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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.
Individually, and as) 12 LA 178

10 Agent of CAROLINE)

McGUIRE and BILL)

11 McGUIRE, and CAROLINE)

McGUIRE and BILL)

12 McGUIRE, Individually,)

13 Defendants.)

14

15 The deposition of

16

17 DR. KATHY KUJAWA

18 July 23, 2014

19

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21 Reported by:

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.
11 3416 West Elm Street
12 McHenry, Illinois 60050,
appeared on behalf of plaintiff;

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

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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 EXAMINATION

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

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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

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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.

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

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