> <p>meant [1] - 141:10</p> <p>measure [2] - 108:23, 109:8</p> <p>measuring [1] - 109:5</p> <p>med [1] - 155:6</p> <p>medical [5] - 146:24, 158:24, 159:1, 159:16, 160:2, 160:10</p> <p>medication [3] - 150:19, 155:3, 155:7</p> <p>medications [1] - 31:5</p> <p>medicine [3] - 148:9, 148:12, 155:15</p> <p>meet [2] - 61:8, 81:14</p> <p>memory [1] - 47:18</p>	<p>Menards [1] - 88:6</p> <p>mentioned [9] - 20:4, 49:17, 61:24, 64:12, 81:7, 87:8, 87:19, 155:20, 175:3</p> <p>mentioning [1] - 142:22</p> <p>metal [5] - 29:7, 29:8, 29:9, 71:19</p> <p>mid [1] - 157:6</p> <p>middle [9] - 8:5, 33:4, 58:3, 78:4, 126:20, 153:13, 157:8, 168:18, 171:22</p> <p>Midwest [1] - 6:7</p> <p>might [19] - 7:12, 47:17, 53:14, 59:15, 59:24, 63:4, 63:22, 64:3, 64:19, 67:1, 69:23, 70:7, 71:13, 76:22, 82:11, 87:19, 136:4, 136:19, 142:7</p> <p>Mike [12] - 9:20, 9:24, 10:3, 21:14, 21:15, 21:24, 37:20, 37:21, 61:6, 65:18, 65:19, 66:10</p> <p>miles [1] - 8:24</p> <p>military [1] - 56:15</p> <p>mind [2] - 6:3, 14:18, 42:15, 55:23, 59:24, 70:11, 99:1, 143:12</p> <p>mine [3] - 5:3, 5:5, 132:13</p> <p>minimal [1] - 159:18</p> <p>minute [4] - 9:1, 41:4, 80:13, 129:5</p> <p>minutes [9] - 36:13, 36:17, 36:19, 109:15, 118:15, 118:16, 122:9, 145:5</p> <p>mode [1] - 138:1</p> <p>Mom [1] - 106:19</p> <p>mom [7] - 10:3, 11:6, 65:16, 83:2, 100:13, 102:24, 146:10</p> <p>mom's [4] - 9:21, 59:7, 79:7, 82:18</p> <p>momentum [1] - 172:9</p> <p>Monday [2] - 39:18, 41:11</p> <p>money [3] - 94:2, 146:10, 174:19</p> <p>month [8] - 12:20, 54:16, 54:18, 78:10, 88:12, 88:19, 88:21, 149:12</p> <p>monthly [1] - 60:7</p> <p>months [20] - 21:8, 23:3, 23:16, 24:23, 24:24, 25:5, 31:24,</p>
--	---	--	---

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 [3] - 100:19, 101:14, 121:5 Morning [1] - 103:12 most [1] - 153:12 mostly [2] - 87:2, 97:12 mother [1] - 9:20 motion [11] - 25:16, 25:18, 25:22, 28:18, 30:4, 30:22, 70:23, 72:24, 156:13, 172:6, 172:7 motioned [1] - 171:2 motor [3] - 72:1, 134:20, 135:9 mouse [12] - 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 [1] - 140:19 movable [2] - 39:3, 39:4 move [19] - 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 [1] - 169:24 movement [5] - 156:21, 156:23, 157:21, 168:22, 172:2 moves [1] - 157:24 moving [21] - 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 [34] - 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 [15] - 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 [1] - 65:24 muscle [3] - 24:11, 32:12, 147:14 muscles [2] - 34:16, 141:12 must [1] - 103:10 N name [22] - 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 [2] - 57:20, 176:5 National [4] - 56:18, 56:19, 56:23, 57:1 natural [6] - 24:17, 24:19, 30:6, 157:7, 157:13, 159:8 nature [4] - 12:7, 18:8, 30:23, 37:11 near [4] - 26:14, 55:13, 85:2, 137:23 nearest [1] - 128:18 neck [1] - 163:16 need [11] - 5:7, 7:21, 7:22, 62:12, 71:11, 90:23, 100:13, 122:6, 122:10, 155:12, 160:2 needed [21] - 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 [2] - 72:12, 72:13 negatively [1] - 56:9 neighborhood [2] - 8:20, 57:19 nerve [7] - 147:16,	150:7, 150:14, 157:2, 157:4, 158:9, 163:17 nerves [1] - 30:15 neurosis [1] - 152:15 never [17] - 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 [13] - 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 [12] - 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 [1] - 173:23 none [5] - 103:17, 104:4, 116:18, 116:19, 116:21 nonetheless [1] - 137:16 North [2] - 2:9, 176:19 Northwest [1] - 26:14 northwest [3] - 46:20, 47:5, 47:7 nose [1] - 171:18 nothing [7] - 83:14, 105:9, 115:11, 141:21, 173:4, 175:15, 176:6 notice [8] - 4:10, 4:19, 4:20, 5:2, 5:15, 29:20, 143:19, 154:18 noticing [1] - 29:19 numb [2] - 153:20, 153:24 number [3] - 55:17, 60:24, 112:16 numbness [2] - 154:15, 155:23 numerous [1] - 62:9 O oath [1] - 176:7 object [1] - 75:23 objection [2] - 7:13, 7:15 observed [1] - 109:11 obviously [9] - 61:21,	62:11, 114:13, 125:5, 128:11, 136:14, 138:21, 146:17, 159:24 occasion [2] - 91:20, 92:21 occasional [1] - 154:16 occasions [2] - 66:21, 67:23 occur [1] - 86:7 occurred [2] - 66:15, 80:7 occurrence [2] - 16:19, 43:6 occurring [1] - 73:7 OF [4] - 1:1, 1:2, 1:7, 176:1 offer [3] - 37:18, 121:21, 127:22 offered [4] - 91:2, 120:19, 121:17, 174:5 offhand [2] - 47:1, 117:16 Office [1] - 2:8 office [2] - 18:19, 78:15 offices [2] - 1:19, 26:13 Offices [1] - 2:1 often [7] - 42:24, 60:6, 60:12, 60:14, 77:18, 84:8, 85:12 oil [2] - 106:17, 108:15 old [4] - 9:10, 87:9, 117:9, 149:4 Oldenburg [2] - 1:22, 176:3 older [2] - 130:18, 158:10 on-the-job [1] - 67:20 once [21] - 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 [54] - 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 [1] - 14:5 ones [7] - 97:19, 124:22, 126:5, 132:22, 153:16, 153:20, 160:7 ongoing [2] - 17:7, 103:7 ongoing-type [1] - 17:7 open [1] - 42:13 operate [2] - 14:11, 38:9 operated [1] - 74:16 operates [2] - 72:9, 74:20 operating [5] - 13:2, 66:8, 66:11, 83:17, 149:3 operation [2] - 69:1, 73:5 operator [4] - 65:8, 66:5, 67:12, 74:24 operator's [2] - 67:24, 68:3 opinion [1] - 150:24 opinions [1] - 66:23 oral [1] - 39:19 ordered [1] - 152:4 orders [1] - 145:7 orient [1] - 123:24 oriented [1] - 128:7 outer [1] - 165:4 outside [8] - 25:6, 25:9, 85:10, 85:14, 85:20, 103:7, 162:7, 173:15 overall [1] - 153:22 overhear [2] - 96:23, 172:20 overheard [1] - 108:6 overheated [2] - 70:19, 73:1 overheating [1] - 71:2 overheats [1] - 71:14 overlapped [1] - 16:22 overlapping [1] - 61:12 override [1] - 105:20 oversimplify [2] -
--	---	--	--	---

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 [7] - 22:19, 29:23, 39:21, 44:4, 50:16, 65:24, 162:11 patient [1] - 152:12 Paul [7] - 3:3, 4:7, 4:9, 8:4, 31:7, 107:22, 176:5 pAUL [1] - 1:5 PAUL [3] - 1:7, 1:16, 4:1 pay [5] - 12:22, 17:14, 53:10, 145:23, 146:2 paying [3] - 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 [3] - 52:3, 55:5, 157:16 periods [1] - 65:1 Perry [1] - 4:17 PERRY [1] - 2:8 person [3] - 21:13,	53:19, 176:5 person's [1] - 63:19 personal [3] - 14:8, 67:18, 102:16 personally [3] - 62:24, 63:21, 76:15 personnel [1] - 173:16 phase [3] - 130:1, 130:12, 130:19 phased [1] - 86:8 phone [6] - 55:17, 80:10, 80:23, 81:12, 82:9, 162:5 photo [2] - 159:23, 161:10 photos [1] - 159:22 phrase [5] - 28:1, 70:15, 73:3, 106:2, 141:15 physical [14] - 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 [5] - 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 [3] - 13:12, 22:6, 22:17 pieces [5] - 21:18, 125:24, 126:2, 126:19, 126:21 pile [3] - 99:24, 115:5, 115:9, 115:13, 122:7, 122:16, 122:18, 127:20 pinch [3] - 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 pink [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 [3] - 43:10, 50:4, 153:3 planning [2] - 43:6, 102:19 plans [1] - 61:4 plastic [3] - 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 [34] - 7:13, 50:23, 54:11, 54:16, 64:7, 67:10, 72:24, 101:16, 102:14, 102:19, 102:24, 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 [9] - 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 [7] - 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 [3] - 46:2, 48:5, 48:13 possibility [3] - 54:22, 101:23, 101:24 possible [3] - 47:16, 67:5, 92:10 possibly [2] - 44:19, 166:10 post [1] - 144:6 potential [2] - 45:17, 66:23 potentially [3] - 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 [3] - 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 [5] - 13:15, 13:17, 18:13, 18:15, 18:17 presses [4] - 12:10, 13:3, 18:9, 18:12 pressure [6] - 73:7,
--	---	---	---	---

<p>76:17, 76:24, 77:1, 77:5</p> <p>presume [1] - 114:18</p> <p>pretty [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</p> <p>prevent [1] - 29:12</p> <p>prevented [1] - 32:15</p> <p>primary [1] - 67:14</p> <p>print [1] - 20:21</p> <p>printed [1] - 22:6</p> <p>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</p> <p>printing [11] - 12:10, 13:3, 13:15, 13:17, 14:17, 16:8, 18:9, 18:12, 18:13, 18:15, 18:17</p> <p>private [1] - 10:19</p> <p>probed [1] - 55:4</p> <p>problem [8] - 23:14, 24:2, 26:19, 32:2, 32:5, 158:2, 166:24, 167:2</p> <p>problematic [2] - 24:5, 25:2</p> <p>problems [3] - 24:21, 35:10, 150:1</p> <p>Procedure [2] - 4:12, 5:16</p> <p>procedure [2] - 153:7, 161:1</p> <p>proceed [2] - 7:18, 121:18</p> <p>process [9] - 37:2, 37:6, 37:10, 68:17, 105:19, 111:5, 125:17, 134:14, 166:21</p> <p>Products [1] - 49:14</p> <p>profanity [1] - 82:14</p> <p>prognosis [1] - 31:16</p> <p>program [5] - 14:9, 14:17, 20:6, 20:7, 22:23</p> <p>programs [1] - 14:6</p> <p>project [2] - 104:24, 130:19</p> <p>projections [1] - 56:10</p> <p>projects [1] - 66:2</p> <p>promise [4] - 43:23, 44:1, 145:23, 146:12</p> <p>promotions [1] - 21:23</p>	<p>pronation [1] - 28:1</p> <p>propels [1] - 72:1</p> <p>properties [1] - 8:21</p> <p>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</p> <p>provide [1] - 54:2</p> <p>pull [6] - 25:19, 26:4, 33:6, 114:1, 123:12, 157:11</p> <p>pulled [4] - 75:8, 103:10, 111:12, 157:9</p> <p>pulling [3] - 27:16, 47:13, 62:5</p> <p>purpose [4] - 67:14, 117:6, 170:10, 174:12</p> <p>pursuant [5] - 4:10, 5:14, 50:17, 144:16, 176:4</p> <p>pursue [1] - 49:24</p> <p>put [21] - 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</p> <p>putting [6] - 28:21, 29:12, 85:18, 87:14, 97:4, 106:17</p>	<p>ramping [2] - 36:22, 140:1</p> <p>ran [4] - 18:13, 27:12, 30:4, 85:16</p> <p>range [8] - 25:16, 25:18, 25:21, 25:23, 28:17, 30:4, 30:21, 156:13</p> <p>rant [1] - 83:6</p> <p>ranting [1] - 83:5</p> <p>rapidly [1] - 65:7</p> <p>rare [1] - 74:21</p> <p>rate [2] - 49:20, 50:11</p> <p>ray [1] - 162:19</p> <p>Raymond [1] - 8:6</p> <p>rays [2] - 147:7, 147:24</p> <p>reach [2] - 136:13, 147:9</p> <p>reaching [1] - 28:13</p> <p>read [3] - 68:3, 68:15, 75:15</p> <p>reading [2] - 67:24, 176:9</p> <p>ready [2] - 54:7, 109:13</p> <p>real [6] - 24:23, 25:1, 25:2, 79:17, 89:9, 156:20</p> <p>realize [1] - 154:11</p> <p>really [8] - 29:24, 81:7, 85:1, 105:10, 113:7, 113:9, 117:20, 148:6</p> <p>reason [6] - 6:20, 11:3, 11:5, 61:5, 85:23, 166:14</p> <p>recalled [1] - 98:13</p> <p>receipts [1] - 52:20</p> <p>received [6] - 13:7, 13:11, 29:22, 37:18, 51:1, 76:4</p> <p>receiving [2] - 82:5, 146:13</p> <p>recent [2] - 61:11, 84:9</p> <p>recently [2] - 60:8, 91:4</p> <p>recess [1] - 80:21</p> <p>recognize [1] - 37:13</p> <p>recollection [1] - 142:14</p> <p>recommended [1] - 154:24</p> <p>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</p> <p>records [8] - 29:21, 147:1, 149:6, 151:8,</p>	<p>152:18, 162:17</p> <p>recreational [1] - 59:3</p> <p>recreationally [2] - 58:20, 58:22</p> <p>reduced [1] - 176:7</p> <p>refer [1] - 33:1</p> <p>referenced [1] - 37:17</p> <p>referencing [1] - 143:16</p> <p>referring [4] - 37:20, 146:9, 160:9, 175:6</p> <p>reflect [2] - 4:8, 171:16</p> <p>refresh [1] - 47:18</p> <p>regardless [2] - 142:14, 143:8</p> <p>register [1] - 27:7</p> <p>rejected [2] - 37:7, 37:8</p> <p>rejection [1] - 37:11</p> <p>related [2] - 157:5, 176:11</p> <p>relation [6] - 8:18, 11:14, 21:5, 44:8, 63:11, 88:11</p> <p>relationship [2] - 58:18, 60:1</p> <p>relative [1] - 176:12</p> <p>relatively [1] - 41:16</p> <p>release [2] - 157:2, 157:5</p> <p>released [2] - 138:3, 139:8</p> <p>remains [1] - 101:1</p> <p>remember [29] - 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</p> <p>remind [1] - 31:8</p> <p>remove [1] - 75:17</p> <p>removed [4] - 88:20, 96:16, 99:6, 152:14</p> <p>remuneration [1] - 93:22</p> <p>renew [1] - 50:20</p> <p>Renew [1] - 50:21</p> <p>renewed [1] - 51:10</p> <p>repair [2] - 86:22, 88:1</p> <p>repaired [1] - 87:4</p> <p>repeat [1] - 82:6</p> <p>replicate [1] - 22:10</p> <p>report [2] - 17:15,</p>	<p>17:18</p> <p>reported [1] - 1:22</p> <p>REPORTER [1] - 176:1</p> <p>Reporter [3] - 1:23, 176:3, 176:19</p> <p>Reporter..... [1] - 3:24</p> <p>request [2] - 81:13, 149:6</p> <p>requires [2] - 22:24, 75:23</p> <p>reside [3] - 8:7, 9:16, 10:3</p> <p>respect [9] - 31:11, 34:18, 50:22, 96:24, 143:18, 154:14, 155:17, 156:1, 157:21</p> <p>response [5] - 83:21, 140:21, 149:7, 172:19, 173:10</p> <p>responsible [2] - 82:17, 82:22</p> <p>rest [6] - 35:22, 35:24, 36:2, 56:23, 123:13, 133:11</p> <p>restart [2] - 111:10, 114:10</p> <p>restarted [1] - 111:11</p> <p>resting [2] - 35:21, 35:22</p> <p>restoration [2] - 87:3, 87:9</p> <p>restoring [1] - 59:7</p> <p>restroom [1] - 7:21</p> <p>result [2] - 49:12, 159:15</p> <p>resulted [1] - 120:15</p> <p>reversed [1] - 75:10</p> <p>revisit [1] - 54:22</p> <p>rid [1] - 90:14</p> <p>rides [1] - 71:10</p> <p>ring [11] - 33:1, 33:11, 153:10, 153:17, 153:21, 153:24, 154:15, 155:23, 156:9, 156:10, 158:1</p> <p>risk [2] - 67:6, 73:11</p> <p>risks [7] - 63:22, 66:23, 67:3, 69:16, 69:17, 69:22, 76:21</p> <p>Riverside [1] - 2:5</p> <p>Road [1] - 176:19</p> <p>rocket [1] - 14:1</p> <p>Rockford [2] - 2:5, 176:20</p> <p>role [4] - 18:18, 18:20, 175:11, 175:13</p> <p>roll [2] - 38:15, 128:3</p> <p>RONALD [1] - 2:4</p>
Q				
<p>quantify [1] - 125:4</p> <p>question-and-answer [1] - 5:20</p> <p>questions [9] - 4:18, 5:7, 5:21, 6:18, 7:15, 48:21, 59:23, 98:17, 160:8</p> <p>quit [1] - 36:22</p> <p>quite [2] - 125:3, 145:16</p>				
R				
<p>rack [2] - 38:15</p> <p>raise [1] - 170:5</p> <p>raised [1] - 111:11</p> <p>ramp [4] - 136:16, 136:18, 137:2, 137:11</p> <p>ramped [1] - 142:16</p>				

roof [1] - 62:8 room [17] - 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 [5] - 111:9, 112:22, 112:24, 114:12, 114:18 roughly [2] - 18:14, 119:16 rpms [5] - 136:16, 137:2, 137:11, 139:24, 142:16 rule [1] - 158:10 Rules [2] - 4:12, 4:13 rules [1] - 4:15 run [5] - 12:10, 61:9, 113:18, 130:24, 131:3 running [10] - 12:23, 16:9, 18:9, 18:12, 18:15, 33:23, 64:10, 82:21, 83:13, 114:12 runs [3] - 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 [2] - 64:12, 65:3 scar [4] - 152:14, 154:8, 154:20, 160:21 scared [1] - 119:5 scars [1] - 161:16 scary [1] - 112:9 scene [1] - 141:3 scheduled [1] - 41:22 school [17] - 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 [1] - 11:2 Scott [1] - 26:17 scrap [2] - 90:5, 90:8 scratch [4] - 21:18, 21:22, 22:2, 22:20 scratch-off [1] - 21:18 scream [1] - 143:22 screamed [2] - 135:14, 140:18 screaming [1] - 144:13 screams [2] - 144:19, 144:22 screen [1] - 22:18 Screw [7] - 37:22, 37:23, 40:8, 40:14, 49:14, 51:1, 51:9 screwed [1] - 174:13 screws [7] - 38:12, 38:13, 38:18, 38:19, 38:23, 39:6, 41:6 second [7] - 47:11, 73:19, 75:23, 160:23, 161:1, 162:17, 173:9 seconds [3] - 168:9, 168:10, 168:14 sections [1] - 126:14 see [43] - 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 [5] - 77:15, 84:24, 95:17, 150:20, 151:14 seem [1] - 107:13 sees [1] - 115:7 Sek [3] - 148:24, 149:1, 149:14 self [2] - 17:20, 45:6 self-employment [1] -	17:20 seminar [1] - 14:5 seminar-type [1] - 14:5 seminars [1] - 14:7 send [2] - 83:19, 149:15 sending [2] - 80:3, 80:6 sensation [3] - 34:7, 34:11, 154:6 sense [3] - 50:21, 153:9, 153:19 sent [2] - 48:21, 149:6 separate [1] - 116:4 series [1] - 22:24 service [2] - 56:19, 56:22 session [1] - 5:20 set [5] - 61:3, 126:15, 126:16, 166:21 sets [1] - 28:21 setting [1] - 94:20 several [3] - 13:24, 45:20, 149:6 severely [1] - 37:13 severing [1] - 99:21 sew [1] - 141:11 shakes [1] - 158:5 shaking [1] - 46:15 share [3] - 79:8, 79:21, 146:12 Sharp [5] - 16:6, 16:9, 16:18, 16:22, 17:19 sharp [1] - 16:7 shed [5] - 88:13, 88:20, 89:5, 90:24, 91:19 sheds [1] - 89:7 shift [1] - 57:8 shock [2] - 141:2, 145:3 shoes [1] - 111:18 shoot [1] - 162:12 shooting [1] - 154:17 short [4] - 12:17, 12:19, 12:20, 80:21 Shorthand [4] - 1:23, 3:24, 176:3, 176:19 SHORTHAND [1] - 176:1 Shoulder [1] - 150:10 shoulder [4] - 6:8, 32:19, 156:21, 156:22 shovel [2] - 87:6, 87:20 show [4] - 103:12, 158:17, 161:19, 171:11	showed [7] - 27:9, 38:20, 103:1, 105:1, 122:11, 122:12, 162:15 showing [1] - 169:7 shows [1] - 162:22 shrugs [1] - 6:8 sick [1] - 83:4 side [16] - 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 [1] - 19:3 signature [3] - 49:5, 49:8, 175:17 signing [2] - 48:16, 176:9 similar [1] - 46:4 simple [2] - 72:2, 105:9 simply [1] - 172:5 sister [4] - 103:1, 103:2, 103:3, 110:8 sit [9] - 17:1, 36:12, 46:11, 47:23, 63:16, 142:24, 143:8, 174:11, 175:9 sitting [3] - 64:9, 67:22, 90:16 situation [11] - 43:4, 45:7, 66:7, 74:22, 76:15, 140:3, 140:8, 143:1, 145:18, 145:19, 145:20 situations [1] - 66:4 six [3] - 56:8, 77:23, 78:2 size [3] - 22:11, 89:15, 112:2 skilled [2] - 67:12, 112:1 skin [1] - 147:14 sky [1] - 170:1 slow [2] - 156:14, 170:6 SM [2] - 13:18, 13:20 small [2] - 38:23, 92:16 smaller [12] - 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 [1] - 32:13 snowed [1] - 62:6 social [3] - 59:3, 85:7,
---	--	--	--	---

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

<p>thereafter [1] - 80:16</p> <p>THERESA [1] - 2:1</p> <p>thereupon [1] - 176:7</p> <p>they've [1] - 86:8</p> <p>thicker [1] - 124:4</p> <p>think's [1] - 163:2</p> <p>thinking [3] - 134:10, 135:13, 140:20</p> <p>thinks [1] - 174:2</p> <p>thinner [1] - 124:6</p> <p>third [2] - 119:14, 173:9</p> <p>thirds [3] - 119:16, 119:17, 120:3</p> <p>Thomas [6] - 1:19, 2:1, 21:14, 21:15, 22:1, 37:21</p> <p>thoughts [2] - 79:8, 121:17</p> <p>three [17] - 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</p> <p>threw [1] - 90:7</p> <p>throughout [1] - 14:4</p> <p>thumb [10] - 33:5, 33:6, 33:11, 33:23, 34:19, 34:22, 153:11, 153:17, 158:2</p> <p>tidied [1] - 92:24</p> <p>tie [1] - 145:9</p> <p>tied [3] - 93:11, 112:24, 114:22</p> <p>tight [2] - 128:4, 157:3</p> <p>tilted [1] - 28:12</p> <p>timewise [1] - 145:3</p> <p>tingles [2] - 34:7, 34:11</p> <p>tingling [4] - 34:20, 35:6, 35:24, 156:20</p> <p>tip [1] - 140:9</p> <p>tired [4] - 83:1, 120:17, 120:18, 130:17</p> <p>tissue [3] - 152:14, 154:8, 154:20</p> <p>today [14] - 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</p> <p>today's [1] - 173:22</p> <p>together [8] - 58:21, 58:23, 59:6, 61:16, 61:19, 82:9, 84:21,</p>	<p>141:12</p> <p>ton [1] - 152:14</p> <p>took [23] - 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</p> <p>tool [2] - 69:6, 71:3</p> <p>tools [1] - 69:3</p> <p>top [4] - 33:19, 76:12, 119:8</p> <p>tore [1] - 157:8</p> <p>torn [1] - 29:17</p> <p>totally [1] - 97:18</p> <p>touching [2] - 30:22, 98:22</p> <p>toward [14] - 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</p> <p>towards [11] - 131:16, 133:11, 133:16, 136:10, 167:8, 168:23, 170:1, 170:20, 172:1, 172:5, 172:8</p> <p>towel [1] - 145:8</p> <p>town [2] - 26:15, 55:15</p> <p>trailer [7] - 88:7, 88:17, 89:20, 89:22, 90:1, 90:20, 102:12</p> <p>train [1] - 91:8</p> <p>trained [3] - 14:11, 20:7, 67:11</p> <p>training [9] - 12:5, 13:2, 13:15, 13:19, 13:21, 14:16, 20:2, 67:20, 76:4</p> <p>Tramadol [1] - 155:13</p> <p>transcribed [1] - 1:22</p> <p>transition [1] - 15:20</p> <p>translate [1] - 6:10</p> <p>translates [1] - 123:22</p> <p>transposition [1] - 163:17</p> <p>treated [2] - 30:6, 31:13</p> <p>treatment [2] - 26:22, 154:24</p> <p>treatments [1] - 159:16</p> <p>tree [91] - 73:8, 92:16, 92:17, 92:22, 93:18,</p>	<p>93:19, 93:20, 94:8, 94:17, 94:18, 94:21, 95:10, 95:11, 95:15, 95:22, 95:24, 96:18, 97:1, 98:19, 98:21, 99:1, 99:2, 99:6, 100:12, 100:17, 100:21, 100:24, 101:2, 103:16, 103:18, 103:20, 103:23, 104:17, 104:22, 105:13, 105:14, 105:22, 106:22, 107:2, 107:5, 108:5, 108:10, 108:11, 108:21, 109:10, 110:17, 110:23, 111:7, 111:12, 111:14, 111:16, 111:23, 112:2, 112:6, 112:7, 112:16, 112:19, 113:1, 113:13, 113:15, 113:22, 116:3, 116:24, 119:12, 119:20, 119:22, 120:2, 120:17, 120:22, 120:23, 121:2, 121:4, 121:7, 121:18, 121:24, 122:16, 122:18, 123:18, 126:15, 133:20, 137:14, 137:19, 141:22, 141:23, 142:10, 165:10, 165:16, 165:21, 165:23, 166:4, 166:19</p> <p>trees [9] - 91:14, 91:21, 96:5, 96:12, 96:15, 97:18, 105:23, 106:5, 106:12</p> <p>triangular [1] - 119:12</p> <p>tried [22] - 21:2, 21:3, 21:4, 21:24, 22:2, 23:16, 31:24, 36:5, 36:10, 44:2, 44:24, 48:6, 54:12, 54:13, 92:9, 131:17, 134:12, 135:11, 138:14, 138:18, 142:17, 149:18</p> <p>trigger [9] - 76:8, 76:10, 114:15, 114:19, 167:12, 167:18, 167:19, 168:8, 169:15</p> <p>trigonometry [1] -</p>	<p>108:24</p> <p>trim [2] - 122:20, 127:2</p> <p>trimmed [9] - 96:16, 97:19, 104:4, 106:12, 126:9, 126:22, 127:12, 129:3, 130:12</p> <p>trimming [19] - 67:19, 120:22, 121:1, 121:18, 124:12, 125:17, 126:18, 127:22, 129:13, 129:20, 130:11, 130:19, 131:19, 133:19, 133:22, 134:17, 135:21, 135:22, 166:22</p> <p>tripped [1] - 170:13</p> <p>trouble [3] - 164:7, 164:11, 165:6</p> <p>truck [4] - 88:7, 102:3, 102:4, 102:8</p> <p>true [4] - 7:6, 8:16, 8:17, 176:8</p> <p>trunk [3] - 116:20, 119:2, 128:22</p> <p>truth [3] - 79:14, 176:6, 176:6</p> <p>truthfully [1] - 5:24</p> <p>try [18] - 21:3, 21:12, 26:1, 26:4, 34:17, 35:3, 36:12, 40:22, 41:24, 45:24, 46:12, 47:7, 47:10, 113:22, 154:9, 155:12, 155:14</p> <p>trying [23] - 13:12, 21:13, 22:9, 22:15, 22:17, 32:13, 46:23, 48:11, 56:20, 70:12, 73:20, 77:6, 82:7, 100:17, 105:20, 140:16, 141:1, 141:7, 142:8, 143:2, 155:11, 171:5</p> <p>tunnel [1] - 29:15</p> <p>turn [3] - 28:24, 137:7, 138:8</p> <p>turned [7] - 51:13, 137:10, 137:23, 145:18, 171:3, 171:13, 171:21</p> <p>turning [2] - 27:19, 114:13</p> <p>TV [1] - 21:21</p> <p>twice [6] - 43:2, 43:3, 60:14, 60:22, 78:12, 150:22</p> <p>twigs [1] - 92:15</p> <p>two [58] - 10:21,</p>	<p>10:22, 13:1, 16:2, 21:8, 23:3, 23:16, 24:23, 24:24, 25:5, 26:13, 30:2, 30:3, 31:23, 32:16, 32:20, 33:7, 33:22, 35:14, 35:18, 36:4, 41:22, 45:17, 46:17, 48:6, 48:10, 48:12, 50:6, 50:8, 50:13, 50:22, 53:11, 53:14, 54:12, 56:2, 56:21, 56:22, 58:11, 60:11, 60:20, 73:21, 77:16, 78:10, 85:16, 86:12, 88:13, 88:19, 96:3, 96:7, 118:14, 118:15, 119:16, 119:17, 120:3, 126:16, 131:8, 135:20, 149:12</p> <p>two-thirds [3] - 119:16, 119:17, 120:3</p> <p>two-week [1] - 50:22</p> <p>type [20] - 14:5, 17:7, 20:17, 21:17, 23:6, 23:23, 34:17, 65:5, 75:13, 86:21, 87:24, 103:20, 103:23, 155:7, 157:14, 163:14, 166:15, 168:21, 174:5</p> <p>typing [1] - 34:18</p>
U				
<p>ugly [2] - 103:21, 103:22</p> <p>uh-huhs [1] - 6:8</p> <p>uh-uhs [1] - 6:8</p> <p>uhs [1] - 6:8</p> <p>ulnar [1] - 163:17</p> <p>ultimately [1] - 139:23</p> <p>unable [3] - 23:4, 32:8, 50:1</p> <p>unbolted [2] - 88:15, 89:5</p> <p>under [5] - 118:19, 154:21, 156:18, 166:14, 176:8</p> <p>underside [2] - 33:18, 33:24</p> <p>understood [3] - 38:11, 38:17, 147:13</p> <p>undertake [2] - 109:12, 110:21</p> <p>undertaken [1] - 45:18</p> <p>undertaking [2] - 106:15, 127:22</p> <p>union [1] - 56:13</p>				

unlike [1] - 134:3 unlikely [1] - 45:8 up [132] - 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 [1] - 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 [1] - 27:4 utilize [1] - 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 [1] - 102:16 Vernon [2] - 26:13, 151:13 version [2] - 20:7, 142:2 versus [1] - 106:12 view [2] - 65:2, 81:4 visit [2] - 85:24, 86:12 visits [2] - 30:2, 30:3 vividly [1] - 63:8 vocal [1] - 145:16 vocational [3] - 12:5, 13:2, 13:20 volunteer [2] - 145:19, 146:15 volunteering [1] - 146:18 vs [1] - 1:7 W wages [1] - 49:13 wait [10] - 27:14, 31:8, 59:15, 75:24, 88:12, 97:11, 129:5, 135:18, 136:1 waiting [2] - 41:2, 145:11 waive [1] - 175:16 waived [1] - 176:9 walked [2] - 131:16, 134:7 walking [9] - 103:9, 109:7, 133:16, 167:8, 167:15, 168:23, 172:1, 172:5, 172:8 walks [1] - 136:3 waned [1] - 60:18 warned [1] - 75:19 warnings [1] - 128:7 warranted [1] - 42:18	wash [1] - 38:16 watch [1] - 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 [1] - 29:3 wearing [1] - 29:1 wedding [1] - 59:12 week [9] - 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 [13] - 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 [1] - 21:1 whole [17] - 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 [1] - 90:12 wit [1] - 176:5 witness [3] - 175:18, 176:8, 176:9 WITNESS [11] - 3:2, 6:1, 6:12, 6:16, 7:5, 7:11, 7:19, 7:24, 76:2, 158:22, 163:1 witnesses [1] - 6:20 won [1] - 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 [1] - 53:2 works [1] - 72:3 worried [1] - 98:19 worst [1] - 153:16 wound [1] - 147:5 wrapped [1] - 111:22 wrist [8] - 27:19, 28:9, 28:12, 28:23, 29:1, 29:5, 29:10, 29:11, 29:12 writing [1] - 176:8 written [1] - 48:21 X X-ray [1] - 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
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