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

6 PAUL DULBERG, )  
7 Plaintiff, )  
8 vs. )  
9 DAVID GAGNON, ) Case No.  
10 Individually, and as ) 12 LA 178  
11 Agent of CAROLINE )  
12 McGuire and BILL )  
13 McGuire, and CAROLINE )  
14 McGuire and BILL )  
15 McGuire, Individually, )  
16 Defendants. )

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15 The deposition of

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17 DR. KATHY KUJAWA

18 July 23, 2014

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21 Reported by:  
22 Jill S. Tiffany, CSR  
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25 The deposition of DR. KATHY KUJAWA,  
26 taken before Jill S. Tiffany, CSR, a notary

1 public within and for the County of Lake and  
2 State of Illinois, on July 23, 2014, at the  
3 hour of 1:34 p.m., at 2614 Patriot Boulevard,  
4 Glenview, Illinois.

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## 7 APPEARANCES:

8

9 MR. ROBERT J. LUMBER, of the  
10 Law Offices of Thomas J. Popovich, P.C.  
3416 West Elm Street  
McHenry, Illinois 60050,  
11 appeared on behalf of plaintiff;

12

13 MR. PERRY A. ACCARDO, of the  
14 Law Office of Steven A. Lihosit  
200 North LaSalle Street, Suite 2650  
Chicago, Illinois 60601,  
15 appeared on behalf of defendants.

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## 2                   I N D E X

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4   WITNESS:

5                   DR. KATHY KUJAWA

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7   EXAMINED BY:                   PAGE

8                   MR. ACCARDO                   4

9                   MR. LUMBER                   25

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11   EXHIBITS:

12                   (No exhibits marked.)

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1 DR. KATHY KUJAWA,  
2 called as a witness and having been first  
3 duly sworn under oath, was examined and  
4 testified as follows:

5 E X A M I N A T I O N

6 BY MR. ACCARDO:

7 Q. Doctor, could you please state  
8 your name and spell it for the court  
9 reporter?

10 A. Kathy Kujawa; Kathy with a K, last  
11 name is K-U-J-A-W-A.

12 MR. ACCARDO: Let the record  
13 reflect this is the discovery deposition of  
14 Dr. Kathy Kujawa taken pursuant to notice,  
15 taken in accordance with the Rules of the  
16 Supreme Court of the State of Illinois, the  
17 Rules of the Circuit Court of McHenry County  
18 and any other applicable Local Court Rules.

19 Q. Good afternoon, Doctor. My name  
20 is Perry Accardo and I'm going to be asking  
21 you some questions today about a patient of  
22 yours by the name of Paul Dulberg, okay?

23 A. Okay.

24 Q. Have you ever given depositions

1 before?

2 A. Yes, I have.

3 Q. You're familiar with the ground  
4 rules then governing depositions? I don't  
5 have to go over them with you?

6 A. You don't have to.

7 Q. All right, great. What type of  
8 doctor are you?

9 A. A neurologist with a specialist in  
10 movement disorders which means two additional  
11 years of training beyond the standard  
12 neurology residency.

13 Q. And today we are located at your  
14 offices in Glenview; is that correct?

15 A. That's correct.

16 Q. And what practice are you  
17 affiliated with currently?

18 A. Let's see. I have two offices. I  
19 saw the -- Mr. Dulberg at my Alexian Brothers  
20 office. Here it's just more convenient. I'm  
21 in private practice here, renting space from  
22 a group. Though the door says Presence, I am  
23 not with Presence.

24 Q. But you are affiliated with

1 Alexian Brothers?

2 A. Correct, absolutely.

3 Q. Gotcha. And do you have at least  
4 some of your records here today regarding  
5 Mr. Dulberg?

6 A. That's right. I have the initial  
7 visit when I saw him in September 2013.

8 Q. And then it's my understanding  
9 that you saw him in February of 2014 for an  
10 injection as well as in May of 2014 for  
11 another injection; is that correct?

12 A. That's correct.

13 Q. Have you reviewed any other  
14 records prior to today's deposition for any  
15 other medical care or treatment that Mr.  
16 Dulberg has received?

17 A. If I did, it was back when I saw  
18 him in September. I do know his orthopedic  
19 doctor, Dr. Sagerman, referred him to me.  
20 But off the top of my head, I can't remember  
21 if I saw some records from Dr. Sagerman.

22 Q. Other than Dr. Sagerman, are you  
23 aware of any other medical care or treatment  
24 that Mr. Dulberg received as a result of this

1 incident?

2 A. No, but it looks like he told me  
3 he saw Dr. Levin. If I recall, I don't think  
4 I've seen any records from Dr. Levin.

5 Q. Do you know what kind of doctor  
6 Dr. Levin is?

7 A. My note said he was a neurologist,  
8 but I don't recognize his name.

9 Q. And I'm here today to ask you some  
10 questions regarding follow-up and injuries  
11 that Mr. Dulberg is claiming resulted from an  
12 incident that took place on June 28th of  
13 2011. Now, when Dr. Dulberg -- or when Mr.  
14 Dulberg first came to see you in September  
15 of 2013, you said he was referred to you by  
16 Dr. Sagerman?

17 A. That's correct.

18 Q. And why did Dr. Sagerman refer him  
19 to you, if you know?

20 A. Dr. Sagerman knows I'm movement  
21 disorders, so the patient had some -- I don't  
22 know if it's correct to say -- some spasms, I  
23 think we were calling them spasms, in his  
24 right arm which occurred after the injury.

1 Q. And when you first saw Mr.

2 Dulberg, did you take a history from him?

3 A. Yes, I did.

4 Q. And what did that history consist  
5 of?

6 A. It looks like he had two  
7 complaints, which was pain in the arm that  
8 had the trauma, but also an abnormal posture  
9 of the right hand.

10 Q. And so we're talking about the  
11 right arm and the right hand?

12 A. That's right.

13 Q. I see in the history that there's  
14 a mention of a right arm dystonia. What is  
15 that?

16 A. It's abnormal muscle spasms. So  
17 dystonia is a fancy word for involuntary  
18 muscle contractions.

19 Q. Did Mr. Dulberg give you a history  
20 of how the incident occurred that led him to  
21 come to see you?

22 A. Yes, he did. He told me two years  
23 prior to seeing him he was in a chain saw  
24 accident.

1           Q.    And what if anything did he say  
2   about that chain saw accident?

3           A.    He told me he was helping a  
4   neighbor who was using the chain saw.

5           Q.    And he suffered some kind of  
6   trauma to his right forearm; is that correct?

7           A.    Correct.

8           Q.    And I see in the history that he  
9   talks about his arm was nearly severed; is  
10   that correct?

11          A.    Correct.

12          Q.    And that would have been something  
13   that he would have told you?

14          A.    Yes, that's correct.

15          Q.    And his primary complaint was when  
16   he talked about a burning pain in his right  
17   forearm?

18          A.    Correct. First complaint is pain.

19          Q.    And there's I think a mention  
20   there of a medication that he was on,  
21   gabapentin, G-A-B-A-P-E-N-T-I-N?

22          A.    That's correct.

23          Q.    What type of medication is that?

24          A.    It was initially developed as a

1 seizure medication. But neurologists, we  
2 have discovered it's very helpful in other  
3 disorders, primarily pain, but also  
4 psychiatrists can use it for mood  
5 stabilization.

6 Q. And as far as this involuntary  
7 spasm where I think you used, in quotations,  
8 a curling of the right hand?

9 A. That's correct.

10 Q. He indicated that that started  
11 approximately 18 months before seeing you; is  
12 that correct?

13 A. That's right.

14 Q. And he also reports a constant  
15 numbness in the medial aspect of the right  
16 forearm?

17 A. That's correct.

18 Q. As well as an intermittent  
19 tingling?

20 A. Yes, that's right.

21 Q. What part of the forearm are we  
22 talking about when we're talking about the  
23 medial aspect?

24 A. The anatomical position is thumbs

1 out, so that would be the, if the thumbs are  
2 held out, the surface closest to the body.

3 Q. So sort of basically what would be  
4 like the inside of the right forearm?

5 A. Yes, that's right.

6 Q. And did you perform a physical  
7 examination of him back in September of 2013?

8 A. Yes, I did.

9 Q. And what were the results of that  
10 physical examination insofar as anything that  
11 was significant to you?

12 A. Let's see. He was slightly weak  
13 in his right hand. But he had observable  
14 spasms in his -- it was actually wrist and  
15 hand also.

16 Q. When you say observable, could you  
17 sort of explain to me what it was that you  
18 were able to observe?

19 A. Let's see. So his wrist came in,  
20 and his third, fourth and fifth, so the last  
21 three fingers curled into his palm.

22 Q. And was that the result of you  
23 asking him to do some types of certain  
24 movements or something like that?

1           A.    I was trying to provoke the  
2 involuntary movement, so I asked him to  
3 voluntary make a fist. And then the abnormal  
4 -- after making a fist, asking him to relax  
5 and he couldn't. The hand continued in that  
6 posture.

7           Q.    Would you consider that to be an  
8 objective or subjective finding?

9           A.    Objective.

10          Q.    Is there any subjective component  
11 to that whatsoever as far as you're  
12 concerned?

13          A.    Subjective on my part or the  
14 patient's part.

15          Q.    On the patient's part.

16          A.    No, these are my observations.

17          Q.    After your taking a history of him  
18 and doing your physical examination, did you  
19 come to an assessment or a diagnosis?

20          A.    Yes, I did.

21          Q.    And what was that?

22          A.    That he had post-traumatic  
23 dystonia, which is involuntary muscle  
24 contractures of his right hand. And also by

1 history, he's got a resultant pain syndrome  
2 also.

3 Q. And what was your plan of  
4 treatment?

5 A. To continue the gabapentin since  
6 he felt it did help his pain. But also to  
7 help the spasms, the treatment of choice --  
8 or the gold standard of treatment for  
9 dystonia is actually botulinum toxin  
10 injections.

11 Q. Commonly known as Botox?

12 A. Botox, that's correct. The brand  
13 name is Botox.

14 Q. I also note under assessment and  
15 plan there's numbers 1 and 2; 1 being other,  
16 acquired torsion dystonia. What is that?

17 A. Our EMR, electronic medical  
18 record, has a search to find out billable  
19 diagnoses. So torsion is an old, old term  
20 but dystonia is not so old. But acquired  
21 means it wasn't congenital; he wasn't born  
22 with it. So the dystonia happened later in  
23 life. But actually, dystonia can affect many  
24 parts of the body, so the second diagnosis

1 was writer's cramp which is actually dystonia  
2 of the hand.

3 Q. And I think as we said before  
4 then, Mr. Dulberg came back to see you in  
5 February of 2014?

6 A. That's correct.

7 Q. Was there any contact between  
8 Mr. Dulberg and your office between the  
9 September 25th visit and coming in in  
10 February of 2014?

11 A. Actually, I believe there were  
12 several phone calls because I -- I don't --  
13 the recommended therapy was Botox which is  
14 very expensive. So there were phone calls  
15 back and forth to see if he would qualify  
16 from a Patient Assistance Program through  
17 Allergan which owns -- essentially owns the  
18 drug, the Botox.

19 Q. And by very expensive, what are we  
20 talking about?

21 A. \$500 a vial. I know I gave him at  
22 least one vial. That's for the drug itself.  
23 But the injection and the doctor visits are  
24 on top of that.

1           Q.    And can you give me a ball park as  
2 far as about total how much that would be?

3           A.    I would guess maybe \$2,000.

4           Q.    And that would just be for one  
5 injection?

6           A.    Correct.

7           Q.    And as far as you know, were there  
8 any complications with that initial injection  
9 in February of 2014?

10          A.    Complication, no.

11          Q.    Now, as far as getting any type of  
12 relief from any of the symptoms that Mr.  
13 Dulberg was complaining of, how immediate is  
14 --- would be the onset of any relief after a  
15 Botox injection?

16          A.    It would have to be at least a  
17 week and a half.

18          Q.    And so what would the plan then be  
19 after that first injection in February of  
20 2014? What would be the follow-up  
21 recommendation?

22          A.    The initial visit is just to see  
23 if there's some sort of response. And  
24 actually, like any medication, you start at

1 the lowest dose possible and titrate up. So  
2 that's kind of an exploratory visit. He did  
3 come back in May. I can't quite -- there had  
4 to be some sort of positive response;  
5 otherwise we wouldn't have invited him back  
6 three months later. But the first one was  
7 just kind of a -- essentially exploratory.

8 Q. And sitting here today, we don't  
9 have the records from that May 2014 visit,  
10 correct?

11 A. That's correct.

12 Q. As far as what you recall, you  
13 believe that there would have been some type  
14 of positive reaction to the initial  
15 injection?

16 A. That's correct.

17 Q. And the second injection, would  
18 that have been at a higher dose?

19 A. Either different muscles or  
20 varying the dose I gave to certain muscles.

21 Q. Are you aware of Mr. Dulberg's  
22 reaction, either positive or negative, or if  
23 there was any improvement in symptoms  
24 following that May 2014 injection?

1       A.    I don't know.  The injections have  
2 to be spaced out every three months for  
3 insurance as well as to avoid immunity.  So I  
4 haven't seen him since then.  And I'm not --  
5 I don't know if he's got a follow-up  
6 appointment in August.  If he made the  
7 appointment I would assume then there was a  
8 positive response.  But I don't know.

9       Q.    Doctor, I'm going to ask you to  
10 give some opinions.  I would just ask that  
11 the opinions you give today be within a  
12 reasonable degree of medical and neurological  
13 certainty, okay?

14       A.    (Nodding.)

15       Q.    Do you have an opinion as to what  
16 if any injury Mr. Dulberg suffered as a  
17 result of the incident with the chain saw  
18 that took place on June 28th of 2011?

19       A.    Well, I believe due to the  
20 severing of muscles and nerves in his  
21 forearm, he's left with pain and involuntary  
22 muscle spasms.

23       Q.    What would cause the involuntary  
24 muscle spasms given the trauma that Mr.

1 Dulberg suffered to his right forearm?

2 (Brief interruption.)

3 THE WITNESS: I'm sorry, could you  
4 repeat that question?

5 MR. ACCARDO: Could you read it  
6 back.

7 (The last question was  
8 read by the reporter.)

9 A. The brain is trying to rewire  
10 itself. Not only is the brain trying to  
11 rewire itself, the nerves are trying to  
12 regrow. And nerves can regrow, but very  
13 slowly. And unfortunately, a lot of times  
14 it's -- the connections made are incorrect,  
15 to the wrong muscles, to the wrong place. So  
16 the man may say voluntary I want to squeeze  
17 my hand and the wrong muscles contract, if  
18 they can contract at all.

19 Q. Does it make a difference as far  
20 as any symptoms that Mr. Dulberg would have  
21 been experiencing if you relate it back to  
22 how deep or how severe the cut was to his  
23 right forearm?

24 A. Well, I believe I asked, do you

1 have any pins in your forearm. He says no,  
2 no, the bone was not injured, so it was  
3 completely a soft tissue injury. But from  
4 what I -- I didn't describe the scar so I  
5 can't remember how extensive the scar was.  
6 But from what I could tell, it was quite the  
7 severe injury. It was very deep, at least an  
8 inch deep, through most of his soft tissue in  
9 his arm.

10 Q. And would that have been based on  
11 what he would have told you as far as your  
12 approximation of the depth or the severity?

13 A. Well, and also who he had been to  
14 see. Dr. Sagerman is a hand surgeon. He's  
15 not a general orthopedic doc. I mean, he  
16 takes the worst of the hand injuries. So  
17 where he came from, too, sort of tells me the  
18 extent of his injury.

19 Q. And as you sit here today, do you  
20 have an opinion as to whether any injury that  
21 Mr. Dulberg may have suffered as a result of  
22 the incident of June 28th of 2011 is  
23 permanent in nature?

24 A. Since he came to me 18 months

1 after the initial injury, it's going to be  
2 pretty chronic at that point. He's come to  
3 me late enough where the damage is done.

4 Q. So you would consider it to be a  
5 permanent injury?

6 A. Correct. I would consider it to  
7 be a permanent injury.

8 Q. What was your prognosis as of the  
9 last time that Mr. Dulberg came to see you?

10 A. That his -- I was trying my best  
11 to relieve some of the spasms which were  
12 contributing to the pain. Completely  
13 resolving his symptoms, it wasn't going to  
14 happen, and I was very honest with him. But  
15 to try to give him some relief and improve  
16 his quality of life, that was my intent.

17 Q. At any point did Mr. Dulberg tell  
18 you that he was having difficulties  
19 performing certain activities or anything  
20 like that?

21 A. That I can't recall, but since we  
22 had to help him with the Patient Assistance  
23 Program, I assumed he didn't have insurance  
24 and he certainly didn't have the means to pay

1 for his medical treatment.

2 Q. But at least as far as your  
3 records and as you sit here today, your  
4 recollection of treating Mr. Dulberg, can you  
5 give me any specific examples of any  
6 limitations in activities or anything that  
7 Mr. Dulberg complained of?

8 A. I can guess what he can't do, but  
9 I didn't write down what he couldn't do.

10 Q. Yeah, I don't want you to guess.

11 It would just be based on your memory or  
12 anything that would be contained in the  
13 records.

14 A. Based on my memory of the records,  
15 no, I can't recall what he exactly couldn't  
16 do.

17 Q. You said that one of the main  
18 goals was to try to alleviate the spasms that  
19 you believed was contributing to the pain.

20 Would those be basically intermingled or  
21 would there be a separate and independent  
22 pain component that would be going along with  
23 it? If you know what I mean.

24 A. I think there was both. I mean,

1 not -- with the injury to the nerves, he was  
2 left with a baseline pain syndrome. But  
3 every time he had the spasms, the pain  
4 intensified. And with the spasms his pain  
5 was so bad it would wake him up at night.

6 Q. Did he give you any frame of  
7 reference or any indication regarding what  
8 his baseline level of pain was?

9 A. No. It looks like we did a pain  
10 scale and at that time it was zero.

11 Q. At which time? Would that have  
12 been --

13 A. It looks like the initial visit,  
14 pain scale is zero, 9/25 at 10:00 a.m.

15 Q. And getting back to some opinion  
16 testimony, as you sit here today do you have  
17 an opinion as to any medical care or  
18 treatment that Mr. Dulberg is going to  
19 require in the future to treat any injuries  
20 that you believe he sustained as a result of  
21 that incident?

22 A. I believe he'll need medications  
23 to treat his neuropathic pain probably  
24 indefinitely. At least periodic visits to

1 physical therapy, at least once a year. My  
2 preference would be several times a year.  
3 We're working with him on the dose to each  
4 muscles and the beneficial muscles to inject.  
5 And it really takes about a year to find a  
6 pattern that each of us is happy with. So at  
7 least for the next -- if I started in  
8 February, until next February to really  
9 decide is the Botox helpful for him.

10 And if we decide the Botox isn't  
11 helpful, then there's oral medications that  
12 sometimes can help with the spasms, but  
13 they're poorly tolerated due to sleepiness,  
14 dry mouth. If he fails Botox and we have to  
15 do those, there would be visits back and  
16 forth to see if he responds to them and see  
17 if the side effects are tolerable.

18 Q. Could you give me the names of  
19 some of those oral medications?

20 A. Oh, Baclofen, the tranquilizers,  
21 Klonopin. I don't like to use Ativan. It  
22 would be Klonopin. Flexeril, tizanidine. I  
23 can't remember the other name of tizanidine.  
24 So it's muscle relaxants and then the

1 tranquilizers.

2 Q. And as far as the Botox  
3 injections, you said that those would be  
4 scheduled every three months as long as  
5 there's some indication that the patient was  
6 experiencing some positive outcome from it?

7 A. Correct. It's not permanent.

8 Unfortunately, the effects wear off so the  
9 patient has to return on a regular basis.

10 And we have to space them out every three  
11 months so they don't become resistant to the  
12 therapy, develop antibodies against the  
13 Botox.

14 Q. And then if after a year he is  
15 still showing some temporary improvement,  
16 would you then continue --

17 A. Oh, they could be continued  
18 indefinitely.

19 Q. Okay. And would those then also  
20 be every three months --

21 A. Correct.

22 Q. -- or at some point --

23 A. We'd continue at three-month  
24 intervals.

1           Q.    At any point does that three-month  
2   interval ever get stretched out?

3           A.    In my experience, when I inject  
4   other body parts, like the face, sometimes we  
5   can go six to eight months because those  
6   muscles are very sensitive. But larger  
7   muscle groups, they're desperate at three  
8   months to come in.

9           MR. ACCARDO: All right. I don't  
10   think I have anything else. Thank you,  
11   Doctor.

12

13           E X A M I N A T I O N

14           BY MR. LUMBER:

15           Q.    Doctor, I just have one quick  
16   question. My name is Robert Lumber and we  
17   represent Mr. Dulberg in this matter.

18           The spasms that you had referred  
19   to, is there generally any rhyme or reason as  
20   to what may trigger them? I know in your  
21   visit you indicated that you were  
22   intentionally trying to trigger them by  
23   having him make a fist. But is there any  
24   other rhyme or reason? Or is this something

1 that just sitting anywhere at any time may  
2 flare up on him?

3           A. They can -- they can occur  
4 spontaneously, but a lot of times with  
5 voluntary movement they can be triggered.  
6 And we're very active with our hands so we're  
7 always using our hands, so I can imagine  
8 they're always being set off.

9           Q. One last question. You had  
10 indicated earlier, I believe, when describing  
11 the spasms or the dystonia that it was an  
12 acquired dystonia. Can that be acquired --  
13 meaning trauma induced? Can that be a  
14 possible reason for that?

15           A. Correct. Within our coding I  
16 don't think -- at that time I don't think  
17 there was a code for trauma. So acquired  
18 means trauma. It's trauma as opposed to  
19 congenital, born with it.

20           MR. LUMBER: I have nothing  
21 further.

22           MR. ACCARDO: I don't have  
23 anything else. Doctor, signature reserved,  
24 waived?

1                   THE WITNESS: Waived. So I don't  
2 have to see anything, right?

3                   MR. ACCARDO: Correct. Show  
4 signature waived then.

5                   (DEPOSITION CONCLUDED AT 2:00 P.M.)

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1  
2 STATE OF ILLINOIS )  
3 COUNTY OF L A K E ) SS:  
4  
5

6 I, Jill S. Tiffany, CSR,  
7 Certified Shorthand Reporter, and a notary  
8 public in and for the County of Lake and  
9 State of Illinois, do hereby certify that  
10 DR. KATHY KUJAWA on July 23, 2014 was by me  
11 first duly sworn to testify to the truth,  
12 the whole truth, and nothing but the truth,  
13 and that the above deposition was recorded  
14 stenographically by me and transcribed by  
15 me.

16  
17 I FURTHER CERTIFY that the  
18 foregoing transcript of said deposition is  
19 a true, correct, and complete transcript of  
20 the testimony given by the said witness at  
21 the time and place specified.

22  
23  
24

1           I FURTHER CERTIFY that I am not a  
2 relative or employee or attorney or  
3 employee of such attorney or counsel, or  
4 financially interested directly or  
5 indirectly in this action.

6           IN WITNESS WHEREOF, I have set my  
7 hand.

8

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13       Jill S. Tiffany  
14       Certified Shorthand Reporter  
14       Certificate No. 084-002807

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